

Comments from Meeting with the Flood Control District Advisory Committee, October 15, 2008.

Comment No. 1 from Michael Zeller

Why has the word “Regional” been deleted from the ordinance and the name of the District now been reverted back to the ole name of the Pima County Flood Control District?

RFCD response: The word Regional is part of the operating name of the District but is not part of the legal name. No change to Ordinance.

Comment No. 2 from Michael Zeller

Under Section 16.08.040, it seems that the last sentence should read: “Unless demonstrated otherwise by an analysis prepared by Professional Civil Engineer registered in the state of Arizona all drainage basins shall be considered to be balanced basins unless a basin has been designated as a critical drainage basin (Ord. 2008 FC-1; Ord. 1999 FC-1 § 1 (part), 1999; Ord. 1988 FC-2 Art. 4 (part), 1988). This allows the opportunity to waive detention/retention if it can be shown, through scientific and technical analysis, that a watershed should not be classified as either Balanced or Critical.

RFCD Response: The ability to waive detention/retention based on technical justification is already addressed in 16.48.040. No change to Ordinance.

Comment No. 3 from Michael Zeller

Why were Item A and Item B deleted from Section 16.08.140? They have been in all previous versions of the ordinance, and seem to serve a valid purpose remaining here and providing “exception cases” to substantial improvement criteria, even though they may also be repeated at another location in the Ordinance.

RFCD Response: Items A and B would apply to Cumulative Substantial Damage, Cumulative Substantial Improvement, Substantial Damage, and Substantial Improvement. Rather than include this language in all the definitions, it was decided to locate it in Substantial Improvement, and refer each other definition to the substantial improvement. Cumulative Substantial Improvement was modified to directly refer to Substantial Improvement.

Comment No. 4 from Michael Zeller

Why are Item C and Item D removed from Section 16.08.220? It seems to me that they serve a purpose here, even though they may also be repeated at another location in the Ordinance.

RFCD Response: Since there are different encroachment standards for floodway and floodway fringe, it is more appropriate to locate the floodway fringe standard in the floodway fringe chapter, and has been moved to that location in 16.26.020. No change to Ordinance

Comment No. 5 from Michael Zeller

Why delete Section 16.08.260. Is it not a useful definition to the lay person?

RFCD Response: This is an incorrect reference; the correct reference is the National Flood Insurance Program.

Comment No. 6 from Michael Zeller

Under new Section 16.08.290, it is my opinion that, for historic consistency and clarification, you should put the term “100-year” in parentheses after the word “base” if you are now going to call the 100-year flood a “base flood.” That is, use the terminology “base (100-year) flood.” I believe that this should also be done everywhere in the Ordinance where base flood is now being used instead of 100-year flood because, after all these years referring to the 100-year flood, there should be an equivalency used throughout the document so as to not confuse the lay reader who does not use the technical jargon.

RFCD response: Although used historically, the term “100-year flood” increases the confusion potential for and frequency of flood occurrence. Acknowledging that this is a misleading term, FEMA is moving to modify the term to the “1% annual chance of flooding”; for consistency, the District is retaining the term base flood. The District will modify the definition of “base flood” to refer to the 100-year flood.

Comment No. 7 from Michael Zeller

Under new Section 16.08.365(350), Item D3, it is stated that: “The watercourse shall be considered confined through all reaches where this criteria is present both upstream and downstream of the subject area.” In my opinion, this is too much overreach. If the ratio of the base flood to the 25-year flood remains greater than 1.25 either upstream or downstream of the subject area for a continuous distance of say something like 3 or 4 times the width of the flood plain, then the criteria should no longer apply beyond that point. There has to be reasonable boundary limits.

RFCD Response: This particular provision will be used to identify those portions of a watercourse that will be considered confined, and should not be considered a limitation by itself. Once considered a confined watercourse, the additional floodway criteria such as avoiding the 25-year floodplain will apply. Those portions of the watercourse which exceed the 1.25 ratio will likely have greater areas allowable for development due to the wider geologic floodplain. It remains important to maintain conveyance capacity through the wider portion through avoidance of the 25-year floodplain, by limited the extent of encroachment, and by avoiding areas with active fluvial processes. However, since the concern of the confined flow area is that progressively larger floods get deeper and faster; this provision has been amended to limit applicability to those areas that remain confined for flows greater than base flood.

Comment No. 8 from Michael Zeller

Under 16.08.600, the proposed wording is: “including all base floods where the base flood peak discharge is 100 cfs or greater, those areas that are subject to sheet flooding, those areas identified on subdivision plats or development plans, those areas designated by FEMA, including areas designated as Shaded Zone X as well as those areas that the Chief Engineer, using the best available data, has determined may be subject to a flood hazard during the base flood.”

As I have commented repeatedly on this one. In my judgment, having been around since the first Ordinance was adopted in December of 1974, the proposed new Ordinance should be applicable only in areas where $Q_{100} > 100$ cfs. The way the current language reads, it leaves the impression to the reader that all sheet flood areas are subject to the ordinance, regardless of the Q_{100} peak. Accordingly, I recommended changing the preceding wording to read as follows (my suggested changes in red): “including all base floods where the base flood peak discharge is 100 cfs or greater, **including** those areas that are subject to sheet flooding, **including** those areas identified on subdivision plats or development plans, **including** those areas designated by FEMA, **particularly including** areas designated as Shaded Zone X, **and including as well as** those areas that the Chief Engineer, using the best available data, has determined may be subject to a flood hazard during ~~the a~~ **a** base flood **where $Q_{100} > 100$ cfs.**” Otherwise, without these suggested changes there is no apparent lower limit to regulation under the Ordinance---a regulatory level for which I believe neither the District nor the Pima County Attorney’s Office should what to be responsible.

RFCO Response: The District has modified the definition of regulatory floodplain to exclude sheet flood areas that have the maximum potential contributing areas of less than 20 acres. It is important to note that the discharge will be calculated across the entire floodplain rather than only the portion of a floodplain impacting the subject property.

Comment No. 9 from Michael Zeller

Under Section 16.16.030, if the term “Chief Engineer” is capitalized, then the term “Arizona Registered Civil Engineer” should also be capitalized in order to maintain consistent syntax. In fact, this should apply throughout the Ordinance. Also, if the District will be preparing floodplain and erosion-hazard maps, it seems to me that it should be clearly stated in the Ordinance that all such District maps will be prepared by, or under the supervision of, an “Arizona Registered Civil Engineer” who is an employee of the District. It should work both ways for the public and private sector.

RFCO Response: Chief Engineer is a defined term and is capitalized for emphasis; Arizona registered civil engineer is not a defined term in the Ordinance. No change to Ordinance.

Comment No. 10 from Michael Zeller

Under section 16.16.070, it is my professional opinion that the following sentence should be added to the end of this section of the Ordinance: “The requirement of new delineations of floodplain conditions within 120 calendar days after completion of construction shall also apply to the District and all other departments within Pima County.”

RFCO Response: This requirement exists in 16.16.070.A. No change to Ordinance

Comment No. 11 from Michael Zeller

Under Section 16.24.020, why has the phrase “require a certification, sealed by an Arizona registered professional civil engineer that the proposed use will not result in any increase in the floodway elevations during the occurrence of the base flood, nor will the proposed use . . .” been deleted? There should always be an opportunity provided, through technical documentation, for the property owner to demonstrate that a use in the floodway would not affect adjacent properties.

RFCD Response: This provision has been moved 16.24.020.C. The use of an engineer to demonstrate that proposed improvements will not cause any rise in base flood elevations, is not only allowed, it is required. No change to Ordinance.

Comment No. 12 from Michael Zeller

I notice that under Section 16.24.050, for example, that the term “property owner” has been deleted and replaced with the term “applicant.” However, there is no definition in the Ordinance for what constitutes an “applicant.” Yet, it seems to me that an applicant must be a property owner or an authorized agent of a property owner in order to even legally file an application with the District. Accordingly, I recommend that the Definitions Section of the Ordinance include “Applicant” and defines exactly what constitutes an applicant.

RFCD Response: You are correct that applicant means the owner of a property for which a Floodplain Use Permit application has been submitted, or that owner’s authorized agent. When a term is not defined, the common practice is to refer to the dictionary definition, which would indicate that it is the person who applies for the permit. This is generally the owner or their authorized agent. No change to Ordinance.

Comment No. 13 from Michael Zeller

Under Section 16.26.040, I believe Item B should read as follows (my suggested changes in red): “Such fill or other materials shall be protected against erosion by a method approved by the District including riprap, vegetative cover, bulk-heading, or other approved methods, **unless a study prepared by an Arizona Registered Civil Engineer demonstrates that erosion protection is not required.” Otherwise, there is no provision in the current language to waive erosion protection for fill or other materials in circumstances where protection is not needed.**

RFCD Response: This change has been made. In addition, while reviewing the Ordinance, the District observed that 16.36.070.B contains similar language, which has now been revised.

Comment No. 14 from Michael Zeller

Under Section 16.26.055, why mandate that the FFE be one foot above the 0.2% flood elevation? Recall that the “one-foot-above” requirement is in the state law only for the regulatory (i.e., 100-year) flood. Requiring the same for a 500-year flood seems like overkill (and there is no legal basis for requiring it).

RFCD Response: The District has amended the rule to require that the FFE be either base flood elevation plus one foot, or the 0.2% annual chance flood elevation, whichever is greater. Other flood protection measures, such as scour protection will still use the 0.2% annual chance flood as the design flood.

Comment No. 15 from Michael Zeller

Section 16.28.030, Item C, should be modified to read (my suggested changes in red): “In order to provide for reasonable access and stability of foundations and structures, at no time shall a setback of less than 25 feet from the top of channel bank be permitted, **unless a study prepared by an Arizona Registered Civil Engineer demonstrates that an alternate**

setback is acceptable.” Again, without this last phrase added there is no provision in the current language to reduce the setback in circumstances where 25 feet is not needed (and they do exist).

RFCO Response: The Ordinance has been revised to allow the erosion hazard setback to be reduced below 25 feet when unusual conditions exist.

Comment No. 16 from Michael Zeller

Under Section 16.34.040, scour around piers and pilings is a complex process ordinarily not understood by the lay person. Accordingly, it seems to me that if piers or pilings are to be used, then before construction occurs in such a manner a study should be prepared by an Arizona Registered Civil Engineer defining the amount of scour and the extent of piers or pilings required. I recommend that language to this effect be added to the Ordinance.

RFCO Response: Section 16.20.020.C of the Ordinance already provides the authority to require an engineering study, prepared by an Arizona registered civil engineer when concerns regarding the development of a property, including scour potential exist. No change to Ordinance.

Comment No. 17 from Michael Zeller

Under Section 16.36.120, for purposes of clarification I recommend adding the word “levee” between the word “the” and the word “construction” on the next to last line of Item C.

RFCO Response: Ordinance revised as requested

Comment No. 18 from Michael Zeller

Under Section 16.48.040, a sentence has been added which reads: “As appropriate, alternate post-construction best management practices for storm water quality will be required.” This kind of regulation should be the purview of PDEQ, et al., not the District. We are dealing with a Floodplain Management Ordinance, not a Stormwater Quality Ordinance. There are other ordinances and regulations (local, state, and federal) which regulate stormwater quality. In addition, to my knowledge there is no state enabling legislation which allows counties to include stormwater quality regulations in their floodplain management ordinances. Finally, stormwater quality issues deal with very small amounts of runoff, not with floodwaters. Why complicate the Ordinance, even more than it already has been complicated, by adding more regulations for which “others” are supposed to be responsible?

RFCO Response: In addition to addressing water quantity issues, the use of detention/retention is known to have a water quality benefit, and implementation of the District’s detention/retention requirements is an element in the County’s Municipal Separate Storm Sewer permit issued by the EPA. Recent audits of this permit by EPA identified that this Ordinance among other, did not emphasize the water quality sufficiently. The purpose for the revision is to address this concern. No change to Ordinance.

Comment No. 19 from Michael Zeller

Under Section 16.56.010, Item D.1, reads: “The appeal petition shall be on a form approved by the District and shall contain a detailed explanation of all matters in dispute”

Although elsewhere in the Ordinance, I recommend adding the following wording (in red) to this item as well: **“When matters of a scientific or technical nature are in dispute, the Appellant must provide a report, prepared by an Arizona Registered Civil Engineer, which includes supporting calculations and documentation regarding the areas of scientific and technical disagreement with the District.”** In this way, it will be clear, “up-front,” that the Appellant will have to provide credible evidence supporting the appeal, not just unsubstantiated opinion.

RFCD Response: The District agrees that this issue should be emphasized, and that this provision is likely the provision that an appellant will read. The Ordinance was changed to reflect this, although language that was already in the Ordinance was used for consistency purposes.

Comment No. 20 from Michael Zeller

Under Section 16.64.10, Item G, there seems to be too wide gap between a \$750.00 fine for an individual and a \$10,000.00 fine for an enterprise. Should not the amount of the fine be based upon the severity of the violation? I mean, an individual can commit just as severe a violation as can an enterprise. If fines cannot be imposed based upon their severity, then I recommend either increasing the amount of the fine to \$2,500.00 for the individual (1/4 of \$10,000.00) or decreasing the amount of the fine to \$3,000.00 for the enterprise (4 times \$750.00).

RFCD Response: These penalties are the penalties prescribed for Class 2 misdemeanors. No change to Ordinance.