

# **MONTGOMERY COUNTY FLOODPLAIN MANAGEMENT REGULATIONS**



## **THE COMMISSIONERS COURT**

MARK J. KEOUGH, County Judge

ROBERT C. WALKER  
Commissioner, Precinct 1

CHARLIE RILEY  
Commissioner, Precinct 2

M. RITCHEY WHEELER  
Commissioner, Precinct 3

MATT GRAY  
Commissioner, Precinct 4

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## **ARTICLE 1**

### **STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS**

#### **SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Texas has in the Flood Control and Insurance Act, Texas Water Code, Chapter 16, Subchapter I, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Commissioners' Court of Montgomery County, Texas does ordain as follows:

#### **SECTION B. FINDINGS OF FACT**

(1) The flood hazard areas of Montgomery County are subject to periodic inundation, which can result in a loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public's health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(3) Due to substantial flood hazard possibilities within Montgomery County and the extensive development observed throughout the county, a critical need exists to monitor alterations to the landscape both within the designated floodplain and floodway and to areas outside these boundaries. Comprehensive review of landscape changes is therefore essential to mitigate future flood risks and ensure the long-term resilience of the county's infrastructure and communities.

#### **SECTION C. STATEMENT OF PURPOSE**

It is the purpose of these Regulations to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions through provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers of property are afforded opportunity to be informed and notified that the property is in a flood area and subject to the Floodplain Management Regulations (defined below).

#### **SECTION D. METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purposes, these Regulations use the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands.

## ARTICLE 2

### DEFINITIONS

Unless specifically defined below, words or phrases used in these Regulations shall be interpreted to give them the meaning they have in common usage and to give these Regulations their most reasonable application.

**ACCESSORY STRUCTURE** means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

**ACT** means the statutes authorizing the National Flood Insurance Program (NFIP) that are incorporated in 42 U.S.C. § 4001- *et seq.*

**ADMINISTRATOR** means the Administrator of the Federal Emergency Management Agency (FEMA).

**AGENCY** means the Federal Emergency Management Agency, Washington DC.

**AGRICULTURAL STRUCTURE** for floodplain management purposes, means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with production, harvesting, storage, raising or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

**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 chance 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** is the land in the floodplain within a community subject to a 1-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V. For purposes of these Regulations, the term "special flood hazard area" (SFHA) is synonymous in meaning with the phrase "area of special flood hazard."

**BASE FLOOD** means the flood having a 1-percent chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE)** is the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V, V1-V30 or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year - also called the *base flood*.

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

**BASE LEVEL ENGINEERING (BLE)** is flood risk datasets that meet the technical mapping standards outlined in FEMA Policy 204-078-1 Standards for Flood Risk Analysis and Mapping and include estimated floodplain extents (10-, 1- and 0.2-percent annual chance events), water surface elevation grids (1- and 0.2-percent annual chance events), flood depth grids (1- and 0.2-percent annual chance events) and Hazus Flood Risk Assessment.

**BREAKAWAY WALL** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

**BUILDING** —see *Structure*.

**COMMUNITY** means Montgomery County, Texas.

**CRITERIA** means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. § 4102 for the purposes set forth in these Regulations.

**DEVELOPER** means any party associated with a Development Permit, including the property owner, engineer, agent or contractor.

**DEVELOPMENT** means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, clearing, demolition, alteration of streams or rivers, mining, dredging, filling, grading, paving, installation of fences, excavation or drilling operations or storage of equipment or materials.

**DEVELOPMENT PERMIT** means any non-structure or structure permit, or any other permit required by the Floodplain Governing Regulatory Codes.

**DISTURBED AREA** means any area on which there is any change to natural conditions, to include, but not limited to the change of a flow regime, excavation, or clearing of such area. See Development.

**ELEVATED BUILDING** means, for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

**EROSION** means the process of either rapid or gradual wearing away of land masses.

**EXCEPTION** means a waiver from the provisions of these Regulations directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

**EXCEPTIONAL HARDSHIP** means, for the purposes of *Variance* from these Regulations, the exceptional difficulty that would result from a failure to grant the requested variance. The hardship

must be exceptional, unusual and specific to the property involved, not to the personal circumstances of the permit applicant.

**EXISTING CONSTRUCTION** means, for the purposes of determining insurance 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 STRUCTURES** —see *Existing Construction*.

**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 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 (2) 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 by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

**FLOOD DAMAGE-RESISTANT MATERIAL** means any building product [material, component or system] capable of withstanding direct and prolonged contact with flood waters without sustaining significant damage. “Prolonged contact” means at least 72 hours, and “significant damage” means any damage requiring more than cosmetic repair (including cleaning, sanitizing and resurfacing – sanding, repair of joints or repainting – of the material).

**FLOOD ELEVATION DETERMINATION** means a determination by the local Floodplain Administration of the water surface elevations of the *Base Flood*, that is, the flood level that has a 1-percent or greater chance of occurrence in any given year.

**FLOOD ELEVATION STUDY** — see *Flood Insurance Study*.

**FLOOD HAZARD BOUNDARY MAP (FHBM)** means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood-related erosion areas having special hazards have been designated as Zones A, M and/or E.

**FLOOD INSURANCE** means the insurance coverage provided under the *Program*.

**FLOOD INSURANCE RATE MAP (FIRM)** means an official map of a community on which the Federal Insurance Administrator has delineated both the *special hazard areas* and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**FLOOD INSURANCE STUDY (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**FLOOD OPENING** is a non-engineered or engineered opening in foundation walls and walls of enclosures that relieve hydrostatic loads to meet basic performance requirements to prevent flotation, collapse and lateral movement due to flood forces. Non-engineered openings do not have moving parts and may be used to meet these Regulations' prescriptive requirement for 1 square inch of net open area for every square foot of enclosed area. Engineered openings may be used if designed and certified by a registered design professional as meeting certain performance characteristics.

**FLOODPLAIN OR FLOOD-PRONE AREA** means any land area susceptible to being inundated by water from any source (see *Flood* or *Flooding*).

**FLOODPLAIN MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** means these regulations, also referred to as the Regulations. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and to ensure the general health and safety of the public.

**FLOODPLAIN GOVERNING REGULATORY CODES** means all county land management, health and environmental regulations including, but not limited to, subdivision and development regulations, drainage and detention regulations, fire codes, building permitting requirements, environmental regulations, septic regulations, as well as any other special purpose regulations/ordinances. The term describes such state or local regulations, in any combination thereof as listed above, which provide standards for the purpose of flood damage prevention, development, detention, and building of structures to ensure the general health and safety of the public (also referred to as the Regulatory Codes).

**FLOOD PROTECTION SYSTEM** means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a *special flood hazard* and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are constructed in conformance with sound engineering standards.

**FLOODPROOFING** means any combination of structural and non-structural additions, changes or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOOD-RELATED EROSION** means the collapse or subsidence of land along the shore of a lake or other body of water as a result of 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 a flash flood, or by some similarly unusual and unforeseeable event which results in *flooding*.

**FLOOD-RELATED EROSION AREA OR FLOOD-RELATED EROSION-PRONE AREA** means a land area adjoining the shore of a lake or other body of water, which, due to the composition of the shoreline or bank and high-water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

**FLOOD-RELATED EROSION AREA MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

**FLOODWAY** —see *Regulatory Floodway*.

**FLOODWAY ENCROACHMENT LINES** mean the lines marking the limits of floodways on federal, state and local floodplain maps.

**FREEBOARD** means a factor of safety, usually expressed in feet above the Base Flood Elevation (BFE), for purposes of floodplain management. *Freeboard* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization of the watershed.

**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 the 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 in the Texas Historical Commission's inventory as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By the Texas Historical Commission; or

(b) Directly by the Secretary of the Interior in states without approved programs.

**LEEVE** means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

**LEEVE SYSTEM** means a flood protection system which consists of a levee, or levees, and associated structures such as closure and drainage devices which are constructed and operated in accordance with sound engineering practices.

**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 in these Regulations.

**LOWEST HORIZONTAL STRUCTURAL MEMBER** in an elevated building, means the lowest beam, joist or other horizontal member that supports the building. Grade beams installed to support vertical foundation members where those members enter the ground are not considered lowest horizontal structural members.

**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 connected 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 for sale.

**MAP** means the FHBM or the FIRM for a community issued by the Agency.

**MEAN SEA LEVEL** means, for purposes of the NFIP, the North American Vertical Datum (NAVD) of 1988 or other datum to which base flood elevations shown on a community's FIRM are referenced.

**MIXED USE BUILDING** means a building that has both residential and non-residential uses.

**MUDSLIDE (I.E., MUDFLOW)** describes a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

**MUDSLIDE (I.E., MUDFLOW) AREA MANAGEMENT** means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works and floodplain management regulations.

**MUDSLIDE (I.E., MUDFLOW) PRONE-AREA** means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

**NEW CONSTRUCTION** means, for the purpose 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.

**NON-COMPLIANT/NON-COMPLIANCE** means the failure of any Structure or Development to be fully compliant with the Floodplain Management Regulations or Floodplain Governing Regulatory Codes. A Structure or other Development without the appropriate Development Permit, elevation certificates, other certifications or other evidence of compliance required by these Regulations is presumed to be in violation until such time as that documentation is provided.

**NON-RESIDENTIAL BUILDING** means a commercial or mixed-use building where the primary use is non-habitational.

**ONE-PERCENT ANNUAL CHANCE FLOOD** —see *Base Flood*.

**PERSON** includes any individual or group of individuals, corporation, partnership, association or any other entity, including state and local governments and agencies.

**PARTICIPATING COMMUNITY**, also known as an *eligible community*, means a community in which the Administrator has authorized the sale of flood insurance.

**PRINCIPALLY ABOVE GROUND** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**PROGRAM** means the National Flood Insurance Program authorized by 42 U.S.C. §§ 4001 through 4128.

**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 projections;
- (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.

**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.

**REMEDY A VIOLATION** means to bring the Structure or other Development into compliance with state or local Floodplain Management Regulations or any of the Regulatory Codes.

**RESIDENTIAL BUILDING** means a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two- to four-family or other residential building (Note: for permitting purposes residential buildings being leased will be permitted commercially and require fire code review).

**RIVERINE** means relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

**SHEET FLOW AREA** —see *Area of Shallow Flooding*.

**SINGLE-FAMILY DWELLING** means either:

- (1) A residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area; or
- (2) A single-family residential unit within a two- to four-family building, other residential building, business or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

**SPECIAL FLOOD HAZARD AREA** —see *Area of Special Flood Hazard*.

**SPECIAL HAZARD AREA** means an area having special flood, or flood-related erosion hazards and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M or E.

**START OF CONSTRUCTION** includes substantial improvement and means the date the required 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 basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, 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, gas or liquid storage tank, portable storage containers or buildings, carports, or manufactured homes that are principally above ground.

*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 permitting regulations 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 its 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 *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 residential 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 ensure safe residential 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 the Regulations.

**VIOLATION** *see Non-compliant/Non-compliance.*

## **ARTICLE 3**

### **GENERAL PROVISIONS**

#### **SECTION A. LANDS TO WHICH THESE REGULATIONS APPLY**

These Regulations shall apply to all unincorporated areas within the jurisdiction of Montgomery County, Texas.

#### **SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in the most recent 2014 Flood Insurance Study (FIS) for Montgomery County and incorporated areas, with accompanying Flood Insurance Rate Maps and/or Flood Boundary Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of these Regulations. In the event that any newer Flood Insurance Study reports are released, for all or part of Montgomery County, following approval of these Regulations, reliance on newer maps shall be authorized without any further adoption or approval by the Commissioners' Court.

#### **SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit is required for all proposed development within the unincorporated areas of Montgomery County, as provided by these Regulations and the Regulatory Codes. No person shall erect, construct, enlarge, alter, repair, or improve any building, development structure, or manufactured housing as defined under Sections 1201.003 (12), (18), and (20) of the Texas Occupations Code, or alter the topography that affects others, without first obtaining a separate Development Permit.

A Development Permit shall be required before any changes or modifications to the existing property are made. All Development Permits shall include a Stormwater Pollution Prevention Plan (SWPPP) and the developer shall comply with Best Management Practices (BMPs), as outlined by the most recent Stormwater General Permit for Construction Activities issued by the Texas Commission for Environmental Quality.

Development Permits are required for all repairs or demolition of any Structure in the Area of Special Flood Hazard regardless if the Structure is determined to be substantially or non-substantially damaged, and irrespective of the cause.

#### **SECTION D. EXEMPTIONS FROM DEVELOPMENT PERMITS**

The following occurrences shall be exempt from obtaining a Development Permit. However, even if exempted, Development must always avoid silt runoff to neighboring properties and have no adverse impact on the drainage on, from, or through adjacent properties.

- (1) Installation of three-strand barbed wire fence.
- (2) Clearing on property outside the Area of Special Flood Hazard, intended exclusively for single-family residential dwellings and outbuildings and for which the Development/Disturbed Area does not exceed fifty percent (50%) of the owned property, up to a total of 2.5 acres (this is cumulative of the entire property and not just proposed Development and is regardless of total acreage that might be contiguously owned by the property owner). Additionally, there must be no grading that alters the natural flow of water or any alteration of streams, swales, or ditches.
- (3) Any clearing on tracts outside the Area of Special Flood Hazard used for commercial purposes (as defined by the Montgomery Central Appraisal District) that is less than 15,000 square feet of Disturbed Area, and where there has been no grading that alters the natural flow of water or any alteration of streams, swales, or ditches.
- (4) The basic upkeep and remodeling of a Structure (internal or external), provided that such upkeep does not result in a Substantial Improvement to the property in the Area of Special Flood Hazard. This exemption does not include upkeep associated with converting the property's use from residential to anything other than residential use.
- (5) Clearing and cleaning of debris and damage resulting from a weather event such as a hurricane, tornado, fire, or flood (this does not include the demolition of any actual Structures).
- (6) Excavation or placement of fill on residential property or vacant lots outside the Area of Special Flood Hazard, provided the affected area is less than 15,000 square feet and the volume does not exceed 500 cubic yards (area and cubic yard maximums apply cumulatively regardless of how many tracts are owned).
- (7) Recreational Vehicles stored on a property owner's lot where a residence already exists, provided they are unoccupied, not connected to water or sewer facilities, currently registered, and capable of highway use.
- (8) Non-permitted development on residential tracts that occurred more than ten (10) years ago, and on commercial tracts more than fifteen (15) years ago, outside of the floodway, and which is believed not to cause an alteration in the natural flow of water or an increase to the Base Flood Elevation. Land use involving the storage of inventory, materials, mulch, soil, etc. will be viewed as an ongoing alteration and shall not establish an existing condition establishing or eligible for exemption.
- (9) Development outside the Special Flood Hazard Area for the maintenance of agricultural operations, including, but not limited to, controlled burns, clearing of trees, and maintenance along fence lines.

- (10) Demolition of Structures outside the Area of Special Flood Hazard that are less than 500 square feet.
- (11) Repairs or replacement of fences located inside the Area of Special Flood Hazard, provided the replaced fence maintains the same size and materials.
- (12) Fences and swimming pools outside the Area of Special Flood Hazard are exempt.

The Floodplain Administrator reserves the right to request additional documentation, materials, and affidavits to substantiate and verify eligibility for any exemption. Additionally, final eligibility for any exemption may require adherence to other local, state, and federal regulations.

#### **SECTION E. COMPLIANCE**

No structure or land shall hereafter be located, altered or its use changed without full compliance with the terms of these Regulations and other Regulatory Codes.

No new Development Permits will be issued for a property if there are outstanding or unresolved violations on the property. An application for a Development Permit will be deemed incomplete if it does not address outstanding or unresolved violations.

If permitted Development is found to be out of compliance with its permit requirements, or the terms of these Regulations and other Regulatory Codes, the County may suspend or revoke any active permits associated with the Developer(s) and may choose not to issue additional permits for projects associated with said Developer(s) until all non-compliance matters are properly addressed.

#### **SECTION F. ABROGATION AND GREATER RESTRICTIONS**

These Regulations are not intended to repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where these Regulations and other Regulatory Codes, ordinances, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions, as determined by the Floodplain Administrator, shall prevail.

#### **SECTION G. INTERPRETATION**

In the interpretation and application of these Regulations, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the Floodplain Administration Department and the Commissioners Court of Montgomery County; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

## **SECTION H. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by these Regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by man-made or natural causes. These Regulations do 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. These Regulations shall not create liability on the part of Montgomery County or any official or employee thereof for any flood damage that results from reliance on these Regulations or any administrative decision lawfully made hereunder.

## **ARTICLE 4**

### **ADMINISTRATION**

#### **SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The Montgomery County Floodplain Administrator is hereby appointed the Floodplain Administrator to administer and implement the provisions of these Regulations and other appropriate sections of Title 44 of the CFR pertaining to floodplain management.

#### **SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

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

(1) Maintain and hold open for public inspection all records pertaining to the provisions of these Regulations.

(2) Maintain for public inspection and furnish, upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including Basement) of all new or substantially improved Structures, including whether or not such Structures contain a Basement, and, if the Structure has been floodproofed, the elevation (in relation to mean sea level) to which the Structure was floodproofed.

(3) Review, or cause to be reviewed, development regulations, subdivision plans, drainage studies, construction plans and permit applications to ensure that Development, including proposed building site projects, fill operations and the placement of manufactured homes, will be reasonably safe from flooding.

(4) Review, approve, or deny (or cause to be), all applications for Development Permits required by these Regulations.

(5) Review, or cause to be reviewed, permits for proposed Development to ensure 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.

(6) Obtain, review and utilize Base Flood Elevation and Floodway data available from a federal, state, or other source, including data developed pursuant to Article 5, Section C of these Regulations, as criteria for requiring that new construction, Substantial Improvement or other

Development in Zone A on the community's FHBM or FIRM meets the standards in Article 5, Section B and Article 5, Section E of these Regulations;

(7) Where base flood elevation data are utilized within Zone A or A99 on the Community's FHBM or FIRM:

(a) Obtain the elevation (in relation to mean sea level) of the lowest floor (including Basement) of all new and substantially improved structures; and

(b) Obtain, if the Structure has been floodproofed in accordance with Article 5, Section B of these Regulations, the elevation (in relation to mean sea level) to which the Structure was floodproofed; and

(c) Maintain a record of all such information with the official designated by the Community under 44 CFR §59.22 (a)(9)(iii).

(8) Where interpretation is needed as to the exact location of the boundaries of the Areas of Special Flood Hazard (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.

(a) Where Base Level Engineering is available:

(i) Base Level Engineering data shall be reviewed and reasonably used in FEMA-identified Special Flood Hazard Areas where Base Flood Elevations and Floodway data have not been identified and in areas where FEMA has not identified Special Flood Hazard Areas.

(ii) Base Level Engineering data may be reasonably used if such source shows increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in Flood Insurance Studies.

(iii) Base Level Engineering data may be reasonably used if such source shows an area as flood-prone that is not shown as flood-prone on FIRMs and Flood Insurance Studies.

(9) Notify, or mandate notification occur, in riverine situations all adjacent impacted communities, the Texas Water Development Board and the Texas Commission on Environmental Quality (TCEQ) prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA's Federal Insurance Administrator when requested.

(10) Ensure that the flood carrying capacity of any altered or relocated watercourse is maintained.

(11) When Base Flood Elevation data have not been provided in accordance with Article 3, Section B, 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 Article 5.

(12) When a Regulatory Floodway has not been designated, the Floodplain Administrator must require that no New Construction, Substantial Improvements or other Development (including the placement of excavation or 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 1 foot at any point within the Community.

(13), Approve certain development in Zones A1-30, AE and AH on the community's FIRM which increases the water surface elevation of the base flood, provided that a conditional FIRM revision be submitted and the requirements for such a revision as established under the provisions of 44 CFR § 65.12 be fulfilled.

(14) Conduct inspections of any Development within the unincorporated area of Montgomery County as deemed necessary to enforce these Regulations and all Regulatory Codes.

(15) Address non-compliant work, including any deviations from approved permits, and require corrections. Such corrections may include the requirement of obtaining a new permit. If a property owner refuses to take the appropriate steps to correct violations, the non-compliance will be grounds for enforcement action as provided by the Floodplain Management Regulations or other Regulatory Codes.

(16) Revoke any permit if it is determined by the Floodplain Administrator that the permit was approved based on false statements, misrepresentations, or incorrect material facts.

(17) Determine if existing conditions on a tract warrant a mandatory hydrological and hydraulic study for development occurring in the floodplain. Such existing conditions may include, but are not limited to:

- (a) Excessive fill or excavation.
- (b) The cumulative Disturbed Area of the tract and any adjacent development.
- (c) The storage of excessive materials or inventory.

(18) When appropriate, consider special circumstances such as the impact on total flow volume, and existing Development in conjunction with proposed Development.

(19) Develop and implement procedures for substantial improvement and substantial damage calculations.

## **SECTION C. PERMIT PROCEDURES**

(1) An application for a Development Permit, as required by the Floodplain Management Regulations or other Regulatory Codes, shall be presented to the Floodplain Administrator or the designated representative on forms furnished by the County. The application may require, but is

not limited to, plans in duplicate (including electronic copies) drawn to scale showing the location, dimensions, and elevation of existing and proposed Structures, including the placement of Manufactured Homes and septic installations, details for commercial businesses, particularly those that store inventory and materials outside of structures and the location of all the foregoing in relation to Areas of Special Flood Hazard and Flood-related Erosion hazards. Incomplete applications will not be accepted and may be returned at any time, unless the Floodplain Administrator grants an exception to allow for a pending submission.

Additionally, the following information/specifications may be applicable:

(a) Elevation (in relation to mean sea level) of the lowest floor (including Basement) of all new and substantially improved Structures;

(b) When engineered Flood Openings are used, certification from a licensed professional engineer that the engineered flood openings are designed to meet the minimum requirements of Article 5, Section B(3) to automatically equalize hydrostatic flood forces will be required;

(c) Elevation in relation to mean sea level to which any nonresidential Structure shall be floodproofed;

(d) Certification from a licensed professional engineer or architect that the nonresidential floodproofed Structure shall meet the Floodproofing criteria of Article 5, Section A and Section B (2);

(e) Description, and proof of notice to all required agencies/parties, of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed Development;

(f) Maintain a record of all such information in accordance with Article 4, Section B (1);

(g) Certification from a licensed professional engineer that the proposed Development or Disturbed Area, if exceeding 15,000 square feet or if involving excavation or bringing in fill in excess of 500 cubic yards, will not cause an increase to the Base Flood Elevation or adversely impact the drainage on, from, or through adjacent properties;

(h) The recording of documents in the Real Property Records of the County. Such recorded documents will serve as public notice of the duties and responsibilities applicable to individual lots, adherence to which is required to avoid violating the Floodplain Management Regulations or other Regulatory Codes. Any document required to be recorded pursuant to this provision shall be subject to final review and approval by the County prior to its recordation.; and

(i) Temporary permits will be issued for Structures requiring elevation certificates, and multiple elevation certificates will be necessary including pre-construction, prior to the pouring of any slab/concrete, and post-construction.

(2) The approval or denial of any Development Permit shall be based on all provisions of these Regulations, all applicable Regulatory Codes, and the following relevant factors:

- (a) The danger to life and property due to flooding or erosion;
- (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual property owner;
- (c) The danger that materials may be swept onto other lands, causing injury to others;
- (d) The compatibility of the proposed use with existing and anticipated development;
- (e) The safety of access to the property for ordinary and emergency vehicles in times of flood;
- (f) The costs of providing governmental services during and after flood conditions, including the maintenance and repair of streets, bridges, and public utilities such as sewer, gas, electrical, and water systems;
- (g) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, as well as the effects of wave action, if applicable, expected at the site;
- (h) The necessity of a waterfront location for the proposed facility, where applicable;
- (i) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage; and
- (j) The cumulative flooding impact of previous development in the area considered in conjunction with the anticipated impact of the proposed development. In such instances, the County may require additional information, including further modeling and engineering certifications, before issuing final approval to ensure the safety and welfare of surrounding areas.
- (k) The determination of whether the proposed site alterations and improvements will reasonably avoid flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and
- (l) If a proposed improvement is found to be in the path of Flood-Related Erosion or to increase the erosion hazard, it may be required to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(3) A Development Permit shall become invalid if the work it authorizes does not commence within six (6) months of its issuance date. Similarly, a Development Permit shall become invalid if the authorized work is suspended or abandoned for a continuous period of six (6) months after

work has commenced. The Floodplain Administrator or their designated representative may grant permit extensions in writing. Such extensions may be contingent on the fulfillment of additional requirements or the recording of documents in the Real Property Records of Montgomery County.

(4) Notwithstanding any other provisions of these Regulations, no Development Permit shall be issued if, after a review of engineering models and consideration of industry best practices, the Floodplain Administrator and the County Engineer collectively determine that the proposed Development would increase flood hazards, pose a risk to the public, or create excessive danger for emergency responders during a flood event.

#### **SECTION D. VARIANCE PROCEDURES**

(1) The Floodplain Administrator shall hear and render judgment (following consultation with the respective precinct commissioner's office and the County Attorney's office) on requests for variances from the requirements of these Regulations. Economic hardship shall not constitute the sole basis for granting a Variance. The Floodplain Administrator may incorporate any provisions within these Regulations or any of the Regulatory Codes when responding to a Variance request in an effort to resolve the matter.

(2) Property owners wishing to appeal the Floodplain Administrator's determination must submit a request to the Commissioners Court within sixty (60) days of a denial by the Floodplain Administrator. The Montgomery County Commissioners Court shall hear and render judgment on requests for an appeal only when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of these Regulations.

(3) Any person(s) aggrieved by the decision of the Montgomery County Commissioners Court may appeal such a decision to a court of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report Variances to FEMA upon request.

(5) Upon consideration of the factors outlined above and the intent of these Regulations, the Montgomery County Commissioners Court may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of these Regulations as defined in Article 1, Section C.

(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 issuing 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:

(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 issuing a Variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or regulations.

(c) Any applicant to whom a variance is issued shall be given written notice that the Structure will be permitted to be built with the Lowest Floor elevation below the Base Flood Elevation (if applicable), 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 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 above in paragraphs (1) through (8) of this Section D are met; and

(b) The Structure or other Development is protected by methods that minimize flood damage during the Base Flood and create no additional threats to public safety.

(10) Variances may be issued for Accessory and Agricultural Structures. A Variance is authorized to be issued for the construction or Substantial Improvement of at-grade Accessory Structures and at-grade Agricultural Structures provided the requirements of this section are satisfied:

(a) Accessory Structures. A determination that the proposed Accessory Structure:

(i) Represents minimal investment and has low damage potential (amount of physical damage, contents damage and loss of function).

(ii) Is larger than the size limits specified in Article 5, Section B (6)(e).

(iii) Complies with the wet Floodproofing construction requirements of paragraph 10(c) of this Section D (see below).

(b) Agricultural Structures. A determination that the proposed Agricultural Structure:

(i) Is used exclusively in connection with the production, harvesting, storage, raising or drying of agricultural commodities and livestock, or the storage of tools and equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.

(ii) Has low damage potential (amount of physical damage, contents damage and loss of function).

(iii) Does not increase risks or pose a danger to public health, safety and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals and production and storage of highly volatile, toxic or water-reactive materials.

(iv) Is an aquaculture structure that is dependent on proximity to water if located in a coastal high-hazard area (Zones V, VE, V1-30 and VO).

(v) Complies with the wet floodproofing construction requirements of paragraph 10(c) of this Section D below.

(c) Wet floodproofing construction requirements. Wet floodproofed structures shall:

(i) Be anchored to resist flotation, collapse and lateral movement.

(ii) Have flood damage-resistant materials below the Base Flood Elevation in compliance with the requirements of Article 5.

(iii) Have mechanical, electrical and utility equipment in compliance with the requirements of Article 5.

(iv) In Special Flood Hazard Areas have flood openings in compliance with the requirements of Article 5.

## **ARTICLE 5**

### **PROVISIONS FOR FLOOD HAZARD REDUCTION**

#### **SECTION A. GENERAL STANDARDS**

(1) In all Areas of Special Flood Hazard all new construction or Substantial Improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse and 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; only Class 4 and Class 5 materials are acceptable for areas below the Base Flood Elevation in buildings in the Area of Special Flood Hazard; [see NFIP Technical Bulletin 2, Flood Damage-Resistant Materials Requirements].

(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) All new or 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.

(7) All new or replacement on-site waste disposal systems shall be located to avoid impairment or contamination from the system during flooding.

(8) For permits relating to fill, property owners must be able to provide information regarding the location from which the fill material will be/was excavated, whether the fill material will be/was excavated as part of a governmental project, and who hauled/delivered the fill material to the location.

(9) Fill material shall not be placed closer than ten (10) feet from any property line. Excavations, with the exception of approved drainage facilities, shall not be conducted closer than twenty (20) feet from any property line. Notwithstanding existing public or private drainage easements, these restrictions may be waived if the applicant obtains written consent from the adjoining landowner.

(10) No person may divert or impound the natural flow of surface waters, or permit such a diversion or impoundment to continue, in a manner that damages the property of another by overflow. If a property owner's claim of damage is substantiated and accepted by the Floodplain Administrator, such damage may result in enforcement actions as provided by these Regulations.

(11) All fill material must be spread in accordance with the applicable Development Permit within six (6) months of the permit's issuance date. If the fill material is not spread within this time period, the Floodplain Administrator may require the property owner to remove the fill material from the property.

(12) No person, organization, or utility provider shall provide utility services to any land, Structure, or improvement without first obtaining written certification from the Floodplain Administrator or County representative confirming that the property complies with all applicable Regulations.

(13) A Development Permit application associated with a sand mining operation must include a written Mine Plan and documentation confirming the operation will follow TCEQ Best Management Practices for Sand Mining Operations in the San Jacinto Watershed. Both of these documents must be certified by a licensed professional engineer or professional geoscientist. The application must also include a vehicle routing plan, and a Roadway Improvement Agreement may be required prior to permit issuance. Furthermore, a Final Stabilization Report, also certified by a licensed professional engineer or professional geoscientist, must be submitted to the Floodplain Administrator for review and approval before operations at the site or any portion thereof are terminated.

(14) Development Permits for projects lasting longer than one year may be subject to a recertification review and inspection. Failure to respond to a recertification request shall be grounds for the Floodplain Administrator to revoke the permit and initiate enforcement action.

## **SECTION B. STANDARDS FOR AREA OF SPECIAL FLOOD HAZARDS**

In all Areas of Special Flood Hazard where Base Flood Elevation data have been provided as set forth in Article 3, Section B, Article 4, Section B (8), or Article 5, Section C (3), the following provisions are required:

(1) **Residential Construction** – for all new construction and Substantial Improvements of any residential structures within Zones A1-30, AE, A, and AH on the Community's FIRM, or within 100 feet of these zones, the lowest floor (including Basement) must be elevated at least two (2) feet above the Base Flood Elevation. A licensed professional engineer, architect, or land surveyor is required to submit elevation certificates to the Floodplain Administrator to certify that this requirement has been met. As determined by the Floodplain Administrator, elevation certificates are generally required at key stages of the project, including before any site development, prior to pouring the foundation, and upon final completion of the Structure.

**(2) Nonresidential Construction** – For all new construction and Substantial Improvement of any non-residential structures within Zones A1-30, AE, A, and AH on the community's FIRM, or within 100 feet of those zones, one of the following two requirements must be met. Either the Structure shall have its lowest floor (including Basement) elevated two feet or more above the Base Flood Elevation or be designed and constructed, along with its attendant utility and sanitary facilities, to be watertight below the Base Flood Elevation. A watertight design must feature walls that are substantially impermeable to the passage of water and structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If the Floodproofing option is chosen, a licensed professional engineer or architect must develop or review the structural design, specifications, and plans, and certify that the design and construction methods are in accordance with accepted standards of practice as defined in this Article. A record of this certification, which includes the specific elevation (in relation to mean sea level) to which the Structure is floodproofed, shall be maintained by the Floodplain Administrator.

**(3) Enclosures** – for all new construction and Substantial Improvements, any fully enclosed areas below the lowest floor must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. This requirement applies to enclosed areas that are usable solely for vehicle parking, building access, or storage; are not Basements; and are subject to flooding. Compliance with this design standard must be certified by a licensed professional engineer or land surveyor through the submittal of a completed elevation certificate.

(a) A minimum of two (2) openings on two (2) different walls having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided (for non-engineered Flood Openings), or the Flood Openings shall be engineered Flood Openings that are designed and certified by a registered design professional to automatically allow entry and exit of floodwaters. The certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.).

(b) The bottom of all openings shall be no higher than one (1) 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 flood waters.

**(4) Manufactured Homes -**

(a) All manufactured homes to be placed or Substantially Improved within Zones A1-A30, AH, or AE on the Community's FHBM or FIRM shall be elevated such that the lowest floor of the Manufactured Home is elevated to at least two (2) feet above the Base Flood Elevation and shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, Manufactured Homes must be elevated and anchored to resist flotation, collapse and 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.

(b) Manufactured homes may not be placed in a floodway.

(5) **Recreational Vehicles** - Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the Community's FIRM shall either:

(a) Be on the site for fewer than 180 consecutive days and;

(b) Be fully licensed and ready for highway use (to be exempt); or

(c) Meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for "Manufactured Homes" in paragraph (4) of this Section B and be permitted.

A Recreational Vehicle is considered "ready for highway use" if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions. A Recreational Vehicle must be permitted as a Structure if it remains on an unimproved tract for more than 180 days, is utilized regularly, and is connected to water and/or sewer services. Furthermore, additional requirements may apply if electrical power is requested for the associated tract, and power availability may be limited to specific time periods.

(6) **Detached Accessory Structures** – Detached Accessory Structures used only for parking of vehicles and storage are permitted at grade if the following requirements are satisfied:

(a) In the Area of Special Flood Hazards (Zones A, AE, AH, AO and A1-30), they are not larger than a one-story, two-car garage and the walls have Flood Openings in compliance with the requirements of Article 5, Section B (3) above;

(b) Are anchored to resist flotation, collapse and lateral movement;

(c) Flood damage-resistant materials used below the Base Flood Elevation comply with the requirements of Article 5, Section A (3);

(d) Mechanical, electrical and utility equipment comply with the requirements of Article 5, Section A (4); and

(e) Accessory Structures shall be limited to not more than 600 square feet in total floor area.

(7) **Basements** - No Basements shall be permitted in any residential structure in any Special Flood Hazard Area.

(8) **Detention Facilities, Streams and Gullies** - Failure to maintain drainage or detention facilities, or allowing refuse (including garbage, trash, fallen trees, leaves, and grass) to accumulate in Areas of the Special Flood Hazard will be classified as storage of materials and subject to enforcement if not properly addressed.

## **SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS**

(1) All subdivision proposals including the placement of Manufactured Home parks, Recreational Vehicle parks, and subdivisions shall be consistent with the Floodplain Management Regulations and provisions outlined in the Montgomery County Development Regulations.

(2) All proposals for the development of subdivisions including the placement of Manufactured Home parks, Recreational Vehicle parks and subdivisions shall be consistent with Article 1, Sections B, C and D of these Regulations and meet Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of these Regulations.

(3) Base Flood Elevation data shall be generated for subdivision proposals and other proposed Development (including proposals for Manufactured Home Parks, Recreational Vehicle parks and subdivisions) which are greater than 50 lots or 5 acres, whichever is less; and the Base Flood Elevation data shall be included within such proposals.

(4) All subdivision proposals, including the placement of Manufactured Home parks, Recreational Vehicle parks, and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazard, and prevent negative impacts to adjacent and downstream properties.

(5) All subdivision proposals including the placement of Manufactured Home parks, Recreational Vehicle 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.

## **SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**

Located within the Areas of special Flood Hazard established in Article 3, Section B of these Regulations are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one (1) to three (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; therefore, the following provisions apply:

(1) All new construction and Substantial Improvements of **residential** Structures shall have the lowest floor (including Basement) elevated two (2) feet or more above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the Community's FIRM (at least two (2) feet if no depth number is specified), or

(2) All new construction and substantial improvements of **non-residential** structures shall have the lowest floor (including basement) elevated to two (2) feet or more above the Base Flood Elevation or the highest adjacent grade at least as high as the depth number specified in feet on the Community's FIRM (at least 2 feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed to be completely Floodproofed to that level to meet the floodproofing standards specified in Article 5, Section B (2).

(3) An elevation certificate shall be submitted to the Floodplain Administrator certifying that the standards of this Section, as specified in Article 4, Section C, are satisfied.

(4) Adequate drainage paths shall be provided around Structures on slopes to guide flood waters around and away from proposed structures. See also the latest effective Montgomery County Drainage Criteria Manual.

## **SECTION E. FLOODWAYS**

Located within Areas of Special Flood Hazard established in Article 3, Section B, 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 shall apply:

(1) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than 1 foot at any point.

(2) Encroachments are prohibited, including fill, new construction, Substantial Improvements and other Development within the adopted Regulatory Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the Community during the occurrence of the Base Flood discharge.

(3) If Article 5, Section E(1) above is satisfied, all new construction and Substantial Improvements shall comply with all applicable flood hazard reduction provisions of Article 5 of these Regulations.

(4) Notwithstanding any other provisions of these Regulations, Development Permit may be issued for encroachments within the adopted Regulatory Floodway that would result in an increase in Base Flood Elevations, provided the project has been preliminarily approved through an application for a Conditional Letter of Map Revision and the Floodway revision fulfills the requirements for such revisions as established under the provisions of 44 CFR § 65.12 and receives the approval of the Federal Insurance Administrator.

(5) The storage of hazardous materials, in any form, is prohibited within the boundaries of the Regulatory Floodway as delineated on the Community's FIRM.

(6) Commercial businesses and sand mining operations that store inventory, building materials, mulch, composite, or crushed concrete in the Floodplain or Floodway will be required to obtain hydrologic and hydraulic analyses to ascertain the maximum cubic volume acceptable to store on the site to avoid causing a rise to the Base Flood Elevation level. In addition, business operations will be required to take steps to install fencing and structures that will help avoid the washing away of inventory and materials into nearby streams, lakes, and ponds the event of a flood event.

(7) Before a Development Permit is issued for a structure in the floodway, the property owner must comply with the provisions of these Regulations including the requirement for an engineering study as outlined in Article V, Section E (1). In addition to the engineering study, the property owner shall also provide the following:

(a) a geotechnical report sealed by a licensed professional engineer that includes the geotechnical engineer's recommendations for the proposed foundation. The report shall also include the results of soil boring(s) to a depth of five (5) feet below the depth of any proposed piles; and

(b) a foundation design prepared by a licensed professional engineer with a certification that the foundation has been adequately designed to resist anticipated hydrodynamic forces, erosion, scour, and debris impact forces. The engineer who designed the foundation shall also provide a certification that the foundation has been constructed in accordance with the design. This certification shall be submitted to the Montgomery County Floodplain Administration permit office along with the elevation certificate.

#### **SECTION F. SEVERABILITY**

It is the intention of these Regulations that the sections, paragraphs, sentences, clauses and phrases of these Regulations are severable and if any section, paragraph, sentence, clause or phrase of these Regulations shall be declared void, ineffective or unconstitutional by a valid judgment or final decree of any court of competent jurisdiction, such judgment or final decree shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases hereof.

Further, in lieu of such void, ineffective or unconstitutional provision, there will be added automatically as part of these Regulations a provision as similar in its terms to such void, ineffective or unconstitutional provision as may be legal, effective and constitutional.

#### **SECTION G. REVOCATION OF PERMIT AND PENALTIES FOR NON-COMPLIANCE**

(1) No Development may occur without full compliance with the terms of these Floodplain Management Regulations and other Regulatory Codes. A violation of these Regulations, including failure to comply with any of their requirements or with conditions and safeguards established in connection with a Development Permit, shall constitute a misdemeanor as provided by Texas Water Code § 16.3221. Any person who violates these provisions shall, upon conviction, be fined not more than \$100 per day per violation and shall also pay all costs and expenses incurred in connection with the prosecution of the case.

(2) In addition to any other penalties, owners of non-compliant tracts shall be subject to civil penalties as provided by Texas Water Code § 16.322. Non-compliant tracts are also subject to further actions, including the recordation of Certificates of Non-Compliance in the Real Property Records or Commissioners' Court resolutions that officially declare the property non-compliant. Furthermore, the County may file a civil suit in the appropriate court to seek injunctive relief to

restrain the property owner from continuing the violation, which may include, but is not limited to, a court order directing the party to remove the non-compliant Development and restore the property to its preexisting condition.

(3) Any person, firm, corporation, or agent who violates a provision of these Regulations, or fails to comply with them, may be found guilty of contempt of the Commissioners' Court of Montgomery County, Texas. Each day or portion of a day that a violation of these Regulations or other Regulatory Codes is committed or continued shall be deemed a separate offense. Upon conviction for any such violation, the person shall be punished within the limits provided by state law.

(4) The Commissioners Court may punish cases of contempt by fine or imprisonment in accordance with Section 81.023 of the Texas Local Government Code, as amended. Any person securing a permit under these Regulations or other Regulatory Codes does so on the representation to the Commissioners' Court that they will comply with the terms of the permit and all other County regulations. The Commissioners' Court has the power to enforce its orders by civil contempt for violations of such representations. If the Court finds a person guilty of contempt, it will issue orders consistent with general law to punish the guilty party. It may also enter further orders, enforceable by civil and criminal contempt, as deemed necessary to enforce its jurisdiction and uphold the integrity of these Regulations. Procedures for contempt proceedings before the Commissioners Court will be consistent with those used for similar actions in other courts within this state.

(5) The Floodplain Administrator is authorized to revoke any Development Permit and require the property owner to reapply if it is determined that the permit was approved based on false statements, misrepresentations, or incorrect material facts, or if the property owner failed to adhere to the permit's requirements. The Floodplain Administrator shall work with the County Attorney's Office, the District Attorney's Office, and law enforcement personnel to take all necessary steps to encourage compliance and enforce these Regulations when necessary. These enforcement actions include, but are not limited to, sending written notices, inspecting Development, issuing criminal citations, facilitating prosecutions, recording certificates of non-compliance, and notifying utility providers of the rescission of County approval for service to non-compliant tracts. Nothing in these Regulations shall prevent Montgomery County from taking any other lawful action necessary to prevent or remedy a violation.

**SECTION H. CERTIFICATION OF ADOPTION**

**APPROVED:** \_\_\_\_\_  
Mark J. Keough, County Judge

**EFFECTIVE DATE:** October 1, 2025

I, the undersigned, County Clerk of Montgomery County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Montgomery County Floodplain Management Regulations duly adopted by the Montgomery County Commissioners Court, at a Regular Meeting duly convened on July 29, 2025.

SIGNED AND SEALED on the 29<sup>th</sup> day of July, 2025.

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L. Brandon Steinmann  
County Clerk  
Montgomery County, Texas