



**Southern Arizona
Home Builders
Association**

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May 11, 2009

Ms. Suzanne Shields, P.E.
Director
Pima County Regional Flood Control District
97 E. Congress
Tucson, AZ 85701-1797

Dear Ms. Shields:

Thank you for the opportunity to comment on the proposed revisions to the Floodplain and Erosion Hazard Management Ordinance. These are important issues for the residential development industry. As you will see below, there are some issues that we would like to see addressed prior to going to the Board of Supervisors. We look forward to a constructive dialogue as the process continues.

- 1) 16.04.020.3 “Authority” – What are the criteria (developed by the director of water resources) by which developers are to delineate floodplains?
- 2) 16.08.020 “Appeal” – What are the criteria used for decision making by the Chief Engineer for issues related to riparian habitat? Aren’t riparian habitat issues determined by the Riparian Mitigation Guidelines?
- 3) 16.08.350 “Floodway Area” – These changes will likely have the effect of further restricting floodplain encroachments. The generalization of this requirement could lead to future limitations upon development unless there are provisions to waive the requirement under certain conditions. What is the intent behind these changes and will there be provisions to waive the requirements?
- 4) 16.08.600 “Regulatory Floodplain or Floodprone area” – We have concerns about the language “may be subject to.” This creates uncertainty and subjective regulation. Perhaps the language can be modified for a tighter definition or an explanation of the thresholds for what will be considered a flood hazard during base flood.
- 5) 16.08.640 “Sheet Flooding Area” – Same issue as 16.08.600.
- 6) 16.16.070 “Floodplain – New delineations required when” – We are concerned about the requirement to have LOMRs and CLOMRs approved by the District and submitted to FEMA prior to recording of the final plat. This adds uncertainty and time delays with this process. Will some Release of Assurances be approved in a phased subdivision prior to LOMR approval by RFCD?
- 7) 16.20.020 “Permit Information Requirements” – Do FEMA and PCRFCDD have the same definition of “watercourse”?

- 8) 16.26.055 “Critical Facilities” – Is all-weather access defined as a 500 year or 100 year flood?
- 9) 16.36.030 “Grading, Storm Water, and Drainage Improvement” – Why was the requirement for as-built plans added? How does it address phased developments? Are as-builts necessary for the whole development? How does it impact model home permits? Is the intent of adding ‘F’ to provide an additional layer of authority for the County to regulate the Clean Water Act?
- 10) 16.36.070 “Building Site Location Restrictions” – We are concerned that the addition of “riparian habitat” is an unnecessary and potentially burdensome layer of regulation. This is already regulated by the Riparian Mitigation Guidelines and we would prefer that this not be included in this ordinance.
- 11) 16.54.050, D – How are the members of the Technical Review Committee selected and what are the criteria for selection?
- 12) 16.56.050, 1 and 2 – “Technical Evidence” – Requiring seals of approval seems to be excessive. A botanist or biologist may be more qualified than a landscape architect. We’d like to see flexibility with this language. (Similar language also found in 16.64.070, 2).
- 13) 16.64.010, B “Violations” – Why was “1/3 of an acre” added and how was that amount chosen? Again, this is an issue of additional regulation already covered by the Riparian Mitigation Guidelines.
- 14) 16.64.020, 2, E “Abatement” – Please elaborate on the process for monetary penalties and specify the amounts. Are they the same as the amounts referenced in 16.64.010, G?

If you have any questions or comments, please contact me at 795-5114. In addition to my formal comments, I ask you to consider the comments or questions raised by SAHBA members either during the two stakeholder meetings or in written form.

Sincerely,



David Godlewski
Gov’t Liaison, SAHBA



**PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT
97 EAST CONGRESS STREET, THIRD FLOOR
TUCSON, ARIZONA 85701-1797**

**SUZANNE SHIELDS, P.E.
DIRECTOR**

**(520) 243-1800
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May 19, 2009

David Godlewski, Government Liaison
Southern Arizona Homebuilders Association
2840 N. Country Club Road
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Subject: Floodplain and Erosion Hazard Management Ordinance – Proposed Revisions

Dear Mr. Godlewski:

The Regional Flood Control District (District) has received your comments dated May 11, 2009 on the proposed revisions to the Floodplain and Erosion Hazard Management Ordinance (Ordinance). We appreciate the time and effort you and your members have spent reviewing the revisions, and hope that the constructive dialogue will improve the clarity and thoughtfulness of the revisions. The following is the District's response to the questions and concerns in your letter:

1) 16.04.020.A.3 "Authority" – What are the criteria (developed by the director of water resources) by which developers are to delineate floodplains?

Response: This new subpart has been added to be consistent with Arizona Revised Statutes (A.R.S.) §48-3609.A. Regarding the criteria that is cited, A.R.S. §48-3605 requires the director of water resources to develop criteria for establishing the 100-year flood and for delineating floodplains. These criteria, referred to as the State Standards for Floodplain Management, have been developed and are available at the Arizona Department of Water Resources' website: www.azwater.gov/dwr/Content/Publications/files/List0802.pdf. The Standards have been in place for some time, and the method by which developers are to delineate floodplains is not expected to change. No change to the Ordinance.

2) 16.08.020 "Appeal" – What are the criteria used for decision making by the Chief Engineer for issues related to riparian habitat? Aren't riparian habitat issues determined by the Riparian Mitigation Guidelines?

Response: This provision was amended to establish that only a "Written Finding by the Chief Engineer" can be appealed to the Floodplain Board. Previously, the definition included the appeal of decisions by the Floodplain Administrator as well. This process has been expanded in Chapter 16.56 to allow for a review of the Floodplain Administrator's decision by the Chief Engineer. Regarding the criteria used when reviewing riparian habitat delineations, the Chief Engineer would use the best information available including information developed in accordance with Riparian Habitat Mitigation Guidelines. The Chief Engineer's review and written finding

would only occur in the event of a dispute or disagreement with the Floodplain Administrator, and would be appealable to the Floodplain Board. No change to the Ordinance.

- 3) **16.08.350 “Floodway Area” – These changes will likely have an effect of further restricting floodplain encroachments. The generalization of this requirement could lead to future limitation upon development unless there are provisions to waive the requirement under certain conditions. What is the intent behind these changes and will there be provisions to waive the requirements?**

Response: The expansion of the definition of Floodway Area to include “confined flow areas” is occurring at the direction of the Floodplain Board. The concept of regulating confined flow areas more restrictively originated during the appeal of a decision by the Chief Engineer in 2006. As with all other permitting decisions there is a process to appeal the Floodplain Administrator’s decision to the Chief Engineer, and to appeal the Chief Engineer’s written finding to the Floodplain Board. This provision is found in section 16.24.050 of the Ordinance. No change to the Ordinance.

- 4) **16.08.600 “Regulatory Floodplain or Floodprone Area” – We have concerns about the language “may be subject to.” This creates uncertainty and subjective regulation. Perhaps the language can be modified for a tighter definition or an explanation for what will be considered a flood hazard during base flood?**

Response: This provision was amended in an attempt to clarify those areas that should be considered a regulatory floodplain. The District understands how the new language may cause uncertainty and will modify the proposed language so that it reads, “as well as those areas that the Chief Engineer, using the best data available, has determined is subject to flood hazard during the base flood.”

- 5) **16.08.640 “Sheet Flooding Area” – Same issue as 16.08.0600.**

Response: This language has been modified to replace “may be subject to” with “are subject to.”

- 6) **16.16.070 “Floodplain – New delineations required when” – We are concerned about the requirement to LOMRs and CLOMRs approved by the District and submitted to FEMA prior to the recording of the final plat. This adds uncertainty and time delays with this process. Will some Release of Assurances be approved in a phased subdivision prior to LOMR approval by RFCD?**

Response: This provision is being amended to codify the process that is currently being used. As such, there should be no real impact to subdivision development timeframes. Regarding phased developments, the District only requires those drainage improvements necessary to mitigate the impact of the proposed development. If a subdivision and associated drainage improvements are proposed to be phased, each phase would be required to go through the LOMR process. The use of a phased approach and multiple LOMRs or constructing all drainage improvements and a single LOMR is the prerogative of the applicant/developer. Based on current practice, it is

anticipated that “partial” assurances may occur prior to approval of the LOMR; however, the District cannot codify this practice as the Development Services Department has not codified the practice of “partial” assurances. No change to the Ordinance.

7) **16.20.020 “Permit Information Requirements” – Do FEMA and PCRFCO have the same definition of “watercourse”?**

Response: FEMA defines watercourse as “the channel and banks of an identifiable watercourse. The watercourse does not include the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel.” It is important to note that this definition is primarily associated with the phrase “Alteration of watercourse.”

The District’s definition of watercourse is very similar to that found in A.R.S. §48-3601, which states, “Watercourse means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.”

8) **16.26.055 “Critical Facilities” – Is all weather access defined as a 500-year or 100-year flood?**

Response: All-weather access is defined as a 100-year flood. This provision has been revised to clarify the issue.

9) **16.36.030 “Grading, Storm Water, and Drainage Improvements” – Why was the requirement for as-built plans added? How does it address phased developments? Are as-built necessary for the whole development? How does it impact model home permits? Is the intent of adding ‘F’ to provide an additional layer of authority for the County to regulate the Clean Water Act?**

Response: The requirement for an as-built plan was added in order to establish a baseline condition that can be used by an HOA or other responsible party when maintenance is required. It is important to ensure that drainage improvements are built as designed in order to ensure that they function properly and perform as intended. The as-built provides a vehicle to identify those areas where changes have been made subsequent to the approval of the design.

The as-built requirement applies only to those drainage improvements needed to mitigate the development that is proposed, and not necessarily the whole development if the development is proposed in phases. It is the applicant/developer’s prerogative to construct drainage improvements for the entire development, or for a single phase, as long as any potential impacts are mitigated. This provision has been modified to clarify this concern.

The District will continue to allow model homes to be constructed prior to the submittal of as-built plans, although it is anticipated that much of the infrastructure would be in place.

Subpart 'F' has been added to emphasize that grading and drainage improvements often have water quality impacts. In addition, since Pima County is also regulated under the Clean Water Act, this provision is intended to reinforce that water quality concerns and drainage modifications are linked. The District does not anticipate requiring the review of SWPPPs for compliance and has modified this provision to remove the reference to BMPs.

- 10) **16.36.070 “Building Site Location Restrictions” – We are concerned that the addition of “riparian habitat” is an unnecessary and potentially burdensome layer of regulation. This is already regulated by the Riparian Mitigation Guidelines and we would prefer that it not be included in this Ordinance.**

Response: The purpose of this proposed revision is to emphasize that when site planning for a proposed development occurs the lot configuration should consider the flood and erosion hazards and minimize the impact to those areas. The riparian habitat chapter of this title already establishes that disturbance should be minimized and, as such, the riparian habitat language is redundant. This provision has been modified to reflect this concern. It is important to note that the Riparian Habitat Mitigation Guidelines are not rules on their own, but have the force and effect of rules because they are incorporated by reference in the Ordinance. Reference to riparian habitat in the Ordinance is necessary.

- 11) **16.54.050.D – How are members of the Technical Review Committee selected and what are the criteria for selection?**

Response: The Technical Review Committee is defined in the Ordinance as the Flood Control District Advisory Committee which is a 12 member committee with 5 members being appointed by the Board (1 per District), 3 members representing the City of Tucson, and 1 member each from the City of South Tucson, Town of Oro Valley, Town of Sahuarita, and Town of Marana. No change to Ordinance.

- 12) **16.56.050.1 and 2 – “Technical Evidence” – Requiring seals of approval seems to be excessive. A botanist or biologist may be more qualified than a landscape architect. We’d like to see more flexibility with this language. (Similar language also found in 16.64.070.2).**

Response: The District acknowledges that there may be other qualified professionals who can provide technical evidence. These provisions have been modified to allow technical evidence to be prepared by a landscape architect or other qualified professional. It is anticipated that the Riparian Habitat Mitigation Guidelines will define the term “qualified professional.”

- 13) **16.64.010.B “Violations” – Why was “1/3 of an acre” added and how was that amount chosen? Again, this is an issue of additional regulation already covered by the Riparian Mitigation Guidelines.**

Response: This provision was amended to be consistent with Section 16.30.040 which establishes the 1/3 of an acre threshold of riparian habitat disturbance before requiring a mitigation plan. In order to be consistent, from a compliance enforcement perspective, the

disturbance of riparian habitat would only be considered a violation when more than 1/3 of an acre has been disturbed and a mitigation plan has not been submitted. Regarding the statement of additional regulation, the Riparian Habitat Mitigation Guidelines are not regulations that stand on their own. They have the force and effect of regulations because they are incorporated in the chapter of the Ordinance regarding riparian habitat. Regulatory standards must be provided in the Ordinance. No change to Ordinance.

14) 16.64.020.2.E “Abatement” – Please elaborate on the process for monetary penalties and specify the amounts. Are they the same as the amounts referenced in 16.64.010.G?

Response: The monetary penalties are those described in 16.64.010.G, which are those stipulated in the A.R.S. for class 2 misdemeanors. It is anticipated that monetary penalties will be part of the compliance enforcement process only for those property owners that are non-responsive to the Floodplain Administrator’s allegations. Should a property owner respond either by rectifying the violation or providing information disputing the violation, the District will work to ensure an expeditious resolution. However, if a property owner refuses to respond to an allegation or provide justification, the process allows the Floodplain Administrator to request a hearing and disclose the facts regarding the violation to a Hearing Officer. The Hearing Officer recommends a course of action to the Chief Engineer, which may include monetary penalties. A more detailed procedure will be developed upon adoption of the enhanced compliance enforcement provisions by the Floodplain Board. No change to Ordinance.

If you have any questions regarding the Districts responses to your comments, have new comments, or would like to discuss any issue further, please do not hesitate to call me at 240-1800.

Sincerely,



Suzanne Shields, P.E.
Director and Chief Engineer

SS/tj

c: Chris Cawein, Deputy Director
Eric Shepp, Division Manager – Floodplain Management Division