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Comments: Green is explanatory, Blue is for discussion, Red is for issues remaining to be addressed

14-3.9 DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS

(A) Applicability

Any plat governed by Article 14-9, or showing land all or in some part within the *special flood hazard area* shall meet the requirements of this section and § 14-8.3 and shall ~~have the~~ be approved and signed ~~by~~ by the Floodplain Administrator.

(B) Administration by Floodplain Administrator

(1) The Floodplain Administrator shall administer and enforce this section and other appropriate sections of 44 CFR Parts 59-78 (National Flood Insurance Program Regulations) pertaining to *floodplain* management. ~~If the Floodplain Administrator finds a violation of the provisions of §§14-3.9 and 14-8.3, the Floodplain Administrator shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. If the violation is not corrected, legal action shall be taken 30 days after notification of the violation.~~

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

(a) Maintain and hold open for public inspection all records pertaining to the provisions of §§14-3.9 and 14-8.3;

(b) Review permit applications to determine whether proposed *building* site will be reasonably safe from *flooding*;

(c) Review and, approve or deny all *applications* for development permits required by ~~adoption of~~ §§14-3.9 and 14-8.3;

(d) Review permits applications for proposed development to assure that all necessary *permits* have been obtained from those federal, state or local governmental agencies (including §404 of the ~~F~~Water ~~P~~Pollution ~~C~~Control ~~A~~Act amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;

Comment [CLG1]: It is too late by the time the permit is issued

(e) Where interpretation is needed as to the exact location of the boundaries of the *flood hazard area* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;

(f) ~~Notify, i~~ In riverine situations, notify adjacent communities and the ~~state coordinating agency that is the~~ New Mexico Office of the State Engineer, prior to any

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alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);

(g) Assure that the *flood* carrying capacity within the altered or relocated portion of any watercourse is maintained;

(h) When *base flood elevation* data has not been provided in accordance with §14-8.3(B), the Floodplain Administrator shall obtain, review and reasonably utilize any *base flood elevation* data and *floodway* data available from federal, state or other sources; in order to administer the provisions of §14-8.3 (C);

(i) When a regulatory *floodway* has not been designated, the Floodplain Administrator shall require that no *new construction*, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the City's Flood Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect of the proposed *development*, when combined with all other existing and anticipated *development*, will not increase the *base flood elevation* of the *base flood* more than one foot at any point within the City;

(j) Establish a *floodplain* management program to meet the prerequisites for the sale of flood insurance as set forth in ~~the National Flood Insurance Program Regulations (44 CFR part 59.22); and~~

Comment [CLG2]: this is just a portion of the NFIP

(k) Maintain a record of all ~~actions involving an appeal~~s; and

~~(l) R- and shall report all variances-waivers to the Federal Emergency Management Agency upon request.~~

Comment [CLG3]: these are split because they are different concepts; FEMA is already identified; "waiver" is terminology used in this section

(C) Enforcement

(1) An *application* for a *permit*, license, or certificate pertaining to the use of land or building in any *special flood hazard area* shall be approved by the Floodplain Administrator.

(2) The Floodplain Administrator may make reasonable entry upon any lands and waters within the City's jurisdiction for the purpose of making any investigation, survey, removal or repair contemplated by §§14-3.9 and 14-8.3. An investigation of any obstruction shall be made by the Floodplain Administrator either on the Floodplain Administrator's own initiative, or the written request of any ~~titleholder abutting the channel or drainageway involved~~ member of the public.

Comment [CLG4]: broadened to include any interested individual

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(3) Whenever it is necessary to make an inspection to enforce any of the provisions of §§14-3.9 and 14-8.3, the Floodplain Administrator may enter such *buildings* or premises at a reasonable time to inspect the same or to perform any duty imposed upon the Floodplain Administrator by this section, provided that if such *building* or premises be occupied, the Floodplain Administrator shall first present proper identification and demand entry, and if such *building* or premises be unoccupied, the Floodplain Administrator shall first make a reasonable effort to locate the owner or other persons having charge or control of the *building* or premises and demand entry. ~~If entry is refused, the City shall proceed to obtain a search warrant by filing a complaint made before the magistrate court or district court upon oath or affirmation. The complaint shall state:~~

~~(a) The particular *building*, premises or portion thereof sought to be inspected;~~

~~(b) That the owner or occupant of the *building*, premises or portion thereof, has refused entry;~~

~~(c) That inspection of the *building*, premises or portions thereof is necessary to determine whether it complies with the requirements of this section;~~

~~(d) The particular provisions of §§14-3.9 and 14-8.3 sought to be enforced;~~

~~(e) Any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the *building*, premises or portion thereof which constitutes a violation of §§14-3.9 and 14-8.3; and~~

~~(f) That the complainant is authorized by the City to make the inspection.~~

Comment [CLG5]: deleted due to conflict and redundancy with 14-11

(4) Each Floodplain Administrator shall carry identification indicating the Floodplain Administrator's authority and shall present such identification to the magistrate court or district court for the purpose of this section, and to other persons, when requested to do so during the performance of the Floodplain Administrator's duty. ~~No owner or occupant of any other person having charge, care or control of any *building* or premises shall fail or neglect, after proper demand is made, to promptly permit entry by the Floodplain Administrator for the purpose of inspection and examination pursuant to this section.~~

Comment [CLG6]: same comment as above

(5) The powers and duties of the Floodplain Administrator relative to obstructions in a *special flood hazard area* shall include the following:

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(a) Where an obstruction to a *floodway* has been created by fallen trees, silt, debris and like matter, the City may remove the obstruction; and

(b) Where, after investigation, an order has been issued to the owner of an obstruction for its removal or repair and the order is not complied with, within such reasonable time as may be prescribed by the City, or if the owner cannot be found or determined, the City may cause such removal or repairs to be made. The reasonable cost of the removal or repairs shall constitute a lien against the *lot* from which the obstruction was removed or on which it was repaired. The lien shall be foreclosed in the manner provided in §§3-36-1 through 3-36-57 NMSA 1978.

Comment [CLG7]: 3-36-7 contains procedures for payment after foreclosure

(D) Appeals

_____ An appeal of any final action of the Floodplain Administrator shall be pursuant to §14-3.17.

(E) ~~Variances~~ **Waivers**

~~Variances~~ **Waivers** to §14-8.3 may be approved by the Planning Commission as follows:

Comment [CLG8]: terminology changed to be consistent with similar provisions in the rest of the code and distinguish the process from land use variances in 14-3.16 (this process is pursuant to FEMA regulation).

(1) ~~Variances~~ **Waivers** may be issued for the reconstruction, rehabilitation or restoration of *structures* listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this ~~paragraph~~ **(subsection (E))**.

(2) ~~Variances~~ **Waivers** may be issued for ~~new construction and substantial improvements to be erected~~ **development** on a *lot* of one-half acre or less in size contiguous to and surrounded by *lots* with existing *structures* constructed below the *base flood level*, providing the relevant factors in **sub**-paragraphs (5) and (6) below have been fully considered. As the *lot*

size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(3) ~~Variances~~ **Waivers** shall not be issued within any ~~designated floodway~~ if any increase in flood levels during the base flood discharge would result.

Comment [CLG9]: revised to apply to "designated floodways" and "regulatory floodways"

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

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(5) ~~_____~~ ~~Waivers~~ ~~Variations~~ may be approved for *new construction* and substantial improvements and for other *development* necessary for the conduct of a *functionally dependent use* provided that:

~~_____~~ (a) ~~The criteria outlined in paragraphs (2), (3) and (6) of this paragraph (E) are met, and~~

Comment [CLG10]: unnecessary

~~_____~~ (b) ~~The~~ structure or other *development* is protected by methods that minimize *flood* damages during the *base flood* and create no additional threats to public safety.

(6) The prerequisites for granting waivers ~~variances~~ are:

(a) Waivers ~~Variations~~ shall only be issued upon a determination that the waiver ~~variance~~ is the minimum necessary, considering the *flood* hazard, to afford relief.

(b) Waivers ~~Variations~~ shall only be issued upon:

(i) Showing a good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and

(iii) A determination that the granting of a waiver ~~variance~~ will not result in increased *flood* heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(7) The Planning Commission may attach such conditions to the granting of waivers ~~variances~~ as it deems necessary to further the purpose and objectives of §14-8.3.

(8) Any application to whom a waiver ~~variance~~ is granted shall be given written notice that the *structure* may be permitted to be built with the lowest floor elevation below the *base flood elevation*, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(9) Notice of the hearing on a waiver request shall be in accordance with §14-3.1(H)(1).