Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

May 1, 2008

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Wilsonville Plan Amendment
DLCD File Number 001-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 14, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** **THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Christine Shirley, FEMA Specialist
Ryan Miller, DLCD Flood Map Modernization Program Coordinator
Chris Neamtzu, City of Wilsonville

<paa> ya

FORM 2

DLCD Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DATE STAMP

DEPT OF

APR 24 2008

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of Wilsonville**
Local file number: **Ordinance No. 647**
Date of Adoption: **4/21/2008**
Date Mailed: **4/22/2008**
Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date:

☐ Comprehensive Plan Text Amendment
☐ Comprehensive Plan Map Amendment
☒ Land Use Regulation Amendment
☐ Zoning Map Amendment
☐ New Land Use Regulation
☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Adoptin of FEMA's revised Flood Insurance Study report and Flood Insurance Rate maps, as well as amendments to the existing floodplain management regulations (WC Sect. 4.172) that meet the standards of Paragraph 60.3(d) of the National Flood Insurance Program.

Does the Adoption differ from proposal? No, no explaination is necessary

Plan Map Changed from: **N/A** to: **N/A**
Zone Map Changed from: **N/A** to: **N/A**
Location: **N/A** Acres Involved: **0**
Specify Density: Previous: **N/A** New: **N/A**
Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☐	☐	☐	☒	☒	☒	☐	☐	☒	☐	☐	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?	☒ Yes	☐ No
If no, do the statewide planning goals apply?	☐ Yes	☐ No
If no, did Emergency Circumstances require immediate adoption?	☐ Yes	☐ No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

See attached revised list.

Local Contact: **Chris Neamtzu, Long Range Planner** Phone: **(503) 682-4960** Extension:

Address: **29799 SW Town Center Loop East** Fax Number: **503-682-7025**

City: **Wilsonville** Zip: **97070-** E-mail Address: **neamtzu@ci.wilsonville.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

AMENDED Affected State or Federal Agnecies, Local Governments or Special Districts

Name	Department	Agency	Address	City	State	Zip
Steve Hanschka	Planning	Clackamas County	9101 SE Sunnybrook Blvd.	Clackamas	OR	97015
Doug McClain	Planning Section Manager	Clackamas County	9101 SE Sunnybrook Blvd.	Clackamas	OR	97015
Christine Shirley	Natural Hazards Planning	DLCD	635 Capitol St. NE, Suite 150	Salem	OR	97301-2540
	Floodmap Modernization Program					
Mark Darienzo	Planning Services Division	DLCD	635 Capitol St. NE, Suite 150	Salem	OR	97301-2540
	Floodplain/GIS Specialist					
Ryan Miller	Planning Services Division	DLCD	635 Capitol St. NE, Suite 150	Salem	OR	97301-2540
		FEMA				
Carl Cook	Region 10	Federal Regional Center	130 228th Street, SW	Bothell	WA	98021-8627
Manager						
Community Development	Growth Management Services	Metro	600 NE Grand Avenue	Portland	OR	97232
Ray Valone		Metro	600 NE Grand Avenue	Portland	OR	97232
		Oregon Dept. of Environmental Quality	811 SW Sixth Avenue	Portland	OR	97204
John Lilly		Oregon Dept. of State Lands	775 Summer Street, NE	Salem	OR	97301-1279
Bill Ferber	Region Manager	Oregon Water Resources Dept.	725 Summer Street, NE	Salem	OR	97301
Brent Curtis	Planning Manager	Washington County	155 N. First Avenue	Hillsboro	OR	97124

David R. Beach 30800 SW Salmon St, Wilsonville, OR 97070

PC Public Hearing Version 3.12.08

Proposed Changes to WC 4.172 Flood Plain Regulations.

New language is in **bold;** Deleted language is ~~struck through~~:

Definitions –

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

"Development": Any human caused 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 ~~located within the floodplain~~ **storage of equipment or materials located within the area of special flood hazard.**

"Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

Manufactured Home: A structure **built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities** for movement on the public highways, that has sleeping cooking and plumbing facilities, that is intended for human occupancy, and was constructed in accordance with the Federal Manufactured Housing Construction and Safety Standards regulations in effect at the time of construction. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For flood insurance purposes, and City zoning standards, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date 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, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does

it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure: Anything built which requires location on the ground or is attached to something having a location on the ground. ~~For purposes of the City's Flood Plain Development Regulations, things located below grade are not considered to be structures, unless they are subterranean buildings, basements or cellars.~~

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50 percent) of the market value of the structure, as determined by the City's Building Official, either:

A. Before the improvement or repair is started, or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term is not used in the same manner as the term "substantial development" and does not include either:

(1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Section 4.172. Flood Plain Regulations.

(.01) Purpose:

A. To minimize public and private losses due to flood conditions in flood-prone areas.

B. To regulate uses and alteration of land which would otherwise cause erosion, decreased storm water storage capability, increased flood heights or velocities.

C. To require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, alteration or remodeling.

D. To restrict filling, grading, dredging, and other development which would increase flood damage.

E. To prevent construction of flood barriers which would unnaturally divert flood waters or increase flood hazards in other areas.

F. To properly regulate the 100-year flood plain identified by the Federal Insurance Administration (FIA) in the "Flood Insurance Study for **Clackamas County and**

incorporated areas ~~the City of Wilsonville~~" dated **June 17, 2008** ~~July 6, 1981,~~ and displayed on FIA Floodway and Flood Insurance Rate Maps **which are on file with the City's Community Development Department**.

G. To implement the policies of the Comprehensive Plan and to provide standards consistent with - Wilsonville's adopted Storm Drainage Master Plan.

H. To insure the City and its residents and businesses, continued eligibility in the National Flood Insurance Program by complying with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973.

(.02) General Provisions Affecting Flood Plains:

A. This section shall apply to all flood plain areas in the City of Wilsonville identified by the Flood Insurance Rate Map. No Building Permits or Construction Permits for development within the flood plain shall be issued except in compliance with the provisions of the Section.

B. Basis For Establishing The Areas Of Special Flood Hazard:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Clackamas County, Oregon and incorporated areas dated June 17, 2008," with accompanying Flood Insurance Maps is hereby adopted by reference and declared part of this ordinance. The Flood Insurance Study is on file at the City of Wilsonville Community Development Department.

~~B~~ **C.** The City of Wilsonville Community Development Director shall review all Building and Grading Permit applications for new construction or substantial improvement to determine whether proposed building or grading sites will be located in a flood plain. If a proposed building or grading site is located within a flood plain, any proposed new construction, grading, or substantial improvement (including prefabricated and manufactured housing) must:

1. Be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.
2. Use construction materials and utility equipment that are resistant to flood damage,
3. Use construction methods and practices that will minimize flood damage, and
4. Limit the addition of any fill material such that the total volume of fill within the flood plain does not exceed the volume of material removed from the flood plain in the same area.

~~C~~ **D.** That the City of Wilsonville Planning Director shall review subdivision proposals and other proposed new developments within the flood plain to assure that:

1. all such proposals are consistent with the need to minimize flood damage,

2. all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage,
3. adequate drainage is provided so as to reduce exposure to flood hazards, and
4. No new lots or parcels shall be created for the purpose of increasing the development of buildings for human occupancy within the flood plain.

~~D~~ **E.** That the City of Wilsonville Community Development Director shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(.03) Development Permit Required:

A. A Development Permit shall be obtained before construction or development, including grading, begins within any area of special flood hazard. The Permit shall be for all structures including manufactured homes and for all development including fill and other activities.

B. Outright Permitted Uses in the 100-year Flood Plain:

1. Agricultural use that is conducted without a structure other than a boundary fence.
2. Recreational uses which would require only minor structures such as picnic tables and barbecues.
3. Residential uses that do not contain buildings.
4. Underground utility facilities.
5. Repair, reconstruction or improvement of an existing structure, the cost of which is less than 50 percent of the market value of the structure, as determined by the City's Building Official, prior to the improvement or the damage requiring reconstruction, provided no development occurs in the floodway.

(.04) Uses within the 100-year Flood Plain requiring a Flood Plain Permit:

A. Any development except as specified in subsection (.03), above, that is otherwise permitted within the Zoning District provided such development is consistent with the Flood Plain Standards.

B. All subdivisions and land partitions.

C. Installation of dikes to provide buildable or usable property, provided that said dikes do not conflict with the policies of the Comprehensive Plan and this Section.

(.05) Prohibited Uses in the 100-year Flood Plain:

A. Any use or building which stores or otherwise maintains hazardous materials, chemicals, explosives or any other similar materials.

B. Storage of any materials that are not properly anchored, enclosed or protected to prevent movement or flotation beyond the property lines.

C. Critical Facility

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(.06) Flood Plain Permit Review Process:

A. The Community Development Director is **the local flood plain administrator and is** hereby appointed to administer and implement this Section by granting or denying Development Permit applications in accordance with its provisions.

B. Duties and Responsibilities of the Community Development Director:

1. Duties of the Community Development Director shall include, but not be limited to:
   a. Review all Development Permits to determine that the permit requirements of this ordinance have been satisfied.
   b. Review all Development Permits to determine that all necessary permits have been obtained from those Federal, State or local government agencies from which prior approval is required. Notify the State Department of Land Conservation and Development and FEMA of final permit decision.
   c. Review all Development Permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment limitations of subsection (.07)(H) are met.

C. The Permit process for developments not regulated by Section 4.140 shall be as follows:

1. Pre-application conference with the Planning Department in accordance with the procedures set forth in 4.008.
2. A complete application in accordance with this Section shall be submitted to the Community Development Director.
3. Within 30 days of complete application, the Community Development Director shall approve or deny the application based on the following Findings:

a. Reports from the City Engineer and Planning Director as to the applicant's submittal documents' compliance with this Section, including recommendations.
b. The proposed development's compliance with other provisions of the Comprehensive Plan and Zoning Regulations.

D. The decision of the Community Development Director may be appealed to the Development Review Board, upon written notice to the City Recorder within ten (10) calendar days of the date of final decision. Upon appeal, the Board shall hear the matter in accordance with 4.022

E. Any flood plain development proposed for property regulated under Section 4.140 shall be considered by the Development Review Board and the Community Development Director as part of the Planned Development Permit process.

F. Submittal requirements.

1. A field survey in relation to mean sea level by a licensed surveyor or civil engineer of the actual location of the 100-year flood plain, fringe, floodway and the lowest habitable finished floor elevations, including basements, of all existing structures.
2. A Site Plan map showing all existing and proposed contours and development and supplemented by a soils and hydrologic report sufficient to determine the net effect of the proposed development on the flood plain elevations on the subject site and adjacent properties. Proposed areas of cut or fill shall be clearly indicated.
3. A soils stabilization plan for all cuts, fills and graded areas.

G. Use and Interpretation of Base Flood Data and maps.

1. When specific 100-year flood plain elevation data has not been provided in as required in this Section, the Community Development Director shall obtain, review and reasonably utilize any base flood elevation data available from Federal, State or other sources, in order to determine compliance with this Section.
2. The Community Development Director shall make the final interpretation of the exact 100-year flood plain boundaries on the FIRM and the Floodway Map. Appeals shall be granted consistent with the Standards of the rules and regulations of the National Flood Insurance Program **and pursuant to WC 4.172 (.08) Appeal Board**.

H. Monumentation and Recordation:

1. Prior to issuance of a Flood Plain Permit, the Community Development Director shall cause the placement of an elevation marker, set at two (2) feet above the 100-year flood elevation, on the subject property. The marker shall be properly identified and permanently monumented in concrete.
2. A Site Plan or map showing the location and elevation of the monument shall be submitted to and maintained on file by the Community Development Director.

3. Prior to issuance of an Occupancy Permit, for any structure within the 100-year flood plain, the Community Development Director shall insure by signature of a licensed surveyor or civil engineer **(elevation certificate)** that the finished floor elevation **of commercial, industrial and public buildings are** ~~is~~ one and one-half (1-1/2) feet above the 100-year flood elevation **and that residential uses are two-feet above the 100-year flood elevation**. The finished floor elevation shall be in relation to mean sea level, of the lowest floor (including basement) of all structures.

(.07) General Standards:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top of frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
3. All recreational vehicles must either be elevated and anchored or be on the site for less than 180 consecutive days **or** ~~and~~ be fully licensed and highway ready. A recreational vehicle is ready for highway use if its wheels are in place and it is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods:

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Below-grade crawl spaces:

a. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:

i. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of

hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

ii. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

iii. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

iv. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

v. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

vi. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

vii. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

viii. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

C. Utilities:

1. All new replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. **On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**

D. Alteration of Watercourses:

1. Provide description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
2. Notify adjacent communities and the Federal Emergency Management Agency, Army Corps of Engineers, **Department of Land Conservation and Development** and **Department** ~~Division~~ of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
3. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. (Amended by Ord. #316, 7/6/87).

E. Residential Construction:

1. New construction and substantial improvement of any residential structure shall have the lowest finished floor, including basement, elevated **two (2)** ~~one and one-half (1-1/2)~~ feet above the 100-year flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
   a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
   b. The bottom of all openings shall be no higher than one foot above grade.
   c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
3. Manufactured homes or mobile homes placed on sites within new or existing manufactured/mobile home parks shall be anchored to a permanent foundation and ~~either~~:
   a. Have the lowest floor **2'** above the base flood elevation, or

~~b. Have the chassis supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches above grade.~~

4. Manufactured/mobile homes outside of manufactured/mobile home parks shall meet all requirements for residential structures at the same locations.
5. All manufactured homes to be placed or substantially improved within Flood Hazard Zones Al-30, AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of sub-section 4.172(.07)(A).

F. Nonresidential Construction:

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest finished floor, including basement, elevated one and one-half (l-l/2) feet above the l00-year flood elevation; or, together with attendant utility and sanitary facilities, shall:
   a. Be floodproofed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water.
   b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
   c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. **Floodproofing certifications are required to be provided to the Community Development Director.**
   d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as prescribed for residential construction, above.
   e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

H. Floodways:

1. Located with**in** the flood plain - are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
   a. Encroachments, including fill in any new development, or **substantial improvements** shall be prohibited unless certification by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase flood levels during the occurrence of the l00-year flood discharge.
   b. All development shall comply with all applicable flood plain standards of Section 4.172.
   c. All buildings designed for human habitation and/or occupancy shall be prohibited within the floodway.

I. Parking Lots and Storage Areas:

1. All parking lots and storage areas below the flood plain elevation shall be paved.
2. A minimum of twenty-five (25) percent of the required parking space must be provided above the l00-year flood plain elevation for all nonresidential uses.
3. Residential uses shall provide at least one parking space per unit above the l00-year flood plain elevation.

J. Subdivision Proposals:

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **or eliminate** flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage, and
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

K. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for Building Permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(.08) Appeal Board.

A. The Development Review Board as established by the City of Wilsonville shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Development Review Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Community Development Director in the enforcement or administration of this ordinance.

C. Those aggrieved by the decision of the Development Review Board may appeal such decision to the City Council.

D. In acting upon such applications, the Development Review Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and

1. the danger that materials may be swept onto other lands to the injury of others;
2. the danger to life an property due to flooding or erosion damage;

3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. the importance of the services provided by the proposed facility to the community;
5. the necessity to the facility of a waterfront location, where applicable;
6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. the compatibility of the proposed use with existing and anticipated development;
8. the relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas electrical and water systems, and streets and bridges.

E. Upon consideration of the factors of Sections 4.035, 4.184, and 4.196 and the purposes of this ordinance, the Development Review Board may attach such conditions to the granting of - permits as it deems necessary to further the purposes of this ordinance and to protect lives or property.

F. The Community Development Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(.09) Conflicts. If any provisions of Section 4.172 conflict with any other Sections of this Code, the most restrictive shall apply.

ORDINANCE NO. 647

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WC 4.172 - FLOOD PLAIN REGULATIONS AND WC 4.001 - DEFINITIONS; ADOPTING FEMA'S REVISED FLOOD INSURANCE RATE MAPS (FIRM) EFFECTIVE DATE JUNE 17, 2008 AND THE SUPPORTING FLOOD INSURANCE STUDY (FIS)

WHEREAS, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) has undertaken a national map modernization project resulting in updated Flood Insurance Rate Maps (FIRM) for Clackamas County and incorporated areas; and

WHEREAS, the City of Wilsonville is a participating municipality in the National Flood Insurance Program (NFIP), and is required to update its flood plain regulations (WC 4.172), adopt the new FIRM's dated 'Effective June 17, 2008', and the supporting Flood Insurance Study (FIS) as a requirement of continued participation; and

WHEREAS, participation in the NFIP benefits affected citizens of the community by lowering flood insurance rates for structures located in the flood plain; and

WHEREAS, in order to remain in good standing in the NFIP, the City is required to adopt the FIS, FIRM's and amend WC 4.172 consistent with FEMA requirements found in 44 CFR Section 60.3 of the NFIP, prior to the effective date of June 17, 2008; and

WHERAS, it is in the best interest of the citizens of the community from a public health and safety standpoint to adopt the required maps, studies and amend the code consistent with the FEMA requirements and remain in the NFIP; and

WHEREAS, City staff has coordinated closely with FEMA Region X staff, and the Department of Land Conservation and Development (DLCD) staff as part of the map adoption and code update process; and

WHEREAS, DLCD staff, Oregon's designated flood map modernization coordinators, have reviewed the proposed code amendments, and have provided supporting comments; and

WHEREAS, City staff have worked closely with FEMA Region X and their consultants throughout the draft FIRM review process to correct mapping discrepancies; and

WHEREAS, the final FIRM's reflect corrections consistent with the City's formal protest; and

WHEREAS, after providing notice to affected parties inviting comment on the proposal, the Planning Commission held a public hearing on this matter on March 12, 2008 receiving no public comment; and

WHEREAS, the Planning Commission forwarded a unanimous recommendation of approval of the proposal to the City Council; and

WHEREAS, the City Council held duly noted public hearings on April 7, 2008 and April 21, 2008, affording interested parties an opportunity to comment on the proposed Planning and Land Development Code amendments and adoption of the FIS and FIRM's;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Wilsonville Code section 4.001 - Definitions is amended by adding the following definitions in bold text as follows. The bold text is inserted, strikethrough text is removed, and the remainder of definitions renumbered:

Section 4.001 Definitions.

In addition to the definitions set forth in Section 4.001, below, for the purpose of this Chapter, the following terms are hereby defined. The word "occupy" includes premises designed or intended to be occupied. The word "shall" is always mandatory. All other words shall have the following respective meanings, unless the context otherwise requires:

1. Abutting: See Adjoining.
2. Access, Vehicular: The designed location of ingress and egress, where vehicles enter or leave property.
3. Access, Pedestrian: The designed location of ingress and egress, where pedestrians enter or leave property.
4. Access Control Strip: A reserve area established adjacent to and paralleling a half street improvement to insure proper participation by adjoining properties in completion of the required street improvements. See Street, Half.
5. Access Drive: A private travel lane primarily used as a means of approach for vehicles.
6. Accessory Building or Use: A subordinate building or use, the function of which is clearly incidental to that of the main building or use on the same lot. An accessory use may be located on a lot adjoining that of the main use if approved for this purpose through the Administrative Review procedures of Section 4.030.
7. Accessory Dwelling Unit: A dwelling unit of not more than 600 square feet on the same lot as a single family dwelling, and being of substantially the same exterior design as that single family dwelling, whether attached or detached.
8. Address Overlay Zone: Distinct areas within the Villebois Village Center where additional information is provided for the definition of architectural character and community elements. [Definition added by Ord. No. 595, 12/5/05.]

9. Adjacent: See adjoining.

10. Adjoining: Contiguous or abutting exclusive of street width. It shall include the terms adjacent, abutting or contiguous.

11. Agriculture: The use of land larger than one acre for the primary purpose of deriving income from growing plants on land including, but not limited to, land used principally for the production of crops, land used for orchards or production of fruit, but not including land used primarily for another use and incidentally for growing plants, crops, or fruit.

12. Alley: A minor access way which is used to provide vehicular ingress and egress to the back or side of properties otherwise abutting on a street. An alley typically has a width of no more than twenty (20) feet.

13. Alteration, Structural: Any change or repair which would tend to prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

14. Ancillary Telecommunication Facilities: The structures and equipment required for operation of the telecommunication equipment, including but not limited to antennae, repeaters, equipment housing structure, footings and foundations, and ventilation or other electrical or mechanical equipment. [Added by Ord. #479, 5/19/97]

15. Antenna(e): Any exterior, apparatus, electrical conductor or group of electrical conductors, the surface of which is designed for telephonic, radio or television communications by sending and/or receiving radio-frequency or electromagnetic waves, including those sent and/or received by wireless communication facilities. Antennae include the following types:

    A. Directional or Parabolic ("panel" or "disk") antenna, which receives and transmits signals in a directional pattern typically encompassing an arc of 120 degrees.

    B. Omni-direction ("whip") antenna, which receives and transmits signals in a 360-degree pattern.

    C. Other, which means all other transmitting or receiving equipment not specifically described herein. Other antennae shall be regulated in conformity with the type of antenna described herein which most closely resembles such equipment. For purposes of this ordinance, the term antenna shall not include ancillary antennae, which are antennae less than 12 inches in their largest dimension and are not directly used to provide personal wireless communication services. (Added by Ord. #479, 5/19/97)

    D. Satellite Dish antenna, which receives signals from satellites.

16. Apartment: A type of multi-family dwelling.

17. Appeal: Means a request for a review of any land use decision or interpretation of any provision of this ordinance.

18. Appropriate Potential Tree Height: The Appropriate Potential Tree Height (APTH) is used to delineate certain areas adjacent to the riparian corridor. The APTH is the mature average height of the appropriate tree species that does or could potentially grow on the site. The term "appropriate" is meant to limit the potential tree species to those species that provide critical riparian functions, and are appropriate and

acceptable on the specific site based on such factors as public safety, property protection, zoning and other factors. The minimum APTH is fifty feet.

19. Arborist: An arborist who is a member of the American Society of Consulting Arborists (ASCA) or is certified by the International Society of Arboriculture, or an ornamental horticulturist or urban forester who possesses equivalent credentials and experience, and who is approved by the City Planning Director.

20. Architectural Character: The distinctive qualities of the form, features, details, color and ornamentation that comprise a style of building.

21. Area of Limited Conflicting Uses: See Section 4.139.00

22. Area of Shallow Flooding: Means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

23. Area of Special Flood Hazard: Means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. This is the area subject to a base flood event. Designation on FIRM maps always includes the letters A or V.

24. Attached Family Dwelling Units: A building or structure designed to house two (2) or more families, whether related to each other or not.

25. Attached Wireless Communication Facility: A wireless communication facility that is affixed to an existing structure, (e.g., an existing building wall or roof, mechanical equipment, or alternative tower structure. [Added by Ord. #479, 5/19/97]

26. Attachment: An antenna or other piece of related equipment affixed to a transmission tower. [Added by Ord. #479, 5/19/97]

27. Accessory Dwelling Unit: A dwelling unit of not more than 600 square feet on the same lot as a single family dwelling, and being of substantially the same exterior design as that single family dwelling, whether attached or detached.

28. Base Flood: Means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood". Designation on FIRM maps always includes the letters A or V.

29. Basement: A portion of a building which has less than one-half (1/2) of its height measured from finished floor to finished ceiling above the average elevation of the adjoining grade.

30. Bed and Breakfast Home or Boarding House: A building or premises used for the provision of lodging and meals, where not more than five (5) rooms are available for rent.

31. Bikeway: Bikeway is a general term used to describe any type of travel way that is designated for use by bicycles. Bikeways may include bike lanes, bike paths, shared roadways, shoulder bikeways and other bikeways.

    A. Bike Lane: A bike lane facility is a type of bikeway where a section of the roadway is designated for exclusive bicycle use.

B. Bike /Pedestrian Path: A bike/pedestrian path facility is a type of bikeway that is entirely separate from the roadway and is designed and constructed to allow for safe use by both pedestrians and bicyclists.

C. Recreational Trail: A recreation trail is a type of pedestrian or equestrian facility that is entirely separate from roadways and has unimproved, gravel, or bark dust surface.

D. Shared Roadway: A shared roadway facility is a type of bikeway where motorists and cyclists occupy the same roadway area.

E. Shoulder Bikeway: A shoulder bikeway facility is a type of bikeway where cyclists occupy the paved roadway shoulder. Shoulder bikeways are common in rural areas.

32. Block: A tract of land bounded by streets, or bounded by such features as the City limits or barriers such as bodies of water or steep slopes.

33. Block Complex: An assemblage of buildings bounded entirely by intersecting streets so as to form a single, comprehensive group.

34. Block Perimeter: The outer boundary of a block.

35. Board: The Development Review Board established pursuant to Chapter 2 of the Wilsonville Code.

36. Buffers or Buffering: Distance, landscaping, walls, berms, or other measures used to separate one land use from another, and to mitigate or minimize the adverse effects of one land use on another.

37. Build-To Line: A line shown on a final plat or other development plan indicating that buildings are required to be built to it, rather than set back from it.

38. Building: Any structure built for the support, shelter or enclosure of any persons, animals, chattels, or property of any kind which requires location on the ground or is attached to something having a location on the ground.

39. Building Façade: The exterior elevation(s) of a building; usually set parallel to the front lot line, often distinguished by elaboration of architectural characteristics.

40. Building Façade, Primary: The main exterior elevation of a building; usually associated with its primary entrance and/or street address.

41. Building Frontage Width, Minimum: A Development Standard that controls the degree of spatial definition of public open space. Described as a percentage, the Minimum Building Frontage Width is calculated as the ratio of the length of the primary building façade(s) to its corresponding lot line length, exclusive of required setbacks.

42. Building Line: A line that is adjacent to the front side of a main building parallel to the front lot line.

43. Building or Structure Height: The term 'height of building or structure' shall be deemed to mean the perpendicular distance from the average elevation of the adjoining ground to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the middle height gable between the eaves and ridge of a pitch or hip roof. If a building is divided into units by means of masonry division walls, each unit shall be considered separately in calculation for height of building.

44. Category of Use: Type of use. See Mixed Use.

45. Change of Use: Within the Willamette River Greenway means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of the existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of Sections 4.500.

46. Civic: Relating to, or derived from, a city or citizen.

47. Civic Building or Place: A building or place that functions communally, such as religious, cultural, environmental or educational institutions.

48. Clear Vision Area: A standard for sight lines at intersections of streets, railways, and driveways. See section 4.125.09, Street Improvement Standards.

49. Cluster Housing: Small lot detached single-family dwellings arranged in groups, with a courtyard(s) containing shared green space and a public access sidewalk easement.

50. Commercial: Development having to do with retail, service, commercial recreation, and/or office uses.

51. Community Center: A structure for the social, cultural, and educational activities of an entire neighborhood or group of people having common rights, privileges, or interests, or living in the same place under the same laws and regulations.

52. Community Elements Book: A plan which is used to establish the type and location of community elements within the Village zone. Community elements may include lighting, site furniture, , bollards, trash receptacles, recycling receptacles, benches, bicycle racks, , and playground equipment. The Community Elements Book also includes a Street Tree Master Plan and Lighting Master Plan.

53. Community Housing: Dwellings developed as defined by ORS 426.502(2).

54. Collocation: The use or placement of two or more antenna systems or platforms by separate FCC license holders on a single support structure, transmission tower or building. [Added by Ord. #479, 5/19/97]

55. Commercial Nursery or Tree Farm. A plant or tree nursery or tree farm where trees are planted and grown on the premises for sale in the ordinary course of business, but not including commercial woodlots, or land that is designated or assessed as forest land for tax deferral purposes or managed for timber production.

56. Commercial Recreation: A planned development commercial center or complex of recreational and complimentary uses. Typical uses include miniature golf courses, bowling alleys, theaters, tennis and racquetball clubs, health spas, swim centers, pool halls and sports complexes. Appropriate complimentary uses would include restaurants and sporting goods stores.

57. Commercial Woodlot. A site of at least 30,000 square feet on which trees are grown for the purpose of harvesting, and which is assessed as forest land for tax deferral purposes, and which is not a part of the approved open space or landscaping of a previously approved development.

58. Commission: The Planning Commission of the City established in Chapter 2 of the Wilsonville Code.

59. Comprehensive Plan: The City of Wilsonville Comprehensive Plan (effective date June 7, 2000).

60. Conditional Use: A use allowable if processed in accordance with the procedures listed in Section 4.512 and 4.184.

61. Conference Center: A facility where the primary function is the formal gathering of large groups of people.

62. Contiguous: See Adjoining.

63. Convenience Store: A retail business that provides for the purchase of limited food and household sundries.

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

65. Crown Cover: The area within the drip line or perimeter of the foliage of a tree.

66. Curb Line: The line indicating the edge of the vehicular roadway within the overall right-of-way.

67. DATELUP: An acronym for the Dammasch Area Transportation-Efficient Land Use Plan, which is the City of Wilsonville's 1997 adopted land-use plan within the Comprehensive Plan Area of Special Concern "B".

68. Design: The conceptualization of the built environment in response to specific sets of human needs and desires.

69. Design Standards ,Village Center: Criteria applicable to the design and construction of development within the Village Center, to guide the selection and arrangement of building elements to achieve a minimum level of quality and consistency in the finished product.

70. Design Principles, Village Zone: The fundamental concepts that support the objectives of the Master Plan and guide the intrinsic qualities of the built environment within the Residential Village Plan District. Design Principles are implemented through conformance with the Design Standards.

71. Design Standards, Village Zone: Criteria applicable to the design and construction of development within the Village zone, to guide the selection and arrangement of building elements to achieve a minimum level of quality and consistency in the finished product.

72. Density: The number of residential units per acre of land.

73. Development: Any human-caused 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 ~~located within the flood plain~~ **or storage of equipment or materials located within the area of special flood hazard.**

74. Development Standards: Criteria established for initial planning of any change to improved or unimproved real estate that determines the relative size and arrangement of common building elements in order to achieve a certain level of quality and consistency in the built environment.

75. Diameter Breast Height (d.b.h.): A tree's diameter in inches measured by diameter tape at four and one-half (4-1/2) feet above grade. On multi-stem trees, the largest diameter stem shall be measured.

76. Director: The Planning Director as established in Section 2.190 of the Wilsonville Code. As used in this Chapter, the term "Planning Director" also applies to other staff persons or consultants specifically assigned to act on behalf of the Director.

77. Drip Line: An imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

78. Duplex: Two dwelling units on a single lot, neither of which meets the definition of an accessory dwelling unit.

79. Dwelling: A building, mobile home, or manufactured home, designed for residential occupancy, but not a house trailer or recreational vehicle.

80. Dwelling, Multiple Family: Three or more attached dwelling units located on a single tax lot. In the Village zone, such use also includes stacked flats or townhouses.

81. Dwelling, Single Family: A dwelling unit designed for occupancy by one family. A single-family dwelling may be detached or attached, provided that each such unit is located on its own tax lot. A single-family dwelling may also include an accessory dwelling unit, if approved for that use as specified in this Code.

82. Dwelling Unit: A building or portion thereof providing complete housekeeping facilities for one family, including a kitchen and bathroom, but not a trailer house or other recreational vehicle.

83. Encroachment Area: See Section 4.139.00

84. Equipment Enclosures: A small structure, shelter, cabinet or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning and emergency generators. [Added by Ord. #479, 5/19/97]

85. Essential Government Services. Services and facilities provided by a governmental unit, that are basis and inherent to the public health and welfare including, but not limited to, fire, police, water, sewer, transportation, emergency communication, and education, and governmental services and facilities in support thereof. [Added by Ord. 545, 8/19/02]

86. Exempt tree or vegetation: As used in the solar access provisions of this Code, the terms "exempt tree or exempt vegetation" refer to the full height and breadth of vegetation that has been identified by the City as "solar friendly," and any vegetation listed as exempt on a plat, a document recorded with the plat, or a solar access permit.

87. **Existing Manufactured Home Park or Subdivision: A manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted flooodplain management regulations.**

88. Exterior Display: The outdoor exhibit of merchandise by a retail merchant.

89. Family: One or two persons with or without their direct descendants and adopted children (and including domestic employees thereof) together with not more than five (5) persons not so related, living together in a room or rooms comprising a single housekeeping unit. Every additional group of five (5) or fewer persons living in such housekeeping unit shall be considered a separate family. For housing developed to implement ORS 426.508 or under the Fair Housing Amendments Act of 1988, family shall mean all persons living in a dwelling unit, regardless of relationship.

90. Feasible: Able to be accomplished, considering all aspects of preservation and proposed site development, including the cost of mitigation and relocation.

91. Fill: Any act by which earth, sand, gravel, rock, structures or any similar material is deposited, erected, placed, pulled or transported, including the conditions resulting therefrom, whether within the limits of the l00-year flood plain or not.

92. Final Development Plan: A plan that includes a final map and other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a land development, in the form required by Section 4.125(.18).

93. Flag Lot: A flag-shaped lot located behind another lot where the frontage on the street is only wide enough for its vehicular and pedestrian access; often found at the end of a street or adjacent to the outside corner of an L-shaped block.

94. Flood or Flooding: General and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source.

95. Flood Insurance Rate Map (FIRM): The official map prepared for the City of Wilsonville on which the Federal Insurance Administration has delineated both the flood plain and the risk premium zones applicable to the community.

96. Flood Insurance Study: The official report prepared for the City of Wilsonville by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

97. Flood Plain: Flood-prone areas as identified on the FIRM.

98. l00-Year Flood Plain: Land adjacent to a floodway that has a one percent chance of flooding in any given year, and as identified within the "A" zones of the FIRM.

99. Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

100. Floodway Fringe: That portion of the flood plain not contained in the floodway.

101. Floodway Map: An official map prepared for the City of Wilsonville by the Federal Insurance Administration which identifies floodways.

102. Floor Area: The area of the building, exclusive of porches and exterior stairs which shall extend to the exterior faces of all walls. Floor area shall include all levels within a structure, including mezzanines and additional stories above the first floor. Within a residential structure, floor area does not include garages or carports.

103. Front lot line: For purposes of the solar access regulations, a lot line abutting a street. For corner lots the front lot line is that with the narrowest frontage. When the lot line abutting a street is curved, the front lot line is the chord or straight line connecting the ends of the curve. For a flag lot, the front lot line is the shortest lot line adjoining the pole portion of the lot, excluding the unbuildable portion of the pole (see Figure 2: Front Line Lot).

104. Garage: Enclosure for the storage of vehicles.

105. Garage, private: An accessory building or portion of a main building used for the parking or temporary storage of vehicles owned or used by occupants of the main building.

106. Grocery Store: A retail business that sells food and household sundries.

107. Grocery Store, Specialty: A retail business that sells specialty food and specialty household sundries.

108. Habitable floor: Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor".

109. Hearing Body: The City Council, the Development Review Board, or the Planning Commission having the authority to review an application assigned by Section 4.031, Section 4.032, and Section 4.033.

110. Heritage Tree: A tree that, due to age, size, species, quality or historic association, is considered of landmark importance to the community and has been designated as such by the City Council.

111. Home Business: A business operating from a dwelling unit that does not meet the definition of a "Home Occupation" listed below, and for which a conditional use permit has been issued by the City.

112. Home Occupation: "Home Occupation" means an occupation, profession, or craft, which is customarily incidental to or carried on in a dwelling place or premises and not one in which the use of the premises as a dwelling place is largely incidental to the business use. A home occupation is carried on by an immediate member of the family residing within the dwelling place. A home occupation shall require no structural alteration or changes to the exterior of the dwelling, and shall include no display of merchandise on the premises which can be seen from the exterior of the dwelling. Any instruction shall be limited to one pupil at a time. Noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the use shall not be of the intensity as to be detected outside of the containing structure. Traffic and parking are to be such as to give no outward appearance that a business is being conducted on the premises.

113. Hospital: A building or premises providing in-patient services that is used for human medical or surgical treatment.

114. Hospital, Animal: A building or premises for the medical or surgical treatment of domestic animals or pets, including dog, cat and veterinary hospitals.

115. Hotel, Motel, or Overnight Lodging Facility: A building which is designed or used to offer lodging, with or without meals, for compensation, for six (6) or more people.

116. Human Occupancy: For purposes of Section 4.172(.02)(C.)(4.), any structure usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof, is considered to be for human occupancy. A structure used only for storage purposes is not for "human occupancy." [Added by Ordinance No. 538, 2/21/02.]

117. Impact Area: See Section 4.139.00

118. Impervious Area: An area with minimal infiltration of surface water into the underlying soil and shall include pavement (including but not limited to concrete or asphaltic concrete surfaces), gravel roads, structures, roadways, and roofs.

119. Intensification of Use: Within the Willamette River Greenway means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of land within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this Code. Seasonal increases in gravel operations shall not be considered an intensification of use.

120. Kennel: Any lot or premises on which four (4) or more dogs, more than four (4) months of age, are kept for boarding, breeding or sales.

121. Lane: See "Alley

122. Landscaping: The term "landscaping" includes trees, grass, shrubs, flowers, water features, and garden areas, and the arrangement of paths, walkways, fountains, patios, decks, fencing, street furniture and ornamental concrete or stonework areas, earth forms such as grading, mounding and contours and shall include exterior use of artificial turf or carpeting, artificial plants, shrubs or flowers. Both native and non-native vegetation may constitute landscaping materials. This definition pertains to complete site modifications rather than just buildings.

123. Legislative process: A process that leads to the adoption of rules or policies that have broad implications for a large geographic area or for the community overall.

124. Light Manufacturing: Low- to moderate-impact industrial, manufacturing, processing, and assembly uses that exhibit benign external characteristics compatible with the character and overall design of a Residential Village environment.

125. Lighting Master Plan: A plan that indicates the criteria for, and general location of exterior lighting within the Village zone. See also Community Elements Book.

126. Lot: A unit of land owned by or under the lawful control and in the lawful possession of one distinct ownership, or separated from other land by a drawing on a recorded subdivision or partition plat, for separate individual use or development.

127. Lot Area: The total horizontal area within the lot lines of a lot, excluding the driveway portion of a flag lot.

128. Lot Coverage: The area of a lot covered by all of the buildings on that lot, expressed as a percentage of the total lot area.

129. Lot Depth: The lot depth is the mean average distance between the front lot line and rear lot line of a lot measured within the lot boundaries.

130. Lot, Front: The boundary line of a lot abutting a street, other than a boundary line along a side or rear yard. If the lot does not abut a street, the narrowest boundary line shall be considered to be the front.

131. Lot, Key: A lot, the side line of which abuts the rear line of one or more adjoining lots.

132. Lot Line, Front: The boundary line of a lot abutting a street, other than a boundary line along a side or rear yard. If the lot does not abut a street, the narrowest boundary line shall be considered to be the front. In the Village zone: the case of an interior lot, the lot line separating the lot from the public space, public street or private way, other than an alley .In the case of a corner lot, the shortest lot line along a public space, public street or private way, other than an alley. The boundary line of a lot abutting a street, other than a boundary line along a side or rear yard. If the lot does not abut a street, the narrowest boundary line shall be considered to be the front.

133. Lot Line, Rear: Any boundary line opposite and most distant from a front line and not intersecting a front lot line, except in the case of a corner lot.

134. Lot Line, Side: Any boundary line not a front or rear lot line.

135. Lot, Through: Any lot, except a corner lot, that abuts two or more streets other than a freeway.

136. Lot, Width: The 'lot width' is the mean horizontal distance between the side lot lines of a lot measured within the lot boundaries.

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

138. Major Alteration: Any change, enlargement or modification to existing site improvements or structures, or use thereof or any which substantially alters the exterior appearance or function of the site or building or increases the previous floor area by an amount equal to or greater than one-third.

139. Manufactured Dwelling: Includes residential trailer, mobile home, mobile house, trailer and manufactured home. This definition does not include any building or

structure subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer.

140. Manufactured Home: A structure **built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities,** for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, and was constructed in accordance with Federal Manufactured Housing Construction and Safety Standards regulations in effect at the time of construction. (Amended, Ord. #317, 11/4/87). For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For flood insurance purposes, and City zoning standards, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

141. Manufactured Home or Mobile Home Park: Means a parcel (or contiguous parcels) of land divided into two or more spaces that are rented or leased for the placement of manufactured or mobile homes.

142. Manufactured Home or Mobile Home Subdivision: Means a group of three (3) or more separate lots intended for the location of manufactured or mobile homes, and which lots may be rented or sold.

143. Master Plan: See "Villebois Village Master Plan".

144. Master Planner: A professional team selected by the City of Wilsonville and the State of Oregon in accordance with ORS 426.508 to master plan the area prescribed in DATELUP.

145. Master Signage and Wayfinding Plan: A plan that describes the design principles and standards of public and private signage and wayfinding elements within the Village zone.

146. Mixed Solid Waste: Solid Waste that contains recoverable or recyclable materials and materials that are not capable of being recycled or recovered for further use. [Amended by Ord. # 426 - April 4, 1994]

147. Mixed Use: A development in which a site or building provides more than one type of use, such as commercial and residential

148. Mobile Home: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of the Oregon mobile home law in effect at the time of construction. [Amended by Ord. #317, 11/4/87]

149. Modular Home: A structure intended for residential use that has sleeping, cooking and plumbing facilities and is constructed off-site in compliance with the Uniform Building Code (Oregon State Structural Specialty Code) and designed to be transported to a site for installation and/or assembly of modular components to form a permanent structure. [Amended by Ord. #317, 11/4/87].

150. Native: As applied to any tree or plant, this term means indigenous to the northern Willamette Valley.

151. Neighborhood: An urban sector of multiple uses served by a network of pedestrian-friendly streets and alleys within approximately ¼ mile in radius. Neighborhoods are defined by arterial or collector streets and/or open space at their edges and include a Neighborhood Commons at their center.

152. Neighborhood Center: An area of mixed-use buildings at or near the center of a neighborhood, providing nearby residents with convenient access to goods and services.

153. Neighborhood Commons: A site within a neighborhood, for use by local residents, which may include a transit shelter and waiting place for transit riders, and public space, providing a social gathering place.

154. Neighborhood Commercial: A planned development commercial center or complex of commercial uses to provide for the daily convenience, goods and services of nearby residential areas. Typical uses include grocery, hardware, and drug stores; barber and beauty stores; banks; laundry and dry cleaning; and professional offices, but exclude service stations.

155. New Construction: For purposed of flood plain management, structures for which the "start of construction" commenced on or after June 17, 2008.

156. New Facility: The installation of a new transmission tower. New attachments are not new facilities. [Added by Ord. #479, 5/19/97]

157. New Manufactured Home Park or Subdivision: Means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed on or after the effective date of flood plain management regulations adopted by the City.

158. Non-Conforming Lot: A legally created lot or parcel that does not conform in terms of area, width, depth, or other dimensions with the standards of the zone in which it is located.

159. Non-Conforming Site Conditions: A legally established site that does not conform with the landscaping, parking or other site development standards of the zone in which it is located. A site may be rendered non-conforming to development standards through a change in zoning requirements or through the acquisition of some portion of the property by a public agency. For purposes of this Code, a site for which Stage II Planned Development approval has been granted by the City, and which approval remains in effect, shall not be deemed non-conforming. [Amended by Ordinance No. 538, 2/21/02.]

160. Non-Conforming Structure: A legally established building or other structure that does not conform with the height, setback, area, lot coverage, or other standards for structures of the zone in which it is located. A structure may be rendered non-conforming through a change in zoning requirements or through the acquisition of some portion of the property by a public agency. For purposes of this Code, a structure for which Stage II Planned Development approval has been granted by the City, and which approval remains in effect, shall not be deemed non-conforming. [Amended by Ordinance No. 538, 2/21/02.]

161. Non-Conforming Use: A legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform. For purposes of this Code, a use for which or Stage II Planned Development approval has been granted by the City, and which approval remains in effect, shall not be deemed non-conforming. [Amended by Ordinance No. 538, 2/21/02.]

162. Northern lot line: The lot line that is the smallest angle from a line drawn east-west and intersecting the northernmost point of the lot, excluding the pole portion of a flag lot. If the north line adjoins an undevelopable area other than a required yard area, the northern lot line shall be at the northern edge of such undevelopable area. If two lot lines have an identical angle relative to a line drawn east-west, or if the northern lot lines is less than 35 feet, then the northern lot line shall be a line 35 feet in length within the lot parallel with and at a maximum distance from the front lot line (see Figure 3: Northern Lot Line in Section 4.137).

163. North-south dimension: The length of a line beginning at the mid-point of the northern lot line and extending in a southerly direction perpendicular to the northern lot line until it reaches a property boundary (see Figure 4: North-South Dimension of the Lot in Section 4.137).

164. Office: A use category designating buildings commonly used as a workplace for professional or government functions.

165. Office Complex: A planned development commercial center or complex of administrative, professional and general office uses. Typical uses include governmental, financial, architectural, medical, dental, legal, real estate, accounting, insurance and general business offices.

166. Office Complex - Technology. Applies to office uses in an industrial, typically high-technology, setting, including research and development, software or hardware development, telecommunication or data manipulation operations.

    Typically in an industrial campus setting, Technology-Office Complexes are expected to generate less traffic than general office uses.

    Technology-Office Complex is not intended to apply to general office uses such as medical offices, real estate sales offices, or similar operations that are more appropriately the predominate uses in non-industrial areas.

167. Official Map: The map established by the City Council on which the plan locations, particularly of streets, are indicated with detail and exactness so as to furnish the basis for property acquisition, building restrictions, building permits, zoning or other uses, the original -of which is on file in the office of the City Recorder.

168. Open Space: Land that is not covered by buildings, paving , or other hard surfaces, unless such hard surfaces are part of an approved landscape plan.

169. Open Space Area: A specific measurement. See Section 4.125(.08), Open Space.

170. Ornamentation: The details of shape, texture, and color that are deliberately added to a structure for decorative effect.

171. Outdoor Dining Area: A space designated for commercial dining, partially bounded by building walls, screening or property lines, but open to the sky, and open on at least one side to a street or public space.

172. Outdoor Living Area: Outdoor recreational area intended for the use of the residents of the development. In order to be considered "outdoor living area" it must be usable and accessible by the residents of the development.

173. Parking Facility, Commercial. A surface lot or parking structure that is operated as a business and is not integral to a specific use or uses within Villebois.

174. Parking Space: A permanently surfaced and marked area not less than nine (9) feet wide and eighteen (18) feet long, excluding paved area necessary for access, for the parking of a motor vehicle.

175. Parking Space, Accessible: A permanently surfaced and marked area meeting the standards established by ORS 447.233. Such spaces shall be appropriately reserved and signed for use by the disabled and shall be subject to any additional standards of the Americans with Disabilities Act (ADA) or other applicable provisions of local, state or federal law.

176. Parking Space, Compact: A permanently surfaced and marked area not less than eight (8) feet wide and sixteen (16) feet long, excluding paved area necessary for access, for the parking of a compact motor vehicle. In order to be considered a compact parking space, it must be clearly labeled as such.

177. Parking Space, Handicapped: Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces, provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000. [Amended by Ordinance No. 538, 2/21/02.]

178. Parking Space, Motorcycle: A permanently surfaced and marked area not less than four (4) feet wide and eight (8) feet long, excluding paved area necessary for access, for the parking of a compact motor vehicle. In order to be considered a motorcycle parking space, it must be clearly labeled as such.

179. Partition:
    A. "Partition" means either an act of partitioning land or an area or tract of land partitioned under the provisions of Section 4.200. As used in this Code, a land partition may be either a "major" or "minor" partition, as those terms are commonly used.
    B. "Partition land" means to divide an area or tract of land into two or three parcels when such area or tract of land exists as a unit or contiguous units of land under single ownership. "Partition land" does not include divisions of land resulting from lien foreclosures, and divisions of land made pursuant to a court order, including but not limited to court orders in proceedings involving testate or intestate succession; and "partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance.

180. Pathway: A pathway is a pedestrian facility that is entirely separate from the roadway and generally serves as an on-site pedestrian system for multi-family, commercial and

industrial developments. The Americans with Disabilities Act defines a pathway as an "Exterior Accessible Route."

181. Pattern Book: An illustrative document that depicts the architectural character of a proposed development, in compliance with the Design Principles and Design Standards. See Section 4.125.15, Pattern Book.

182. Pedestrian Access: A path of travel to approach and enter a building , or open space on foot.

183. Permit (Tree cutting): Approval to remove trees according to the following categories:
   A. Type A - Permits removal of one to three trees within a twelve (12) month period on any property.
   B. Type B - Permits removal of four or more trees on any property (a) not subject to site development review, or b) previously approved for site development, and is c) not in a commercial woodlot.
   C. Type C - Permits removal of trees on property under a site development application.
   D. Type D - Permits removal of trees on a commercial woodlot.

184. Permit Grantee: Any person, including the person's successors-in-interest, whose application for a Permit has been approved, or who is acting on the permit grantee's behalf with the grantee's consent.

185. Person: Any individual or legal entity.

186. Phasing: To plan and then carry out development in stages over time. The length of time will be determined by several factors, including response to market conditions, availability and capacity of existing utilities and infrastructure, and timing of road improvement approval and funding.

187. Planning Commission: The Planning Commission of the City of Wilsonville established in Chapter 2 of the Wilsonville Code.

188. Planning Director: The Planning Director as established in Section 2.190 of the Wilsonville Code. As used in this Chapter, the term "Planning Director" also applies to other staff persons or consultants specifically assigned to act on behalf of the Planning Director.

189. Plat: A map, diagram, drawing, replat or other writing containing all of the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision, condominium division or land partition. A tentative plat is one that is prepared for review and consideration by the City. A final plat is one that is prepared for recordation with the County after the City has approved the tentative plat.

190. Plaza: A public space at the intersection of important streets, as illustrated and described in the Villebois Village Master Plan, for civic purposes and commercial activity.

191. Porch: An open-air room appended to the mass of a building, with floor and roof.

192. Pre-existing Towers and Pre-existing Antennae: Any tower or antennae for which a building permit has been properly issued prior to the effective date of this ordinance. [Added by Ord. 479, 5/19/97]

193. Preliminary Development Plan: A conceptual and quantitatively accurate representation of a defined area within an approved Specific Area Plan, in the form required by Section 4.125(.18).

194. Premises: A site with or without buildings.

195. Professional-Type Services: A "professional-type service" shall include activities such as those offered by a physician, surgeon, dentist, lawyer, architect, engineer, accountant, artist, teacher, real estate and insurance sales.

196. Protected solar building line: A line on a plat or map recorded with the plat that identifies the location on a lot where a point two feet above may not be shaded by structures or non-exempt trees (see Figure 11: Soar Lot Option 2: Protected Solar Building Line in Section 4.137).

197. Protected Outdoor Space: An outdoor space that is partially protected from direct exposure to the weather by a roof, building walls, and/or other enclosures.

198. Private Way: A private area dedicated to circulation, including the roadway for private streets, bikeways, paths or utilities.

199. Public Space: An area without buildings, reserved for public use, whether owned and maintained by a public or private organization, including but not limited to, plazas, parks, natural preserves, and trails.

200. Public Way: A public area dedicated to circulation, including the roadway or street, bikeways, paths and public utilities.

201. Quasi-judicial process: A process that leads to a decision on a land use or development application involving a single property or small group of properties. (Please see the definition of Legislative Process, above.)

202. Rainwater Management Program: Infrastructure and procedures for the collection, filtration, and conveyance of rainwater.

203. Rainwater Management System: The physical components of the Rainwater Management Program.

204. Rainwater Path: The route of movement of rainwater from building roofs and paved surfaces to the Rainwater Management System.

205. Recreational Vehicle: Means a vehicle which is:

    A. Built on a single chassis;

    B. 400 square feet or less, when measured at the largest horizontal projection;

    C. designed to be self-propelled or permanently towable by a light-duty truck; and

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

206. Religious Institution: A building or structure, or groups of buildings or structures, such as a church, synagogue, temple or mosque, that is used for conducting organized religious services, including ceremonies, rituals, and education pertaining to a particular system of beliefs.

207. Remove or Removal: The act of removing a tree by topping, digging up or cutting down, effecting removal through damage, or causing to be removed, transplanted or destroyed.

208. Replacement Area: the mitigation area required to compensate for an encroachment into the SROZ when allowed in accordance within Section 4.139.00

209. Research and Development: Commercial and non-profit establishments primarily engaged in performing laboratory or other physical or biological, primary, basic, or applied research, development and testing. Does not include Light Manufacturing.

210. Residential Facility: As used in ORS 197, a residential facility is a residential treatment or training facility, licensed by the State of Oregon, which provides care, treatment or training for six (6) to fifteen (15) individuals, and which may also provide housing for staff persons who provide services to those individuals. For the purposes of this Code, unless inhabited by a single family, a residential facility is considered to be a form of multiple family residential development.

211. Residential Home: As used in ORS 197, a residential home is a residential treatment or training home, or adult foster home, licensed by the State of Oregon, which provides care, treatment or training for five (5) or fewer individuals, and which may also provide housing for staff persons who provide services to those individuals. For the purposes of this Code, a residential home is considered to be a form of single-family dwelling unit.

212. Residential Trailer: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962. [Amended by Ordinance 317, 11/4/87].

213. Residential Village Comprehensive Plan Designation: The area within which the Village zone applies, as illustrated on the Comprehensive Plan Map.

214. Row House: A form of single family dwelling where individual units are arranged in an unbroken row with no intervening side yards, with or without an accessory dwelling unit or building.

215. Right-of-way: The area between boundary lines of a public way.

216. Riparian Corridor: See Section 4.139.00.

217. Riparian Corridor Cross Sections: See Section 4.139.00.

218. Riparian Impact Area: See Section 4.139.00.

219. Roadway: The portion of a street right-of-way developed for use by vehicular traffic.

220. School: An educational facility.

221. School, Commercial: A school operated as a commercial enterprise. See Section 4.125(.04), Conditional Uses.

222. School, Private: Schools, including kindergartens, nurseries, children's or adult day care facilities, play schools, and other such facilities, operated primarily through private funding sources. See Section 4.125(.04), Conditional Uses.

223. School, Public: A school endowed and/or supported by taxation. See Section 4.125(.04), Conditional Uses.

224. Screening: Any construction whose essential function is to visually conceal, as in sight-obscuring fencing or sight-obscuring planting. See Section 4.176.

225. Setback: The distance between a reference line (usually a property line) and the nearest point of a building, or portion thereof. In the Village Zone, see Section 4.125.06, Standards Applying to all Developments.

226. Service Center: A planned development commercial center or complex of uses related to serve the motoring public and located at or near the freeway interchanges. Typical uses include restaurants, motels, automobile and truck service stations and centers.

227. Shade point: The part of a structure or non-exempt tree that casts the longest shadow onto the adjacent northern lot(s) when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south; except a shadow caused by a narrow object such as a mast or whip antenna, a dish antenna with a diameter of 3 feet or less, a chimney, utility pole, or wire. The height of the shade point shall be measured from the shade point to either the average elevation at the font lot line or the elevation at the midpoint of the front lot line. If the shade point is located at the northern end of a ridgeline of a structure oriented within 45 degrees of a true north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a true east-west line with a pitch that is flatter than 5 feet (vertical) in 12 feet (horizontal) the shade point will be the eave of the roof. If such a roof has a pitch that is 5 feet in 12 feet or steeper, the shade point will be the peak of the roof (see Figures 5: Height of the Shade Point of the Structure and Figure 6: Shade Point Height in Section 4.137).

228. Shade reduction line: A line drawn parallel to the northern lot line that intersects the shade point (see Figure 7: Shade Reduction Line in Section 4.137).

229. Shade: As used in the solar access provisions of this Code, a shadow cast by the shade point of a structure or vegetation when the sun is at an altitude of 21.3 degrees and an azimuth ranging from 22.7 degrees east and west of true south.

230. Shadow pattern: A graphic representation of an area that would be shaded by the shade point of a structure or vegetation when the sun in at an altitude of 21.3 degrees and an azimuth ranging between 22.7 degrees east and west of true south (see Figure 13: Shadow Pattern in Section 4.137).

231. Sidewalk: A walkway, within or adjacent to a street right-of-way, paved to City standards.

232. Sight-Obscuring Planting: A dense perennial evergreen planting with sufficient foliage to obscure vision as specified in Section 4.176 and which will reach a height of at least six (6) feet within thirty (30) months after planting.

233. Sign: A device or display used or intended to be used for advertising purposes or used or intended to be used to inform or attract the attention of the public. "Sign" includes, where applicable, the structure, display surface, or other component parts of the device or display. Examples include, but are not limited to, advertising sign, banner, outdoor advertising sign, on-premises sign, temporary sign, window sign, message, light (other than a device used primarily to illuminate a building and/or premise), emblem, figure or, painting, drawing, placard, or poster. The display of merchandise that is offered on

the premises shall not be considered to be a sign unless it is attached to any exterior surface or structure of the building including, but not limited to, roofs, walls, marquees, monuments, or poles. Flags of the United States, State of Oregon, Clackamas or Washington County or City of Wilsonville shall not be considered to be signs and shall not be subject to these regulations.

A. Addressing Signs: Signs indicating, at a minimum, the numerical address of the building. Such signs are provided in lieu of a street graphics sign.

B. Building Graphics: building mounted signs.

C. Changing image sign. Any sign which, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement, or change of sign image or text.

D. Directional signs: Signs on private property that provide directions for the traveling public and deemed necessary for the safe traverse of the public.

E. District Sign: a sign indicating the entrance to a Planned Development containing at least fifty (50) acres.

F. Electric Sign: any sign containing electric wiring, but not including signs illuminated by an exterior floodlight source.

G. Flashing Sign: any illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color at all times when such sign is in use. For the purpose of this Code, any moving illuminated sign shall be considered a flashing sign.

H. Freestanding Sign: A sign erected and maintained on a freestanding frame, mast, or pole not attached to any building, and not including ground-mounted signs.

I. Ground-mounted Sign: a sign which extends from the ground, or has support which places the bottom of the sign less than two (2) feet from the ground, including monument signs.

J. Inflatable Sign: any device that depends on a differential between internal and external air pressure to maintain its size, form or shape regardless of whether it is tied, tethered, mounted or connected to a pole, building, or ground.

K. Institutional Signs: signs that identify public buildings, churches, public and private schools and other such structures used for public gathering or to serve the general public. The Planning Director shall determine the nature of such signs if there is a question. Institutional signage shall comply with all applicable provisions of this Code.

L. Integral Sign: a sign carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction indicating names of buildings, date of erection, monumental citations, commemorative tablets and the like when made an integral a part of the structures.

M. Marquee Sign: a canopy or covering structure bearing a signboard or graphics projecting from, and attached to, a building.

N. Permanent Sign: any sign that does not meet the definition of a temporary sign, below.

O. Portable Sign: a sign that is not permanently affixed to a building, structure, or the ground; a sign designed to be moved from place to place; other than garage sale signs and real estate signs. These signs include, but are not limited to movable A-frame signs, sandwich board signs, signs on vehicles or trailers, signs attached to wood or metal frames designed to be self-supporting and movable, including trailer reader boards, paper, cardboard or canvas sign wrapped around supporting poles.

P. Projecting Sign: a sign, other than a wall sign which projects from and is supported by a wall of a building or structure. Projecting Signs are differentiated from Wall Flat Signs as defined below.

Q. Roof Sign: A sign located on or above the roof of any building, not including a false mansard roof, canopy or other fascia.

R. Selling slogans: a brief striking phrase used in advertising or promotion. The hours of operation of a business shall be considered to be a selling slogan.

S. Sign Area: the display surface or face of the sign, including all frames, backing face plates, non-structured trim or other component parts not otherwise used for support. Where a sign is displayed on a surface that includes both signage and blank area, the Planning Director shall have the responsibility for calculating the sign area and shall include all of the surface generally bounding any lettering or other display.

T. Site Area, Net: The area of a development site, excepting all areas in public or private streets, driveways, and parking spaces.

U. Street Graphics: signs that indicate the name and function of a business or institution and are located on private property but within fifteen (15) feet of the right-of-way of a public street.

V. Temporary Sign: a banner, pennant, poster or advertising display constructed of paper, window paint, cloth, canvas, plastic sheet, cardboard, or other like materials intended to be displayed for a limited period of time.

W. Wall Flat Sign: a sign affixed directly to or painted on or otherwise inscribed on an exterior wall and confined within the limits of any building and which projects from that surface not more than twelve (12) inches at all points.

234. Significant Resource Impact Report (SRIR): See Section 4.139.00

235. Significant Resource Overlay Zone (SROZ): See Section 4.139.00

236. Site Development: Any human-caused change to improved or unimproved property -, including, but not limited to, land surface mining, grading, filling, excavation, tree cutting, clearing, construction, installation or alteration of a building or other structure, establishment or termination of an access or outdoor storage on the land.

237. Solar access height limit: A series of contour line establishing the maximum permitted height for non-exempt vegetation on lots affected by a Solar Access Permit (see Figure 12: Solar Access Height Limit in Section 4.137).

238. Solar access permit: A document issued by the city that describes the maximum height that non-exempt vegetation is allowed to grow on lots to which a solar access permit applies.

239. Solar feature: A device or combination of devices or elements that does or will use direct sunlight as a source of energy for such purposes as heating or cooling of a structure, heating or pumping of water, and generating electricity. Examples of a solar feature include a window or windows that contain(s) at least 20 square feet of glazing oriented within 45 degrees east and west of true south, a solar greenhouse, or a solar hot water heater. A solar feature may be used for purposes in addition to collecting solar energy, including but not limited to serving as a structural member or part of a roof, wall, or window. A south-facing wall without windows and without other features that use solar energy is not a solar feature for purposes of this Section.

240. Solar gain line: A line parallel to the northern property line(s) of the lot(s) south of and adjoining a given lot, including lots separated only by a street, that intersects the solar feature on that lot (see Figure 8: Solar Gain Line in Section 4.137).

241. Source Separated Recyclables: Recyclable materials designated "principle recyclable materials" by the Oregon Environmental Quality Commission under ORS 495A.025 with the exception of yard debris, as well as other source-separated recyclables that may be designated by local ordinance or regulation. (Amended by Ordinance #426 - April 4, 1994)

242. South or South facing: True south, or 20 degrees east of magnetic south.

243. Special Flood Hazard Area: Means an area having special flood, mudslide (i.e., mudflow), and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, AO, A1-30, AE, **AR,** A99, AH, VO, VI-30, VE, V, M, OR E.

244. Specific Area Plan (SAP): A plan with a series of detailed components covering one of the five distinct areas of the Villebois Village Master Plan. These plans provide a higher level of analysis and detail than the Villebois Village Master Plan.

245. Stacked Flats: Two or more single-level dwelling units, the second arranged above the first, etc.

246. Start of Construction: Includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date or within any lawful extension of the 180 day permit period provided for by the Oregon State Structural Specialty Codes. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

247. Stoop: A small uncovered platform or porch at the entrance to a dwelling, usually up several steps from the sidewalk.

248. Storage Area for Solid Waste or Recyclables: The space necessary to store mixed solid waste and source separated recyclables that accumulate between collection days. [Amended by Ordinance #426 - April 4, 1994]

249. Story: That portion of a building included between a floor and the ceiling next above it, exclusive of a basement.

250. Street: The entire right-of-way of a dedicated public way, which provides vehicular and pedestrian access to adjacent properties. It shall include the terms street, court, road, drive, and other such terms. Except in the Village zone**, a** right-of-way less than twenty (20) feet in width shall not be recognized as a street.

251. Street, Arterial: A street used primarily for through traffic.

252. Street, Collector: A street used to some extent for through traffic and to some extent for access to abutting properties.

253. Street, Frontage: A minor street parallel to and adjacent to a major street providing access to abutting properties and protection from through traffic.

254. Street, Half: A portion of the width of a street, usually along the edge of a development where the remaining portion of the street could be provided in another adjacent development. In the Village Zone, see Section 4.125(.09), Street Improvement Standards.

255. Street Tree Master Plan: A plan that denotes the species, spacing, minimum size and location of all street trees.

256. Street, Local: A street used exclusively for access to abutting properties.

257. Structure: Anything built which requires location on the ground or is attached to something having a location on the ground. ~~For purposes of the City's Flood Plain Development regulations, things located below grade are not considered to be structures, unless they are subterranean buildings, basements, or cellars.~~

258. Structured Parking: Enclosure for the storage of four or more vehicles.

259. Subdivide: To effect a subdivision of land, as defined below.

260. Subdivider: Any owner commencing proceedings under Sections 4.200 to 4.290 to effect a subdivision of land.

261. Subdivision: Either an act of subdividing land, or an area or tract of land subdivided as defined in this Code. A subdivision means the division of land into more than three (3) lots.

262. Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

263. Substantial Development: Receipt of a valid public works permit or building permit for construction activities, other than a grading permit, is deemed to constitute "substantial development."

264. Substantial Improvement: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50 percent) of the market value of the structure, as determined by the City's Building Official, either:

A. Before the improvement or repair is started, or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is

considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term is not used in the same manner as the term "substantial development" and does not include either:

(1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

265. Sunchart: One or more photographs that plot the position of the sun between 10:30 am and 1:30 pm on January 21, prepared pursuant to guidelines issued by the Planning Director. The sunchart shall show the southern skyline through a transparent grid on which is imposed solar altitude for a 45-degree and 30-minute northern latitude in 10-degree increments and solar azimuth from true south in 15-degree increments.

266. Support Structure (Telecommunication): The structure to which wireless communication antennae and other necessary hardware are mounted. For purposes of this ordinance the terms "support structure," "tower," and "transmission tower" shall be interchangeable. Support structures include, but are not limited to:

A. Guyed Tower: A tower which is supported, in whole or in part, but the use of cables (guy wires) and ground anchors.

B. Lattice tower: A freestanding support structure which consists of an open framework of crossed metal braces on three or four sides which stabilize the tower and which is built without guy wires and ground anchors.

C. Monopole: A freestanding support structure consisting of a single upright pole sunk into the ground and/or attached to a foundation and engineered to be self-supporting without guy wires or ground anchors.

267. Terrace: A raised space or platform adjoining a building, paved or planted, especially one used for leisure enjoyment.

268. Theater: A building or outdoor structure providing facilities for the presentation of performances.

269. Tower Footprint: The area described at the base of a transmission tower as the perimeter of the transmission tower including the transmission tower foundation and any attached or overhanging equipment, attachments or structural members but excluding ancillary facilities and guy wires and anchors. [Added by Ord. #479, 5/19/97]

270. Tower Height: The distance measured vertically from the highest point when positioned for operation to the lowest point, which is defined as the bottom of the base of the structure being measured at either roof level for a roof-mounted structure or at ground level for a freestanding structure. The height of a tower shall include the height of any antennae positioned for operation attached or which may be attached to the highest point on the tower. [Added by Ord. #479, 5/19/97]

271. Tower Pad: The area encompassing the tower footprint, ancillary facilities, fencing and screening. [Added by Ord. #479, 5/19/97]

272. Town Center: That part of the community that is generally bounded by, or adjoining, Town Center Loop Road.

273. Townhouse: A configuration of a Multiple Family Dwelling where multi-story units are attached in an unbroken row sharing common walls, and each having a separate entrance.

274. Trailers, Travel Trailers, Mobile Coaches: A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking or plumbing facilities and is intended for temporary residential and/or recreational uses. Trailers, travel trailers, and mobile coaches do not meet the standards to be considered mobile homes or manufactured dwellings noted above.

275. Transit Stop: A designated location along or near a transit street for pick-up and drop-off of transit users.

276. Transit Station: A facility at a major transit stop accommodating multiple types of transportation, including the seating, sheltering, pick-up, and drop-off of transit users; bicycle storage; automobile drop-off lanes; and other uses compatible with transit use.

277. Transit Street: A designated transit route with one or more transit stops serving TRI-MET or South Metro Area Rapid Transit (SMART) riders.

278. Tree: Any living, standing woody plant having a trunk six inches or more d.b.h. at four and one-half (4-1/2) feet above grade.

279. Tree Cutting: The falling or removal of a tree, or any procedure the natural result of which is to cause the death or substantial destruction of a tree, including topping and severe cutting back of limbs to such a degree as to destroy or adversely affect the normal growth pattern of the tree. Cutting does not include routine pruning or trimming.

280. Tree Preservation and Protection Plan: A plan that indicates the locations of existing trees to be preserved and the methods to be employed to do so. See the City of Wilsonville Tree Preservation Code, Section 4.600 for additional information.

281. Tree Pruning: Reduction of a tree to achieve a better shape and more fruitful growth, using common practices of the arboriculture industry, including the International Society of Arboriculture, the Oregon Department of Forestry (Urban Forestry), or other professional arboriculture industry organizations.

282. Tree Survey: Information provided by an arborist which describes size, species, health, and condition, and an accurate map that locates the trees on the property and descriptive text. Tree surveys shall be provided in keeping with WC 4.610.30 and 4.610.40.

283. Tree Topping: The severe cutting of the top or limbs within the tree's crown to such a degree so as to remove the natural canopy or disfigure the tree.

284. TRP: Tree Removal Permit.

285. Undevelopable area: As used in the solar access provisions of this Code, an area than cannot be used practicably for a habitable structure, because of natural conditions, such as slopes exceeding 20% in a direction greater that 45 degrees east or west of true south, severe topographic relief, water bodies, or conditions that isolate one portion of

a property from another portion so that access is not practicable to the unbuildable portion; or man-made conditions, such as existing development which isolates a portion of the site and prevents its further development; setbacks or development restrictions that prohibit development of a given area of a lot by law or private agreement; or existence or absence of easements or access rights that prevent development of a given area.

286. Urban Growth Management Function Plan (UGMFP): Regulatory requirements imposed on local governments by Metro.

287. Use: The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied.

288. Utilities: Any water, gas, sewer, storm drainage, electrical, telephone, or communication service and all persons, companies, and agencies supplying the same.

289. Value: Current market value or replacement cost as determined by a licensed or certified professional in the tree, nursery, or landscape field.

290. Variance: Means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance. A Variance does not allow a use that is prohibited by this Chapter.

291. View Corridor: As located and defined in the Master Plan, a view corridor is a panorama or line-of-site that, for aesthetic or cultural reasons, is to remain free of noncontributing elements.

292. Village Center: An area illustrated and described in the Villebois Village Master Plan, providing a mixture of residential and commercial uses, at the intersection of three neighborhoods. The Village Center is the focal point of civic and commercial activity.

293. Village Center Architectural Standards: A document that includes standards for all buildings within the Village Center. [Definition amended by Ord. No. 595, 12/5/05.]

294. Village Zone: The zoning district that is applied to areas designated Residential Village on the Wilsonville Comprehensive Plan Map. The Village zone implements the Residential-Village designation and the Villebois Village Master Plan. Also known as the V zone.

295. Villebois Village Master Plan: The approved document depicting the general organizational structure of the Villebois Village Concept Plan, implemented by the Residential-Village Comprehensive Plan designation, and the Village (V) zone, including but not limited to the form and location of public open spaces, types and alignment of the utilities and various thoroughfares, and land use types and locations.

296. Violation: The division or use of land or structures, or the construction of, addition to, or alteration of, structures in a manner that does not fully comply with the provisions of Chapter 4. Structures located in flood hazard areas without adequate elevation certificates or other satisfactory proof of compliance with the provisions of Section 4.172 will be presumed to be in violation until such time as the necessary information has been provided to the Community Development Director.

297. Wall: An upright construction having a length greater than the thickness and presenting a continuous surface except where pierced by doors, windows, etc., used for shelter, protection, or privacy.

298. Water-Dependent: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production or source of water.

299. Water-Related: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories; and trailer parks are not generally considered dependent on or related to water location needs.

300. Wayfinding Plan: See Master Signage and Wayfinding Plan.

301. Wetlands: Existing wetlands include jurisdictional wetlands as determined by the Division of State Lands (DSL) and/or the US Army Corps of Engineers (COE). "Wetlands" are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Created wetlands are mitigation wetlands as defined by the Division of State Lands or US Army Corps of Engineers. For the purpose of this ordinance, wetlands shall not include these constructed facilities:

    A. stormwater treatment ponds or swales;
    B. stormwater treatment wetlands;
    C. detention ponds;
    D. a 25-foot buffer adjacent to the wetland;
    E. an off-stream recreational lake, lagoon, fire pond or reservoir; and
    F. ditches that are not mapped within the Significant Resources Overlay Zone and are constructed solely for the purpose of draining roads, lots, and outfalls of storm drains.

302. Wildlife Habitat: A Goal 5 resource defined as an area upon which wildlife depend in order to meet their requirements for food, water, shelter and reproduction. Wildlife habitat in the *City of Wilsonville Natural Resource Inventory and Goal 5, Title 3, Endangered Species Act Compliance and Protection Plan* refers to upland, forested areas of at least one-acre size. Hazelnut orchards, small clumps of trees and areas with only a few scattered trees are not included as wildlife habitat.

303. Wireless Communication Facilities (WCF): An unstaffed facility for the transmission and reception of radio or microwave signals used for commercial communications. WCFs are composed of two or more of the following components: (1) antenna: (2) support structure: (3) equipment enclosures; and (4) security barrier. [Added by Ord. #479, 5/19/97]

304. Yard: The open space, other than a court, on a lot, unoccupied and unobstructed other than by landscaping or permitted fences from the ground upward, between a structure

or structures and any lot line. The minimum horizontal distance between any point on a lot line and the nearest part of any structure or building is the yard depth.

305. Yard, Front: Any yard abutting a street, unless one side is determined to meet the definition of a side yard, below.

306. Yard, Rear: Any yard abutting a rear lot line.

307. Yard, Side: Any yard abutting a side lot line and, for corner lots, the side with the longest street frontage. Where a corner lot has an existing building with a primary entrance, the street side without the entrance shall be deemed the side yard. Where a corner lot has the same amount of frontage on both streets, and no primary building entrance facing either street, the Planning Director may designate the side yard in order to determine required setbacks.

[Definitions amended by Ord. 557 adopted 9/5/03]

Section 2. Wilsonville Code Section 4.172 is amended to read as follows:

Section 4.172. Flood Plain Regulations.

(.01) Purpose:

A. To minimize public and private losses due to flood conditions in flood-prone areas.

B. To regulate uses and alteration of land which would otherwise cause erosion, decreased storm water storage capability, increased flood heights or velocities.

C. To require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, alteration or remodeling.

D. To restrict filling, grading, dredging, and other development which would increase flood damage.

E. To prevent construction of flood barriers which would unnaturally divert flood waters or increase flood hazards in other areas.

F. To properly regulate the l00-year flood plain identified by the Federal Insurance Administration (FIA) in the "Flood Insurance Study for **Clackamas County and Incorporated Areas** ~~the City of Wilsonville~~" dated **effective June 17, 2008** ~~July 6, 1981,~~ and displayed on FIA Floodway and Flood Insurance Rate Maps **dated effective June 17, 2008, which are on file with the City's Community Development Department**.

G. To implement the policies of the Comprehensive Plan and to provide standards consistent with - Wilsonville's adopted Storm Drainage Master Plan.

H. To insure the City and its residents and businesses, continued eligibility in the National Flood Insurance Program by complying with the requirements of the National Flood Insurance Act of l968 and the Flood Disaster Protection Act of l973.

(.02) General Provisions Affecting Flood Plains:

A. This section shall apply to all flood plain areas in the City of Wilsonville identified by the Flood Insurance Rate Map. No Building Permits or Construction Permits for development within the flood plain shall be issued except in compliance with the provisions of the Section.

B. Basis For Establishing The Areas Of Special Flood Hazard:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study - Clackamas County, Oregon and Incorporated Areas effective June 17, 2008," with accompanying Flood Insurance Rate Maps (effective date June 17, 2008) is hereby adopted by reference and declared part of this ordinance. The Flood Insurance Study is on file at the City of Wilsonville Community Development Department.

~~B~~ **C.** The City of Wilsonville Community Development Director shall review all Building and Grading Permit applications for new construction or substantial improvement to determine whether proposed building or grading sites will be located in a flood plain. If a proposed building or grading site is located within a flood plain, any proposed new construction, grading, or substantial improvement (including prefabricated and manufactured housing) must:

1. Be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.
2. Use construction materials and utility equipment that are resistant to flood damage,
3. Use construction methods and practices that will minimize flood damage, and
4. Limit the addition of any fill material such that the total volume of fill within the flood plain does not exceed the volume of material removed from the flood plain in the same area.

~~C~~ **D.** That the City of Wilsonville Planning Director shall review subdivision proposals and other proposed new developments within the flood plain to assure that:

1. all such proposals are consistent with the need to minimize flood damage,
2. all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage,
3. adequate drainage is provided so as to reduce exposure to flood hazards, and
4. No new lots or parcels shall be created for the purpose of increasing the development of buildings for human occupancy within the flood plain.

~~D~~ **E.** That the City of Wilsonville Community Development Director shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal

systems to be located so as to avoid impairment of them or contamination from them during flooding.

(.03) Development Permit Required:

A. A Development Permit shall be obtained before construction or development, including grading, begins within any area of special flood hazard. The Permit shall be for all structures including manufactured homes and for all development including fill and other activities.

B. Outright Permitted Uses in the 100-year Flood Plain:

1. Agricultural use that is conducted without a structure other than a boundary fence.
2. Recreational uses which would require only minor structures such as picnic tables and barbecues.
3. Residential uses that do not contain buildings.
4. Underground utility facilities.
5. Repair, reconstruction or improvement of an existing structure, the cost of which is less than 50 percent of the market value of the structure, as determined by the City's Building Official, prior to the improvement or the damage requiring reconstruction, provided no development occurs in the floodway.

(.04) Uses within the 100-year Flood Plain requiring a Flood Plain Permit:

A. Any development except as specified in subsection (.03), above, that is otherwise permitted within the Zoning District provided such development is consistent with the Flood Plain Standards.

B. All subdivisions and land partitions.

C. Installation of dikes to provide buildable or usable property, provided that said dikes do not conflict with the policies of the Comprehensive Plan and this Section.

(.05) Prohibited Uses in the 100-year Flood Plain:

A. Any use or building which stores or otherwise maintains hazardous materials, chemicals, explosives or any other similar materials.

B. Storage of any materials that are not properly anchored, enclosed or protected to prevent movement or flotation beyond the property lines.

C. Critical Facility:

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from

the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(.06) Flood Plain Permit Review Process:

A. The Community Development Director is **the local flood plain administrator and is** hereby appointed to administer and implement this Section by granting or denying Development Permit applications in accordance with its provisions.

B. Duties and Responsibilities of the Community Development Director:

1. Duties of the Community Development Director shall include, but not be limited to:
   a. Review all Development Permits to determine that the permit requirements of this ordinance have been satisfied.
   b. Review all Development Permits to determine that all necessary permits have been obtained from those Federal, State or local government agencies from which prior approval is required. Notify the State Department of Land Conservation and Development and FEMA of final permit decision.
   c. Review all Development Permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment limitations of subsection (.07)(H) are met.

C. The Permit process for developments not regulated by Section 4.l40 shall be as follows:

1. Pre-application conference with the Planning Department in accordance with the procedures set forth in **Section** 4.008.
2. A complete application in accordance with this Section shall be submitted to the Community Development Director.
3. Within 30 days of complete application, the Community Development Director shall approve or deny the application based on the following Findings:
   a. Reports from the City Engineer and Planning Director as to the applicant's submittal documents' compliance with this Section, including recommendations.
   b. The proposed development's compliance with other provisions of the Comprehensive Plan and Zoning Regulations.

D. The decision of the Community Development Director may be appealed to the Development Review Board, upon written notice to the City Recorder within ten (l0) calendar days of the date of final decision. Upon appeal, the Board shall hear the matter in accordance with **Section** 4.022

E. Any flood plain development proposed for property regulated under Section 4.140 shall be considered by the Development Review Board and the Community Development Director as part of the Planned Development Permit process.

F. Submittal requirements.

1. A field survey in relation to mean sea level by a licensed surveyor or civil engineer of the actual location of the 100-year flood plain, fringe, floodway and the lowest habitable finished floor elevations, including basements, of all existing structures.
2. A Site Plan map showing all existing and proposed contours and development and supplemented by a soils and hydrologic report sufficient to determine the net effect of the proposed development on the flood plain elevations on the subject site and adjacent properties. Proposed areas of cut or fill shall be clearly indicated.
3. A soils stabilization plan for all cuts, fills and graded areas.

G. Use and Interpretation of Base Flood Data and maps.

1. When specific 100-year flood plain elevation data has not been provided in as required in this Section, the Community Development Director shall obtain, review and reasonably utilize any base flood elevation data available from Federal, State or other sources, in order to determine compliance with this Section.
2. The Community Development Director shall make the final interpretation of the exact 100-year flood plain boundaries on the FIRM and the Floodway Map. Appeals shall be granted consistent with the Standards of the rules and regulations of the National Flood Insurance Program **and pursuant to WC 4.172 (.08) Appeal Board**.

H. Monumentation and Recordation:

1. Prior to issuance of a Flood Plain Permit, the Community Development Director shall cause the placement of an elevation marker, set at two (2) feet above the 100-year flood elevation, on the subject property. The marker shall be properly identified and permanently monumented in concrete.
2. A Site Plan or map showing the location and elevation of the monument shall be submitted to and maintained on file by the Community Development Director.
3. Prior to issuance of an Occupancy Permit, for any structure within the 100-year flood plain, the Community Development Director shall insure by signature of a licensed surveyor or civil engineer **(elevation certificate)** that the finished floor elevation **of commercial, industrial and public buildings are** ~~is~~ one and one-half (1-1/2) feet above the 100-year flood elevation **and that residential uses are two (2) feet above the 100-year flood elevation**. The finished floor elevation shall be in relation to mean sea level, of the lowest floor (including basement) of all structures.

(.07) General Standards:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top of frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
3. All recreational vehicles must either be elevated and anchored or be on the site for less than 180 consecutive days **or** ~~and~~ be fully licensed and highway ready. A recreational vehicle is ready for highway use if its wheels are in place and it is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods:

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Below-grade crawl spaces:

a. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:

i. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

ii. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The

bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

iii. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

iv. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

v. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

vi. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

vii. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

viii. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

C. Utilities:

1. All new replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. **On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**

D. Alteration of Watercourses:

1. Provide description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
2. Notify adjacent communities and the Federal Emergency Management Agency, Army Corps of Engineers, **Department of Land Conservation and Development** and **Department** ~~Division~~ of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
3. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. (Amended by Ord. #316, 7/6/87).

E. Residential Construction:

1. New construction and substantial improvement of any residential structure shall have the lowest finished floor, including basement, elevated **two (2)** ~~one and one-half (1-1/2)~~ feet above the 100-year flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
   a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
   b. The bottom of all openings shall be no higher than one foot above grade.
   c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
3. Manufactured homes or mobile homes placed on sites within new or existing manufactured/mobile home parks shall be anchored to a permanent foundation and ~~either~~:
   a. Have the lowest floor **2'** above the base flood elevation, or
   ~~b. Have the chassis supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches above grade.~~
4. Manufactured/mobile homes outside of manufactured/mobile home parks shall meet all requirements for residential structures at the same locations.

5. All manufactured homes to be placed or substantially improved within Flood Hazard Zones Al-30, AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of sub-section 4.172(.07)(A).

F. Nonresidential Construction:

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest finished floor, including basement, elevated one and one-half (1-1/2) feet above the 100-year flood elevation; or, together with attendant utility and sanitary facilities, shall:
   a. Be floodproofed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water.
   b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
   c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. **Floodproofing certifications are required to be provided to the Community Development Director.**
   d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as prescribed for residential construction, above.
   e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

H. Floodways:

1. Located with**in** the flood plain - are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
   a. Encroachments, including fill in any new development, or **substantial improvements** shall be prohibited unless certification by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase flood levels during the occurrence of the 100-year flood discharge.
   b. All development shall comply with all applicable flood plain standards of Section 4.172.
   c. All buildings designed for human habitation and/or occupancy shall be prohibited within the floodway.

I. Parking Lots and Storage Areas:

1. All parking lots and storage areas below the flood plain elevation shall be paved.

2. A minimum of twenty-five (25) percent of the required parking space must be provided above the 100-year flood plain elevation for all nonresidential uses.
3. Residential uses shall provide at least one parking space per unit above the 100-year flood plain elevation.

J. Subdivision Proposals:

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **or eliminate** flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage, and
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

K. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for Building Permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(.08) Appeal Board.

A. The Development Review Board as established by the City of Wilsonville shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Development Review Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Community Development Director in the enforcement or administration of this ordinance.

C. Those aggrieved by the decision of the Development Review Board may appeal such decision to the City Council.

D. In acting upon such applications, the Development Review Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and

1. the danger that materials may be swept onto other lands to the injury of others;
2. the danger to life an property due to flooding or erosion damage;
3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. the importance of the services provided by the proposed facility to the community;
5. the necessity to the facility of a waterfront location, where applicable;
6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. the compatibility of the proposed use with existing and anticipated development;
8. the relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas electrical and water systems, and streets and bridges.

E. Upon consideration of the factors of Sections 4.035, 4.184, and 4.196 and the purposes of this ordinance, the Development Review Board may attach such conditions to the granting of - permits as it deems necessary to further the purposes of this ordinance and to protect lives or property.

F. The Community Development Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(.09) Conflicts. If any provisions of Section 4.172 conflict with any other Sections of this Code, the most restrictive shall apply.

Section 3. Severability. In the event any provisions of this Ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 7th day of April, 2008, and scheduled for second reading on the 21st day of April, 2008, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall.

Sandra C. King

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 21st day of April, 2008, by the following votes:

YEAS:-4- NAYS: -0-

Sandra C. King

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 23rd day of April, 2008.

CHARLOTTE LEHAN, MAYOR

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Núñez	Excused
Councilor Knapp	Yes
Councilor Ripple	Yes

WILSONVILLE PLANNING DIVISION
***Legislative* STAFF REPORT**

HEARING DATE: March 31, 2008

DATE OF REPORT: April 7, 2008

APPLICATION NO: LP08-0002

APPLICANT: City of Wilsonville

REQUEST: Adoption of the Federal Emergency Management Agency's (FEMA) revised Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRM), as well as amendments to the existing flood plain management regulations (WC Section 4.172) as required by FEMA and the Department of Land Conservation and Development (DLCD) that meet the standards of Paragraph 60.3(d) of the National Flood Insurance Program (NFIP). Adoption of the maps and new code language are required for the City to remain in the National Flood Insurance Program.

APPLICABLE REVIEW CRITERIA: Wilsonville Comprehensive Plan: Goal 1.1- Citizen Involvement: Policy 1.1.1; Implementation Measures 1.1.1a and e; Public Facilities and Services: Policy 3.1.7; Implementation Measure 3.1.7 a, d, k, l, m; Environmental Resources and Community Design: Policy 4.1.5; Implementation Measure 4.1.5 e, f, n, t, w, z; Planning and Land Development Ordinance: Section: 4.172: Flood Plain Regulations; 4.198: Zone Changes and Amendments to this Code-Procedures; FEMA's National Flood Insurance Program.

STAFF REVIEWER: Chris Neamtzu, Long-Range Planning Manager, (503) 682-4960
neamtzu@ci.wilsonville.or.us.

LOCATION: Mapped 100-Year Floodplains citywide (Please refer to Exhibit B-June 17, 2008 FIRM)

SUMMARY:

Following a work session on February 13, 2008 and a public hearing on March 12, 2008 the Planning Commission forwarded a recommendation of approval of the adoption of new Flood Insurance Rate Maps (FIRM), the supporting Flood Insurance Study (FIS) and amendments to WC Section 4.172-Flood Plain Regulations onto the City Council. There was no written or oral testimony at the public hearing; one citizen was in attendance. Since the Planning Commission public hearing, there have been numerous discussions with consultants representing various

development projects in the City. Staff has been working diligently with citizens and the development community to address all concerns raised and to date staff is not aware of any outstanding issues.

Over the course of 2006-07', FEMA undertook an update to the 100-year flood plain maps for Clackamas County and incorporated areas. Washington County is just undergoing this process. This process is commonly referred to as a map modernization process. The City of Wilsonville is a participating community in the National Flood Insurance Program (NFIP), and administers flood plain regulations through the Development Code (WC Section 4.172). The National Flood Insurance Program was established with the passage of the National Flood Insurance Act of 1968. As a participating community in the National Flood Insurance Program, and to remain in good standing, the City is required to adopt the revised Flood Insurance Rate Maps (FIRM-Exhibit B), Flood Insurance Study (FIS-Exhibit G), and revise the local flood plain regulations to comply with Federal Regulations.

On December 14, 2007, Chief of the Engineering Management Branch at FEMA, William R. Blanton provided a letter to Mayor Lehan (Exhibit A) formally notifying the City that the flood hazard determinations had been finalized. The currently adopted floodplain maps date back to 1987. FEMA recently completed a re-evaluation of flood hazards in Clackamas County and incorporated areas. Draft flood plain maps were provided to the City in September of 2007. City Staff raised concerns about the accuracy of the draft maps and filed a formal protest. As a result of the protest, FEMA used the City's more accurate digital topography and incorporated a pending Conditional Letter of Map Refinement (CLOMR) that is now a Letter of Map Refinement (LOMR) for the Seely Ditch/Wilsonville Road culvert project and re-ran the analysis resulting in modifications to the base flood elevations in the City. The end results are the draft FIRM maps that are presented for final adoption. City staff believes that the revised maps more accurately represent the base flood elevations in the City of Wilsonville, which was the staff's goal in raising concerns and protesting the draft maps.

In order for the City to continue to obtain eligibility in the NFIP, FEMA's FIS and FIRM need to be adopted by the City, including public hearings and final adoption with the City Council prior June 17, 2008. Communities that fail to enact the necessary flood plain management regulations will be suspended in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973, as amended.

In order to comply, the City is required to update Wilsonville Code (WC) *Section 4.172: Flood Plain Regulations* (Exhibit C) to comply with Section 1361 of the National Flood Insurance Act of 1968. To remain eligible the City must demonstrate compliance with the standards of 44 CFR Section 60.3(d) of the NFIP regulations, as audited by the DLCD (Exhibit D).

In addition to the City using the FIS and FIRM to manage development in the flood plain, FEMA will use the FIS report to establish appropriate flood insurance rates. On the effective date, actuarial rates for flood insurance will be charged for all new structures and substantial improvements to existing structures located in the identified Special Flood Hazard Areas (SFHA). These rates may be higher if structures are not built in compliance with the flood plain management standards of the NFIP. The actuarial flood insurance rates increase as the lowest

elevations (including basements) of new structures decrease in relation to the Base Flood Elevation (BFE) established for the community. This is an important consideration for new development because building at a higher elevation can greatly reduce the cost of flood insurance.

Couple this point with the fact that the 1996 flood, which in many parts of the Willamette Valley was considered a 100-year event, resulted in different peak flood elevations than are depicted in the 1987 FIRM maps. In order to adequately protect the public from the likelihood of flood damage, Staff is recommending an increase in height above the 100-year floodplain from the current 1.5' to 2' for new residential structures, or structures that undergo a substantial improvement as defined by the WC. Commercial, industrial and public facilities will continue to have a 1.5' requirement. **This is the only policy decision that is outside of the required code changes mandated by FEMA.**

Community Rating System:

Upon adoption of the new Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRM), staff will begin the process of obtaining an official Community Rating System (CRS) from FEMA. The CRS program will benefit the City by adjusting the flood insurance premium rates for property owners located in the flood hazard zones and are paying for flood insurance. The goals to achieve the adjusted insurance rates will be: reduce flood loses; facilitate accurate insurance rates; and promote the awareness of flood insurance.

By adopting the (CRS) program, our goal will be to reduce the flood insurance rates between 15% and 45% depending on the rating score.

ISSUES:

FEMA/DLCD provided detailed comments to the City on the revisions that were necessary to the flood plain regulations to result in compliance with Federal standards (Exhibit D). Most of these comments are required revisions. The major revisions include:

1) Addition of new definitions that are contained in the Code of Federal Regulations (CFR) and the FEMA model code that are not in the local regulations.
2) Updates to the *Purpose* section of the flood plain regulations to reference the new maps and study.
3) Addition of language specifically to address the process of certifying that development complies with the regulations – called an elevation certificate.
4) Addition of DLCD as a required party to be noticed of flood plain alterations.
5) Cross reference the appeals process outlined in the City code.
6) Minor word additions to the utilities section and the subdivision section.
7) Addition of language to the non-residential structures section requiring submission of flood proofing certifications to the Community Development Director.
8) Modifications to the residential structures section to comply with the FEMA model code requiring manufactured homes and mobile homes to be at least 1' above BFE.

Consistent with other residential development, Staff is recommending that this elevation be 2'.

9) Prohibitions on substantial improvements in the floodway, unless certified by a registered civil engineer.
10) Addition of language that addresses critical facilities within the SFHA.
11) Addition of language that clearly states that the Community Development Director is the local flood plain administrator.
12) Addition of specific language that addresses below grade crawl spaces and comply with NFIP specifications.
13) Proposed addition in finished floor elevation for residential structures, mobile and manufactured homes to 2' above BFE.

Project Acronyms:

BFE:	Base Flood Elevation
CFR:	Code of Federal Regulations
CLOMR:	Conditional Letter of Map Revision
DLCD:	Department of Land Conservation and Development
FEMA:	Federal Emergency Management Agency
FIRM:	Flood Insurance Rate Maps
FIS:	Flood Insurance Study
LOMC:	Letter of Map Change
LOMR:	Letter of Map Revision
NFIP:	National Flood Insurance Program
SFHA:	Special Flood Hazard Area

RECOMMENDATION:

As this is a very time sensitive topic, a final action is needed by the City Council before June 18, 2008. If the study and maps are not adopted by June 17, 2008, Wilsonville risks suspension from the NFIP. Staff is requesting that the City Council take the following action:

- Adopt the City of Wilsonville FIRM's (Panel Nos. 234, 241, 242, 250, 261 of 1175- Effective date June 17, 2008) and the FIS as a supporting document.

- Adopt the revised text in *WC 4.172. Flood Plain Regulations* (Exhibit C) to support the FIS and FIRM consistent with FEMA requirements.

BACKGROUND:

Staff received the draft FIS and FIRM from FEMA in September of 2007. After following the filing of a formal protest, the maps were redrawn for the incorporated part of the City of Wilsonville. Prior to receiving the maps, Staff received an audit of the existing flood plain regulations (WC 4.172) clearly specifying what changes needed to be completed in order to

result in continued participation with the NFIP. The revised code language is contained in the packet as Exhibit C and the audit is included as Exhibit D.

Staff conducted a worksession on this topic with the Planning Commission on February 13, 2008. Notice of public hearing was provided to all owners of property containing mapped 100-year floodplains consistent with the updated maps, as well as a 50' buffer around the mapped 100-year boundary.

CONCLUSIONARY FINDING(S):

GOAL 1.1 *To encourage and provide means for interested parties to be involved in land use planning processes, on individual cases and City-wide programs and policies.*

Policy 1.1.1 The City of Wilsonville shall provide opportunities for a wide range of public involvement in City planning programs and processes.

Response: ***The public hearing notice was sent to all property owners who have flood plains mapped on their land plus a 50 buffer. These are the affected parties regarding changes to the floodplain maps and revisions to the regulations. A Planning Commission worksession was held in February on this topic. Public hearings were held in March with the Commission, and work sessions and hearings with the Council are planned for April. Adoption has to occur prior to June 18, 2008. These criteria are supported by the public process and notices that have been provided.***

Implementation Measure 1.1.1.a *Provide for early public involvement to address neighborhood or community concerns regarding Comprehensive Plan and Development Code changes. Whenever practical to do so, City staff will provide information for public review while it is still in "draft" form, thereby allowing for community involvement before decisions have been made.*

Response: There has been a relatively short timeframe for compliance on this matter. The schedule is being set by FEMA. Once the final maps were provided, Staff initiated the review process with the public. The Staff has met numerous times with State DLCD Flood Plain Administrators, as well as conducted conference calls with FEMA Staff in Region X. The draft maps have been posted on the City web site, and Staff has spoken to numerous individuals who have called with specific questions. This criterion is supported by the process that is being conducted.

Implementation Measure 1.1.1.e *Encourage the participation of individuals who meet any of the following criteria:*

1. *They reside within the City of Wilsonville.*

2. *They are employers or employees within the City of Wilsonville.*
3. *They own real property within the City of Wilsonville.*
4. **They reside or own property within the City's planning area or Urban Growth Boundary adjacent to Wilsonville.**

Response: ***Public hearing notices were provided to residents and employers who have mapped 100-year flood plains on their land plus buffers. The notice encourages their participation. This criterion is met.***

Policy 3.1.7 The City of Wilsonville shall develop and maintain an adequate storm drainage system. However, where the need for new facilities is the result of new development, the financial burden for drainage system improvements shall remain primarily the responsibility of developers. The City will use systems development charges, user fees, and/or other funding sources to construct facilities to improve storm water quality and control the volume of runoff.

Response: The City develops and maintains the public storm drainage system. Without adequate storm drainage, detention and water quality system, the likelihood of flooding would increase. The Storm Water Master Plan (2001) and the Public Works Standards are the guiding documents regarding storm water management. This criterion is met.

Implementation Measure 3.1.7.a In order to adequately provide for urban development, the City has established and will maintain a Stormwater Master Plan, development policies/standards for control of an on and off-site drainage, Public Works Standards, and a Capital Improvements Program to upgrade deficient structures and drainage ways.

Response: The City's Storm Water Master Plan, Public Works Standards, and CIP which provide facilities to manage stormwater, all work together to detain and treat storm water and meter flows downstream at a pace that will not result in increased flooding and potential property damage. This criterion is generally supported by the proposal.

Implementation Measure 3.1.7.d Major natural drainage ways shall be retained and improved as the backbone of the drainage system and designated as open space. The integrity of these drainage ways shall be maintained as development occurs. Where possible, on-site drainage systems will be designed to complement natural drainage ways and designated open space to create an attractive appearance and will be protected by conservation, utility, or inundation easements. Alteration of minor drainage ways may be allowed provided that such alterations do not adversely impact stream flows and in-stream water quality of the major drainage ways and provide for more efficient use of the land. Such alteration must be approved by the City. Remnant creek channels, which previously carried water that has since been diverted, shall be evaluated for their wildlife habitat value before being selected for use as drainage ways. Where a remnant creek channel is found to provide unique habitat value without being a riparian zone, and that habitat

value would actually be diminished through the re-introduction of storm water, alternate methods of conveying the storm water will be considered and, if feasible, used.

Response: Many of the City's major drainage ways are flood plain areas as well as sensitive wetlands and wildlife habitats. The proposed code amendments contain provisions for the alteration of flood plains and notification to the proper State and Federal agencies. This criterion is generally supported by the proposal.

Implementation Measure 3.1.7.k One-hundred year flood plains and floodways have been established through the Federal Flood Insurance program, for all flood-prone areas of the City except Coffee Lake Creek, north of Barber Street. For that area along Coffee Lake Creek, a hydrology study to establish the 100-year flood elevation will be required prior to development approval. The floodways must continue to be protected from encroachment. Development within the flood plain shall be regulated consistent with the standards of the Federal Flood Insurance Act, and Title 3 of Metro's Urban Growth Management Functional Plan. Storm water runoff from upstream development shall be controlled so as to not adversely impact the peak flood flow in the mainstream channels.

Response: The revised FIRM's contain limited mapping for the area of Coffee Creek (Panel 241D) north of Barber and is an area beyond the detailed study. The revised maps show that area as Zone A – No base flood elevations established. The Boeckman Road extension project contained a detailed flood plain and hydrology study, which at this time is in the form of a Conditional Letter of Map Revision (CLOMR). The CLOMR boundaries are shown on Exhibit K. Once as-builts for Boeckman Road are created and submitted to FEMA for review, the CLOMR can be made a Letter of Map Revision (LOMR), and BFE's established and new flood plain boundaries drawn for the area south and north of Boeckman to Grahams Ferry Rd. The flood way will continue to be protected from development and encroachment. The proposed amendments to WC 4.172 are consistent with the FIA, and Metro's Title 3 of the UGMFP. This criterion is met.

Implementation Measure 3.1.7.l The City will regulate new land divisions to prevent the creation of additional lots for building sites within 100-year floodplains. This is not intended to prohibit the creation of new lots that are partially within flood plains, provided that the developable portion of each lot will be outside of the 100-year flood plain, and FEMA standards are met.

Response: The proposed revisions to the flood plain ordinance will not alter the City's role in limiting the creation of new lots wholly within the 100-year flood plain. Proposed lots that have buildable areas outside of the 100-year boundary would continue to not be prohibited, provided FEMA standards are met.

Implementation Measure 3.1.7.m The City will regulate cuts and fills within flood plains to assure that the amount of fill material added will not exceed the amount of cut material.

Response: This criterion is supported by the language in the WC that requires balanced cut and fill (WC 4.172 (.02) C. 4.).

Policy 4.1.5 Protect valuable resource lands from incompatible development and protect people and property from natural hazards.

Response: By limiting flood plain development, restricting conflicting uses from the floodway and by providing updated language in the WC to guide flood plain development, and increasing the height of the finished floor elevation from 1.5' to 2' in new residential development, the City will protect valuable resource lands and will protect people and property from natural hazards such as flooding. This criterion is met.

Implementation Measure 4.1.5.e Protect the beneficial uses and functional values of resources within the Water Quality and Flood Management Areas identified by Metro by limiting or mitigating the impact on these areas from development activities.

Response: Via the City's adopted SROZ regulations, the beneficial uses and functional values of resources within the water quality and flood management areas are protected by limiting development activities. The proposed modifications to the flood plain ordinance do not alter the SROZ requirements. This criterion is met.

Implementation Measure 4.1.5.f Ensure protection of Water Quality and Flood Management Areas pursuant to Title 3 of the Metro Urban Growth Management Functional Plan by either:

1. *Adopting the relevant provisions of the Metro Water Quality and Flood Management model ordinance and Metro Water Quality and Flood Management Conservation Area Map; or*
2. *Demonstrating that the City's plans and implementing ordinances substantially comply with the performance standards, including the map, contained in Title 3. In this case, the purpose of this map is to provide a performance standard for evaluation of substantial compliance for the City; or*
3. *Any combination of 1 and 2 above that substantially complies with all performance standards in Section 4 of Title 3 of Metro's Urban Growth Management Functional Plan.*

Response: The City's adopted Goal 5 program resulted in substantial compliance with the requirements of Metro's Title 3. Many floodplains are protected from development via the SROZ regulations, resulting in protection of the water quality and flood

management areas. The proposal will not alter the SROZ requirements as they are more restrictive. These criteria are satisfied.

Implementation Measure 4.1.5.n Adopt performance standards, in accordance with Metro, to conserve, preserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas identified on Metro's water quality and flood management area map.

Response: The City's adopted and acknowledged Goal 5 program has resulted in compliance with the above implementation measure. Many of the SROZ areas are also flood plains. This measure does not conflict with the proposal.

Implementation Measure 4.1.5.t Define risks of development by using Federal Emergency Management Agency maps showing flood plains and floodways. Restrict buildings in the flood plains and prohibit buildings in the floodway.

Response: The City of Wilsonville is fortunate to have very little development in the 100-year flood plain, and staff is not aware of any development in the flood way. FEMA's FIRM maps are used regularly as a tool to inform the public and guide development. Through this process, risks are defined, and rules and regulations restricting activities communicated. This criterion is met.

Implementation Measure 4.1.5.w Provide available information, when requested, to those interested in developing land in areas of the following hazards:

a. 100 year floods;
b. slides and earthquake damage; or
c. wind damage, possible tree topping.

Response: City Staff routinely provide a wide array of information to the public interested in developing land in Wilsonville. The 1987 flood plain maps have been on file at City Hall since their adoption. The draft FIRM maps have been posted on the City's web site for citizens to review at their own pace. Paper copies are available for anyone who requests them. The proposal does not alter the City's ability to provide information in a timely and accurate manner. This criterion is met.

Implementation Measure 4.1.5.z Protected natural resources within the Significant Resource Overlay Zone are intended to remain undeveloped with the possible exceptions of passive recreation and underground public facilities. These areas include the following:

1. Riparian corridors, wetlands and wildlife habitat that are determined to be significant through the Goal 5 process and are included in the Significant Resource Overlay Zone.

2. *Water quality resource areas as defined by Metro's Title 3 of the Urban Growth Management Functional Plan.*

Response: The SROZ and the flood plain areas overlap in many areas. Both sets of requirements need to be consulted before any land use decisions can be made. The more restrictive standards apply. Modifications to the flood plain ordinance and adoption of the 100-year flood plain maps will not allow activities that are not permitted in the SROZ. The proposal does not conflict with the above implementation measure.

Planning and Land Development Code, Section 4.197, Zone Changes and Amendments to This Code:

(.01) The following procedure shall be followed in applying for an amendment to the text of this Chapter:

A. The Planning Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after it is proposed and shall, within forty (40) days after concluding the hearing, provide a report and recommendation to the City Council regarding the proposed amendment. The findings and recommendations of the Commission shall be adopted by resolution and shall be signed by the Chair of the Commission.

Response: This is a City initiated Planning and Land Development Ordinance text amendment to Section 4.172-Flood Plain Regulations that is required by FEMA and DLCD as part of compliance with the NFIP. The map adoption and code revision process is moving forward to hearing in an expeditious manner following the customary worksession before the Planning Commission in February 2008 and public hearing in March of 2008. The Council hearing dates are targeted for April 7 and 21 of 2008. This criterion is met.

B. In recommending approval of a proposed text amendment, the Planning Commission shall, at a minimum, adopt findings relative to the following:

1. That the application was submitted in compliance with the procedures set forth in Section 4.008, and

2. The amendment substantially complies with all applicable goals, policies and objectives set forth in the Comprehensive Plan; and

3. The amendment does not materially conflict with, nor endanger, other provisions of the text of the Code, and

4. If applicable, the amendment is necessary to insure that the City's Land Use and Development Ordinance complies with mandated requirements of State or Federal laws and/or statutes.

Response:

2. The adoption of the FIRM/FIS, and amendments to WC 4.172, are being initiated by city staff, as authorized by the City Manager, at the direction of FEMA/DLCD and are necessary to remain in the NFIP. The City is the applicant for this proposal. The Planning Commission will recommend approval, approval with modifications or denial of this application to the City Council after concluding a public hearing. Public hearing notices were sent as required to all directly affected property owners, as well as to property owners within 50 feet of the mapped 100-year flood plain boundary. All of the customary agencies were notified of the city's proposal. The list of property owners and agencies notified are contained in the project file. Notice was published in the Wilsonville Spokesman as required. Findings of fact are included in the staff report.

3. The Findings found earlier in this report demonstrate substantial compliance with applicable goals, policies and objectives set forth in the Comprehensive Plan.

4. The proposed map adoption and code amendments do not conflict with other portions of the Development Code, but instead strengthen the Code by adhering to the recommendations provided by FEMA/DLCD and the requirements necessary to have good standing in the NFIP.

5. In an email to Chris Neamtzu dated 2/22/08, Mark Darienzo, DLCD Flood Map Modernization Coordinator (Exhibit G) generally stated that the proposed code amendments were reviewed and are consistent with the requirements. The proposed amendments comply with mandated State and Federal requirements.

EXHIBITS

A. Letter from William Blanton to Mayor Lehan dated December 17, 2008; Final Summary of Map Actions; NFIP Elevation Certificate and Instructions; and FEMA NFIP Regulations.
B. Flood Insurance Rate Maps (FIRM) dated June 17, 2008
C. Updated WC 4.172 Flood Plain text language
D. DLCD audit of the City's existing flood plain regulations.
E. Email from Mark Darienzo, DLCD Flood Plain Modernization Coordinator to Chris Neamtzu dated 2/22/08.
F. *Adoption of Flood Insurance Rate Maps by Participating Communities* –FEMA 495/September 2005
G. FEMA's Flood Insurance Study for Clackamas County and incorporated areas (2 large bound documents available upon request)

New City Council Exhibits:

H. Letter from David Maurstad, Assistant Administrator Mitigation Directorate to Mayor Lehan dated March 13, 2008.
I. Letter from Ryan Miller, Map Modernization Coordinator, DLCD, to Community Floodplain Managers dated March 25, 2008

CC Public Hearing Version 4.07.08 – Exhibit C

Proposed Changes to WC 4.172 Flood Plain Regulations.

New language is in **bold;** Deleted language is ~~struck through~~**:**

Definitions –

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

"Development": Any human caused 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 ~~located within the floodplain~~ **storage of equipment or materials located within the area of special flood hazard.**

"Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

Manufactured Home: A structure **built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities** for movement on the public highways, that has sleeping cooking and plumbing facilities, that is intended for human occupancy, and was constructed in accordance with the Federal Manufactured Housing Construction and Safety Standards regulations in effect at the time of construction. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For flood insurance purposes, and City zoning standards, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

"New Construction" means structures for which the "start of construction" commenced on or after June 17, 2008.

308. Start of Construction: Includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date or within any lawful extension of the 180 day permit period provided for by the Oregon State Structural Specialty Codes. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure: Anything built which requires location on the ground or is attached to something having a location on the ground. ~~For purposes of the City's Flood Plain Development Regulations, things located below grade are not considered to be structures, unless they are subterranean buildings, basements or cellars.~~

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50 percent) of the market value of the structure, as determined by the City's Building Official, either:

A. Before the improvement or repair is started, or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term is not used in the same manner as the term "substantial development" and does not include either:

(1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Section 4.172. Flood Plain Regulations.

(.01) Purpose:

A. To minimize public and private losses due to flood conditions in flood-prone areas.

B. To regulate uses and alteration of land which would otherwise cause erosion, decreased storm water storage capability, increased flood heights or velocities.

C. To require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, alteration or remodeling.

D. To restrict filling, grading, dredging, and other development which would increase flood damage.

E. To prevent construction of flood barriers which would unnaturally divert flood waters or increase flood hazards in other areas.

F. To properly regulate the l00-year flood plain identified by the Federal Insurance Administration (FIA) in the "Flood Insurance Study for **Clackamas County and Incorporated Areas** ~~the City of Wilsonville~~" dated **effective June 17, 2008** ~~July 6, 1981,~~ and displayed on FIA Floodway and Flood Insurance Rate Maps **dated effective June 17, 2008, which are on file with the City's Community Development Department**.

G. To implement the policies of the Comprehensive Plan and to provide standards consistent with - Wilsonville's adopted Storm Drainage Master Plan.

H. To insure the City and its residents and businesses, continued eligibility in the National Flood Insurance Program by complying with the requirements of the National Flood Insurance Act of l968 and the Flood Disaster Protection Act of l973.

(.02) General Provisions Affecting Flood Plains:

A. This section shall apply to all flood plain areas in the City of Wilsonville identified by the Flood Insurance Rate Map. No Building Permits or Construction Permits for development within the flood plain shall be issued except in compliance with the provisions of the Section.

B. Basis For Establishing The Areas Of Special Flood Hazard:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study - Clackamas County, Oregon and Incorporated Areas effective June 17, 2008," with accompanying Flood Insurance Rate Maps (effective date June 17, 2008) is hereby adopted by reference and declared part of this ordinance. The Flood Insurance Study is on file at the City of Wilsonville Community Development Department.

~~B~~ **C.** The City of Wilsonville Community Development Director shall review all Building and Grading Permit applications for new construction or substantial improvement to determine whether proposed building or grading sites will be located in a flood plain. If a proposed building or grading site is located within a flood plain, any proposed new construction, grading, or substantial improvement (including prefabricated and manufactured housing) must:

1. Be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.
2. Use construction materials and utility equipment that are resistant to flood damage,
3. Use construction methods and practices that will minimize flood damage, and
4. Limit the addition of any fill material such that the total volume of fill within the flood plain does not exceed the volume of material removed from the flood plain in the same area.

~~C~~ **D.** That the City of Wilsonville Planning Director shall review subdivision proposals and other proposed new developments within the flood plain to assure that:

1. all such proposals are consistent with the need to minimize flood damage,
2. all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage,
3. adequate drainage is provided so as to reduce exposure to flood hazards, and
4. No new lots or parcels shall be created for the purpose of increasing the development of buildings for human occupancy within the flood plain.

~~D~~ **E.** That the City of Wilsonville Community Development Director shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(.03) Development Permit Required:

A. A Development Permit shall be obtained before construction or development, including grading, begins within any area of special flood hazard. The Permit shall be for all structures including manufactured homes and for all development including fill and other activities.

B. Outright Permitted Uses in the l00-year Flood Plain:

1. Agricultural use that is conducted without a structure other than a boundary fence.
2. Recreational uses which would require only minor structures such as picnic tables and barbecues.
3. Residential uses that do not contain buildings.
4. Underground utility facilities.
5. Repair, reconstruction or improvement of an existing structure, the cost of which is less than 50 percent of the market value of the structure, as determined by the City's Building Official, prior to the improvement or the damage requiring reconstruction, provided no development occurs in the floodway.

(.04) Uses within the 100-year Flood Plain requiring a Flood Plain Permit:

A. Any development except as specified in subsection (.03), above, that is otherwise permitted within the Zoning District provided such development is consistent with the Flood Plain Standards.

B. All subdivisions and land partitions.

C. Installation of dikes to provide buildable or usable property, provided that said dikes do not conflict with the policies of the Comprehensive Plan and this Section.

(.05) Prohibited Uses in the 100-year Flood Plain:

A. Any use or building which stores or otherwise maintains hazardous materials, chemicals, explosives or any other similar materials.

B. Storage of any materials that are not properly anchored, enclosed or protected to prevent movement or flotation beyond the property lines.

C. Critical Facility

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(.06) Flood Plain Permit Review Process:

A. The Community Development Director is **the local flood plain administrator and is** hereby appointed to administer and implement this Section by granting or denying Development Permit applications in accordance with its provisions.

B. Duties and Responsibilities of the Community Development Director:

1. Duties of the Community Development Director shall include, but not be limited to:
   a. Review all Development Permits to determine that the permit requirements of this ordinance have been satisfied.
   b. Review all Development Permits to determine that all necessary permits have been obtained from those Federal, State or local government agencies from which prior approval is required. Notify the State Department of Land Conservation and Development and FEMA of final permit decision.

c. Review all Development Permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment limitations of subsection (.07)(H) are met.

C. The Permit process for developments not regulated by Section 4.l40 shall be as follows:

1. Pre-application conference with the Planning Department in accordance with the procedures set forth in **Section** 4.008.
2. A complete application in accordance with this Section shall be submitted to the Community Development Director.
3. Within 30 days of complete application, the Community Development Director shall approve or deny the application based on the following Findings:
   a. Reports from the City Engineer and Planning Director as to the applicant's submittal documents' compliance with this Section, including recommendations.
   b. The proposed development's compliance with other provisions of the Comprehensive Plan and Zoning Regulations.

D. The decision of the Community Development Director may be appealed to the Development Review Board, upon written notice to the City Recorder within ten (l0) calendar days of the date of final decision. Upon appeal, the Board shall hear the matter in accordance with **Section** 4.022

E. Any flood plain development proposed for property regulated under Section 4.l40 shall be considered by the Development Review Board and the Community Development Director as part of the Planned Development Permit process.

F. Submittal requirements.

1. A field survey in relation to mean sea level by a licensed surveyor or civil engineer of the actual location of the l00-year flood plain, fringe, floodway and the lowest habitable finished floor elevations, including basements, of all existing structures.
2. A Site Plan map showing all existing and proposed contours and development and supplemented by a soils and hydrologic report sufficient to determine the net effect of the proposed development on the flood plain elevations on the subject site and adjacent properties. Proposed areas of cut or fill shall be clearly indicated.
3. A soils stabilization plan for all cuts, fills and graded areas.

G. Use and Interpretation of Base Flood Data and maps.

1. When specific l00-year flood plain elevation data has not been provided in as required in this Section, the Community Development Director shall obtain, review and reasonably utilize any base flood elevation data available from Federal, State or other sources, in order to determine compliance with this Section.

2. The Community Development Director shall make the final interpretation of the exact l00-year flood plain boundaries on the FIRM and the Floodway Map. Appeals shall be granted consistent with the Standards of the rules and regulations of the National Flood Insurance Program **and pursuant to WC 4.172 (.08) Appeal Board**.

H. Monumentation and Recordation:

1. Prior to issuance of a Flood Plain Permit, the Community Development Director shall cause the placement of an elevation marker, set at two (2) feet above the l00-year flood elevation, on the subject property. The marker shall be properly identified and permanently monumented in concrete.
2. A Site Plan or map showing the location and elevation of the monument shall be submitted to and maintained on file by the Community Development Director.
3. Prior to issuance of an Occupancy Permit, for any structure within the l00-year flood plain, the Community Development Director shall insure by signature of a licensed surveyor or civil engineer **(elevation certificate)** that the finished floor elevation **of commercial, industrial and public buildings are** ~~is~~ one and one-half (l-l/2) feet above the l00-year flood elevation **and that residential uses are two-feet above the 100-year flood elevation**. The finished floor elevation shall be in relation to mean sea level, of the lowest floor (including basement) of all structures.

(.07) General Standards:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top of frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
3. All recreational vehicles must either be elevated and anchored or be on the site for less than 180 consecutive days **or** ~~and~~ be fully licensed and highway ready. A recreational vehicle is ready for highway use if its wheels are in place and it is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods:

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. **Below-grade crawl spaces:**

a. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:

i. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

ii. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

iii. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

iv. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

v. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

vi. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation

wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

vii. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

viii. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

C. Utilities:

1. All new replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. **On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**

D. Alteration of Watercourses:

1. Provide description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
2. Notify adjacent communities and the Federal Emergency Management Agency, Army Corps of Engineers, **Department of Land Conservation and Development** and **Department** ~~Division~~ of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
3. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. (Amended by Ord. #316, 7/6/87).

E. Residential Construction:

1. New construction and substantial improvement of any residential structure shall have the lowest finished floor, including basement, elevated **two (2)** ~~one and one-half (1-1/2)~~ feet above the 100-year flood elevation.

2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
   a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
   b. The bottom of all openings shall be no higher than one foot above grade.
   c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
3. Manufactured homes or mobile homes placed on sites within new or existing manufactured/mobile home parks shall be anchored to a permanent foundation and ~~either~~:
   a. Have the lowest floor **2'** above the base flood elevation, or
   ~~b. Have the chassis supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches above grade.~~
4. Manufactured/mobile homes outside of manufactured/mobile home parks shall meet all requirements for residential structures at the same locations.
5. All manufactured homes to be placed or substantially improved within Flood Hazard Zones Al-30, AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of sub-section 4.172(.07)(A).

F. Nonresidential Construction:
   1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest finished floor, including basement, elevated one and one-half (1-1/2) feet above the l00-year flood elevation; or, together with attendant utility and sanitary facilities, shall:
      a. Be floodproofed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water.
      b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
      c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. **Floodproofing certifications are required to be provided to the Community Development Director.**
      d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as prescribed for residential construction, above.

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

H. Floodways:

1. Located with**in** the flood plain - are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
   a. Encroachments, including fill in any new development, or **substantial improvements** shall be prohibited unless certification by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase flood levels during the occurrence of the 100-year flood discharge.
   b. All development shall comply with all applicable flood plain standards of Section 4.172.
   c. All buildings designed for human habitation and/or occupancy shall be prohibited within the floodway.

I. Parking Lots and Storage Areas:

1. All parking lots and storage areas below the flood plain elevation shall be paved.
2. A minimum of twenty-five (25) percent of the required parking space must be provided above the 100-year flood plain elevation for all nonresidential uses.
3. Residential uses shall provide at least one parking space per unit above the 100-year flood plain elevation.

J. Subdivision Proposals:

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **or eliminate** flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage, and
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

K. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for Building Permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding,

etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(.08) Appeal Board.

A. The Development Review Board as established by the City of Wilsonville shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Development Review Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Community Development Director in the enforcement or administration of this ordinance.

C. Those aggrieved by the decision of the Development Review Board may appeal such decision to the City Council.

D. In acting upon such applications, the Development Review Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and

1. the danger that materials may be swept onto other lands to the injury of others;
2. the danger to life and property due to flooding or erosion damage;
3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. the importance of the services provided by the proposed facility to the community;
5. the necessity to the facility of a waterfront location, where applicable;
6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. the compatibility of the proposed use with existing and anticipated development;
8. the relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas electrical and water systems, and streets and bridges.

E. Upon consideration of the factors of Sections 4.035, 4.184, and 4.196 and the purposes of this ordinance, the Development Review Board may attach such conditions to the granting of - permits as it deems necessary to further the purposes of this ordinance and to protect lives or property.

F. The Community Development Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(.09) Conflicts. If any provisions of Section 4.172 conflict with any other Sections of this Code, the most restrictive shall apply.

Case File # LP08-0002

FEMA Map Revisions and related Development Code amendments

Federal Emergency Management Agency's (FEMA) revised Flood Insurance Study (FIS) and Flood Insurance Rate Maps dated June 17, 2008 (FIRM) and amendments to the existing flood plain management regulations (WC Section 4.172) as required by FEMA that meet the standards of Paragraph 60.3(d) of the National Flood Insurance Program (NFIP).

Planning Commission

Public Hearing Record

LP08-0002
Development Code Amendment
Adoption of FEMA's Revised Flood Insurance Study (FIS)
and Flood Insurance Rate Maps (FIRM)
Record Index

Planning Commission March 12, 2008 Actions:

- Notice of Decision
- Resolution No. LP08-0002
- Motion
- Draft Minutes

Staff Report for the March 12, 2008 Planning Commission Public Including:

Exhibit A: Letter from William Blanton to Mayor Lehan dated December 17, 2008; Final Summary of Map Actions; NFIP Elevation Certificate and Instructions; and FEMA NFIP Regulations. *(Distributed separately)*

Exhibit B: Flood Insurance Rate Maps (FIRM) dated June 17, 2008

Exhibit C: Updated WC 4.172 Flood Plain text language

Exhibit D: DLCD audit of the City's existing flood plain regulations.

Exhibit E: Email from Mark Darienzo, DLCD Flood Plain Modernization Coordinator to Chris Neamtzu dated 2/22/08.

Exhibit F: *Adoption of Flood Insurance Rate Maps by Participating Communities* – FEMA 495/September 2005

Exhibit G: FEMA's Flood Insurance Study for Clackamas County and incorporated areas pertaining to Wilsonville. Select pages included with Staff Report. *(The two large documents these pages are excerpted from are located in the Project File in the Planning Division)*

LP08-0002
Development Code Amendment
Adoption of FEMA's Revised Flood Insurance Study (FIS)
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- Notice of Decision
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City of
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in OREGON

29799 SW Town Center Loop E
Wilsonville, Oregon 97070
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NOTICE OF DECISION

PLANNING COMMISSION

RECOMMENDATION TO CITY COUNCIL

FILE NO.: **LP08-0002**

APPLICANT: **City of Wilsonville**

REQUEST: **That the Wilsonville Planning Commission adopt the Federal Emergency Management Agency's (FEMA) revised Flood Insurance Study (FIS) and Flood Insurance Rate Maps dated June 17, 2008 (FIRM) and amendments to the existing flood plain management regulations (WC Section 4.172) as required by FEMA that meet the standards of Paragraph 60.3(d) of the National Flood Insurance Program (NFIP).**

After conducting a public hearing on March 12, 2008 the Planning Commission voted to recommend this action to the City Council by passing Resolution No. LP08-0002.

The City Council is scheduled to conduct a Public Hearing on this matter on Monday, April 7, 2008, at 7:00 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East.

For further information, please contact the Wilsonville Planning Division, 29799 SW Town Center Loop East, or telephone (503) 682- 4960.

PLANNING COMMISSION

WEDNESDAY, MARCH 12, 2008
6:00 P.M.

Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon

MOTIONS

V. **PUBLIC HEARINGS**

A. LP08-0002 – Development Code amendments related to FEMA Floodplains Standards

Commissioner Phelps moved to adopt Resolution No. LP-08-0002.

Commissioner Faiman seconded the motion, which passed 5 to 0.

PLANNING COMMISSION
RESOLUTION NO. LP08-0002

A WILSONVILLE PLANNING COMMISSION RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S (FEMA) REVISED FLOOD INSURANCE STUDY (FIS) AND FLOOD INSURANCE RATE MAPS DATED JUNE 17, 2008 (FIRM) AND AMENDMENTS TO THE EXISTING FLOOD PLAIN MANAGEMENT REGULATIONS (WC SECTION 4.172) AS REQUIRED BY FEMA THAT MEET THE STANDARDS OF PARAGRAPH 60.3(D) OF THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP).

WHEREAS, the Wilsonville Planning Director submitted proposed Ordinance amendments to the Planning Commission, along with a Staff Report, in accordance with the public hearing and notice procedures that are set forth in Sections 4.008, 4.010, 4.011 and 4.012 of the Wilsonville Code (WC); and

WHEREAS, the Planning Commission, after providing the required notice, held a Public Hearing on March 12, 2008, to review the FEMA FIS and FIRM revisions and the proposed Development Code language and to gather additional testimony and evidence regarding the Ordinance; and

WHEREAS, the Commission has afforded all interested parties an opportunity to be heard on this subject and has entered all available evidence and testimony into the public record of their proceeding; and

WHEREAS, the Planning Commission has duly considered the subject, including the staff recommendations and all the exhibits and testimony introduced and offered by all interested parties; and

NOW, THEREFORE, BE IT RESOLVED that the Wilsonville Planning Commission does hereby adopt all Planning Staff Reports along with the findings and recommendations contained therein and, further, recommends that the Wilsonville City Council approve and adopt the FEMA FIS and FIRM revisions and the proposed Development Code language, as reviewed by the Planning Commission; and

BE IT RESOLVED that this Resolution shall be effective upon adoption.

ADOPTED by the Planning Commission of the City of Wilsonville at a regular meeting thereof this 12th day of March 2008, and filed with the Planning Administrative Assistant on March 13, 2008.

Wilsonville Planning Commission

DRAFT

PLANNING COMMISSION

WEDNESDAY, MARCH 12, 2008
6:00 P.M.

Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon

FEMA Hearing Minutes Excerpt

II. PUBLIC HEARINGS

Vice-Chair Hurst read the Legislative Hearing Procedure for all hearings for the record.

B. LP08-0002 – Development Code amendments related to FEMA Floodplain Standards

Vice-Chair Hurst opened the Public Hearing for LP08-0002 at 7:15 p.m. and called for the Staff report.

Chris Neamtzu, Long-Range Planning Manager, reviewed the Staff report with these additional comments:

- The Commission had reviewed issues regarding the Standards at last month's work session. The public hearing would adopt the Federal Emergency Management Agency's (FEMA) Flood Insurance Study (FIS), a large, two-volume, technical engineering document containing a cross-section of all creeks and streams used to create the background and supporting documentation for determining flood levels around the region.
- Clackamas County and its incorporated areas underwent a complete floodplain remapping. The FIS, revised Flood Insurance Rate Maps (FIRM); and modifications to the City's floodplain regulations, Development Code Section 4.172, must be adopted by June 17, 2008.
- The Department of Land Conservation and Development (DLCD) audited the City of Wilsonville's 2000 Floodplain Standards, and FEMA ran the City's Code through its own model code, and requested a number of specific changes, which Staff has incorporated into Section 4.172 of the Development Code as described on page 3 of 68 and as shown in bolded text in Exhibit C.
- The biggest policy change that Staff recommends for the Commission's consideration was the addition of a section that recommends an increase from 1.5 to 2 feet for the finished floor to be elevated above the 100-year elevation for new residential structures, or substantial improvements to existing structures, which the Code already defines.
- Staff spent much of the last nine months working with FEMA Region 10, and officials and consultants from around the U.S., to ensure the City's maps were accurate.
  - The City filed a formal protest of the first set of draft maps and requested that FEMA rerun its analysis using more accurate digital topography, which the City provided to FEMA, which showed 6-inch contours for the entire city.
  - The City also had FEMA incorporate a Letter of Map Revision (LOMR) not previously included for culvert work done at Wilsonville Road. The City had a Conditional Letter of Map Revision (CLOMR) for the culverts under Wilsonville Road at Seely Ditch which now is lower.
    - Seely Ditch was deemed to be an impediment to flood flows, which result in water backing up Seely Ditch. In case of a 100-year event, water could come out of the channel and cause the flooding of adjacent properties. The culvert under Wilsonville had been replaced with

  - He expected Washington County's submitted maps would cover the upper region of Coffee Creek in the Day Road area. To his knowledge, Staff had found nothing that might be an issue.
- Recalled that none of his business's property on Ridder Road, near the Day Road area, was in the floodplain based on a survey that had been done when the Coffee Creek Prison was sited.
  - Mr. Brown responded that the area's flooding history was raised during the siting. As an essential facility, the prison's construction would not have been allowed in a flood hazard area.
- Inquired if it was fairly safe to assume that Washington County's work on floodplain mapping would not impact the City or the portion of the City located in Washington County.
  - Mr. Brown answered that the City's maps only encompassed Clackamas, not Washington County.
  - He assured that FEMA would consider the City compliant, even if Washington County's process extended into the future.
  - Mr. Neamtzu presumed that the City would have to adopt floodplain maps for its own portion in Washington County, once that work was complete.
  - Mr. Brown replied that would depend on whether Washington County actually had FIRM maps with a floodplain and he did not believe such maps existed. In that case, the City would likely not have to adopt anything, but he recommends seeing what results from that study.
- Commissioner Phelps noted that the City was in both counties, and his facility occupied an area that was not identified as being in the floodplain, Washington County's own map work notwithstanding.
  - Mr. Neamtzu responded it was important for the City to recognize Washington County's maps, given all the Urban Growth Boundary expansions to the north. He offered to work on getting the draft maps, so he could start tracking that separate process.
- Anticipated Mr. Neamtzu's work would not stop the current amendment process from moving forward; however, he wanted to ensure that the point he raised was on the City's radar scope as a matter of record.

Vice-Chair Hurst looked for confirmation that the proposed Code amendments would bring the City Code up to minimum FEMA standards and that the 6-inch difference in crawl space was the only item proposed beyond that.

- Mr. Brown believed the City would gain points through the proposed ratings system, as well as a bit of a safety factor based on Staff's observations of the 1996 flood.

Commissioner Phelps:

- Asked whether something had been done with the topography to establish that the change in the proposed standard from 1.5 to 2 feet was a good idea, the point system notwithstanding.
  - Mr. Brown answered that the main reason for the change stemmed from the 1996 flood and data gained from flyovers of the area. Only a few areas had been inundated beyond the actual base flood elevation. Staff believed a 6-inch increase was a good idea, given the history of what could take place and the area's high snowmelt.
  - He added other jurisdictions were considering similar changes. The cities of Keizer and Portland were going to 2 feet, while Vernonia went to 3 feet. The City of Wilsonville was presently 6-inches above the minimum 1-foot FEMA standard.
  - He further emphasized no increases were proposed for commercial areas, which were mainly on Kinsman Road. He saw no further problems on Kinsman based on the LOMR that had been adopted.

Commissioner Meyer thanked Staff for all its efforts, not just in merely adopting what FEMA wanted the City to adopt, but for making things work better for Wilsonville's citizens and making flood insurance cheaper for those required to buy it.

Commissioner Peck:

- Asked for further clarification about the increase being for new construction or major changes.

LP08-0002
Development Code Amendment
Adoption of FEMA's Revised Flood Insurance Study (FIS)
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WILSONVILLE PLANNING DIVISION
Legislative STAFF REPORT

HEARING DATE: March 12, 2008

DATE OF REPORT: March 5, 2008

APPLICATION NO: LP08-0002

APPLICANT: City of Wilsonville

REQUEST: Adoption of the Federal Emergency Management Agency's (FEMA) revised Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRM), as well as amendments to the existing flood plain management regulations (WC Section 4.172) as required by FEMA and the Department of Land Conservation and Development (DLCD) that meet the standards of Paragraph 60.3(d) of the National Flood Insurance Program (NFIP). Adoption of the maps and new code language are required for the City to remain in the National Flood Insurance Program.

The Planning Commission action is in the form of a recommendation to the City Council.

APPLICABLE REVIEW CRITERIA: Wilsonville Comprehensive Plan: Goal 1.1- Citizen Involvement: Policy 1.1.1; Implementation Measures 1.1.1a and e; Public Facilities and Services: Policy 3.1.7; Implementation Measure 3.1.7 a, d, k, l, m; Environmental Resources and Community Design: Policy 4.1.5; Implementation Measure 4.1.5 e, f, n, t, w, z; Planning and Land Development Ordinance: Section: 4.172: Flood Plain Regulations; 4.198: Zone Changes and Amendments to this Code-Procedures; FEMA's National Flood Insurance Program.

STAFF REVIEWER: Chris Neamtzu, Long-Range Planning Manager, (503) 682-4960
neamtzu@ci.wilsonville.or.us.

LOCATION: Mapped 100-Year Floodplains citywide (Please refer to Exhibit B-June 17, 2008 FIRM)

Couple this point with the fact that the 1996 flood, which in many parts of the Willamette Valley was considered a 100-year event, resulted in different peak flood elevations than are depicted in the 1987 FIRM maps. In order to adequately protect the public from the likelihood of flood damage, Staff is recommending an increase in height above the 100-year floodplain from the current 1.5' to 2' for new residential structures, or structures that undergo a substantial improvement as defined by the WC. Commercial, industrial and public facilities will continue to have a 1.5' requirement.

ISSUES:

FEMA/DLCD provided detailed comments to the City on the revisions that were necessary to the flood plain regulations to result in compliance with Federal standards (Exhibit D). Many of the comments are required revisions. The major revisions include:

1) Addition of new definitions that are contained in the Code of Federal Regulations (CFR) and the FEMA model code that are not in the local regulations.
2) Updates to the *Purpose* section of the flood plain regulations to reference the new maps and study.
3) Addition of language specifically to address the process of certifying that development complies with the regulations – called an elevation certificate.
4) Addition of DLCD as a required party to be noticed of flood plain alterations.
5) Cross reference the appeals process outlined in the City code.
6) Minor word additions to the utilities section and the subdivision section.
7) Addition of language to the non-residential structures section requiring submission of flood proofing certifications to the Community Development Director.
8) Modifications to the residential structures section to comply with the FEMA model code requiring manufactured homes and mobile homes to be at least 1' above BFE. Consistent with other residential development, Staff is recommending that this elevation be 2'.
9) Prohibitions on substantial improvements in the floodway, unless certified by a registered engineer.
10) Addition of language that addresses critical facilities within the SFHA.
11) Addition of language that clearly states that the Community Development Director is the local flood plain administrator.
12) Addition of specific language that addresses below grade crawl spaces and comply with NFIP specifications.
13) Proposed addition in finished floor elevation for residential structures, mobile and manufactured homes to 2' above BFE.

Project Acronyms:

BFE:	Base Flood Elevation
CFR:	Code of Federal Regulations
CLOMR:	Conditional Letter of Map Revision
DLCD:	Department of Land Conservation and Development
FEMA:	Federal Emergency Management Agency
FIRM:	Flood Insurance Rate Maps

G. Select pages from FEMA's Flood Insurance Study for Clackamas County and incorporated areas pertaining to Wilsonville (The entire 2 large bound documents these pages are from are available upon request)

CONCLUSIONARY FINDING(S):

GOAL 1.1 *To encourage and provide means for interested parties to be involved in land use planning processes, on individual cases and City-wide programs and policies.*

Policy 1.1.1 *The City of Wilsonville shall provide opportunities for a wide range of public involvement in City planning programs and processes.*

Response: The public hearing notice was sent to all property owners who have flood plains mapped on their land. These are the affected parties regarding changes to the floodplain maps and revisions to the regulations. A Planning Commission worksession was held in February on this topic. Public hearings are scheduled for March with the Commission, and work sessions and hearings with the Council are planned for April and May. Adoption has to occur prior to June 18, 2008. These criteria are supported by the public process and notices that have been provided.

Implementation Measure 1.1.1.a *Provide for early public involvement to address neighborhood or community concerns regarding Comprehensive Plan and Development Code changes. Whenever practical to do so, City staff will provide information for public review while it is still in "draft" form, thereby allowing for community involvement before decisions have been made.*

Response: There has been a relatively short timeframe for compliance on this matter. The schedule is being set by FEMA. Once the final maps were provided, Staff initiated the review process with the public. The Staff has met numerous times with State DLCD Flood Plain Administrators, as well as conducted conference calls with FEMA Staff in Region X. The draft maps have been posted on the City web site, and Staff has spoken to numerous individuals who have called with specific questions. This criterion is supported by the process that is being conducted.

Implementation Measure 1.1.1.e *Encourage the participation of individuals who meet any of the following criteria:*

1. *They reside within the City of Wilsonville.*
2. *They are employers or employees within the City of Wilsonville.*
3. *They own real property within the City of Wilsonville.*
4. *They reside or own property within the City's planning area or Urban Growth Boundary adjacent to Wilsonville.*

Response: Public hearing notices were provided to residents and employers who have mapped 100-year flood plains on their land. The notice encourages their participation. This criterion is met.

the City except Coffee Lake Creek, north of Barber Street. For that area along Coffee Lake Creek, a hydrology study to establish the 100-year flood elevation will be required prior to development approval. The floodways must continue to be protected from encroachment. Development within the flood plain shall be regulated consistent with the standards of the Federal Flood Insurance Act, and Title 3 of Metro's Urban Growth Management Functional Plan. Storm water runoff from upstream development shall be controlled so as to not adversely impact the peak flood flow in the mainstream channels.

Response: The revised FIRM's contain limited mapping for the area of Coffee Creek (Panel 241D) north of Barber and is an area beyond the detailed study. The revised maps show that area as Zone A – No base flood elevations established. The Boeckman Road extension project contained a detailed flood plain and hydrology study, which at this time is in the form of a Conditional Letter of Map Revision (CLOMR). Once as-builts for Boeckman Road are created and submitted to FEMA for review, the CLOMR can be made a Letter of Map Revision (LOMR), and BFE's established and new flood plain boundaries drawn for the area south of Boeckman. The flood way will continue to be protected from development and encroachment. The proposed amendments to WC 4.172 are consistent with the FIA, and Metro's Title 3 of the UGMFP. This criterion is met.

Implementation Measure 3.1.7.l The City will regulate new land divisions to prevent the creation of additional lots for building sites within 100-year floodplains. This is not intended to prohibit the creation of new lots that are partially within flood plains, provided that the developable portion of each lot will be outside of the 100-year flood plain, and FEMA standards are met.

Response: The proposed revisions to the flood plain ordinance will not alter the City's role in limiting the creation of new lots wholly within the 100-year flood plain. Proposed lots that have buildable areas outside of the 100-year boundary would continue to not be prohibited, provided FEMA standards are met.

Implementation Measure 3.1.7.m The City will regulate cuts and fills within flood plains to assure that the amount of fill material added will not exceed the amount of cut material.

Response: This criterion is supported by the language in the WC that requires balanced cut and fill (WC 4.172 (.02) C. 4.).

Policy 4.1.5 Protect valuable resource lands from incompatible development and protect people and property from natural hazards.

Response: By limiting flood plain development, restricting conflicting uses from the floodway and by providing updated language in the WC to guide flood plain development, and increasing the height of the finished floor elevation from 1.5' to 2' in new residential development, the City will protect valuable resource lands and will protect people and property from natural hazards such as flooding. This criterion is met.

Response: The City of Wilsonville is very fortunate to have very little development in the flood plain, and staff is not aware of any development in the flood way. FEMA's FIRM maps are used regularly as a tool to inform the public and guide development. Through this process, risks are defined, and rules and regulations restricting activities communicated. This criterion is met.

Implementation Measure 4.1.5.w Provide available information, when requested, to those interested in developing land in areas of the following hazards:

a. 100 year floods;
b. slides and earthquake damage; or
c. wind damage, possible tree topping.

Response: City Staff routinely provide a wide array of information to the public interested in developing land in Wilsonville. The 1987 flood plain maps have been on file at City Hall since their adoption. The draft FIRM maps have been posted on the City's web site for citizens to review at their own pace. Paper copies are available for anyone who requests them. The proposal does not alter the City's ability to provide information in a timely and accurate manner. This criterion is met.

Implementation Measure 4.1.5.z Protected natural resources within the Significant Resource Overlay Zone are intended to remain undeveloped with the possible exceptions of passive recreation and underground public facilities. These areas include the following:

1. Riparian corridors, wetlands and wildlife habitat that are determined to be significant through the Goal 5 process and are included in the Significant Resource Overlay Zone.
2. Water quality resource areas as defined by Metro's Title 3 of the Urban Growth Management Functional Plan.

Response: The SROZ and the flood plain areas overlap in many areas. Both sets of requirements need to be consulted before any land use decisions can be made. The more restrictive standards typically apply. Modifications to the flood plain ordinance and adoption of the 100-year flood plain maps will not allow activities that are not permitted in the SROZ. The proposal does not conflict with the above implementation measure.

Planning and Land Development Code, Section 4.197, Zone Changes and Amendments to This Code:

(.01) The following procedure shall be followed in applying for an amendment to the text of this Chapter:

A. The Planning Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after it is proposed and shall, within forty (40) days after concluding the hearing, provide a report and recommendation to the City Council regarding the proposed amendment. The findings and recommendations of the Commission shall be adopted by resolution and shall be signed by the Chair of the Commission.

were reviewed and are consistent with the requirements. The proposed amendments comply with mandated State and Federal requirements.

EXHIBITS

A. Letter from William Blanton to Mayor Lehan dated December 17, 2008; Final Summary of Map Actions; NFIP Elevation Certificate and Instructions; and FEMA NFIP Regulations.
B. Flood Insurance Rate Maps (FIRM) dated June 17, 2008
C. Updated WC 4.172 Flood Plain text language
D. DLCD audit of the City's existing flood plain regulations.
E. Email from Mark Darienzo, DLCD Flood Plain Modernization Coordinator to Chris Neamtzu dated 2/22/08.
F. *Adoption of Flood Insurance Rate Maps by Participating Communities* –FEMA 495/September 2005
G. Select pages from FEMA's Flood Insurance Study for Clackamas County and incorporated areas pertaining to Wilsonville (The entire 2 large bound documents these pages are from are available upon request)

Due to its size,

Exhibit A of
LP08-0002 FEMA:

Letter from William Blanton to Mayor Lehan dated December 17, 2008; Final Summary of Map Actions; NFIP Elevation Certificate and Instructions; and FEMA NFIP Regulations.

Is distributed separately.

NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0.0 North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the floodways were computed at cross-sections and interpolated between cross-sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 3.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was Universal Transverse Mercator (UTM) zone 10. The horizontal datum was NAD83, GRS1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at http://www.ngs.noaa.gov/ or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at http://www.ngs.noaa.gov/.

Base map information shown on this FIRM was derived from multiple sources. High resolution color orthophotos produced by Merrick & Co. Pictometry, Inc., and Clean Water Services covered portions of the county. USGS Digital Quadrangles at a scale of 1:12000 or less dated 8/20/94 covered the remainder of the county.

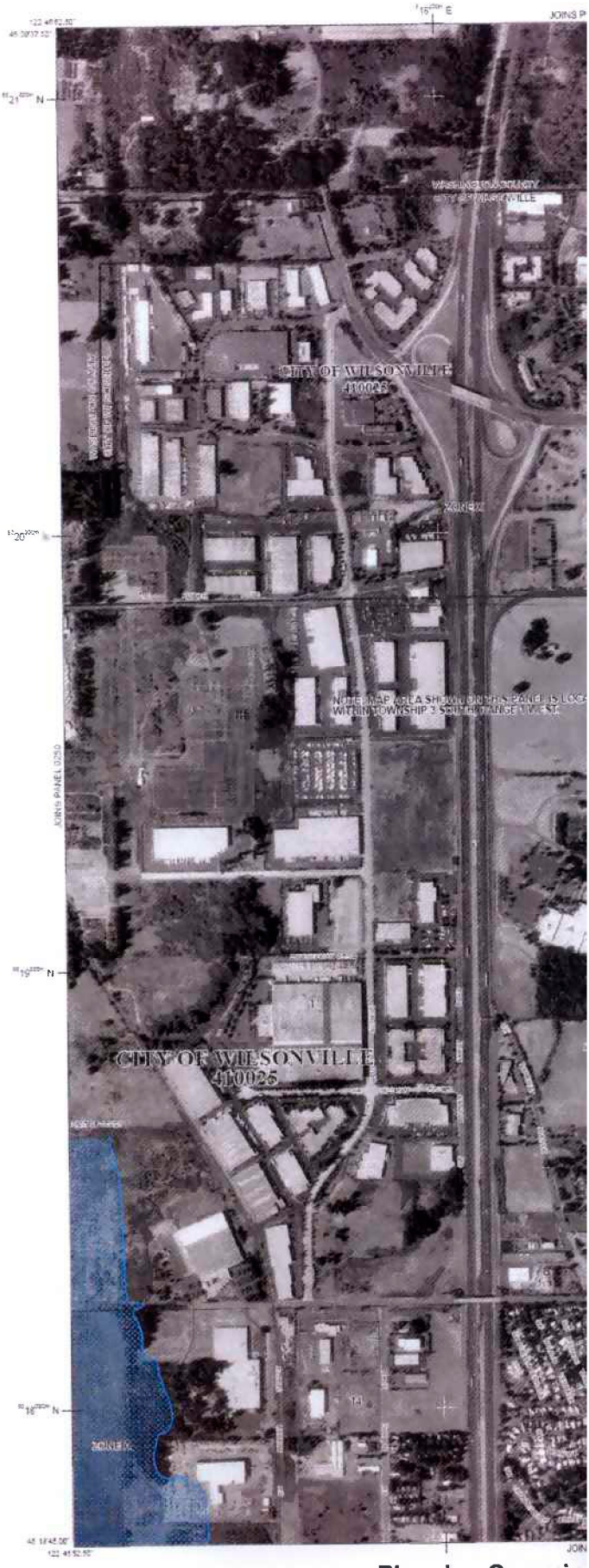
This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

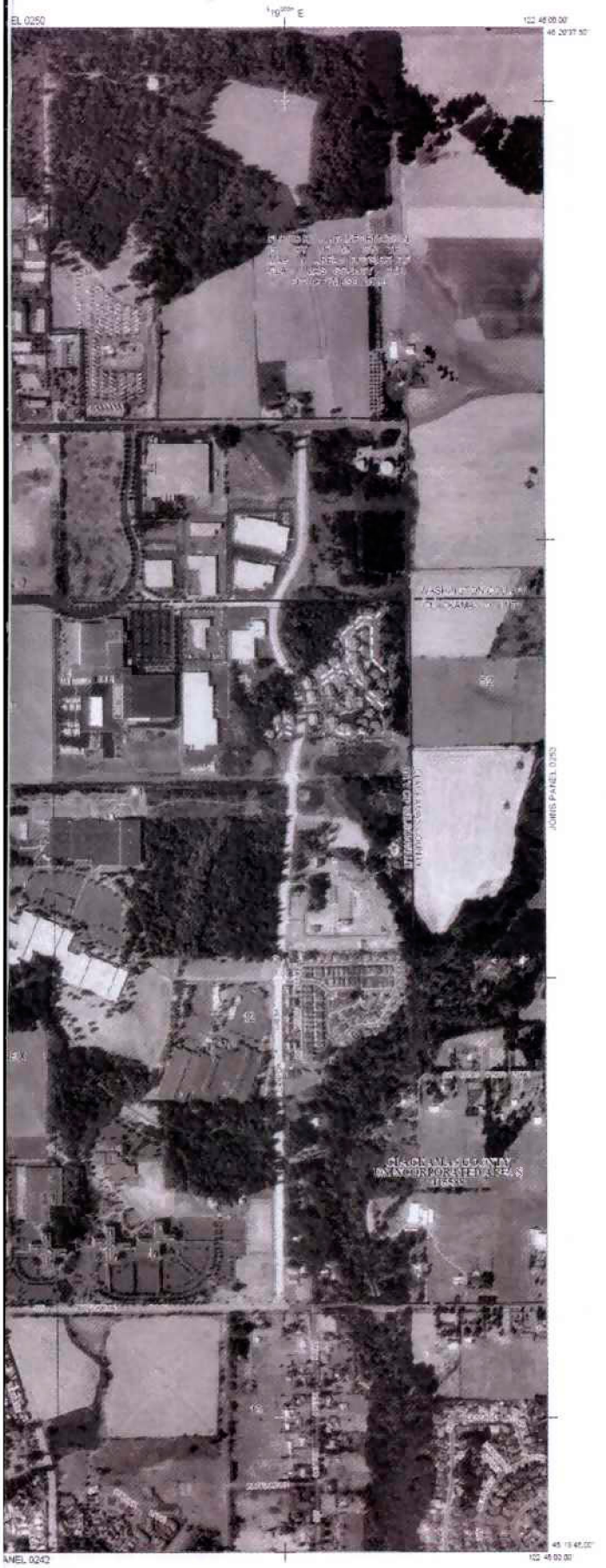
Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

Contact the FEMA Map Service Center at 1-800-358-9616 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-358-9620 and its website at http://www.msc.fema.gov/.

If you have questions about this map or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at http://www.fema.gov/.





LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INFLUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A — No Base Flood Elevations determined.

ZONE AE — Base Flood Elevations determined.

ZONE AH — Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood elevations determined.

ZONE AO — Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

ZONE AR — Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

ZONE A99 — Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

ZONE V — Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE — Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D — Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

1% annual chance floodplain boundary

0.2% annual chance floodplain boundary

Floodway boundary

Zone D boundary

CBRS and OPA boundary

Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

~~~ 513 ~~~ Base Flood Elevation line and value; elevation in feet*

(EL 987) Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

A — A Cross section line

23 — 23 Transect line

97°07'30", 32°22'30" Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

4276000mN 1000-meter Universal Transverse Mercator grid ticks, zone 10

6000000 M 5000-foot grid ticks: Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic

5000000 FT Bench mark (see explanation in Notice to Users section of this FIRM panel)

M1.5 River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD INSURANCE RATE MAP
June 17, 2008
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.

MAP SCALE 1" = 500'

150 0 150 300 FEET
150 0 150 300 METERS

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0234D

FIRM

FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON AND INCORPORATED AREAS

PANEL 234 OF 1175

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
CLACKAMAS COUNTY	410035	0234	D
WILSONVILLE, CITY OF	410029	0234	D

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
41005C0234D

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency
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NOTES TO USERS

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Boundaries of the floodways were computed at cross-sections and interpolated between cross-sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

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Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at http://www.ngs.noaa.gov/ or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

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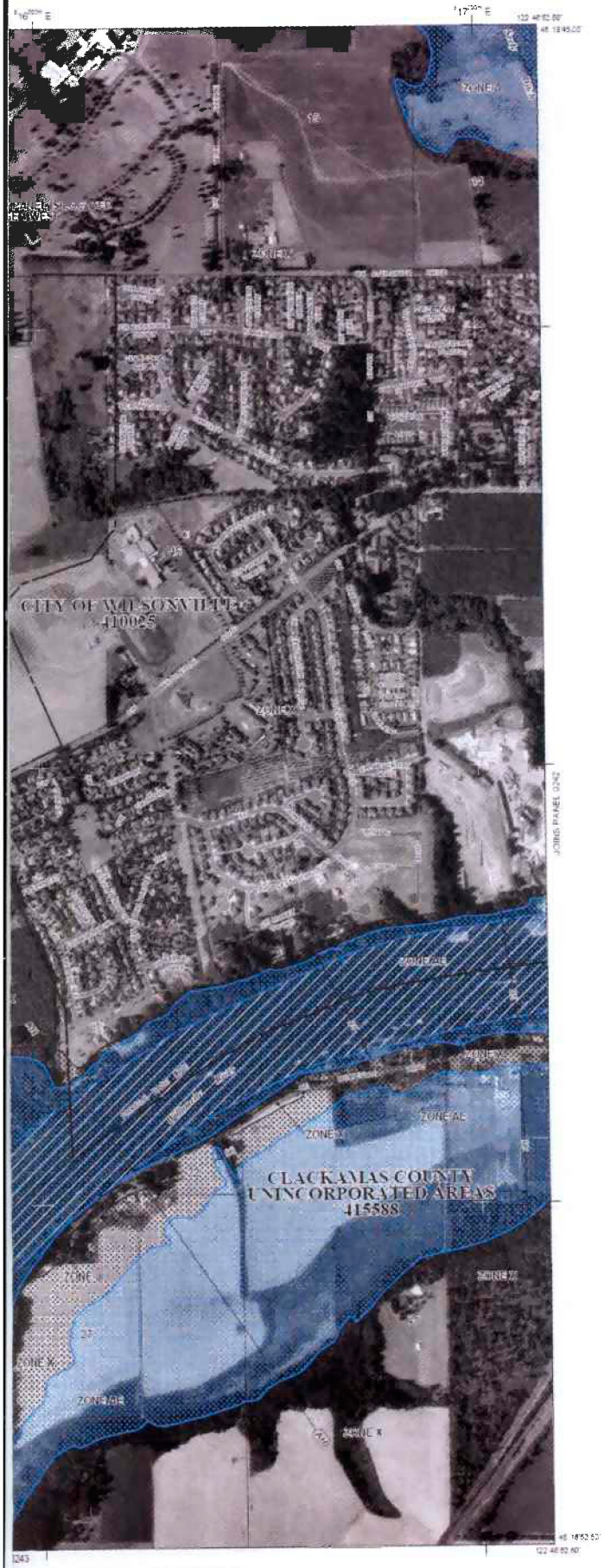

LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water surface elevation of the 1% annual chance flood.

ZONE A — No Base Flood Elevations determined.

ZONE AE — Base Flood Elevations determined.

ZONE AH — Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

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ZONE AR — Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

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ZONE V — Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE — Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

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OTHER FLOOD AREAS

ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.

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COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

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1% annual chance floodplain boundary

0.2% annual chance floodplain boundary

Floodway boundary

Zone D boundary

CBRS and OPA boundary

Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

513 — Base Flood Elevation line and value; elevation in feet*

(EL 987) — Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

A — A — Cross section line

23 — 23 — Transect line

97°07'30", 32°22'30" — Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

4276000mN — 1000-meter Universal Transverse Mercator grid values, zone 11

6000000 M — 1000-foot grid ticks, Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic

DX510 — Bench mark (see explanation in notes to users section of this FIRM panel)

M1.5 — River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD INSURANCE RATE MAP
June 17, 2008
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

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MAP SCALE 1" = 500'

250 0 500 1000 FEET

150 0 150 300 METERS

PANEL 0241D

FIRM
FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON
AND INCORPORATED AREAS

PANEL 241 OF 1175
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
CLACKAMAS COUNTY	415588	0241	D
WILSONVILLE, CITY OF	410029	0241	D

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
41005C0241D

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency

NATIONAL FLOOD INSURANCE PROGRAM

NOTES TO USERS

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To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0.0 North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was Universal Transverse Mercator (UTM) zone 10. The horizontal datum was NAD83, GRS1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at http://www.ngs.noaa.gov/ or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at http://www.ngs.noaa.gov/.

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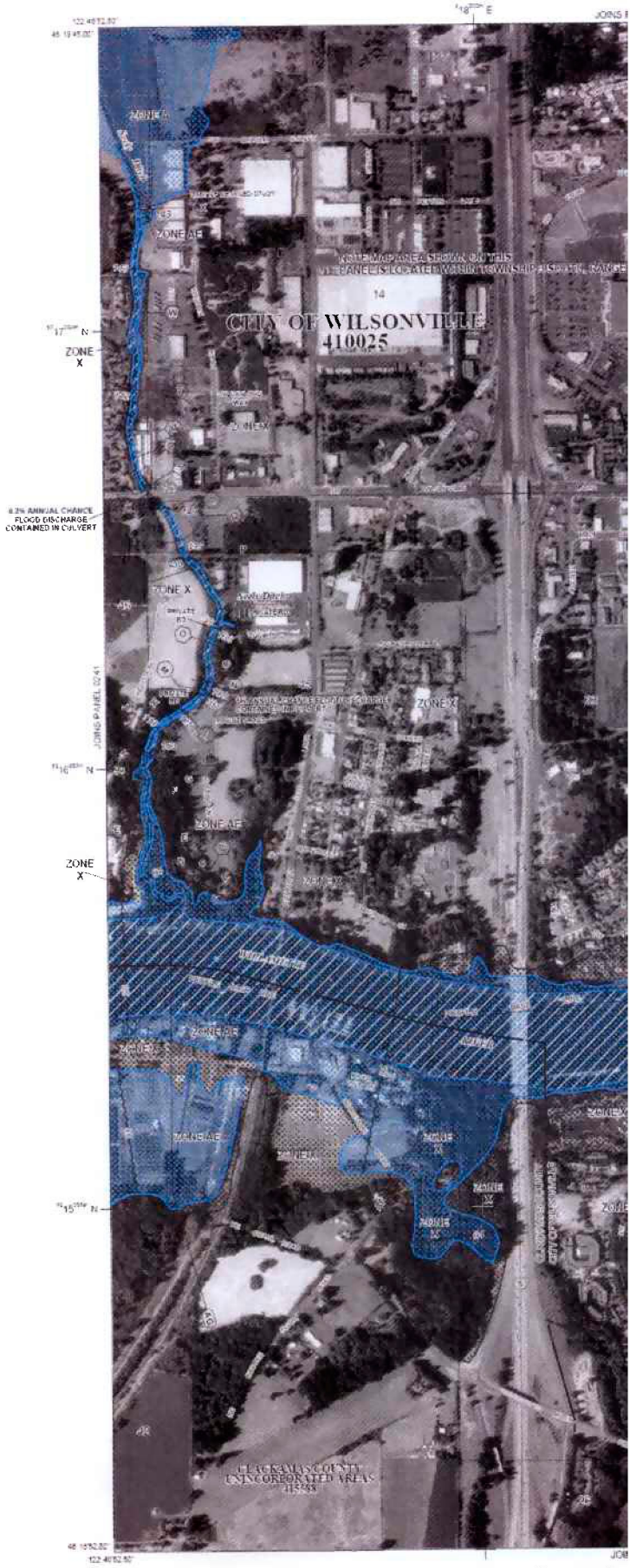
This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

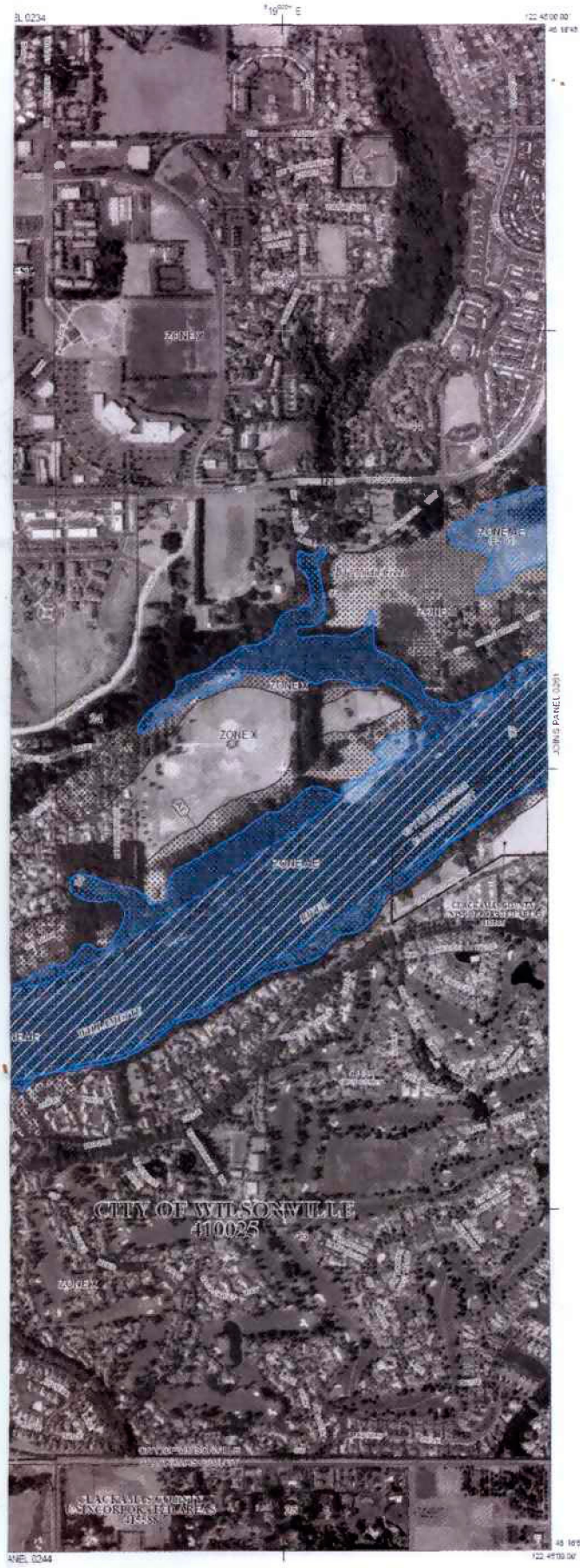
Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

Contact the FEMA Map Service Center at 1-800-358-9616 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-358-9620 and its website at http://www.msc.fema.gov/.

If you have questions about this map or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at http://www.fema.gov/.





LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A — No Base Flood Elevations determined.

ZONE AE — Base Flood Elevations determined.

ZONE AH — Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

ZONE AO — Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

ZONE AR — Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

ZONE A99 — Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

ZONE V — Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE — Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D — Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

1% annual chance floodplain boundary

0.2% annual chance floodplain boundary

Floodway boundary

Zone D boundary

CBRS and OPA boundary

Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

513 — Base Flood Elevation line and value; elevation in feet*

(EL 987) — Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

A — A — Cross section line

23 — 23 — Transect line

97°07'30", 32°22'30" — Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

4275000 N — 1000-meter Universal Transverse Mercator grid ticks, zone 10

6000000 M — 5000-foot grid ticks: Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic

DX5510 — Bench mark (see explanation in notice to users section of this FIRM panel)

M1.5 — River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD INSURANCE RATE MAP
June 17, 2008
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.

MAP SCALE 1" = 500'

250 0 500 1000 FEET

150 0 150 300 METERS

PANEL 0242D

FIRM

FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON AND INCORPORATED AREAS

PANEL 242 OF 1175

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
CLACKAMAS COUNTY	410028	0242	D
WILSONVILLE, CITY OF	410029	0242	D

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
41005C0242D

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency

NATIONAL FLOOD INSURANCE PROGRAM

NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

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National Geodetic Survey
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Base map information shown on this FIRM was derived from multiple sources. High resolution color orthophotos produced by Merrick & Co. Pictures Inc. and Olson Aerial Services covered portions of the county. USGS Digital Quadrangles at a scale of 1:12000 or less dated 6/2/94 covered the remainder of the county.

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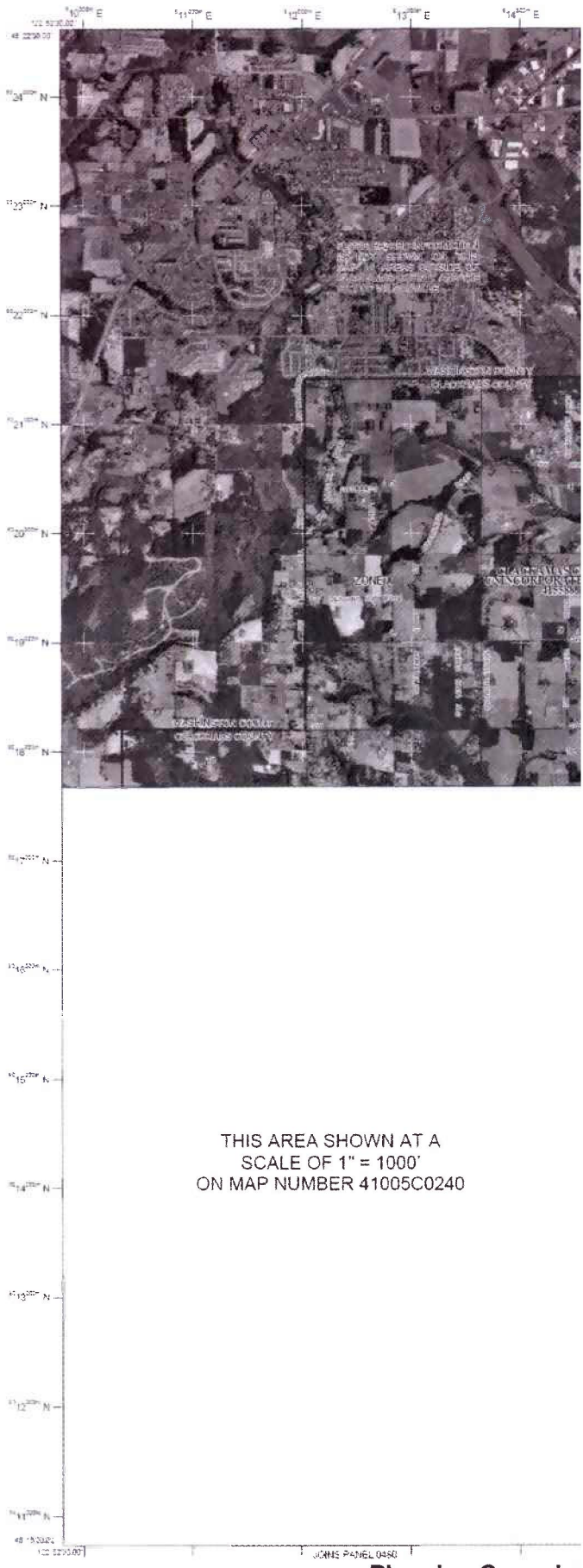
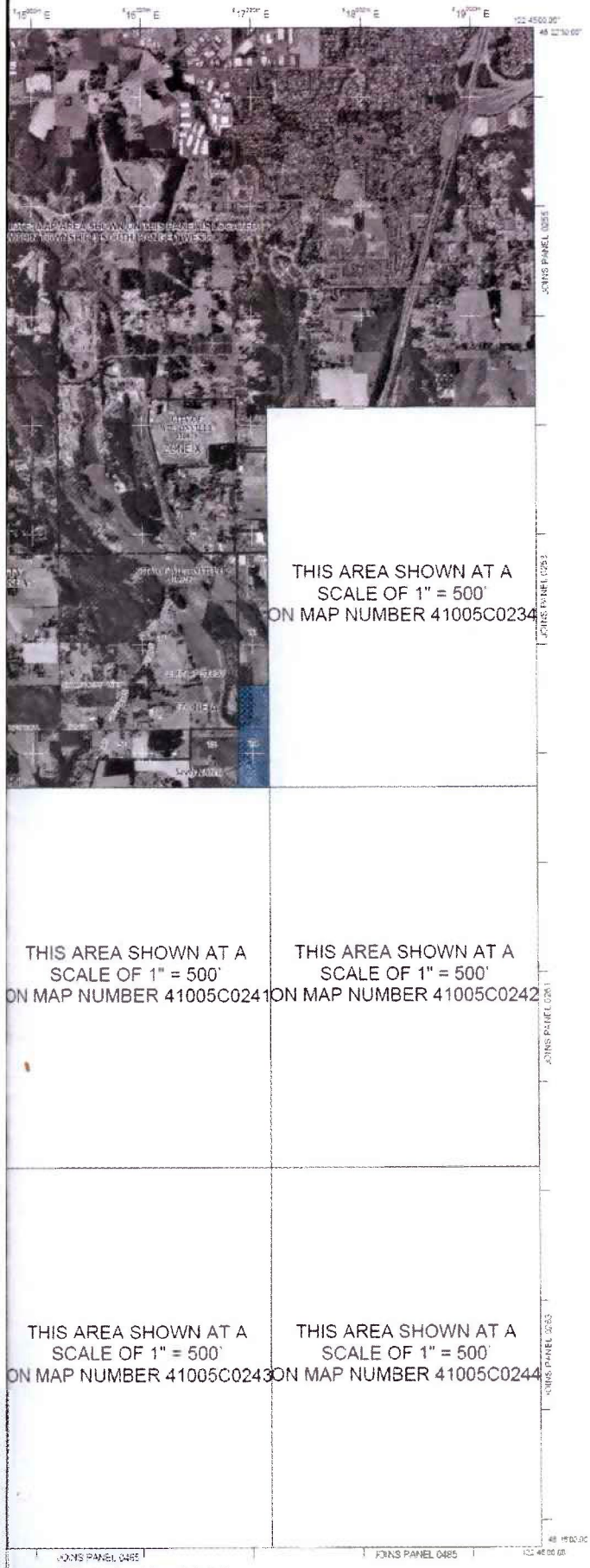


THIS AREA SHOWN AT A
SCALE OF 1" = 1000'
ON MAP NUMBER 41005C0240



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A	No Base Flood Elevations determined.
ZONE AE	Base Flood Elevations determined.
ZONE AH	Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
ZONE AO	Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
ZONE AR	Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
ZONE A99	Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
ZONE V	Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
ZONE VE	Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X	Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X	Areas determined to be outside the 0.2% annual chance floodplain.
ZONE D	Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

1% annual chance floodplain boundary
0.2% annual chance floodplain boundary
Floodway boundary
Zone D boundary
CBRS and OPA boundary
Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

~~~ 513 ~~~ Base Flood Elevation line and value; elevation in feet*

(EL 987) Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

(A)——(A) Cross section line

(23)- - - - -(23) Transect line

97°07'30", 32°22'30" Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

$^{45}75^{000m}$N 1000-meter Universal Transverse Mercator grid ticks, zone 10

6000000 M Value-that grid ticks, Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic

DA5510 Bench mark (see explanation in Notes to Users section of this FIRM panel)

• M1.5 River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD INSURANCE RATE MAP
June 17, 2008
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

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MAP SCALE 1" = 2000'

1000 0 2000 4000 FEET

500 0 500 1000 METERS

NFIP

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0250D

FIRM
FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON
AND INCORPORATED AREAS

PANEL 250 OF 1175
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
CLACKAMAS COUNTY	41005	0250	D
MILDONVILLE, CITY OF	41005	0250	D

Notes to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
41005C0250D

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency
~~~

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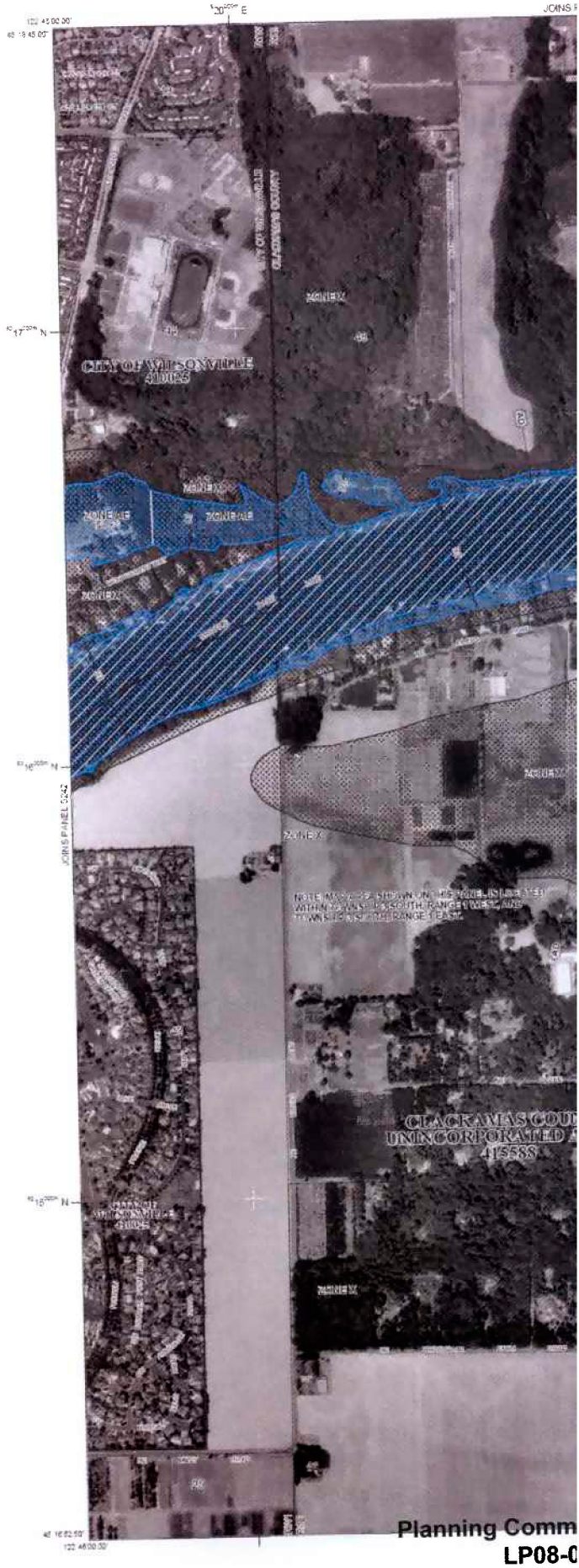
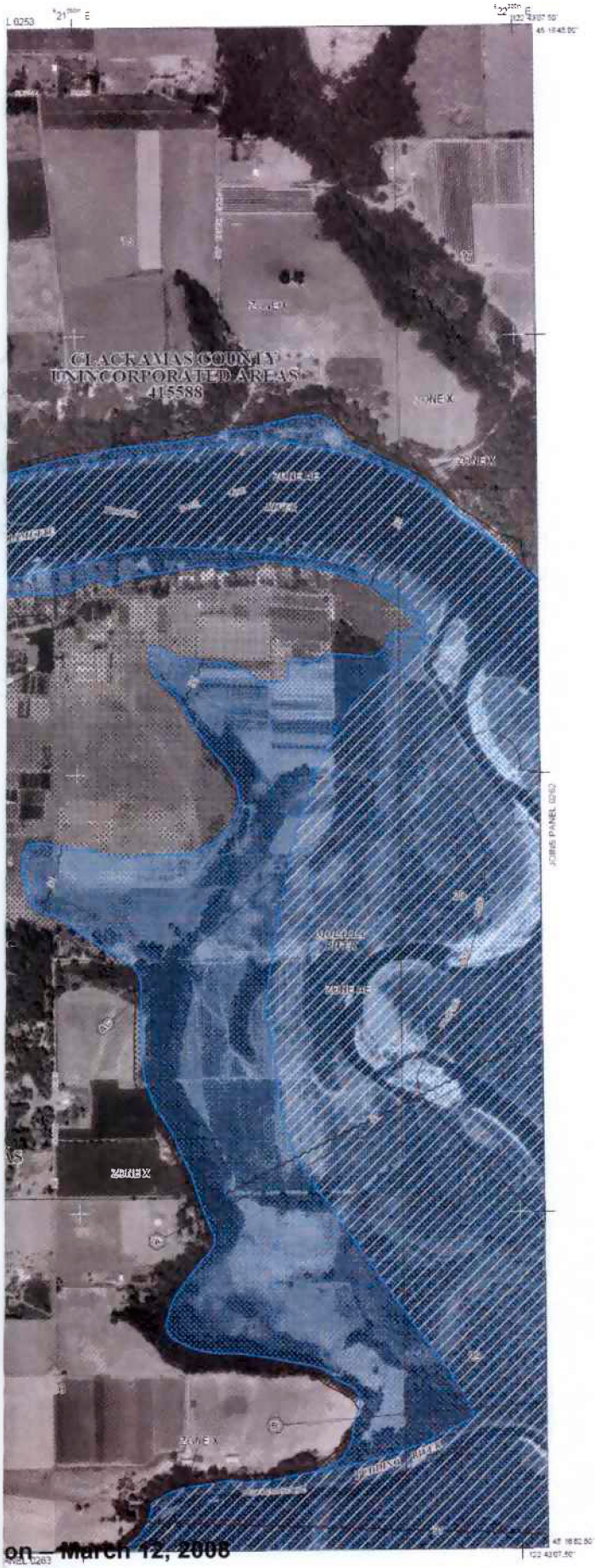

122° 45'00"
45° 19'45"
45°17'30" N
45°16'00" N
45°15'00" N
45°13'45"
122° 46'00"
JOHNS PANEL 0242
CLEAR WATER CREEK
ZONE AE
ZONE AE
ZONE X
ZONE X
ZONE X



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water surface elevation of the 1% annual chance flood.

ZONE A — No Base Flood Elevations determined.

ZONE AE — Base Flood Elevations determined.

ZONE AH — Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

ZONE AO — Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

ZONE AR — Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

ZONE A99 — Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

ZONE V — Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE — Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D — Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

1% annual chance floodplain boundary

0.2% annual chance floodplain boundary

Floodway boundary

Zone D boundary

CBRS and OPA boundary

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513 — Base Flood Elevation line and value; elevation in feet*

(EL 987) — Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

A — A — Cross section line

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97°07'30", 32°22'30" — Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)

4275000 FT N — 1000-meter Universal Transverse Mercator grid ticks, zone 10

6000000 M — 2000-foot grid ticks: Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic

DX5510 — Bench mark (see explanation in Notes to Users section of this FIRM panel)

MP — River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD INSURANCE RATE MAP
June 17, 2008
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For communities/towns/villages prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.

MAP SCALE 1" = 500'

250 0 500 1000 FEET
150 0 150 300 METERS

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0261D

FIRM

FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON AND INCORPORATED AREAS

PANEL 261 OF 1175

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

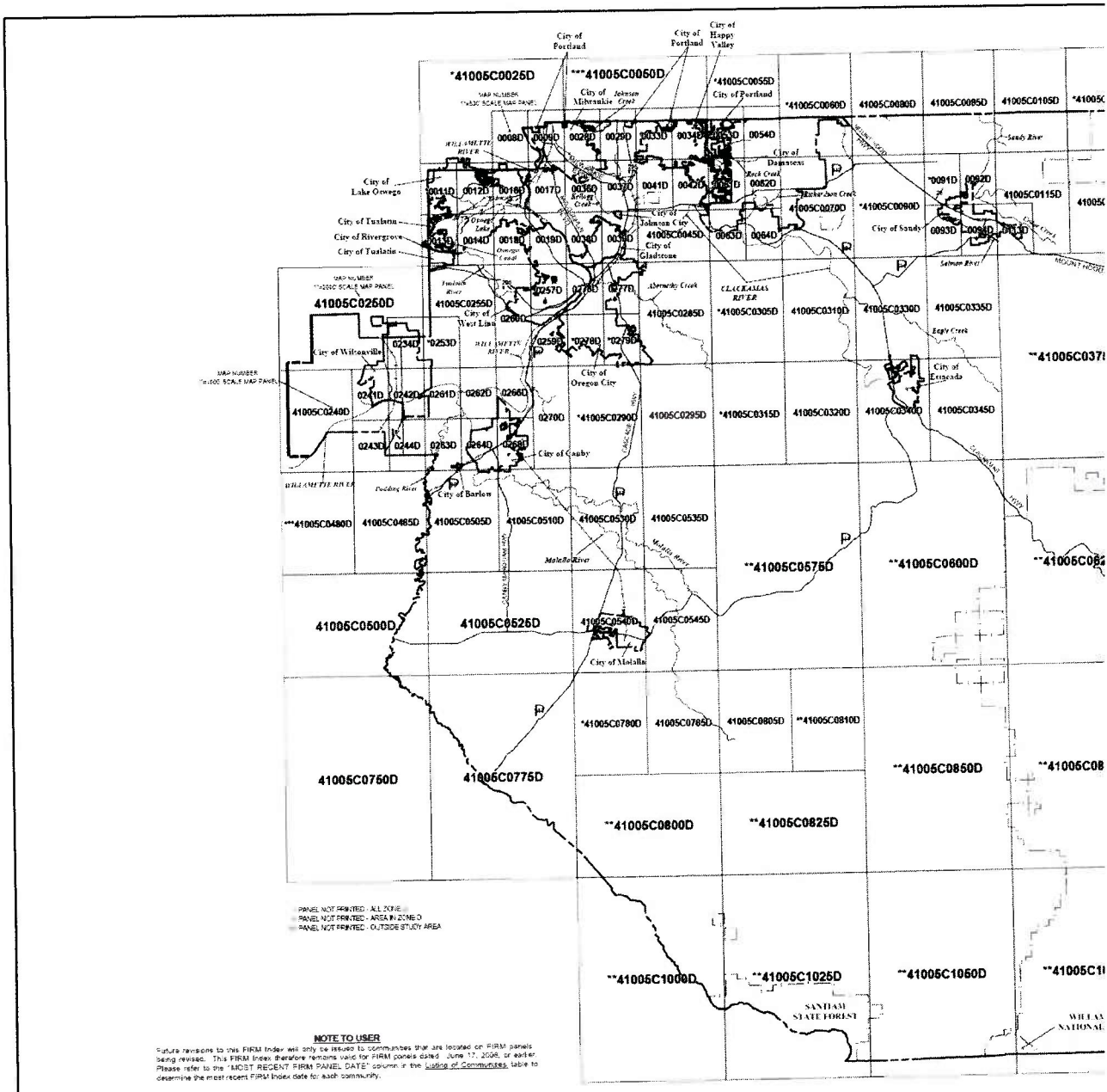
COMMUNITY	NUMBER	PANEL	SUFFIX
CLACKAMAS COUNTY	415588	0261	D
WILSONVILLE, CITY OF	410029	0261	D

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
41005C0261D

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency



NOTE TO USER

Future revisions to this FIRM Index will only be issued to communities that are located on FIRM panels being revised. This FIRM Index therefore remains valid for FIRM panels dated June 17, 2008, or earlier. Please refer to the "MOST RECENT FIRM PANEL DATE" column in the Listing of Communities table to determine the most recent FIRM Index date for each community.

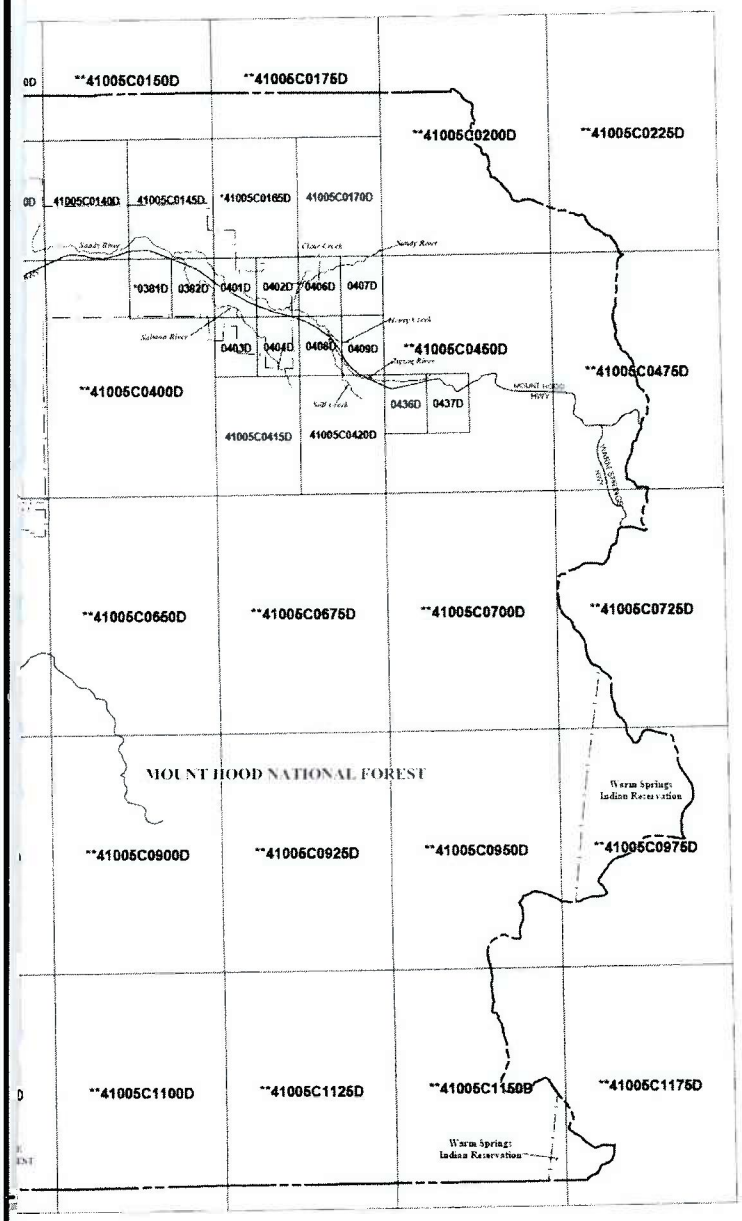
LISTING OF COMMUNITIES

COMMUNITY NAME	COMMUNITY NUMBER	LOCATED ON PANELS	INITIAL NFIP MAP DATE	INITIAL FIRM DATE	MOST RECENT FIRM PANEL DATE
BARLOW, CITY OF	410013	0253, 0254, 0506	JANUARY 10, 1975	MAY 5, 1981	JUNE 17, 2008
CANBY, CITY OF	410014	0264, 0266, 0268, 0506, 0510	NOVEMBER 16, 1973	JUNE 15, 1984	JUNE 17, 2008
CLACKAMAS COUNTY UNINCORPORATED AREAS	415588	0008, 0009, 0011, 0012, 0013, 0014, 0016, 0017, 0018, 0019, 0026, 0030, 0033, 0034, 0035, 0037, 0038, 0039, 0041, 0042, 0045, 0053, 0054, 0056[1], 0061, 0062, 0063, 0064, 0070, 0080, 0085, 0090[1], 0091[1], 0092, 0093, 0094, 0105, 0110[1], 0113, 0115, 0120, 0140, 0145, 0150[1], 0165[1], 0170, 0175[1], 0200[1], 0225[1], 0234, 0240, 0241, 0242, 0243, 0244, 0250, 0253[1], 0256, 0257, 0258, 0260, 0261, 0262, 0263, 0264, 0265, 0266, 0270, 0277, 0278[1], 0279[1], 0285, 0290[1], 0295, 0305[1], 0310, 0315, 0320, 0330, 0335, 0336, 0340, 0345, 0372[1], 0381[1], 0382, 0401[1], 0402, 0403, 0404, 0405, 0407, 0408, 0409, 0410, 0420, 0436, 0437, 0438[1], 0475[1], 0480, 0500, 0505, 0510, 0525, 0530, 0535, 0540, 0545, 0575[1], 0600[1], 0625[1], 0636[1], 0675, 0700[1], 0725[1], 0750, 0775, 0780[1], 0785, 0800[1], 0805, 0810[1], 0825[1], 0830[1], 0875[1], 0900[1], 0925[1], 0950[1], 0975[1], 1000[1], 1025[1], 1050[1], 1075[1], 1100[1], 1125[1], 1150[1], 1175[1]	JUNE 17, 2008	JUNE 17, 2008	JUNE 17, 2008
DAMASCUS, CITY OF	410006	0042, 0045, 0053, 0054, 0062, 0061, 0063, 0064, 0070	JUNE 17, 2008	JUNE 17, 2008	JUNE 17, 2008
ESTACADA, CITY OF	410018	0030, 0040	N/A	N/A	N/A
GLADSTONE, CITY OF	410017	0036, 0036, 0270	MARCH 15, 1977	MARCH 15, 1977	JUNE 17, 2008
HAPPY VALLEY, CITY OF	410026	0029, 0033, 0034, 0037, 0041, 0042, 0053, 0061	DECEMBER 20, 1974	DECEMBER 4, 1979	JUNE 17, 2008
JOHNSON CITY, CITY OF	410067	0037, 0039	N/A	N/A	N/A
LAKE OSWEGO, CITY OF	410016	0011[1], 0012, 0013, 0014, 0016, 0017, 0018, 0019, 0025[1]	JUNE 14, 1974	AUGUST 4, 1987	JUNE 17, 2008
MILWAUKIE, CITY OF	410019	0009, 0017, 0023, 0029, 0036, 0037	APRIL 5, 1974	JUNE 15, 1980	JUNE 17, 2008
MOLALLA, CITY OF	410020	0540, 0545	N/A	N/A	N/A
OREGON CITY, CITY OF	410021	0036, 0039, 0257, 0258, 0276, 0277, 0278[1], 0279[1], 0285, 0290[1]	DECEMBER 29, 1973	FEBRUARY 15, 1980	JUNE 17, 2008
RIVERGROVE, CITY OF	410022	0015	DECEMBER 6, 1974	AUGUST 4, 1987	JUNE 17, 2008
SANDY, CITY OF	410023	0091[1], 0092, 0093, 0094, 0112	APRIL 12, 1974	DECEMBER 11, 1979	JUNE 17, 2008
WEST LINN, CITY OF	410024	0013, 0016, 0038, 0257, 0259, 0260, 0276	DECEMBER 17, 1973	MARCH 15, 1977	JUNE 17, 2008
WILSONVILLE, CITY OF	410025	0234, 0241, 0242, 0250, 0253, 0261	MARCH 28, 1974	JANUARY 3, 1982	JUNE 17, 2008

[1] NON-FLOODPRONE COMMUNITY PANEL NOT PRINTED

FIRM Panel Dates For Printed Panels of Clackamas County, OR (and Incorpo

Panel	Effective Date	Panel	Effective Date	Panel
41005C0009D	June 17, 2008	41005C0105D	June 17, 2008	41005C0335D
41005C0010D	June 17, 2008	41005C0113D	June 17, 2008	41005C0340D
41005C0012D	June 17, 2008	41005C0115D	June 17, 2008	41005C0345D
41005C0013D	June 17, 2008	41005C0120D	June 17, 2008	41005C0382D
41005C0014D	June 17, 2008	41005C0140D	June 17, 2008	41005C0401D
41005C0016D	June 17, 2008	41005C0145D	June 17, 2008	41005C0402D
41005C0017D	June 17, 2008	41005C0170D	June 17, 2008	41005C0403D
41005C0018D	June 17, 2008	41005C0234D	June 17, 2008	41005C0404D
41005C0019D	June 17, 2008	41005C0240D	June 17, 2008	41005C0406D
41005C0026D	June 17, 2008	41005C0241D	June 17, 2008	41005C0407D
41005C0029D	June 17, 2008	41005C0242D	June 17, 2008	41005C0408D
41005C0033D	June 17, 2008	41005C0243D	June 17, 2008	41005C0409D
41005C0034D	June 17, 2008	41005C0244D	June 17, 2008	41005C0415D
41005C0036D	June 17, 2008	41005C0250D	June 17, 2008	41005C0420D
41005C0037D	June 17, 2008	41005C0255D	June 17, 2008	41005C0436D
41005C0038D	June 17, 2008	41005C0257D	June 17, 2008	41005C0437D
41005C0039D	June 17, 2008	41005C0259D	June 17, 2008	41005C0485D
41005C0041D	June 17, 2008	41005C0260D	June 17, 2008	41005C0509D
41005C0042D	June 17, 2008	41005C0261D	June 17, 2008	41005C0505D
41005C0045D	June 17, 2008	41005C0262D	June 17, 2008	41005C0510D
41005C0053D	June 17, 2008	41005C0263D	June 17, 2008	41005C0525D
41005C0054D	June 17, 2008	41005C0264D	June 17, 2008	41005C0530D
41005C0061D	June 17, 2008	41005C0266D	June 17, 2008	41005C0535D
41005C0062D	June 17, 2008	41005C0268D	June 17, 2008	41005C0540D
41005C0063D	June 17, 2008	41005C0270D	June 17, 2008	41005C0545D
41005C0064D	June 17, 2008	41005C0276D	June 17, 2008	41005C0750D
41005C0070D	June 17, 2008	41005C0277D	June 17, 2008	41005C0775D
41005C0080D	June 17, 2008	41005C0285D	June 17, 2008	41005C0785D
41005C0085D	June 17, 2008	41005C0295D	June 17, 2008	41005C0805D
41005C0092D	June 17, 2008	41005C0310D	June 17, 2008	
41005C0093D	June 17, 2008	41005C0320D	June 17, 2008	
41005C0094D	June 17, 2008	41005C0330D	June 17, 2008	



MAP REPOSITORIES
(Maps available for reference only, not for distribution.)

City of Barlow
City Hall
106 N. Main Street
Barlow, OR 97013

City of Canby
City Hall
182 N. Holly Street
Canby, OR 97013

Clackamas County
Sunnybrook Service Center – Planning Division
9101 SE Sunnybrook Boulevard
Clackamas, OR 97015

City of Damascus
City Hall
19920 Southeast Highway 212
Damascus, OR 97089

City of Gladstone
City Hall
525 Portland Avenue
Gladstone, OR 97027

City of Happy Valley
City Hall
12915 SE King Road
Happy Valley, OR 97086

City of Lake Oswego
City Hall
380 A Avenue
Lake Oswego, OR 97034

City of Milwaukie
City Hall – Public Works
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

City of Oregon City
City Hall
320 Warner Milne Road
Oregon City, OR 97045

City of Rivergrove
City Hall
5311 Childs Road
Lake Oswego, OR 97035

City of Sandy
City Hall
39250 Pioneer Boulevard
Sandy, OR 97055

City of West Linn
City Hall
22500 Salamo Road
West Linn, OR 97068

City of Wilsonville
City Hall
29799 SW Town Center Loop E
Wilsonville, OR 97070

MAP DATES

This FIRM index displays the map dates for each FIRM panel at the time that this index was printed. Because this index may not be distributed to unaffected communities in subsequent revisions, users may determine the most current map date for each FIRM panel by visiting the FEMA Map Service Center website at http://msc.fema.gov, or by calling the Map Service Center at 1-800-358-9616.

Communities annexing land on adjacent FIRM panels must obtain a current copy of the adjacent panel as well as the current FIRM index. These may be ordered directly from Map Service Center at the number listed above.

ELEVATION DATUM

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

BASE MAP SOURCE

Base Map information shown on this FIRM was derived from multiple sources. High resolution color orthophotos produced by Merrick & Co., Pictures, Inc., and Clean Water Services covered portions of the county. USGS Digital Quadrangles at a scale of 1:12000 or less covered the remainder of the county.

MAP INDEX

NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

CLACKAMAS COUNTY, OREGON AND INCORPORATED AREAS

(SEE LISTING OF COMMUNITIES TABLE)

MAP INDEX

PANELS PRINTED: 5, 9, 12, 13, 14, 16, 17, 18, 19, 26, 29, 33, 34, 36, 37, 38, 39, 41, 42, 45, 53, 54, 61, 62, 63, 64, 70, 80, 85, 92, 93, 94, 105, 113, 115, 120, 140, 145, 170, 234, 240, 241, 242, 243, 244, 250, 255, 257, 259, 260, 261, 262, 263, 264, 266, 268, 270, 275, 277, 285, 295, 310, 320, 330, 335, 340, 345, 352, 401, 402, 403, 404, 406, 407, 408, 409, 415, 420, 436, 437, 485, 500, 505, 510, 525, 530, 535, 540, 545, 750, 775, 785, 805

MAP NUMBER
41005CIND0A

EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency

(Areas)
ective Date
e 17, 2008
e 17, 2008
e 17, 2008

PC Public Hearing Version 3.12.08

Proposed Changes to WC 4.172 Flood Plain Regulations.

New language is in **bold;** Deleted language is ~~struck through~~:

Definitions –

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

"Development". Any human caused 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 ~~located within the floodplain~~ **storage of equipment or materials located within the area of special flood hazard.**

"Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

Manufactured Home. A structure **built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities** for movement on the public highways, that has sleeping cooking and plumbing facilities, that is intended for human occupancy, and was constructed in accordance with the Federal Manufactured Housing Construction and Safety Standards regulations in effect at the time of construction. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For flood insurance purposes, and City zoning standards, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date 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, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a

foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure: Anything built which requires location on the ground or is attached to something having a location on the ground. ~~For purposes of the City's Flood Plain Development Regulations, things located below grade are not considered to be structures, unless they are subterranean buildings, basements or cellars.~~

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50 percent) of the market value of the structure, as determined by the City's Building Official, either:

A. Before the improvement or repair is started, or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term is not used in the same manner as the term "substantial development" and does not include either:

(1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Section 4.172. Flood Plain Regulations.

(.01) Purpose:

A. To minimize public and private losses due to flood conditions in flood-prone areas.

B. To regulate uses and alteration of land which would otherwise cause erosion, decreased storm water storage capability, increased flood heights or velocities.

C. To require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, alteration or remodeling.

D. To restrict filling, grading, dredging, and other development which would increase flood damage.

E. To prevent construction of flood barriers which would unnaturally divert flood waters or increase flood hazards in other areas.

F. To properly regulate the 100-year flood plain identified by the Federal Insurance Administration (FIA) in the "Flood Insurance Study for **Clackamas County and incorporated areas** ~~the City of Wilsonville~~" dated **June 17, 2008** ~~July 6, 1981,~~ and displayed on FIA Floodway and Flood Insurance Rate Maps **which are on file with the City's Community Development Department**.

G. To implement the policies of the Comprehensive Plan and to provide standards consistent with Wilsonville's adopted Storm Drainage Master Plan.

H. To insure the City and its residents and businesses, continued eligibility in the National Flood Insurance Program by complying with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973.

(.02) General Provisions Affecting Flood Plains:

A. This section shall apply to all flood plain areas in the City of Wilsonville identified by the Flood Insurance Rate Map. No Building Permits or Construction Permits for development within the flood plain shall be issued except in compliance with the provisions of the Section.

B. Basis For Establishing The Areas Of Special Flood Hazard:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Clackamas County, Oregon and incorporated areas dated June 17, 2008," with accompanying Flood Insurance Maps is hereby adopted by reference and declared part of this ordinance. The Flood Insurance Study is on file at the City of Wilsonville Community Development Department.

~~B~~ C. The City of Wilsonville Community Development Director shall review all Building and Grading Permit applications for new construction or substantial improvement to determine whether proposed building or grading sites will be located in a flood plain. If a proposed building or grading site is located within a flood plain, any proposed new construction, grading, or substantial improvement (including prefabricated and manufactured housing) must:

1. Be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.

2. Use construction materials and utility equipment that are resistant to flood damage,

3. Use construction methods and practices that will minimize flood damage, and

4. Limit the addition of any fill material such that the total volume of fill within the flood plain does not exceed the volume of material removed from the flood plain in the same area.

~~C~~ **D.** That the City of Wilsonville Planning Director shall review subdivision proposals and other proposed new developments within the flood plain to assure that:

1. all such proposals are consistent with the need to minimize flood damage,
2. all public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage.
3. adequate drainage is provided so as to reduce exposure to flood hazards, and
4. No new lots or parcels shall be created for the purpose of increasing the development of buildings for human occupancy within the flood plain.

~~D~~ **E.** That the City of Wilsonville Community Development Director shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(03) Development Permit Required:

A. A Development Permit shall be obtained before construction or development, including grading, begins within any area of special flood hazard. The Permit shall be for all structures including manufactured homes and for all development including fill and other activities.

B. Outright Permitted Uses in the 100-year Flood Plain:

1. Agricultural use that is conducted without a structure other than a boundary fence.
2. Recreational uses which would require only minor structures such as picnic tables and barbecues.
3. Residential uses that do not contain buildings.
4. Underground utility facilities.
5. Repair, reconstruction or improvement of an existing structure, the cost of which is less than 50 percent of the market value of the structure, as determined by the City's Building Official, prior to the improvement or the damage requiring reconstruction, provided no development occurs in the floodway.

(04) Uses within the 100-year Flood Plain requiring a Flood Plain Permit:

A. Any development except as specified in subsection (03), above, that is otherwise permitted within the Zoning District provided such development is consistent with the Flood Plain Standards.

B. All subdivisions and land partitions.

C. Installation of dikes to provide buildable or usable property, provided that said dikes do not conflict with the policies of the Comprehensive Plan and this Section.

(.05) Prohibited Uses in the 100-year Flood Plain:

A. Any use or building which stores or otherwise maintains hazardous materials, chemicals, explosives or any other similar materials.

B. Storage of any materials that are not properly anchored, enclosed or protected to prevent movement or flotation beyond the property lines.

C. **Critical Facility**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(.06) Flood Plain Permit Review Process:

A. The Community Development Director is **the local flood plain administrator and is** hereby appointed to administer and implement this Section by granting or denying Development Permit applications in accordance with its provisions.

B. Duties and Responsibilities of the Community Development Director:

1. Duties of the Community Development Director shall include, but not be limited to:

a. Review all Development Permits to determine that the permit requirements of this ordinance have been satisfied.

b. Review all Development Permits to determine that all necessary permits have been obtained from those Federal, State or local government agencies from which prior approval is required. Notify the State Department of Land Conservation and Development and FEMA of final permit decision.

c. Review all Development Permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment limitations of subsection (.07)(H) are met.

C. The Permit process for developments not regulated by Section 4.140 shall be as follows:

1. Pre-application conference with the Planning Department in accordance with the procedures set forth in 4.008.
2. A complete application in accordance with this Section shall be submitted to the Community Development Director.
3. Within 30 days of complete application, the Community Development Director shall approve or deny the application based on the following Findings:
   a. Reports from the City Engineer and Planning Director as to the applicant's submittal documents' compliance with this Section, including recommendations.
   b. The proposed development's compliance with other provisions of the Comprehensive Plan and Zoning Regulations.

D. The decision of the Community Development Director may be appealed to the Development Review Board, upon written notice to the City Recorder within ten (10) calendar days of the date of final decision. Upon appeal, the Board shall hear the matter in accordance with 4.022.

E. Any flood plain development proposed for property regulated under Section 4.140 shall be considered by the Development Review Board and the Community Development Director as part of the Planned Development Permit process.

F. Submittal requirements.
1. A field survey in relation to mean sea level by a licensed surveyor or civil engineer of the actual location of the 100-year flood plain, fringe, floodway and the lowest habitable finished floor elevations, including basements, of all existing structures.
2. A Site Plan map showing all existing and proposed contours and development and supplemented by a soils and hydrologic report sufficient to determine the net effect of the proposed development on the flood plain elevations on the subject site and adjacent properties. Proposed areas of cut or fill shall be clearly indicated.
3. A soils stabilization plan for all cuts, fills and graded areas.

G. Use and Interpretation of Base Flood Data and maps.
1. When specific 100-year flood plain elevation data has not been provided in as required in this Section, the Community Development Director shall obtain, review and reasonably utilize any base flood elevation data available from Federal, State or other sources, in order to determine compliance with this Section.
2. The Community Development Director shall make the final interpretation of the exact 100-year flood plain boundaries on the FIRM and the Floodway Map. Appeals shall be granted consistent with the Standards of the rules and regulations of the National Flood Insurance Program **and pursuant to WC 4.172 (.08) Appeal Board**.

H. Monumentation and Recordation:

1. Prior to issuance of a Flood Plain Permit, the Community Development Director shall cause the placement of an elevation marker, set at two (2) feet above the 100-year flood elevation, on the subject property. The marker shall be properly identified and permanently monumented in concrete.
2. A Site Plan or map showing the location and elevation of the monument shall be submitted to and maintained on file by the Community Development Director.
3. Prior to issuance of an Occupancy Permit, for any structure within the 100-year flood plain, the Community Development Director shall insure by signature of a licensed surveyor or civil engineer **(elevation certificate)** that the finished floor elevation **of commercial, industrial and public buildings are** ~~is~~ one and one-half (1-1/2) feet above the 100-year flood elevation **and that residential uses are two-feet above the 100-year flood elevation**. The finished floor elevation shall be in relation to mean sea level, of the lowest floor (including basement) of all structures.

(.07) General Standards:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top of frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
3. All recreational vehicles must either be elevated and anchored <u>or</u> be on the site for less than 180 consecutive days **or** ~~and~~ be fully licensed and highway ready. A recreational vehicle is ready for highway use if its wheels are in place and it is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Construction materials and methods:

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Below-grade crawl spaces:

a. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:

i. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

ii. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

iii. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

iv. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

v. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

vi. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

vii. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

viii. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

C. Utilities:

1. All new replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
3. **On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**

D. Alteration of Watercourses:

1. Provide description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
2. Notify adjacent communities and the Federal Emergency Management Agency, Army Corps of Engineers, **Department of Land Conservation and Development** and **Department** ~~Division~~ of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
3. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. (Amended by Ord. #316, 7/6/87)

E. Residential Construction:

1. New construction and substantial improvement of any residential structure shall have the lowest finished floor, including basement, elevated **two (2)** ~~one and one-half (1-1/2)~~ feet above the 100-year flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered

professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

3. Manufactured homes or mobile homes placed on sites within new or existing manufactured mobile home parks shall be anchored to a permanent foundation and ~~either~~

a. Have the lowest floor **2'** above the base flood elevation, or

~~b. Have the chassis supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches above grade.~~

4. Manufactured mobile homes outside of manufactured/mobile home parks shall meet all requirements for residential structures at the same locations.

5. All manufactured homes to be placed or substantially improved within Flood Hazard Zones A1-30, AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of sub-section 4.172(.07)(A).

F. Nonresidential Construction:

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest finished floor, including basement, elevated one and one-half (1-1/2) feet above the 100-year flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. **Floodproofing certifications are required to be provided to the Community Development Director.**

d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as prescribed for residential construction, above.

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below

the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

H. Floodways.

1. Located within the flood plain are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
   a. Encroachments, including fill in any new development, or **substantial improvements** shall be prohibited unless certification by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase flood levels during the occurrence of the 100-year flood discharge.
   b. All development shall comply with all applicable flood plain standards of Section 4.172.
   c. All buildings designed for human habitation and/or occupancy shall be prohibited within the floodway.

I. Parking Lots and Storage Areas.

1. All parking lots and storage areas below the flood plain elevation shall be paved.
2. A minimum of twenty-five (25) percent of the required parking space must be provided above the 100-year flood plain elevation for all nonresidential uses.
3. Residential uses shall provide at least one parking space per unit above the 100-year flood plain elevation.

J. Subdivision Proposals:

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **or eliminate** flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage, and
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

K. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for Building Permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding.

etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(.08) Appeal Board.

A. The Development Review Board as established by the City of Wilsonville shall hear and decide appeals and requests for variances from the requirements of this ordinance.

B. The Development Review Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Community Development Director in the enforcement or administration of this ordinance.

C. Those aggrieved by the decision of the Development Review Board may appeal such decision to the City Council.

D. In acting upon such applications, the Development Review Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and

1. the danger that materials may be swept onto other lands to the injury of others;
2. the danger to life an property due to flooding or erosion damage;
3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. the importance of the services provided by the proposed facility to the community;
5. the necessity to the facility of a waterfront location, where applicable;
6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. the compatibility of the proposed use with existing and anticipated development;
8. the relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
10. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas electrical and water systems, and streets and bridges.

E. Upon consideration of the factors of Sections 4.035, 4.184, and 4.196 and the purposes of this ordinance, the Development Review Board may attach such conditions to the granting of permits as it deems necessary to further the purposes of this ordinance and to protect lives or property.

F. The Community Development Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(.09) Conflicts. If any provisions of Section 4.172 conflict with any other Sections of this Code, the most restrictive shall apply.

CITY OF WILSONVILLE

Planning and Land Development Ordinance
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DRAFT

Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A, AH, A3, A6 and A21; and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Ordinance Reference	**Model Ordinance & CFR References**	**Issue(s)/Discussion/Explanation/Comments**	**Compliance Determination:** • Complies • Revision Required • Revision Recommended • Discuss with city
Planning and Land Development Ordinance Section 4.001 (Definitions)	3.2 44 CFR §59.1 DEFINITIONS	The following definitions from section 4.001 meet the definitions in the CFR and the FEMA model code • "appeal" • "area of shallow flooding" • "area of special flood hazard" • "base flood" • "flood" or "flooding" • "Flood Insurance Rate Map (FIRM)" • "Flood Insurance Study" • "floodway" • "lowest floor"	Complies except where revisions are recommended below. Discuss with city

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Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A; AH; A3, A6 and A21, and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

		• **"manufactured home park or subdivision"** (Note: city has separate definitions for "manufactured home or mobile home park" and "manufactured home or mobile home subdivision." • **"new manufactured home park or subdivision"** • **"recreational vehicle"** • **"substantial improvement"** • **"variance"** • **"water dependent"**	
		The following definitions in the CFR and FEMA model code are apparently not in the city's ordinance. • **"critical facility"** • **"existing manufactured home park or subdivision"** • **"expansion to an existing manufactured home park or subdivision"** • **"new construction"** • **"start of construction"** • **"substantial damage"**	Revision recommended, discuss with city

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Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A, A11, A3, A6 and A21; and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

		The definition of "**development**" should be amended to include "... storage of equipment or materials located within the area of special flood hazard	Revision recommended
		The definition of "**manufactured home**" lacks the FEMA code references to being "built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities." Also the definition contains confusing possibly contradictory wording by including for flood management purposes "park trailers, travel trailers, and other similar vehicles placed on a site for more than 180 consecutive days," but then excludes "park trailers, travel trailers and other similar vehicles" from the same definition of for flood insurance purposes.	Revision recommended Revision recommended following DLCD consultation with FEMA. Discuss with city in conjunction with required revisions to the city's recreational vehicle standards. See analysis of section 172(.07) (A) (3) below.

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Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A, AH; A3, A6 and A21; and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Section 4.172.01(E) (Purpose) and 4.172(.02)(A) (General Provisions Affecting Flood Plains)	3.2 44 CFR §60.3(c)(1) & (d)(2) BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD (MAP/FIS REFERENCES)	The second sentence in the definition of "**structure**" should be deleted as it creates the confusing situation where for floodplain management purposes, the basement of a house or building is not considered part of the structure above ground Together these two provisions declare that the city's flood plain regulations will be applied to all flood plains areas identified on the July 6, 1981 FIS study and FIRM maps. There are several deficiencies in the ordinance that will need to be corrected. First, the language does not explicitly state that the FIS study and FIRMs are adopted and made a part of the city's ordinance. Second, the ordinance does not state that the most recent FIS study for the city is dated February 19, 1987. Third, the ordinance does not indicate where the FIS study and FIRMs are available for public review in the city.	Revision recommended Revision required Discuss with city.

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Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A; AH, A3, A6 and A21; and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

		Note The city has not adopted the FEMA recommended language re "automatic" adoption of future flood map revisions However, DLCD has been advised by the Oregon Department of Justice (DOJ) that such method for adopting future map changes may conflict with state law	Revision required based on further DLCD consultation with DOJ Discuss with city
Section 4.172(.03)(A) (Development Permit Required)	4.1-1 44 CFR §60.3(b)(1) PERMIT REQUIRED	No issues However, section 4.172 do not include the following terms from the FEMA model code: • **"Warning and Disclaimer of Liability"** • **"Penalties for Noncompliance"** • **"Abrogation and Greater Restrictions"** • **"Interpretation"**	Complies but revisions recommended Discuss with city the benefits of including the omitted terms in administering the city's flood plain regulations
Section 4.172(.06)(B)(1)(b) (Duties and Responsibilities of the Community Development Director)	4.3-1(2) 44 CFR §60.3(a)(2) OTHER PERMITS	No issues	Complies
Section 4.172(.06)(G)(1) (Use and Interpretation of Base Flood Data and Maps)	4.3-2 44 CFR §60.3(b)(4) USE OF OTHER BASE FLOOD DATA	No issues	Complies

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(Flood Insurance Study: Wilsonville, Oregon, February 19, 1987)

Section 4.172(.06)(H) (Monumentation and Recordation)	4.3-3 44 CFR §60.3(b)(5) INFO TO BE OBTAINED	This section calls for a site plan (or map) to be submitted and maintained by the Community Development Director, and that a signature from an engineer/surveyor is obtained on the occupancy permit that the finished floor elevation is above BFE. However, it is unclear if elevation certificates are being required by the city.	Discuss with city. Revision recommended requiring issuance of elevation certificates if currently not being done.
Section 4.172(.07)(D)(2) (Alteration of Watercourses)	4.3-4(1) 44 CFR §60.3(b)(6) NOTICE OF WATERCOURSE ALTERATION	This section does not require that notice of alterations be provided to DLCD as specified in FEMA model code.	Revision required.
Section 4.172(D)(3) (Alteration of Watercourses)	4.3-4(2) 44 CFR §60.3(b)(7) MAINTENANCE OF WATERCOURSE	No issues.	Complies.
Section 4.172(.06)(G)(2) (Use and Interpretation of Base Flood Data and Maps)	4.3-5 44 CFR §60.3 INTERPRETATION OF FIRM	No issues. However, this section does not cite the city's appeals process (see 4.172(.08) (B) (Appeal Board) where presumably a challenge of a FIRM interpretation is to be made.	Complies but with recommended revision to reference the city's appeals process in section 4.172(.06) (G) (2).

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Sections 4.172(.08) (Appeal Board) and 4.196(.01) (Variances)	4.4 44 CFR §60.6 VARIANCES	No issues	Complies
Section 4.172(.07)(A)(1) (Anchoring)	5.1-1(1) 44 CFR §60.3(a)(3)(i) ANCHORING	No issues	Complies
Section 4.172(.07)(A)(2)(Anchoring)	5.1-1(2) 44 CFR §60.3(b)(8) ANCHORING MANUFACTURED HOMES	No issues	Complies
Section 4.172	5.1-2 44 CFR §60.3(c)(11) AH ZONE	The February 1987 FIS study for the city indicates that the city has an AH zone However, the ordinance does not appear to contain the language from the FEMA model code which states that in AH areas, "Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures."	Revision required unless discussion with city determines that other ordinance provisions satisfy this requirement
Section 4.172(.07)(B) (Construction Materials and Methods)	5.1-3(1)-(3) 44 CFR §60.3(a)(3)(ii)-(iv) CONSTRUCTION MATERIALS & METHODS	No issues	Complies

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Section 4.172 – Flood Plain Regulations

(Flood zones in incorporated areas of city: A, AH, A3, A6 and A21, and B)
(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Section 4.172(.07)(C) (Utilities)	5.1-4 44 CFR §60.3(a)(5) & (6)(i)-(ii) UTILITIES	This section does not address siting the on-site disposal (septic) systems to avoid impairment to them or contamination from them during flooding. However, it is likely that the city does not authorize any new on-site disposal systems.	Complies unless the city does permit new on-site disposal systems. If so, this section must be revised to incorporate 5.1-4(3) of the FEMA model code. Discuss with city.
Section 4.172(.07)(J) (Subdivision Proposals)	5.1-5 44 CFR §60.3(a)(4)(i)-(iii) & (b)(3) SUBDIVISIONS	Subsection (J) (2) of this section should be revised to add the following underlined wording, "...systems located and constructed to minimize or eliminate flood damage." Subsection (J) (4) includes the appropriate language from the FEMA model code for obtaining BFE data in A zoned areas.	Revision recommended
Section 4.172(.07)(K) (Review of Building Permits)	5.1-6 44 CFR 60.3(a)(3) REASONABLY SAFE FROM FLOODING	No issues	Complies
Section 4.172(.07)(E) – (I) (General Standards)	5.2 44 CFR §60.3(c)(1) SPECIFIC STANDARDS	See below for specific compliance determinations.	See below

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Section 4.172 – Flood Plain Regulations

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Section 4.172(.07)(E) (Residential Construction)	5.2-1 44 CFR §60.3(c)(2) & (5) RESIDENTIAL STANDARDS	No issues. Note: The city's elevation requirement is for 1-1/2 feet above BFE.	Complies
Section 4.172(.07)(F) (Nonresidential Construction)	5.2-2 44 CFR §60.3(c)(3) & (4) NON-RESIDENTIAL STANDARDS	Note: The city's elevation requirement is for 1-1/2 feet above BFE for nonresidential construction which is not floodproofed. It is recommended that subsection (F)(1)(c) be revised to require that floodproofing certifications by a registered engineer or architect be provided to the city's Community Development Director	Complies with a revision recommended re the submission of floodproofing certifications to the Community Development Director
Section 4.172(.07)(E)(3)-(5) (Residential Construction)	5.2-3 44 CFR §60.3(c)(6) MANUFACTURED HOME STANDARDS	While this section calls for elevation of all manufactured homes or mobile homes above the BFE, it does not specifically require that they be elevated one foot above BFE as provided in the FEMA model code and the OMHPSC	Revision required
Section 4.172(.07)(A)(3) (Anchoring)	5.2-4 44 CFR §60.3(c)(14) RECREATIONAL VEHICLE STANDARDS	While this section calls for recreational vehicles sited longer than 180 days to be elevated and anchored, it does not state that they meet the anchoring and elevation requirements for manufactured/mobile homes in section 4.172(.07)(E)(3)-(5).	Revision required

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Section 4.172 – Flood Plain Regulations

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Section 4.172	5.3 44 CFR §60.3(c)(10) BEFORE REGULATORY FLOODWAY	The city has no zones with BFEs determined but with no floodways established.	Not applicable.
Section 4.172(07)(H) Floodways	5.4 44 CFR §60.3(d)(3) FLOODWAY STANDARDS	This section prohibits all buildings designed for human habitation and/or occupancy within the floodway. This is a "higher regulatory standard" as it exceeds the minimum FEMA requirement. However, subsection (h) (1) (a) needs to be revised to clarify that substantial improvements are included in the prohibition of encroachments in floodways unless certified by a registered engineer	Revision recommended clarifying that "substantial improvements" are in fact included in the prohibition of encroachments in floodways without certification by an engineer.
Section 4.172	5.5 44 CFR §60.3(c)(7), (8), (11), (14) & (d)(1) AO ZONES	There are no AO flood zones in the city.	Not applicable.
Section 4.172	5.6 44 CFR §60.3(e) V ZONES	There are no V flood zones in the city.	No applicable.

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(Flood Insurance Study: Wilsonville, Oregon, February 19, 1987)

Section 4.172	5.7 N/A (not addressed in CFRs but in guidelines to EO 11988) CRITICAL FACILITIES	As noted above, the city does not define "**critical facility**." If the city does intend to permit critical facilities within special flood hazard areas, then it should revise its ordinance to comply with section 5.7 of the FEMA model code	Revision recommended if the city decides to authorize "critical facilities" within special flood hazard areas
Section 4.172	N/A(not addressed in model ordinance or CFRs) EXEMPT USES	There do not appear to be any exempt uses authorized by section 4.172	Discuss with city to confirm.
Section 4.172(.07)(I) (Parking Lots and Storage Areas)	N/A(not addressed in model ordinance or CFR) ACCESSORY USES	No issues	Complies
Section 4.172(.06)(A)-(B) (Flood Plain Permit Review Process	4.2 N/A (not addressed in CFRs) LOCAL ADMINISTRATOR	While this section does not specifically identify the Community Development Director as the Local Floodplain Administrator, it is clear from reading subsections (A) and (B) that the Community Development Director performs these duties.	Complies. Revision recommended to clearly state that the Community Development Director is the city's Local Floodplain Administrator

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Section 4.172 – Flood Plain Regulations

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

Section 4.172	N/A (not addressed in model ordinance) See instead FEMA Technical Bulletin 11-01, copy enclosed. Specifications for below-grade crawlspaces are defined within this Bulletin	Below-grade crawlspace construction can be allowed in the floodplain provided that NFIP specifications are met. Most local governments in Oregon have addressed compliance with these specifications through the building permit process and not within their floodplain ordinances. FEMA HQ's last stated position is that allowing below grade crawlspaces requires an affirmative action on the part of each local government, i.e. below grade crawlspace language must be adopted in the local floodplain ordinance. Section 4.172 does not specifically address below grade crawl spaces.	Confirm with the city whether or not it regulates below grade crawlspaces If the city does allow below grade crawlspace construction in the floodplain, then the city will need to add language specifically allowing below grade crawlspaces that meet NFIP specifications. Note: Floodplain insurance premiums are <u>higher</u> for a structure built with a below-grade crawlspace – even if the crawlspace meets the FEMA specifications (see FEMA Technical

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

			Bulletin 11-01) – than for the same structure built with a crawlspace that has the inside grade of the crawlspace at the same level as the outside grade
HIGHER REGULATORY/OTHER LOCAL STANDARDS			

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(Flood Insurance Study, Wilsonville, Oregon, February 19, 1987)

REVIEWER NOTES:			

Neamtzu, Chris

Exhibit E

r m Mark Darienzo [Mark.Darienzo@state.or us]
e t Friday, February 22, 2008 10:08 AM
Neamtzu, Chris
u e t Re: draft revisions to Wilsonville flood plain ordinance

Chris

It looks good.

Thank you for your efforts in putting it together.

Mark

Flood Map Modernization Coordinator
Department of Land Conservation and Development
Phone 503-373-0050 ext. 269
Fax 503-378-5518
http://www.lcd.state.or.us

>>> "Neamtzu, Chris" <neamtzu@ci.wilsonville.or.us> 2/21/2008 2:28 PM
>>> >>>
Mark:

Attached is a draft of the ordinance that I have been working on. I would appreciate your review and comment. Please let me know how it looks and if I have missed anything. I appreciate your assistance and look forward to hearing from you.

Thanks,

Chris Neamtzu, AICP

Long-Range Planning Manager

City of Wilsonville

29799 SW Town Center Loop E

Wilsonville, OR 97070

503.570.1574

neamtzu@ci.wilsonville.or.us <mailto:neamtzu@ci.wilsonville.or.us>

Disclosure Notice: Messages to and from this email address may be subject to the Oregon Public Records Law.



Adoption of Flood Insurance Rate Maps by Participating Communities

FEMA 495/September 2005

FEMA

Adoption of Flood Insurance Rate Maps By Participating Communities

The National Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages. Over 20,000 communities participate in the Program.

This brochure addresses several questions about adopting the Flood Insurance Rate Map by communities. As a participating community in the NFIP, your community is responsible for making sure that its floodplain management regulations meet or exceed the minimum requirements of the NFIP. By law, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) cannot offer flood insurance in communities that do not have regulations that meet or exceed these minimum requirements. These regulations can be found in ***Title 44*** of the ***Code of Federal Regulations (44 CFR) Section 60.3***. You can also find them in model ordinances developed by most States and by FEMA Regional Offices.

The basis of your community's floodplain management regulations is the flood hazard data provided to the community by FEMA. FEMA identifies flood hazards nationwide and publishes and updates flood hazard data in support of the NFIP. Under Map Modernization, FEMA will be updating and modernizing the flood hazard maps for most communities. Flood hazard data will be provided to communities in the form of a Flood Insurance Rate Map (FIRM) (hereafter referred to as the "flood map") and a Flood Insurance Study (FIS) (hereafter referred to as the "flood study"). Your community will need to adopt the new or revised flood map and flood study.

The identification of flood hazards serves many important purposes. Identifying flood hazards creates an awareness of the hazard, especially for those who live and work in flood-prone areas. Maps provide States and communities with the information needed for land use planning and to reduce flood risk to floodplain development and implement other health and safety requirements through codes and

Flood Study And Adoption Timeline

Initial Scoping Meeting Held

Flood Hazard Data Development, Flood Map & Flood Study Production*

regulations. States and communities can also use the information for emergency management.

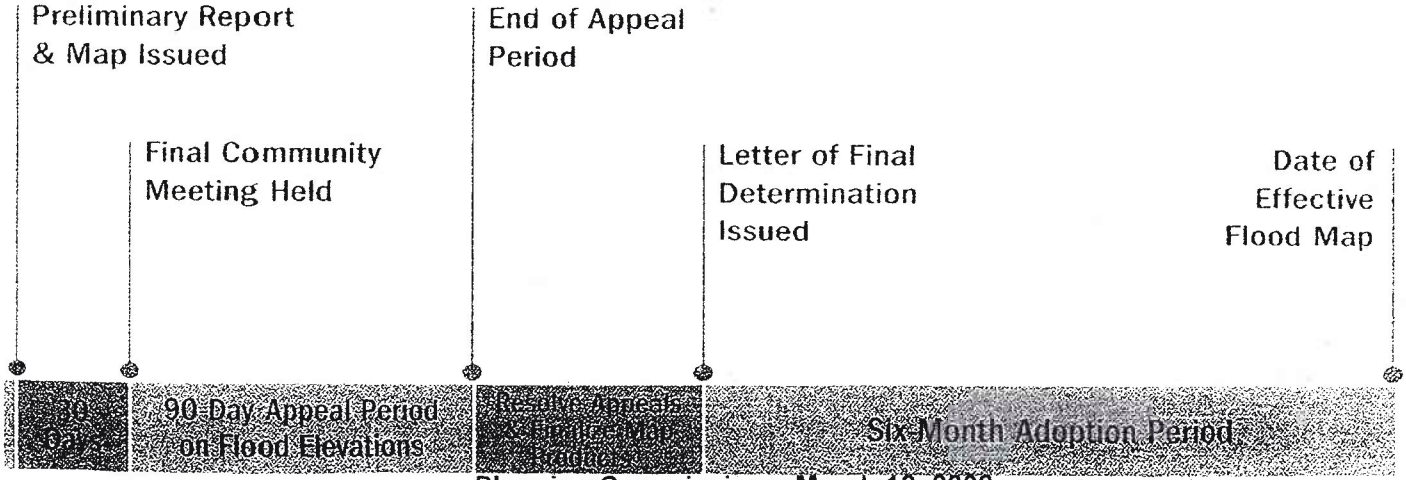
Each time that FEMA provides your community with additional flood hazard data, your community must adopt new floodplain management regulations or amend existing regulations to incorporate the new data and meet any additional requirements that result from any changes in the data, such as the designation of a floodway for the first time. Your floodplain management regulations must also meet any additional State requirements and be adopted through a process that complies with any procedural requirements established in your State for the adoption of ordinances or regulations.

What is the process for developing new flood hazard data or revising existing data?

FEMA works closely with communities to develop new flood hazard data or revise existing data during the flood study process. In general, the study process includes the following activities:

- FEMA holds a scoping meeting with community officials to identify where a new flood study is necessary and the type of study and extent (number of stream miles) of the study.
- FEMA undertakes a flood study to identify the flood hazards and to develop Base Flood Elevations (BFEs) (hereafter referred to as "flood elevations") and floodways for the areas of study identified during the scoping process. In addition, the mapping process includes activities such as obtaining the base map, incorporating Letters of Map Change, and developing the flood hazard database.
- When the study is completed, FEMA provides the community with a preliminary flood map and flood study for review. In addition, FEMA may hold a public meeting – often referred to as the "Final Meeting" to explain and obtain comments on the preliminary flood map and flood study.
- FEMA provides a 90-day appeal period when new or revised flood elevations are proposed. Before the appeal period is initiated, FEMA will publish the proposed flood elevation determinations in the Federal Register and notify the community's Chief Executive Officer of the determination. FEMA will then publish information about the flood elevation determinations at least twice in a local newspaper. The appeal period provides the community and owners or lessees of property in the community an opportunity to submit information on whether the flood elevations are scientifically or technically incorrect.
- At the end of the 90-day appeal period, FEMA resolves all appeals and finalizes the flood map and flood study.
- FEMA then issues a Letter of Final Determination (LFD) (hereafter referred to as the "final letter"), which establishes the final flood elevations, and provides the new flood map and flood study to the community. The final letter initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period.
- The flood map and flood study become effective at the end of the six-month period. The effective date is also the date when flood insurance rates will be based on the new flood data for new construction built after this date. The effective map will be the one that will be used by federally insured or regulated lenders to determine if flood insurance is required as a condition of a loan.

FEMA has also entered into agreements with over 200 communities, States, and regional agencies to be active partners in FEMA's flood hazard mapping program under the Cooperating Technical Partner (CTP) Program. These



* The timeframe for completing these activities may vary.



Digital Flood Map

agencies are participating with FEMA in developing and updating flood maps. (See the box on the inside of the back cover page for a brief description of the CTP program.)

What must an NFIP participating community do when FEMA provides new or revised flood hazard data?

Each time FEMA provides a community with new or revised flood hazard data, the community must either adopt new floodplain management regulations or amend its existing regulations to reference the new flood map and flood study. In some cases, communities may have to adopt additional floodplain management requirements if a new type of flood hazard data is provided, such as a new flood zone (going from an A Zone without flood elevations to an AE Zone with flood elevations or going from an AE Zone to a V Zone – the coastal high hazard area), or the addition of a floodway designation.

The following guide is to help you determine whether changes need to be made in your community's floodplain management regulations when a new or revised flood map and flood study are provided:

- If the community's floodplain management regulations are compliant with the NFIP requirements when the final letter is issued, the community needs to amend only the map reference section of their floodplain management regulations to identify the new flood map and flood study.
- If the community has a legally valid automatic adoption clause established in the map reference section of the regulations and the community's regulations are otherwise compliant with the NFIP requirements, then the floodplain management regulations do not need to be amended. Automatic adoption clauses adopt all future revisions to the flood map without further action by the community. Automatic adoption clauses are not permitted in many States.
- If the community is provided a new type of flood hazard data, the community will need to either adopt new regulations or amend existing regulations to include the appropriate NFIP requirements in addition to referencing the new flood map and flood study.

The final letter indicates the sections of the NFIP floodplain management requirements at *44 CFR Section 60.3* that a



Breckenridge, Minnesota, 1997

community must adopt based on the type of flood hazard data provided to the community.

You can contact the FEMA Regional Office or your State NFIP Coordinating Agency for assistance on the specific requirements your community will need to adopt. (See "For Assistance" on the back cover page for contact information.)

If your community has adopted higher standards than the minimum requirements of the NFIP, your community may qualify for a reduction in flood insurance premiums for your citizens under the Community Rating System (CRS). (See the box on the inside of the back cover for a brief description of the CRS.)

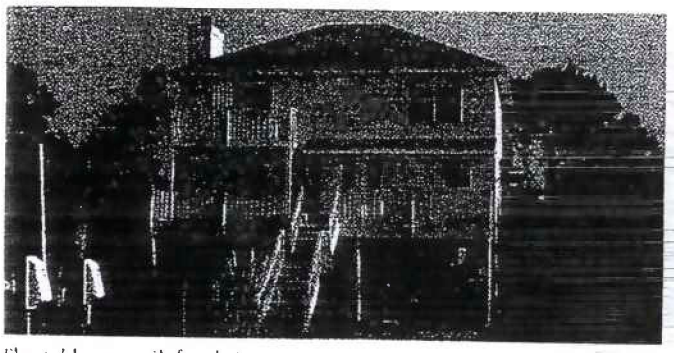
When must a community adopt the new or revised flood hazard data?

Your community must amend its existing floodplain management regulations or adopt new regulations before the effective date of the flood map, which is identified in the final letter. The final letter initiates the six-month adoption period.

Communities are encouraged to adopt the appropriate floodplain management regulations as soon as possible after the final letter is issued. The adopted regulations must be submitted to FEMA or the State and be approved by FEMA before the effective date of the flood map.

FEMA will send two letters notifying the community that it must have approved floodplain management regulations in place before the effective date of the flood map. The first letter is a reminder letter and is sent to the community 90 days before the effective date. The second letter is sent to the community 30 days before the effective date of the flood map. This letter is the actual letter that notifies the community it will be suspended from the NFIP if it does not adopt the flood map before the effective date. Notice of the suspension is also published in the Federal Register.

If the community adopts or amends its floodplain management regulations prior to the effective date of the flood map and the FEMA Regional Office approves the community's regulations, the suspension will not go into effect and the community will remain eligible for the NFIP



Elevated home on pile foundation



Elevated home on crawl space foundation

What happens if a community does not adopt the appropriate floodplain management regulations during the six-month adoption period?

If a community does not adopt new floodplain management regulations or amend its existing regulations before the effective date of the flood map, the community will be suspended from the NFIP.

The following sanctions apply if a community is suspended from the NFIP.

- Property owners will not be able to purchase NFIP flood insurance policies and existing policies will not be renewed.
- Federal grants or loans for development will not be available in identified flood hazard areas under programs administered by Federal agencies such as the Department of Housing and Urban Development, Environmental Protection Agency, and Small Business Administration.
- Federal disaster assistance will not be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
- Federal mortgage insurance or loan guarantees will not be provided in identified flood hazard areas such as those written by the Federal Housing Administration and the Department of Veteran Affairs.
- Federally insured or regulated lending institutions, such as banks and credit unions, are allowed to make conventional loans for insurable buildings in flood hazard areas of non-participating communities. However, the lender must notify applicants that the property is in a flood hazard area and that the property is not eligible for Federal disaster assistance. Some lenders may voluntarily choose not to make these loans.

If your community is suspended from the NFIP for failure to adopt or amend its floodplain management regulations prior to the map effective date, your community can be reinstated into the program upon adoption. If development takes place in your community during suspension that does not meet the minimum NFIP requirements, your community will be asked to take actions to reduce the increased flood hazard prior to reinstatement.

ADOPTING YOUR COMMUNITY'S NEW DIGITALLY-FORMATTED FLOOD MAP

FEMA will be reformatting your community's existing (paper) flood map into a digital format. This means taking your existing flood map and producing a digital, geospatially-referenced flood layer on a new, digital base map. For some communities where existing flood data is determined to be accurate, FEMA will prepare the new flood map without developing new flood hazard data or changing existing data (elevations or flood flows). However, geospatially referencing the floodplain delineations to a new base map will likely result in some changes in the floodplain boundaries. In addition, the flood map and flood study will be modified to incorporate Letters of Map Change that have been approved by FEMA since the original flood map was issued for your community.

When reformatting your community's map to a digital format, the flood map will need to be republished with a new effective date. Communities will be given a review period and an opportunity to provide comments to FEMA on the new flood map. In these cases, your community's floodplain management regulations will have to be amended to reference the new map unless your community has a valid automatic adoption provision. The digitally based flood map will provide you with increased capabilities in using the flood hazard information for floodplain management and other purposes.

CTP Cooperating Technical Partners

BECOMING A COOPERATING TECHNICAL PARTNER (CTP)

One of the key objectives of Map Modernization is to increase local involvement in, and ownership of, the flood study process and the flood hazard data. To meet this objective, FEMA established the CTP Program. This program enables communities and regional and State agencies that have the interest, capabilities, and resources to be active partners in FEMA's flood hazard mapping program.

One of the major objectives of the CTP Program is to recognize States, regional agencies, and communities with proactive floodplain management programs that include identifying the flood risk and getting the information incorporated into official FEMA flood hazard data. The CTP Program maintains national standards consistent with the NFIP Regulations. The following are some of the benefits of being a CTP.

- CTPs are given an opportunity to develop more detailed maps by making local geospatial data a part of FEMA flood maps.
- CTPs receive support such as access to existing data, access to custom-made FEMA tools, technical assistance, and national recognition.
- CTPs receive mentoring support, on-line examples of "best practices," and free training, and
- Communities that participate in the Community Rating System (CRS) that also become CTPs or are in an area covered by a regional or State CTP may be eligible to receive CRS credit for CTP activities.

Another major objective and benefit of the CTP Program is the ability to leverage available funding and local data to make the most of limited resources. Communities, States, and regional agencies can take advantage of these benefits by entering into an agreement with FEMA that formalizes the types of mapping activities and support the CTP will provide. There are over 200 communities, States, and regional agencies currently participating in the CTP Program.

TO LEARN MORE ABOUT CTP, YOU CAN VISIT THE FOLLOWING WEBSITE:

http://www.fema.gov/fhm/ctp_main.shtm

OR YOU CAN CONTACT THE FEMA REGIONAL OFFICE

See "For Assistance" on the back page for contact information

NFIP/CRS

BECOMING AN NFIP COMMUNITY RATING SYSTEM (CRS) COMMUNITY

The NFIP CRS recognizes community efforts that go beyond the minimum floodplain management requirements of the NFIP. CRS recognizes these efforts by reducing flood insurance premiums from 5% to 45% for the community's property owners. Your community is probably already doing many things that it can get credit for under CRS that will reduce flood insurance premiums for your citizens. Here are just a few:

- Adopting and enforcing higher standards for safer new development,
- Informing people about flood hazards, flood insurance, and how to reduce flood damage, and
- Preserving open space in the floodplain.

To get credit, officials in your community simply need to prepare an application showing what's being done. FEMA can even provide you assistance in preparing the application. Once FEMA has verified the information, the flood insurance premium discounts will go into effect. The amount of discount depends on what your community does.

The CRS has many benefits:

- Prevent property damage for your citizens,
- Avoid lost jobs and economic devastation caused by flooding,
- Prevent damage and disruption to community infrastructure, and
- Save lives.

TO LEARN MORE ABOUT CRS, YOU CAN VISIT THE FOLLOWING WEBSITE:

http://www.fema.gov/nfip/crs.shtm

OR YOU CAN CALL

(317) 848-2898

FOR ASSISTANCE

If your community needs assistance in adopting the Flood Insurance Rate Maps, you can contact the FEMA Regional Office (see below for address and telephone number). You can also contact your respective State Coordinating Agency for the NFIP. You can go to http://www.fema.gov/fima/floodplain.shtm for a listing of the FEMA Regional Offices and the NFIP State Coordinating Agencies.

REGION I
CT, ME, MA, NH, RI, VT
99 High Street, 6th Floor
Boston, MA 02110
877-336-2734

REGION II
NJ, NY, PR, VI
26 Federal Plaza, Ste. 1307
New York, NY 10278
212-680-3609

REGION III
DE, DC, MD, PA, VA, WV
615 Chestnut Street, 6th Floor
Philadelphia, PA 19106
215-931-5608

REGION IV
AL, FL, GA, KY, MS, NC, SC, TN
3003 Chamblee-Tucker Rd.
Atlanta, GA 30341
770-220-5200

REGION V
IL, IN, MI, MN, OH, WI
536 South Clark Street
Chicago, IL 60605
312-408-5500

REGION VI
AR, LA, NM, OK, TX
Federal Regional Center
800 North Loop 288
Denton, TX 76210
940-898-5399

REGION VII
IA, KS, MO, NE
2323 Grand Boulevard, Ste. 900
Kansas City, MO 64108
816-283-7061

REGION VIII
CO, MT, ND, SD, UT, WY
Denver Federal Center, Bldg. 710, Box 25267
Denver, CO 80225
303-235-4800

REGION IX
AZ, CA, HI, NV, American Samoa, Guam,
Marshall Islands and Northern Mariana Islands
1111 Broadway, Suite 1200
Oakland, CA 94607
510-627-7100

REGION X
AK, ID, OR, WA
Federal Regional Center
130 228th Street SW
Bothell, WA 98021-9796
425-487-4600

Exhibit G

FLOOD INSURANCE STUDY



CLACKAMAS COUNTY, OREGON

AND INCORPORATED AREAS

PRELIMINARY
SEP 30 2006

Community Name	Community Number
BARLOW, CITY OF	410013
CANBY, CITY OF	410014
DAMASCUS, CITY OF	410006
ESTACADA, CITY OF	410016
GLADSTONE, CITY OF	410017
HAPPY VALLEY, CITY OF	410026
JOHNSON CITY, CITY OF	410267
LAKE OSWEGO, CITY OF	410018
MILWAUKIE, CITY OF	410019
MOLALLA, CITY OF	410020
OREGON CITY, CITY OF	410021
RIVERGROVE, CITY OF	410022
SANDY, CITY OF	410023
WEST LINN, CITY OF	410024
WILSONVILLE, CITY OF	410025
CLACKAMAS COUNTY (UNINCORPORATED AREAS)	415588

Federal Emergency Management Agency

FLOOD INSURANCE STUDY NUMBER
41005CV000A

1. Introduction - 1.3 Coordination

City of West Linn

An initial CCO meeting with local officials and representatives from FEMA and the State of Oregon was held October 9, 1974, to identify data sources, establish communication and coordination procedures, and explain the basic concepts and scope of the original study. A final CCO meeting was held on March 5, 1975, to review maps of flood-prone areas and proposed floodway limits that were provided in a draft report dated October, 1974. Certain revisions were made and are reflected in this report.

City of Wilsonville

Streams requiring detailed and approximate study for the original FIS were identified at a meeting held in June 1977, attended by representatives of the study contractor, FEMA, and the city. Results of the hydrologic analyses were coordinated with the USACE, USGS, and U.S. SCS. The final CCO meeting for the original study was held at the Wilsonville City Hall on January 29, 1981, and was attended by representatives of FEMA, the study contractor, the city, and local developers. In July 1985, the original FIS was revised to incorporate data prepared for Seely Ditch.

2.0 AREA STUDIED

2.1 Scope of Study

This FIS report covers the geographic area of Clackamas County, Oregon, including the incorporated communities listed in Section 1.1.

The areas studied by detailed methods were selected with priority given to all known flood hazards and areas of projected development.

The flooding sources studied by detailed methods are shown in Table 1, "List of Detailed Studied Streams".

Boeckman Creek, Henry Creek, Oswego Creek, and Western Tributary of Spring Brook Creek were studied by approximate methods.

Approximate analyses were used to study those areas having a low development potential or minimal flood hazards. The scope and methods of study were proposed to, and agreed upon, by FEMA and Clackamas County CWS.

The results of the LOMRs listed in Section 1.2 above have been incorporated into this countywide FIS.

2.2 Community Description

Clackamas County is located in northwestern Oregon and is bordered to the west by Washington, Yamhill, and Marion Counties; to the east by Hood River and Wasco Counties, to the north by Multnomah County; and to the south by Marion County.

The county is in the northeastern portion of the Willamette valley. The eastern third of the county is part of Mt. Hood National Forest, extending from the foothills to the crest of the Cascade Range. The Willamette River lies immediately to the west of the county along most of its western boundary, and runs through the northwestern section of the county.

The Willamette Valley was one of the earliest settled areas in the Pacific Northwest. It was

2.0 Area Studied
2.2 Community Description

1820's and 1830s, and large-scale emigration over the Oregon Trail began in 1843. Sandy's first post office was established in 1873 and the village became an incorporated City in 1913.

As of 2000, the City of Sandy had a population of 5,385 (Reference 1), and is located on the Mt. Hood Highway (U.S. Highway 26), midway between Portland and Mt. Hood.

Residents of the City enjoy a mild climate, clean air, good water, beautiful scenic views in a country setting, and all the advantages of small-town living while being only 45 minutes from the urban amenities of downtown Portland.

Though the City of Sandy's heritage was logging and saw milling, today's economic activity ranges from light industrial manufacturing to service businesses. Many Sandy residents commute to jobs in nearby Portland. Agricultural crops in the surrounding area are primarily nursery stock and a variety of berries.

U.S. Highway 26 remains a major thoroughfare for travelers and for commerce. Agriculture is central to the area's economic stability, and industrial activity is increasing.

City of West Linn

West Linn, a rapidly growing suburb of Portland, is located at the confluence of the Willamette and Tualatin Rivers. The city stretches for 6 miles along the west bank of the Willamette River in an area characterized by rolling hills and random development. Several concentrations of residential development occur throughout the area. Commercial development is centered near the Oregon City-West Linn Bridge, and an industrial district fronts on Willamette River upstream of the bridge. Major industries located at one time there included a paper mill and a hydroelectric plant adjacent to Willamette Falls. At Willamette Falls, a navigational lock enables river traffic to bypass the 45-foot falls. Highway transportation is provided by State Highway 43 and I-205.

Settlement of the West Linn area, once known as Robins Nest, began in 1840. In 1850, the legislature named the area Linn City. In 1923, the area was incorporated under the name West Linn.

The population of West Linn grew dramatically in the mid-1900s and continues to do so today. The estimated 1974 population was 8,630. In 2000, the population grew to 22,261 (Reference 1).

City of Wilsonville

Wilsonville is situated in the northwestern corner of Clackamas County and the southeastern corner of Washington County, in northwestern Oregon. Oregon City is approximately 9 miles northeast of Wilsonville, and the City of Canby lies approximately 5 miles southeast. Wilsonville is bordered by unincorporated areas of Clackamas County on all sides except the north where it borders unincorporated Washington County. The total land area contained within the corporate limits is 5.92 square miles. The population of Wilsonville increased from 1,009, when it was incorporated in 1969, to 2,040 in 1977. According to U.S. Census Bureau figures, Wilsonville had a 1980 population of 2,920 people. By 2000, the Wilsonville population had ballooned to 13,991 people, most of who reside in Clackamas County (Reference 1).

Exhibit G

Seely Ditch, which flows southerly, is a minor tributary of the Willamette River. It extends approximately 5.2 miles from its origin to Willamette River. The total drainage area of Seely Ditch is 8.2 square miles.

Boeckman Creek, also a tributary of the Willamette River, flows southerly through Wilsonville. It extends approximately 4.2 miles and has a total drainage area of approximately 2.0 square miles.

Corral Creek, also a tributary flowing southeasterly to the Willamette River, is 6.8 miles long and has a total drainage area of 10.9 square miles.

Approximately 19 percent of the city has been developed. Within, the flood plains studied, development is residential, commercial, and light industrial.

The terrain in the Wilsonville area is generally flat, with slopes of less than 3 percent. There are some areas of low, gently rolling hills. Soil consists of a large deposit of lacustrine gravel (bouldry pebble and cobble gravel in silt and coarse sand) for approximately 1 mile north of Willamette River. A young alluvium (sand and clay) has been deposited over Willamette silt (unconsolidated sediments, silt, and fine sand) along stream banks and floodplain areas. A wide variety of trees is common in the area. This includes ash, cottonwood, maple, willow, dogwood, oak, Douglas fir, hemlock, cedar, sycamore, and poplar. A variety of grasses and smaller plants forms the understory. Undergrowth, bushes, and trees are especially dense along the Willamette River, Boeckman Creek, and Seeley Ditch (Reference 4).

2.0 Area Studied
2.3 Principal Flood Problems

Exhibit G

a estimated flow of 590,000 cfs at West Linn. Many large floods have occurred since then. The next 5 largest floods, in order of descending magnitude, occurred in February 1890, December 1964, January 1923, January 1943, and December 1955. The Willamette River flood of December 2964, had it not been regulated by upstream storage projects, would have been approximately equal to the 1861 flood. The December 1964 flood reached approximately a 1 %-annual-chance magnitude and had a peak flow at West Linn of 403,000 cfs. A corresponding crest elevation of 70.1 feet MSL, 1947 adjustment, was recorded at the Willamette Falls upper gage.

The December 1964 flood caused considerable damage to the study area. The paper mill on Moores Island and those low lying residences in were especially hard hit.

City of Wilsonville

Floods have been observed on Seely Ditch, and Boeckman and Corral Creeks; however, there are no gaging stations on these streams, and as a result, no records of major floods are available.

2.4 Flood Protection Measures

Willamette River flood stages have been reduced significantly by 14 storage projects operated by the USACE. These projects have been placed in operation since 1942 and provide a total flood-storage capacity of 1.7 million acre-feet. Three more reservoirs are authorized and are in preliminary planning stages as of 2005.

The Tualatin River basin has one multipurpose storage project available for flood control. Henry Hagg Lake Project, constructed by the U.S. Bureau of Reclamation, began operation during the 1974—75 flood seasons. It provides 30,000 acre-feet of flood storage, starting in November of each year. The flood-storage capacity is reduced as the winter flood season terminates, and the reservoir is filled each spring in anticipation of the summer irrigation demand. The effect of the Henry Hagg Lake Project on flood storage has been considered in the calculation of water-surface profiles for the segment of the Tualatin River near the City of Lake Oswego. Located approximately 50 miles upstream, this storage facility is distant enough that the effect it would have on the 1- and 0.2-percent-annual-chance floods is negligible. The U.S. Bureau of Reclamation has completed a draft feasibility study of two alternative storage projects on the Tualatin River near the Town of Gaston that could provide additional flood storage in the Tualatin River basin. Those projects, however, are still in the planning stages and are not reflected in this study.

There are no flood control structures on Johnson, Kellogg, or Mount Scott Creeks. In an effort to reduce flood losses, The City of Milwaukie has established a flood hazard zoning ordinance that requires planning commission approval for building permits within the 1%-annual-chance flood plain. When reviewing a building permit application, the planning commission considers such factors as the danger to life and property due to increased flood heights or velocities caused by encroachments, the ability of water supply and sanitation systems to prevent unsanitary conditions, and the availability of alternative locations not subject to flooding (Reference 10).

Regulatory measures have been adopted by the City of Oregon City to guide new development in the floodplain consistent with the hazards involved (Reference 11). Finished floors must be at least 2 feet higher than the 1%-annual-chance flood, and development within the floodway which would hinder flow is not permitted.

Table 3- Summary of Discharges

Flooding Source and Location	Drainage Area (Square Miles)	Peak Discharge (cfs) 10-Percent-Annual-Chance	2-Percent-Annual-Chance	1-Percent-Annual-Chance	0 2-Percent-Annual-Chance
Salmon River North Channel					
At divergence from Salmon River	--	4,500	7,200	8,500	12,000
Sandy River					
Upstream of confluence with Alder Creek	251 5	25,700	38,000	43,700	58,200
Upstream of confluence with Clear Creek	42 7	5,800	8,500	9,800	12,900
Seely Ditch					
At confluence with Willamette River	8 2	720	1,120	1,300	1,850
Still Creek					
At mouth	23 0	3,400	5,000	5,700	7,600
Tickle Creek					
At downstream study limit (Approximately 2,600 feet downstream of Northeast 362nd Street)	3 9	368	549	633	807
Upstream of confluence with Unnamed Tributary (Highway 211)	1 7	176	263	303	388
Tualatin River					
Downstream of confluence with Oswego Canal	690 0	15,000	20,740	23,455	29,370
Willamette River					
At Milwaukie	11,130	251,000	329,000	375,000	495,000
At Willamette Locks Upper Gage	10,100	219,000	295,000	341,000	469,000
At Fish Eddy	9,300	209,200	284,200	328,000	457,000
At downstream of Wilsonville corporate limits	8,400	178,000	250,000	287,000	420,000
Zig Zag River					
At mouth	60.0	7,800	11,500	13,100	17,400
Upstream of confluence with Still Creek	30.0	4,300	6,300	9,800	10,400

Data not available

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Exhibit G

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER SURFACE ELEVATION			
CROSS SECTION	DISTANCE[1]	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY	WITH FLOODWAY	INCREASE
						FEET (NAVD)		
SEELY DITCH								
A	80	26	109	12.0	94.4	69.8[2]	69.8[2]	0.0
B	160	27	116	11.2	94.4	73.6[2]	74.0[2]	0.4
C	390	30	172	7.6	94.4	78.0[2]	79.0[2]	1.0
D	610	28	150	8.7	94.4	80.6[2]	81.6[2]	1.0
E	800	30	121	10.7	94.4	85.1[2]	85.2[2]	0.1
F	1,060	36	141	9.2	94.4	91.6[2]	91.9[2]	0.3
G	1,200	39	171	7.6	94.4	93.8[2]	94.8[2]	1.0
H	1,325	35	122	10.6	98.4	98.4	98.5	0.1
I	1,440	32	120	10.8	103.1	103.1	103.9	0.8
J	1,640	25	109	11.9	113.4	113.4	113.7	0.3
K	1,785	28	116	11.2	120.0	120.0	120.0	0.0
L	1,895	29	120	10.9	126.1	126.1	126.1	0.0
M	2,060	21	107	12.2	130.5	130.5	131.1	0.6
N	2,200	58	452	2.9	138.3	138.3	138.5	0.2
O	2,515	53	372	3.5	138.4	138.4	138.6	0.2
P	3,180	48	271	4.8	139.7	139.7	139.7	0.0
Q	3,400	50	303	4.3	142.1	142.1	142.1	0.0
R	3,760	48	253	5.1	142.3	142.3	142.3	0.0
S	3,900	62	474	2.6	145.6	145.6	145.6	0.0
T	4,235	51	367	3.3	145.6	145.6	145.6	0.0
U	4,450	56	384	3.2	145.7	145.7	145.7	0.0
V	4,755	48	354	3.4	145.8	145.8	145.8	0.0
W	5,375	99	526	2.3	146.1	146.1	146.1	0.0
X	6,005	153	645	1.9	146.2	146.2	146.3	0.1

[1] Stream distance in feet above confluence with Willamette River

[2] Water surface elevations computed without consideration of backwater effects from Willamette River

TABLE 3

FEDERAL EMERGENCY MANAGEMENT AGENCY
CLACKAMAS COUNTY, OR
AND INCORPORATED AREAS

FLOODWAY DATA

SEELY DITCH

Exhibit G

Exhibit G

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER-SURFACE ELEVATION			
CROSS SECTION	DISTANCE[1]	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY	WITH FLOODWAY	INCREASE
					FEET (NAVD)			
WILLAMETTE RIVER								
A	91,661	964/507[2]	58,628	6.4	34.7	34.7	35.4	0.7
B	94,161	985/490[2]	63,554	5.9	35.3	35.3	36.0	0.7
C	96,691	815/373[2]	56,043	7.3	35.6	35.6	36.3	0.7
D	98,381	1,325/745[2]	85,767	4.4	36.3	36.3	37.0	0.7
E	100,861	1,519/1,020[2][3]	63,590	5.9	36.4	36.4	37.0	0.6
F	104,979	955	52,697	7.1	36.7	36.7	37.4	0.7
G	105,719	778	47,756	7.9	36.7	36.7	37.4	0.7
H	106,469	1,005	62,300	6.0	37.4	37.4	38.1	0.7
I	110,312	895	43,115	8.7	37.6	37.6	38.1	0.5
J	111,912	550	44,879	8.4	38.1	38.1	38.9	0.8
K	113,540	520	31,029	12.1	39.3	39.3	40.0	0.7
L	115,130	820	54,496	6.9	42.7	42.7	43.4	0.7
M	118,034	578	37,630	10.0	44.0	44.0	44.7	0.7
N	122,034	1,440	64,809	5.8	46.1	46.1	46.8	0.7
O	125,434	800	46,296	8.1	46.2	46.2	46.9	0.7
P	126,834	1,370	55,501	6.8	46.8	46.8	47.5	0.7
Q	129,034	1,230	52,785	7.1	47.2	47.2	47.9	0.7
R	131,034	1,335	48,241	7.8	47.7	47.7	48.4	0.7
S	143,020	888	42,725	8.0	74.5	74.5	74.7	0.2
T	145,970	1,040	47,541	7.2	74.9	74.9	75.1	0.2
U	149,170	1,050	51,473	6.6	75.2	75.2	75.3	0.1
V	165,070	665	31,973	10.3	84.3	84.3	85.3	1.0
W	168,300	1,450	66,319	4.9	86.4	86.4	87.3	0.9
X	170,950	1,057	47,397	6.9	86.6	86.6	87.5	0.9
Y	174,825	1,100	52,109	6.3	87.5	87.5	88.4	0.9
Z	176,685	705	37,988	8.6	87.5	87.5	88.4	0.9

[1] Stream distance in feet above mouth

[2] Width/width within study area

[3] Values calculated from original model prior redelineation

TABLE 3

FEDERAL EMERGENCY MANAGEMENT AGENCY
CLACKAMAS COUNTY, OR
AND INCORPORATED AREAS

FLOODWAY DATA

WILLAMETTE RIVER

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER-SURFACE ELEVATION			
CROSS SECTION	DISTANCE[1]	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY (FEET NAVD)	WITH FLOODWAY (FEET NAVD)	INCREASE
WILLAMETTE RIVER								
AA	180,960	818	36,339	9.0	88.7	88.7	89.5	0.8
AB	184,535	760	33,080	9.9	89.8	89.8	90.6	0.8
AC	188,435	2,740[2]	35,841	8.0	91.7	91.7	92.5	0.8
AD	193,410	750	43,652	6.6	92.8	92.8	93.6	0.8
AE	200,200	747	42,342	6.8	93.6	93.6	94.3	0.7
AF	203,665	710	42,872	6.7	94.2	94.2	95.0	0.8
AG	205,610	731	38,605	7.4	94.5	94.5	95.3	0.8
AH	209,645	716	38,580	7.4	95.3	95.3	96.1	0.8
AI	213,795	690	42,290	6.7	96.1	96.1	97.0	0.9
AJ	217,760	680	41,838	6.9	96.6	96.6	97.5	0.9
AK	221,910	710/305[3]	43,332	6.6	97.2	97.2	98.1	0.9
AL	223,590	730/305[3]	43,718	6.6	97.4	97.4	98.3	0.9
AM	225,235	700/227[3]	43,336	6.6	97.6	97.6	98.4	0.8
AN	227,010	709/257[3]	43,605	6.6	97.8	97.8	98.6	0.8
AO	228,615	680/297[3]	39,287	7.3	97.9	97.9	98.7	0.8

[1] Stream distance in feet above mouth.

[2] Width includes portion of Molalla River floodway

[3] Width/width within study area

TABLE 3

FEDERAL EMERGENCY MANAGEMENT AGENCY

CLACKAMAS COUNTY, OR
AND INCORPORATED AREAS

FLOODWAY DATA

WILLAMETTE RIVER

[redacted]

Exhibit G

Planning Commission – March 12, 2008
LP08-0002 FEMA
Page 63 of 68

COMMUNITY NAME	INITIAL IDENTIFICATION	FLOOD HAZARD BOUNDARY MAP REVISION DATE(S)	FLOOD INSURANCE RATE MAP EFFECTIVE DATE	FLOOD INSURANCE RATE MAP REVISION DATE(S)
Barlow, City of	January 10, 1975	November 28, 1975	May 5, 1981	
Canby, City of	November 16, 1973		June 15, 1984	
Damascus, City of				
Estacada, City of	April 5, 1974			
Gladstone, City of	June 25, 1976			
Happy Valley, City of	December 20, 1974		December 4, 1979	
Johnson, City of				
Lake Oswego, City of	June 14, 1974	June 11, 1976	August 4, 1987	
Milwaukie, City of	April 5, 1974	May 25, 1982		
Molalla, City of		June 25, 1976	June 18, 1980	
Oregon City, City of	December 28, 1973			
Rivergrove, City of	December 6, 1974	June 4, 1976	February 15, 1980	
Sandy, City of	April 12, 1974	April 22, 1977	August 4, 1987	
West Linn, City of	December 17, 1973	December 19, 1975	December 11, 1979	July 19, 2000
Wilsonville, City of	August 20, 1976			
Unincorporated Areas	March 29, 1974	August 6, 1976	January 6, 1982	
	March 1, 1978		March 1, 1978	August 4, 1987

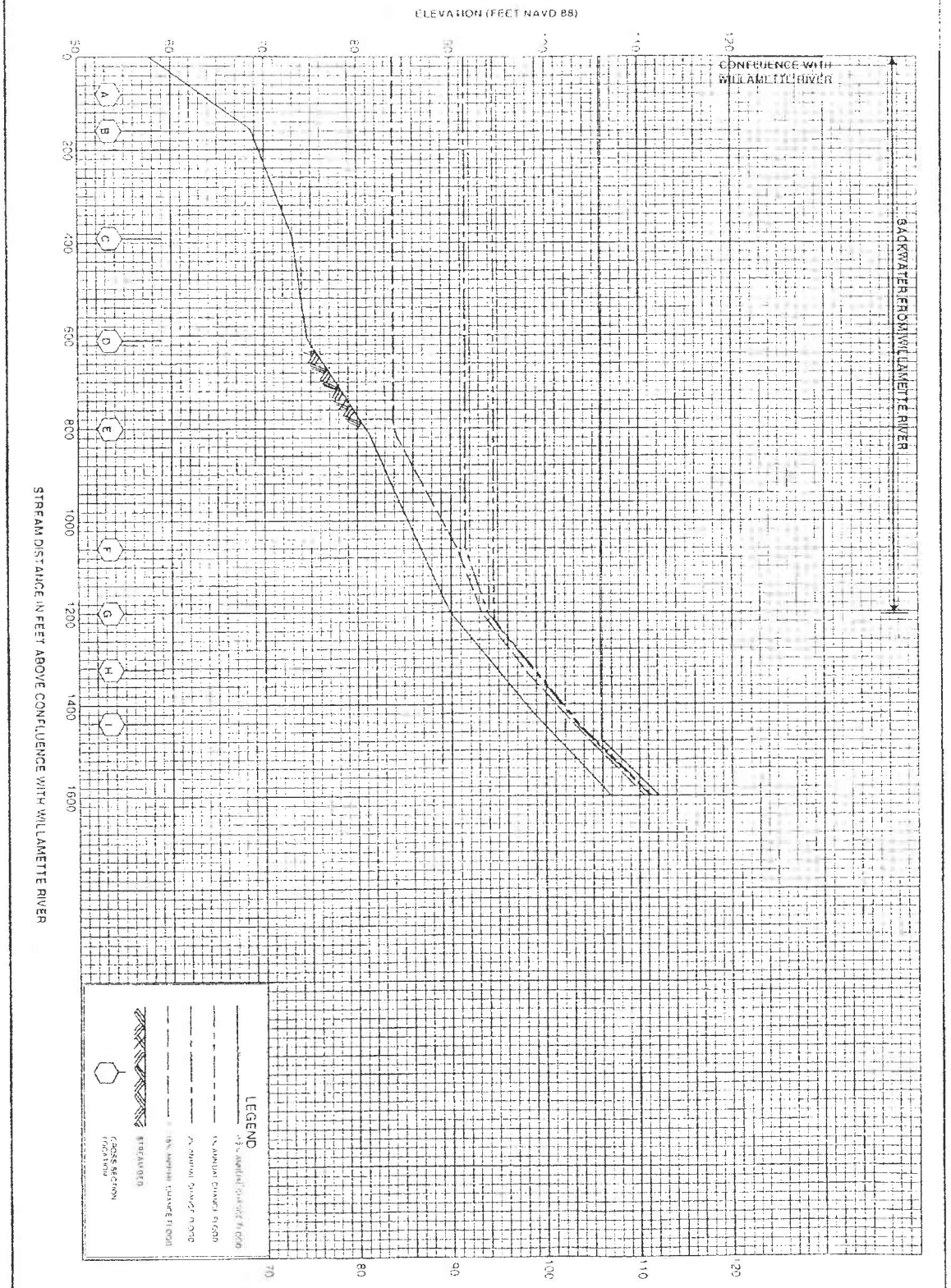
TABLE 6

FEDERAL EMERGENCY MANAGEMENT AGENCY

CLACKAMAS COUNTY, OR
AND INCORPORATED AREAS

COMMUNITY MAP HISTORY

Exhibit G



127P	FEDERAL EMERGENCY MANAGEMENT AGENCY CLACKAMAS COUNTY, OR AND INCORPORATED AREAS	FLOOD PROFILES SEELY DITCH

Exhibit G

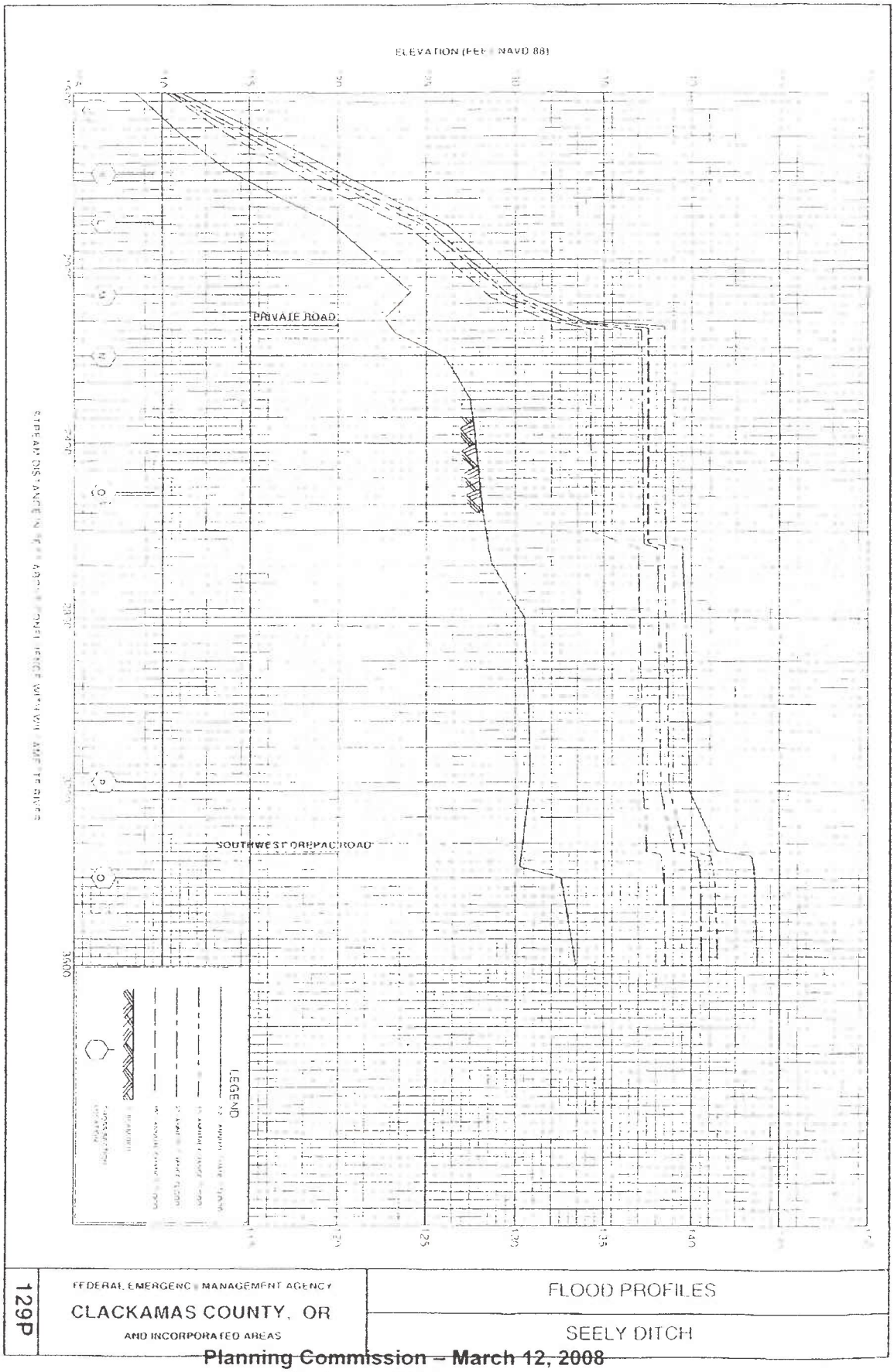
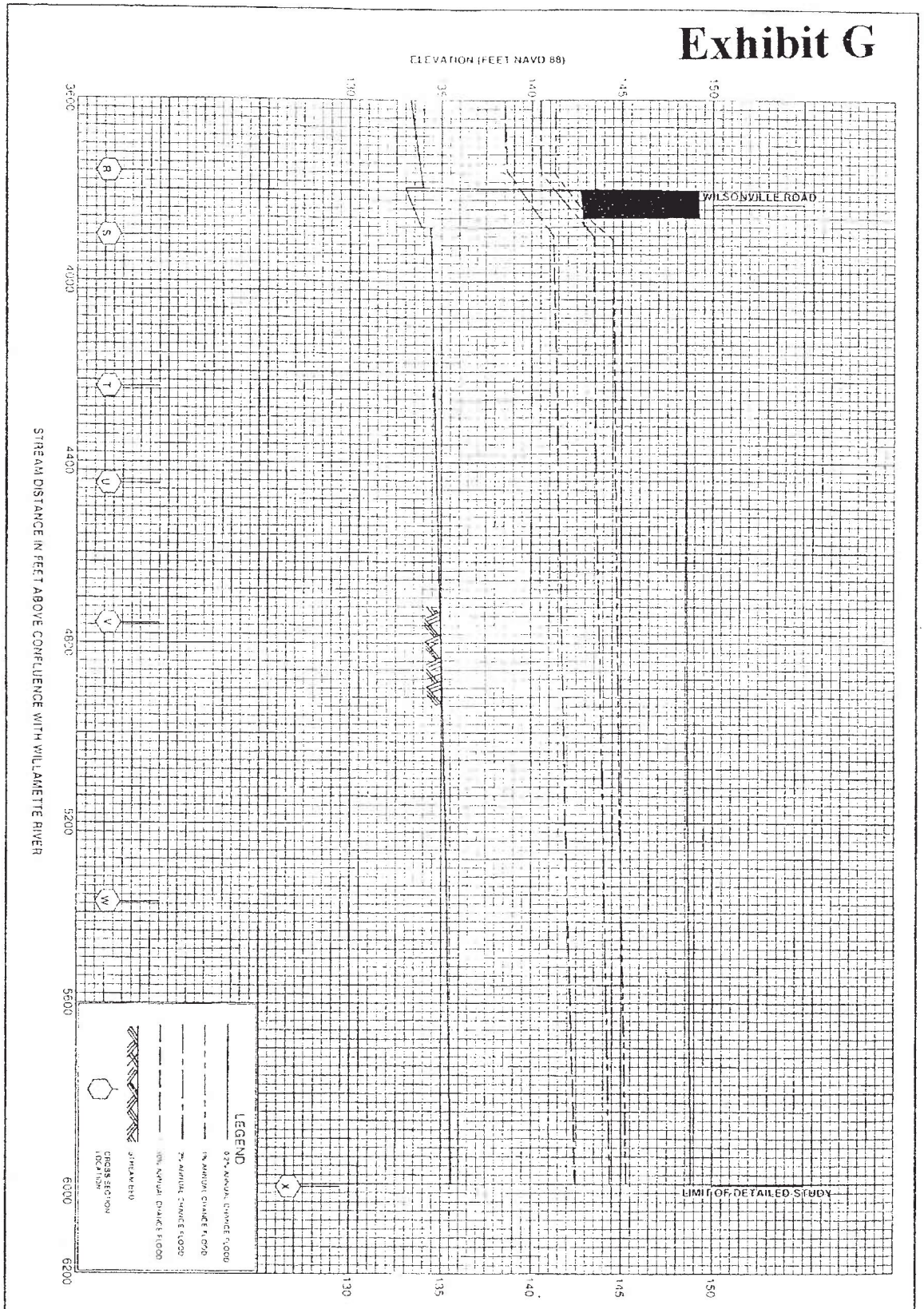
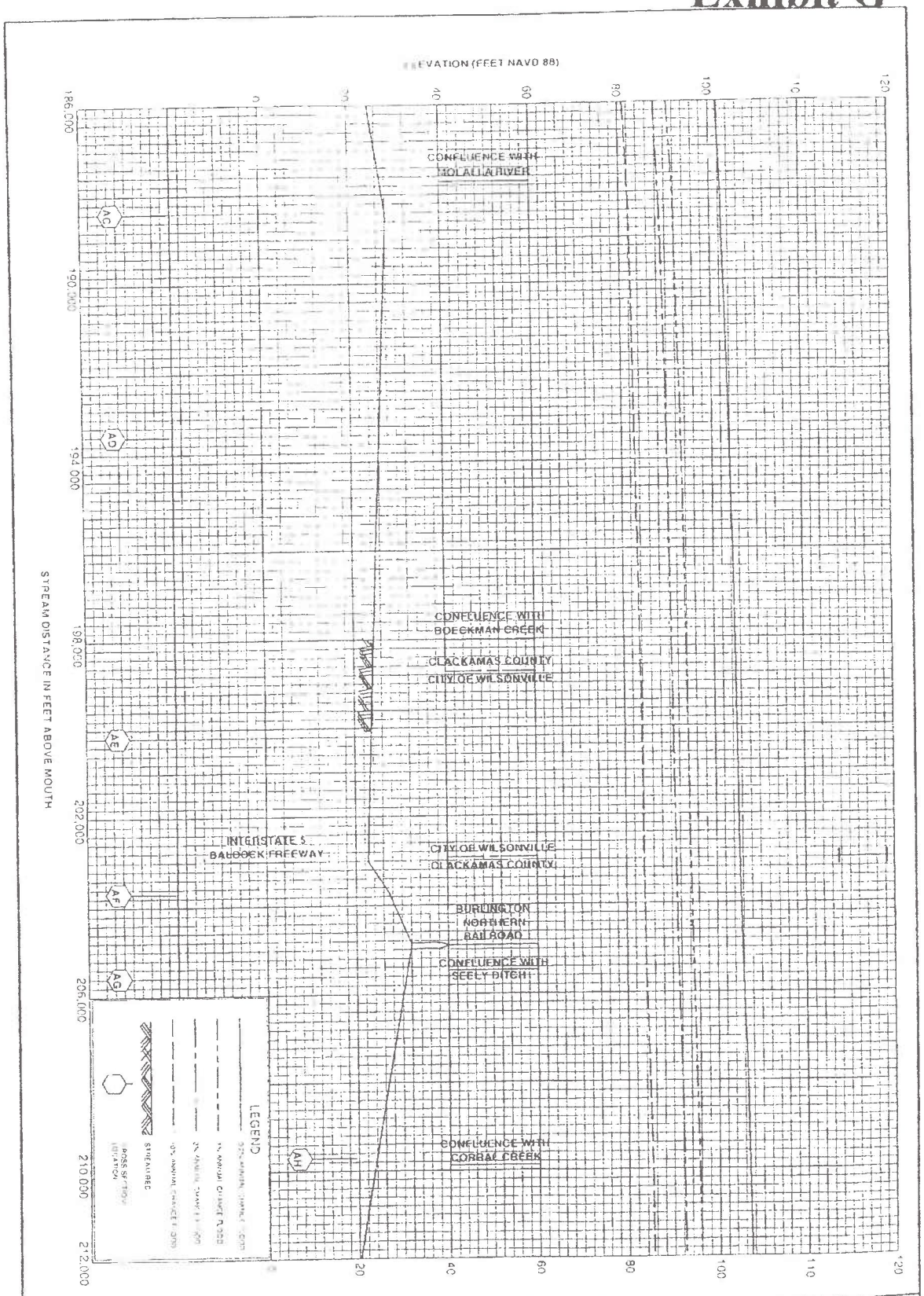

ELEVATION (FEET - NAVD 88)
PRIVATE ROAD
SOUTHWEST ORIEPAC ROAD
LEGEND
129P
FEDERAL EMERGENCY MANAGEMENT AGENCY
CLACKAMAS COUNTY, OR
AND INCORPORATED AREAS
FLOOD PROFILES
SEELY DITCH

Exhibit G



129P	FEDERAL EMERGENCY MANAGEMENT AGENCY CLACKAMAS COUNTY, OR AND INCORPORATED AREAS	FLOOD PROFILES SEELY DITCH



154P	FEDERAL EMERGENCY MANAGEMENT AGENCY CLACKAMAS COUNTY, OR AND INCORPORATED AREAS	FLOOD PROFILES WILLAMETTE RIVER

Due to its size,

Exhibit A of LP08-0002 FEMA:

Letter from William Blanton to Mayor Lehan dated December 17, 2008; Final Summary of Map Actions; NFIP Elevation Certificate and Instructions; and FEMA NFIP Regulations.

Is distributed separately.

LP08-0002

Exhibit A

Federal Emergency Management Agency

Washington, D.C. 20472

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
19P-N

December 17, 2007

The Honorable Charlotte Lehan
Mayor, City of Wilsonville
30000 Southwest Town Center Loop E
Wilsonville, OR 97070

Community: City of Wilsonville, Oregon
Community No.: 410025
Map Panels Affected: 41005C0234D, 0241D, 0242D, 0244D, 0250D, 0261D

Dear Mayor Lehan:

This is to formally notify you of the final flood hazard determination for your community in compliance with Title 44, Chapter I, Part 67, Code of Federal Regulations. On February 19, 1987, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) issued a Flood Insurance Rate Map (FIRM) that identified the Special Flood Hazard Areas (SFHAs) the areas subject to inundation by the base (1-percent-annual-chance) flood in the City of Wilsonville, Clackamas County, Oregon. Recently, FEMA completed a re-evaluation of flood hazards in your community. On September 29, 2006, FEMA provided you with Preliminary copies of the Flood Insurance Study (FIS) report and FIRM that identify existing flood hazards in your community.

FEMA has addressed all comments received on the Preliminary copies of the FIS report and FIRM. Accordingly, the FIS report and FIRM for your community will become effective on June 17, 2008. Before the effective date, FEMA will send you final printed copies of the FIS report and FIRM.

Because the FIS for your community has been completed, certain additional requirements must be met under Section 1361 of the National Flood Insurance Act of 1968, as amended, within 6 months from the date of this letter. Prior to June 17, 2008, your community is required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Paragraph 60.3(d) of the enclosed NFIP regulations (44 CFR 59, etc.). These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

It must be emphasized that all the standards specified in Paragraph 60.3(d) of the NFIP regulations must be enacted in a legally enforceable document. This includes adoption of the current effective FIS report and FIRM to which the regulations apply and the other modifications made by this map revision. Some of the standards should already have been enacted by your community in order to establish eligibility in the NFIP. Any additional requirements can be met by taking one of the following actions:

1. Amending existing regulations to incorporate any additional requirements of Paragraph 60.3(d).

2. Adopting all the standards of Paragraph 60.3(d) into one new, comprehensive set of regulations, or

3. Showing evidence that regulations have previously been adopted that meet or exceed the minimum requirements of Paragraph 60.3(d).

Rec'd 12/26/07

Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Flood Disaster Protection Act of 1973 as amended.

In addition to your community using the FIS report and FIRM to manage development in the floodplain, FEMA will use the FIS report to establish appropriate flood insurance rates. On the effective date of the revised FIRM, actuarial rates for flood insurance will be charged for all new structures and substantial improvements to existing structures located in the identified SFHAs. These rates may be higher if structures are not built in compliance with the floodplain management standards of the NFIP. The actuarial flood insurance rates increase as the lowest elevations (including basement) of new structures decrease in relation to the Base Flood Elevations established for your community. This is an important consideration for new construction because building at a higher elevation can greatly reduce the cost of flood insurance.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions to document previous Letter of Map Change (LOMC) actions (i.e., Letters of Map Amendment, Letters of Map Revision) that will be superseded when the revised FIRM panels referenced above become effective. Information on LOMCs is presented in the following four categories: (1) LOMCs for which results have been included on the revised FIRM panels; (2) LOMCs for which results could not be shown on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lots or structures involved were outside the SFHA as shown on the FIRM; (3) LOMCs for which results have not been included on the revised FIRM panels because the flood hazard information on which the original determinations were based is being superseded by new flood hazard information; and (4) LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures cannot be revalidated through an administrative process like the LOMCs in Category 2 above. LOMCs in Category 2 will be revalidated through a single letter that reaffirms the validity of a previously issued LOMC; the letter will be sent to your community shortly before the effective date of the revised FIRM and will become effective 1 day after the revised FIRM becomes effective. For the LOMCs listed in Category 4, we will review the data previously submitted for the LOMA or LOMR request and issue a new determination for the affected properties after the revised FIRM becomes effective.

The FIRM and FIS report for your community have been prepared in our countywide format, which means that flood hazard information for all jurisdictions within Clackamas County has been combined into one FIRM and FIS report. When the FIRM and FIS report are printed and distributed, your community will receive only those panels that present flood hazard information for your community. We will provide complete sets of the FIRM panels to county officials, where they will be available for review by your community.

The FIRM panels have been computer-generated. Once the FIRM and FIS report are printed and distributed, the digital files containing the flood hazard data for the entire county can be provided to your community for use in a computer mapping system. These files can be used in conjunction with other thematic data for floodplain management purposes, insurance purchase and rating requirements, and many other planning applications. Paper copies of the FIRM panels may be obtained by calling our Map Service Center, toll free, at 1-800-358-9616. Copies of the digital files may be obtained by calling our Map Assistance Center, toll free, at 1-877-FEMA MAP (1-877-336-2627). In addition, your community may be eligible for additional credits under our Community Rating System if you implement your activities using digital mapping files.

If your community is encountering difficulties in enacting the necessary floodplain management measures, we urge you to call the Division Director, Federal Insurance and Mitigation Division of FEMA in Bothell, Washington, at 425-587-4687for assistance. If you have any questions concerning mapping issues in general or the enclosed Summary of Map Actions please call Debi Heiden, Senior Projects Manager for the Regional Management Center (RMC 10), at 206-344-3891. You may also call FEMA's Map Assistance Center; toll free, at 1-877-FEMA MAP (1-877-336-2627).

Sincerely,

William R Blanton Jr

William R. Blanton Jr., CFM, Chief
Engineering Management Branch
Mitigation Directorate

List of Enclosures:

National Flood Insurance Program Elevation Certificate and Instructions
Frequently Asked Questions Regarding the Effect That Revised Flood Hazards Have on Existing Structures
Lowest Floor Elevation Certifications for Flood Insurance Post Flood Insurance Rate Map Construction
Use of Flood Insurance Study (FIS) Data as Available Data
National Flood Insurance Program Regulations
Final Summary of Map Actions

cc: City of Wilsonville City Hall

Mr. Martin Brown
Building Official

FINAL SUMMARY OF MAP ACTIONS

Community: WILSONVILLE, CITY OF Community No 410025

To assist your community in maintaining the Flood Insurance Rate Map (FIRM), we have summarized below the previously issued Letter of Map Change (LOMC) actions (i.e., Letters of Map Revision (LOMRs) and Letters of Map Amendment (LOMAs)) that will be affected when the revised FIRM becomes effective on 06/17/2008.

1. LOMCs Incorporated

The modifications effected by the LOMCs listed below will be reflected on the revised FIRM. In addition, these LOMCs will remain in effect until the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
			NO CASES RECORDED		

2. LOMCs Not Incorporated

The modifications effected by the LOMCs listed below will not be reflected on the revised FIRM panels because of scale limitations or because the LOMC issued had determined that the lot(s) or structure(s) involved were outside the Special Flood Hazard Area, as shown on the FIRM. These LOMCs will remain in effect until the revised FIRM becomes effective. These LOMCs will be revalidated free of charge 1 day after the revised FIRM becomes effective through a single revalidation letter that reaffirms the validity of the previous LOMCs.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMR-F	93-10-039A	06/03/1993	LACI PARK NO 2 LOT 21 -- 10136 EVERGREEN COURT	4100250004C	41005C0242D
LOMR-F	94-10-014A	02/23/1994	LACI PARK NO. 2, LOT 22 10148 SW EVERGREEN COURT	4100250004C	41005C0242D
LOMR-F	95-10-014A	02/23/1994	LACI PARK NO. 2, LOT 22-- 10148 SOUTHWEST EVERGREEN COURT	4100250004C	41005C0242D
LOMA	97-10-160A	04/11/1997	LLAHEE APTS A PORT. OF THE SE1/4OF SEC 23 & THE SW1/4 T3S R1W W.M.	4100250004C	41005C0242D
LOMA	97-10-161A	04/18/1997	FRENCH PRAIRIE VILLAGE APARTMENTS PORTION OF THE SE1/4 OF SECTION 23 AND THE SW 1/4 OF SECTION 24,T3	4100250005B	41005C0242D
LOMA	98-10-229A	05/07/1998	FRENCH PRAIRIE VILLAGE APARTMENTS, BLDGS 8305, 8315, 8325, 8400, 8405, 8410, 8420, 8430, & SALES PA	4100250004C	41005C0242D
LOMA	98-10-265A	05/07/1998	LLAHEE APTS POT OF SEC 23 & 24 T3S R1W W.M. BLDGS A & B FACILITIES RECREATION BLDG	4100250004C	41005C0242D
LOMA	98-10-319A	06/19/1998	FRENCH PRAIRIE VILLAGE APTS. BLDGS 8455 & 8515,PORTIONS OF SECTIONS 23 & 24 T3S,R1W,W.M.	4100250004C	41005C0242D

FINAL SUMMARY OF MAP ACTIONS

Community: WILSONVILLE, CITY OF Community No: 410025

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
LOMA	02-10-463A	05/29/2002	EDGEWATER AT CHARBONNEAU LOT 26 -- 8123 SW EDGEWATER DRIVE WEST	4100250005B	41O05C0242D
LOMA	03-10-0169A	02/19/2003	30577 SW ROSE LANE -- PORTION OF S.D. WINKLER DLC NO. 44, SECTION 24, T3S, R1W, W.M.	4100250005B	41O05C0242D
LOMA	04-10-0121A	12/16/2003	JACI PARK NO. 2, LOT 19 -- 10112 SW EVERGREEN COURT	4100250004C	41O05C0242D

3. LOMCs Superseded

The modifications effected by the LOMCs listed below have not been reflected on the Final revised FIRM panels because they are being superseded by new detailed flood hazard information or the information available was not sufficient to make a determination. The reason each is being superseded is noted below. These LOMCs will no longer be in effect when the revised FIRM becomes effective.

LOMC	Case No.	Date Issued	Project Identifier	Reason Determination Will be Superseded
			NO CASES RECORDED	

1. Insufficient information available to make a determination.
2. Lowest Adjacent Grade and Lowest Finished Floor are below the proposed Base Flood Elevation.
3. Lowest Ground Elevation is below the proposed Base Flood Elevation.
4. Revised hydrologic and hydraulic analyses.
5. Revised topographic information.

4. LOMCs To Be Redetermined

The LOMCs in Category 2 above will be revalidated through a single revalidation letter that reaffirms the validity of the determination in the previously issued LOMC. For LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures has changed, the LOMC cannot be revalidated through this administrative process. Therefore, we will review the data previously submitted for the LOMC requests listed below and issue a new determination for the affected properties after the effective date of the revised FIRM.

LOMC	Case No.	Date Issued	Project Identifier	Old Panel	New Panel
			NO CASES RECORDED		



FEMA

National Flood Insurance Program

Elevation Certificate

and

Instructions

NATIONAL FLOOD INSURANCE PROGRAM
ELEVATION CERTIFICATE

PAPERWORK BURDEN DISCLOSURE NOTICE

FEMA Form 81-31

The public reporting burden for this form is estimated to be 3.0 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing this burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (3067-0077). NOTE: Please do not send your completed form to the above address.

PURPOSE OF THE ELEVATION CERTIFICATE

The Elevation Certificate is an important administrative tool of the National Flood Insurance Program (NFIP). It is to be used to provide elevation information necessary to ensure compliance with community floodplain management ordinances, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment or Revision (LOMA or LOMR-F).

The Elevation Certificate is required in order to properly rate post-FIRM buildings, which are buildings constructed after publication of the Flood Insurance Rate Map (FIRM), for flood insurance Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO. The Elevation Certificate is not required for pre-FIRM buildings unless the building is being rated under the optional post-FIRM flood insurance rules.

As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance that specifies minimum requirements for reducing flood losses. One such requirement is for the community to obtain the elevation of the lowest floor (including basement) of all new and substantially improved buildings and maintain a record of such information. The Elevation Certificate provides a way for a community to comply with this requirement.

Use of this certificate does not provide a waiver of the flood insurance purchase requirement. Only a LOMA or LOMR-F from the Federal Emergency Management Agency (FEMA) can amend the FIRM and remove the Federal mandate for a lending institution to require the purchase of flood insurance. However, the lending institution has the option of requiring flood insurance even if a LOMA/LOMR-F has been issued by FEMA. The Elevation Certificate may be used to support a LOMA or LOMR-F request. Lowest floor and lowest adjacent grade elevations certified by a surveyor or engineer will be required if the certificate is used to support a LOMA or LOMR-F request.

This certificate is used only to certify building elevations. A separate certificate is required for floodproofing. Under the NFIP, non-residential buildings can be floodproofed up to or above the Base Flood Elevation (BFE). A floodproofed building is a building that has been designed and constructed to be watertight (substantially impermeable to floodwaters) below the BFE. Floodproofing of residential buildings is not permitted under the NFIP unless FEMA has granted the community an exception for residential floodproofed basements. The community must adopt standards for design and construction of floodproofed basements before FEMA will grant a basement exception. For both floodproofed non-residential buildings and residential floodproofed basements in communities that have been granted an exception by FEMA, a floodproofing certificate is required.

FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

O.M.B. No. 3067-0077
Expires December 31, 2005

ELEVATION CERTIFICATE

Important: Read the instructions on pages 1 - 7.

SECTION A - PROPERTY OWNER INFORMATION

For Insurance Company Use:

BUILDING OWNER'S NAME — Policy Number

BUILDING STREET ADDRESS (Including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. — Company NAIC Number

CITY — STATE — ZIP CODE

PROPERTY DESCRIPTION (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)

BUILDING USE (e.g., Residential, Non-residential, Addition, Accessory, etc. Use a Comments area, if necessary.)

LATITUDE/LONGITUDE (OPTIONAL) ##° - ## - ##.##" or ##.#####°) HORIZONTAL DATUM: |__| NAD 1927 |__| NAD 1983 SOURCE: |__| GPS (Type): _____ |__| USGS Quad Map |__| Other _____

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP COMMUNITY NAME & COMMUNITY NUMBER	B2. COUNTY NAME	B3. STATE

B4. MAP AND PANEL NUMBER	B5. SUFFIX	B6. FIRM INDEX DATE	B7. FIRM PANEL EFFECTIVE/REVISED DATE	B8. FLOOD ZONE(S)	B9. BASE FLOOD ELEVATION(S) (Zone AO, use depth of flooding)

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in B9.
|__| FIS Profile |__| FIRM |__| Community Determined |__| Other (Describe): _____
Indicate the elevation datum used for the BFE in B9: |__| NGVD 1929 |__| NAVD 1988 |__| Other (Describe): _____
B11. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? |__| Yes |__| No
Designation Date: _____

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

Building elevations are based on: |__| Construction Drawings* |__| Building Under Construction* |__| Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.
C1. Building Diagram Number _____ (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)
C2. Elevations – Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO
Complete Items C3.a-i below according to the building diagram specified in Item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion.
Datum _____ Conversion/Comments _____
Elevation reference mark used _____ Does the elevation reference mark used appear on the FIRM? |__| Yes |__| No

- ☐ a) Top of bottom floor (including basement or enclosure) _____ ___ ft.(m)
- ☐ b) Top of next higher floor _____ ___ ft.(m)
- ☐ c) Bottom of lowest horizontal structural member (V zones only) _____ ___ ft.(m)
- ☐ d) Attached garage (top of slab) _____ ___ ft.(m)
- ☐ e) Lowest elevation of machinery and/or equipment servicing the building (Describe in a Comments area.) _____ ___ ft.(m)
- ☐ f) Lowest adjacent (finished) grade (LAG) _____ ___ ft.(m)
- ☐ g) Highest adjacent (finished) grade (HAG) _____ ___ ft.(m)
- ☐ h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade _____
- ☐ i) Total area of all permanent openings (flood vents) in C3.h _____ sq. in. (sq. cm)

License Number, Embossed Seal, Signature, and Date

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information.
I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available.
I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

CERTIFIER'S NAME — LICENSE NUMBER

TITLE — COMPANY NAME

ADDRESS — CITY — STATE — ZIP CODE

SIGNATURE — DATE — TELEPHONE

IMPORTANT: In these spaces, copy the corresponding information from Section A.	For Insurance Company Use:
BUILDING STREET ADDRESS (Including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO.	Policy Number:
CITY STATE ZIP CODE	Company NAIC Number:

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

|__| Check here if attachments.

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete Items E1. through E5. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMR-F, Section C must be completed.

E1. Building Diagram Number _____ (Select the building diagram most similar to the building for which this certificate is being completed – see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is |__|__| ft. (m) |__|__| in. (cm) |__| above or |__| below (check one) the highest adjacent grade. (Use natural grade, if available.)

E3. For Building Diagrams 6-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is |__|__| ft. (m) |__|__| in. (cm) above the highest adjacent grade. Complete Items C3.h and C3.i on front of form.

E4. The top of the platform of machinery and/or equipment servicing the building is |__|__| ft. (m) |__|__| in. (cm) |__| above or |__| below (check one) the highest adjacent grade. (Use natural grade, if available.)

E5. For Zone AO only. If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? |__| Yes |__| No |__| Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, C (Items C3.h and C3.i only), and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. *The statements in Sections A, B, C, and E are correct to the best of my knowledge.*

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME

ADDRESS CITY STATE ZIP CODE

SIGNATURE DATE TELEPHONE

COMMENTS

|__| Check here if attachments.

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. |__| The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)

G2. |__| A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.

G3. |__| The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER	G5. DATE PERMIT ISSUED	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED

G7. This permit has been issued for: |__| New Construction |__| Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building is: _____ ft. (m) Datum _____

G9. BFE or (in Zone AO) depth of flooding at the building site is: _____ ft. (m) Datum _____

LOCAL OFFICIAL'S NAME TITLE

COMMUNITY NAME TELEPHONE

SIGNATURE DATE

COMMENTS

|__| Check here if attachments.

INSTRUCTIONS FOR COMPLETING THE ELEVATION CERTIFICATE

The Elevation Certificate is to be completed by a land surveyor, engineer, or architect who is authorized by law to certify elevation information when elevation information is required for Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, or AR/AO. Community officials who are authorized by law or ordinance to provide floodplain management information may also complete this form. For Zones AO and A (without BFE), a community official, a property owner, or an owner's representative may provide information on this certificate, unless the elevations are intended for use in supporting a LOMA or LOMR-F. Certified elevations must be included if the purpose of completing the Elevation Certificate is to obtain a LOMA or LOMR-F.

In Puerto Rico only, elevations for building information and flood hazard information may be entered in meters.

SECTION A - PROPERTY OWNER INFORMATION

This section identifies the building, its location, and its owner. Enter the name(s) of the building owner(s), the building's complete street address, and the lot and block number. If the building's address is different from the owner's address, enter the address of the building being certified. If the address is a rural route or a Post Office box number, enter the lot and block numbers, the tax parcel number, the legal description, or an abbreviated location description based on distance and direction from a fixed point of reference. For the purposes of this certificate, "building" means both a building and a manufactured (mobile) home.

A map may be attached to this certificate to show the location of the building on the property. A tax map, FIRM, or detailed community map is appropriate. If no map is available, provide a sketch of the property location, and the location of the building on the property. Include appropriate landmarks such as nearby roads, intersections, and bodies of water. For building use, indicate whether the building is residential, non-residential, an addition to an existing residential or non-residential building, an accessory building (e.g., garage), or other type of structure. Use the Comments area of Section F if needed.

If latitude and longitude data are available, enter them in degrees, minutes, and seconds, or in decimal degrees, taken at the center of the front of the building. Enter arc seconds to two decimal places. Indicate the horizontal datum and the source of the measurement data (for example, taken with GPS, scaled from a USGS Quad Map, etc.).

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

Complete the Elevation Certificate on the basis of the FIRM in effect at the time of the certification.

The information for Section B is obtained by reviewing the FIRM panel that includes the building's location. Information about the current FIRM and a pamphlet titled "Guide to Flood Maps" are available from the Federal Emergency Management Agency (FEMA) website at http://www.fema.gov or by calling 1-800-427-4661. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F) has been issued by FEMA, please provide the letter date and case number in the Comments area of Section D or Section G, as appropriate.

Item B1. NFIP Community Name & Community Number. Enter the complete name of the community in which the building is located and the associated 6-digit community number. For a building that is in an area that has been annexed by one community but is shown on another community's FIRM, enter the community name and 6-digit number of the annexing community. For a newly incorporated community, use the name and 6-digit number of the new community. Under the NFIP, a "community" is any State or area or political subdivision thereof, or any Indian tribe or authorized native organization, that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. To determine the current community number, see the NFIP *Community Status Book*, available on FEMA's website at http://www.fema.gov or by calling 1-800-427-4661.

Item B2. County Name. Enter the name of the county or counties in which the community is located. For an unincorporated area of a county, enter "unincorporated area." For an independent city, enter "independent city."

Item B3. State. Enter the 2-letter state abbreviation (for example, VA, TX, CA).

Item B4. Map and Panel Number. Enter the 10-digit number shown on the FIRM panel where the building or manufactured (mobile) home is located. The first six digits will not match the NFIP community number 1) when the sixth digit is a "C," in which case the FIRM panel is in a countywide format, or 2) when one community has annexed land from another community but the FIRM panel has not been updated to reflect this annexation. If the sixth digit is a "C," it is followed by a four-digit map number. For maps not in countywide format, enter the "community panel number" shown on the FIRM.

Item B5. Suffix. Enter the suffix letter shown on the FIRM panel that includes the building's location.

Item B6. FIRM Index Date. Enter the effective date or map revised date shown on the FIRM Index.

Item B7. FIRM Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the FIRM panel. This will be the latest of all dates shown on the map. The current FIRM panel effective date can be determined by calling 1-800-427-4661.

Item B8. Flood Zone(s). Enter the flood zone, or flood zones, in which the building is located. All flood zones containing the letter "A" or "V" are considered Special Flood Hazard Areas. The flood zones are A, AE, A1-A30, V, VE, V1-V30, AH, AO, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO. Each flood zone is defined in the legend of the FIRM panel on which it appears.

Item B9. Base Flood Elevation(s). Using the appropriate Flood Insurance Study (FIS) Profile, Flood Elevation Table, or FIRM panel, locate the property and enter the BFE (or base flood depth) of the building site. If the building is located in more than one flood zone in Item B8, list all appropriate BFEs in Item B9. BFEs are shown on a FIRM or FIS Profile for Zones A1-A30, AE, AH, V1-V30, VE, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO; flood depth numbers are shown for Zone AO. Use the AR BFE if the building is located in any of Zones AR/A, AR/AE, AR/A1-A30, AR/AH, or AR/AO. In A or V zones where BFEs are not provided on the FIRM, the community may have established BFEs or obtained BFE data from other sources. For subdivisions and other developments of more than 50 lots or 5 acres, establishment of BFEs is required by the community's floodplain management ordinance. If the BFE is obtained from another source, enter the BFE in Item B9.

Item B10. Indicate the source of the BFE that you entered in Item B9.

Item B11. Indicate the elevation datum to which the elevations on the applicable FIRM are referenced.

Item B12. Indicate whether the building is located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA). Federal flood insurance is prohibited in designated CBRS areas for buildings or manufactured (mobile) homes built or substantially improved after the date of the CBRS designation. An information sheet explaining CBRS areas may be obtained on FEMA's website at http://www.fema.gov or by calling 1-800-427-4661.

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

Complete Section C if the building is located in any of Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, or AR/AO, or if this certificate is being used to support a LOMA or LOMR-F. If the building is located in Zone AO or Zone A (without BFE), complete Section E instead. To ensure that all required elevations are obtained, it may be necessary to enter the building (for instance, if the building has a basement or sunken living room, split-level construction, or machinery and equipment).

Surveyors may not be able to gain access to some crawl spaces to shoot the elevation of the crawl space floor. If access to the crawl space cannot be gained, use the following guidance:

- Use a yardstick or tape measure to measure the floor height to the "next higher floor," and then subtract the crawl space height from the elevation of the "next higher floor."
- Contact the local floodplain administrator of the community that the building is located in. The community may have documentation of the elevation of the crawl space floor as part of the permit issued for the building.
- If the property owner has documentation or knows the height of the crawl space floor to the next higher floor, try to verify this by looking inside the crawl space through any openings or vents.

In all three cases, provide the elevation in the Comments area and a brief description of how the elevation was obtained.

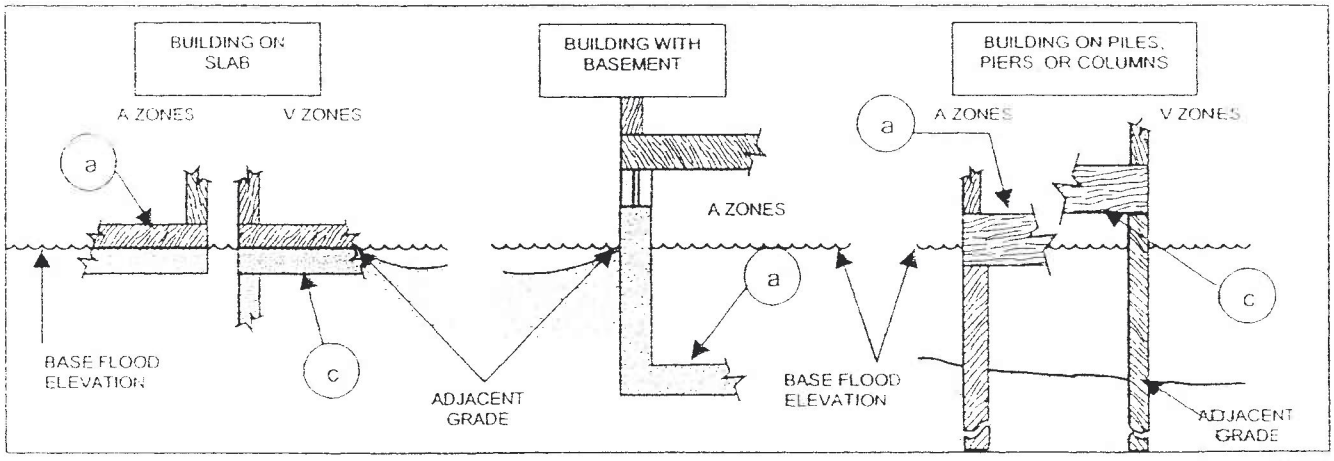
Item C1. Indicate whether the elevations to be entered in this section are based on construction drawings, a building under construction, or finished construction. For either of the first two choices, a post-construction Elevation Certificate will be

quired when construction is complete. If the building is under construction, include only those elevations that can be rveyed in Items C3.a-g. Use the Comments area to provide elevations obtained from the construction plans or drawings. lect "finished construction" only when all machinery and/or equipment—furnaces, hot water heaters, heat pumps, air nditioners, and elevators and their associated equipment—have been installed and the grading around the building is mpleted.

em C2. Select the diagram on pages 6 and 7 that best represents the building. Then enter the diagram number and use the agram to identify and determine the appropriate elevations requested in Items C3.a-g. If you are unsure of the correct agram, select the diagram that most closely resembles the building being certified, or provide a sketch or photograph of the ilding and enter all elevations in Items C3.a-g.

em C3. Indicate whether the elevation reference mark (benchmark) used during the field survey is an elevation mark on the 'RM. If it is not, indicate the source and datum for the elevation. Vertical control benchmarks other than those shown on the RM are acceptable for elevation determinations. Show the conversion from the field survey datum used to the datum used r the BFE(s) entered in Item B9. All elevations for the certificate must be referenced to the datum on which the BFE is sed. Show the datum conversion, if applicable, in this section or in the Comments area of Section D. For property periencing ground subsidence, the most recently adjusted reference mark elevations must be used for determining building evations. However, when subsidence is involved, the BFE should not be adjusted. Enter elevations in Items C3.a-g to the earest tenth of a foot (nearest tenth of a meter, in Puerto Rico).

ems C3.a-d. Enter the building elevations (excluding the attached garage) indicated by the selected building diagram (Item 2.) in Items C3.a-c. If there is an attached garage, enter the elevation for top of attached garage slab in Item C3.d. (Because evation for top of attached garage slab is self-explanatory, attached garages are not illustrated in the diagrams.) If the ilding is located in a V zone on the FIRM, complete Item C3.c. If the flood zone cannot be determined, enter elevations for l of Items C3.a-g. For buildings in A zones, elevations a, b, d, and e should be measured at the top of the floor. For buildings V zones, elevation c must be measured at the bottom of the lowest horizontal structural member of the floor (see drawing ·low). For buildings elevated on a crawl space, Diagram 8, enter the elevation of the top of the crawl space floor in Item C3.a hether or not the crawl space has openings (flood vents). *If any item does not apply to the building, enter "N/A" for not pplicable.*



em C3.e. Enter the lowest elevation of machinery and/or equipment—furnaces, hot water heaters, heat pumps, air nditioners, and elevators and their associated equipment—in an attached garage or enclosure or on an open utility platform iat provides utility services for the building. If the machinery and/or equipment is mounted to a wall, pile, etc., enter the atform elevation of the machinery and/or equipment. Indicate machinery/equipment type in the Comments area of Section D Section G, as appropriate. *If this item does not apply to the building, enter "N/A" for not applicable.*

ems C3.f-g. Adjacent grade is defined as the elevation of the ground, sidewalk, patio slab, or deck support immediately next the building. If the certificate is to be used for a LOMA or LOMR-F, provide in the Comments area the lowest adjacent ade elevation measured at the deck support or stairs if that elevation is lower than the building's lowest adjacent grade. For

Zone AO, use the natural grade elevation if available. This measurement must be to the nearest tenth of a foot (nearest tenth of a meter, in Puerto Rico) if this certificate is being used to support a request for a LOMA or LOMR-F.

Items C3.h-i. Enter the number of permanent openings (flood vents) in the walls supporting the building, including the attached garage, that are no higher than 1.0 foot above the adjacent grade. Determine the total area of all such openings in square inches (square cm, in Puerto Rico) and enter the total in Item C3.i. If the building has no permanent openings (flood vents) within 1.0 foot above adjacent grade, enter "0" (zero) for each of Items C3.h and C3.i. Enter in the Comments area whether the openings are on the foundation walls of the building and/or on the walls of the garage.

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

Complete as indicated. This section of the Elevation Certificate may be signed by only a land surveyor, engineer, or architect who is authorized by law to certify elevation information. Place embossed seal and signature in the box next to elevations in Section C. A flat stamp is acceptable only in states that do not authorize use of an embossed seal over the signature of a professional. You are certifying that the information in Sections A, B, and C on this certificate represents your best efforts to interpret the data available and that you understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001. Use the Comments area of Section D, on the back of the certificate, to provide datum, elevation, or other relevant information not specified on the front.

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO & ZONE A (WITHOUT BFE)

Complete Section E if the building is located in Zone AO or Zone A (without BFE). Otherwise, complete Section C instead.

Item E1. Select the diagram on pages 6 and 7 that best represents the building, then enter the diagram number. If you are unsure of the correct diagram, select the diagram that most closely resembles the building, or provide a sketch or photograph. Explain in the Comments area if the measurement provided under Item E.2, E.3, or E.4 is based on the "natural grade."

Item E2. Enter the height in feet and inches (meters and centimeters, in Puerto Rico) of the top of the bottom floor (as indicated in the applicable diagram) above or below the highest adjacent grade (HAG). For post-FIRM buildings in Zone AO, the community's floodplain management ordinance requires that this value equal or exceed the base flood depth on the FIRM. Buildings in Zone A (without BFE) may qualify for a lower insurance rate if an engineered BFE is developed at the site.

Item E3. For Building Diagrams 6-8 with proper openings (see page 7), enter the height in feet and inches (meters and centimeters, in Puerto Rico) of the next higher floor or elevated floor (as indicated in the applicable diagram) above the highest adjacent grade (HAG). Be sure that you have completed Items C3.h and C3.i on the front of the form to show the number of permanent openings (flood vents) within 1 foot above adjacent grade and the total area of the openings.

Item E4. Enter the height in feet and inches, in relation to the highest adjacent grade next to the building, of the platform that supports the machinery and/or equipment servicing the building. Indicate machinery/equipment type in the Comments area of Section E. *If this item does not apply to the building, enter "N/A" for not applicable.*

Item E5. For those communities where this base flood depth is not available, the community will need to determine whether the top of the bottom floor is elevated in accordance with the community's floodplain management ordinance.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

Complete as indicated. This section is provided for certification of measurements taken by a property owner or property owner's representative when responding to Sections A, B, C (Items C3.h and C3.i only), and E. The address entered in this section must be the actual mailing address of the property owner or property owner's representative who provided the information on the certificate.

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

ɔmplete as indicated. The community official who is authorized by law or ordinance to administer the community's oodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. If the authorized ·mmunity official completes Sections C, E, or G, complete the appropriate item(s) and sign this section.

neck **Item G1**, if Section C is completed with elevation data from other documentation, including elevations obtained from :e Community Rating System Elevation Software, that has been signed and embossed by a licensed surveyor, engineer, or chitect who is authorized by law to certify elevation information. Indicate the source of the elevation data and the date ɔtained in the Comments area of Section G. If you are both a community official and a licensed land surveyor, engineer, or chitect authorized by law to certify elevation information, and you performed the actual survey for a building in Zones A1-30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/A1-A30, AR/AE, AR/AH, or AR/AO, you must so complete Section D.

heck **Item G2.** if information is entered in Section E by the community for a building in Zone A (without a FEMA-issued or mmunity-issued BFE) or Zone AO.

neck **Item G3.** if the information in Items G4-G9 has been completed for community floodplain management purposes to ɔcument the as-built lowest floor elevation of the building. Section C of the Elevation Certificate records the elevation of rious building components but does not determine the lowest floor of the building or whether the building, as constructed, mplies with the community's floodplain management ordinance. This must be done by the community. Items G4-G9 ovide a way to document these determinations.

em G4. Permit Number. Enter the permit number or other identifier to key the Elevation Certificate to the permit issued for e building.

em G5. Date Permit Issued. Enter the date the permit was issued for the building.

em G6. Date Certificate of Compliance Issued. Enter the date that the Certificate of Compliance or Occupancy or similar ritten official documentation of as-built lowest floor elevation was issued by the community as evidence that all work thorized by the floodplain development permit has been completed in accordance with the community's floodplain anagement laws or ordinances.

em G7. New Construction or Substantial Improvement. Check the applicable box. "Substantial Improvement" means any construction, rehabilitation, addition, or other improvement of a building, the cost of which equals or exceeds 50 percent the market value of the building before the start of construction of the improvement. The term includes buildings that ive incurred substantial damage, regardless of the actual repair work performed.

em G8. As-built lowest floor elevation. Enter the elevation of the lowest floor (including basement) when the construction the building is completed and a final inspection has been made to confirm that the building is built in accordance with the rmit, the approved plans, and the community's floodplain management laws or ordinances. Indicate the elevation datum ed.

em G9. BFE. Using the appropriate FIRM panel, FIS, or other data source, locate the property and enter the BFE (or base ɔod depth) of the building site. Indicate the elevation datum used.

ıter your name, title, and telephone number, and the name of the community. Sign and enter the date in the appropriate anks.

BUILDING DIAGRAMS

The following eight diagrams illustrate various types of buildings. Compare the features of the building being certified with the features shown in the diagrams and select the diagram most applicable. Enter the diagram number in Item C2 and the elevations in Items C3.a-C3.g.

In A zones, the floor elevation is taken at the top finished surface of the floor indicated, in V zones, the floor elevation is taken at the bottom of the lowest horizontal structural member (see drawing in instructions for Section C).

DIAGRAM 1

All slab-on-grade single- and multiple-floor buildings (other than split-level) and high-rise buildings, either detached or row type (e.g., townhouses); with or without attached garage.

Distinguishing Feature – The bottom floor is at or above ground level (grade) on at least one side. *

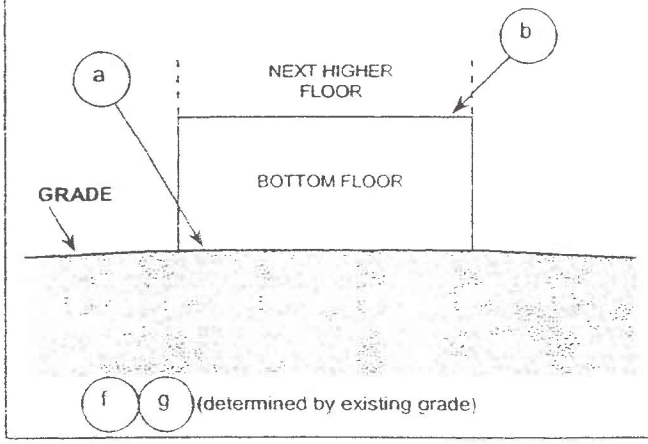


DIAGRAM 2

All single- and multiple-floor buildings with basement (other than split-level) and high-rise buildings with basement, either detached or row type (e.g., townhouses), with or without attached garage.

Distinguishing Feature – The bottom floor (basement or underground garage) is below ground level (grade) on all sides. Buildings constructed above crawl spaces that are below grade on all sides should also use this diagram. *

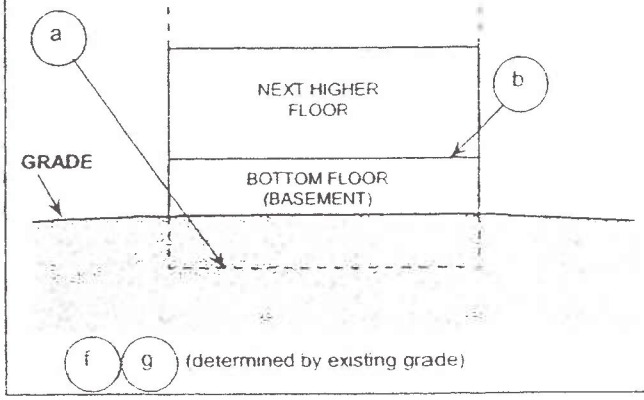


DIAGRAM 3

All split-level buildings that are slab-on-grade, either detached or row type (e.g., townhouses); with or without attached garage.

Distinguishing Feature – The bottom floor (excluding garage) is at or above ground level (grade) on at least one side. *

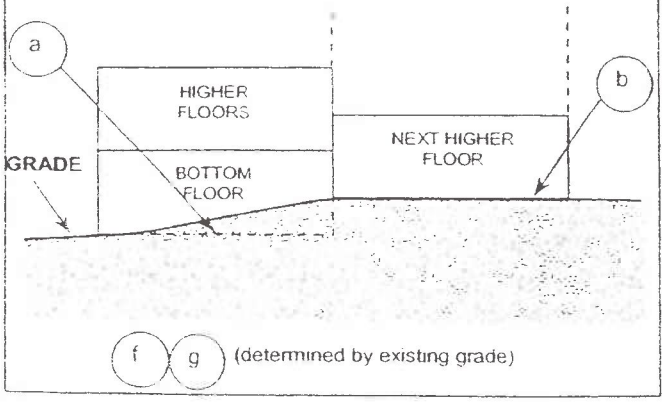
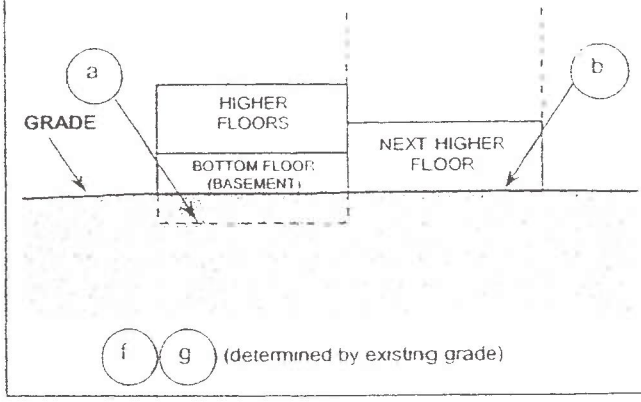


DIAGRAM 4

All split-level buildings (other than slab-on-grade), either detached or row type (e.g., townhouses); with or without attached garage.

Distinguishing Feature – The bottom floor (basement or underground garage) is below ground level (grade) on all sides. Buildings constructed above crawl spaces that are below grade on all sides should also use this diagram. *



* A floor that is below ground level (grade) on all sides is considered a basement even if the floor is used for living purposes, or as an office, garage, workshop, etc.

DIAGRAM 5

All buildings elevated on piers, posts, piles, columns, or parallel shear walls. No obstructions below the elevated floor.

Distinguishing Feature – For all zones, the area below the elevated floor is open with no obstruction to flow of flood waters (open lattice work and/or readily removable insect screening is permissible).

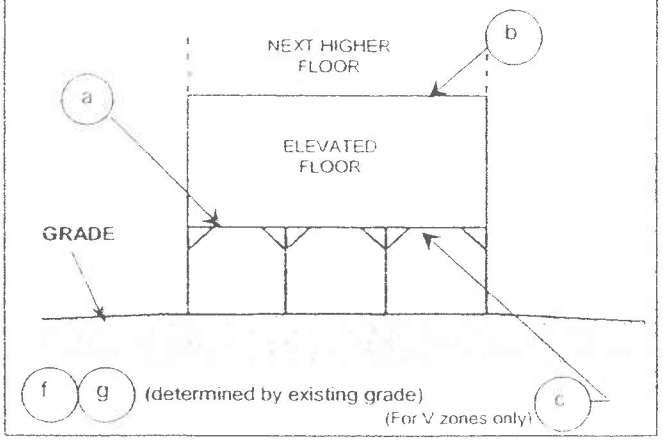


DIAGRAM 6

All buildings elevated on piers, posts, piles, columns, or parallel shear walls with full or partial enclosure below the elevated floor.

Distinguishing Feature – For all zones the area below the elevated floor is enclosed, either partially or fully. In A Zones, the partially or fully enclosed area below the elevated floor is with or without openings** present in the walls of the enclosure. Indicate information about openings in Section C, Building Elevation Information (Survey Required).

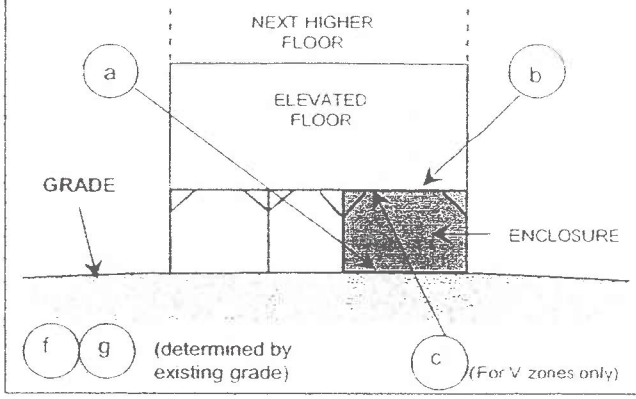


DIAGRAM 7

All buildings elevated on full-story foundation walls with a partially or fully enclosed area below the elevated floor. This includes walkout levels, where at least one side is at or above grade. The principal use of this building is located in the elevated floors of the building.

Distinguishing Feature – For all zones the area below the elevated floor is enclosed, either partially or fully. In A Zones, the partially or fully enclosed area below the elevated floor is with or without openings** present in the walls of the enclosure. Indicate information about openings in Section C, Building Elevation Information (Survey Required).

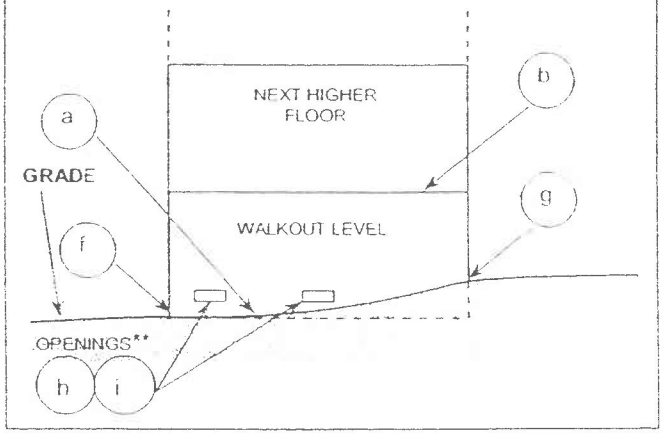
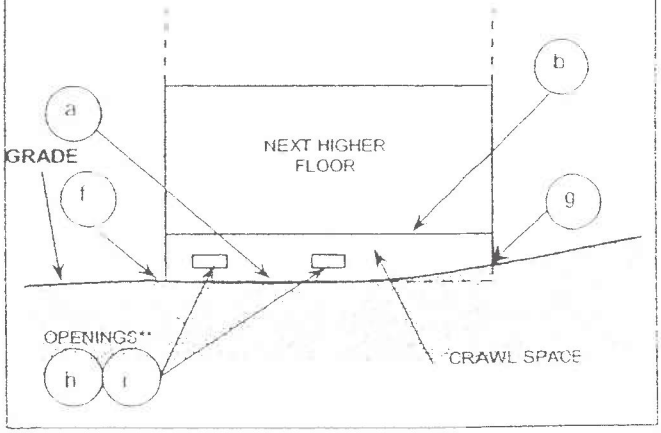


DIAGRAM 8

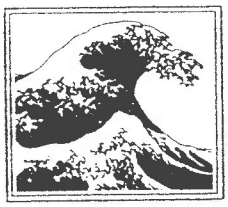
All buildings elevated on a crawl space with the floor of the crawl space at or above grade on at least one side, with or without an attached garage.

Distinguishing Feature – For all zones, the area below the first floor is enclosed by solid or partial perimeter walls. In all A zones, the crawl space is with or without openings** present in the walls of the crawl space. Indicate information about the openings in Section C, Building Elevation Information (Survey Required).



** An "opening" (flood vent) is defined as a permanent opening in a wall that allows for the free passage of water automatically in both directions without human intervention. Under the NFIP, a minimum of two openings is required for enclosures or crawl spaces with a total net area of not less than one square inch for every square foot of area enclosed. Each opening must be on different sides of the enclosed area. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter. The bottom of the openings must be no higher than one foot above the grade underneath the flood vents. Alternatively, you may submit a certification by a registered professional engineer or architect that the design will allow for the automatic equalization of hydrostatic flood forces on exterior walls. A window, a door, or a garage door is not considered an opening.

*U.S.G.P.O. 2003—521-073/99083



Floodplain Management Bulletin 1–98

Use Of Flood Insurance Study (FIS) Data As Available Data

Floodplain Management Bulletin 1-98 provides guidance on the use of FEMA draft or preliminary Flood Insurance Study data as "available data" for regulating floodplain development. The bulletin includes:

- **Introduction** ..... page 1
- **Background** 2
- **NFIP Requirements: Use of Draft or Preliminary FIS Data** . 2
- **Ordinance Requirements: Adoption of Data** 5
- **Insurance Implications** 7
- **Further Information** 8

Introduction

When areas have been designated as special flood hazard areas on the community's Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) and no Base Flood Elevations (BFEs) or an identified floodway have been developed, communities are required to apply the provisions of 44 Code of Federal Regulations 60 3(b)(4). Subparagraph 60.3(b)(4) requires that communities:

> ***Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source... [44 CFR 60.3(b)(4)]***

Data obtained are to be used by communities as criteria for requiring that new construction and substantial improvements have their lowest floors elevated to or above the BFE (non-residential structures can also be floodproofed to or above the BFE) and for prohibiting any encroachments in a floodway that would result in any increase in flood levels during occurrence of the base flood discharge. The data obtained should be used as long as they reasonably reflect flooding conditions expected during the base flood, are not known to be scientifically or technically incorrect, and represent the best data available. Data from a draft or preliminary Flood Insurance Study (FIS) constitute available data under 44 CFR 60.3(b)(4). This bulletin provides guidance on the use of FEMA draft or preliminary FIS data as available data for regulating floodplain development.

Federal Emergency Management Agency
Mitigation Directorate and the
Federal Insurance Administration

FMB-1
1/98

Background

Flood Insurance Studies (FIS) use detailed hydrologic and hydraulic analyses to model the 1% annual chance flood event, determine BFEs, and designate floodways and risk zones (Zones AE, A1-30, AH, AO, VE, and V1-30). The flood hazard data are portrayed in tabular fashion in the FIS narrative and graphically as flood profiles that are attached to the narrative. They are portrayed planimetrically on the FIRM. Over 10,000 communities have now been provided detailed FISs and issued FIRMs that include BFEs for Zones AE, A1-30, AH, AO, VE, and V1-30.

A draft FIS can be prepared by a study contractor to FEMA under 44 CFR Part 66 or by appellants under 44 CFR Part 65 for the purpose of establishing or revising BFE and floodway data. FEMA reviews and modifies, as appropriate, the draft FIS to ensure it complies with established NFIP criteria. Once FEMA has reviewed and approved the draft FIS, FEMA releases the information to the public as a Preliminary FIS and FIRM for review and comment during a statutory 90-day appeal period in accordance with 44 CFR Part 67. Until such time as the 90-day appeal period is completed and a notice of final flood elevation determination [Letter of Final Determination (LFD)] has been provided, the BFE and floodway data in the FIS are considered preliminary and subject to change.

Due to the cost of developing detailed flood hazard data, not all floodplains can be studied using detailed methodologies. A primary factor FEMA uses in it's system for prioritizing floodplain studies or restudies with BFEs and floodway data is whether the floodplains of the flooding sources are currently or are projected to be subject to development pressure. In NFIP communities where there are few existing buildings in the floodplain and minimal development pressure, FEMA does not prepare a detailed FIS. These communities are converted to the Regular Program with a FIRM in which all of the special flood hazard areas are designated Zone A without BFEs using approximate methodologies. Most NFIP communities will have FIRMs that include a combination of special flood hazard areas that have been studied in detail with BFEs and floodway data and special flood hazard areas that have been studied using approximate methods which have been designated Zone A.

National Flood Insurance Program (NFIP) Requirements: Use of Draft or Preliminary FIS Data

For Zone A:

For Zone A areas designated on the community's effective FHBM or FIRM, the BFE and floodway data from a draft or preliminary FIS constitute available data under Subparagraph 60.3(b)(4). The requirement at Subparagraph 60.3(b)(4) is an important floodplain management tool for reducing flood damages in areas where a detailed engineering study to develop BFEs and designate floodways on streams has not been conducted. Communities are required to reasonably utilize the data from a draft or preliminary FIS under the section of their ordinance that applies to this paragraph. A community is allowed discretion in using

this data only to the extent that the technical or scientific validity of the data in the draft or preliminary FIS is questioned.

When all appeals have been resolved and a notice of final flood elevation determination has been provided in a LFD, communities are required to use the BFE and floodway data for regulating floodplain development in accordance with 44 CFR 60.3(b)(4) since the data represents the best data available. This includes meeting the standards at 44 CFR 60.3(c), and (d) which includes the requirement that new construction, substantial improvements, and other development have their lowest floor elevated to or above the BFE (non-residential structures can also be floodproofed to or above the BFE). Communities must regulate floodplain development using the data in the FIS under 60.3(b)(4) until such time as the community has adopted the revised FIRM and FIS.

In Zone A areas, the rationale for requiring reasonable utilization of BFE and floodway data in a draft or preliminary FIS is premised on the absence of other BFE or floodway data and the need to protect new or substantially improved structures from flood damage until such time as appeals are completed and the BFEs and/or floodway are incorporated into the local ordinance. The use of the qualifier "reasonable" at 44 CFR 60.3(b)(4) reflects FEMA's statutory obligation to provide the public an opportunity to appeal the proposed elevation data.

If a community decides not to use the BFE or floodway data in the draft or preliminary FIS because it is questioning the data through a valid appeal, the community must continue to ensure that buildings are constructed using methods and practices that minimize flood damages in accordance with the floodplain management requirements under subparagraphs 60.3(a)(3) and (4).

- Subparagraph 60.3(a)(3) requires communities to review permit applications to determine whether proposed building sites are reasonably safe from flooding. If a proposed building site is floodprone, communities are to require that new construction and substantial improvements be adequately anchored, use flood resistant materials, be constructed to minimize flood damages, and have attendant utilities protected during the conditions of flooding.

- Subparagraph 60.3(a)(4) requires communities to review subdivision proposal and other proposed new development, including manufactured home parks or subdivisions, to determine whether proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is floodprone, communities are required to review such proposals to assure potential flood damages are minimized, utilities are constructed to minimize or eliminate damages, and adequate drainage is provided to reduce the exposure to flood hazards.

For Zones AE, A1-30, AH, AO, VE, and V1-30:

The NFIP floodplain management criteria do not require communities to use BFE and flood way data from a draft or preliminary Flood Insurance Restudy in Zones AE, A1-30, AH, AO, VE, and V1-30 in lieu of using the BFE and floodway data contained in an existing effective FIS and FIRM. Because communities are afforded the opportunity to appeal BFE data from a restudy in accordance with Section 1363 of the National Flood Insurance Act of 1968, as amended, a presumption of validity is given to existing effective BFE data that has gone through the formal statutory appeals process and which has been adopted by the community.

However, in cases where BFEs increase in the restudied area, communities have the responsibility to ensure that new or substantially improved structures are protected, particularly if the increases in BFEs are significant. While FEMA can not mandate or require a community to use BFE and floodway data in a draft or preliminary FIS as available data or to use the data at the time FEMA issues the LFD to the community, FEMA encourages communities to reasonably utilize this information in instances where BFEs increase and floodways are revised to ensure that the health, safety, and property of their citizens are protected.

In cases where BFEs decrease, the community should not use this information to regulate floodplain development until the LFD has been issued or at least until all appeals have been resolved. If the draft or preliminary FIS provides information that BFEs are decreasing, but a valid appeal actually results in higher BFEs, the community could place its citizens at a greater flood risk by using the draft or preliminary FIS to regulate floodplain development. Also, these structures could be subject to increased flood insurance premiums.

In communities where floodways have not been designated for all or some of the flooding sources, but BFEs have been provided, communities are required to apply the criteria at 44 CFR 60.3(c)(10). This provision requires that:

> ***Until a regulatory floodway is designated, no new construction, substantial improvements, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. [44 CFR 60.3(c)(10)]***

However, if a draft or preliminary FIS has designated floodways where none had previously existed, communities should reasonably utilize this data in lieu of applying the encroachment performance standard of 44 CFR 60.3(c)(10) since the data in the draft or preliminary FIS represents the best data available. By utilizing the floodway data from a draft or Preliminary FIS, communities avoid the expense of conducting the hydraulic analysis necessary to demonstrate compliance with 60.3 (c)(10). In addition, communities can minimize flood damages by ensuring that the flood carrying capacity of the floodway is preserved since obstruction of floodways can significantly increase potential flooding upstream.

For Zones B, C, and X:

The NFIP floodplain management criteria do not require the use of BFE and floodway data from a draft or preliminary FIS under 44 CFR 60.3(b)(4) for an area or areas within Zones B, C, or X on the community's FIRM that are being revised to Zone AE, A1-30, AH, AO, VE, or V1-30. While FEMA can not mandate or require a community to use the information contained in the draft or preliminary FIS pertaining to areas designated as Zone B, C, or X as available data or use the data at the time FEMA issues the LFD to the community, FEMA encourages communities to reasonably utilize this information to ensure that the health, safety, and property of their citizens are protected.

Important Note to Communities:

In order to participate in the NFIP, all communities must initially adopt a resolution or ordinance which expresses a "commitment to recognize and evaluate flood hazards in all official actions and to take such other official action as reasonably necessary to carry out the objectives of the program" [44 CFR 59.22(a)(8)]. This is in addition to the general requirement that the community "take into account flood hazards to the extent that they are known in all official actions relating to land management and use" [44 CFR 60.1(c)]. When communities receive a draft or preliminary FIS, communities have a responsibility to evaluate and prudently use this information for actions in the floodplain to ensure that the health, safety, and property of their citizens are protected. Neglecting to take into consideration the information provided in a draft or preliminary FIS and not taking reasonable actions to ensure the safety of lives and property may subject the community to potential liability when flooding occurs.

In the interest of sound floodplain management and to anticipate the impacts of future development on flood elevations, communities also can, at their discretion, adopt more restrictive floodplain management requirements. For example, the community can require that new or substantially improved buildings be elevated or floodproofed to one or more feet above the BFEs provided in the draft or preliminary FIS. This more restrictive requirement is generally referred to as "freeboard".

Ordinance Requirements: Adoption of the Data

For Zone A:

When all appeals have been resolved and a notice of final flood elevation determination has been provided in a LFD, communities are required to use the BFE and floodway data for regulating floodplain development in accordance with 44 CFR 60.3(b)(4) since the data represents the best data available. This includes meeting the standards of Subparagraphs 60.3(c), (d), and/or (e). Communities must regulate floodplain development using the data in the FIS under Subparagraph 60.3(b)(4) until such time as the community has adopted the effective FIRM and FIS.

For Zones AE, A1-30, AH, AO, VE, V1-30, B, C, and X:

Communities are given six months from the date of the LFD in which to adopt the revised FIS and FIRM. This is in keeping with FEMA's statutory obligation to provide a reasonable time for the community to adopt floodplain management regulations consistent with the final flood elevation determinations. Subparagraph 44 CFR 59.24(a) of the NFIP Regulations provides for a six month compliance period in which the community must adopt the effective FIS and FIRM and amend existing regulations to incorporate any additional requirements under 44 CFR 60.3.

Floodplain management ordinances generally contain a section entitled "Basis for Establishing the Areas of Special Flood Hazard" in which the current effective FIS and FIRM are cited. Language in the ordinance may include any subsequent amendments thereto (i.e., to include any subsequent revised FIS and FIRM); however, this language should not be used as the basis for a community to use the preliminary FIS prior to the issuance of the LFD. If a community chooses to use BFE and floodway data from a preliminary FIS prior to the LFD being issued or use the data after a LFD is issued but before the effective date of the FIS and FIRM, it is advised that the community adopt this information before its use.

Advisory Flood Hazard Data:

FEMA may issue advisory flood hazard data in certain situations. A major flood disaster, such as from a coastal storm or from a failure of a flood protection system, may result in a community's effective FIS and FIRMs underestimating the extent of the flood hazard and the risk of flooding. FEMA may undertake a post-flood survey to document additional areas of the community subject to the base flood (1% annual chance) and to develop estimated flood elevations which will be used to reanalyze and revise the effective FIS and FIRMs. The information from the post-flood survey will be provided to communities as advisory information when the analyses indicates that the effective FIS and FIRMs are inaccurate. Also, communities may obtain or develop flood hazard data that indicates existing flood hazard areas that shows a greater risk than what is in the effective FIS and on the FIRM.

Communities are advised to prudently use this information for regulating floodplain development. When communities receive advisory flood hazard information or have evidence that there is an increased flood hazard risk, communities have a responsibility to evaluate and prudently use this information for actions in the floodplain to ensure that structures are not vulnerable to flood damage. If a community chooses to use this information, it is advised that the community formally adopt the information. Neglecting to take into consideration advisory or other flood hazard information and not taking reasonable actions to ensure that the health, safety, and property of their citizens are protected may subject the community to potential liability when flooding occurs.

Insurance Implications

Zone A:

For a new or substantially improved structure, communities can use information from a draft or preliminary FIS for completing the Elevation Certificate in Zone A areas. The flood insurance policies for new or substantially improved structures in Zone A that are rated using BFE data from a draft or preliminary FIS will often qualify for significantly lower insurance rates than policies that are rated without a BFE.

Zones AE, A1-30, AH, AO, VE, and V1-30:

For flood insurance rating purposes, in Zones AE, A1-30, AH, AO, VE, or V1-30, new or substantially improved structures are rated based on the BFE and FIRM zone in effect on the date of construction until the revised FIRM becomes effective. This is the case regardless of whether the preliminary FIS indicates that the proposed BFEs will increase or decrease.

If a community chooses to use proposed BFEs from a draft or a preliminary FIS for a new or substantially improved structure, the flood insurance rate is still based on the BFE and FIRM Zone in effect on the date of construction. The flood insurance rate will be based on the elevation difference between the BFE and FIRM Zone in effect and the elevation of the lowest floor. Therefore, if a new or substantially improved structure is built to the proposed BFE from a draft or preliminary FIS and this BFE is higher than the BFE in effect, the flood insurance rate may be significantly lower. However, a new or substantially improved structure built to the proposed BFE that is lower than the BFE in effect may result in a significantly higher flood insurance rate. In this case, the insured will qualify for a premium pro rata refund once the revised FIRM is effective.

Zones B, C, and X:

For flood insurance rating purposes, new or substantially improved structures are rated based on the FIRM Zone in effect (i.e., Zone B, C, or X) on the date of start of construction. If a community chooses to use proposed BFEs from a draft or preliminary FIS for a new or substantially improved structure, the flood insurance rate is still based on the FIRM Zone in effect (i.e., Zone B, C or X) on the date of construction.

Further Information

Managing Floodplain Development in Approximate Zone A Areas, A Guide For Obtaining and Developing Base (100-year) Flood Elevations, FEMA 265, July 1995. Additional guidance pertaining to obtaining and developing BFEs in Zone A can be found in this publication. To obtain a copy of this publication, see the section on Ordering Information on the following page.

Comments

Any comments on the Floodplain Management Bulletin should be directed to:

FEMA
Mitigation Directorate
500 C St., SW
Washington, D.C. 20472

Ordering Information

Copies of Floodplain Management Bulletins are available from various sources.

- Floodplain Management Bulletins can be ordered from the FEMA Distribution Facility. Use of FEMA Form 60-8 will result in a more timely delivery from the warehouse. The form can be obtained from FEMA regional offices or your state's Office of Emergency Management. Send publication requests to FEMA Distribution Facility, P.O. Box 2012, Jessup, MD 20794-2012. FEMA's Distribution Facility also accepts telephone requests (1-800-480-2520) and facsimile requests (301-497-6378).
- FEMA's Fax-On-Demand system. Call 202-646-FEMA (3362) and follow the directions.
- FEMA World Wide Web Page: http://www.fema.gov/mit/.
- Copies of the Floodplain Management Bulletins can be obtained from the appropriate FEMA regional office.

Graphic design based on the Japanese print The Great Wave Off Kanagawa, by Katsushika Hakusai (1760-1849), Asiatic Collection, Museum of Fine Arts, Boston.

Federal Emergency Management Agency

Washington, D.C. 20472

FREQUENTLY ASKED QUESTIONS REGARDING THE EFFECT THAT REVISED FLOOD HAZARDS HAVE ON EXISTING STRUCTURES

What factors determine flood insurance premiums?

A number of factors determine premiums for National Flood Insurance Program (NFIP) flood insurance coverage. Major factors include the amount of coverage purchased, the deductible and the location, age, occupancy, and type of building. For newer buildings in floodplains, the elevation of the lowest floor relative to the elevation of the 1-percent-annual-chance flood can also be used to rate the policy.

My house is not in a floodplain according to the current map, but the new map will show it as being in a floodplain. Will I have to purchase flood insurance when the new map officially takes effect?

If you have Federal or federally related financing for the property in question and you do not already have flood insurance, your lender may contact you once the new map takes effect and require that you purchase the insurance. If you do not purchase flood insurance within 45 days after being informed that flood insurance is required, the lender can force place the insurance and charge you for the cost of it. If you dispute the lender's determination that your property is located in a floodplain, you and your lender can jointly request a Letter of Determination Review from the Federal Emergency Management Agency (FEMA) within 45 days of being informed by your lender that your property is located in a floodplain. If you have insurance before the new maps take effect, the basis for rating that policy remains unchanged (i.e., you can use the rate that was charged to you when your property was located outside the floodplain).

I have flood insurance, and my house is in a floodplain according to the current map. The new map, however, will show my house as being outside the floodplain. Will I have to continue carrying flood insurance when the new map officially takes effect?

If you have Federal or federally related financing for the property in question, you will no longer have a Federal requirement to purchase flood insurance when the new maps take effect; however, lenders retain the prerogative to require flood insurance, even for property that is not in a floodplain. If you wish to continue coverage once the new maps take effect, you may be eligible for preferred risk rates based on your property being outside the floodplain. You should have your policy re-rated using the new map, which should lower your premium. Even if you are not required to purchase flood insurance, FEMA encourages homeowners to continue coverage at the preferred risk rates, because you may be flooded by an event greater than the 1-percent-annual-chance event.

My house was built to the flood elevation shown on the current map (or a previous map). On the new map,, my house will remain in the floodplain,, but the flood elevation will increase. What will happen to my insurance premium when the new map officially takes effect?

If you can show that your house was built in compliance with local floodplain management regulations and the map in effect at the time of construction, the basis for rating your policy does not change and your premium will be the same. If you cannot show that your house was built in the compliance at the time of construction, your policy will be re-rated using the new map, which may raise your premium. However, if you can show that your home has been continuously insured since before the map change, your premium will not be affected. If you do not have Federal or federally related financing, you are not required by Federal regulations to have flood insurance, although it is available to you.

My house was built to the flood elevation shown on the current map (or a previous map). On the new map, my house will remain in the floodplain,, but the flood elevation will decrease. What will happen to my insurance premium when the new map officially takes effect?

You should contact your insurance agent to ensure that the policy is re-rated when the new map officially takes effect. The lower flood elevation may result in a lower premium.

My house is in a floodplain according to the current map. On the new map,, my house will remain in the floodplain, but the flood elevation will be increased. Will my house be considered to be in violation of NFIP regulations when the new map officially takes effect?

Any house that can be shown to have been built in compliance with local floodplain management regulations and the map that was effective at the time of construction will continue to be considered compliant, even if the new map will show an increase in flood elevation or a chance to a more restrictive zone designation. However, should your house be substantially damaged (damage is 50 percent or more of the pre-damage market value) and you wish to repair it, you will be required to bring the entire structure into compliance with the zone designation and flood elevations shown on the map that is in effect at the time the repairs take place. If the house is less than substantially damaged you do not need to refer to the map when repairing damages. Please note, however, that there may be more stringent state or local requirements that take precedence over those stated here. Regardless of whether your house is substantially damaged, you will likely need a building permit to make repairs and therefore, will need to contact your local building official.

My house is in a floodplain. What do I do if I want to build an addition or otherwise improve it?

If the value of the addition or improvement to the residential structure is less than 50 percent of the market value of the existing structure, you need only make sure that the improvement meets or exceeds the standards that were used in constructing the existing structure (assuming the existing structure was built in compliance at the time it was constructed). Additions or other improvements valued at 50 percent or more of the market value of the existing structure are considered substantial improvements. In such cases, the entire structure must be brought into compliance with the elevations on the map in effect at the time the improvement begins. Under certain circumstances, only the addition needs to be elevated tot the flood elevations shown on that map. Please note, however, that there may be more stringent state or local requirements that take precedence over those stated here. Regardless of whether your building is substantially improved, you will likely need a building permit to make the improvement and need to contact your local building official.

Federal Emergency Management Agency

Washington, D.C. 20472

Lowest Floor Elevation Certifications for Flood Insurance-
Post Flood Insurance Rate Map Construction

The enclosed "Postconstruction Elevation Certification/Flood Proofing Certificate" is available for insurance agents, mortgage lenders, and community officials to use as a means of obtaining or supplying the necessary data to 'elevation rate" a building and its contents under the Regular Flood Insurance Program.

Owners of Post Flood Insurance Rate Map (FIRM) construction and other buildings who wish to choose "elevation rating" are required to submit a "Postconstruction Elevation Certificate/Flood Proofing Certificate." Post FIRM "elevation rating" means the rating of buildings and their contents, the construction or substantial improvement of which started after December 31, 1974, or on or after the effective date of the community's initial FIRM, whichever is later, and the building is located in Zones A1-A30, AE, AH and VE.

It is recommended that this certificate be used by communities since it assures that all the necessary information will be supplied. Also the use of this certificate will assist the community in administering its floodplain management obligations under the National Flood Insurance Program.

The community needs to be familiar with the format of this Certificate since it may be supplied to a building owner by an insurance agent or by a mortgage lender as a means of obtaining the necessary data from either the community permit official or a professional engineer or architect Insurance agents cannot elevation rate a flood insurance policy without an elevation certification.

Additional copies of this form may be obtained by writing CSC, the servicing contractor for the National Flood Insurance Program, at the following address:

National Flood Insurance Program
Forms Order Department
P.O. Box 499
Lanham, Maryland 20706

Enclosure

National Flood Insurance Program (NFIP)'s Regulations

Revised Oct. 21, 2002



FEMA

CORRECTION

The fourth bullet on the cover page is a mischaracterization of what the September 30, 2002 rule accomplishes. The rule does NOT permit States to extend coverage under Group Flood Insurance Policies. Rather, the rule amends the Group Flood Insurance Policy (GFIP) to make changes that are necessary as a result of implementing the Individuals and Households Program (IHP) under the Disaster Mitigation Act of 2000. It also revises the premium and policy period of the GFIP.

This document, which is in two parts, contains a reprint of the National Flood Insurance Program (NFIP)'s regulations (44 CFR Parts 59-78), revised as of October 1, 2001, as well as final NFIP rules that became effective between October 1, 2001 and October 21, 2002.

Part I contains the NFIP final regulations revised as of October 1, 2001.
Part II contains the following NFIP rules published after that date:

- A final rule published on February 27, 2002, which increases premium rates charged under the NFIP for "pre-FIRM," V-zone properties. (Those revisions became effective May 1, 2002.)
- A final rule published on March 22, 2002, launching a pilot project to enable up to six intergovernmental risk pools to sell flood insurance under the Write Your Own (WYO) program. (Those revisions became effective on April 22, 2002.)
- A final rule published on August 9, 2002, revising the effective date of the WYO arrangement for the 2002-3 arrangement year. (The change took effect October 1, 2002.)
- An interim final rule published on September 30, 2002, permitting States to extend coverage under Group Flood Insurance Policies by paying premiums for the coverage. (The rule became effective October 15, 2002.)

PART I

SUBCHAPTER B—INSURANCE AND HAZARD MITIGATION

PARTS 50–54 [RESERVED]

NATIONAL INSURANCE DEVELOPMENT PROGRAM

PARTS 55–58 [RESERVED]

NATIONAL FLOOD INSURANCE PROGRAM

PART 59—GENERAL PROVISIONS

Subpart A—General

Sec.
59.1 Definitions.
59.2 Description of program.
59.3 Emergency program.
59.4 References.

Subpart B—Eligibility Requirements

59.21 Purpose of subpart.
59.22 Prerequisites for the sale of flood insurance.
59.23 Priorities for the sale of flood insurance under the regular program.
59.24 Suspension of community eligibility.

Subpart C—Pilot Inspection Program

59.30 A pilot inspection procedure.

AUTHORITY: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart A—General

§ 59.1 Definitions.

As used in this subchapter—

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001–4128.

Actuarial rates—see *risk premium rates*.

Administrator means the Federal Insurance Administrator.

Agency means the Federal Emergency Management Agency, Washington DC.

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Applicant means a community which indicates a desire to participate in the Program.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood-related erosion hazard is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Area of special flood hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1–30, AE, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1–30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Area of special mudslide (i.e., mudflow) hazard is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area

may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

Base flood means the flood having a one percent chance of being equalled or exceeded in any given year.

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

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

Building—see *structure.*

Chargeable rates mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

Chief Executive Officer of the community (*CEO*) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Community means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

Contents coverage is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

Criteria means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in part 60 of this subchapter.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

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

Deductible means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

Developed area means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum

building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

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..

Director means the Director of the Federal Emergency Management Agency.

Eligible community or *participating community* means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Flood Insurance Program or *emergency program* means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

Exception means a waiver from the provisions of part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

Existing construction, means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

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

Existing structures see *existing construction.*

Expansion to an existing manfactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal agency means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

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

Financial assistance for acquisition or construction purposes means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include

the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

First-layer coverage is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

Flood or *Flooding* means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

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

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

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

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

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

Flood insurance means the insurance coverage provided under the Program.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study see *flood elevation study*.

Flood plain or *flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

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

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

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate

flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

Flood-related erosion area or *flood-related erosion prone area* means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

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

Floodway— see *regulatory floodway*.

Floodway encroachment lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

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

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

General Counsel means the General Counsel of the Federal Emergency Management Agency.

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

Historic Structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

Independent scientific body means a non-Federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

Insurance adjustment organization means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

Insurance company or *insurer* means any person or organization authorized to engage in the insurance business under the laws of any State.

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

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

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of §60.3.

Mangrove stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (Avicennia Nitida); red mangrove (Rhizophora Mangle); white mangrove (Languncularia Racemosa); and buttonwood (Conocarpus Erecta).

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

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

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

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mudslide(i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

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

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

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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

100-year flood see *base flood.*

Participating community, also known as an *eligible community*, means a community in which the Administrator has authorized the sale of flood insurance.

Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

Policy means the Standard Flood Insurance Policy.

Premium means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

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

Program means the National Flood Insurance Program authorized by 42 U.S.C. 4001 through 4128.

Program deficiency means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in §§ 60.3, 60.4, 60.5, or 60.6.

Project cost means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

Recreational vehicle means a vehicle which is:

(a) Built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection,

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

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

Reference feature is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

Regular Program means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

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

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

Risk premium rates mean those rates established by the Administrator pursuant to individual community studies

and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

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

Sand dunes mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Scientifically incorrect. The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

Second layer coverage means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.

Servicing company means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.

Sheet flow area— see *area of shallow flooding.*

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

Special flood hazard area— see "area of special flood hazard".

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1–30, VE, V, M, or E.

Standard Flood Insurance Policy means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97–348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

State coordinating agency means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

Storm cellar means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Subsidized rates mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal Government.

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

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

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

30-year setback means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

Technically incorrect. The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

V Zone—see "coastal high hazard area."

Variance means a grant of relief by a community from the terms of a flood plain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

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

Zone of imminent collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

[41 FR 46968, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §59.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO access.

§ 59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in §59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91–152, December 24, 1969). Flood-related erosion (as defined in §59.1) protection was added to the Program by the Flood Disaster Protection Act of

1973 (Pub. L. 93–234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at § 59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in § 60.3 for flood-prone areas, in § 60.4 for mudslide (i.e., mudflow) areas and in § 60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983, 49 FR 4751, Feb. 8, 1984]

§ 59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91–152, December 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures.

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543, Sept. 29, 1983]

§ 59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90–448, approved August 1, 1968, 42 U.S.C. 4001 et seq.

(2) Housing and Urban Development Act of 1969 (Pub. L. 91–152, approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Public Law 93–234, approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Public Law 93–383, approved August 22, 1974.

(5) Public Law 5–128 (effective October 12, 1977).

(6) The above statutes are included in 42 U.S.C. 4001 et seq.

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11988 (Floodplain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(2) The Flood Control Act of 1960 (Pub. L. 86–645).

(3) Title II, section 314 of title III and section 406 of title IV of the Disaster Relief Act of 1974 (Pub. L. 93–288).

(4) Coastal Zone Management Act (Pub. L. 92–583), as amended Public Law 94–370.

(5) Water Resources Planning Act (Pub. L. 89–90), as amended Public Law 94–112 (October 16, 1975).

(6) Title I, National Environmental Policy Act (Pub. L. 91–190).

(7) Land and Water Conservation Fund Act (Pub. L. 89–578), and subsequent amendments thereto.

(8) Water Resources Council, Principals and Standards for Planning Water and Related Land Resources (38 FR 24778–24869, September 10, 1973).

(9) Executive Order 11593 (Protection and Enchancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).

(10) 89th Cong., 2nd Session, H.D. 465.

(11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR 600.72).

(12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).

(14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.

(c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (54 FR 29666–29695, July 13, 1989).

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 57 FR 19540, May 7, 1992]

Subpart B—Eligibility Requirements

§ 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.22 Prerequisites for the sale of flood insurance.

(a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population;

(ii) Number of one to four family residences;

(iii) Number of small businesses; and

(iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBM's) and Flood Insurance Rate Maps (FIRM's) will be made available for public inspection.

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and

State-administered flood plain management regulations,

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBM's and FIRM's accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit a report to the Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Administrator.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Emergency Management Agency, Washington DC 20472.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979 and amended at 48 FR 29318, June 24, 1983; 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33656, Aug. 24, 1984, 50 FR 36023, Sept. 4, 1985]

§ 59.23 Priorities for the sale of flood insurance under the regular program.

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood,

mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of §60.3 or paragraph (b) of §60.4 or §60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Administrator shall provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October

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1, 1986, but prior to October 1, 1992, an additional premium of $25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be $50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This $50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the FEDERAL REGISTER under part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if its submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has

taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985; 57 FR 19540, May 7, 1992; 59 FR 53598, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997]

Subpart C—Pilot Inspection Program

§ 59.30 A pilot inspection procedure.

(a) *Purpose.* This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999 and is eligible for the sale of flood insurance. The purpose of this inspection procedure is to provide the communities participating in the pilot inspection procedure with an additional means to identify whether structures built in Special Flood Hazard Areas (SFHAs) after the date of the effective Flood Insurance Rate Map (FIRM) comply with the community's floodplain management regulations. The pilot inspection procedure will also assist FEMA in verifying that structures insured under the National Flood Insurance Program's Standard Flood Insurance Policy are properly rated.

(b) *Procedures and requirements for implementation.* Each community must establish procedures and requirements for implementing the pilot inspection procedure consistent with the criteria established in this section.

(c) *Inspection procedure*—(1) *Starting and termination dates.* The Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director. The Regional Director will consult with each community.

(2) *Extension.* The Associate Director for Mitigation and the Federal Insurance Administrator may extend the implementation of the inspection procedure with a new termination date upon the recommendation of the Regional Director. The Regional Director will consult with the community. An extension will be granted based on good cause.

(3) *Notices.* Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator will publish a notice in the FEDERAL REGISTER that the community will undertake an inspection procedure. Published notices will include the purpose for implementing the inspection procedure and the effective period of time that the inspection procedure will cover.

(4) *Community reviews.* The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHAs to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and to identify possible violations of insured post-FIRM buildings. The community will provide to FEMA a list of insured buildings incorrectly rated as pre-FIRM and a list of insured post-FIRM buildings that the community identifies as possible violations.

(5) *SFIP endorsement.* In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we

and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61, Appendices A(4), (5), and (6)].

(6) *Notice from insurer.* For a building identified as a possible violation under paragraph (c)(4) of this section, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process, which includes the payment of the premium. The insurer will send this notice about 6 months before the Standard Flood Insurance Policy expires.

(7) *Conditions for renewal.* If a policyholder receives a notice under paragraph (c)(6) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following conditions apply:

(i) If the policyholder obtains an inspection from the community and the policyholder sends the community inspection report to the insurer as part of the renewal process, which includes the payment of the premium, the insurer will renew the policy and will verify the flood insurance rate, or

(ii) If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy.

(8) *Community responsibilities.* For insured post-FIRM buildings that the community inspects and determines to violate the community's floodplain management regulations, the community must demonstrate to FEMA that the community is undertaking measures to remedy the violation to the maximum extent possible. Nothing in this section modifies the community's responsibility under the NFIP to enforce floodplain management regulations adequately that meet the minimum requirements in §60.3 for all new construction and substantial improvements within the community's SFHAs. The community's responsibility also includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

(d) *Restoration of flood insurance coverage.* Insurers will not provide new flood insurance on any building if a property owner does not obtain a community inspection report or if the property owner obtains a community inspection report but does not submit the report with the renewal premium payment. Flood insurance policies sold on a building ineligible in accordance with paragraph (c)(6)(ii) of this section are void under the Standard Flood Insurance Policy inspection endorsements [44 CFR Part 61, Appendices (A)(4), (A)(5), and (A)(6)]. When the property owner applies for a flood insurance policy and submits a completed community inspection report by the community with an application and renewal premium payment, the insurer will issue a flood insurance policy.

(Approved by the Office of Management and Budget under Control Number 3067–0275)

[65 FR 39748, June 27, 2000]

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Flood Plain Management Regulations

Sec.
60.1 Purpose of subpart.
60.2 Minimum compliance with flood plain management criteria.
60.3 Flood plain management criteria for flood-prone areas.
60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.
60.5 Flood plain management criteria for flood-related erosion-prone areas.
60.6 Variances and exceptions.
60.7 Revisions of criteria for flood plain management regulations.
60.8 Definitions.

Subpart B—Requirements for State Flood Plain Management Regulations

60.11 Purpose of this subpart.
60.12 Flood plain management criteria for State-owned properties in special hazard areas.
60.13 Noncompliance.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

60.21 Purpose of this subpart.

60.22 Planning considerations for flood-prone areas.
60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
60.24 Planning considerations for flood-related erosion-prone areas.
60.25 Designation, duties, and responsibilities of State Coordinating Agencies.
60.26 Local coordination.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Requirements for Flood Plain Management Regulations

§60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in §60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in §60.3 for flood-prone areas, §60.4 for mudslide areas and §60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in subpart C of this part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of §60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(b), (c), (d), (e) or (f), in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in §60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in §60.3(c), (d), (e) or (f) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of §60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the

(i) Determine the applicable elevation for Zone AR from paragraphs (a)(3) and (4) of this section;

(ii) Determine the base flood elevation or flood depth for the underlying A1–30, AE, AH, AO and A Zone; and

(iii) Using the higher elevation from paragraphs (a)(5)(i) and (ii) of this section require the standards of paragraphs (c)(1) through (14) of this section.

(6) For all substantial improvements to existing construction within Zones AR/A1–30, AR/AE, AR/AH, AR/AO, and AR/A:

(i) Determine the A1–30 or AE, AH, AO, or A Zone base flood elevation; and

(ii) Using this elevation apply the requirements of paragraphs (c)(1) through (14) of this section.

(7) Notify the permit applicant that the area has been designated as an AR, AR/A1–30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

[41 FR 46975, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in §64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems

of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.6 Variances and exceptions.

(a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management

design and those provisions of this section which are verifiable.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30308, Aug. 25, 1986; 54 FR 33550, Aug. 15, 1989]

§ 60.7 Revisions of criteria for flood plain management regulations.

From time to time part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

§ 60.8 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

Subpart B—Requirements for State Flood Plain Management Regulations

§ 60.11 Purpose of this subpart.

(a) A State is considered a "community" pursuant to § 59.1 of this subchapter, and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to part 75 of this subchapter, of its plan of self-insurance.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

§ 60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to § 59.24.

Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone and Flood-Related Erosion-Prone Areas

§60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

§60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

(1) Preservation of the flood-prone areas for open space purposes;

(2) Relocation of occupants away from flood-prone areas;

(3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;

(4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

(1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

(4) Adverse effects of flood plain development on existing development;

(5) Encouragement of floodproofing to reduce flood damage;

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring subdividers to furnish delineations for

floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones V1–30, VE, and V on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1–30, AE, V1–30, and VE on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

(19) Requirement that a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas be developed and filed with and approved by appropriate community emergency management authorities.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 50 FR 36025, Sept. 4, 1985; 54 FR 40284, Sept. 29, 1989]

§ 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.

The planning process for communities identified under part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

(a) The existence and extent of the hazard;

(b) The potential effects of inappropriate hillside development, including

(1) Loss of life and personal injuries, and

(2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;

(c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages,

correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and

(h) Provision for emergencies, including:

(1) Warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow),

(2) Enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow),

(3) Fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides,

(4) Provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems,

(5) Similar provisions for sewers which in the event of rupture pose both health and site stability hazards and

(6) Provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

§ 60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to § 59.22 of this subchapter that they have flood-related erosion areas should include—

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

§ 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.

(a) States are encouraged to demonstrate a commitment to the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the designation of an agency of State government to be responsible for coordinating the Program aspects of flood plain management in the State.

(b) State participation in furthering the objectives of this part shall include maintaining capability to perform the appropriate duties and responsibilities as follows:

(1) Enact, whenever necessary, legislation enabling counties and municipalities to regulate development within flood-prone areas;

(2) Encourage and assist communities in qualifying for participation in the Program;

(3) Guide and assist county and municipal public bodies and agencies in developing, implementing, and maintaining local flood plain management regulations;

(4) Provide local governments and the general public with Program information on the coordination of local activities with Federal and State requirements for managing flood-prone areas;

(5) Assist communities in disseminating information on minimum elevation requirements for development within flood-prone areas;

(6) Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Administrator;

(7) Recommend priorities for Federal flood plain management activities in relation to the needs of county and municipal localities within the State;

(8) Provide notification to the Administrator in the event of apparent irreconcilable differences between a community's local flood plain management program and the minimum requirements of the Program;

(9) Establish minimum State flood plain management regulatory standards consistent with those established in this part and in conformance with other Federal and State environmental and water pollution standards for the prevention of pollution during periods of flooding;

(10) Assure coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies;

(11) Assist in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum flood plain management criteria for the Program;

(12) Participate in flood plain management training opportunities and other flood hazard preparedness programs whenever practicable.

(c) Other duties and responsibilities, which may be deemed appropriate by the State and which are to be officially designated as being conducted in the capacity of the State Coordinating Agency for the Program, may be carried out with prior notification of the Administrator.

(d) For States which have demonstrated a commitment to and experience in application of the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the establishment and implementation of programs which substantially encompass the activities described in paragraphs (a), (b), and (c) of this section, the Administrator shall take the foregoing into account when

(1) Considering State recommendations prior to implementing Program activities affecting State communities,

(2) Considering State approval or certifications of local flood plain management regulations as meeting the requirements of this part.

[51 FR 30309, Aug. 25, 1986]

§ 60.26 Local coordination.

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

PART 61—INSURANCE COVERAGE AND RATES

Sec.

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APPENDIX A(6) TO PART 61—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION STANDARD FLOOD INSURANCE POLICY

AUTHORITY: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 43 FR 2570, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the Administrator from time to time as applications are approved under the emergency program and as ratemaking studies of communities are completed prior to the regular program. Lists of such communities are periodically published under part 64 of this subchapter.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 39068, Aug. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984]

§61.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§61.3 Types of coverage.

Insurance coverage under the Program is available for structures and their contents. Coverage for each may be purchased separately.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 39068, Aug. 29, 1983; 50 FR 36025, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 58 FR 62424, Nov. 26, 1993]

§61.4 Limitations on coverage.

All flood insurance made available under the Program is subject:

(a) To the Act, the Amendments thereto, and the Regulations issued under the Act,

(b) To the terms and conditions of the Standard Flood Insurance Policy, which shall be promulgated by the Administrator for substance and form, and which is subject to interpretation by the Administrator as to scope of coverage pursuant to the applicable statutes and regulations;

(c) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(d) To the maximum limits of coverage set forth in §61.6.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 39068, Aug. 29, 1983; 50 FR 36025, Sept. 4, 1985; 53 FR 16277, May 6, 1988; 58 FR 62424, Nov. 26, 1993]

§61.5 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (i.e., mudflow) or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if the insurer ceases to have an ownership interest in the covered property at the location described in the policy. Refunds of premiums for any other reason are subject to the conditions set forth in §62.5 of this subchapter.

(d) Optional Deductibles, All Zones, are available as follows:

CATEGORY ONE—1 TO 4 FAMILY BUILDING AND CONTENTS COVERAGE POLICIES

Options	Building/contents
	$500/$500

CATEGORY ONE—1 TO 4 FAMILY BUILDING AND CONTENTS COVERAGE POLICIES—Continued

Options	Building/contents
	1,000/1,000 2,000/1,000 3,000/1,000 4,000/2,000 5,000/2,000

CATEGORY TWO—1 TO 4 FAMILY BUILDING COVERAGE ONLY OR CONTENTS COVERAGE ONLY POLICIES

Options	Building	Contents [1]
	$500 1,000 2,000 3,000 4,000 5,000	$500 1,000 2,000 3,000 4,000 5,000

[1] Also applies to residential unit contents in other residential building or in multi-unit condominium building.

CATEGORY THREE—OTHER RESIDENTIAL AND NONRESIDENTIAL POLICIES

Options	Policy combining building and contents	Single coverage only policy (either building or contents)
	$500/$500 1,000/1,000 2,000/2,000 3,000/3,000 4,000/4,000 5,000/5,000	$500 1,000 2,000 3,000 4,000 5,000

CATEGORY FOUR—RESIDENTIAL CONDOMINIUM BUILDING POLICIES

Options	Policy combining building and contents	Single coverage only policy (either building or contents)
	$10,000/$10,000 25,000/10,000	$10,000 25,000

NOTE: Any other combination may be submitted for rating to the NFIP.

(e) The standard flood insurance policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 19140, May 4, 1982; 48 FR 39068, Aug. 29, 1983; 49 FR 33656, Aug. 23, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 53 FR 16277, May 6, 1988; 53 FR 27991, July 26, 1988; 57 FR 19541, May 7, 1992; 58 FR 62424, Nov. 26, 1993]

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

	Regular program		
	Emergency program [1] first layer	Second layer	Total amount available
Single Family Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	$35,000	$215,000	$250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	200,000	250,000
Other Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	100,000	250,000
Nonresidential			
Small business	100,000	400,000	500,000
Churches and other properties	100,000	400,000	500,000
Contents [2]			
Residential	10,000	90,000	100,000
Small business	100,000	400,000	500,000
Churches, other properties	100,000	400,000	500,000

[1] Only first layer available under emergency program.
[2] Per unit.

(b) In the insuring of a residential condominium building in a regular program community, the maximum limit of building coverage is $250,000 times the number of units in the building (not to exceed the building's replacement cost).

[60 FR 5585, Jan. 30, 1995]

§61.7 Risk premium rate determinations.

(a) Pursuant to section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him/her to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates are also referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as "chargeable rates." For areas having special flood, mudslide (i.e., mudflow), and flood-related erosion hazards, chargeable rates are usually lower than actuarial rates.

§61.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for:

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) $35,000 aggregate liability for any property containing only one unit, (ii) $100,000 for any property containing more than one unit, and (iii) $10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) $50,000 aggregate liability for any property containing only one unit, (ii) $150,000 for property containing more than one unit, and (iii) $10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) $100,000 for the structure and (ii) $100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this part would exceed the risk premium rates.

§61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for pre-FIRM, A zone properties, pre-FIRM, V zone properties, and emergency program properties.

Type of structure	A zone rates[1] per year per $100 coverage on:		V zone rates[2] per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential:				
No Basement or Enclosure	.68	.79	.82	.95
With Basement or Enclosure	.73	.79	.88	.95
2. All other including hotels and motels with normal occupancy of less than 6 months duration:				
No Basement or Enclosure	.79	1.58	.95	1.90
With Basement or Enclosure	.84	1.58	1.01	1.90

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.

(b) We will charge rates for contents in pre-FIRM buildings according to the use of the building.

(c) A-zone rates for buildings without basements or enclosures apply uniformly to all buildings throughout emergency program communities.

[64 FR 13116, Mar. 17, 1999]

§61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

(a) During the 13-month period beginning on the effective date of a revised Flood Hazard Boundary Map or Flood Insurance Rate Map for a community, the effective date and time of any initial flood insurance coverage shall be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 2.

(b) Where the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan, the coverage with respect to the property which is the subject of the loan shall be effective as of the time of the loan closing, provided the written request for the coverage is received by the NFIP and the flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.

(c) Except as provided by paragraphs (a) and (b) of this section, the effective date and time of any new policy or added coverage or increase in the amount of coverage shall be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

(d) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy. The additional premium for any new coverage or increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force.

(e) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium payment by the agent, does not constitute payment to the NFIP, except where a WYO Company receives an application and premium payment from one of its agents and elects to refer the business to the NFIP Servicing Agent because the WYO Company does not wish to write the business, in which case any applicable waiting period under this section shall be calculated in accordance with the first sentence of paragraph (f) of this section. Therefore, it is important that an application for Flood Insurance and its premium be mailed to the NFIP promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the premium payment are received at the office of the NFIP within ten (10) days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of application even though the application and premium payment are received at the office of the NFIP after ten (10) days following the date of application. Thus, if the application and premium payment are received after ten (10) days from the date of the application or are not mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term *endorsement* for the term *application* in this paragraph (e).

(f) With respect to the submission of an application in connection with new business, a renewal of a policy in effect and an endorsement to a policy in effect, the payment by an insured to an agent or the issuance of premium payment to a Write-Your-Own (WYO) Company by the agent, accompanied by a properly completed application, renewal or endorsement form, as appropriate, shall commence the calculation of any applicable waiting period under this section, provided that the agent is acting in the capacity of an agent of a Write-Your-Own (WYO) Company authorized by 44 CFR 62.23, is under written contract to or is an employee of such Company, and such WYO Company is, at the time of such submission

of an application in connection with new business or a renewal of or endorsement to flood insurance coverage, engaged in WYO business under an arrangement entered into by the Administrator and the WYO Company pursuant to §62.23.

(g) Subject to the provisions of paragraph (f) of this section, the rules set forth in paragraphs (a), (b), (c), (d) and (e) of this section apply to WYO Companies, except that premium payments and accompanying applications and endorsements shall be mailed to and received by the WYO Company, rather than the NFIP.

[43 FR 50427, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 46 FR 13514, Feb. 23, 1981; 48 FR 39069, Aug. 29, 1983; 48 FR 44544, Sept. 29, 1983; 49 FR 33656, Aug. 24, 1984; 50 FR 16242, Apr. 25, 1985; 50 FR 36026, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 53 FR 15211, Apr. 28, 1988; 60 FR 5585, 5586, Jan. 30, 1995]

§61.12 Rates based on a flood protection system involving Federal funds.

(a) Where the Administrator determines that a community has made adequate progress on the construction of a flood protection system involving Federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(b) Adequate progress in paragraph (a) of this section means that the community has provided information to the Administrator sufficient to determine that substantial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) All critical features of the flood protection system, as identified by the Administrator, are under construction, and each critical feature is 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Risk Studies Division, Office of Risk Assessment, Federal Insurance Administration, Federal Emergency Management Agency, Washington DC, and contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of Federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request: A full and precise statement of intended purposes of the flood protection system, and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this section, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Administrator, detailing

the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Administrator annually on the anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

[43 FR 2570, Jan. 17, 1978, Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 43061 Sept. 30, 1982; 48 FR 39069, Aug. 29, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 51 FR 30310, Aug. 25, 1986]

§ 61.13 Standard Flood Insurance Policy.

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in appendix "A" hereto (General Property, Dwelling, and Residential Condominium Building Association) and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than by the express written consent of the Administrator through the issuance of an appropriate amendatory endorsement, approved by the Administrator as to form and substance for uniform use.

(e) *Oral and written binders.* No oral binder or contract shall be effective. No written binder shall be effective unless issued with express authorization of the Administrator.

(f) The Standard Flood Insurance Policy and endorsements may be issued by private sector "Write-Your-Own" (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO Company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO Company, wherever the names "Federal Emergency Management Agency" and "Federal Insurance Administration" appear, the WYO Company is authorized to substitute its own name therefor. Standard Flood Insurance Policies issued by WYO Companies may be executed by the issuing WYO Company as Insurer, in the place and stead of the Federal Insurance Administrator.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 44 FR 62517, Oct. 31, 1979; 48 FR 46791, Oct. 14, 1983; 58 FR 62424, Nov. 26, 1993]

§ 61.14 Standard Flood Insurance Policy Interpretations.

(a) *Definition.* A Standard Flood Insurance Policy Interpretation is a written determination by the Administrator construing the scope of the flood insurance coverage that has been and is provided under the policy.

(b) *Publication and requests for interpretation.* The Administrator shall, pursuant to these regulations from time to time, issue interpretative rulings regarding the provisions of the Standard

Flood Insurance Policy. Such Interpretations shall be published in the FEDERAL REGISTER, made a part of appendix C to these regulations, and incorporated by reference as part of these regulations. Any policyholder or person in privity with a policyholder may file a request for an interpretation in writing with the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 39072, Aug. 29, 1983]

§ 61.16 Probation additional premium.

The additional premium charged pursuant to § 59.24(b) on each policy sold or renewed within a community placed on probation prior to October 1, 1992, is $25.00. Where the community was placed on probation on or after October 1, 1992, the additional premium charge is $50.00.".

[50 FR 36026, Sept. 4, 1985, as amended at 57 FR 19541, May 7, 1992]

§ 61.17 Group Flood Insurance Policy.

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under section 411 of the Stafford Act (42 U.S.C. 5178) of an Individual and Family Grant (IFG) program award for flood damage as a result of a major disaster declaration by the President.

(b) The premium for the GFIP is a flat fee of $200 per policyholder. We may adjust the premium to reflect NFIP loss experience and any adjustment of benefits under the IFG program.

(c) The amount of coverage is equivalent to the maximum grant amount established under section 411 of the Stafford Act (42 U.S.C. 5178).

(d) The term of the GFIP is for 37 months and begins 60 days after the date of the disaster declaration.

(e) Coverage for individual grantees begins on the thirtieth day after the NFIP receives the required data for individual grantees and their premium payments.

(f) We will send a Certificate of Flood Insurance to each individual insured under the GFIP.

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

(1) VI. DEDUCTIBLES does not apply to the GFIP. A special deductible of $200 (applicable separately to any building loss and any contents loss) applies to insured flood-damage losses sustained by the insured property in the course of any subsequent flooding event during the term of the GFIP. The deductible does not apply to:

(i) III.C.2. Loss Avoidance Measures; or

(ii) III. C.3. Condominium Loss Assessments coverage.

(2) VII. GENERAL CONDITIONS, E. Cancellation of Policy by You, does not apply to the GFIP.

(3) VII. GENERAL CONDITIONS, H. Policy Renewal, does not apply to the GFIP.

(h) We will send a notice to the GFIP certificate holders approximately 60 days before the end of the thirty-seven month term of the GFIP. The notice will encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP to apply for a conventional NFIP Standard Flood Insurance Policy, and advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The IFG program will provide the NFIP the amount of flood insurance coverage to be maintained by certificate holders.

[65 FR 60769, Oct. 12, 2000]

APPENDIX A(1) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

DWELLING FORM

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions. This policy covers only:

1. A non-condominium residential building designed for principal use as a dwelling place of one to four families, or

2. A single family dwelling unit in a condominium building

I AGREEMENT

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium,
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II DEFINITIONS

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:
   a. Overflow of inland or tidal waters,
   b. Unusual and rapid accumulation or runoff of surface waters from any source,
   c. Mudflow.
2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in A.1.a. above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.
2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.
3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.
4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.
5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.
6. *Building.*
   a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
   b. A manufactured home (a "manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
   c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

   Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in B.6.c. above.
7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.
8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.
9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:
   a. Common elements owned in undivided shares by unit owners; and
   b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.
10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.
11. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.
12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.
13. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.
14. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

15. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

16. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

17. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the Expense Constant.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured dwelling or the apartment in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued, and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one dwelling, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

27. *Unit.* A single-family unit you own in a condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.

3. A detached garage at the described location. Coverage is limited to no more than 10% of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of liability. We do not cover any detached garage used or held for use for residential (i.e., dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

6. A manufactured home or a travel trailer as described in the Definitions section (see II.B.6.b. and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are covered under Coverage A only:

a. Awnings and canopies,

b. Blinds,

c. Built-in dishwashers;

d. Built-in microwave ovens;

e. Carpet permanently installed over unfinished flooring;

f. Central air conditioners,

g. Elevator equipment,

h. Fire sprinkler systems,

i. Walk-in freezers;

j. Furnaces and radiators,

k. Garbage disposal units;

l. Hot water heaters, including solar water heaters;

m. Light fixtures;

n. Outdoor antennas and aerials fastened to buildings,

o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;

p. Plumbing fixtures;

q. Pumps and machinery for operating pumps;

r. Ranges, cooking stoves, and ovens,

s. Refrigerators, and

t. Wall mirrors, permanently installed.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners,

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them,

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways,

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system,

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:

a. The property is owned by you or your household family members, and

b. At your option, the property is owned by guests or servants.

Personal property is also covered for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.

Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case there is no coverage for such property.

2. Coverage for personal property includes the following property, subject to B.1. above, which is covered under Coverage B only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring.

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills,

f. Food freezers, other than walk-in, and food in any freezer; and

g. Portable microwave ovens and portable dishwashers.

3. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

4. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10% of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

5. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise covered under a flood insurance policy purchased by your condominium association) for not more than 10% of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

6. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value; or

e. Personal property used in any business.

7. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. *Debris Removal.*

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B Limit of Liability.

2. *Loss Avoidance Measures*

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b.and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

3. *Condominium Loss Assessments.*

a. If this policy insures a unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against

you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed.

The assessment must be made as a result of direct physical loss by or from flood during the policy term, to the building's common elements.

b. We will not pay any loss assessment charged against you:

(1) And the condominium association by any governmental body;

(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;

(3) That results from a loss to personal property, including contents of a condominium building;

(4) That results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

(a) 80% or more of its full replacement cost; or

(b) The maximum amount of insurance permitted under the Act;

(5) To the extent that payment under this policy for a condominium building loss, in combination with payments under any other NFIP policies for the same building loss, exceeds the maximum amount of insurance permitted under the Act for that kind of building; or

(6) To the extent that payment under this policy for a condominium building loss, in combination with any recovery available to you as a tenant in common under any NFIP condominium association policies for the same building loss, exceeds the amount of insurance permitted under the Act for a single-family dwelling.

Loss assessment coverage does not increase the Coverage A Limit of Liability.

D. Coverage D—Increased Cost of Compliance

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures.

b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. *Eligibility*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss structure." A repetitive loss structure is one that meets the following conditions:

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.(1) above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has

derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a structure must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g. below.

e. This coverage will also pay to bring a flood-damaged structure into compliance with state or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws

5. *Exclusions.*

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any structure insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage as set forth in VII. General Conditions, V. Loss Settlement.

b. All other conditions and provisions of the policy apply.

IV. PROPERTY NOT COVERED

We do not cover any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

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3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts;

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

V. EXCLUSIONS

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through the covered property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures;

2. III.C.3. Condominium Loss Assessments; or

3. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation, or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Concealment or Fraud and Policy Voidance

1. With respect to all insureds under this policy, this policy:

a. Is void;

b. Has no legal force or effect;

c. Cannot be renewed; and

d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance;

(2) Engaged in fraudulent conduct; or

(3) Made false statements; relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts described in B.1.above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or reenter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

C. Other Insurance

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that

the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance in the name of your condominium association covering the same property covered by this policy, then this policy will be in excess over the other insurance.

D. Amendments, Waivers, Assignment

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

F. Non-Renewal of the Policy by Us

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. If your building has been declared ineligible under section 1316 of the Act.

G. Reduction and Reformation of Coverage

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss:

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss:

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. Concealment or Fraud and Policy Voidance apply.

H. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the covered property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

a. Quantities and costs,

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

L. No Benefit to Bailee

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept our denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

N. Abandonment

You may not abandon to us damaged or undamaged property insured under this policy.

O. Salvage

We may permit you to keep damaged property insured under this policy after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the covered property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file

the suit in the United States District Court of the district in which the covered property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. Continuous Lake Flooding

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2., we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that

under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. Duplicate Policies Not Allowed

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a-c. below.

a. Replacement Cost Loss Settlement, described in V.2. below, applies to a single-family dwelling provided:

(1) It is your principal residence, which means that, at the time of loss, you or your spouse lived there for 80% of:

(a) The 365 days immediately preceding the loss; or

(b) The period of your ownership, if you owned the dwelling for less than 365 days; and

(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80% or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in V.3. below, applies to a single-family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value loss settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in V.4. below.

2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in V.1.a. above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown on your Declarations Page;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than $1,000, or more than 5% of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under V.2.a. above or V.4.a.(2) below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to V.2.a., b., and c. above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a single-family dwelling that:

(1) is a manufactured or mobile home or a travel trailer, as defined in II.B.6.b. and c.,

(2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled, and

(3) is your principal residence as specified in V.1.a.(1) above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value, or

(2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in V.2.above.

4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of V.4.a.(2), below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80% of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value, as defined in II.B.2., of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80% of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that represents 80% of its full replacement cost. But if 80% of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two-, three-, or four-family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets, and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property covered under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in V.5.a. above, that are below the surface of the ground inside the foundation walls if there is no basement; and

c. Excavations and underground flues, pipes, wiring, and drains.

NOTE: The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

VIII. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

IX. WHAT LAW GOVERNS

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

JO ANN HOWARD,
Administrator, Federal Insurance Administration.

[65 FR 60769, Oct. 12, 2000]

APPENDIX A(2) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

GENERAL PROPERTY FORM

Please read the policy carefully. The flood insurance coverage provided is subject to limitations, restrictions, and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

I. AGREEMENT

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II. DEFINITIONS

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. The collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in A.1.a. above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home ("a manufactured home," also known as a mobile home, is a structure built on a permanent chassis,

transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle, except as described in B.6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

11. *Described Location.* The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured building.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued, and,

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, which you specifically described in the application, may be insured under this policy.

21. *Pollutants.* Substances that include, but that are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, V.

27. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping.

Stock does not include any property not covered under Section IV. Property Not Covered, except the following:

a. Parts and equipment for self-propelled vehicles;

b. Furnishings and equipment for watercraft;

c. Spas and hot-tubs, including their equipment; and

d. Swimming pool equipment.

28. *Unit.* A unit in a condominium building.

29. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. We also insure building property for a period of 45 days at another location, as set forth in III.C.2.b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials attached to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment; and

o. Wall mirrors, permanently installed.

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II. 6.a.), then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions

Section (see II.B.6.b.and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B. 2., 3., and 4. below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. When this policy covers personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy covers household personal property, it will insure household personal property usual to a living quarters, that:

(1) Belongs to you, or a member of your household, or at your option:

(a) Your domestic worker;

(b) Your guest; or

(2) You may be legally liable for.

b. If this policy covers other than household personal property, it will insure your:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) Stock; and

(4) Other personal property owned by you and used in your business, subject to IV. Property Not Covered.

3. Coverage for personal property includes the following property, subject to B.1.a. and B.1.b. above, which is covered under Coverage B. only:

a. Air conditioning units installed in the building;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

4. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units—portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than $2,500 for any loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value; or

6. We will pay only for the functional value of antiques.

7. If you are a tenant, you may apply up to 10% of the Coverage B limit to improvements:

a. Made a part of the building you occupy; and

b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

8. If you are a condominium unit owner, you may apply up to 10% of the Coverage B limit to cover loss to interior:

a. walls,

b. floors, and

c. ceilings,

that are not covered under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a tenant, personal property must be inside the fully enclosed building.

C. Coverage C—Other Coverages

1. *Debris Removal.*

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. *Loss Avoidance Measures.*

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items; and

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to a place other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B limit of liability.

3. *Pollution Damage.*

We will pay for damage caused by pollutants to covered property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is $10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the covered property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

D. Coverage D—Increased Cost of Compliance

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures. b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. *Eligibility.*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.(1) above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g. below.

e. This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. *Exclusions.*

Under this Coverage D—Increased Cost of Compliance, we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any structure insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

All other conditions and provisions of the policy apply.

IV. Property Not Covered

A. We do not cover any of the following property:

1. Personal property not inside the fully enclosed building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if it was constructed or substantially improved after September 30, 1962;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the II.B.6.c., whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:

a. Used mainly to service the described location, or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49% of the actual cash value of the building or unit is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act of 1990 and amendments to these Acts;

16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy;

17. A residential condominium building located in a Regular Program community.

V. Exclusions

A. We only provide coverage for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the covered property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment situated on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything that you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, less depreciation, or

2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Concealment or Fraud and Policy Voidance

1. With respect to all insureds under this policy, this policy

a. Is void,

b. Has no legal force or effect,

c. Cannot be renewed, and

d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts described in B.1 above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

C. Other Insurance

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following.

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy covers a condominium association and there is a flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

D. Amendments, Waivers, Assignment

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. Cancellation of Policy by You

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

F. Non-Renewal of the Policy by Us

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP; or

2. If your building has been declared ineligible under section 1316 of the Act.

G. Reduction and Reformation of Coverage

1. If the premium we received from you was not enough to buy the kind and amount of coverage that you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. above apply.

H. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within sixty days after the loss

even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices, and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash values;

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

L. No Benefit to Bailee

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

N. Abandonment

You may not abandon damaged or undamaged insured property to us.

O. Salvage

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. Appraisal

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as

any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. Continuous Lake Flooding

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply when as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or this paragraph T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States, where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2 we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the

agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show that there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. Duplicate Policies Not Allowed

1. Property may not be insured under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under this Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. Loss Settlement

We will pay the least of the following amounts after application of the deductible:

1. The applicable amount of insurance under this policy;

2. The actual cash value; or

3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

IX. WHAT LAW GOVERNS

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

JO ANN HOWARD,
Administrator, Federal Insurance Administration.

[65 FR 60778, Oct. 12, 2000]

APPENDIX A(3) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

I. AGREEMENT

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II. DEFINITIONS

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. Insured(s) includes: any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

"Flood", as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in A.1.a above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion

of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site.

b. A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in B.6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

11. *Described Location.* The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, which you specifically described in the application, may be insured under this policy.

21. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that the NFIP has placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99,

AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

27. *Unit.* A single-family unit in a residential condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials fastened to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment;

o. Wall mirrors, permanently installed; and

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.), then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions Section (See II.B.b. and c.).

If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners,

(2) Cisterns and the water in them.

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2. and B.3. below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest, or

b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. Coverage for personal property includes the following property, subject to B.1. above, which is covered under Coverage B only:

a. Air conditioning units—portable or window type;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

3. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units—portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

4. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value.

5. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. *Debris Removal*

a. We will pay the expense to remove nonowned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. *Loss Avoidance Measures*

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items; and

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor applies only if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood. This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B limit of liability.

D. Coverage D—Increased Cost of Compliance

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures.

b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. *Eligibility.*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.(1) above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g.below relating to improvements.

e. This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. *Exclusions.*

Under this Coverage D—Increased Cost of Compliance, we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any structure insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under VIII. General Conditions, V. Loss Settlement.

b. All other conditions and provisions of this policy apply.

IV. PROPERTY NOT COVERED

We do not cover any of the following:

1. Personal property not inside the fully enclosed building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions Section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment.

However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:

a. Used mainly to service the described location, or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts;

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

V. EXCLUSIONS

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer, drain, or sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water.

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating or cooling equipment situated on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. DEDUCTIBLES

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of insurance that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance.

VII. COINSURANCE

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80% of its replacement cost; or

2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII. B. above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1. above.

3. Subtract the deductible from the figure determined in C.2. above.

We will pay the amount determined in C.3. above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

Examples

Example #1 (Inadequate Insurance)

Replacement value of the building—$250,000
Required amount of insurance—$200,000
(80% of replacement value of $250,000)
Actual amount of insurance carried—$180,000
Amount of the loss—$150,000
Deductible—$500
Step 1:180,000 ÷ 200,000 = .90
(90% of what should be carried.)
Step 2: 150,000 × .90 = 135,000
Step 3: 135,000 − 500 = 134,500

We will pay no more than $134,500. The remaining $15,500 is not covered due to the coinsurance penalty ($15,000) and application of the deductible ($500).

Example #2 (Adequate Insurance)

Replacement value of the building—$500,000
Required amount of insurance—$400,000
(80% of replacement value of $500,000)
Actual amount of insurance carried—$400,000
Amount of the loss—$200,000
Deductible—$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than $199,500 ($200,000 amount of loss minus the $500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any covered building property will be included;

2. The replacement cost value of any building property not covered under this policy will not be included, and

3. Only the replacement cost value of improvements installed by the condominium association will be included.

VIII. GENERAL CONDITIONS

A. *Pair and Set Clause.*

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, less depreciation; or

2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. *Concealment or Fraud and Policy Voidance.*

1. With respect to all insureds under this policy, this policy:

a. Is void,

b. Has no legal force or effect,

c. Cannot be renewed, and

d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements,

relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date the wrongful acts described in B.1. above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is not otherwise eligible for coverage under the NFIP.

C. *Other Insurance.*

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

D. *Amendments, Waivers, Assignment.*

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. *Cancellation of Policy by You.*

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

F. *Non-Renewal of the Policy by Us.*

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. Your building has been declared ineligible under section 1316 of the Act.

G. *Reduction and Reformation of Coverage.*

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above the amount that you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy

term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. Concealment or Fraud and Policy Voidance above apply.

H. *Policy Renewal.*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

I. *Conditions Suspending or Restricting Insurance.*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. *Requirements in Case of Loss.*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged insured buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help

you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. *Our Options After a Loss.*

Options that we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can make reasonably available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value we agree upon or its appraised value.

L. *No Benefit to Bailee.*

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. *Loss Payment.*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VIII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

N. *Abandonment.*

You may not abandon damaged or undamaged insured property to us.

O. *Salvage.*

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. *Appraisal.*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. *Mortgage Clause.*

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist

at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk, of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. *Suit Against Us.*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. *Subrogation.*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding.*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply as long as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or this paragraph T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the

ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied, and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above, except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2., we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. *Duplicate Policies Not Allowed.*

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under this condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. *Loss Settlement.*

1. Introduction

This policy provides three methods of settling losses. Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a.-c. below.

a. Replacement Cost Loss Settlement described in V.2. below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement described in V.3. below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value loss settlement applies to all other property covered under this policy, as outlined in V.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is: (1) a manufactured home or travel trailer, as defined in II.B.6.b. and c., and (2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The Building Limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in V.2. above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement.

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location;

(3) Outside antennas and aerials, awning, and other outdoor equipment;

(4) Carpeting and pads;

(5) Appliances; and

(6) A manufactured home or mobile home or a travel trailer as defined in II.B.6.b. or c. that does not meet the conditions for special loss settlement in V.3. above.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value (as defined in II.B.2.); or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

IX. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. WHAT LAW GOVERNS

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

JO ANN HOWARD,
Administrator, Federal Insurance Administration.

[65 FR 60785, Oct. 12, 2000]

APPENDIX A(4) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

ENDORSEMENT TO DWELLING FORM POLICY

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph VII.H.5. This endorsement applies

only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

[65 FR 60793, Oct. 12, 2000]

APPENDIX A(5) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

ENDORSEMENT TO GENERAL PROPERTY FORM

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

[65 FR 60793, Oct. 12,2000]

APPENDIX A(6) TO PART 61

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

ENDORSEMENT TO RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

This endorsement replaces the provisions of VIII.B.4. and VIII.H.2, and also adds a new paragraph, VIII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VIII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VIII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VIII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

[65 FR 60794, Oct. 12, 2000]

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.
62.1 Purpose of part.
62.2 Definitions.
62.3 Servicing agent.
62.4 Limitations on sale of policies.
62.5 Premium refund.
62.6 Minimum commissions.

Subpart B—Claims Adjustment and Judicial Review

62.21 Claims adjustment.
62.22 Judicial review.

Subpart C—Write-Your-Own (WYO) Companies

62.23 WYO Companies authorized.
62.24 WYO Company participation criteria. new applicants.

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

AUTHORITY: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Issuance of Policies

§ 62.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

§ 62.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§ 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) National Con-Serv, Inc., whose offices are located in Rockville, Maryland, is the servicing agent for the Federal Insurance Administration.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 58 FR 62447, Nov. 26, 1993]

§ 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, in any area

the Administrator designates in part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice, or the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be pro rata but with retention of the expense constant.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 49 FR 33658, Aug. 24, 1984; 53 FR 16279, May 6, 1988]

§62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First $2,000 of Premium	15
Excess of $2,000	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amount	Commissions (percent)
First $2,000 of Premium	15
Excess of $2,000	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission, and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis.

In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981, as amended at 53 FR 15221, Apr. 28, 1988; 57 FR 19541, May 7, 1992]

Subpart B—Claims Adjustment and Judicial Review

§ 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and parts 61 and 62 of this subchapter.

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the Federal Insurance Administrator in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Federal Insurance Administrator of the Federal Emergency Management Agency.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 43061 Sept. 30, 1982; 49 FR 33879, Aug. 27, 1984]

Subpart C—Write-Your-Own (WYO) Companies

§ 62.23 WYO Companies authorized.

(a) Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies whereby such companies may offer flood insurance coverage under the Program to eligible applicants for such insurance, including policyholders insured by them under their own property business lines of insurance pursuant to their customary business practices including their usual arrangements with agents and producers, in any State in which such WYO Companies are licensed to engage in the business of property insurance. Arrangements entered into by WYO Companies under this subpart shall be in the form and substance of the standard arrangement, entitled "Financial Assistance/Subsidy Arrangement", a copy of which is included in appendix A of this part and made a part of these regulations.

(b) Any duly licensed insurer so engaged in the Program shall be a WYO Company.

(c) A WYO Company is authorized to arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the WYO Company, coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and

conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this subpart, a WYO Company shall use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act and regulations prescribed by the Administrator under the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. In furtherance of this end, the Administrator has established "A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program", a copy of which is included in appendix B of this part and made a part of these regulations.

(g) WYO Companies shall not be agents of the Federal Government and are solely responsible for their obligations to their insureds under any flood insurance policies issued under agreements entered into with the Administrator.

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be used by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance through the NFIP WYO Program.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan. Transactions reported by the WYO Company under the WYO Transaction Record Reporting and Processing Plan will be analyzed by the NFIP Bureau & Statistical Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions that have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from an agent or a producer, the agent or producer shall be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrent expiration dates with other policies covering the property.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be used by WYO Companies.

(1) Under the terms of the Arrangement set forth at appendix A of this part, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP

Claims manuals. The Arrangement also provides that claim adjustments shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO Company. The responsibility for providing a proper adjustment for combined wind and water claims is to be conducted by listing in concert with the Single Adjuster provisions listed in appendix A.

(2) The WYO Company may use its staff adjusters, independent adjusters, or both. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility for defending claims will be upon the Write Your Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be used.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of the General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Bureau and Statistical Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as: nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of the General Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Have a biennial audit of the flood insurance financial statements conducted by an independent Certified Public Accountant (CPA) firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with the generally accepted auditing standards (GAAS) and Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us (the Federal Insurance Administration) a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(2) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing (TRPP) Plan (Part 5). We will file a report of the Operation Review with the Standards Committee.

(3) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual. Transactions reported to the National Flood Insurance Program's (NFIP's) Bureau and Statistical Agent by the WYO Company under the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual will be analyzed by the Bureau and Statistical Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the totals generated from transaction reports with those submitted on WYO Company reconciliation reports.

(4) Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

(5) Cooperate with FIA in the implementation of a claims reinspection program.

(6) Cooperate with FIA in the verification of risk rating information.

(7) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this title relative to the administration of the NFIP.

(l)(1) WYO Companies may, on a voluntary basis, elect to participate in the Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties that:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution that, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO Companies must also maintain evidence of compliance with paragraph (l)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan contained in appendix B of this part.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in paragraphs (l)(4) through (6) of this section.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973, as amended;

(ii) Announce the determination that the mortgagor's property is in an identified special flood hazard area as delineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan;

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination;

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to obtain a Standard Flood Insurance Policy (SFIP) promptly from a local insurance agent (or WYO Company);

(v) Advise that the premium for a MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance; and

(vi) Advise that a MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not received by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act.

(Approved by the Office of Management and Budget under OMB control number 3067–0229.)

[61 FR 51219, Oct. 1, 1996, as amended at 64 FR 56176, Oct. 18, 1999]

§ 62.24 WYO Company participation criteria: new applicants.

New companies seeking to participate in the WYO Program, as well as former WYO Companies seeking to return to the WYO Program, must meet standards for financial capability and stability, for statistical and financial reporting, and for commitment to Program objectives.

(a) To demonstrate the ability to meet the financial requirements, an applicant for entry or reentry into the WYO Program must:

(1) be a licensed property insurance company;

(2) have a five (5) year history of writing property insurance;

(3) disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal government during the immediate prior five (5) years regarding the company's business practices;

(4) submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) submit its last State or regional audit, which should contain no material negative findings.

(b) An applicant for entry or reentry into the WYO Program must also pass a test to determine the company's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where the company's reporting requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(c) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the company shall submit information concerning the company's plans for the Write Your Own Program including plans for the training and support of producers and staff, marketing plans and sales targets, and

claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicant companies shall also name, in addition to a Principal Coordinator, a corporate officer point of contact— an individual, e.g., at the level of a Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line, and the company's Best's Financial Size Category for the purpose of setting marketing goals.

[59 FR 38572, July 29, 1994]

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT

Purpose: To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

Accounting Data. Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 2001.

Issued By: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

ARTICLE I—FINDINGS, PURPOSE, AND AUTHORITY

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended ("the Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, overtime, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

ARTICLE II—UNDERTAKING OF THE COMPANY

A. Eligibility Requirements for Participation in the NFIP:

1. Policy Administration. All fund receipt, recording, control, timely deposit requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan. The Company shall be responsible for:

a. Compliance with the Community Eligibility/Rating Criteria

b. Making Policyholder Eligibility Determinations

c. Policy Issuance

d. Policy Endorsements

e. Policy Cancellations

f. Policy Correspondence

g. Payment of Agents' Commissions

2. Claims Processing. All claims processing must be processed in accordance with the processing of all the companies' insurance policies and with the Financial Control Plan. Companies will also be required to comply with FIA Policy Issuances and other guidance authorized by FIA or the Federal Emergency Management Agency ("FEMA").

3. Reports.

a. Monthly Financial Reporting and Statistical Transaction reporting requirements. All monthly financial reporting and statistical transaction reporting shall be in accordance with the requirements of the NFIP Transaction Record Reporting and Processing Plan for the Company Program and the Financial Control Plan for business written under the WYO (Write Your Own) Program. 44 CFR part 62, appendix B. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company reports.

b. Monthly financial reporting procedure shall be in accordance with the WYO Accounting Procedures.

B. Time Standards. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these requirements may result in limitations on the company's authority to write new business or the removal of the Company from the program. Applicable time standards are:

1. Application Processing—15 days (note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added moneys shall be mailed within 10 days);

2. Renewal Processing—7 days.

3. Endorsement Processing—15 days

4. Cancellation Processing—15 days.

5. Claims Draft Processing—7 days from completion of file examination.

6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Single Adjuster Program. To ensure the maximum responsiveness to the NFIP policyholders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program using procedures issued by the Administrator. The Single Adjuster procedure shall be followed in the following cases:

1. Where the flood and wind coverage is provided by the Company.

2. Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and

3. Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance.

1. The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act.

3. All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator.

4. All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business.

5. The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

ARTICLE III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS

A. The Company shall be liable for operating, administrative and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments.

B. The Company may withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for "Other Acq.", "Gen. Exp.", and "Taxes" calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, we (the Federal Insurance Administration) will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages* for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). In addition, this amount will be increased by one percentage point to reimburse expenses beyond regular property/casualty expenses.

The Company may retain fifteen percent (15%) of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the Company may increase a maximum of two percentage points, depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. We will pay the company the amount of any increase after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. We will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a "Fee Schedule" coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D. Loss Payments.

1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation which arises under the scope of this Arrangement, and the Authorities set forth above. All such loss payments must meet the documentation requirements of the Financial Control Plan and of this Arrangement. The Company will be reimbursed for errors and omissions only as set forth at Article IX of this Arrangement.

3. Notification of claims in litigation against the company. To ensure reimbursement of costs expended to defend a claim in litigation against the Company, the Company must promptly notify FIA.

Prompt notice, in duplicate, of any such claim in litigation within the scope of this section (D) shall be sent to the FIA along with a copy of any material pertinent to the claim in litigation. FIA shall forward one copy of all such claims to the Associate General Counsel for Litigation, FEMA OGC, to ensure that the FEMA OGC is aware of all pending litigation. Following the initial notice of claims in litigation, to ensure expeditious reimbursement, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a notice of claim in litigation by the Company, the Company must submit an initial case analysis and legal fee estimate for billing support. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner.

4. Limitation on Litigation Costs. Following receipt of notice of such claim, the Office of General Counsel (OGC), FEMA, shall review the information submitted. If it is determined that the claim is grounded in actions by the Company that are outside the scope of this Arrangement, the National Flood Insurance Act, and 44 CFR chapter 1, subchapter B, and/or involve issues of insurer/agent negligence as discussed in Article IX of this Arrangement, the OGC shall make a recommendation to the Administrator as to whether the claim is grounded in

actions by the Company that are significantly outside the scope of this Arrangement. In the event the Administrator determines that the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement, the Company will be notified, in writing, within thirty (30) days of the Administrator's decision, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration the determination that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from Federal flood insurance funds referred to in Article II, Section E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

ARTICLE IV—UNDERTAKINGS OF THE GOVERNMENT

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

ARTICLE V—COMMENCEMENT AND TERMINATION

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the FEDERAL REGISTER and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to

insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

ARTICLE VI—INFORMATION AND ANNUAL STATEMENTS

The Company shall furnish to FEMA such summaries and analyses of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

ARTICLE VII—CASH MANAGEMENT AND ACCOUNTING

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

ARTICLE VIII—ARBITRATION

If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and

such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

ARTICLE IX—ERRORS AND OMISSIONS

The parties shall not be liable to each other for damages caused by inadvertent delay, error, or omission made in connection with any transaction under this Arrangement. In the event of such actions, the responsible party must attempt to rectify that error as soon as possible after discovery of the error and act to mitigate any costs incurred due to that error. In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or Trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

ARTICLE X—OFFICIALS NOT TO BENEFIT

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

ARTICLE XI—OFFSET

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

ARTICLE XII—EQUAL OPPORTUNITY

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

ARTICLE XIII—RESTRICTION ON OTHER FLOOD INSURANCE

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

ARTICLE XIV—ACCESS TO BOOKS AND RECORDS

The FIA and the Comptroller General of The United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under

policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

ARTICLE XV—COMPLIANCE WITH ACT AND REGULATIONS

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

ARTICLE XVI—RELATIONSHIP BETWEEN THE PARTIES (FEDERAL GOVERNMENT AND COMPANY) AND THE INSURED

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

[62 FR 39910, July 24, 1997, as amended at 63 FR 32761, June 16, 1998; 64 FR 27709, May 21, 1999; 65 FR 36634, June 9, 2000; 66 FR 40917, Aug. 6, 2001]

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

A PLAN TO MAINTAIN FINANCIAL CONTROL FOR BUSINESS WRITTEN UNDER THE WRITE YOUR OWN PROGRAM.

(a) *In general.* Under the Write Your Own (WYO) Program, we (the Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA)) may enter into an arrangement with individual private sector insurance companies licensed to engage in the business of property insurance. The arrangement allows these companies—using their customary business practices—to offer flood insurance coverage to eligible property owners. To assist companies in marketing flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO policies issued under the WYO Arrangement. To account for and ensure appropriate spending of any taxpayer funds, the WYO companies and we will implement this Financial Control Plan (Plan). Only the Administrator may approve any departures from the requirements of this Plan.

(b) *Financial Control Plan.* (1) The WYO Companies are subject to audit, examination, and regulatory controls of the various States. Additionally, the operating department of an insurance company is customarily subject to examinations and audits performed by the company's internal audit or quality control departments, or both, and independent Certified Public Accountant (CPA) firms. This Plan will use to the extent possible the findings of these examinations and audits as they pertain to business written under the WYO Program.

(2) This Plan contains several checks and balances that can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of the Company's files by us or our designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

(c) *Standards Committee established.* (1) We establish in this Plan a Standards Committee for the WYO Program to oversee the performance of WYO companies under this Plan and to recommend appropriate remedial actions to the Administrator. The Standards Committee will review and recommend to the Administrator remedies for any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to, not renewing a particular company's WYO Arrangement.

(2) The Administrator appoints the members of the Standards Committee, which consists of five (5) members from FIA, one (1) member from FEMA's Office of Financial Management, and one (1) member from each of the six (6) designated WYO Companies, pools, or other entities.

(3) A WYO company must—

(A) Have a biennial audit of the flood insurance financial statements conducted by a CPA firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with generally accepted auditing standards (GAAS) and the Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee

(B) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing Plan (Part 5). We will file a report of the Operation Review with the Standards Committee (Part 7).

(C) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing (TRRP) Plan and the WYO Accounting Procedures Manual. The National Flood Insurance Program's (NFIP) Bureau and Statistical Agent will analyze the transactions reported under the TRRP Plan and submit a monthly report to the WYO company and to us. The analysis will cover the timeliness of the WYO submissions, the disposition of transactions that do not pass systems edits, and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reports. (Parts 2 and 6).

(D) Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

(E) Cooperate with us in the implementation of a claims reinspection program (Part 3).

(F) Cooperate with us in the verification of risk rating information.

(G) Cooperate with FEMA's Office of Inspector General on matters pertaining to fraud.

(d) This Plan incorporates by reference a separate document, "The Write Your Own Program Financial Control Plan Requirements and Procedures," that contains the following parts, each of which is incorporated by reference into and is applicable to the Financial Control Plan.

(1) Part 1—Financial Audits, Audits for Cause, and State Insurance Department Audits;

(2) Part 2—Transaction Record Reporting and Processing Plan Reconciliation Procedures;

(3) Part 3—Claims Reinspection Program;

(4) Part 4—Report Certifications and Signature Authorization;

(5) Part 5—Transaction Record Reporting and Processing Plan;

(6) Part 6—Write Your Own (WYO) Accounting Procedures Manual; and

(7) Part 7—Operation Review Procedures.

(e) Interested members of the public may obtain a copy of "The Write Your Own Program Financial Control Plan Requirements and Procedures" by contacting the FEMA Distribution Center, P.O. Box 2012, Jessup, MD 20794.

[64 FR 56176, Oct. 18, 1999]

PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Subpart A—General

Sec.
63.1 Purpose of part.
63.2 Condemnation in lieu of certification.
63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.
63.4 Property not covered.
63.5 Coverage for contents removal.
63.6 Reimbursable relocation costs.
63.7 Amount of coverage and deductible on effective date of condemnation or certification.
63.8 Limitation on amount of benefits.
63.9 Sale while claim pending.
63.10 Demolition or relocation contractor to be joint payee.
63.11 Requirement for a commitment before October 1, 1989.
63.12 Setback and community flood plain management requirements.

Subpart B—State Certification of Structures Subject to Imminent Collapse

63.13 Purpose of subpart.
63.14 Criteria for State qualification to perform imminent collapse certifications.
63.15 State application for eligibility to certify structures subject to imminent collapse.
63.16 Review of State application by the Administrator.
63.17 Procedures and data requirements for imminent collapse certifications by States.
63.18 Review of State certification by the Administrator.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 53 FR 36975, Sept. 23, 1988, unless otherwise noted.

Subpart A—General

§ 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or

relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

§ 63.2 Condemnation in lieu of certification.

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property owner of an unsafe condition, or unsanitary condition, or other deficiency at the property address, coupled with a statement that the property owner must vacate the property if the condition giving rise to the condemnation notice is not cured by repair, removal, or demolition of the building by a date certain.

(c) In addition to a condemnation in accordance with paragraphs (a) and (b) of this section, a structure must be found by the Administrator to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels to be eligible for benefits under section 1306(c) of the Act.

§ 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.

The requirement in section 1306(c)(4)(C)(i) of the Act that a structure be "covered by a contract for flood insurance under this title—(i) on or before June 1, 1988" was met if presentation of the appropriate premium and a properly completed flood insurance application form was made to the National Flood Insurance Program or a Write Your Own (WYO) Company on or before June 1, 1988.

§ 63.4 Property not covered.

Benefits under section 1306(c) of the Act do not include compensation for items excluded under the provisions of the Standard Flood Insurance Policy (SFIP).

§ 63.5 Coverage for contents removal.

Whenever a structure is subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels and otherwise meets the requirements of section 1306(c) of the Act so that benefits are payable under those provisions, the coverage in the definition of "Direct Physical Loss by or from Flood" in the SFIP for the expense of removing contents, up to the minimum deductible of $500.00, to protect and preserve them from flood or from the imminent danger of flood, applies if contents coverage is in effect.

§ 63.6 Reimbursable relocation costs.

In addition to the coverage described in § 63.5 of this part, relocation costs for which benefits are payable under section 1306(c) of the Act include the costs of:

(a) Removing the structure from the site,

(b) Site cleanup,

(c) Debris removal,

(d) Moving the structure to a new site, and

(e) At the new site, a new foundation and related grading, including elevating the structure as required by local flood plain management ordinances, and sewer, septic, electric, gas, telephone, and water connections at the building.

§ 63.7 Amount of coverage and deductible on effective date of condemnation or certification.

The amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act are what was in effect on the date of condemnation or the date of application for certification.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

§ 63.8 Limitation on amount of benefits.

(a) In section 1306(c)(3)(C) of the Act, the phrase *under the flood insurance contract issued pursuant to this title* means the value of the structure under section 1306(c)(3)(C) of the Act is limited to the amount of building coverage provided by the insured's policy.

(b) Where the amount payable under section 1306(c)(1)(A)(ii) of the Act for the cost of demolition, together with the amount payable under section 1306(c)(1)(A) of the Act for the value of the structure under the demolition option, exceeds the amount of building coverage provided by the insured's policy, such amounts will be paid beyond the amount of that building coverage, even if this payment exceeds the limits of coverage otherwise authorized by section 1306(a) of the Act for the particular class of property.

§ 63.9 Sale while claim pending.

If a claimant sells a structure prior to its demolition or relocation, no benefits are payable to that claimant under section 1306(c) of the Act, and any payments which may have been made under those provisions shall be reimbursed to the insurer making them.

§ 63.10 Demolition or relocation contractor to be joint payee.

If a demolition or relocation contractor is used, the instrument of payment for benefits under section 1306(c) of the Act for the fee of that contractor, shall include that contractor as a joint payee, unless that contractor has already been paid when the instrument of payment is issued.

§ 63.11 Requirement for a commitment before October 1, 1989.

The requirement in section 1306(c)(7) of the Act that a commitment be made on or before September 30, 1989 as a necessary condition to making any payments after September 30, 1989, is met if before October 1, 1989,

(a) There is either a condemnation in accordance with § 63.2 of this part or a certification in accordance with subpart B of this part, and

(b) A policyholder's notice of claim for benefits under section 1306(c) of the Act is received by the insurer.

§ 63.12 Setback and community flood plain management requirements.

(a) Where benefits have been paid under section 1306(c) of the Act, the setback requirements in section 1306(c)(5) of the Act, which if not met result in a prohibition against subsequently providing flood insurance or assistance under the Disaster Relief Act of 1974, shall apply:

(1) To the structure involved wherever it is located, and

(2) To any other structure subsequently constructed on or moved to the parcel of land on which the structure involved was located when the claim under section 1306(c) of the Act arose.

(b) In addition, any structures relocated under section 1306 of the Act must comply with the flood plain management criteria set forth in § 60.3 of this chapter.

Subpart B—State Certification of Structures Subject to Imminent Collapse

§ 63.13 Purpose of subpart.

The purpose of this subpart is to establish criteria under the provisions of section 1306(c) of the National Flood Insurance Act of 1968, as amended, by which States can obtain approval from the Administrator to certify that structures are subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. The subpart also sets forth the procedures and data requirements to be utilized by those

States in certifying structures as subject to imminent collapse. The State certification procedure represents an option to the use of the procedure whereby a structure is condemned by a State or local authority as a prerequisite to consideration for imminent collapse insurance benefits.

§63.14 Criteria for State qualification to perform imminent collapse certifications.

In order to qualify under this subpart, the State must be administering a coastal zone management program which includes the following components, as a minimum:

(a) A state-wide requirement that prohibits new construction and the relocation of structures seaward of an adopted erosion setback. Such setback must be based in whole or in part on some multiple of the local mean annual erosion (recession) rate; and

(b) An established, complete and functional data base of mean annual erosion rates for all reaches of coastal shorelines subject to erosion in the State, which is used as the basis to enforce these setback requirements.

§63.15 State application for eligibility to certify structures subject to imminent collapse.

(a) Application pursuant to this part shall be made by the Governor or other duly authorized official of the State.

(b) The application must be submitted to the Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472.

(c) Documents to be included in the application are as follows:

(1) Copies of all applicable State statutes and regulations verifying the existence of a coastal zone management program including setback requirements for new and relocated construction which are based in whole or in part on mean annual erosion rates established for the State's shorelines.

(2) A copy of the State's mean annual erosion rate data base, if not already provided, showing such rates for all reaches of coastal shorelines subject to erosion within the State.

(3) The title, address and phone number of a contact person within the State agency having authority for administering the coastal zone management program.

(4) A statement that adequate resources are available to carry out the certification services, and that certifications will be performed in accordance with the procedures described in §63.17.

§63.16 Review of State application by the Administrator.

(a) The Administrator may return the application for eligibility upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the coastal zone management program and erosion rate data base.

(b) Upon determining that the State's program and/or data base does not meet the criteria set forth in §63.14, the Administrator shall in writing reject the application for eligibility and indicate in what respects the State program and/or data base fails to comply with the criteria.

(c) Upon determining that the State program and data base meets the criteria set forth in §63.14, the Administrator shall approve the State as eligible to certify structures subject to imminent collapse. Such approval, however, is in all cases provisional. The Administrator shall review the State program and data base for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the program and/or data base is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his approval.

§63.17 Procedures and data requirements for imminent collapse certifications by States.

Any State that has been determined to be eligible by the Administrator may certify that a coastal structure is subject to imminent collapse. Such certification requires that the State collect scientific or technical information relative to the structure and its site and provide such information to the insured to be filed with a claim for

insurance benefits under Section 1306 of the National Flood Insurance Act of 1968, as amended. The information which is provided to the insured shall include, but is not limited to, the following:

(a) Certification from the State agency that the structure is subject to imminent collapse. The certification shall cite the property address, legal description (e.g., lot, block), the date of application for certification, and the date of and basis for the certification, and

(b) Supporting scientific and technical data to substantiate the certification consisting of the following:

(1) Photographs of the structure in relation to the obvious peril. All photographs should be labeled with the location, direction, date and time from which they were taken. The collection of photographs should adequately display the following:

(i) Any evidence of existing damage. The damage can include loss or erosion of soil near or around the foundation, or structural damage to the foundation components.

(ii) Structure and waterbody. These photographs shall show both the structure and the waterbody that presents the peril. If the structure is on a high bluff or dune and not accessible from the water side, the top edge of the bluff or dune will be sufficient. These will usually be taken from one or both sides of the structure.

(iii) Physical reference features used in the measurements discussed below. The reference feature shall be in or near the area affected by normal tides, when applicable. If a reference is not clearly distinguishable on the photograph, it should be annotated to identify the feature. If possible, all reference features described below should be photographed showing their relationship to the site of the threatened structure.

(2) Identification and selection of reference features. The following reference features are presented according to priority. If the first feature is not present, the next feature shall be located and photographed, and so forth.

(i) Top edge of bluff (cliff top).

(ii) Top edge of escarpment on an eroding dune (i.e., a nearly vertical erosional cut at the seaward face of the dune). The normal high tide should be near the toe of the dune and there should be indications that the dune is actively eroding.

(iii) The normal high tide limit may be indicated by one of the following:

(A) Vegetation line (the seaward most edge of permanent vegetation).

(B) Beach scarp (erosion line on beach, usually a sharp, nearly vertical drop of 0.5 to 3.0 feet at the upper limit of high tide).

(C) Debris line deposited by the normal high tide, not by a recent storm.

(D) Upper limit of wet sand.

(3) Distance measurements from the threatened structure to the nearest points on the reference features. These measurements should be taken from all photographed reference features to the closest point on the supporting foundation. For purposes of making this measurement, decks, stairs, and other exterior attachments that do not contribute to the structural support of the building are not considered part of the structure. The measurements shall be taken horizontally with a tape and recorded to the nearest foot. The date and time of the measurement shall be noted. The location of the measurements (i.e., reference feature and closest structural member) shall be identified on the appropriate photograph or sketch of the site. If some or all of the reference features coincide, this shall also be noted and identified on the photographs. Reference features landward of the structure need not be measured, but shall be noted on the photographs.

(4) A determination of the average annual erosion rate at the site and a copy of the pertinent section of the reference document used to obtain the annual erosion rate at the site.

(5) Copy of the effective Flood Insurance Rate Map panel annotated with the location of the threatened structure.

(6) In the event that a structure is not situated within a "zone of imminent collapse" using the criteria and procedures in paragraphs (b) (1) through (5) of this section, then the State may submit other scientific and technical data, in addition to the information described in paragraphs (b) (1) through (5) of this section, that would

reveal unusual erosive or stability conditions at the site. Such data must include engineering analyses or reports performed on the structure or site which evaluates local rates of erosion, or the condition or stability of the structure's foundation including supporting soil.

(c) In the case of structures planned to be relocated, a certification as to whether the proposed relocation site is outside the 30-year setback for 1–4 family residential structures, or outside the 60-year setback for all other structures, must also be submitted by the State.

[53 FR 36975, Sept. 23, 1988, as amended at 53 FR 44193, Nov. 2, 1988]

§63.18 Review of State certification by the Administrator.

The Administrator, after a claim has been filed by the property owner, will review the certification and data prepared by the State. Upon completion of the review, the State will be notified that:

(a) The structure has been determined to be subject to imminent collapse, or

(b) The structure has not been determined to be subject to imminent collapse and the basis for such determination, or

(c) Additional data are needed to verify that the procedures and criteria for imminent collapse certification have been met.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Sec.

64.1 Purpose of part.
64.2 Definitions.
64.3 Flood Insurance Maps.
64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.
64.5 Relationship of rates to zone designations.
64.6 List of eligible communities.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376

§64.1 Purpose of part.

(a) 42 U.S.C. 4012(c), 4022 and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has: (1) Identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community; and/or (2) completed a risk study for the applicant community. The priorities for conducting such risk studies are set forth in §§59.23 and 60.25 of this subchapter. The purpose of this part is to define the types of zones which the Agency will use for identifying the hazard areas on maps.

(b) 42 U.S.C. 4056 authorizes an emergency implementation of the National Flood Insurance Program whereby the Administrator may make subsidized coverage available to eligible communities prior to the completion of detailed risk studies for such areas. This part also describes procedures under the emergency program and lists communities which become eligible under the NFIP.

[48 FR 28278, June 21, 1983, as amended at 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

§64.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§64.3 Flood Insurance Maps.

(a) The following maps may be prepared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol	
A	Area of special flood hazard without water surface elevations determined
A1–30, AE	Area of special flood hazard with water surface elevations determined
AO	Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft

Zone symbol	
A99	Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes
AH	Areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined
AR	Area of special flood hazard that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection
V	Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area)
V1–30, VE	Area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area)
V0	Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. and with velocity
B, X	Area of moderate flood hazards
C, X	Area of minimal hazards
D	Area of undetermined but possible, flood hazards
M	Area of special mudslide (i.e., mudflow) hazards
N	Area of moderate mudslide (i.e., mudflow) hazards
P	Area of undetermined, but possible, mudslide hazards
E	Area of special flood-related erosion hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1–30, AE, A99, AO, AH, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V1–30, VE, V, VO, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The information office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood prone.

(2) One or more official locations within the community in which flood insurance is offered.

(3) [Reserved]

(4) The official record copy of each official map shall be maintained in FEMA files in Washington, DC.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 46 FR 1274, Jan. 6, 1981, 48 FR 28278, June 21, 1983; 48 FR 44544 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985, 59 FR 53599, Oct. 25, 1994; 62 FR 55716, Oct. 27, 1997]

§ 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program, no new flood insurance shall be made available as of the effective date of annexation until the newly acquiring community participates in the Program. Until the effective date of participation, existing flood insurance policies remain in effect until the policy's date of expiration, but shall not be renewed.

(b) When a community participating in the Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program, the community shall have six months from the date of acquisition to formally amend its flood plain management regulations in order to include all flood-prone areas within the newly acquired area. The amended regulations shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. In the event that the newly acquired area was previously located in a community participating in the Program, the provisions of this section shall only apply if the community, upon acquisition, and pending formal adoption of the amendment to its flood plain management regulations, certifies in writing over

the signature of a community official that within the newly acquired area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly-acquired area was previously located in a community not participating in the Program, the provisions of the section shall only apply if the community, upon acquisition, and pending formal adoption of the amendments to its flood plain management regulations, certifies in writing over the signature of a community official that it shall enforce within the newly-month period, existing flood insurance policies shall remain in effect until their date of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in §60.3 shall result in the community's suspension from Program participation pursuant to §59.24 of this subchapter.

(c) When an area previously a part of a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community resulting from boundary changes, governmental reorganization, changes in state statutes or constitution, or otherwise, such new community shall be given six months from the date of its independence to adopt flood plain management regulations within the special hazard areas subject to its jurisdiction and to submit its application for participation as a separate community in order to retain eligibility for the sale of flood insurance. The regulations adopted by such new community shall satisfy the applicable requirements in §60.3 of this subchapter based on the data previously provided by the Administrator. The provisions of this section shall only apply where the new community upon the date of its independence certifies in writing over the signature of a community official that, pending formal adoption of flood plain management regulations, the flood plain management requirements previously applicable in that area remain in effect. During the six month period, existing flood insurance policies shall remain in effect until their dates of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in §60.3 of this subchapter shall result in the community's suspension from Program participation pursuant to §59.24 of this subchapter.

(d) Where any community or any area within a community had in effect a FHBM or FIRM, but all or a portion of that community has been acquired by another community, or becomes autonomous, that map shall remain in effect until it is superseded by the Administrator, whether by republication as part of the map of the acquiring community, or otherwise.

(e) When a community described in paragraph (a), (b), (c), or (d) of this section has flood elevations in effect, no new appeal period under parts 66, 67, and 68 of this subchapter will begin except as new scientific and technical data are available.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§64.5 Relationship of rates to zone designations.

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may authorize the sale of such insurance without designating any Zones A, M, or E within a community, provided the community has previously adopted flood plain management regulations meeting the requirements of §60.3(a), §60.4(a) or §60.5(a) of this subchapter. When the Administrator has obtained sufficient technical information to delineate Zones A, M, or E, he/she shall delineate the tentative boundaries on a FHBM.

(b) Upon the effective date of the FIRM, flood insurance will continue to be available throughout the entire community at chargeable rates (i.e., subsidized) for first layer coverage of existing structures, but will be only available at risk premium rates for all new construction and substantial improvements. Upon the effective date of a FIRM, second layer coverage is available only at risk premium rates for all structures.

(c) Detailed insurance information may be obtained from the servicing

companies. See part 62 of this subchapter.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 64.6 List of eligible communities.

The sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001–4128) is authorized for the communities set forth under this section. Previous listings under this part continue in effect until revised.

[41 FR 46986, Oct. 25, 1976]

EDITORIAL NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Sec.

65.1 Purpose of part.
65.2 Definitions.
65.3 Requirement to submit new technical data.
65.4 Right to submit new technical data.
65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.
65.6 Revision of base flood elevation determinations.
65.7 Floodway revisions.
65.8 Review of proposed projects.
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65.10 Mapping of areas protected by levee systems.
65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.
65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.
65.13 Mapping and map revisions for areas subject to alluvial fan flooding.
65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.
65.15 List of communities submitting new technical data.
65.16 Standard Flood Hazard Determination Form and Instructions.
§ 65.17 Review of determinations.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.1 Purpose of part.

42 U.S.C. 4104 authorizes the Director to identify and publish information with respect to all areas within the United States having special flood, mudslide (i.e., mudflow) and flood-related erosion hazards. The purpose of this part is to outline the steps a community needs to take in order to assist the Agency's effort in providing up-to-date identification and publication, in the form of the maps described in part 64, on special flood, mudslide (i.e., mudflow) and flood-related erosion hazards.

[48 FR 28278, June 21, 1983]

§ 65.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

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

(c) For the purposes of this part, "reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

[51 FR 30313, Aug. 25, 1986, as amended at 66 FR 22442, May 4, 2001]

§ 65.3 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting

from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

[51 FR 30313, Aug. 25, 1986]

§65.4 Right to submit new technical data.

(a) A community has a right to request changes to any of the information shown on an effective map that does not impact flood plain or floodway delineations or base flood elevations, such as community boundary changes, labeling, or planimetric details. Such a submission shall include appropriate supporting documentation in accordance with this part and may be submitted at any time.

(b) All requests for changes to effective maps, other than those initiatedby FEMA, must be made in writing by the Chief Executive Officer of the community (CEO) or an official designated by the CEO. Should the CEO refuse to submit such a request on behalf of another party, FEMA will agree to review it only if written evidence is provided indicating the CEO or designee has been requested to do so.

(c) Requests for changes to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) are subject to the cost recovery procedures described in 44 CFR part 72. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not to be subject to the cost-recovery procedures.

[51 FR 30313, Aug. 25, 1986, as amended at 57 FR 29038, June 30, 1992; 61 FR 46331, Aug. 30, 1996; 62 FR 5736, Feb. 6, 1997]

EDITORIAL NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with engineered earthen fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of engineered earthen fill will include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (*e.g.*, County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, FEMA requires copies of the tax map or other suitable maps to help in locating the property accurately.

(3) A topographic map or other information indicating existing ground elevations and the date of fill. FEMA's determination to exclude a legally defined parcel of land or a structure from the area of special flood hazard will be based upon a comparison of the base flood elevations to the lowest ground elevation of the parcel or the lowest adjacent grade to the structure. If the lowest ground elevation of the entire legally defined parcel of land or the lowest adjacent grade to the structure are at or above the elevations of the base flood, FEMA will exclude the parcel and/or structure from the area of special flood hazard.

(4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements under §60.3. This includes the requirements that:

for assuring that the maintenance activities are accomplished.

(13) Notwithstanding any other provisions of § 65.6, a community may submit, in lieu of the documentation specified in § 65.6(a)(12), certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

(14) The participating community must provide written assurance that they have complied with the appropriate minimum floodplain management requirements under § 60.3 of this chapter. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding," and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State or local law.

(15) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are "reasonably safe from flooding," we will process a revision to the SFHA using the criteria set forth under § 65.6. The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are "reasonably safe from flooding."

(b) *Data requirements for correcting map errors.* To correct errors in the original flood analysis, technical data submissions shall include the following:

(1) Data identifying mathematical errors.

(2) Data identifying measurement errors and providing correct measurements.

(c) *Data requirements for changed physical conditions.* Revisions based on the effects of physical changes that have occurred in the flood plain shall include:

(1) *Changes affecting hydrologic conditions.* The following data must be submitted:

(i) General description of the changes (e.g., dam, diversion channel, or detention basin).

(ii) Construction plans for as-built conditions, if applicable.

(iii) New hydrologic analysis accounting for the effects of the changes.

(iv) New hydraulic analysis and profiles using the new flood discharge values resulting from the hydrologic analysis.

(v) Revised delineations of the flood plain boundaries and floodway.

(2) *Changes affecting hydraulic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., channelization or new bridge, culvert, or levee).

(ii) Construction plans for as-built conditions.

(iii) New hydraulic analysis and flood elevation profiles accounting for the effects of the changes and using the original flood discharge values upon which the original map is based.

(iv) Revised delineations of the flood plain boundaries and floodway.

(3) *Changes involving topographic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., grading or filling).

(ii) New topographic information, such as spot elevations, cross sections grading plans, or contour maps.

(iii) Revised delineations of the flood plain boundaries and, if necessary, floodway.

(d) *Data requirements for incorporating improved data.* Requests for revisions

based on the use of improved hydrologic, hydraulic, or topographic data shall include the following data:

(1) Data that are believed to be better than those used in the original analysis (such as additional years of stream gage data).

(2) Documentation of the source of the data.

(3) Explanation as to why the use of the new data will improve the results of the original analysis.

(4) Revised hydrologic analysis where hydrologic data are being incorporated.

(5) Revised hydraulic analysis and flood elevation profiles where new hydrologic or hydraulic data are being incorporated.

(6) Revised delineations of the flood plain boundaries and floodway where new hydrologic, hydraulic, or topographic data are being incorporated.

(e) *Data requirements for incorporating improved methods.* Requests for revisions based on the use of improved hydrologic or hydraulic methodology shall include the following data:

(1) New hydrologic analysis when an alternative hydrologic methodology is being proposed.

(2) New hydraulic analysis and flood elevation profiles when an alternative hyrologic or hydraulic methodology is being proposed.

(3) Explanation as to why the alternative methodologies are superior to the original methodologies.

(4) Revised delineations of the flood plain boundaries and floodway based on the new analysis(es).

(f) *Certification requirements.* All analysis and data submitted by the requester shall be certified by a registered professional engineer or licensed land surveyor, as appropriate, subject to the definition of "certification" given at §65.2 of this subchapter.

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

[51 FR 30314, Aug. 25, 1986, as amended at 53 FR 16279, May 6, 1988; 54 FR 33550, Aug. 15, 1989; 61 FR 46331, Aug. 30, 1996; 62 FR 5736, Feb. 6, 1997; 66 FR 22442, May 4, 2001]

§65.7 Floodway revisions.

(a) *General.* Floodway data is developed as part of FEMA Flood Insurance Studies and is utilized by communities to select and adopt floodways as part of the flood plain management program required by §60.3 of this subchapter. When it has been determined by a community that no practicable alternatives exist to revising the boundaries of its previously adopted floodway, the procedures below shall be followed.

(b) *Data requirements when base flood elevation changes are requested.* When a floodway revision is requested in association with a change to base flood elevations, the data requirements of §65.6 shall also be applicable. In addition, the following documentation shall be submitted:

(1) Copy of a public notice distributed by the community stating the community's intent to revise the floodway or a statement by the community that it has notified all affected property owners and affected adjacent jurisdictions.

(2) Copy of a letter notifying the appropriate State agency of the floodway revision when the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP.

(3) Documentation of the approval of the revised floodway by the appropriate State agency (for communities where the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP).

(4) Engineering analysis for the revised floodway, as described below:

(i) The floodway analysis must be performed using the hydraulic computer model used to determine the proposed base flood elevations.

(ii) The floodway limits must be set so that neither the effective base flood elevations nor the proposed base flood elevations if less than the effective base flood elevations, are increased by more than the amount specified under

§ 60.3 (d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(5) Delineation of the revised floodway on the same topographic map used for the delineation of the revised flood boundaries.

(c) *Data requirements for changes not associated with base flood elevation changes.* The following data shall be submitted:

(1) Items described in paragraphs (b)(1) through (3) of this section must be submitted.

(2) Engineering analysis for the revised floodway, as described below:

(i) The original hydraulic computer model used to develop the established base flood elevations must be modified to include all encroachments that have occurred in the flood plain since the existing floodway was developed. If the original hydraulic computer model is not available, an alternate hydraulic computer model may be used provided the alternate model has been calibrated so as to reproduce the original water surface profile of the original hydraulic computer model. The alternate model must be then modified to include all encroachments that have occurred since the existing floodway was developed.

(ii) The floodway analysis must be performed with the modified computer model using the desired floodway limits.

(iii) The floodway limits must be set so that combined effects of the past encroachments and the new floodway limits do not increase the effective base flood elevations by more than the amount specified in § 60.3(d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(3) Delineation of the revised floodway on a copy of the effective NFIP map and a suitable topographic map.

(d) *Certification requirements.* All analyses submitted shall be certified by a registered professional engineer. All topographic data shall be certified by a registered professional engineer or licensed land surveyor. Certifications are subject to the definition given at § 65.2 of this subchapter.

(e) *Submission procedures.* All requests that involve changes to floodways shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

[51 FR 30315, Aug. 25, 1986]

§ 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project, if built as proposed, would justify a map revision. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Revision, in accordance with 44 CFR part 72. The data required to support such requests are the same as those required for final revisions under §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72.

[62 FR 5736, Feb. 6, 1997]

§ 65.9 Review and response by the Administrator.

If any questions or problems arise during review, FEMA will consult the Chief Executive Officer of the community (CEO), the community official designated by the CEO, and/or the requester for resolution. Upon receipt of a revision request, the Administrator shall mail an acknowledgment of receipt of such request to the CEO. Within 90 days of receiving the request with all necessary information, the Administrator shall notify the CEO of one or more of the following:

(a) The effective map(s) shall not be modified;

(b) The base flood elevations on the effective FIRM shall be modified and new base flood elevations shall be established under the provisions of part 67 of this subchapter;

(c) The changes requested are approved and the map(s) amended by Letter of Map Revision (LOMR);

(d) The changes requested are approved and a revised map(s) will be printed and distributed;

(e) The changes requested are not of such a significant nature as to warrant

a reissuance or revision of the flood insurance study or maps and will be deferred until such time as a significant change occurs;

(f) An additional 90 days is required to evaluate the scientific or technical data submitted; or

(g) Additional data are required to support the revision request.

(h) The required payment has not been submitted in accordance with 44 CFR part 72, no review will be conducted and no determination will be issued until payment is received.

[51 FR 30315, Aug. 25, 1986; 61 FR 46331, Aug. 30, 1996, as amended at 62 FR 5736, Feb. 6, 1997]

§65.10 Mapping of areas protected by levee systems.

(a) *General.* For purposes of the NFIP, FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive flood plain management criteria established by §60.3 of this subchapter. Accordingly, this section describes the types of information FEMA needs to recognize, on NFIP maps, that a levee system provides protection from the base flood. This information must be supplied to FEMA by the community or other party seeking recognition of such a levee system at the time a flood risk study or restudy is conducted, when a map revision under the provisions of part 65 of this subchapter is sought based on a levee system, and upon request by the Administrator during the review of previously recognized structures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how a structure or system will perform in a flood event.

(b) *Design criteria.* For levees to be recognized by FEMA, evidence that adequate design and operation and maintenance systems are in place to provide reasonable assurance that protection from the base flood exists must be provided. The following requirements must be met:

(1) *Freeboard.* (i) Riverine levees must provide a minimum freeboard of three feet above the water-surface level of the base flood. An additional one foot above the minimum is required within 100 feet in either side of structures (such as bridges) riverward of the levee or wherever the flow is constricted. An additional one-half foot above the minimum at the upstream end of the levee, tapering to not less than the minimum at the downstream end of the levee, is also required.

(ii) Occasionally, exceptions to the minimum riverine freeboard requirement described in paragraph (b)(1)(i) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood elevation profile and include, but not necessarily be limited to an assessment of statistical confidence limits of the 100-year discharge; changes in stage-discharge relationships; and the sources, potential, and magnitude of debris, sediment, and ice accumulation. It must be also shown that the levee will remain structurally stable during the base flood when such additional loading considerations are imposed. Under no circumstances will freeboard of less than two feet be accepted.

(iii) For coastal levees, the freeboard must be established at one foot above the height of the one percent wave or the maximum wave runup (whichever is greater) associated with the 100-year stillwater surge elevation at the site.

(iv) Occasionally, exceptions to the minimum coastal levee freeboard requirement described in paragraph (b)(1)(iii) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood loading conditions. Particular emphasis must be placed on the effects of wave attack and overtopping on the stability of the levee. Under no circumstances, however, will a freeboard of less than two

feet above the 100-year stillwater surge elevation be accepted.

(2) *Closures.* All openings must be provided with closure devices that are structural parts of the system during operation and design according to sound engineering practice.

(3) *Embankment protection.* Engineering analyses must be submitted that demonstrate that no appreciable erosion of the levee embankment can be expected during the base flood, as a result of either currents or waves, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability. The factors to be addressed in such analyses include, but are not limited to: Expected flow velocities (especially in constricted areas); expected wind and wave action; ice loading; impact of debris; slope protection techniques; duration of flooding at various stages and velocities; embankment and foundation materials; levee alignment, bends, and transitions; and levee side slopes.

(4) *Embankment and foundation stability.* Engineering analyses that evaluate levee embankment stability must be submitted. The analyses provided shall evaluate expected seepage during loading conditions associated with the base flood and shall demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV as defined in the U.S. Army Corps of Engineers (COE) manual, "Design and Construction of Levees" (EM 1110–2–1913, Chapter 6, Section II), may be used. The factors that shall be addressed in the analyses include: Depth of flooding, duration of flooding, embankment geometry and length of seepage path at critical locations, embankment and foundation materials, embankment compaction, penetrations, other design factors affecting seepage (such as drainage layers), and other design factors affecting embankment and foundation stability (such as berms).

(5) *Settlement.* Engineering analyses must be submitted that assess the potential and magnitude of future losses of freeboard as a result of levee settlement and demonstrate that freeboard will be maintained within the minimum standards set forth in paragraph (b)(1) of this section. This analysis must address embankment loads, compressibility of embankment soils, compressibility of foundation soils, age of the levee system, and construction compaction methods. In addition, detailed settlement analysis using procedures such as those described in the COE manual, "Soil Mechanics Design—Settlement Analysis" (EM 1100–2–1904) must be submitted.

(6) *Interior drainage.* An analysis must be submitted that identifies the source(s) of such flooding, the extent of the flooded area, and, if the average depth is greater than one foot, the water-surface elevation(s) of the base flood. This analysis must be based on the joint probability of interior and exterior flooding and the capacity of facilities (such as drainage lines and pumps) for evacuating interior floodwaters.

(7) *Other design criteria.* In unique situations, such as those where the levee system has relatively high vulnerability, FEMA may require that other design criteria and analyses be submitted to show that the levees provide adequate protection. In such situations, sound engineering practice will be the standard on which FEMA will base its determinations. FEMA will also provide the rationale for requiring this additional information.

(c) *Operation plans and criteria.* For a levee system to be recognized, the operational criteria must be as described below. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual, a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or when the manual for a previously recognized system is revised in any manner. All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.

(1) *Closures.* Operation plans for closures must include the following:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provisions for periodic operation, at not less than one-year intervals, of the closure structure for testing and training purposes.

(2) *Interior drainage systems.* Interior drainage systems associated with levee systems usually include storage areas, gravity outlets, pumping stations, or a combination thereof. These drainage systems will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provision for manual backup for the activation of automatic systems.

(iv) Provisions for periodic inspection of interior drainage systems and periodic operation of any mechanized portions for testing and training purposes. No more than one year shall elapse between either the inspections or the operations.

(3) *Other operation plans and criteria.* Other operating plans and criteria may be required by FEMA to ensure that adequate protection is provided in specific situations. In such cases, sound emergency management practice will be the standard upon which FEMA determinations will be based.

(d) *Maintenance plans and criteria.* For levee systems to be recognized as providing protection from the base flood, the maintenance criteria must be as described herein. Levee systems must be maintained in accordance with an officially adopted maintenance plan, and a copy of this plan must be provided to FEMA by the owner of the levee system when recognition is being sought or when the plan for a previously recognized system is revised in any manner. All maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance. This plan must document the formal procedure that ensures that the stability, height, and overall integrity of the levee and its associated structures and systems are maintained. At a minimum, maintenance plans shall specify the maintenance activities to be performed, the frequency of their performance, and the person by name or title responsible for their performance.

(e) *Certification requirements.* Data submitted to support that a given levee system complies with the structural requirements set forth in paragraphs (b)(1) through (7) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the levee must be submitted. Certifications are subject to the definition given at §65.2 of this subchapter. In lieu of these structural requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection against the base flood.

[51 FR 30316, Aug. 25, 1986]

§65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.

(a) *General conditions.* For purposes of the NFIP, FEMA will consider storm-induced dune erosion potential in its determination of coastal flood hazards and risk mapping efforts. The criterion to be used in the evaluation of dune erosion will apply to primary frontal dunes as defined in §59.1, but does not

apply to artificially designed and constructed dunes that are not well-established with long-standing vegetative cover, such as the placement of sand materials in a dune-like formation.

(b) *Evaluation criterion.* Primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to, or less than, 540 square feet.

(c) *Exceptions.* Exceptions to the evaluation criterion may be granted where it can be demonstrated through authoritative historical documentation that the primary frontal dunes at a specific site withstood previous base flood storm surges and associated wave action.

[53 FR 16279, May 6, 1988]

§ 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.

(a) When a community proposes to permit encroachments upon the flood plain when a regulatory floodway has not been adopted or to permit encroachments upon an adopted regulatory floodway which will cause base flood elevation increases in excess of those permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter, the community shall apply to the Administrator for conditional approval of such action prior to permitting the encroachments to occur and shall submit the following as part of its application:

(1) A request for conditional approval of map change and the appropriate initial fee as specified by § 72.3 of this subchapter or a request for exemption from fees as specified by § 72.5 of this subchapter, whichever is appropriate;

(2) An evaluation of alternatives which would not result in a base flood elevation increase above that permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter demonstrating why these alternatives are not feasible;

(3) Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property;

(4) Concurrence of the Chief Executive Officer of any other communities impacted by the proposed actions;

(5) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(6) A request for revision of base flood elevation determination according to the provisions of § 65.6 of this part;

(7) A request for floodway revision in accordance with the provisions of § 65.7 of this part.

(b) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to the Administrator of the adoption of flood plain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.

(c) Upon completion of the proposed encroachments, a community shall provide as-built certifications in accordance with the provisions of § 65.3 of this part. The Administrator will initiate a final map revision upon receipt of such certifications in accordance with part 67 of this subchapter.

[53 FR 16279, May 6, 1988]

§ 65.13 Mapping and map revisions for areas subject to alluvial fan flooding.

This section describes the procedures to be followed and the types of information FEMA needs to recognize on a NFIP map that a structural flood control measure provides protection from the base flood in an area subject to alluvial fan flooding. This information must be supplied to FEMA by the community or other party seeking recognition of such a flood control measure at the time a flood risk study or restudy is conducted, when a map revision under the provisions of part 65 of this subchapter is sought, and upon request by the Administrator during the review of previously recognized flood control measures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for

NFIP maps and shall not constitute a determination by FEMA as to how the flood control measure will perform in a flood event.

(a) The applicable provisions of §§65.2, 65.3, 65.4, 65.6, 65.8 and 65.10 shall also apply to FIRM revisions involving alluvial fan flooding.

(b) The provisions of §65.5 regarding map revisions based on fill and the provisions of part 70 of this chapter shall not apply to FIRM revisions involving alluvial fan flooding. In general, elevations of a parcel of land or a structure by fill or other means, will not serve as a basis for removing areas subject to alluvial fan flooding from an area of special food hazards.

(c) FEMA will credit on NFIP maps only major structural flood control measures whose design and construction are supported by sound engineering analyses which demonstrate that the measures will effectively eliminate alluvial fan flood hazards from the area protected by such measures. The provided analyses must include, but are not necessarily limited to, the following:

(1) Engineering analyses that quantify the discharges and volumes of water, debris, and sediment movement associated with the flood that has a one-percent probability of being exceeded in any year at the apex under current watershed conditions and under potential adverse conditions (e.g., deforestation of the watershed by fire). The potential for debris flow and sediment movement must be assessed using an engineering method acceptable to FEMA. The assessment should consider the characteristics and availability of sediment in the drainage basin above the apex and on the alluvial fan.

(2) Engineering analyses showing that the measures will accommodate the estimated peak discharges and volumes of water, debris, and sediment, as determined in accordance with paragraph (c)(1) of this section, and will withstand the associated hydrodynamic and hydrostatic forces.

(3) Engineering analyses showing that the measures have been designed to withstand the potential erosion and scour associated with estimated discharges.

(4) Engineering analyses or evidence showing that the measures will provide protection from hazards associated with the possible relocation of flow paths from other parts of the fan.

(5) Engineering analyses that assess the effect of the project on flood hazards, including depth and velocity of floodwaters and scour and sediment deposition, on other areas of the fan.

(6) Engineering analyses demonstrating that flooding from scources other than the fan apex, including local runoff, is either insignificant or has been accounted for in the design.

(d) *Coordination.* FEMA will recognize measures that are adequately designed and constructed, provided that: evidence is submitted to show that the impact of the measures on flood hazards in all areas of the fan (including those not protected by the flood control measures), and the design and maintenance requirements of the measures, were reviewed and approved by the impacted communities, and also by State and local agencies that have jurisdiction over flood control activities.

(e) *Operation and maintenance plans and criteria.* The requirements for operation and maintenance of flood control measures on areas subject to alluvial fan flooding shall be those specified under §65.10, paragraphs (c) and (d), when applicable.

(f) *Certification requirements.* Data submitted to support that a given flood control measure complies with the requirements set forth in paragraphs (c)(1) through (6) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the flood control measures must be submitted. Certifications are subject to the definition given at §65.2.

(Approved by the Office of Management and Budget under control number 3067-0147.)

[54 FR 33551, Aug. 15, 1989]

§65.14 Remapping of areas for which local flood protection systems no longer provide base flood protection.

(a) *General.* (1) This section describes the procedures to follow and the types of information FEMA requires to designate flood control restoration zones. A community may be eligible to apply

for this zone designation if the Administrator determines that it is engaged in the process of restoring a flood protection system that was:

(i) Constructed using Federal funds;

(ii) Recognized as providing base flood protection on the community's effective FIRM; and

(iii) Decertified by a Federal agency responsible for flood protection design or construction.

(2) Where the Administrator determines that a community is in the process of restoring its flood protection system to provide base flood protection, a FIRM will be prepared that designates the temporary flood hazard areas as a flood control restoration zone (Zone AR). Existing special flood hazard areas shown on the community's effective FIRM that are further inundated by Zone AR flooding shall be designated as a "dual" flood insurance rate zone, Zone AR/AE or AR/AH with Zone AR base flood elevations, and AE or AH with base flood elevations and Zone AR/AO with Zone AR base flood elevations and Zone AO with flood depths, or Zone AR/A with Zone AR base flood elevations and Zone A without base flood elevations.

(b) *Limitations.* A community may have a flood control restoration zone designation only once while restoring a flood protection system. This limitation does not preclude future flood control restoration zone designations should a fully restored, certified, and accredited system become decertified for a second or subsequent time.

(1) A community that receives Federal funds for the purpose of designing or constructing, or both, the restoration project must complete restoration or meet the requirements of 44 CFR 61.12 within a specified period, not to exceed a maximum of 10 years from the date of submittal of the community's application for designation of a flood control restoration zone.

(2) A community that does not receive Federal funds for the purpose of constructing the restoration project must complete restoration within a specified period, not to exceed a maximum of 5 years from the date of submittal of the community's application for designation of a flood control restoration zone. Such a community is not eligible for the provisions of §61.12. The designated restoration period may not be extended beyond the maximum allowable under this limitation.

(c) *Exclusions.* The provisions of these regulations do not apply in a coastal high hazard area as defined in 44 CFR 59.1, including areas that would be subject to coastal high hazards as a result of the decertification of a flood protection system shown on the community's effective FIRM as providing base flood protection.

(d) *Effective date for risk premium rates.* The effective date for any risk premium rates established for Zone AR shall be the effective date of the revised FIRM showing Zone AR designations.

(e) *Application and submittal requirements for designation of a flood control restoration zone.* A community must submit a written request to the Administrator, signed by the community's Chief Executive Officer, for a flood plain designation as a flood control restoration zone. The request must include a legislative action by the community requesting the designation. The Administrator will not initiate any action to designate flood control restoration zones without receipt of the formal request from the community that complies with all requirements of this section. The Administrator reserves the right to request additional information from the community to support or further document the community's formal request for designation of a flood control restoration zone, if deemed necessary.

(1) At a minimum, the request from a community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project must include:

(i) A statement whether, to the best of the knowledge of the community's Chief Executive Officer, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and if so, the purpose of that litigation;

(ii) A statement whether the community has previously requested a determination with respect to the same subject matter from the Administrator,

and if so, a statement that details the disposition of such previous request;

(iii) A statement from the community and certification by a Federal agency responsible for flood protection design or construction that the existing flood control system shown on the effective FIRM was originally built using Federal funds, that it no longer provides base flood protection, but that it continues to provide protection from the flood having at least a 3-percent chance of occurrence during any given year;

(iv) An official map of the community or legal description, with supporting documentation, that the community will adopt as part of its flood plain management measures, which designates developed areas as defined in §59.1 and as further defined in §60.3(f).

(v) A restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates;

(C) Identify the date on which "as built" drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system, or;

(D) Identify the date on which the community will submit a request for a finding of adequate progress that meets all requirements of §61.12. This date may not exceed the maximum allowable restoration period for the flood protection system;

(vi) A statement identifying the local project sponsor responsible for restoration of the flood protection system;

(vii) A copy of a study, performed by a Federal agency responsible for flood protection design or construction in consultation with the local project sponsor, which demonstrates a Federal interest in restoration of the system and which deems that the flood protection system is restorable to a level of base flood protection.

(viii) A joint statement from the Federal agency responsible for flood protection design or construction involved in restoration of the flood protection system and the local project sponsor certifying that the design and construction of the flood control system involves Federal funds, and that the restoration of the flood protection system will provide base flood protection;

(2) At a minimum, the request from a community that receives no Federal funds for the purpose of constructing the restoration project must:

(i) Meet the requirements of §65.14(e)(1)(i) through (iv),

(ii) Include a restoration plan to return the system to a level of base flood protection. At a minimum, this plan must:

(A) List all important project elements, such as acquisition of permits, approvals, and contracts and construction schedules of planned features;

(B) Identify anticipated start and completion dates for each element, as well as significant milestones and dates; and

(C) Identify the date on which "as built" drawings and certification for the completed restoration project will be submitted. This date must provide for a restoration period not to exceed the maximum allowable restoration period for the flood protection system;

(iii) Include a statement identifying the local agency responsible for restoration of the flood protection system,

(iv) Include a copy of a study, certified by registered Professional Engineer, that demonstrates that the flood protection system is restorable to provide protection from the base flood;

(v) Include a statement from the local agency responsible for restoration of the flood protection system certifying that the restored flood protection system will meet the applicable requirements of Part 65; and

(vi) Include a statement from the local agency responsible for restoration of the flood protection system that identifies the source of funds for the purpose of constructing the restoration project and a percentage of

the total funds contributed by each source. The statement must demonstrate, at a minimum, that 100 percent of the total financial project cost of the completed flood protection system has been appropriated.

(f) *Review and response by the Administrator.* The review and response by the Administrator shall be in accordance with procedures specified in §65.9.

(g) *Requirements for maintaining designation of a flood control restoration zone.* During the restoration period, the community and the cost-sharing Federal agency, if any, must certify annually to the FEMA Regional Office having jurisdiction that the restoration will be completed in accordance with the restoration plan within the time period specified by the plan. In addition, the community and the cost-sharing Federal agency, if any, will update the restoration plan and will identify any permitting or construction problems that will delay the project completion from the restoration plan previously submitted to the Administrator. The FEMA Regional Office having jurisdiction will make an annual assessment and recommendation to the Administrator as to the viability of the restoration plan and will conduct periodic on-site inspections of the flood protection system under restoration.

(h) *Procedures for removing flood control restoration zone designation due to adequate progress or complete restoration of the flood protection system.* At any time during the restoration period:

(1) A community that receives Federal funds for the purpose of designing, constructing, or both, the restoration project shall provide written evidence of certification from a Federal agency having flood protection design or construction responsibility that the necessary improvements have been completed and that the system has been restored to provide protection from the base flood, or submit a request for a finding of adequate progress that meets all requirements of §61.12. If the Administrator determines that adequate progress has been made, FEMA will revise the zone designation from a flood control restoration zone designation to Zone A99.

(2) After the improvements have been completed, certified by a Federal agency as providing base flood protection, and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood control system.

(3) A community that receives no Federal funds for the purpose of constructing the restoration project must provide written evidence that the restored flood protection system meets the requirements of Part 65. A community that receives no Federal funds for the purpose of constructing the restoration project is not eligible for a finding of adequate progress under §61.12.

(4) After the improvements have been completed and reviewed by FEMA, FEMA will revise the FIRM to reflect the completed flood protection system.

(i) *Procedures for removing flood control restoration zone designation due to non-compliance with the restoration schedule or as a result of a finding that satisfactory progress is not being made to complete the restoration.* At any time during the restoration period, should the Administrator determine that the restoration will not be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is not being made to restore the flood protection system to provide complete flood protection in accordance with the restoration plan, the Administrator shall notify the community and the responsible Federal agency, in writing, of the determination, the reasons for that determination, and that the FIRM will be revised to remove the flood control restoration zone designation. Within thirty (30) days of such notice, the community may submit written information that provides assurance that the restoration will be completed in accordance with the time frame specified in the restoration plan, or that satisfactory progress is being made to restore complete protection in accordance with the restoration plan, or that, with reasonable certainty, the restoration will be completed within the maximum allowable restoration period. On the basis of this information the Administrator may suspend the decision to revise the FIRM to remove the flood control restoration zone designation. If the community does not submit any information, or if, based on a review of

the information submitted, there is sufficient cause to find that the restoration will not be completed as provided for in the restoration plan, the Administrator shall revise the FIRM, in accordance with 44 CFR Part 67, and shall remove the flood control restoration zone designations and shall redesignate those areas as Zone A1–30, AE, AH, AO, or A.

[62 FR 55717, Oct. 27, 1997]

§ 65.15 List of communities submitting new technical data.

This section provides a cumulative list of communities where modifications of the base flood elevation determinations have been made because of submission of new scientific or technical data. Due to the need for expediting the modifications, the revised map is already in effect and the appeal period commences on or about the effective date of the modified map. An interim rule, followed by a final rule, will list the revised map effective date, local repository and the name and address of the Chief Executive Officer of the community. The map(s) is (are) effective for both flood plain management and insurance purposes.

[51 FR 30317, Aug. 25, 1986. Redesignated at 53 FR 16279, May 6, 1988, and further redesignated at 54 FR 33551, Aug. 15, 1989. Redesignated at 59 FR 53599, Oct. 25, 1994]

EDITORIAL NOTE: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 65.16 Standard Flood Hazard Determination Form and Instructions.

(a) Section 528 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 1365(a)) directs FEMA to develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available. The purpose of the form is to determine whether a building or mobile home is located within an identified Special Flood Hazard Area (SFHA), whether flood insurance is required, and whether federal flood insurance is available. Use of this form will ensure that required flood insurance coverage is purchased for structures located in an SFHA, and will assist federal entities for lending regulation in assuring compliance with these purchase requirements.

(b) The form is available by written request to Federal Emergency Management Agency, PO Box 2012, Jessup, MD 20794; ask for the Standard Flood Hazard Determination form. It is also available by fax-on-demand; call (202) 646–3362, form #23103. Finally, the form is available through the Internet at http://www.fema.gov/nfip/mpurfi.htm.

[63 FR 27857, May 21, 1998]

§ 65.17 Review of determinations.

This section describes the procedures that shall be followed and the types of information required by FEMA to review a determination of whether a building or manufactured home is located within an identified Special Flood Hazard Area (SFHA).

(a) *General conditions.* The borrower and lender of a loan secured by improved real estate or a manufactured home may jointly request that FEMA review a determination that the building or manufactured home is located in an identified SFHA. Such a request must be submitted within 45 days of the lender's notification to the borrower that the building or manufactured home is in the SFHA and that flood insurance is required. Such a request must be submitted jointly by the lender and the borrower and shall include the required fee and technical information related to the building or manufactured home. Elevation data will not be considered under the procedures described in this section.

(b) *Data and other requirements.* Items required for FEMA's review of a determination shall include the following:

(1) Payment of the required fee by check or money order, in U.S. funds, payable to the National Flood Insurance Program;

(2) A request for FEMA's review of the determination, signed by both the borrower and the lender;

(3) A copy of the lender's notification to the borrower that the building or manufactured home is in an SFHA and

that flood insurance is required (the request for review of the determination must be postmarked within 45 days of borrower notification);

(4) A completed Standard Flood Hazard Determination Form for the building or manufactured home, together with a legible hard copy of all technical data used in making the determination; and

(5) A copy of the effective NFIP map (Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM)) panel for the community in which the building or manufactured home is located, with the building or manufactured home location indicated. Portions of the map panel may be submitted but shall include the area of the building or manufactured home in question together with the map panel title block, including effective date, bar scale, and north arrow.

(c) *Review and response by FEMA.* Within 45 days after receipt of a request to review a determination, FEMA will notify the applicants in writing of one of the following:

(1) Request submitted more than 45 days after borrower notification, no review will be performed and all materials are being returned;

(2) Insufficient information was received to review the determination; therefore, the determination stands until a complete submittal is received; or

(3) The results of FEMA's review of the determination, which shall include the following:

(i) The name of the NFIP community in which the building or manufactured home is located;

(ii) The property address or other identification of the building or manufactured home to which the determination applies;

(iii) The NFIP map panel number and effective date upon which the determination is based;

(iv) A statement indicating whether the building or manufactured home is within the Special Flood Hazard Area;

(v) The time frame during which the determination is effective.

[60 FR 62218, Dec. 5, 1995]

PART 66—CONSULTATION WITH LOCAL OFFICIALS

Sec.

66.1 Purpose of part.
66.2 Definitions.
66.3 Establishment of community case file and flood elevation study docket.
66.4 Appointment of consultation coordination officer.
66.5 Responsibilities for consultation and coordination.

AUTHORITY: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 66.1 Purpose of part.

(a) The purpose of this part is to comply with section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107) by establishing procedures for flood elevation determinations of Zones A1–30, AE, AH, AO and V1–30, and VE within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this part shall apply when base flood elevations are to be determined or modified.

(c) The Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(4) Carry out the responsibilities for consultation and coordination set forth in § 66.5 of this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 771, Jan. 7, 1982; 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985]

§66.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§66.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under part 65 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Agency representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Administrator's final determination.

(c) A flood elevation determination docket shall be established and maintained in accordance with part 67 of this subchapter.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§66.4 Appointment of consultation coordination officer.

The Administrator may appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination Officer, for each community when an analysis is undertaken to establish or to modify flood elevations pursuant to a new study or a restudy. When a CCO is appointed by the Administrator, the responsibilities for consultation and coordination as set forth in §66.5 shall be carried out by the CCO. The Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

§66.5 Responsibilities for consultation and coordination.

(a) Contact shall be made with appropriate officials of a community in which a proposed investigation is undertaken, and with the state coordinating agency.

(b) Local dissemination of the intent and nature of the investigation shall be encouraged so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(c) Submission of information from the community concerning the study shall be encouraged.

(d) Appropriate officials of the community shall be fully informed of (1) The responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Emergency Management Agency, (3) the community's role in establishing elevations, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(e) Before the commencement of an initial Flood Insurance Study, the CCO or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local

officials shall be informed of (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study.

(f) The community shall be informed in writing of any intended modification to the community's final flood elevation determinations or the development of new elevations in additional areas of the community as a result of a new study or restudy. Such information to the community will include the data set forth in paragraph (e) of this section. At the discretion of the Chief of the Natural and Technological Hazards Division in each FEMA Regional Office, a meeting may be held to accomplish this requirement.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

67.1 Purpose of part.
67.2 Definitions.
67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
67.4 Proposed flood elevation determination.
67.5 Right of appeal.
67.6 Basis of appeal.
67.7 Collection of appeal data.
67.8 Appeal procedure.
67.9 Final determination in the absence of an appeal by the community.
67.10 Rates during pendency of final determination.
67.11 Notice of final determination.
67.12 Appeal to District Court.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 67.1 Purpose of part.

The purpose of this part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

§ 67.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§ 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

(a) The name of the community subject to the flood elevation determination;

(b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;

(c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;

(d) A copy of the notice of the proposed flood elevation determination published in the FEDERAL REGISTER;

(e) Copies of all appeals by private persons received by the Administrator from the CEO;

(f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the FEDERAL REGISTER.

(g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;

(h) A copy of the flood insurance study for the community;

(i) A copy of the FIRM for the community;

(j) Copies of all materials maintained in the flood elevation study consultation docket; and

(k) A copy of the final determination with supporting documents.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§67.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the FEDERAL REGISTER;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For references to FR pages showing lists of flood elevation determinations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

(b)[Reserved]

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§67.6 Basis of appeal.

(a) The sole basis of appeal under this part shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect. Because scientific and technical correctness is often a matter of degree rather than absolute (except where mathematical or measurement error or changed physical conditions can be demonstrated), appellants are required to demonstrate that alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect.

(b) *Data requirements.* (1) If an appellant believes the proposed base flood elevations are technically incorrect due to a mathematical or measurement error or changed physical conditions, then the specific source of the error must be identified. Supporting data must be furnished to FEMA including certifications by a registered professional engineer or licensed land surveyor, of the new data necessary for FEMA to conduct a reanalysis.

(2) If an appellant believes that the proposed base flood elevations are technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods, the appeal must demonstrate technical incorrectness by:

(i) Identifying the purported error in the application or the inferior data.

(ii) Supporting why the application is incorrect or data is inferior.

(iii) Providing an application of the same basic methods utilized by FEMA but with the changes itemized.

(iv) Providing background technical support for the changes indicating why the appellant's application should be accepted as more correct.

(v) Providing certification of correctness of any alternate data utilized or measurements made (such as topographic information) by a registered professional engineer or licensed land surveyor, and

(vi) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(3) If any appellant believes the proposed base flood elevations are scientifically incorrect, the appeal must demonstrate scientific incorrectness by:

(i) Identifying the methods, or assumptions purported to be scientifically incorrect.

(ii) Supporting why the methods, or assumptions are scientifically incorrect.

(iii) Providing an alternative analysis utilizing methods, or assumptions purported to be correct.

(iv) Providing technical support indicating why the appellant's methods should be accepted as more correct and

(v) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

[48 FR 31644, July 1, 1983]

§ 67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his/her proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under § 67.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with § 67.12.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.9 Final determination in the absence of an appeal by the community.

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with § 67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in § 67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to

purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

§67.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the FEDERAL REGISTER, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb 8, 1984; 49 FR 33879, Aug. 27, 1984]

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.
68.1 Purpose of part.
68.2 Definitions.
68.3 Right to administrative hearings.
68.4 Hearing board.
68.5 Establishment of a docket.
68.6 Time and place of hearing.
68.7 Conduct of hearings.
68.8 Scope of review.
68.9 Admissible evidence.
68.10 Burden of proof.
68.11 Determination.
68.12 Relief.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 47 FR 23449, May 29, 1982, unless otherwise noted.

§68.1 Purpose of part.

The purpose of this part is to establish procedures for appeals of the Administrator's base flood elevation determinations, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or newly acquired scientific and technical information.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§68.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§68.3 Right to administrative hearings.

If a community appeals the Administrator's flood elevation determination established pursuant to §67.8 of this subchapter, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community or by submitting the conflicting data to an independent scientific body or appropriate Federal agency for advice, the Administrator shall hold an administrative hearing to resolve the appeal.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§68.4 Hearing board.

(a) Each hearing shall be conducted by a three member hearing board (hereinafter "board"). The board shall consist of a hearing officer (hereinafter "Judge") appointed by the Director based upon a recommendation by the Office of Personnel Management and two members selected by the Judge

who are qualified in the technical field of flood elevation determinations. The Judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

(b) The Judge shall be responsible for conducting the hearing, and shall make all procedural rulings during the course of the hearing. Any formal orders and the final decision on the merits of the hearing shall be made by a majority of the board. A dissenting member may submit a separate opinion for the record.

(c) A technically qualified alternate will be appointed by the Judge as a member of the board when a technically qualified appointed member becomes unavailable. The Director will appoint an alternate Judge if the appointed Judge becomes unavailable.

§ 68.5 Establishment of a docket.

The General Counsel shall establish a docket for appeals referred to him/her by the Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the flood elevation determination docket (FEDD) file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the board's final determination.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the Judge for that hearing. The Administrator and the General Counsel shall be promptly advised of such designations.

(b) The board's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing shall be sent no later than 30 days before the date of hearing unless such period is waived by all appellants.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.7 Conduct of hearings.

(a) The Judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Administrator shall be represented by the General Counsel or his/her designee.

(c) One administrative hearing shall be held for any one community unless the Administrator for good cause shown grants a separate hearing or hearings.

(d) The Chief Executive Officer (CEO) of the community or his/her designee shall represent all appellants from that community; *Provided*, That any appellant may petition the board to allow such appellant to make an appearance on his/her own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) Hearings shall be open to the public.

(f) A verbatim transcript will be made of the hearing. An appellant may order copies of the transcribed verbatim record directly from the reporter and will be responsible for payments.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.8 Scope of review.

Review at administrative hearings shall be limited to: An examination of any information presented by each appellant within the 90 day appeal period indicating that elevations proposed by the Administrator are scientifically or technically incorrect, the FIRM; the flood insurance study; its backup data and the references used in development of the flood insurance study; and responses by FEMA to the issues raised by the appellant(s).

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at adminstrative hearings. However, *only* evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) Documentary and oral evidence shall be admissible.

(c) Admissibility of non-expert testimony shall be within the discretion of the board.

(d) All testimony shall be under oath.

(e) *Res judicata/* collateral estoppel. Where there has been a previous determination, decision or finding of fact by the Director, one of his delegees, an administrative law judge, hearing officer, or hearing board regarding the base flood elevations of any other community, such determination, decision, or finding of fact shall not be binding on the board and may only be admissible into evidence if relevant.

§ 68.10 Burden of proof.

The burden shall be on appellant(s) to prove that the flood elevation determination is not scientifically or technically correct.

§ 68.11 Determination.

The board shall render its written decision within 45 days after the conclusion of the hearing. The entire record of the hearing including the board's decision will be sent to the Director for review and approval. The Director shall make the final base flood elevation determination by accepting in whole or in part or by rejecting the board's decision.

§ 68.12 Relief.

The final determination may be appealed by the appellant(s) to the United States district court as provided in section 1363(f) of the Act (42 U.S.C. 4104).

PART 69 [RESERVED]

PART 70—PROCEDURE FOR MAP CORRECTION

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

Sec.

70.1 Purpose of part.
70.2 Definitions.
70.3 Right to submit technical information.
70.4 Review by the Director.
70.5 Letter of Map Amendment.
70.6 Distribution of Letter of Map Amendment.
70.7 Notice of Letter of Map Amendment.
70.8 Premium refund after Letter of Map Amendment.
70.9 Review of proposed projects.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

§70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either an FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of part 65 of this subchapter.

[62 FR 55718, Oct. 27, 1997]

§70.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1–30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for the Administrator's review.

(b) Scientific and technical information for the purpose of this part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours in relation to the National Geodetic Vertical Datum (NVGD) of 1929, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest adjacent grade to a structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control District, a County or City Engineer, a Federal Emergency Management Agency Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985, 51 FR 30317, Aug. 25, 1986; 53 FR 16280, May 6, 1988; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 70.4 Review by the Director.

The Director, after reviewing the scientific or technical information submitted under the provisions of §70.3, shall notify the applicant in writing of his/her determination within 60 days after we receive the applicant's scientific or technical information that we have compared either the ground elevations of an entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure with the elevation of the base flood and that:

(a) The property is within a designated A, A0, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V0, V1–30, VE, or V Zone, and will state the basis of such determination; or

(b) The property should not be within a designated A, A0, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A,V0, V1–30, VE, or V Zone and that we will modify the FHBM or FIRM accordingly; or

(c) The property is not within a designated A, A0, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A,V0, V1–30, VE, or V Zone as shown on the FHBM or FIRM and no modification of the FHBM or FIRM is necessary; or

(d) We need an additional 60 days to make a determination.

[66 FR 33900, June 26, 2001]

§ 70.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of §70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

(a) The name of the Community to which the map to be amended was issued;

(b) The number of the map;

(c) The identification of the property to be excluded from a designated A, AO, A1–30, AE, AH, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, V0, V1–30, VE, or V Zone.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 70.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Administrator.

(b) A copy of the Letter of Map Amendment shall be sent to the local

map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) [Reserved]

(f) A copy of the Letter of Map Amendment will be maintained by the Agency in its community case file.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 70.7 Notice of Letter of Map Amendment.

(a) The Administrator, shall not publish a notice in the FEDERAL REGISTER that the FIRM for a particular community has been amended by letter determination pursuant to this part unless such amendment includes alteration or change of base flood elevations established pursuant to part 67. Where no change of base flood elevations has occurred, the Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

(b) [Reserved]

EDITORIAL NOTE: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected, which appears in the Finding Aids Section of the printed volume and on GPO Access.

§ 70.8 Premium refund after Letter of Map Amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be included inadvertently in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s), if built as proposed, will be in the SFHA. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment. The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with 44 CFR part 72. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC.

[62 FR 5736, Feb. 6, 1997]

PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION

Sec.
71.1 Purpose of part.
71.2 Definitions.
71.3 Denial of flood insurance.
71.4 Documentation.
71.5 Violations.

AUTHORITY: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; 42 U.S.C. 4028; secs. 9 and 14, Pub. L. 101-591, 42 U.S.C. 4028(b).

SOURCE: 48 FR 37039, Aug. 16, 1983, unless otherwise noted.

§ 71.1 Purpose of part.

This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97-348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22661, May 29, 1992]

§ 71.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in

part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and

(ii) The start of construction (see part 59) took place prior to October 18, 1982; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983.

(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.

(d) For the purpose of this part, a structure located in an "otherwise protected area" is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(ii) The start of construction took place prior to November 16, 1990; or

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.

(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a "substantial improvement" if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is a "substantial improvement" if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an "otherwise protected area" is a "substantial improvement" if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a *policy of flood insurance* means a policy issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company under the Write Your Own Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, *new policy of flood insurance* means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, *new flood insurance coverage* means a new or renewed policy of flood insurance.

(k) For the purpose of this part, *otherwise protected area* means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

(1) Not within the CBRS and

(2) In an "otherwise protected area."

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984; 57 FR 22661, May 29, 1992]

§71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure which is located in an "otherwise protected area."

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure which is newly constructed or substantially improved in an "otherwise protected area" if the building is used in a manner consistent with the purpose for which the area is protected.

[57 FR 22662, May 29, 1992]

§71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an "otherwise protected area," the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statment must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The start of construction took place prior to October 18, 1982; and

(ii) The structure has not been substantially improved since September 30, 1983.

(d) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof permanently in place) prior to October 1, 1983, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 1, 1983;

(i) If the community did not have a building permit system at the time the

structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983; and

(ii) The structure has not been substantially improved since September 30, 1983; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying the the building was completed (walled and roofed) by October 1, 1983.

(e) For a structure located in an area newly identified as being in the CBRS as of November 16, 1990, where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(f) For a structure located in an area identified as an "otherwise protected area" where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(g) For a structure located in an area identified as an "otherwise protected area" where the start of construction of the structure took place after November 15, 1990, but construction was completed with the walls and a roof

permanently in place no later than November 16, 1991, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1991.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991; and

(ii) The structure has not been substantially improved since November 16, 1991; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991.

(h) For a structure located in an area identified as an "otherwise protected area" for which the documentation requirements of neither paragraph (f) nor paragraph (g) of this section have been met, the documentation shall consist of a written statement from the governmental body or qualified organization overseeing the "otherwise protected area" certifying that the building is used in a manner consistent with the purpose for which the area is protected.

(Approved by the Office of Management and Budget under control number 3067-0120)

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22662, May 29, 1992]

§ 71.5 Violations.

(a) Any flood insurance policy which has been issued where the terms of this section have not been complied with or is otherwise inconsistent with the provisions of this section, is void *ab initio* and without effect.

(b) Any false statements or false representations of any kind made in connection with the requirements of this part may be punishable by fine or imprisonment under 18 U.S. Code section 1001.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

Sec.

72.1 Purpose of part.
72.2 Definitions.
72.3 Fee schedule.
72.4 Submittal/payment procedures and FEMA response.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 72.1 Purpose of part.

This part provides administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR-Fs), Letters of Map Revision Based on Fill (LOMR-Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

[62 FR 5736, Feb. 6, 1997]

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions in 44 CFR part 59

are applicable to this part. For the purposes of this part, the products are defined as follows:

CLOMA. A CLOMA is FEMA's comment on a proposed structure or group of structures that would, upon construction, be located on existing natural ground above the base (1-percent-annual-chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

CLOMR. A CLOMR is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the Special Flood Hazard Area (SFHA).

CLOMR–F. A CLOMR–F is FEMA's comment on a proposed project that would, upon construction, result in a modification of the SFHA through the placement of fill outside the existing regulatory floodway.

LOMR. A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and, when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

LOMR–F. A LOMR–F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

PMR. A PMR is FEMA's physical revision and republication of an effective FIRM, FBFM, or FIS report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

[62 FR 5737, Feb. 6, 1997]

§ 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, an initial fee of $5,000, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the FEDERAL REGISTER.

(b) For requests for CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans, the total fee will be calculated based on the total hours by FEMA to review and process the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the FEDERAL REGISTER. A revision to the hourly rate, if necessary, shall be published as a notice in the FEDERAL REGISTER.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins its review of the request:

(1) Requests for CLOMAs, CLOMR–Fs, and LOMR–Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR–Fs and LOMR–Fs for multiple structures or multiple lots;

(4) Requests LOMR–Fs for single structures or single lots based on as-built information for projects for which FEMA issued CLOMR–Fs previously;

(5) Requests for LOMR–Fs for multiple structures or multiple lots based on as-built information for projects for which FEMA issued CLOMR–Fs previously;

(6) Requests for LOMRs and PMRs based on projects involving bridges, culverts, or channels, or combinations thereof;

(7) Requests for LOMRs and PMRs based on projects involving levees, berms, or other structural measures;

(8) Requests for LOMRs and PMRs based on as-built information for projects for which FEMA issued CLOMRs previously, except those based on structural measures on alluvial fans;

(9) Requests for LOMRs and PMRs based solely on more detailed data;

(10) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(11) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) If a request involves more than one of the categories listed above, the highest applicable flat user fee must be submitted.

(e) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR–Fs, LOMRs, and PMRs also include a fee of $35 to cover FEMA's costs for physically revising affected FIRM and FBFM panels to reflect the map changes.

(f) Revisions to the fees, if necessary, shall be published as a notice in the FEDERAL REGISTER.

[62 FR 5737, Feb. 6, 1997]

§ 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and PMRs based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial or flat user fees before it will begin any review. The fee is non-refundable once FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or PMR based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA shall not issue a determination letter or revised map panel(s) until it receives the invoiced amount.

(d) For all map revision requests, FEMA shall bear the cost of reprinting and distributing the revised FIRM panel(s), FBFM panel(s), or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures of this part when another party sends the application to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR–F, LOMA, and LOMR–F requests, FEMA shall:

(1) Notify the requester and community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, and/or affected portions of the FIS report for review and comment.

[62 FR 5737, Feb. 6, 1997]

§ 72.5 Exemptions.

Requesters are exempt from submitting review and processing fees for:

(a) Requests for map changes based on mapping or study analysis errors;

(b) Requests for map changes based on the effects of natural changes within SFHAs;

(c) Requests for a Letter of Map Amendment (LOMA);

(d) Requests for map changes based on federally sponsored flood-control projects where 50 percent or more of the project's costs are federally funded;

(e) Requests for map changes based on detailed hydrologic and hydraulic studies conducted by Federal, State, or local agencies to replace approximate studies conducted by FEMA and shown on the effective FIRM, and

(f) Requests for map changes based on flood hazard information meant to improve upon that shown on the flood map or within the flood study will be exempt from review and processing fees. Improvements to flood maps or studies that partially or wholly incorporate man-made modifications within the special flood hazard area will not be exempt from review and processing fees.

[64 FR 51462, Sept. 23, 1999]

§ 72.6 Unfavorable response.

(a) Requests for CLOMAs, CLOMRs, or CLOMR–Fs may be denied or the determinations may contain specific comments, concerns, or conditions regarding proposed projects or designs and their impacts on flood hazards in a community. Requesters are not entitled to any refund of fees paid if the determinations contain such comments, concerns, or conditions, or if the requests are denied. Requesters are not entitled to any refund of fees paid if the requesters are unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which requesters seek the CLOMAs, CLOMRs, or CLOMR–Fs.

(b) Requests for LOMRs, LOMR–Fs, or PMRs may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requesters. Requesters are not entitled to any refund of fees paid if the revision requests are denied or if the LOMRs, LOMR–Fs, or PMRs do not revise the map specifically as requested.

[62 FR 5738, Feb. 6, 1997]

§ 72.7 Resubmittals.

(a) Resubmittals of CLOMA, CLOMR, CLOMR–F, LOMR, LOMR–F, or PMR requests more than 90 days after FEMA notification that the requests were denied or after FEMA ended its review because the requester provided insufficient information will be treated as original submissions and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to a resubmitted request (regardless of when submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When LOMR, LOMR–F, or PMR requests are made after FEMA issues CLOMRs or CLOMR–Fs, the procedures in § 72.4 and the appropriate fee apply, as referenced in § 72.3(c). When the as-built conditions differ from the proposed conditions on which FEMA issued the CLOMRs or CLOMR–Fs, the reduced fee for as-built requests will not apply.

[62 FR 5738, Feb. 6, 1997]

PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Sec.

73.1 Purpose of part.
73.2 Definitions.
73.3 Denial of flood insurance coverage.
73.4 Restoration of flood insurance coverage.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 51 FR 30318, Aug. 25, 1986, unless otherwise noted.

§ 73.1 Purpose of part.

This part implements section 1316 of the National Flood Insurance Act of 1968.

§ 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a *duly constituted State or local zoning authority or other authorized public body* means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, *State or local laws, regulations or ordinances*

intended to discourage or restrict development or occupancy of flood-prone areas are measures such as those defined as *Flood plain management regulations* in §59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

§73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

§73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

PART 74 [RESERVED]

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

Subpart A—General

Sec.
75.1 Purpose of part.
75.2 Definitions.
75.3 Burden of proof.

Subpart B—Standards for Exemption

75.10 Applicability.
75.11 Standards.
75.12 Application by a State for exemption.
75.13 Review by the Director.
75.14 States exempt under this part.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§75.1 Purpose of part.

The purpose of this part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the

provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

[62 FR 55719, Oct. 27, 1997]

§ 75.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

§ 75.3 Burden of proof.

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this part.

Subpart B—Standards for Exemption

§75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

[62 FR 55719, Oct. 27, 1997]

§ 75.11 Standards.

(a) In order to be exempt under this part, the State's self-insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund, or a commercial policy of insurance or reinsurance, for which provision is made in statute or regulation and that is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage that would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged

as a result of flood-related losses occurring in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E zones. The inventory shall:

(i) Include the location of individual structures;

(ii) Include an estimate of the current replacement costs of such structures and their contents, or of their current economic value, and

(iii) Include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to §60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones.

(b) The Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 75.12 Application by a State for exemption.

Application for exemption made pursuant to this part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in §75.11.

§ 75.13 Review by the Director.

(a) The Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

(b) Upon determining that the State's plan of self-insurance is inadequate, the Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in §75.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in §75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Administrator as A, AO, AH, A1–30, AE, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, A99, M, V, VO, V1–30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Administrator may revoke his certification for a State's

failure to submit adequate documentation after the six month period.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985; 59 FR 53601, Oct. 25, 1994; 62 FR 55719, Oct. 27, 1997]

§ 75.14 States exempt under this part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

[48 FR 44544, Sept. 29, 1983, as amended at 57 FR 19542, May 7, 1992]

PARTS 76–77 [RESERVED]

PART 78—FLOOD MITIGATION ASSISTANCE

Sec.
78.1 Purpose.
78.2 Definitions.
78.3 Responsibilities.
78.4 Applicant eligibility.
78.5 Flood Mitigation Plan development.
78.6 Flood Mitigation Plan approval process.
78.7 Grant application procedures.
78.8 Grant funding limitations.
78.9 Planning grant approval process.
78.10 Project grant approval process.
78.11 Minimum project eligibility criteria.
78.12 Eligible types of projects.
78.13 Grant administration.
78.14 Alternative procedures.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 62 FR 13347, Mar. 20, 1997, unless otherwise noted.

§ 78.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) program, authorized by Sections 1366 and 1367 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c and 4104d.

(b) The purpose of FMA is to assist State and local governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. The long-term goal of FMA is to reduce or eliminate claims under the National Flood Insurance Program (NFIP) through mitigation activities. The program provides cost-shared grants for three purposes: Planning Grants to States and communities to assess the flood risk and identify actions to reduce that risk; Project Grants to execute measures to reduce flood losses; and Technical Assistance Grants that States may use to assist communities to develop viable FMA applications and implement FMA projects. FMA also outlines a process for development and approval of Flood Mitigation Plans.

§ 78.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) *Community* means:

(1) A political subdivision, including any Indian tribe or authorized tribal organization or Alaskan native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of paragraph (b)(1) of this section.

§ 78.3 Responsibilities.

(a) *Federal.* The Director will allocate available funds to each FEMA Region. The FEMA Regional Director will:

(1) Allocate Technical Assistance and Planning Grants to each State through the annual Cooperative Agreements;

(2) Approve Flood Mitigation Plans in accordance with § 78.6; and

(3) Award all FMA project grants, after evaluating applications for minimum eligibility criteria and ensuring

compliance with applicable Federal laws.

(b) *State.* The State will serve as grantee through the State Point of Contact (POC) designated by the Governor. The POC must have working knowledge of NFIP goals and processes and will ensure that FMA is coordinated with other mitigation activities at the State level. If a Governor chooses not to identify a POC to coordinate the FMA, communities may follow alternative procedures as described in §78.14. States will:

(1) Provide technical assistance to communities to assist them in developing applications and implementing approved applications;

(2) Award planning grants;

(3) Submit plans to the FEMA Regional Director for approval;

(4) Evaluate project applications, selecting projects to forward to the FEMA Regional Director for final approval; and

(5) Submit performance and financial reports to FEMA in compliance with 44 CFR 13.40 and 13.41.

(c) *Community.* The community will:

(1) Complete and submit applications to the State POC for the Planning and Projects Grants;

(2) Prepare and submit the Flood Mitigation Plan;

(3) Implement all approved projects;

(4) Comply with FMA requirements, 44 CFR parts 13 and 14, the grant agreement, applicable Federal, State and local laws and regulations (as applicable); and

(5) Account for the appropriate use of grant funds to the State POC.

§78.4 Applicant eligibility.

(a) The State is eligible to apply for grants for Technical Assistance.

(b) State agencies and communities are eligible to apply for Planning and Project Grants and to act as subgrantee. Communities on probation or suspended under 44 CFR part 60 of the NFIP are not eligible. To be eligible for Project Grants, an eligible applicant will develop, and have approved by the FEMA Regional Director, a Flood Mitigation Plan in accordance with §78.5.

§78.5 Flood Mitigation Plan development.

A Flood Mitigation Plan will articulate a comprehensive strategy for implementing technically feasible flood mitigation activities for the area affected by the plan. At a minimum, plans will include the following elements:

(a) Description of the planning process and public involvement. Public involvement may include workshops, public meetings, or public hearings.

(b) Description of the existing flood hazard and identification of the flood risk, including estimates of the number and type of structures at risk, repetitive loss properties, and the extent of flood depth and damage potential.

(c) The applicant's floodplain management goals for the area covered by the plan.

(d) Identification and evaluation of cost-effective and technically feasible mitigation actions considered.

(e) Presentation of the strategy for reducing flood risks and continued compliance with the NFIP, and procedures for ensuring implementation, reviewing progress, and recommending revisions to the plan.

(f) Documentation of formal plan adoption by the legal entity submitting the plan (e.g., Governor, Mayor, County Executive).

§78.6 Flood Mitigation Plan approval process.

The State POC will forward all Flood Mitigation Plans to the FEMA Regional Director for approval. The Regional Director will notify the State POC of the approval or disapproval of the plan within 120 days after submission. If the Regional Director does not approve a mitigation plan, the Regional Director will notify the State POC of the reasons for non-approval and offer suggestions for improvement.

§78.7 Grant application procedures.

States will apply for Technical Assistance and Planning Grants through the annual Cooperative Agreement between FEMA and the State. The State POC will be notified regarding their available funds for project grants each fiscal year. The State may forward

project applications to FEMA for review at any time.

§ 78.8 Grant funding limitations.

(a) The Director will allocate the available funds for FMA each fiscal year. Each State will receive a base amount of $10,000 for Planning Grants and $100,000 for Project Grants, with the remaining funds distributed based on the number of NFIP policies, repetitive loss structures, and other such criteria as the Director may determine in furtherance of the disaster resistant community concept.

(b) A maximum of $1,500,000 may be allocated for Planning Grants nationally each fiscal year. A Planning Grant will not be awarded to a State or community more than once every 5 years, and an individual Planning Grant will not exceed $150,000 to any State agency applicant, or $50,000 to any community applicant. The total Planning Grant made in any fiscal year to any State, including all communities located in the State, will not exceed $300,000.

(c) A maximum of ten percent of the funds available for Project Grants will be allocated to Technical Assistance grants each fiscal year.

(d) The total amount of FMA Project Grant funds provided during any 5-year period will not exceed $10,000,000 to any State or $3,300,000 to any community. The total amount of Project Grant funds provided to any State, including all communities located in the State will not exceed $20,000,000 during any 5-year period.

§ 78.9 Planning grant approval process.

The State POC will evaluate and approve applications for Planning Grants. Funds will be provided only for the flood portion of any mitigation plan, and Planning Grants will not be awarded to develop new or improved floodplain maps. The performance period for each Planning Grant will not exceed 3 years.

§ 78.10 Project grant approval process.

The State POC will solicit applications from eligible applicants, review projects for eligibility, and select applications for funding. Those project applications will then be forwarded to FEMA for final approval. FEMA will provide funding on a project by project basis through a supplement to the annual Cooperative Agreement. The FEMA Regional Director will notify States regarding the program schedule at the beginning of each fiscal year.

§ 78.11 Minimum project eligibility criteria.

The identification of a project or activity in an approved Flood Mitigation Plan does not mean it meets FMA eligibility criteria. Projects must:

(a) Be cost-effective, not costing more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future floods were to occur. Both costs and benefits are computed on a net present value basis.

(b) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands; Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction; 44 CFR part 10, Environmental Considerations; and any applicable environmental laws and regulations.

(c) Be technically feasible.

(d) Be in conformance with the minimum standards of the NFIP Floodplain Management Regulations at 44 CFR part 60.

(e) Be in conformance with the Flood Mitigation Plan; the type of project being proposed must be identified in the plan.

(f) Be located physically in a participating NFIP community that is not on probation or must benefit such community directly by reducing future flood damages.

§ 78.12 Eligible types of projects.

The following types of projects are eligible for funding through FMA, providing they meet all other eligibility criteria.

(a) Acquisition of insured structures and underlying real property in fee simple and easements restricting real property to open space uses.

(b) Relocation of insured structures from acquired or restricted real property to non hazard-prone sites.

(c) Demolition and removal of insured structures on acquired or restricted real property.

(d) Elevation of insured residential structures in accordance with 44 CFR 60.3.

(e) Elevation or dry floodproofing of insured non-residential structures in accordance with 44 CFR 60.3.

(f) Other activities that bring an insured structure into compliance with the floodplain management requirements at 44 CFR 60.3.

(g) Minor physical flood mitigation projects that reduce localized flooding problems and do not duplicate the flood prevention activities of other Federal agencies.

(h) Beach nourishment activities.

§78.13 Grant administration.

(a) FEMA may contribute up to 75 percent of the total eligible costs of each grant. At least 25 percent of the total eligible costs will be provided from a nonFederal source. Of this amount, not more than one half will be provided from in-kind contributions. Allowable costs will be governed by OMB Circular A–87 and 44 CFR part 13.

(b) The grantee must submit performance and financial reports to FEMA and must ensure that all subgrantees are aware of their responsibilities under 44 CFR parts 13 and 14.

(c) FEMA will recapture any funds provided to a State or a community under FMA and deposit the amounts in the National Flood Mitigation Fund if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in the regulations in this part.

§78.14 Alternative procedures.

For the purposes of this part, alternative procedures are available which allow the community to coordinate directly with FEMA in implementing the program. These alternative procedures are available in the following circumstances. Native American tribes or authorized tribal organizations may submit plans and applications to the State POC or directly to the FEMA Regional Director. If a Governor chooses not to identify a POC to coordinate the FMA, communities may also submit plans and applications to the FEMA Regional Director.

PART 79 [RESERVED]

FEDERAL CRIME INSURANCE PROGRAM

PARTS 80–149 [RESERVED]

SUBCHAPTER C—FIRE PREVENTION AND CONTROL

PART 150—PUBLIC SAFETY AWARDS TO PUBLIC SAFETY OFFICERS

Sec.

150.1 Background and purpose.
150.2 Definitions.
150.3 Nomination process.
150.4 Nomination and selection criteria.
150.5 Joint Public Safety Awards Board.
150.6 Design and procurement of awards.
150.7 Selection process.
150.8 Presentation of awards.
150.9 Funding.
150.10 Date of submission of nominations.

AUTHORITY: Federal Fire Prevention and Control Act of 1974, sec. 15, 15 U.S.C. 2214; Reorg. Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329, and E.O. 12127, dated Mar. 31, 1979, 3 CFR, 1979 Comp., p. 376.

SOURCE: 49 FR 39845, Oct. 11, 1984, unless otherwise noted.

§ 150.1 Background and purpose.

The regulations in this part are issued under the authority of the Federal Fire Prevention and Control Act of 1974 (the Act), 15 U.S.C. 2201 *et seq.* The Act establishes two classes of honorary awards for public safety officers and directs the issuance of the necessary joint regulations by the Director of the Federal Emergency Management Agency (FEMA) and the Attorney General. The functions of the Secretary of Commerce were transferred by Reorganization Plan No. 3 of 1978 to the Director, FEMA. Since initial passage of the Act, civil defense functions which then were delegated to the Secretary of Defense have been delegated to the Director, FEMA. Section 15 of the Act has been amended to delete the Secretary of Defense from participating in the granting of awards. *See* Public Law 98–241, 98 Stat. 95, 96 (1984). The Director, FEMA, and the Attorney General are issuing this regulation to implement the statutory provisions for FEMA and the Department of Justice.

§ 150.2 Definitions.

Civil defense officer (or member of a recognized civil defense or emergency preparedness organization) means any individual who is assigned to and is performing the assigned tasks of the unit or organization which has been given a mission under the direction or operational control of a Civil Defense or Emergency Preparedness Director/Coordinator in accordance with a Federal, State or local emergency plan and sanctioned by the government concerned. This also includes emergency management officers. This includes volunteers and paid employees for any governmental entity.

Distinguished Public Safety Service Award means the *Secretary's Award for Distinguished Public Safety Service*, presented by either the Attorney General or the Director of FEMA to public safety officers for distinguished service in the field of public safety.

FEMA means the Federal Emergency Management Agency.

Firefighter means a member, regardless of rank or duties, of any organization (including such Federal organizations) in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire. This term includes volunteer or paid employees. The location of any such organization may include, but is not limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, rural fire district or other special district.

Joint Board means the Joint Public Safety Awards Board established by the Director of the Federal Emergency Management Agency and the Attorney General to carry out the purposes of the Federal Fire Prevention and Control Act of 1974.

Law enforcement officer means a person involved in the control or reduction of crime and juvenile delinquency or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and court officers, and Federal civilian officers in such capacities.

Nominating official means the head of a Federal government department or agency, or his delegatee(s), the governor or other head of a State, or the chief executive or executives of any

PART II

H. Where Are the Revised State Rules Different From the Federal Rules?

Delaware's regulations now require that within 10 days of acceptance by a transporter, a copy of the manifest must be sent to the State in which the generator is located and to the State in which the facility is located. Only the 10-day deadline is a new requirement. The Federal program does not require routine transmission of manifests to States. Therefore, the State requirement remains broader in scope than the Federal program.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, Delaware will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits, or portions of permits, which we issued prior to the effective date of this authorization until such time as formal transfer of EPA permit responsibility to Delaware occurs and EPA terminates its permits. EPA and Delaware agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any new permits or new portions of permits for the provisions listed in the chart in section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. What is Codification and is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR 272. We reserve the amendment of 40 CFR part 272, subpart I for this authorization of Delaware's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action does not have tribal implications within meaning of Executive Order 13175 (65 FR 68249, November 6, 2000). This action does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney Generals' "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective April 29, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 15, 2002.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 02–4528 Filed 2–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD27

National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the amount of premium policyholders pay for flood insurance coverage under the NFIP for "pre-FIRM" buildings in coastal areas subject to high velocity waters, such as storm surges and wind-driven waves (*i.e.*, "V" zones). (The term "pre-FIRM buildings" means buildings whose construction began on or before December 31, 1974, or the effective date of the community's Flood Insurance Rate Map (FIRM), whichever date is later. Pre-FIRM buildings and their contents are eligible for subsidized rates under the NFIP.) This rate increase brings the premiums we charge for pre-FIRM, V-zone properties more in line with their actual risk.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, (email) *Thomas.Hayes@fema.gov*.

SUPPLEMENTARY INFORMATION:

Summary of Comments

On December 3, 2001, we published at 66 FR 60176 a proposed rule to increase the rates we charge under the NFIP for flood insurance coverage for pre-FIRM properties located in V-zone areas.

During the comment period, we received four sets of comments. Two writers supported the proposal; two opposed it.

The two supporting the proposal represent insurance companies participating in the NFIP's Write Your Own program. The two opposing the rate changes are a State Coordinator for the NFIP and the Insurance Committee of the Association of State Floodplain Managers, a national association promoting sound floodplain management and flood hazard mitigation as well as flood preparedness, warning and recovery.

Lower Rates in Non-SFHAs

One of the insurance companies supporting the proposed rate increase suggested that there should also be a decrease in rates for "very low risk exposures in non-SFHA zones." ("SFHA" zones are "special flood hazard areas" shown on FEMA's flood maps.)

We are already doing this. The NFIP currently offers lower rates for flood coverage under the Preferred Risk Policy (PRP), available only to properties in Zones B, C, and X. (These zones are areas of moderate or minimal flood hazards from the primary water source.) One may buy a PRP totaling $30,000 worth of building coverage and $8,000 worth of contents coverage for a building without a basement or enclosure for $131—well below the premium for comparable coverage in an A-zone area or a V-zone area. The lower premium we charge for PRPs is consistent with the commenter's recommendation.

Opposition to the Rate Increase

The two opponents of the rate change raised questions about the need for a comprehensive approach to reduce flood losses, the amount of the rate increase, the accuracy of the maps used for ratemaking, and erosion mapping. We will address their issues under the headings below.

Need for a Comprehensive Approach

The Insurance Committee of the Association of State Floodplain Managers (ASFPM) contended "that any rate increase must be part of an overall effort to evaluate all measures to reduce flood losses, and such measures must not be based solely on increasing income by increasing the cost of flood insurance, but need to focus on mitigation measures to reduce claims against the NFIP."

We agree with this recommendation. This rate increase is part of a comprehensive approach we are currently pursuing to reduce the subsidy for the NFIP. We have also developed strategies for addressing the costliest drain on the NFIP—repetitive loss properties insured under the NFIP. Ten thousand of those properties currently insured under the NFIP have had four or more flood losses, or two or three losses that cumulatively exceed the value of the building. Within the scope of our budget authority for fiscal year 2002, we will target the riskiest flood-prone properties, especially the repetitive flood loss structures, for mitigation activities, such as relocation, elevation, floodproofing, and other mitigation measures through mitigation grants with the States.

This rate increase is only one incremental step in a much larger campaign to reduce the exposure of property to flood damages, insure more of the Nation's property owners against flood loss, and mitigate future flood losses so that we can continue to operate the NFIP on a financially sound basis.

Taking this step—a modest rate increase for the first layer of coverage for pre-FIRM, V-zone properties—is not at odds with nor does it prevent us from proceeding in other areas such as mitigating repetitive flood loss properties, reducing the subsidy for the NFIP, and promoting the sale of flood insurance. We will also continue to use every opportunity, such as this modest rate increase, to reduce the NFIP's subsidy and mitigate future flood damage.

Amount of Rate Increase

The Insurance Committee of the ASFPM, which opposes the rate increase, also said that the rate increases "range from 10% to 11.5% in rates for pre-FIRM Velocity Zone structures." This is inaccurate. As we said in the proposed rule, "these proposed increases apply only to the rates for the "first layer" of flood insurance coverage." It is estimated that the average total premium for all pre-FIRM, V-zone policyholders will increase to $936, an increase of 6.3% over their current average premium.

This rate increase, therefore, falls within the statutory limit for rate increases imposed by Section 572 of the National Flood Insurance Reform Act of 1994, Pub. L. 103–325, 42 U.S.C. 4015. The corresponding rate increases for other classes of property affected by this rule also fall under this statutory limit.

Exposure to Loss for V-Zone Properties

One opponent of the rate increase argued that we should not increase rates for pre-FIRM, V-zone properties since pre-FIRM, V-zone policyholders in the State of Alaska are already paying "far beyond what the already high premiums have paid out in claims." This opponent also pointed out that a review of the total claims paid for pre-FIRM, V-zone properties in Alaska "does not support the FEMA assertion that pre-FIRM, V-zone properties are 'a particularly risky class of properties.'"

The H. John Heinz III Center for Science, Economics and the Environment, which conducted for FEMA a Congressionally-mandated study evaluating erosion hazards, disagrees with this position. The Heinz Center's report characterizes the "V zone" as the "most hazardous coastal flood risk zone." (See page 39 of *Evaluation of Erosion Hazards*, April 2000). The report, which can be found on FEMA's web site at: *http://www.fema.gov/library/erosion.pdf*, also points out that current insurance rates under the NFIP "do not reflect the magnitude of the erosion risk faced by any individual policyholder." Since V-zone areas—the areas affected by this rule—contain areas subject to erosion, this rate increase will help close the gap somewhat for this rate insufficiency

under the existing mapping authority FEMA has.

We would also point out that there are 4.3 million policies currently in force under the NFIP nationwide; 2,260 flood insurance polices are currently in force in Alaska. Of Alaska's 2,260 flood insurance policies, only eleven (11) are written on properties located in V-zone areas. Those eleven policies for V-zone properties in Alaska do not represent a credible group on which to make ratemaking decisions for pre-FIRM, V-zone properties across the entire country. We need a much larger population of risks to make ratemaking decisions—decisions that will affect similar classes of risks for a national program. We estimate that the proposed rates for first layer V-zone coverage are less than 20% of the full-risk actuarial rate for that layer. We have based this rate increase on the loss experience and loss expectations for all-pre-FIRM, V-zone properties under the NFIP.

Also, we would argue that the limited losses experienced by V-zone properties in Alaska does not result from their lower exposure to loss but rather from the low number of flood insurance policies (eleven) written on properties in Alaska's V-zone areas and the resulting extended time periods needed for the true exposure to emerge.

The Issue of Erosion

The commenter says, "A much riskier class of properties appears to be structures subject to the threat of coastal erosion where a large percentage—at least in Alaska—are paying Preferred Risk Premium Rates but probably are subject to catastrophic loss or substantial damage and not located within a mapped flood zone."

The Heinz Center study for FEMA concluded that the risk to properties in coastal areas is increasing, that the premium rates for flood insurance in coastal areas will in the future be too low, and that Congress should give FEMA the funds and mandate to map areas subject to coastal erosion—about ⅓ of the properties along the coast. Lacking the authority at present to isolate properties in V-zone areas that are subject to erosion risks, this modest rate increase for V-zone properties is a step toward bringing premiums in line with a risk that the Heinz Center study demonstrates is worsening.

Comparison of May 1, 2002 Rate Increases With Current Rates

The following chart compares the current rates we charge for pre-FIRM, V-zone properties with the rate increases for pre-FIRM, V-zone properties to go into effect May 1, 2002. The rates for pre FIRM, A-zone properties are unaffected by this change. Also these increases apply only to the rates charged for the "first layer" of flood insurance coverage set by Congress in Section 1306 of the National Flood Insurance Act of 1968, as amended (Pub.L. 90–448):

Type of structure	Current V zone[1] rates per year per $100 coverage on:		To take effect May 1, 2002: V zone rates per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential:				
No Basement or Enclosure	.82	.95	.91	1.06
With Basement or Enclosure	.88	.95	.98	1.06
2. All other including hotels and motels with normal occupancy of less than 6 months duration:				
No basement or Enclosure	.95	1.90	1.06	2.10
With basement or Enclosure	1.01	1.90	1.12	2.10

[1] V zones are zones V1–V30, VE, and unnumbered V zones.

Adequacy of FEMA's V-zone Maps

The opponents of the rate increase also argued that V-zone maps need to be updated, and that, until such updating is made and inaccuracies corrected, the rate increase is inappropriate. We recognize that flood maps need to be updated periodically—especially those containing erosion-prone areas where the flood hazard is increasing. That is why we are committed to a multi-million dollar map modernization effort for this fiscal year and beyond; however, to delay needed rate adjustments for a national program on the basis of specific disputed maps or studies would be an overreaction. There are procedures in place for restudying and remapping flood-prone areas; we also have regulatory procedures in place for appealing flood elevations derived from our studies and for correcting or amending published maps by letter. We will refer the expressions of concern about our V-zone maps in general, as well as the specific examples of Alaska's V-zone maps, for consideration and appropriate action within the Federal Insurance and Mitigation Administration.

Request for an Extension of the Comment Period

The two opponents of the rule also pointed out that the 30-day comment period fell within the holiday season, and they asked us to consider an extension beyond January 2, 2002. We contacted the Association of State Floodplain Managers to let them know that, while we will not extend the comment period, we would wait until January 14, 2002—an additional two weeks—to assure them that we would consider any comments that may have been in transit at the close of the comment period. We also pointed out that the proposed rule also offered the public the options to submit comments by email and facsimile. The FEMA Rules Docket Clerk reported that no additional comments were received between January 2, 2002—the official end of the comment period—and January 14, 2002, the last day we would accept any outstanding comments or comments that may have been in the mail at the end of the comment period. In line with the Association's suggestion during that telephone conversation, we will do our best to ensure that any future proposed rate increase will be published well before the holiday season to avoid any potential inconvenience to the public or interested stakeholders.

National Environmental Policy Act of 1969

Under section 102(2) (C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4317 *et seq.*, the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and FEMA's regulations on Environmental Considerations, 44 CFR part 10, we

conducted an environmental assessment of this rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment and Finding of No Significant Impact are on file for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule would result in a modest increase in premiums for V zone, pre-FIRM buildings and their contents. The adjustment in premiums rates will increase by slightly less than $3 million the amount of premium collected and deposited in the National Flood Insurance Fund each year. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would adjust the premiums for pre-FIRM buildings in V-zone areas. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise § 61.9(a) to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for pre-FIRM, A zone properties, pre-FIRM, V-zone properties, and emergency program properties.

Type of structure	A zone rates [1] per year per $100 coverage on—		V zone rates [2] per year per $100 coverage on—	
	Structure	Contents	Structure	Contents
1. Residential:				
No Basement or Enclosure	.68	.79	.91	1.06
With Basement or Enclosure	.73	.79	.98	1.06
2. All other including hotels and motels with normal occupancy of less than 6 months duration.				
No Basement or Enclosure	.79	1.58	1.06	2.10
With Basement or Enclosure	.84	1.58	1.12	2.10

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones

[2] V zones are zones V1–V30, VE, and unnumbered V zones.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: January 31, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–4389 Filed 2–26–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–314, MM Docket No. 01–313, RM–10251]

Digital Television Broadcast Service; Tulsa, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KTUL, LLC, licensee of station KTUL–TV, NTSC channels 58, Tulsa, Oklahoma, substitutes DTV channel 10 for DTV channel 58. *See* 66 FR 56794, November 13, 2001. DTV channel 10 can be allotted to Tulsa in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35–58–08 N. and 95–36–55 W., with a power of 7, HAAT of 497 meters and with a DTV service population of 999 thousand.

With this action, this proceeding is terminated.

DATES: Effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–313, adopted February 8, 2002, and released February 14, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 58 and adding DTV channel 10 at Tulsa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–4577 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–298; MM Docket No. 01–249; RM–10272]

Radio Broadcasting Services; Telluride and Norwood, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Rocky II Investments, Inc., the Commission reallots Channel 285C1 from Telluride to Norwood, Colorado as that community's first local aural transmission service, and modifies the license for Station KRYD accordingly. *See* 66 FR 50602, October 4, 2001. Coordinates used for Channel 285C1 at Norwood, Colorado, are 38–00–05 NL and 107–57–53 WL.

DATES: Effective March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–249, adopted January 30, 2002, and released February 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445–12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Telluride, Channel 285C1, and by adding Norwood, Channel 285C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–4576 Filed 2–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 022102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole/Flathead Sole/"Other Flatfish" by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for rock sole/flathead sole/"other flatfish" by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 bycatch allowance of red king crab specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.



Federal Register

Friday,
March 22, 2002

Part VIII

Federal Emergency Management Agency

44 CFR Part 62
National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD17

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are launching a three-year pilot project that will permit governmental risk-sharing pools to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We are limiting the participants in this pilot effort to a maximum of six such insurers that are able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort must comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. This final rule includes the eligibility criteria for participation in the pilot and an addendum to the WYO Arrangement that construes the term "the company" used in the Arrangement to mean not only WYO companies but also the insurers selected for this pilot.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–4335, or (e-mail) *Edward.Pasterick@fema.gov.*

SUPPLEMENTARY INFORMATION: On May 8, 2001, we published at 66 FR 23200 a proposed rule that would add, on a pilot project basis, a new category of insurer to the National Flood Insurance Program (NFIP)'s Write Your Own (WYO) system. We proposed the pilot to be for three years with participation limited to no more than three intergovernmental risk-sharing pools sponsored by State municipal leagues.

Our stated purpose for the pilot was to use the WYO program as a model for serving the flood insurance needs of municipalities. We said in the proposed rule, "One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools . . . enjoy with local governments."

We proposed the pilot in response to several organizations—several such risk pools and the National League of Cities—that asked us to consider permitting intergovernmental risk pools sponsored by State municipal leagues to sell flood insurance on a limited basis under the WYO program. We considered the request and agreed to propose such an expansion of the WYO program, but only on a pilot project basis. We saw the pilot as a controlled extension of the proven WYO approach—to use available mechanisms in the insurance marketplace to protect property owners from the peril of flood loss.

We also presented the proposal, during its formative stages and before its publication as a proposed rule, to WYO companies and associations for flood insurance producers. The WYO companies and these associations raised concerns about the proposal. We summarize their concerns under the "Comments" section.

In sum, our intention for the pilot has been to determine whether the WYO model would be as successful in the public sector as it has been in the private sector. Using the WYO model we want to see whether the governmental risk pools selected for the pilot will provide more convenient and direct access for municipal governments to obtain flood insurance coverage. We have decided after careful consideration of the public comments on the proposed rule to proceed with the pilot with a number of modifications.

Comments: Summary

During the comment period, we received fifteen written submissions from the public. The following submitted comments on the proposed rule:

- One State Executive Department,
- One international association,
- One insurance agency,
- Two private WYO insurance companies,
- Four national associations, and
- Six State Municipal leagues.

In addition to the written comments, we heard comments from representatives of two national associations—the National League of Cities (NLC) and the National Association of Counties (NACo)—at a meeting on June 20, 2001. FEMA's Office of the General Counsel, in coordination with the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, facilitated that meeting. We recorded the comments offered by the two national associations and made them part of the docket for this rule. We summarize that meeting and our decisions under a separate heading of this section.

The public generally favored the proposal. Twelve of the written submissions supported the pilot project while three objected to the proposal. Four of those in support of the proposal expressed an interest in participating in the pilot project.

Each of the following sections treats issues raised by the submitters and explains our reasons for accepting, rejecting, or modifying a given recommendation. We also add a section that summarizes the content of the June 20, 2001 meeting that is included in the rule's docket. Additionally, one set of comments was submitted well after the end of the comment period; however, we considered those comments as well and discuss them in a separate section.

Proposed Pilot: Creating Non-Insurance Company Competitors

Two private insurance companies expressed concern that the pilot would create "non-insurance company" competition for the WYO companies "that may or may not be subject to the same requirements as the WYO participants."

We modeled the participation criteria for the pilot's participants in 44 CFR 62.24(b) on the participation standards that WYO companies have had to meet under 44 CFR 62.24(a). Also, the pilot participants will participate under the same WYO Arrangement that WYO companies do. To ensure consistent standards and requirements, we added an addendum to the WYO Arrangement that expands the definition of "WYO company" to include the public entity insurers that will participate in the pilot. As a result, the pilot participants will be subject to the same requirements for customer service, reporting, financial management, and administration that the private WYO insurance companies must meet.

We would point out that the participants in the pilot project will not be able to sell flood insurance coverage to private consumers—homeowners, business owners, condominium associations, or the owners of multi-family dwellings. They may sell flood insurance only to public entities for their public buildings. Conversely,

WYO companies may still sell flood insurance to public entities for their public buildings as well as to homeowners, business owners, condominium associations, and the owners of multi-family dwellings. The pilot project will not change that.

Use of Cover America II To Promote Flood Coverage for Public Buildings

The two private insurance companies objecting to the proposal asked whether the market of public buildings was in fact an "under-penetrated" market. If so, the WYO companies suggested that, instead of launching a pilot project, we should use the NFIP's marketing campaign, Cover America II, to increase education and awareness among municipalities that may need flood insurance protection for their public buildings. The commenters suggested that we target mailings to municipalities for their public buildings and launch awareness and education efforts with municipal leagues, instead of implementing the pilot.

Whether the pilot will serve an "under-penetrated" market was not a major factor in proposing the pilot. Rather, the primary purpose of the pilot is to extend to another category of insurer and client the same opportunity for full service that is currently enjoyed by private WYO companies and their policyholders. At the same time, any increase in market penetration resulting from the pilot will be welcome.

We believe using our marketing and education efforts to target public entities is a good suggestion, but it is not a mutually exclusive option to launching the pilot. We plan to look into such a marketing and education effort with the view of increasing the number of public buildings protected by flood insurance. The pilot project will be one of several measures we will use to accomplish that objective.

Cost of Flood Insurance as Deterrent to Sales

The two companies objecting to the pilot, and one municipal league in support of the proposal, believed that public entities have not bought flood insurance to date for their public buildings because of the cost of coverage. The pilot will provide a good opportunity to examine this.

We will also be interested to see whether the convenience for public entities in dealing with one insurance vehicle for all lines of property coverage will increase flood insurance coverage of public buildings in the selected States.

Expansion of the Pilot

Two national associations—the Association of Governmental Risk Pools (AGRIP) and the National Association of Counties—recommended that we expand the pilot project to permit other interested public-entity pools, including county pools, to participate. AGRIP, however, said that a pilot is unnecessary arguing that the need is already clear.

We disagree with the position that a pilot is unnecessary; we believe that we need a pilot project to demonstrate whether using governmental risk-pools will be a useful vehicle for meeting the flood insurance needs of municipal governments and for meeting the standards of the program. We agree, however, with AGRIP and NACo that the expansion of the pilot is warranted.

In the preamble of the proposed rule, we said that the pilot would consist of three intergovernmental risk-sharing pools sponsored by State municipal leagues. As we mentioned earlier, two other national organizations—NACo and AGRIP—that represent the interests of risk pools asked that we expand the scope of the pilot to permit their members to be considered for the pilot as well. Those comments have merit.

We have agreed therefore to expand the scope of the pilot to permit eligible entities from each of these national associations to participate in the pilot. Due to the limitations on NFIP resources, however, we must at this time limit the expanded pilot to a maximum of six participants. In order to ensure that participation in the pilot is fair, representative, and equally distributed among various kinds of governmental risk pools, we will accept two nominations each from NLC, NACo, and AGRIP for this WYO pilot. This represents a doubling of the scope of pilot, which we originally proposed.

Each of the national associations representing governmental risk pools—NLC, NACo, and AGRIP—will nominate two of its interested members to participate in the pilot. We will then review the applications of all candidate organizations and accept up to six organizations that meet our criteria as set forth in the NFIP's regulations, 44 CFR 62.23 and 62.24.

Criteria for Participation

AGRIP recommended a number of changes to 44 CFR 62.23 and 62.24 that would be inclusive enough to accommodate other public entity pools. We believe our language in the proposed rule is already inclusive enough to accommodate such entities and that was certainly our intention in drafting the proposal. And while we have not adopted every change in wording recommended by AGRIP, we have modified the criteria for participation in section 62.23 and 62.24 to ensure that the pilot is open not only to intergovernmental risk-sharing pools sponsored by State municipal leagues but also county pools and other governmental risk pools. For instance, in section 62.23(b), we say that "the term 'WYO company' shall include public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, and other intergovernmental risk-sharing pool entities for covering public entity structures." We maintain the position that those eligible for the WYO program under this pilot must be an entity already acting as an insurer, that is, an organization that provides property and liability coverage and is subject to State oversight.

Questions

In addition to the questions we have addressed in the preceding sections, one State, which sponsors a local government property insurance fund ("Fund"), asked specific questions on the program's implementation. We restate those questions followed by our answer.

Question. How will, or could participation in the pilot project affect compliance with FEMA (disaster) guidelines? For example, by participating in the pilot program could Fund members, if they elect not to purchase flood coverage, be held to a different (higher) standard of compliance, as it relates to FEMA eligibility guidelines.

Answer: Fund members will not be held to a higher standard.

Question: The Fund does not employ or use agents. Does the Fund need to become an Agent of Record, or appoint an Agent of Record to receive commissions on its behalf? Could the NFIP commissions be paid directly to the Fund?

Answer: Under the WYO program, a portion of the expense allowance—the portion of the premium income that a participating insurer retains—provides for a 15% agent commission; however, it does not have to be used to pay for commissions if a participating insurer does not use agents. (One of the private companies participating in the WYO program does not use agents in selling flood insurance.)

Question: Can separate service fees be paid directly to the Fund for administering/ servicing the NFIP WYO program? If so, what are those fees and how would they be calculated

Answer: We do not pay service fees directly to participating insurers. Under Article III of the WYO Arrangement, participants retain a certain percentage of the premium for selling and servicing flood insurance. We call the amount of premium participants retain the "expense allowance."

Question: Are there any plans for the FEMA/NFIP Application to be streamlined or tailored to the governmental entities in the pilot project?

Answer: No, there are no such plans.

Question: What type of bank account is envisioned to process premium collections and claim payments for a governmental risk-sharing insurer?

Answer: The WYO Arrangement and the WYO Program's Financial Control Plan call for the participating WYO entity to deposit premiums into a separate, restricted account. Article II of the Arrangement requires the participating WYO company to "separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing, for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III."

Question: Do the FEMA/NFIP Flood Zone maps have a global position or plotting feature whereby the Fund can access them electronically? Can the Fund enter an address or location co-ordinate and automatically determine what Flood hazard Zone or Area the building or location is situated?

Answer: The NFIP does not provide such a service. There are private enterprises called Flood Zone Determination Companies that provide such a service for a fee. Those interested in acquiring such services may find a list of Flood Zone Determination Companies on FEMA's Web site at *www.fema.gov* under "Flood Zone Determination Companies."

Question: What types of training programs are available for training and support of producers or administrative staff, if * * * (we) are selected as one of the candidates for the pilot program?

Answer: The NFIP's Bureau and Statistical Agent conducts training for all the program's major stakeholders, including the WYO companies. We plan during the early implementation of the pilot program for the NFIP Bureau to conduct such specialized training for the selected participants.

Meeting of FEMA and Stakeholders

On June 20, 2001, FEMA's Office of the General Counsel, the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, and the Deputy Administrator for the Federal Insurance and Mitigation Administration met with representatives of the NLC and NACo. The NLC and NACo had asked for the meeting so that they could offer comments on the proposed rule, in addition to their written comments, and get clarification on several issues. We made the recorded minutes of that meeting part of the official docket for this rule and they are available upon request from FEMA's Rules Docket Clerk, 500 C Street, SW., Washington, DC 20472.

At the meeting, representatives for NLC and NACo asked whether there was any flexibility for expanding the pilot to accommodate other kinds of qualified pools. The Deputy Administrator responded that the scope of the pilot resulted from ongoing work between FEMA, the NLC, and several of its members that had expressed an interest in providing flood insurance to its members. One representative from NACo stressed that "we want to be part of the pilot and [can] identify a * * * (member) that is doing a good job." The enthusiasm and support by NACo both at the June 20, 2001 meeting and in written comments submitted to the FEMA Rules Docket, as well as the written comments of AGRIP, have prompted us to expand the pilot to accommodate other governmental risk pools. We will ask the NLC, NACo, and AGRIP each to nominate two of its interested and potentially qualified members to us for consideration in the pilot.

Additional Comment

One national association of insurance agents submitted written comments well after the close of the comment period. We reviewed those comments but did not find them persuasive. The association "does not believe that a new delivery system would change the mindset of public entity risk pools, a market segment that has never been willing to pay the price for flood coverage recommended to them in the past."

Our philosophy is that we wish to use and, in this case, test every available mechanism within the marketplace that can help property owners—private and public to protect their interests with flood insurance. The finite nature of the pilot will help us evaluate the effectiveness of applying the successful WYO model to the public sector as well. We believe the pilot's restriction that the pilot's participants may only sell flood insurance to public entities and then again only for their public buildings will preserve the unique relationship that private insurance companies and agents have with their private customers—a market excluded from the participants of this pilot. Conversely, the pilot does not preclude agents and companies from marketing to public entities in addition to their private customers.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this rule is to launch a three-year pilot project that will permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: To determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored and other governmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The rule will permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this rule. Rather, the rule will add a new marketing avenue for writing flood insurance for public buildings.

The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Act, a person does not have to respond to and may not be penalized for failing to comply with an information collection that does not display a currently valid OMB.

The Office of Management and Budget has approved the use of the following information collection requirements for use by a maximum of six pilot participants in the newly added governmental risk-sharing pools category of insurer under the Write Your Own (WYO) program. The criteria for participating in the program are contained in FEMA regulation 44 CFR 62.23(a) and 62.24 and Appendixes A and B of part 62. The information collections are:

Title: Write Your Own (WYO) Program, OMB Number 3067–0169, expiration date March 31, 2002, hour burden—33 minutes per respondent; and

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants, OMB Number 3067–0259, expiration date April 30, 2002, hour burden—7 hours per respondent.

FEMA did not receive any comments on the need for the information, the accuracy of the burden estimate, cost to the respondents, or the methods for minimizing burden on the respondents during the review and comment period for the proposed rule.

Addressee. Interested persons should submit comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 on or before April 22, 2002. Comments may also be sent to the Chief, Records Management Branch, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule revises the NFIP regulations to launch a three-year pilot project that permits governmental risk sharing pools to sell insurance to public entities under the NFIP's WYO Program. We will limit the participants to six such insurers that will be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule adds a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, the National Association of Counties, the Association of Governmental Risk Pools, Write Your Own companies, and several State municipal leagues. We have welcomed their valuable comments, and this rule has benefited from their comments.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise paragraphs (a) and (b) of section 62.23 to read as follows:

§ 62.23 WYO Companies authorized.

(a)Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO insurers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. Arrangements entered into by WYO Companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled "Financial Assistance/Subsidy Arrangement," a copy of which is included in appendix A of this part and made a part of these regulations.

(b)Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term "WYO Company" shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise section 62.24 to read as follows:

§ 62.24 WYO participation criteria.

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d)To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

Addendum to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Financial Assistance/Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures participating in the pilot project established in § 62.24(b) that permits intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

(1) "Company" in the preceding Arrangement includes "a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures."

(2) The references to "marketing guidelines" in Article II—Undertaking of the Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 12, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6920 Filed 3–21–02; 8:45 am]

BILLING CODE 6718–03–P

extremely hazardous waste under its hazardous waste program.

Broader-in-scope requirements are not part of the authorized RCRA program and EPA can not enforce them. Although you must comply with these requirements in accordance with state law, they are not federal RCRA requirements.

I. Who Handles Permits After This Authorization Takes Effect?

Rhode Island will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Rhode Island is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Rhode Island?

Rhode Island is not authorized to carry out its hazardous waste program in Indian country within the State which includes the land of the Narragansett Indian Tribe. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying Rhode Island's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying, the enumerated revisions to the Rhode Island program. We reserve the amendment of 40 CFR part 272, subpart OO for the codification of Rhode Island's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 6, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–19979 Filed 8–8–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD30

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are changing the effective date of the Financial Assistance/Subsidy Arrangement ("the Arrangement") to October 1, 2002. The Arrangement defines the duties and responsibilities of insurers that sell and service flood insurance under the Write Your Own

program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, (202) 646–3429, (facsimile) (202) 646–3445, or (email) *edward.connor@fema.gov*.

SUPPLEMENTARY INFORMATION: On August 6, 2001, we published in the **Federal Register** (Vol. 66, No. 151, page 40916) a final rule that adjusted the expense allowance under the Arrangement to reflect more accurately the costs of the private insurers that sell and service flood insurance under the Arrangement. That rule also revised the effective date of the Arrangement.

This final rule revises the effective date of the Arrangement to agree with the new Arrangement year that begins October 1, 2002. We are not making any other changes to the Arrangement for fiscal year 2003.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

This final rule involves no policies that have federalism implications under E.O. 13132, Federalism.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In appendix A to part 62, revise the *Effective Date* to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date October 1, 2002.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance", No. 83.516, "Disaster Assistance")

Dated: July 30, 2002.

Howard Leikin,

Deputy Administrator for Insurance, Federal Emergency Management Agency.

[FR Doc. 02–20152 Filed 8–8–02; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1687, MB Docket No. 02–94, RM–10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Georgia Public Telecommunications Commission, licensee of noncommercial station WGTV–TV, substitutes DTV channel *12 for DTV channel *22 at Athens, Georgia. *See* 17 FCC Rcd 755 (2002). DTV channel *12 can be allotted to Athens in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 33–48–18 N. and 84–08–40 W. with a power of 16, HAAT of 305 meters and with a DTV service population of 3211 thousand. With is action, this proceeding is terminated.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–94, adopted July 15, 2002, and released July 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV channel *22 and adding DTV channel *12 at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–20186 Filed 8–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1668, MB Docket No. 02–84, RM–10339]

Digital Television Broadcast Service; San Mateo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of San Mateo County Community College District, licensee of noncommercial educational station KCSM–TV, San Mateo, California, substitutes DTV channel *43 for DTV channel *59 at San Mateo. *See* 67 FR 20942, April 29, 2002. DTV channel *43 can be allotted to San Mateo in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–45–19 N. and 122–27–06

assistance, which is 18 months from the date of the disaster declaration. This period of assistance may be extended if requested in writing by the State and approved in writing by the FEMA Associate Director. The State must include a justification for an extension of the assistance period.

(2) Reporting requirements.

(i) The State shall provide financial status reports, as required by 44 CFR 13.41.

(ii) The State shall provide copies of PSC 272, Federal Cash Transactions Report to FEMA. The PSC 272 is required quarterly by the Department of Health and Human Services from users of its SMARTLINK service.

(iii) The State shall provide weekly program status reports which include the number and dollar amount of applications approved, the amount of assistance disbursed and the number of appeals received.

(3) Ineligible costs. Funds provided to the State for the administrative costs of administering Other Needs assistance shall not be used to pay regular time for State employees, but may be used to pay overtime for those employees.

(4) Closeout. The State has primary responsibility to closeout the tasks approved under the Grant Award. In compliance with the period of assistance, as identified in the award, the State must reconcile costs and payments, resolve negative audit findings, and submit final reports within 90 days of the end of the period of assistance. The State must also provide an inventory of equipment purchased with grant funds and loaned to it by FEMA for purposes of administering IHP, which lists the items, dates, and costs of equipment purchased.

(5) Recovery of funds. The State is responsible for recovering assistance awards from applicants obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error.

(i) Adjustments to expenditures will be made as funding is recovered and will be reported quarterly on the Financial Status Report.

(ii) A list of applicants from whom recoveries are processed will be submitted on the quarterly progress report to allow FEMA to adjust its program and financial information systems.

(iii) The State will reimburse FEMA for the Federal share of awards not recovered through quarterly financial adjustments within the 90 day close out liquidation period of the grant award.

(iv) If the State does not reimburse FEMA within the 90 day close out liquidation period, a bill for collection will be issued. FEMA will charge interest, penalties, and administrative fees on delinquent bills for collection in accordance with the Debt Collection Improvement Act. Recovered funds, interest, penalties, and fees owed to FEMA through delinquent bills for collection may be offset from other FEMA disaster assistance programs from which the State is receiving funds or future grant awards from FEMA or other Federal agencies. Debt collection procedures will be followed as outlined in 44 CFR part 11.

(6) Audit requirements. Pursuant to 44 CFR 13.26, uniform audit requirements apply to all grants provided under this subpart.

(7) Document retention. Pursuant to 44 CFR 13.42, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the final Financial Status Report. The State is responsible for resolving questioned costs that may result from an audit conducted during the three-year record retention period and for returning disallowed costs from ineligible activities.

3. Revise the last sentence of 44 CFR 206.44(a) to read as follows:

"No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Director to begin the process of providing essential emergency services or housing assistance under the Individuals and Households Program.";

4. Revise 44 CFR 206.62(f) to read as follows:

§ 206.62 Available assistance.

* * * * *

(f) Provide assistance in accordance with section 408 of the Stafford Act.; and

* * * * *

5. Revise the heading of 44 CFR 206.101 to read:

§ 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.

6. 44 CFR 206.101(a) is amended by adding the following phrase at the end of paragraph (a):

"for Presidentially-declared emergencies and major disasters declared on or before October 14, 2002 (Note that the reference to section 408 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000)."

7. Revise the heading of 44 CFR 206.131 to read as follows:

"Individual and Family Grant Program for major disasters declared on or before October 14, 2002."

8. Amend 44 CFR 206.131(a) by adding the following phrase at the end of the first sentence: "for Presidentially-declared major disasters declared on or before October 14, 2002 (Note that the reference to section 411 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000)."

9. Revise 44 CFR 206.191(d)(2)(ii) & (iv) to read as follows:

§ 206.191 Duplication of benefits.

* * * * *

(d) * * *

(2) * * *

(ii) Housing assistance pursuant to section 408 of the Stafford Act.

* * * * *

(iv) Other Needs assistance, pursuant to section 408 of the Stafford Act or its predecessor program, the Individual and Family Grant Program.

* * * * *

Dated: September 25, 2002.

John R. D'Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02–24733 Filed 9–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD31

National Flood Insurance Program (NFIP); Group Flood Insurance Policy (GFIP)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are amending the Group Flood Insurance Policy (GFIP), as a result of the consolidation of sections 408 and 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) by the Disaster Mitigation Act of 2000, which created a new disaster assistance program.

DATES: *Effective Date:* This rule is effective September 30, 2002.

Applicability Date: This rules applies to Emergencies and Major Disasters declared on or after October 15, 2002.

Comment Date: Please submit written comments on or before April 15, 2003.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Suzan M. Krowel, Federal Emergency Management Agency, Federal Insurance Administration, (202) 646–3423, (facsimile) (202) 646–4327, or (e-mail) *Suzan.Krowel@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA established the GFIP in the mid-1990's to address the need for recipients of Individual and Family Grant (IFG) disaster assistance under section 411 of the Stafford Act to purchase flood insurance as a condition of their receipt of the IFG assistance.

The purpose of the GFIP was to provide a temporary mechanism for the recipients of the IFG grants—generally low-income persons—to have flood insurance coverage for a period of thirty-seven months following a flood loss so that they would have time to recover from the disaster and be in better position to buy flood insurance for themselves after the expiration of the GFIP.

Section 408 of the Stafford Act, 42 U.S.C. 5174, entitled "Temporary Housing Assistance," and section 411 of the Stafford Act, 42 U.S.C. 5178, entitled "Individual and Family Grant Programs," have been effectively combined into a revised section 408 of the Stafford Act by section 206 of the Disaster Mitigation Act of 2000, Pub. L. 106–390, to establish a single program called the Federal Assistance to Individuals and Households Program (IHP). The maximum IFG assistance was $14,800. The maximum IHP assistance is $25,000. Therefore, we (the Federal Insurance and Mitigation Administration of FEMA) must make revisions to the GFIP.

The coverage will now be in the amount of $25,000. The premium for this coverage will be a flat fee of $600. The deductible will remain at $200, which is applicable separately to real property (building) and personal property (contents). The GFIP term will be 36 months. Previously the term had been increased to 37 months, because one state needed additional time to work with its GFIP certificate holders to make arrangements to buy and maintain flood insurance beyond the GFIP term of 36 months. The extra time is no longer necessary.

The purpose of the new GFIP policy is the same as the previous GFIP policy: to provide a temporary mechanism for the recipients of the IHP grants—generally low-income persons—to have flood insurance coverage for a period of three years following a flood loss so that they will have time to recover from the disaster and be in a better position to buy flood insurance for themselves after the expiration of their three-year policy term.

We intend to continue analyzing the GFIP to make further adjustments in premium charges as warranted.

FEMA is considering allowing the states to renew the GFIP policy after the 36 month expiration, provided the states pay the premium. We invite comments on this proposal.

National Environmental Policy Act

This interim final rule falls within the exclusion category 44 CFR Part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: revise the GFIP as a result of the changes in the Stafford Act. The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and it is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. Section 206 of the Disaster Mitigation Act of 2000 has

combined sections 408 and 411, respectively, of the Stafford Act, into a revised section 408. The grant amount has been increased to $25,000 and a single grant program has been established, titled the Federal Assistance to Individuals and Households Grant Program (IHP).

The GFIP was established to provide flood insurance for all individuals named by the State as recipients under the Stafford Act grant program award for flood damage as a result of a major disaster declaration by the President. This interim final rule revises the GFIP to meet the new limits stated in the revised Stafford Act grant program. The revisions to the GFIP must coincide with the revisions to the Stafford Act.

The public benefit of this rule is the continuation of the GFIP without interruption, the increase in the amount of coverage provided, and the deductible remaining at $200.

Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553 (d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to coincide with the revisions to the Stafford Act.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after a comment period would not further the public interest. For these reasons, we believe we have good cause to publish an interim final rule.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise paragraphs (a) (b) (c) (d) and (h) of § 61.17 to read as follows:

§ 61.17 Group Flood Insurance Policy.

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under section 408 of the Stafford Act (42 U.S.C. 5174) of an Individuals and Households Program (IHP) award for flood damage as a result of major disaster declaration by the President.

(b) The premium for the GFIP is a flat fee of $600 per insured. We may adjust the premium to reflect NFIP loss experience and any adjustment of benefits under the IHP program.

(c) The amount of coverage is equivalent to the maximum grant amount established under section 408 of the Stafford Act (42 U.S.C. 5174).

(d) The term of the GFIP is for 36 months and begins 60 days after the date of the disaster declaration.

* * * * *

(h) We will send a notice to the GFIP certificate holders approximately 60 days before the end of the thirty-six month term of the GFIP. The notice will encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP Standard Flood Insurance Policy, and advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The IHP program will provide the NFIP the amount of flood insurance coverage to be maintained by certificate holders.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: September 25, 2002.

Anthony S. Lowe,

Administrator, , Federal Insurance and Mitigation Administration.

[FR Doc. 02–24734 Filed 9–27–02; 8:45 am]

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