



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

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June 25, 2009

Bill Arnold, Chairman, Public Affairs Committee
Tucson Association of REALTORS
2445 N. Tucson Blvd.
Tucson, Arizona 85716

Subject: Floodplain and Erosion Hazard Management Ordinance – Proposed Revisions

Dear Mr. Arnold:

The Regional Flood Control District (District) has received your comments dated June 4, 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 proposed revisions. Below is the District's response to your questions and concerns:

1) 16.08.150 "Cumulative Substantial Improvement"- Refer to letter for details of comment.

Response: The District has not encountered the situation where a residence has multiple permits for kitchen and/or bathroom remodels likely due to the fact that these improvements seldom obtain permits prior to their construction. This provision is not intended to apply to that scenario, and it has been modified to exempt multiple remodels of the same facility.

2) 16.08.350 "Floodway Area" – Will there be a mechanism to allow for property owners who will be affected by the new restrictions to discuss "creative" solutions (e.g., the language is general enough to appear to allow a "conversation" between the District and property owners, but that is not explicit?)

Response: The existing language in the Ordinance allows for discussion of options. In addition, as with all other permitting decisions, the Floodplain Administrator's decision can be appealed to the Chief Engineer and the Chief Engineer's written finding can be appealed to the Floodplain Board. This provision is found in Section 16.24.050 of the Ordinance. No change to the Ordinance.

3) 16.36.030 "Grading, Storm Water and Drainage Improvement" – The "as-built plans" requirement adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived in these cases?

Response: This chapter applies only to subdivision and development plan permitting, and the “as-built” requirement would only apply to infrastructure authorized pursuant to these actions. The District may require “as-built” plans for individual residences in cases where engineered structures (e.g., erosion protection, or channel stabilization) were required prior to issuance of the Floodplain Use Permit. In these cases, it is important to ensure that the infrastructure was built as designed and approved. This is typically accomplished through the “as-built” inspection process. No change to Ordinance

- 4) **16.38 “Maintenance of Private Drainage Improvements” – Is it the intent of the District to impose these restrictions “off-site (e.g. improvements that may be made to private easements which lead to the property on which a structure is being built)?**

Response: The intent of this language is to ensure that there is adequate enforcement authority to compel a homeowners association (HOA) responsible for drainage maintenance to perform maintenance if needed. The construction of detention basins and constructed channels occur in order create subdivision parcels that are free from flood hazards. Once constructed, these improvements often become the responsibility of an HOA. It is important to make sure that these basins and channels are maintained so they continue to function as intended and adjacent properties remain free from flood risk. No change to Ordinance

- 5) **16.56.050: 1/2 “Technical Evidence – Requiring a “seal” adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived, or the standard(s) reduced in these cases? (applicable to 16.20.070 and 16.64.070(2) as well).**

Response: There are ample opportunities for discussion during the permitting process which would avoid the need for Technical Evidence to come in under a seal (or for an appeal for that matter). The District prefers the use of thoughtful site planning and consideration of floodplain and riparian functions during the design stage. However, in some cases, when flood hazards are severe or when compromise cannot occur, the remaining option is to appeal. In these cases, the District’s reasoning will be technical in nature, whether it’s a flood hazard assessment or a biological assessment, and the appropriate response in these situations should be technical as well. We do realize that some appeals may be due to hardship or other factors. The proposed language will be modified to allow for appeals with out an engineering seal.

- 6) **16.64.020.B.1.a “Abatement of Violations” – Refer to letter for details of comment.**

Response: This section will be modified to clarify that administrative searches are inspections of businesses that need to be closely regulated such as sand and gravel operations. The District is allowed “reasonable access” to inspect pursuant to A.R.S. §48-3609.K. Further, the Chief Engineer is authorized to apply for and obtain an administrative search warrant for entry and inspection pursuant to A.R.S. §48-3603.C.25. Again, the administrative search warrant is for regulation of businesses where there is substantial government interest supported by the regulatory scheme. Such warrants would be obtained through the courts.