

CUSTER COUNTY ORDINANCE #6 REVISED
FLOOD DAMAGE PREVENTION ORDINANCE

SECTION 1.0

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of South Dakota has in SDCL 7-18A-2 enabled county governmental units with the authority to enact, amend, and repeal ordinances and resolutions as may be proper and necessary to carry into effect the powers granted to it by law. SDCL 11-2-13 enables county governmental units to adopt zoning ordinances for the purpose of promoting health, safety, or the general welfare of the county. In addition, SDCL 7-18-14 and 7-18-15 enables county governmental units to enter into cooperative agreements with other units of governments to prevent or control flooding and to implement flood control programs at the county level. Therefore, the Board of County Commissioners of Custer County, South Dakota does ordain as follows:

1.2 FINDINGS OF FACT

- (1) The flood hazard areas of Custer County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

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

- (1) To protect human life and health;

- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,

1.4 METHODS OF REDUCING FLOOD LOSSES

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

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION 2.0

DEFINITIONS

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

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 hazard The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. This is the land within the community subject to a 1 percent or greater chance of flooding in any given year. The SFHA is the area where the NFIP's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) – Is the water surface elevation of the one (1) percent annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

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

Building--see structure.

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.

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 manufactured 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 Emergency Management Agency (FEMA) The federal agency under which the National Flood Insurance Program (NFIP) is administered. In March 2003, FEMA became part of the newly created U.S. Department of Homeland Security.

Flood or Flooding means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters.
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) 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.
- (2) 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 (1)(a) of this definition.

Flood elevation determination means a determination by FEMA 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 Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) A FIS is an official report provided by the Federal Emergency Management Agency. The report contains a compilation and presentation of flood risk data for specific watercourses, lakes, and coastal flood hazard areas within a community. The FIS report contains detailed flood elevation data in flood profiles and data tables.

Flood Study or 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 Zones are geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map. Each zone reflects the potential severity or type of flooding in the area.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

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.

Floodway--see regulatory floodway.

Floodway encroachment lines mean the lines marking the limits of floodways on Federal, State and local floodplain maps.

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.

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

Historic Structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a

- district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

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 Sec. 60.3 of the National Flood Insurance Program (NFIP) Regulation.

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.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum of 1988 (NAVD88) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

National Flood Insurance Program (NFIP) The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations, Subchapter B

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (5) Is fully licensed and ready for highway use

Ready for highway use means that it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions.

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.

Special flood hazard area: see “area of special flood hazard”.

Start of Construction includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start 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.

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.

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 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.”

Variance means a grant of relief by a community from the terms of this floodplain management-ordinance.

Violation means the failure of a structure or other development to be fully compliant with this floodplain management ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the NFIP regulations, located in CFR Sec. 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 North American Vertical Datum 1988 (NAVD 88), (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wet Floodproofing includes permanent or contingent measures applied to a structure or its contents that prevents or provides resistance to damage from flooding while allowing floodwaters to enter the structure or area. Generally, this includes properly anchoring the structure, using flood resistant materials below the BFE, protection of mechanical and utility equipment, and use of openings or breakaway walls.

SECTION 3.0

GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Custer County.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Custer County, South Dakota and Incorporated Areas effective date January 6, 2012, with an accompanying Flood Insurance Rate Map (FIRM) , is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study, and FIRMs, are on file at the Custer County Planning Office, 420 Mt. Rushmore Road, Custer, South Dakota 57730.

3.3 COMPLIANCE

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

3.4 ABROGATION AND GREATER RESTRICTIONS

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

3.5 INTERPRETATION

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Custer County, an officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

3.7 SEVERABILITY

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

SECTION 4.0

ADMINISTRATION

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

4.1.1 Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. The permit shall be for all structures including manufactured homes and for all development including fill and other activities.

4.1.2 Application for Development Permit

Application for a development permit shall be made on forms furnished by the Director of Planning and may include, but is not limited to:

Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing in relation to the Areas of Special Flood Hazard. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.2.2; and,
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Custer County Director of Planning is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

4.3 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

- (1) Duties of the Floodplain Administrator shall include, but not be limited to:
 - (a) Maintain and hold open for public inspections all records pertaining to the provisions of this ordinance.
 - (b) Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
 - (c) Review, approve or deny all applications for development permits required by adoption of this ordinance.
 - (d) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
 - (e) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
 - (f) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

- (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 Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of this ordinance.
 - (i) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
 - (j) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, or AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).
- (2) Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
- (a) The danger to life and property due to flooding or erosion damage;
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (c) The danger that materials may be swept onto other lands to the injury of others;
 - (d) The compatibility of the proposed use with existing and anticipated development;
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - (g) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (h) The necessity to the facility of a waterfront location, where applicable;
 - (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(j) The relationship of the proposed use to the comprehensive plan for that area.

4.4 VARIANCE PROCEDURE

4.4.1 Appeal Board

The Custer County Board of Adjustment, as established by South Dakota Law (SDCL 11-4-17 to 11-4-24), shall hear and decide appeals and requests for variance from the requirements of this ordinance.

- (1) The Custer County Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of the ordinance.
- (2) Those aggrieved by the decision of the Custer County Board of Adjustment, or any taxpayer, may appeal such decisions to the Seventh Judicial Circuit Court, as provided by SDCL 11-4-25.
- (3) The Floodplain Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency.
- (4) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 4.4.1 (8) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (5) Upon consideration of the factors of Section 4.4.1 (8) and the purposes of this ordinance, the Custer County Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this ordinance.
- (6) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (7) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (8) Prerequisites for granting variances:

- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - 1) showing a good and sufficient cause;
 - 2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - 3) a determination that the granting of a 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.
 - (c) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (9) Variances may be issued by a community 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 Section 4.4.1(1)-(8) are met, and
 - (b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

SECTION 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all areas of special flood hazards, the following standards are required:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided the following provisions are required:

5.2.1 Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standards of this ordinance are satisfied.

5.2.2 Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (1) be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- (3) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certification shall be provided to the Floodplain Administrator.

5.2.3 Other Enclosures

- (1) New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters
- (2) Small accessory structures used solely for parking, building access or limited storage and certain agricultural structures located in wide expansive floodplains may be permitted contingent upon implementation of the design criteria of 5.2.3 (1) (a), (b), (c), and other appropriate wet floodproofing techniques. Applicable structures shall be based on a determination by the Floodplain Administrator and NFIP Guidelines.

5.2.4 Manufactured Homes

- (1) Require that all manufactured homes to be placed within Zone A on the FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (3) In A-1-30, AH, and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at or above the Base Flood Elevation; OR the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

5.2.5 Recreational Vehicles

Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- (1) be on the site for fewer than 180 consecutive days,
- (2) be fully licensed and ready for highway use, or
- (3) meet the permit requirements of Section 4.3, and the elevation and anchoring requirements for "manufactured homes" of this section.

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

5.3 STANDARDS FOR SUBDIVISION PROPOSALS

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser. If physical development is proposed that impacts the designated floodplain area then the applicant must complete the Letter of Map Change process.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas,

electrical and water systems located and constructed to minimize or eliminate flood damage.

5.4 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

Located within the areas of special flood hazard established in Section 3.2, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- (2) All new construction and substantial improvements of non-residential structures;
 - (a) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;
 - (b) together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 4.1 are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

5.5 FLOODWAYS

Located within areas of special flood hazard established in Section 3.2 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:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered

professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- (2) If Section 5.5(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 5.0, PROVISIONS FOR FLOOD HAZARD REDUCTION.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

5.6 PENALTIES FOR NONCOMPLIANCE

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of Federally-subsidized flood insurance, a community must adopt floodplain management regulations that meets or exceeds the minimum standards of Section 60. “These regulations must include effective enforcement provisions.” In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP 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 less restrictive conflicting local laws, ordinances or codes.”

THEREFORE: No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a Class II misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Custer County from taking such other lawful action as is necessary to prevent or remedy any violation.

Custer County Ord #6 Rev

Flood Damage Prevention

Effective Date

This revised ordinance shall become effective on February 8th, 2012.

ADOPTED this 4th day of January, 2012.



 Chairman, Custer County Board of
 Commission

 

 Custer County Auditor

1st Notice of Public Hearing published: December 14th, 2011
 Public Hearing held: December 28th, 2011

2nd Notice of Public Hearing published: December 21, 2011
 Public Hearing held: January 3rd, 2012

3rd Notice of Public Hearing published: December 21, 2011
 Public Hearing held: January 4th, 2012

Publication of Notice of Ordinance in Revision Adopted:

I hereby certify that the actions described above took place on the dates referred to above and that this Ordinance is effective as of the 4th day of January, 2012.



 Tracy Kelly, Custer County States Attorney