



REGULAR COMMITTEE OF THE WHOLE MEETING AGENDA

I. Roll Call

II. Consideration of Previous Minutes

1. Regular Council Meeting 02/06/2024
2. Committee of the Whole 02/06/2024

III. Unfinished Business

Miscellaneous

Resolutions

Ordinances

IV. New Business

Miscellaneous

1. Approval of one-year extension for Case No. 1203-PUD-22, Romar Beach Hotel PUD. (KA)
2. Approval of one-year extension for Case No. 1205-PUD-22, Jones Duplex PUD. (KA)

Resolutions

1. Resolution authorizing the execution of a subaward grant agreement with the Pensacola and Perdido Bays Estuary Program, Inc. to construct and operate a greenhouse. (WS)

Ordinances

1. Ordinance amending and restating Chapter 42, Article III of the Code of Ordinances for the City of Orange Beach, Alabama, retitled "Floodplain Development." (JL/AR)

Public Hearings

1. Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0204-PUD-24, Admiral Self Storage PUD. (Suggested date 3/19/2024) (KA)
2. Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0205-PUD-24, Mill's Row Beachside PUD. (Suggested date 3/19/2024) (KA)

V. Public Comments

VI. Adjourn

**MINUTES OF
REGULAR COUNCIL MEETING
ORANGE BEACH CITY COUNCIL
FEBRUARY 6, 2024 – 5:00 P.M.
CITY HALL – COUNCIL CHAMBERS**

- I. CALL TO ORDER** Mayor Tony Kennon called the meeting to order at 5:01 P.M.
- II. INVOCATION** Pastor Jared Jones, Central Church Orange Beach
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**

Present: Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Joni Blalock
Councilmember Jeff Boyd
Mayor Tony Kennon

Absent: Councilmember Annette Mitchell

V. CONSIDERATION OF AGENDA

Motion made (Blalock/Boyd) to approve the agenda as written. Vote unanimous in favor.

VI. CONSIDERATION OF PREVIOUS MINUTES

Work Session	01/02/2024
Regular Council Meeting	01/02/2024
Committee of the Whole	01/02/2024
Work Session	01/09/2024

The reading was waived and minutes were approved as written.

VII. REPORTS OF OFFICERS/COMMITTEES

- | | |
|--|------------|
| 1. <u>City Administrator – Ford Handley</u> | No report. |
| 2. <u>Director, Public Works – Tim Tucker</u> | No report. |
| 3. <u>Director, Community Development – Kit Alexander</u> | No report. |
| 4. <u>Chief, Police Department – Steve Brown</u> | No report. |
| 5. <u>Chief, Fire Department – Jeff Smith</u> | No report. |
| 6. <u>City Clerk – Renee Eberly</u> | No report. |
| 7. <u>Director, Finance – Ford Handley</u> | No report. |
| 8. <u>Parks & Recreation – Ford Handley</u> | No report. |
| 9. <u>Director, Utilities – Jeff Hartley</u> | No report. |
| 10. <u>Director, Coastal Resources – Phillip West</u> | No report. |
| 11. <u>Librarian, Public Library – Meagan Bing</u> | No report. |
| 12. <u>Director, Municipal Court – Pam Davis</u> | No report. |
| 13. <u>Director, Expect Excellence – Jonathan Langston</u> | No report. |
| 14. <u>Mayor/Council</u> | |

Councilmember Boyd shared a plaque from the Alabama Recreation and Parks Association given in gratitude for Orange Beach hosting their 2023 state conference.

Ford Handley, City Administrator/Finance Director, thanked the Public Works Landscape Division for planting the palm trees in the new Canal Road median. Mayor Kennon addressed some questions raised on Facebook regarding the palm trees.

VIII. AUDITING OF ACCOUNTS

Motion made (Johnson/Silvers) to certify that cash requirements with no related interests are within budget and appropriate for payment. Vote revealed: Silvers, aye; Johnson, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Motion passed. (5-0).**

Motion made (Johnson/Blalock) to certify that cash requirements with related interests in Swift Supply are within budget and appropriate for payment. Vote revealed: Silvers, abstain; Johnson, aye; Blalock, aye; Boyd, aye; Kennon, aye. **Motion passed. (4-0-1).**

IX. PRESENTATIONS

1. Proclamation to declare February 17, 2024, as Arbor Day. Woody Speed, City Environmental Specialist, accepted the proclamation and read the proclamation aloud. He announced that this year's free tree giveaway for Orange Beach residents will be held on February 17, 2024, beginning at 8:00 A.M. in front of Community Development, 4101 Orange Beach Boulevard.

X. RECOGNITIONS

1. Council recognized Aidan Smith, Orange Beach High School student, who attended the city council meeting as part of a coastal leadership program.

XI. UNFINISHED BUSINESS

Resolutions

1. Resolution awarding the bid for Sportsplex Turf Maintenance Services to Limitless Services, LLC. **Motion made (Silvers/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
2. Resolution awarding the proposal for Glamping Concessionaire to Timberline Glamping Company, LLC. **Motion made (Johnson/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

XII. NEW BUSINESS

Miscellaneous

1. Approval of a Retail Beer (On or Off Premises) and Retail Table Wine (On or Off Premises) Liquor License Application by L & R Food Service LLC for China Dragon at 25405 Perdido Beach Boulevard, Suite 19. **Motion made (Silvers/Johnson) to approve the liquor license.** Vote unanimous in favor. **Motion passed.**
2. Approval of a Special Events Retail Liquor License Application by Wharf Restaurant Group LLC for the "Black And White Night" event to be held on March 15-16, 2024, at 4671 Wharf Parkway West. **Motion made (Johnson/Blalock) to approve the liquor license.** Vote unanimous in favor. **Motion passed.**

Resolutions

1. Resolution authorizing the purchase of a Video Surveillance System at the Recreation Center for the Expect Excellence Department through State Bid in the amount of \$34,856.48. **Motion made (Boyd/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

2. Resolution authorizing the purchase of Eight Treadmills for the Adult Fitness Center through the Sourcewell purchasing cooperative from Life Fitness in the amount of \$55,986.66. **Motion made (Blalock/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
3. Resolution authorizing the purchase of Five Elliptical Trainers for the Adult Fitness Center through the Sourcewell purchasing cooperative from Life Fitness in the amount of \$31,913.85. **Motion made (Johnson/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
4. Resolution authorizing the execution of amendment four to the subaward grant agreement with the Alabama Department of Conservation and Natural Resources for the RESTORE Act-funded North Sewer Force Main Upgrade. **Motion made (Silvers/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
5. Resolution authorizing the execution of a contract for law enforcement services with Baldwin County. **Motion made (Blalock/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
6. Resolution authorizing the purchase of Three Vehicles for the Public Works Department through State Bid from Stivers Ford Lincoln, Inc., in the amount of \$118,407. **Motion made (Boyd/Johnson) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
7. Resolution to accept a negotiated price for Two Vehicles for the Public Works Department from Sandy Sansing Ford-Lincoln, LLC, in the amount of \$87,124. **Motion made (Silvers/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
8. Resolution authorizing the purchase of a Message Board for the Police Department through the BuyBoard Purchasing Cooperative from All Traffic Solutions Inc. in the amount of \$37,154.36. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
9. Resolution authorizing execution of a use agreement with the Mystics of Pleasure, Inc., for joint use of Mardi Gras floats. **Motion made (Blalock/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
10. Resolution authorizing the execution of a performance contract with Severance Security Services, LLC, for a public safety training initiative. **Motion made (Johnson/Silvers) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
11. Resolution authorizing qualified political candidates to utilize the Orange Beach Event Center at the Wharf and the Orange Beach Community Center. **Motion made (Silvers/Boyd) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
12. Resolution authorizing the use of the Senior Center to support the Orange Beach Garden Club's "36th Annual Game Day and Salad Luncheon" event. **Motion made (Boyd/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
13. Resolution appointing new members and reappointing existing members to the Legislative Review Committee. **Motion made (Silvers/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**
14. Resolution awarding the bid for Two UTVs for the Fire Department to Gulf Shores Power Sports, Inc., in the amount of \$47,920. **Motion made (Johnson/Blalock) to adopt the resolution.** Vote unanimous in favor. **Motion passed.**

Public Hearings

1. Public hearing for an ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case Nos. 0103-PUD-04 and 0704-PUD-04, Reversion of the Bama Bayou Planned Unit Development Master Plan. **Motion made (Silvers/Blalock) to postpone the public hearing and first reading to February 20, 2024.** Vote unanimous in favor. **Motion passed.**
2. Public hearing for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0204-PUD-24, The Wharf Landing PUD. The public hearing was cancelled due to withdrawal by the applicant.
3. Public hearing for an ordinance to amend Ordinance No. 172, the Zoning Ordinance, Case No. 0103-PUDA-24, Beach Village PUD Modification, Food Trucks. – Cancelled, withdrawn by the applicant. The public hearing was cancelled due to withdrawal by the applicant.

XIII. PUBLIC COMMENTS

None

XIV. ADJOURN

There being no further business to come before the council, motion made (Blalock/Boyd) to adjourn. Vote unanimous in favor.

Time: 5:14 P.M.

APPROVED this the 5th day of March, 2024.

Renee Eberly
City Clerk

**MINUTES OF
COMMITTEE OF THE WHOLE MEETING
ORANGE BEACH CITY COUNCIL
FEBRUARY 6, 2024 – 5:14 P.M.
CITY HALL – COUNCIL CHAMBERS**

The Orange Beach City Council met to review potential items for the February 20, 2024, agenda.

The following members were present:

Mayor Tony Kennon
Councilmember Jeff Silvers
Councilmember Jerry Johnson
Councilmember Joni Blalock
Councilmember Boyd

The following members were absent:

Councilmember Annette Mitchell

The following items were discussed:

1. Resolution authorizing execution of license agreements with the Orange Beach City Board of Education for athletic facilities, parking lots, and gymnasiums. (JL)
2. Resolution authorizing use of city staff, equipment, and facilities by the Orange Beach City Board of Education for operation of the Orange Beach High School Sailing Club for the 2023-2024 school year. (JL)
3. Resolution awarding the bid for Beaver Creek Sidewalk Repairs. (TT)
4. Resolution awarding the bid for Surveying Equipment. (CP/TR)
5. Resolution awarding the bid for a Vehicle for the Community Development Department. (CP/TR)
6. Resolution awarding the bid for Four Vehicles for the Police Department. (SB/TR)
7. Resolution authorizing execution of a professional services agreement with Edward Terry Stefankiewicz for soccer coaching. (FH)
8. Resolution adopting a Title VI Civil Rights Policy in compliance with Department of Homeland Security and FEMA regulations for acceptance of grants and other funding. (JL)
9. Resolution authorizing the purchase of Lighting for Softball Fields at the Sportsplex through the Sourcewell Purchasing Cooperative from Musco Sports Lighting, LLC, in the amount of \$169,900. (SS)
10. Resolution authorizing the purchase of a Video Surveillance System for the Finance Department through State Bid from Vision Security Technologies Inc. in the amount of \$26,303.54. (FH)
11. Resolution authorizing the purchase of a Video Surveillance System for the Coastal Arts Center through State Bid from Vision Security Technologies Inc. in the amount of \$45,210.48. (FH)
12. Resolution authorizing the purchase of a Vehicle for the Police Department through Sourcewell in the amount of \$69,309. (SB)
13. Ordinance amending Chapter 78, Article III of the Code of Ordinances for the City of Orange Beach, Alabama, entitled "Commercial Vessels." (JL)
14. Ordinance amending Chapter 50, Article III, Section 50-79 of the Code of Ordinances for the City of Orange Beach, Alabama, to modify the business license rate schedule for commercial vessels. (JL)

Public Comments:

1. Councilmember Blalock shared that she has received questions from the public about the surveying activity occurring near the dog park. She explained that the surveying activity is related to a potential facility being built by Auburn University at the Coastal Resources site, and reassured residents that the dog park will not be affected. Mayor Kennon further stated that the city already has an alternate location for the dog park should it ever need to be relocated.
2. Angela Bateman, City Event Operations Director, announced that Mardi Gras parades begin on Saturday, February 10th. Councilmember Blalock recognized the Event Center staff for their professionalism during a busy week at the facility.
3. Cherish Schlayer, City Public Works Refuse Employee, handed Mayor, Council, and City Administrator written packets and spoke briefly about the Andy Andrews employee development program.
4. Courtney Dombrowski, Eco Clean Marine, invited the community to participate in a beach cleanup event at Bear Point Marina on Saturday, February 10, 2024, beginning at 8:45 A.M.

There being no further business, the meeting adjourned.

Time: 5:24 P.M.

APPROVED this 5th day of March, 2024.

Renee Eberly
City Clerk



**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: Community Development

Description of Topic: Approval of one-year extension for Case No. 1203-PUD-22, Romar Beach Hotel PUD. (KA)

Background/Description: Per Section 7.08 of the zoning ordinance, the applicant for Case No. 1203-PUD-22, Romar Beach Hotel PUD, requests a one-year extension to its PUD master plan. Final PUD was approved by City Council on March 1, 2023, by adoption of Ordinance No. 2023-1435.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. Ord 2023-1435 Amd 172 1203-PUD-22 Romar Beach Hotel

ORDINANCE NO. 2023-1435

**AN ORDINANCE FURTHER AMENDING ORDINANCE NO. 172,
CITY OF ORANGE BEACH ZONING ORDINANCE,
ROMAR BEACH HOTEL PLANNED UNIT DEVELOPMENT
PRELIMINARY AND FINAL PUD APPROVAL
(#1203-PUD-22)**

FINDINGS:

1. The following proposed amendment to the City of Orange Beach Zoning Ordinance has been heard and considered by the Orange Beach Planning Commission in Public Session after the required public advertisement period.
2. The City Council of the City of Orange has held the required Public Hearing after the required public advertisement period concerning the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Zoning Ordinance of the City of Orange Beach as previously amended is hereby further amended for the property described for the purpose of converting the existing building into a hotel;
2. That the zoning classification is hereby rezoned from RM-2 (Multi-Family Residential High Density) to PUD (Planned Unit Development) for the property legally described as follows:

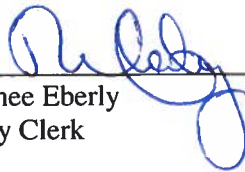
156'(S) X 785'(S) BEG AT SW COR LOT 15 OF D M RUSSELL SUBD, RUN
N 785'(S) 767'(D) TO S MARG COTTON BAYOU, TH SW'LY ALG M ARG
160'(S) 130'(D) TO W SEC 9 LINE, TH S 420', TH E 82.7', TH S 262.7' TO N
R/W LN OF HWY 182, TH NE 15.5' TO POB IN CI TY OF ORANGE BEACH
SEC 9-T9S-R5E (WD)

*Tax Parcel ID #05-66-06-13-3-001-104.000, PPIN #003292
23370 Perdido Beach Boulevard*

3. That the Zoning ordinance of the City of Orange Beach as previously amended is hereby further amended to approve the preliminary and final PUD for Romar Beach Hotel pursuant to application #1203-PUD-22 on file with the Department of Community Development;
4. That approval of this PUD is contingent upon the conditions recommended by staff as follows:
 - a. That approval includes the following deviations to the zoning ordinance:
 - (1) Section 4.03, Minimum Setbacks: Eliminating the required landscape area of 5 feet on the east side between the east driveway and east lot line to accommodate the increase in the width of the east driveway to 26 feet; and
 - (2) Section 4.05, Buffering Between Uses: Allowing the new construction areas on the third, fourth, fifth, and rooftop levels to have a setback of 20 feet instead of 30 feet from the west side lot line to match the setback of the existing building.
 - b. Coastal Permits will be required for the project.
5. That all ordinances or parts of ordinances in conflict are, to the extent of such conflict, repealed; and
6. That this Ordinance shall become effective immediately upon its adoption and publication as

required by law.

ADOPTED THIS 1st DAY OF MARCH, 2023.



Renee Eberly
City Clerk

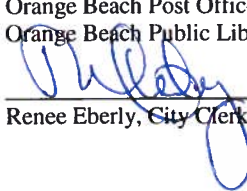
The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2023-1435**
was posted on **03/02/2023** in the following three

(3) public places:

Orange Beach City Hall _____

Orange Beach Post Office _____

Orange Beach Public Library _____



Renee Eberly, City Clerk





**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: Community Development

Description of Topic: Approval of one-year extension for Case No. 1205-PUD-22, Jones Duplex PUD. (KA)

Background/Description: Per Section 7.08 of the zoning ordinance, the applicant for Case No. 1205-PUD-22, Jones Duplex PUD, requests a one-year extension to its PUD master plan. Final PUD was approved by City Council on March 21, 2023, by adoption of Ordinance No. 2023-1440.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. Ord 2023-1440 Amd 172 1205-PUD-22 Jones Duplexes

ORDINANCE NO. 2023-1440

**AN ORDINANCE FURTHER AMENDING ORDINANCE NO. 172,
CITY OF ORANGE BEACH ZONING ORDINANCE,
JONES DUPLEXES RESIDENTIAL PLANNED UNIT DEVELOPMENT
PRELIMINARY AND FINAL PUD APPROVAL
(#1205-PUD-22)**

FINDINGS:

1. The following proposed amendment to the City of Orange Beach Zoning Ordinance has been heard and considered by the Orange Beach Planning Commission in Public Session after the required public advertisement period.
2. The City Council of the City of Orange has held the required Public Hearing after the required public advertisement period concerning the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Zoning Ordinance of the City of Orange Beach as previously amended is hereby further amended for the property described for the purpose of constructing a beachfront residential development consisting of two duplexes and three single-family houses;
2. That the zoning classification is hereby rezoned from RS-1 (Single-Family Residential) to PUD (Planned Unit Development) for the property legally described as follows:

110'(S) X 585'(S) IRR BEG AT PT WHERE W LINE OF W1/2 OF SUB 6 SEC 9-9-5
INTERSECTS THE S R/W LINE PAVED HWY TH E'LY ALG S R/ W LINE 103.9' FOR
POB TH CONT E'LY 103.9' FOR THE FRONT AND DEPTH EXT S'LY BETWEEN
PAR LINE WHICH ARE ALSO PAR TO SD W L INE W1/2 OF SD SUB 6 456' MOL
TO SHORE LINE OF GULF SEC 9-T9 S-R5E (WD/SURVIVORSHIP)

Tax Parcel ID #05-65-02-09-0-002-071.000, PPIN #18196

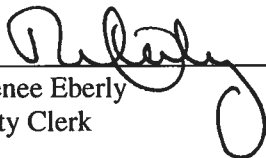
26480 Perdido Beach Boulevard

3. That the Zoning ordinance of the City of Orange Beach as previously amended is hereby further amended to approve the preliminary and final PUD for Jones Duplexes Residential pursuant to application #1205-PUD-22 on file with the Department of Community Development;
4. That approval of this PUD is contingent upon the conditions recommended by staff as follows:
 - a. The by-right plan shall be amended to adhere to Sections 5.0601 and 5.0602 of the Zoning Ordinance restricting density and requiring side walls and separation between two structures, respectively.
 - b. That approval includes the following deviations to the zoning ordinance:
 - (1) Section 5.0601, Number of Principal Buildings on Lot: To allow the proposed PUD to have seven residential dwellings, exceeding the maximum of two residential dwellings that are allowed for RS lots with lot areas more than 26,250 square feet; and
 - (2) Section 5.0602, Space between Buildings: To allow the separation between the side walls of the two buildings to be 10 feet, which is less than the 20 feet requirement.
 - c. Provision of screening details for the enclosed trash receptacle or dumpster area in the

front of the setback area. The height of the solid enclosure fence must be at least 6 feet.

- d. Swimming pools for the single-family houses shall have a minimum setback of 5 feet from the west side lot line.
 - e. The six surface parking spaces between the single-family houses and duplexes shall have signage designating parking spaces for specific units.
 - f. Removal of the current FDC (Fire Department Connection) on the site plan. A 1.5-inch connection can be placed on the structure and tied directly into the NFPR 13R sprinkler system.
 - g. A 2-inch common sewer force main is recommended instead of the 1.5-inch main as shown.
 - h. A Coastal Permit shall be obtained as required.
 - i. Provision of a tree survey and amendment to the landscape plan to reflect tree mitigation requirements if necessary.
5. That all ordinances or parts of ordinances in conflict are, to the extent of such conflict, repealed; and
 6. That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 21st DAY OF MARCH, 2023.

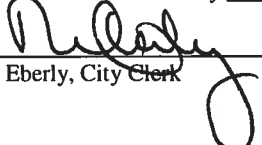


Renee Eberly
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2023-1440**
was posted on **03/22/2023** in the following three

(3) public places:

Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____



Renee Eberly, City Clerk





**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: Coastal Resources

Description of Topic: Resolution authorizing the execution of a subaward grant agreement with the Pensacola and Perdido Bays Estuary Program, Inc. to construct and operate a greenhouse. (WS)

Background/Description: The subaward from the Pensacola and Perdido Bays Estuary program will be used to construct and operate a greenhouse to grow out native vegetation for use in the Living Shoreline Cost Share Program. The greenhouse facility will house a native plant nursery to use for living shoreline applicants, dune restoration projects and trail vegetation.

Action Options/Recommendation:

Source of Funding (if applicable): The funding is 100% reimbursable in an amount not to exceed \$220,000.

ATTACHMENTS:

1. 03-05-24 24-xxx Authorize Subaward Grant Agreement Pensacola Perdido Bays Estuary Program Greenhouse
2. Workplan
3. PPBEP Subaward Number NOAA23-06--Orange Beach

RESOLUTION NO. 24-xxx

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
SUBAWARD GRANT AGREEMENT WITH THE
PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, INC.
TO CONSTRUCT AND OPERATE A GREENHOUSE**

FINDINGS:

1. The purpose of this agreement is for the Pensacola and Perdido Bays Estuary Program, Inc. (PPBEP) to provide funding under the National Ocean and Atmospheric Administration (NOAA) Transformational Habitat Restoration and Coastal Resilience Grant Cooperative Agreement No. NA23NMF4630056 for the Perdido Watershed Habitat and Community Resilience Initiative Project to construct and operate a greenhouse facility that will house a native plant nursery to use for living shoreline applicants, dune restoration projects, and trail vegetation.
2. PPBEP will disperse funds to the City to carry out the scope of the project in an amount not to exceed a total of \$220,000.
3. After having reviewed said agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That the Council authorized the Mayor and City Clerk to execute and attest, respectively, the implementation agreement between the City of Orange Beach and the Alabama Department of Conservation and Natural Resources (ADCNR) as an act for and behalf of the City of Orange Beach, subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

ADOPTED THIS 5th DAY OF MARCH, 2024.

Renee Eberly
City Clerk

C E R T I F I C A T E

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 24-xxx, which was duly and legally adopted at a regular meeting of the City Council on March 5, 2024.

City Clerk

Attachment 1: Project Workplan

Subrecipient Agreement #: NOAA23-06

Subaward Project Title: Orange Beach NOAA IJA Subaward

Period of Performance: August 1, 2023 – March 31, 2027

Award Amount: \$220,000

Project Location: The following tasks will be implemented within the project area in Figure 1 below (watershed coverage area).

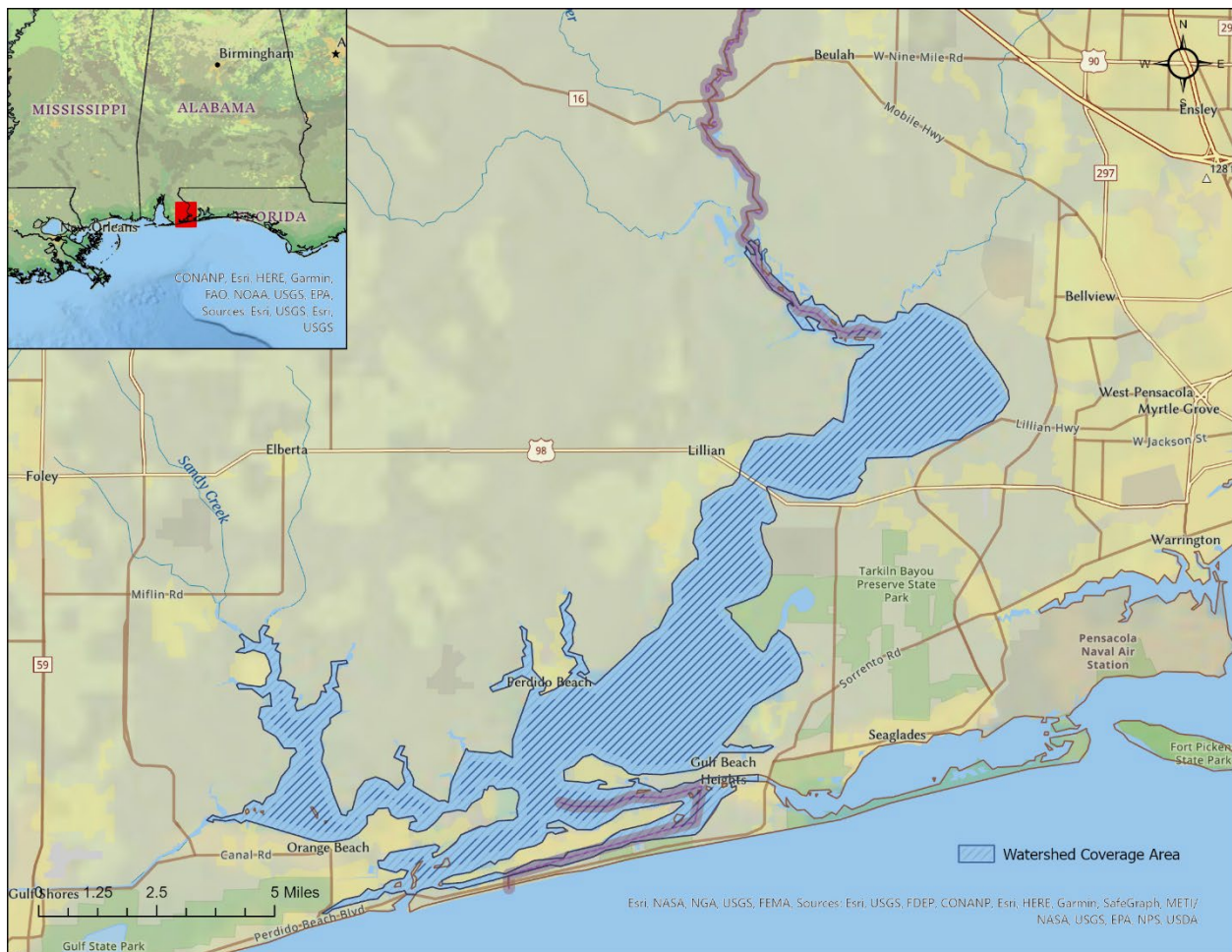


Figure 1. Project location and watershed coverage area for all project activities.

Project Abstract:

The City of Orange Beach will construct and operate a greenhouse on City property to grow out native vegetation for use in the Living Shoreline Cost Share Program. Greenhouse facility will

house a native plant nursey to supply applicants enrolled in the Cost Share Program. A variety of plants will be stocked initially and seed will be harvested and purchased for the grow out. The facility will be staffed with existing and new personnel to maintain and expand on greenhouse operations.

Tasks and Deliverables:

Task 1: Determine greenhouse site location

Task 1 Description: Determine site location of 72'x 30' Greenhouse.

Task 1 Deliverables: The grantee will submit a copy of the Baldwin County property appraisers parcel number showing proof of ownership of the property to place the greenhouse.

Task 1 Budget: 0.00

Task 2: Site preparation

Task 2 Description: Property for greenhouse will be cleared of any existing materials and structures. City will furnish a 220 V AC on 20A breaker. Install 4-inch well or waterline. Install 1 HP submersible pump with pressure switch and pressure tank.

Task 2 Deliverables: The grantee will submit proof of site preparation through photos.

Task 2 Budget: 0.00 (The City plans to fund this activity).

Task 3: Invitation to bid for Greenhouse Assembly and Installation

Task 3 Description: The city will procure and purchase materials through an approved greenhouse manufacturer with the price to include the assembly and installation of the greenhouse.

Task 3 Deliverables: The city will submit a signed contract with the approved greenhouse manufacturer to purchase and install a greenhouse selected for the project.

Task 3 Budget: \$67,935

Task 4: Greenhouse Assembly & Installation

Task 4 Description: The city will work with the manufacturer to assemble and install a 72-foot x 30foot greenhouse. May include other activities such as electrical that are needed for installation and fully functioning greenhouse.

Task 4 Deliverables: Grantee will submit signed acceptance of the completed work to date.

Task 4 Budget: \$34,500

Task 5: Plant Propagation

Task 5 Description: Purchase supplies, set-up plant beds and begin plant propagation.

Task 5 Deliverables: Using 8 -6'x9' benches, 4" pots (common pot size using *S. alterniflora* cuttings), we would divide the plants at least one time (4-6 months), 800-1000 plants ready to transplant.

Task 5 Budget: \$120,000

Subaward Budget: \$220,000

Object Categories	Year 1	Year 2	Year 3	Year 4	TOTAL
a. Personnel	-	-	-	-	-
b. Fringe Benefits	-	-	-	-	-
c. Travel	-	-	-	-	-
d. Equipment	\$67,935	\$20,000	\$10,000	\$10,000	\$107,935
e. Supplies	-	\$37,565	\$10,000	\$10,000	\$57,565
f. Contractual	\$20,000	-	-	-	\$20,000
g. Construction	\$34,500	-	-	-	\$34,500
h. Other	-	-	-	-	-
i. Total Direct Charges	-	-	-	-	-
j. Indirect Charges	-	-	-	-	-
k. Grand Total	\$122,435	\$57,565	\$20,000	\$20,000	\$220,000

Project Timeline: The tasks must be completed by the corresponding task end date and all deliverables must be received by the designated due date.

Task No.	Start Date	End Date	Deliverable Due Date
1. Determine greenhouse site location	Upon Execution		
2. Site preparation	2/1/24	3/1/24	3/1/24
3. Invitation to bid for Greenhouse Assembly and Installation	3/1/24	6/1/24	6/1/24
4. Greenhouse Assembly & Installation	6/1/24	8/1/24	8/1/24
5. Plant Propagation	8/1/24	4/1/25	4/1/25

**Subrecipient Agreement
between Pensacola and Perdido Bays Estuary Program, Inc. and
City of Orange Beach, Alabama**

Subrecipient Agreement #: NOAA23-06

Subaward Project Title: Orange Beach NOAA IJA Subaward

Federal Grant Agreement #: NA23NMF4630056

Period of Performance: August 1, 2023 – March 31, 2027

Subaward Amount: \$220,000

This Subrecipient Agreement is made and entered by and between **Pensacola and Perdido Bays Estuary Program, Inc.** (herein after referred to as “PPBEP” or “the Estuary Program”) and **City of Orange Beach, Alabama** (herein after referred to as “the City” or “Subrecipient”).

WHEREAS, PPBEP is a subrecipient to National Ocean and Atmospheric Administration (NOAA) Transformational Habitat Restoration and Coastal Resilience Grant Cooperative Agreement No. NA23NMF4630056 for the Perdido Watershed Habitat and Community Resilience Initiative (herein after referred to as “the Project”); and

WHEREAS, the City was included in the Project workplan and budget to perform specified tasks and deliverables.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the mutual agreements, terms and conditions herein contained, PPBEP and the City agree as follows:

- 1. Services:** Subrecipient agrees to perform services in accordance with the Project Workplan, Budget, and Schedule provided in Attachment 1 of this Agreement. Subrecipient further agrees to perform the services in accordance with the terms and conditions set forth in the National Ocean and Atmospheric Administration (NOAA) Transformational Habitat Restoration and Coastal Resilience Grant through NOAA Cooperative Agreement No. NA23NMF4630056 for the Perdido Watershed Initiative (attached hereto as Attachment 2).
- 2. Notice to Proceed:** Subrecipient agrees to not commence work prior to issuance of a Notice to Proceed by PPBEP.
- 3. Subaward Amount:** PPBEP agrees to make available \$220,000 for use by the City for work to be performed in accordance with the Project Workplan, Budget, and Schedule (Attachment 1).
- 4. Period of Performance:** The period of performance for this cost-reimbursable subaward is from August 1, 2023 through March 31, 2027 unless amended by written mutual



agreement. All work under this agreement must be performed during this period. Expenditures after the period of performance are unallowable.

5. **Alterations:** Any alterations in the scope of the work performed shall be submitted by the Subrecipient in writing to PPBEP and must be approved in advance in writing by PPBEP. The Subrecipient must obtain prior approval in writing from PPBEP if the cumulative amount of funding transfers among direct budget categories exceeds 10% of the total budget. The Subrecipient must notify PPBEP of cumulative funding transfers among direct budget categories that do not exceed 10% of the total budget for the agreement. Subrecipients must also notify PPBEP when transferring funds from direct budget categories to the indirect cost category or from the indirect cost category to the direct cost category. Prior approval by PPBEP is required if the transfer involves any of the items listed in 2 CFR 200.407 that PPBEP did not previously approve at time of award or in response to a previous post-award request by the Subrecipient.
6. **Reporting Requirements:** The Subrecipient agrees to submit progress reports and the final report in accordance with the schedule identified in Attachment 1. Progress and final reports must adhere to reporting templates included in Attachment 3 and indicate the progress that has been made during the reporting period. Subrecipient agrees to prepare and submit progress and final reports as described in Attachment 3. PPBEP reserves the right to withhold payments if the Subrecipient has not submitted the reports on schedule or if reports are unsatisfactory in meeting the requirements of this Agreement.
7. **Outreach and Communications:** Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Subrecipient will coordinate with PPBEP on outreach plans, events, products, and media coverage associated with the project. Subrecipient agrees to submit educational materials, publications, videos, or signage developed with subaward funding to PPBEP for technical review and final approval before commencing production. Subrecipient will submit materials to PPBEP for approval with at least two (2) weeks' notice before purchasing any items. Subrecipients will provide copies of final outreach products, website mentions, press materials, photos, etc. to PPBEP when available throughout the award period. Subrecipients will provide PPBEP with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by PPBEP.

PPBEP expects all completed work products funded by NOAA be in the public domain, free of copyright or other intellectual property protections, unless covered by another applicable agreement or requirement (e.g., university intellectual property policies). In the event that Project work products are subject to other intellectual property requirements, the Subrecipient shall inform PPBEP of such requirements prior to signature of this subaward.



- 8. Acknowledgement of Project Contributors:** The Subrecipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.
- 9. Permits, Compliance, and Safety:** Subrecipient will ensure that implementation of the Project meets all federal, state and local environmental laws and consistency requirements, including National Environmental Policy Act (NEPA) requirements.
- a. The Subrecipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Subrecipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.
 - b. In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Subrecipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Subrecipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.
- 10. Invoicing and Payment:** Project funds are payable on a reimbursable basis only. Subrecipient shall invoice PPBEP no more frequently than monthly, and not before December 1, 2023. Invoices must include all reimbursable expenses incurred during the invoice period. If no reimbursable expenses were incurred during the invoice period, explain why no other reimbursable expenses were incurred.

In order to be reimbursed, invoices must be complete, containing all required information and adhering to the required format described below. Invoices that do not include required information may be returned to Subrecipient and payment delayed.

Invoices must include the following:

- The invoice must be on organization letterhead
- Reference the subaward number
- Provide an invoice number
- Provide mailing address for payment, and any cost codes or other notations that should be included on the check or information on signing up for direct deposit will be provided when available



- Include date of invoice and period covered
- Include a general description of the work performed and brief description of any significant accomplishments during the invoice period.
- Per CFR 200.415 - Invoices must be signed by an authorized representative of the organization and must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729– 3730 and 3801–3812).”
- Include a summary cost table, consistent with the approved project budget in Attachment 1.
- The cost table should describe:
 - Reimbursable expenses incurred during the invoice period by federal cost category;
 - Reimbursable expenses incurred to date during the project period by federal cost category;
 - Break down personnel costs by individual, including a brief description of the work performed by each. This may be done with a separate table or with notations. PPBEP will not reimburse “lump sum” or combined personnel costs.
 - Attach copies of all invoices over \$500.00 for which you are requesting reimbursement.
 - Provide brief description of any travel costs.

Submit invoices and supporting information through email to the PPBEP Project Coordinator. Invoiced expenditures must agree with the approved project budget. Variances among approved direct cost categories that cumulatively exceed 10% of the total award must be approved by PPBEP in writing, in advance of the expenditure.

The final billing, clearly marked Final, shall be submitted no later than sixty (60) days after the end of the period of performance. The final invoice will be paid upon approval of the final report.

11. Financial Records: Subrecipient agrees to maintain accurate records of all costs incurred in the performance of this work, and agrees to allow PPBEP, or their duly authorized representatives reasonable access to their records to verify the validity of expenses reimbursed under this agreement. Subrecipient agrees to maintain financial records, supporting documents and other records pertaining to this agreement for a period of three (3) years from the termination date of this agreement.



To comply with federal regulations, Subrecipient agrees to maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the subaward. This means the financial system must be capable of generating regular financial status reports which indicate the dollar amount allocated for the award (including any budget revisions), the amount obligated, and the amount expended for each activity. The system must permit the comparison of actual expenditures and revenues against budgeted amounts.

Accounting records must be supported by source documentation. Invoices, purchase vouchers, payroll documentation, and related source documentation must be secured and retained for three (3) years following the termination date of this agreement in order to show for what purpose funds were spent. Payments should not be made without invoices and vouchers physically in hand. All vouchers and invoices should be on vendors' letterheads.

- 12. Audits:** PPBEP reserves the right to audit some or all of the Project costs, expenses, payments, etc., either formally or informally, as the Project proceeds and/or upon completion. Every year PPBEP is required to conduct random invoice audits of its Subrecipients. If Subrecipient is chosen for a random invoice audit, they must furnish all requested materials within thirty (30) days of the request. Any subsequent requests for corrective actions or additional documentation must be fulfilled within fifteen (15) days of the request.

Subrecipient agrees to comply with the requirements of 2 CFR Part 200 Subpart F. After completion of each yearly audit report the Subrecipient will promptly furnish (within 30 days) to PPBEP a copy of said audit report (or written notification) for each and every year during which this subaward is in effect. Subrecipient further agrees to notify PPBEP in writing if at any time during the period of this subaward it is no longer in compliance or if there are audit findings. In cases of such non-compliance or audit findings, the Subrecipient will promptly provide PPBEP with its written plan for corrective action.

All records and reports prepared in response to the audit requirements, or that relate to this subaward, shall be retained by the Subrecipient for three (3) years from the date of final payment on the subaward and will be made available during that period for inspection by representatives of PPBEP, its independent auditors, or the Federal government during normal business hours.

- 13. Allowable and Unallowable Costs:** Subrecipient acknowledges the Project is funded through federal funds. Subrecipient agrees to follow federal regulations as put forth in 2 CFR 200 in determining allowable costs under this agreement. Subrecipient agrees not to use funds provided under this agreement for any cost that is unallowable under these



regulations. Reimbursement by PPBEP for any cost that is later determined to be unallowable does not constitute sanction by PPBEP for the unallowable use of these funds.

14. Procurement: The Subrecipient agrees to conduct all procurement actions, including reporting, under this award in accordance with the procurement standards set forth in 2 CFR 200.317 through 200.326. These measures include multiple bids for procurements above \$10,000 (2 CFR 200.320 and Davis-Bacon prevailing wage requirements for construction activities (2 CFR 200)).

a. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act (“IIJA”), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.



To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: <https://www.nist.gov/mep/supplier-scouting>

DEFINITIONS

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives² — that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

- b. **Federal Employee Costs:** No funds for this project (including funds contributed by the Subrecipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the Subrecipient as authorized by a Federal statute.
- c. **Management Fees:** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate



and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this grant. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

- d. **Prohibition on certain telecommunication and video surveillance services or equipment:** Effective August 13, 2020, Subrecipients and contractors must comply with regulations at 2 CFR 200.216, Prohibition on certain telecommunication and video surveillance services or equipment, implementing section 889 of Public Law 115-232. The regulation prohibits the use of funds on federally funded projects to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, or any other company, including affiliates and subsidiaries, owned or controlled by the People's Republic of China, which are a substantial or essential component of any system, or as critical technology as part of any system. The prohibition extends to the use of all funds under federally funded projects by recipients and subrecipients, including those subject to contract.

15. Compliance: As a Recipient of funds under this Award, PPBEP is responsible for the management of the award and is ultimately responsible for ensuring compliance with all federal requirements. The Subrecipient will cooperate with PPBEP in achieving compliance with the specific terms and conditions of the award, as well as the other terms and conditions specified in this agreement.

16. Cyber Security: The Subrecipient agrees that when collecting and managing environmental or other data under this agreement, it will protect the data by following all applicable Federal, State, or Tribal law cybersecurity requirements. Subrecipients must comply with regulations at 2 CFR 200.216, Prohibition on certain telecommunication and video surveillance services or equipment, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by Recipients and Subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities



subject to the prohibition are recorded in the System for Award Management exclusion list, which is available via <https://sam.gov/SAM/>.

17. Tangible Personal Property: Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non- Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. Subrecipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

- a. **Disposition:** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the Subrecipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

18. Assurances: By signing this subaward, Subrecipient certifies that:

It is not delinquent on repayment of any Federal debt including direct and guaranteed loans and other debt as defined in OMB Circular A-129, “Managing Federal Credit Programs.”

It is presently not debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (34 CFR Part 85, Section 85.510).

It has not, within three (3) years preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

No personnel working on this project are presently indicted for, or otherwise criminally or civilly charged by a government entity.

It is in compliance with the Drug-Free Workplace Act of 1988 (34 CFR Part 85, Subpart F).

It is in compliance with Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.



It is in compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) regarding restrictions on lobbying.

Funds expended under this award will comply with the applicable Federal cost principles.

It does not have any known conflicts of interest pertaining to work on this project.

19. Suspension or Cancellation of Awards: With 30 days' notice, PPBEP may, in its sole discretion, discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to PPBEP on a timely basis, (b) the reports do not comply with the terms of this agreement or fail to contain adequate information to allow PPBEP to determine if the funds have been used for their intended purposes, (c) subaward funds have not been used for their intended purposes or have been used inconsistently with the terms of this agreement, (d) PPBEP is not satisfied with the progress of the activities funded by this subaward, (e) the purposes for which the subaward was made cannot be accomplished, or (f) making any payment might, in the judgment of PPBEP, violate the terms of PPBEP's cooperative agreement with NOAA, or expose PPBEP to liability. PPBEP will provide notice of any determinations made under this paragraph. In the event PPBEP takes action permitted by this paragraph solely based on (d) and (e), and Subrecipient provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on the Subrecipient Agreement and the approved budget, PPBEP will consider in good faith permitting subaward funds to be used to pay such obligations.

20. Public Records: All Contractors providing services to Pensacola and Perdido Bays Estuary Program, Inc. ("PPBEP") shall comply with Florida's public records laws, Chapter 119, Florida Statutes, and satisfy the Contractor's duties thereunder as follows:

Keep and maintain public records required by the PPBEP and/or related to performance of the service.

Upon request from the PPBEP's custodian of public records, provide the PPBEP with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

Upon completion of the contract, transfer, at no cost, to the PPBEP all public records in possession of the Contractor or keep and maintain public records required by the PPBEP and/or related to performance of the service. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the PPBEP, upon request from the PPBEP's custodian of public records, in a format that is compatible with the information technology systems of the PPBEP.



IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, PENSACOLA AND PERDIDO BAYS ESTUARY PROGRAM, Matt Posner at (850) 595-0820 or mjposner@ppbep.org.

Failure of the Contractor to comply with requests for public records in accordance with the following procedures shall be deemed noncompliance:

A request to inspect or copy public records relating to a PBBEP contract for services must be made directly to the PBBEP. If the PBBEP does not possess the requested records, the PBBEP shall immediately notify the Contractor of the request, and the Contractor must provide the records to the PBBEP or allow the records to be inspected or copied within a reasonable time.

If a Contractor does not comply with the PBBEP's request for records, the PBBEP shall enforce these contract provisions in accordance with the contract.

A Contractor who fails to provide the public records to the PBBEP within a reasonable time may be subject to penalties under s. 119.10.

If Subrecipient fails to abide by the provisions of Chapter 119, Florida Statutes, PPBEP may, without prejudice to any right or remedy and after giving seven (7) days written notice, during which period the Subrecipient fails to allow access to such documents, terminate this Agreement.

CONTACTS:

For PPBEP:

Matthew J. Posner
Executive Director
Pensacola & Perdido Bays Estuary Program
850.595.0820
mjposner@ppbep.org

For Orange Beach:

Woody Speed
Environmental Specialist
City of Orange Beach
251.981.1062
wspeed@orangebeachal.gov



**PENSACOLA
& PERDIDO BAYS
ESTUARY PROGRAM**

**Pensacola and Perdido Bays
Estuary Program, Inc.**

City of Orange Beach

By: Matthew J. Posner

Matthew J. Posner, Executive Director

2/1/24
Date

By: _____

Tony Kennon, Mayor

Date

Attachment 1: Project Workplan, Budget, and Schedule

Attachment 2: Prime Federal Award Grant Agreement

Attachment 3: Quarterly Progress and Final Report Templates



**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: City Clerk

Description of Topic: Ordinance amending and restating Chapter 42, Article III of the Code of Ordinances for the City of Orange Beach, Alabama, retitled "Floodplain Development." (JL/AR)

Background/Description:

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

1. 2024-xxxx Amd Ch 42 Art III Restate Floodplain Development Ordinance

ORDINANCE NO. 2024-xxxx

**AN ORDINANCE REPEALING ORDINANCE 2019-1314
AND REPLACING CHAPTER 42, ARTICLE III OF THE
CODE OF ORDINANCES FOR THE CITY OF ORANGE BEACH, ALABAMA
RETITLED “FLOODPLAIN DEVELOPMENT”**

FINDINGS:

1. The National Flood Insurance Program (NFIP) is managed by the Federal Emergency Management Agency (FEMA). Communities are not required to participate in the program by any law or regulation, but instead participate voluntarily in order to obtain access to NFIP flood insurance. Communities that choose to participate in the NFIP are required to adopt and enforce a floodplain development ordinance with land use and control measures that include effective enforcement provisions to regulate development in the floodplain resulting in reduced future flood losses.
2. FEMA has set forth in federal regulations the minimum standards required for participation in the NFIP; however, these standards have the force of law only because they are adopted and enforced by a state or local government; referred to as a NFIP community. Legal enforcement of the floodplain management standards is the responsibility of the participating NFIP community, which can elect to adopt higher standards as a means of mitigating flood risk. The City of Orange Beach agrees to adopt and enforce this ordinance, which meets or exceeds the minimum standards of the Code of Federal Regulations Title 44 §60.3 in order to participate in the NFIP and have access to federal flood insurance and other federal assistance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That Ordinance 2019-1314 is hereby repealed and Chapter 42, Article III of the Code of Ordinances for the City of Orange Beach is hereby replaced to read in its entirety as follows:

ARTICLE III. - FLOODPLAIN DEVELOPMENT

DIVISION 1. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

Sec. 42-151. - Statutory authorization.

The Legislature of the State of Alabama has, in Title 11, Chapter 19, Sections 1-24; Chapter 45, Sections 1-11; Chapter 52, Sections 1-84; and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Sec. 42-152. - Findings of fact.

- (1) The flood hazard areas of the City of Orange Beach, Alabama (the Federal Emergency Management Agency’s [FEMA] designated Special Flood Hazard Areas (SFHAs) or other areas designated by the of Orange Beach as flood-prone areas) are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare.
- (2) These flood losses are caused most often by development, as defined in this ordinance, in areas designated as FEMA SFHAs or other areas designated by the City of Orange Beach as vulnerable to flooding, including structures which are inadequately elevated or floodproofed (only non-

residential structures) or are otherwise unprotected from flood damages; or by the cumulative effect of development in areas subject to flooding that cause increases in flood heights and velocities.

Sec. 42-153. - Statement of purpose.

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

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
- (3) Control development (including filling, grading, paving, dredging, and all other development as defined in this Ordinance);
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands; and
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which may influence the flow of water.

Sec. 42-154. - Objectives.

The objectives of this ordinance are to:

- (1) Protect human life and health;
- (2) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) 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 flood blight areas;
- (4) Minimize expenditure of public money for costly flood control projects;
- (5) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) Minimize prolonged business interruptions; and
- (7) When asked for assistance regarding flood risk, ensure that potential home buyers are aware that a property is in an area subject to flooding.

Sections 42-155 through 42-169 reserved.

DIVISION 2. - GENERAL PROVISIONS

Sec. 42-170. - Lands to which this ordinance applies.

This ordinance shall apply to all FEMA SFHAs and any additional areas designated by the City of Orange Beach as floodplains or areas subject to flooding within the jurisdiction of the City of Orange Beach, Alabama.

Sec. 42-171. - Basis for special flood hazard areas.

The SFHAs identified by FEMA in Baldwin County's Flood Insurance Study (FIS), dated April 19, 2019, with accompanying Flood Insurance Rate Maps (FIRMs) and other supporting data and any revision thereto, are adopted by reference and declared a part of this ordinance. For those lands acquired by a municipality through annexation, the current effective FIS and data for Baldwin County

are hereby adopted by reference. Community Flood Hazard Areas may also be regulated as SFHAs. FEMA encourages communities to adopt areas prone to flooding to be added to the FIRMs. They may include those areas known to have flooded historically or that have been defined through standard engineering analysis by a professional engineer, licensed to practice in the State of Alabama; or by governmental agencies or private organizations that are not yet incorporated into the FIS or otherwise designated by the community.

Sec. 42-172. - Establishment of a floodplain development permit.

A Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development, as defined in this Ordinance, in identified SFHAs and any additional identified Community Flood Hazard Areas within the community.

Sec. 42-173. - Compliance.

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

Sec. 42-174. - Abrogation and greater restrictions.

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

Sec. 42-175. - Interpretation.

In the interpretation and application of this ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Sec. 42-176. - Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the SFHAs or other identified areas subject to flooding or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Orange Beach or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Sec. 42-177. - Penalties for violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. The Code of Alabama (1975), Title 11, Chapters 19 and 45 grant local governments in Alabama the authority to administer the enforcement provisions stated within this section of the ordinance.

(1) Stop Work Order. The community may issue a stop work order, which shall be served on the applicant or other responsible person.

(a) Upon notice from the Administrator, work on any building, structure or premises that is being performed contrary to the provisions of this ordinance shall immediately cease.

(b) Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(2) Notice of Violation. If the community determines that an applicant or other responsible party for

the development has failed to comply with the terms and conditions of a permit, or otherwise not in accordance with the provisions of this ordinance, it shall issue a written Notice of Violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this Ordinance without having first secured a permit, the notice shall be served on the owner or the party in charge of the activity being conducted on the site. Therefore, any work undertaken prior to submission and approval of an official permit by the City of Orange Beach or otherwise not in accordance with this ordinance shall constitute a violation of this ordinance and be at the permit holder's risk. The notice of violation shall contain:

- (a) The name and address of the owner or the applicant or the responsible party;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation (including failure to obtain a permit);
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this ordinance and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
- (f) A statement in the Notice of Violation shall be included that the determination of violation may be appealed to the community by filing a written Notice of Appeal within ten (10) working days after the Notice of Violation. Exceptions for the deadline for this Notice include: 1) in the event the violation constitutes a danger to public health or public safety, then a 24-hour notice shall be given; 2) if there's an imminent or immediate threat to life or property, then immediate action is required.

- (3) Criminal penalties. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than six months, or both, and in addition, shall pay all costs and expenses involved in the case: Each day such violation continues following receipt of the Notice of Violation shall be considered a separate offense. Nothing contained herein shall prevent the City of Orange Beach from taking such other lawful actions as is necessary to prevent or remedy any violation.
- (4) Additional Enforcement Actions. If the remedial measures described in the Notice of Violation have not been completed by the date set forth in the Notice of Violation, any one or more of the following enforcement actions may be enacted against the person to whom the Notice of Violation was directed.

Before taking any of the following enforcement actions or imposing any of the following penalties, the City of Orange Beach shall first notify the applicant or other responsible person in writing of its intended action. The City of Orange Beach shall provide reasonable opportunity, of not less than ten days (except, in the event the violation constitutes a danger to public health or public safety, then a 24-hour notice shall be sufficient; if there's an imminent or immediate threat to the public health or public safety then immediate action is required) to cure such violation.

In the event the applicant or other responsible party fails to cure such violation after such notice and cure period, the City of Orange Beach may take or impose any one or more of the enforcement actions or penalties listed below.

- (a) Termination of utility service and/or withhold or revoke Certificate of Occupancy. The community may terminate utility services to the property and/or refuse to issue and/or revoke a certificate of occupancy for the building or other improvements/repairs conducted on the site. The order shall remain in-place until the applicant or other responsible party has taken the remedial measures set forth in the Notice of Violation or has otherwise cured the violation

or violations described therein.

(b) Suspension, revocation, or modifications of permit. The community may suspend, revoke, or modify the permit that authorizes the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible party has taken the remedial measures set forth in the Notice of Violation or has otherwise cured the violations described therein.

i. The Administrator may revoke a permit issued under the provisions of this ordinance in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

ii. The Administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

(c) Section 1316 Declaration. A Section 1316 declaration shall be used only when all other legal means included in this ordinance to remedy a violation have been exhausted and the structure remains non-compliant. Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued, no NFIP insurance claim can be paid on any policy on the property, and federal disaster assistance will be denied for the property.

The declaration must be in writing (letter or citation), from the community to the property owner and to the FEMA Regional Office, and must contain the following items:

i. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

ii. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

iii. A clear statement that the public body making the declaration has authority to do so and a citation of that authority;

iv. Evidence that the community has taken and exhausted all legal means to remedy the violation, including all Community enforcement actions, as specified in this ordinance; and

v. Notice of violation, and a statement regarding the prospective denial of insurance.

(5) Administrative appeal; judicial review. Any person receiving a Notice of Violation may appeal the determination of the city, including but not limited to the issuance of a stop work order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the city upon finding that the holder is in violation of permit conditions, or notification that the holder is in violation of any applicable ordinance or any of the city's rules and regulations, or the issuance of a notice of bond forfeiture.

The Notice of Appeal must be in writing to the Floodplain Administrator and must be received within ten (10) days from the date of the Notice of Violation. A hearing on the appeal shall take place within thirty (30) days from the date of receipt of the Notice of Appeal.

(6) All administrative appeals shall be heard and decided by the city's designated appeals board, which shall be the Orange Beach City Council, or their designees. The appeals board shall have the power to affirm, modify, or reject the original determination, including the right to increase or decrease the amount of any administrative monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's floodplain development ordinance, and any other applicable local, state, or federal requirements.

Appeals cannot be in opposition to the provisions of this ordinance.

- (7) A judicial review can be requested by any person aggrieved by a decision or order of the city, after exhausting his/her administrative remedies. They shall have the right to appeal de novo to the Circuit Court of Baldwin County, Alabama.

Sec. 42-178. - Savings clause.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 42-179 is reserved.

DIVISION 3. - ADMINISTRATION

Sec. 42-180. - Designation of floodplain administrator.

The City of Orange Beach Building Official is hereby appointed to administer and implement the provisions of this ordinance. The City of Orange Beach Building Official shall hereto after be referred to as the Floodplain Administrator in this ordinance.

Sec. 42-181. - Permit procedures.

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the community prior to any development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials) in the SFHAs of the community, and may include, but not be limited to, the following: plans drawn to scale showing the elevations of the area of development and the nature, location, and dimensions of existing or proposed development.

Specifically, the following procedures and information are required for all projects in the SFHA or other designated floodplains within the jurisdiction of the City of Orange Beach:

(1) Application stage.

Plot plans are to include:

- (a) The Base Flood Elevations (BFEs) where provided as set forth in §42-186 and §42-187;
- (b) Boundary of the Special Flood Hazard Area and floodway(s) as delineated on the FIRM or other flood map as determined in §42-171;
- (c) Flood zone designation of the proposed development area as determined on the FIRM or other flood map as set forth in §42-171;
- (d) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor elevation, including basement, of all proposed structures;
- (e) Within Zones V1-30, VE, and V, the elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor, including basement, of all proposed structures;
- (f) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
- (g) Design certification from a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, who is registered to practice in the State of Alabama, that any proposed non-residential floodproofed structure will meet the floodproofing criteria of

§42-186(2) and §42-189(2);

- (h) A Foundation Plan, drawn to scale, that shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include, but are not limited to, the proposed method of elevation (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls) and description of any flood openings required in accordance with §42-186(1) and (3) when solid foundation perimeter walls are used;
- (i) Usage details of any enclosed areas below the lowest floor shall be described;
- (j) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (k) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development including current and proposed locations of the watercourse. An engineering report shall be prepared by a professional engineer, who is licensed to practice in the State of Alabama, on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream. The affected properties shall be depicted on a map or on the plot plan;
- (l) Certification of the plot plan by a professional engineer or surveyor, who is licensed to practice in the State of Alabama, is required; and
- (m) In any lot or lots/areas that will be or have been removed from the special flood hazard area utilizing a Letter of Map Revision Based on Fill (LOMR-F), the top of fill elevation must meet the community's freeboard elevation at that location. If the top of fill elevation is below the freeboard elevation, all new structures, additions to existing buildings or substantial improvements must meet the required community freeboard elevation.

(2) Construction stage.

For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the regulatory floor elevation or floodproofing level using appropriate FEMA elevation or floodproofing certificate immediately after the lowest floor or floodproofing is completed. In addition:

- (a) When floodproofing is utilized for non-residential structures, said certification shall be prepared by professional engineer, who is licensed to practice in the State of Alabama, or architect, who is registered to practice in the State of Alabama.
- (b) Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.
- (c) The Floodplain Administrator shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed. Failure to submit certification or failure to make the required corrections shall be cause to issue a Notice of Violation and/or Stop-Work Order for the project.
- (d) The Floodplain Administrator shall make periodic inspections of projects during construction throughout the SFHAs within the jurisdiction of the community to ensure that the work is being done according to the provisions of this ordinance and the terms of the permit. Members of the inspections/engineering department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the City of Orange Beach during normal business hours of the community for the purposes of inspection or other enforcement action.

- (e) The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(3) Finished Construction.

Upon completion of construction, a FEMA elevation certificate (FEMA Form FF-206-FY-22-152 or equivalent), which depicts all finished construction elevations, must be submitted to the Floodplain Administrator prior to issuance of a Certificate of Occupancy.

- (a) If the project includes a floodproofing measure, a FEMA floodproofing certificate must be submitted by the permit holder to the Floodplain Administrator.
- (b) The Floodplain Administrator shall review the certificate(s) and the data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance.
- (c) In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (d) Documentation regarding completion of and compliance with the requirements stated in the permit application and with §42-181(1) of this ordinance shall be provided to the local Floodplain Administrator at the completion of construction or records shall be maintained throughout the Construction Stage by inspectors for the Floodplain Administrator. Failure to provide the required documentation shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (e) All records that pertain to the administration of this ordinance shall be maintained in perpetuity and made available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

Sec. 42-182. - Duties and responsibilities of the Floodplain Administrator.

The Floodplain Administrator and his/her designated staff is hereby authorized and directed to enforce the provisions of this article. The Floodplain Administrator is further authorized to render interpretations of this article, which are consistent with its spirit and purpose. Duties of the Floodplain Administrator shall include, but shall not be limited to:

- (1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may be determined whether such construction or other development is proposed within flood-prone areas. Ensure the public is aware that floodplain development permits are required for development in SFHAs.
- (2) Conduct regular inspections of the community's SFHAs for any unpermitted development and issue Stop Work Orders and Notice of Violations for any such development. Any unpermitted structure or non-structural development in the SFHA will be considered a violation until such time that the violation has been remedied.
- (3) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Maintain such permits permanently with floodplain development permit file.

- (4) Review all permit applications of proposed development, to determine whether the proposed construction or other development will be reasonably safe from flooding and to assure compliance with this article.
 - (a) If the provisions of this article have been met, approve the permit.
 - (b) If the provisions of this article have not been met, request that either corrections and accurate completion of the application be made or disapprove the permit.
- (5) When BFE data or floodway data have not been provided in accordance with §42-171 then the Floodplain Administrator shall obtain, review and reasonably utilize any BFE and floodway data available from a Federal, State, or other sources in order to administer the provisions of Division 4.
- (6) Verify and record that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide.
- (7) Verify and record the actual elevation of the lowest floor, in relation to mean sea level (or highest adjacent grade), including basement, of all new construction or substantially improved residential structures in accordance with §42-181(2).
 - (a) Review elevation certificates and require incomplete or incorrect certificates to be corrected and resubmitted for approval.
 - (b) A post-construction elevation certificate is required to be kept with the permit and certificate of occupancy in perpetuity; a pre-construction elevation certificate can be used to ensure the correct elevation for the lowest floor and machinery along with the correct number of vents that will be used.
- (8) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved non-residential structures have been elevated or floodproofed, in accordance with §42-181, or §42-186(2) and §42-189(2).
- (9) Verify and record that all new construction and substantial improvements within Zones V1-30, VE, and V comply with all applicable provisions contained in §42-190 that address location, foundations, fill, space below the lowest supporting structural member, enclosures, certifications, sand dunes, mangrove stands, manufactured homes, and recreational vehicles.
- (10) When floodproofing is utilized for a non-residential structure, the Floodplain Administrator shall obtain certification of design criteria from a professional engineer, licensed to practice in the State of Alabama, or licensed architect, registered to practice in the State of Alabama, in accordance with §42-181(1) and §42-186(2) or §42-189(2).
- (11) Notify adjacent communities and the Alabama Department of Environmental Management and the appropriate district office of the U.S. Army Corps of Engineers prior to any alteration or relocation of a watercourse. Submit evidence of such notification to FEMA and the NFIP State Coordinator's Office (Alabama Department of Economic and Community Affairs, Office of Water Resources).
- (12) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months after completion of the project to FEMA and State to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained following completion of the project.
- (13) Where interpretation is needed as to the exact location of boundaries of the SFHA (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. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as

provided in this article.

- (14) All records pertaining to the provisions of this article shall be maintained, in perpetuity, at the office of the Floodplain Administrator and shall be available for public inspection when requested.
- (15) For any improvements made to existing construction located in the SFHA (as established in §42-171) ensure that a permit is obtained. Also, conduct Substantial Improvement (SI) (as defined in §42-205) reviews and analysis of all structural development permit applications. Maintain a record of the SI calculations and comments within the permit files in accordance with §42-182(14).
- (16) For any residential and nonresidential structures located in the SFHAs that are damaged from any source, natural hazard or man-made, conduct Substantial Damage (SD) (as defined in §42-205) assessments.
 - (a) The Floodplain Administrator shall ensure that permits are obtained, in accordance with this article, prior to any repairs commencing.
 - (b) SD determinations shall not be waived to expedite the rebuilding process during a post-disaster recovery or for any other reason.
 - (c) If the community has a large number of buildings in their SFHAs that have been damaged, they should decide in advance how best to handle permitting and inspecting damaged buildings for substantial damage determinations.
 - (d) If required, a moratorium may be placed on all non-disaster related construction permits until the community has sufficiently completed its SD determinations.
 - (e) The SD determinations should be performed immediately after the damage-causing event or other cause of damage.
 - (f) The community shall utilize methods and tools for collecting building data and performing analyses that will provide reasonable and defensible SD determinations. Those tools shall be capable of generating reports for record-keeping purposes and to provide to the applicable property owners if requested.
 - (g) Maintain a record of the SD calculations within permit files in accordance with §42-182(14).
 - (h) If the SD determination finds that the extent that 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, the Floodplain Administrator shall:
 - (i) A structure qualifies as a repetitively damaged structure (synonymous to repetitive loss property) if it is determined to have been damaged by flooding two or more times within a 10-year period where the cost of repairing the flood damage, on average, equaled or exceeded 25 percent of its market value at the time of each flood event. All of the provisions of §42-182(16) for substantial damages shall apply to any repetitively damaged structure, whether it is covered by NFIP flood insurance or not.

If the structure is located within a SFHA and NFIP flood insurance claims were paid for each of the two flood losses then the structure is eligible for an Increased Cost of Compliance (ICC) claim. The following procedures shall be performed by the community to track repetitive losses and provide documentation necessary for an ICC claim:

- i. Maintain permit records of all reconstruction and repairs for flood damages;
- ii. Record the date of repairs for a particular building so that the repair history can be checked before the next permit is issued;

- iii. Record the flood-related cost to repair the building and the market value of the building before the damage occurred for each flood event; and
 - iv. Issue a letter of Notice of Determination to the owner of the structure.
- (j) Ensure that phased improvements and incremental repairs do not circumvent the SI/SD requirements.
- (k) Ensure that any combinations of elective improvements being made in addition to the necessary repairs to damages are included in making the SI/SD determination.
- (l) An applicant for a permit may appeal a decision, order, or determination that was made by the local official for the following:
 - i. The local official's finding or determination that the proposed work constituting a SI/SD were based on insufficient information, errors, or repair/improvement costs that should be included and/or excluded; or
 - ii. The local official's finding or determination that the proposed work constituting a SI/SD were based on inappropriate valuations of costs for the proposed work, or an inappropriate method to determine the market value of the building.
- (m) It is not appropriate for a permit applicant to seek an appeal who wishes to build in a manner that is contrary to the regulations and codes included in this ordinance. In those cases, the applicant should seek a variance.
- (n) Ensure that any building located in a floodway that constitutes a SI/SD has an engineering analysis performed in accordance with §42-187(2). If that analysis indicates any increase in the BFE, the local official must not allow the proposed work unless the structure is brought into full compliance with this article.
- (17) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either substantially damaged structures or repetitive loss structures) to ensure eligibility for ICC funds.
- (18) Right of entry.
 - (a) After the Certificate of Occupancy has been issued for a building and the Floodplain Administrator observes or has reasonable cause to believe that renovations or retrofits have been made to the building, structure, or premises located in a SFHA that appear to be in violation of any provisions of this article, he/she shall have the right to seek entry into that building as described in (b) to (e) below.
 - (b) Whenever it becomes necessary to make an inspection to enforce any of the provisions of this article, the Floodplain Administrator may enter such building, structure or premises at all reasonable times (normal business hours for the community) to inspect the same or perform any duty imposed upon the Floodplain Administrator by this article.
 - (c) If such building or premises are occupied, the Floodplain Administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of such building or premises prior to entry.
 - (d) If entry is refused or owner cannot be located, the Floodplain Administrator shall have recourse to every remedy provided by law to secure the right of entry of the building, structure, or premises.
 - (e) When the Floodplain Administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons

having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Floodplain Administrator for the purpose of inspection and examination pursuant to this article.

Sections 42-183 through 42-184 reserved.

DIVISION 4. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 42-185. - General standards.

In all SFHAs and flood-prone areas regulated by the City of Orange Beach, the following provisions are required for all proposed development including new construction, reconstruction or repairs made to repetitive loss structures, and substantial improvements:

- (1) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including but, not limited to Section 404 of the Federal Water Pollution Control Act Amendments (1972, 33 U.S.C. 1334) and the Endangered Species Act (1973, 16 U.S.C. 1531-1544). Maintain such permits permanently with floodplain development permit file.
- (2) New construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (3) New construction and substantial improvements shall be constructed with materials resistant to flood damage below the BFE.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (5) New construction and 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.
- (6) Review subdivision proposals and other proposed development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed development is in a SFHA, any such proposals shall be reviewed to assure that:
 - (a) They are consistent with the need to minimize flood damage within the SFHA;
 - (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
 - (c) All new and replacement water supply systems are to be designed to minimize or eliminate infiltration of flood waters into the systems;
 - (d) All new and replacement sanitary sewage systems are to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
 - (e) Onsite waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding; and
 - (f) Adequate drainage is provided to reduce exposure to flood hazards.
- (7) Manufactured homes shall be installed using methods and practices which minimize flood

damage. They must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local requirements for resisting wind forces.

- (8) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (9) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (10) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (11) Any alteration, repair, reconstruction or improvement to new construction and substantial improvements which is not compliant with the provisions of this article shall be undertaken only if the non-conformity is not furthered, extended or replaced.
- (12) Proposed new construction and substantial improvements that are partially located in a SFHA shall have the entire structure meet the standards of this article for new construction.
- (13) Where new construction and substantial improvements located in multiple SFHAs or in a SFHA with multiple BFEs, the entire structure shall meet the standards for the most hazardous SFHA and the highest BFE.

Sec. 42-186. – Specific technical standards.

In all Special Flood Hazard Areas designated as A, AE, AH (with engineered or estimated BFE), the following provisions are required:

- (1) Residential and Non-Residential Structures. Where BFE data is available, new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than two (2) foot above the base flood elevation (also referred to as the design flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of §42-186(3).
- (2) Non-Residential Structures. New construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvement of any non-residential structure located in AE or AH zones, may be floodproofed (dry) in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to at least two (2) foot above the base flood elevation (herein after referred to as the design flood elevation), with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
 - (a) A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered to practice in the State of Alabama, shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with the standards in ASCE-24 (for dry floodproofing) or other compatible standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in §42-182(10).
 - (b) A record of such certificates, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained with the official permitting records for the structure and kept in perpetuity.
 - (c) Any non-residential functionally dependent structure (as defined in §42-205) that cannot meet

- the standards stated in §42-186(2)(a) shall require a variance to be issued in accordance with §42-197(3) and §42-198(1).
- (d) Any non-residential structure, or part thereof, made watertight below the DFE shall be floodproofed in accordance with the applicable standards in ASCE 24. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered to practice in the State of Alabama, which states that the proposed design and methods of construction are in conformance with the above referenced standards. There should be a statement submitted with the permit application and a statement submitted with the as-built floodproofing certificate prior to the issuance of the Certificate of Occupancy.
- (3) Enclosures for Elevated Buildings. All new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvements of existing structures (residential and non-residential) that include any fully enclosed area below the DFE, located below the lowest floor formed by the foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.
- (a) Designs for complying with this requirement must either be certified by a professional engineer, who is licensed to practice in the State of Alabama, or a licensed architect, registered to practice in the State of Alabama, or meet the following minimum criteria:
- i. Provide a minimum of two openings for each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding (if a structure has more than one enclosed area below the DFE, each shall have openings on exterior walls);
 - ii. Openings shall be in at least two walls of each enclosed area (includes areas separated by interior walls);
 - iii. The bottom of all openings shall be no higher than one foot above grade;
 - iv. Openings may be equipped with screens, louvers, valves and other coverings or devices provided that they permit the automatic entry and exit of floodwaters in both directions without impeding or blocking flow and shall be accounted for in determination of the net open area; and
 - v. Openings meeting the requirements of (3)(a)(i)–(iv) that are installed in doors are permitted.
- (b) So as not to violate the “Lowest Floor” criteria of this article, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage, or access to the elevated area.
- (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (d) All interior walls, ceilings and floors below the DFE shall be unfinished and/or constructed of flood damage-resistant materials. This practice is also referred to as “wet floodproofing”. The definitions for “flood damage-resistant materials” and “wet floodproofing” are included in §42-205.
- (e) Mechanical, electrical, or plumbing devices shall be installed not less than two foot above the DFE. The interior portion of such enclosed area(s) shall be void of utilities except for essential lighting and power, as required, that are watertight or have otherwise been

floodproofed.

- (f) Property owners shall agree, certify, and declare to the following conditions and restrictions placed on the affected property as a condition for granting a permit. A binding agreement, referred to as a Non-conversion Agreement, is required to be executed and recorded with the Deed. It shall obligate the Owner to the following terms and conditions:

- i. That the enclosed area(s) shall remain fully compliant with all parts of §42-187(3) of this article unless otherwise modified to be fully compliant with the applicable sections of the Floodplain Development Ordinance in effect at the time of conversion.
- ii. A duly appointed representative of the City of Orange Beach is authorized to enter the property for the purpose of inspecting the exterior and interior of the enclosed area to verify compliance with the Agreement and Permit.
- iii. The community may take any appropriate legal action to correct any violation pertaining to the Agreement and the subject Permit.

- (4) Standards for manufactured homes and recreational vehicles where base flood elevation data is available.

- (a) Require that all manufactured homes placed or substantially improved:

- i. Outside of a manufactured home park or subdivision;
- ii. In a new or substantially improved manufactured home park or subdivision;
- iii. In an expansion to an existing manufactured home park or subdivision; or
- iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood

be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated two foot or more above the BFE and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

- (b) Require that all manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are **not** subject to the provisions of Subsection (4)(a) be elevated so that either:

- i. The lowest floor of the manufactured home is two foot or more above the BFE; or
- ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the highest adjacent grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- iii. Concrete block piers (and other foundation systems) are to be designed in accordance with the Code of Federal Regulations Title 24, Part 3285 and with the specifications in FEMA P-85: Protecting Manufactured Homes from Floods and Other Hazards – A Multi-Hazard Foundation and Installation Guide. The §3285.306 Design procedures for concrete block piers and FEMA P-85 (Table SP-1.1), specify that the maximum allowable pier height (measured from top of grade) for concrete piers to be five (5) feet.
- iv. The chassis and its supporting equipment are to be above the pier or other foundation. The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of three (3) feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in §42-

185(5).

(c) Require that all recreational vehicles placed on sites must either:

- i. Be on the site for fewer than 180 consecutive days;
- ii. Be fully licensed and ready for highway use on its wheels or jacking system;
- iii. Be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or additions; or
- iv. Must meet all the requirements for "New Construction," including the anchoring and elevation requirements of §42-186(4)(a) and (b).

(5) Standards for manufactured homes where no base flood elevation exists.

- (a) Require that all manufactured homes to be placed within a Zone A area on the FIRM shall be installed using methods and practices which minimize flood damage.
- (b) Manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors.
- (c) The manufactured home chassis must be supported by reinforced piers or other foundation elements of at least equivalent strength such that the bottom of the chassis and its supporting equipment be no less than 36 inches and up to a maximum 60 inches (five feet) above the highest adjacent grade and be securely anchored to an adequately anchored foundation system.
- (d) The areas below the chassis must be constructed with flood-resistant materials. All utilities and mechanical equipment must be elevated to a minimum of 3 feet above the highest adjacent grade. Any utility and mechanical components that must be below the BFE must be made watertight to that same elevation to meet the standards in §42-185(5).

(6) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on Baldwin County's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(7) Accessory and agricultural structures. When an accessory structure meets the requirements outlined below, these structures may be wet-floodproofed and do not have to be elevated to two feet above the BFE as required in §42-186(1).

A permit shall be required prior to construction or installation of any accessory structures and any agricultural structures built below the DFE and the following provisions apply:

- (a) Must be adequately anchored to prevent flotation, collapse, or lateral movement;
- (b) Must be designed with an unfinished interior and constructed with flood damage-resistant materials below the DFE as described in §42-186(3);
- (c) Must have adequate flood openings as described in §42-186(3);
- (d) Must be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Must comply with the requirements for development in floodways in accordance with §42-187;

- (f) Must elevate any mechanical and other utility equipment in or servicing the structure to or above the DFE or must be floodproofed in accordance with §42-185;
 - (g) Prohibit storage of any hazardous or toxic materials below the DFE;
 - (h) Permits for small accessory structures may be issued to provide wet floodproofing measures in accordance with the standards described in subsections (i) through (iv) below without requiring a variance. Before issuing permits for small accessory structures, the Floodplain Administrator must verify:
 - i. Use is limited to parking of vehicles or storage;
 - ii. Size is less than or equal to a one-story, two-car garage for all A zones;
 - iii. Structures are a minimal investment and have a low damage potential with respect to the structure and contents;
 - iv. Structures will not be used for human habitation; and
 - v. Structures comply with the wet floodproofing requirements in §42-186 (3).
 - (i) Permits for accessory structures larger than the size allowed for in subsection (7)(h) above, shall require a variance to be granted on a case-by-case basis in accordance with §42-198(3). Variances shall not be granted for entire subdivisions for accessory structures.
 - (j) Permits for new construction of all agricultural structures shall require a variance to be granted on a case-by-case basis in accordance with §42-198(4).
 - (k) Accessory structures in Coastal A and V zone floodplains shall be limited to a maximum of 100 square feet.
- (8) Underground and aboveground storage (liquid and gas) tanks. Tanks and tank inlets, fill openings, outlets, and vents that are located below the DFE shall be designed, constructed, installed, and anchored to resist all flood-related loads (flotation, collapse, or lateral movement resulting from hydrostatic and hydrodynamic forces) and any other loads, including the effects of buoyancy, during flooding up to and including the 100-year flood and without release of contents into floodwaters or infiltration of floodwaters into the tanks.
- (a) A permit that includes floodplain development shall be required prior to construction or installation of any underground and aboveground tanks (including their foundation and support systems) located within a special flood hazard area.
 - (b) Loads on underground tanks and aboveground tanks exposed to flooding shall be determined assuming at least 1.3 times the potential buoyant and other flood forces acting on the empty tank.
 - (c) Tanks and associated piping shall be installed to resist local scour and erosion during the 100-year flood.
 - (d) Aboveground tanks located in Zone A/AE flood hazard areas shall be either:
 - i. Elevated to or above the DFE on platforms or structural fill;
 - ii. Elevated to or above the DFE where attached to structures and the foundation system supporting the structures shall be designed to accommodate any increased loads resulting from the attached tanks;
 - iii. Permitted below the DFE where the tank and its foundation are designed to resist all flood-related loads including floating debris; or
 - iv. Permitted below the DFE where the tank and its foundation are designed to resist flood

loads and are located inside a barrier designed to protect the tank from floating debris.

- (e) Aboveground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall be elevated to or above the DFE on platforms that conform to the foundation requirements of ASCE 24-14, Section 4.5. Aboveground tanks shall not be permitted to be located under elevated structures or attached to structures at elevations below one foot above the DFE in these areas.
- (f) Underground tanks located in areas designated as Zone V/VE, Coastal A-Zones, and other high risk flood hazard areas (see ASCE 24-14) shall have the determination of flood-related loads take into consideration the eroded ground elevation.
- (g) Tank inlets, fill openings, outlets, and vents shall be:
 - i. At or above the DFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the 100-year flood; and
 - ii. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the 100-year flood.

(9) Structures and sites for the storage or production of hazardous substances. Require that all outdoor storage sites, new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvements to be used for the production or storage of hazard substances (as defined in §42-205) which are located in the special flood hazard area shall be built in accordance with all applicable standards in this article in addition to the following requirements:

- (a) No structures containing hazardous substances shall be permitted for construction in a floodway;
- (b) Residential structures shall have the area in which the hazard substances are to be stored elevated or dry floodproofed a minimum of two (2) feet above the BFE;
- (c) Non-residential structures shall be permitted to be built below the BFE in accordance with §42-186(2) such that the area where the hazard substance production or storage is located will be:
 - i. Elevated or designed and constructed to remain completely dry to at least two (2) feet above the BFE; and
 - ii. Designed to prevent pollution from the storage containers, structure, or activity during the course of the base flood.
- (d) Any solid, liquid, or gas storage containers of hazardous substances and any associated mechanical, electrical, and conveyance equipment shall be watertight and shall be properly anchored and protected from the hydrostatic and hydrodynamic forces of flood waters and debris carried by the base flood.

It is prohibited for any outdoor storage sites, new construction and substantial improvements used for the production or storage of hazard substances (as defined in §42-205) to be located within the SFHA.

- (10) Construction of fences. New and replacement fences may be allowed in flood hazard areas if they do not act as a flow boundary and redirect the direction of flow, collect flood debris and cause blockages, cause localized increases in flood levels, or if damaged, become debris that may cause damage to other structures.
- (11) Structures elevated on fill. Fill for structures shall be designed to be stable under conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and

flood-related erosion and scour. The standards from ASCE 24 should be followed for any fill placed in flood hazard areas. All new construction for residential or non-residential structures may be constructed on permanent structural fill in accordance with the following:

- (a) The lowest floor (including basement) of the structure or addition along with any appurtenant utilities shall be no lower than one foot above the BFE.
- (b) The nearest wall foundation of the structure shall have a minimum setback distance of 25 feet from the edge of the floodplain boundary.
- (c) Fill used for structural support or protection shall consist of granular and earthen material that is free of vegetation and foreign or organic materials and suitable for its intended use.
- (d) The fill shall be placed in layers no greater than one foot deep before compacting and should extend at least ten (10) feet beyond the foundation of the structure before sloping below the BFE, said slope being no greater than a 1:1.5 (vertical/horizontal) ratio unless a stability analysis is provided by a registered professional engineer. However, the ten-foot minimum may be waived if a structural engineer certifies an alternative method to protect the structure from damage due to erosion, scour, and other hydrodynamic forces.
- (e) All new structures built on fill must be constructed on properly designed and compacted fill (ASTM D-698 or equivalent) that extends beyond the building walls before dropping below the BFE.
- (f) The top of the fill shall be no lower than one foot above the BFE.
- (g) The fill shall not adversely affect the flow or surface drainage from or onto any neighboring properties.
- (h) Structural fill, including side slopes, shall be protected from scour and erosion under flood conditions up to and including the base flood discharge. When expected velocities during the occurrence of the base flood are greater than five feet per second, armoring with stone or rock protection shall be provided. When expected velocities during the base flood are five feet per second or less, protection shall be provided by covering them with vegetative ground cover.
- (i) The design of the fill or the fill standard must be approved by a licensed professional engineer.
- (j) The applicant shall submit a Letter of Map Revision based on fill (LOMR-F) utilizing FEMA's MT-1 application forms to FEMA requesting a revision to the FIRM for the placement of fill.
- (k) This standard is not applicable for placement of fill in a floodway; fill in a floodway is prohibited.

Sec. 42-187. – Floodways.

Located within Special Flood Hazard Areas established in §42-171 are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (1) The community shall 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 one foot at any point;
- (2) Encroachments, including fill, new construction, placement of manufactured homes substantial improvements, and other development, are prohibited within the adopted regulatory floodway unless it is demonstrated through hydrologic and hydraulic analyses performed in accordance

with standard engineering practice that the proposed encroachment would not result in any increase in DFEs during the occurrence of the base flood discharge. A registered professional engineer must provide supporting technical data and certification (No-Rise Certificate) to FEMA for the proposed floodway encroachment. The No-Rise Certificate must be submitted to the Floodplain Administrator with the development permit (including a Site Plan showing the current and proposed floodway alignment) for approval;

- (3) ONLY if §42-187(1) and (2) are satisfied, then any new construction or substantial improvement in a floodway shall comply with all other applicable flood hazard reduction provisions of Division 4. After satisfying the required provisions stated in this section, encroachments in floodways should be limited to the following types of projects:

- (a) Flood control and stormwater management structures;
- (b) Road improvements and repairs;
- (c) Utility easements/rights-of-way; and
- (d) Public improvements or public structures for bridging over the floodway.

- (4) Fencing shall be prohibited in floodways unless it is demonstrated that such development will not cause any increase in the BFE. Appropriate analysis and documentation shall be submitted along with the development permit for review and approval. Fences that have the potential to block or restrict the passage of floodwaters (by trapping debris or with openings too small to allow unhindered passage of water), such as stockade and wire mesh fences, shall meet the requirements of §42-187(2).

Sec. 42-188. – Building standards for streams without established base flood elevations (Approximate A-zones).

Located within the SFHAs established in §42-171, where streams exist but no base flood data have been provided (Approximate A-Zones), the following provisions apply:

- (1) BFE data shall be provided for new subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser.
- (2) When BFE data or floodway data have not been provided in accordance with §42-171 then the Floodplain Administrator shall obtain, review, and reasonably utilize any scientific or historic BFE and floodway data available from a Federal, State, or other source, in order to administer the provisions of Article 4. ONLY if data are not available from these sources, then §42-188(4) and (5) shall apply.
- (3) All development in Zone A must meet the requirements of §42-185 and §42-186(1)–(3), (5)–(11).
- (4) In SFHAs without BFE data, new construction and substantial improvements of existing structures shall have the lowest floor (for the lowest enclosed area; including basement) elevated no less than five (5) feet above the highest adjacent grade. As the requirements set forth in §42-186(1) and (2) stipulate the lowest floor to be elevated no less than one foot above the BFE, then the structure for this condition shall be elevated no less than six (6) feet above the highest adjacent grade.
- (5) In the absence of a BFE, a manufactured home must also meet the elevation requirements of §42-186(4)(b)(ii)–(iv) in that the structure cannot be elevated above a maximum of 60 inches (5 feet) and all utilities and mechanical equipment must be elevated a minimum of three (3) feet above the highest adjacent grade.
- (6) Enclosures for elevated buildings in Zone A areas shall comply with the standards of §42-

186(3)(a). The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

Sec. 42-189. – Standards for areas of shallow flooding (AO Zones).

Special flood hazard areas established in §42-171 may include designated “AO” shallow flooding areas. These areas have base flood depths of one to three feet (1'-3') above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM) plus two feet of freeboard. If no depth number is specified, the lowest floor (including basement) shall be elevated at least five (5) feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of §42-186(3).

The Floodplain Administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction and the substantial improvement of a non-residential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified flood level in §42-189(1) or three (3) feet (if no depth number is specified), above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. As the requirements set forth in §42-186(1) and (2) stipulate the lowest floor to be elevated no less than two feet about the BFE, then the structure for this condition shall be elevated no less than six (6) feet about the highest adjacent grade.

A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered in the State of Alabama, shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above and shall provide such certification to the official as set forth above and as required in §42-181(1) and (2).

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

Sec. 42-190. – Standards for coastal high hazard areas (V-Zones and Coastal A-Zones).

Located within the areas of special flood hazard established in §42-171 are areas designated as Coastal High Hazard areas (V-Zones and Coastal A-Zones). These areas have special flood hazards associated with wave action and storm surge; therefore, the following provisions shall apply, in addition to the standards of Division 4:

- (1) All new construction and substantial improvements of existing structures shall be located landward of the reach of the mean high tide.
- (2) All new construction and substantial improvements of existing structures shall be elevated on piles, columns, or shear walls parallel to the flow of water so that:
 - (a) The bottom of the lowest supporting horizontal structural member (excluding pilings or columns) is located no lower than three feet above the base flood elevation or to the flood protection level; whichever is higher. All space below the lowest supporting member shall remain free of obstruction.
 - (b) Open lattice work, non-supporting breakaway walls, or decorative screening may be

- permitted for aesthetic purposes only and built in accordance with §42-190(5) below.
- (c) All pile and column foundations and the structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the combined effects of wind and water loads acting simultaneously on ALL building components, both non-structural and structural. Water and wind loading values shall be in accordance with the most current edition of the State Building Code and any applicable local building standards.
- (3) All new construction and substantial improvements of existing structures shall be securely anchored on pilings, columns, or shear walls.
 - (4) A professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered in the State of Alabama shall develop or review the structural design, specifications and plans for construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions contained in §42-190(2), (3), and (4) herein.
 - (5) For all new construction and substantial improvements in Zones V1-30, VE, V, and Coastal A Zones, the space below the lowest horizontal-supporting member must be free of obstruction or constructed with non-supporting breakaway walls, open wood or vinyl latticework, or insect screening which must be designed to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The following design specifications are required:
 - (a) No solid or supporting walls shall be allowed; and
 - (b) Material shall consist of lattice or mesh screening only.
 - (c) If aesthetic lattice work, non-supporting breakaway walls, or screening is utilized, any enclosed space shall not be used for human habitation but, shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
 - (d) For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a professional engineer, who is licensed to practice in the State of Alabama, or licensed architect, who is registered in the State of Alabama certifies that the designs proposed meet the following conditions:
 - i. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - ii. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those requirements by applicable state or local building codes.
 - (6) Enclosures below elevated buildings shall be useable solely for storage, parking of vehicles, or building access. Such space will not be used for human habitation and not finished or partitioned into separate rooms.
 - (7) Above grade (hanging) enclosures shall have flood openings in accordance with §42-186(3) and be constructed with flood damage-resistant material below the flood protection elevation. One or more floor grates or drains shall be installed in the enclosure floor to allow water to have

unimpeded ingress into and egress from the enclosure to reduce damages from buoyancy loads and from added weight.

- (8) Prior to construction, plans for any structure using lattice, breakaway walls, or decorative screening must be submitted to the Floodplain Administrator for approval.
- (9) Any alteration, repair, reconstruction or improvement to any structure shall not enclose the space below the lowest floor except with lattice-work, breakaway walls, or decorative screening, as provided in this section.
- (10) In Coastal AE Zones, property owners shall be required to execute an elevation certificate with an affidavit acknowledging that all flood openings in breakaway walls will be maintained as flood vents, and that the elimination or alteration of the openings in any way will violate the requirements of §42-186(3). Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance.
- (11) Property owners shall be required to execute and record with the structure's deed a non-conversion agreement declaring that the area below the lowest floor of the structure or the detached accessory building shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area as described in §42-186(3)(g).
- (12) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, V, and Coastal A-Zones. The Floodplain Administrator shall maintain a record of all such information.
- (13) Prohibit the use of fill for structural support of buildings or structures and from being placed or used under the buildings or structures except for minor site grading for drainage purposes. Nonstructural fill may be used on coastal building sites for minor landscaping and site grading for drainage purposes to the extent that the fill does not interfere with the free passage of floodwaters and debris underneath buildings or cause changes in flow direction during coastal storms. Changes to site grades, other than those prescribed above, must be avoided as they can cause damage to buildings on the site or to adjacent buildings.

The Floodplain Administrator shall approve design plans for landscaping/ aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:

- (a) Particle composition of fill material does not have a tendency for excessive natural compaction;
 - (b) Volume and distribution of fill will not cause wave deflection to adjacent properties; and
 - (c) Slope of fill will not cause wave run-up or ramping.
- (14) Fill placed in coastal zones should be similar (compatible) to the natural soils in the area and not contain large rocks or debris, organic materials, or clay. Minor site grading is to be limited to the addition of one to two feet of coastal zone compatible soils. If additional fill (greater than two feet) or non-compatible soils are to be added to the site, certification by a professional engineer or architect shall be submitted along with design calculations demonstrating that no adverse impacts will result to the building. (For guidance, see FEMA Technical Bulletin #5 "Free of Obstruction Requirements.")
 - (15) Prohibit man-made alteration of sand dunes and mangrove stands which would increase potential flood damage.
 - (16) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes park or subdivision. A replacement manufactured home may be placed on

a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of §42-186(4) are met. All standards from §42-190(1)–(15) must also be met.

- (17) A recreational vehicle placed on a site in a VE Zone or Coastal A-Zone must meet all the applicable requirements for “new construction” in §42-185 and §42-186 including the elevation and anchoring requirements for manufactured homes, unless it is either:

- (a) On the site for fewer than 180 consecutive days; or
- (b) Fully licensed and ready for highway use. “Ready for highway use” means that it is on its wheels or jacking system, has a valid state license tag, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.

If a recreational vehicle does not meet the criteria of §42-190(17)(a) and (b), then it must meet the requirements in §42-190(1)–(16) along with all other provisions for development in this article.

Sec. 42-191. - Standards for subdivisions and other development.

All subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include within the drawings, plans, and permits for such proposals the following:

- (1) BFE data;
- (2) Provisions to minimize flood damage;
- (3) Public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (4) Adequate drainage provided to reduce exposure to flood hazards without negatively impacting adjacent properties;
- (5) Preliminary plans for review and approval of the platted subdivision which identifies the Special Flood Hazard Area, floodway boundaries, the BFE, and other areas regulated by the community; and
- (6) Final subdivision plats that identify the boundary of the special flood hazard area, the floodway boundary, the BFEs, and any drainage easements to reduce the risk for flash flooding.

Sec. 42-192. - Critical facilities.

Construction of new and substantially improved critical facilities, which are those for which the effects of even a slight chance of flooding would be too great, shall be located outside the limits of the SFHA or other flood hazard area regulated by the community. These types of facilities (hospitals, fire stations, police stations, storage of critical records, etc.) are given special consideration when formulating regulatory alternatives and floodplain management plans. Construction of new critical facilities (including the modification of an existing structure not previously classified as a critical facility) shall be permissible within the SFHA or other area regulated by the community only if no feasible alternative site is available and access to the facilities remains available during a 0.2 percent chance flood (a.k.a., 500-year flood).

- (1) Critical facilities constructed within the SFHAs shall have the lowest floor elevated three feet above the BFE at the site (or to the 0.2 percent chance flood elevation whichever is greater).
- (2) Floodproofing and sealing measures must be implemented to ensure that any and all on-site toxic substances will not be displaced by or released into floodwaters.
- (3) Multiple access routes, elevated to or above the 0.2 percent flood elevation, shall be provided to

all critical facilities to the maximum extent possible.

(4) Critical facilities must be protected to or above the 0.2 percent chance flood and must remain operable during such an event.

(a) The community's flood response plan must list critical facilities.

(b) Other facilities in low-risk flood zones that may also be needed to support flood response efforts must be included on the critical facility list.

(5) The "use" classification of any structure shall not be changed to that of a critical facility, where such a change in use will render the new critical facility out of conformance with this section.

Sections 42-193 through 42-194 reserved

DIVISION 5. - VARIANCE PROCEDURES

Sec. 42-195. - Designation of variance and appeals board.

The Floodplain Development Ordinance Board of Adjustment (FDO Board) is hereby established by the Council of the City of Orange Beach to hear and decide requests for appeals or variances from the requirements of this Ordinance. The FDO Board shall be comprised of the Mayor and full Council of the City of Orange Beach.

Sec. 42-196. - Duties of board.

The FDO Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this article. Any person aggrieved by the decision of the FDO Board may appeal such decision to the Circuit Court of Baldwin County, as provided by Alabama Code.

Sec. 42-197. - Conditions for variances.

The provisions of this article are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(1) A variance may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of §42-197(3) and (4), and §42-200(1) and (2).

(2) In the instance of a Historic Structure, a determination is required that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(3) A variance shall be issued ONLY when there is:

(a) A finding of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship (cannot be personal physical or financial hardship); and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(4) A variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall not be issued "after the fact."

Sec. 42-198. - Variance procedures.

In reviewing requests for variance, the Floodplain Development Ordinance Board (FDO Board) shall consider all technical evaluations, relevant factors, and standards specified in other sections of this article, and:

- (1) Certain facilities and structures must be located on or adjacent to water in order to perform their intended purpose which may result in practical and operational difficulties due to the physical characteristics of the property. Variances may be issued for development necessary for conducting of a functionally dependent use, provided the criteria of this article are met, no reasonable alternative exists, the development is protected by methods that minimize flood damage during the base flood, and it creates no additional threats to public safety.
- (2) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (3) Variances may be issued for the construction or substantial improvement of accessory structures provided it has been determined that the proposed structure:
 - (a) Represents minimal investment and has low damage potential (amount of physical damage, contents damage, and loss of function);
 - (b) Is larger than the size limits specified in §42-186(7)(i); and
 - (c) Complies with the wet floodproofing construction requirements of §42-186(3).
- (4) Variances may be issued for the construction or substantial improvement of agricultural structures provided it has been determined that the proposed structure:
 - (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses;
 - (b) Has low damage potential (amount of physical damage, contents damage, and loss of function);
 - (c) Does not increase risks and 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, liquefied natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials;
 - (d) 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);
 - (e) Complies with the wet floodproofing construction requirements of §42-186(3).
- (5) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners.
- (6) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.
- (7) Careful consideration and evaluation should be given to the following factors:
 - (a) The danger of life and property due to flooding or erosion damage including materials that may be swept onto other lands to the injury of others;
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and the community;
 - (c) The safety of access to the property during flood conditions for daily traffic and emergency

vehicles;

- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity of the facility to be at a waterfront location, where applicable;
- (f) The compatibility of the proposed use with existing and anticipated development based on the community's comprehensive plan for that area;
- (g) If applicable, the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action expected at the site; and
- (h) The costs associated with providing governmental services to the development during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and community infrastructure such as streets, bridges, and culverts.

Upon consideration of factors listed above, and the purpose of this article, the Floodplain Development Ordinance Board (FDO Board) may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Sec. 42-199. - Variances for historic structures.

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 to preserve the historic character and design of the structure.

Sec. 42-200. - Variance notification and records..

- (1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that specifies the difference between the BFE and the elevation of the proposed lowest floor and stating that the issuance of such a variance could:
 - (a) result in flood insurance rate increases in the hundreds and possibly thousands of dollars annually depending on structure and site-specific conditions; and
 - (b) increase the risk to life and property resulting from construction below the base flood level.
- (2) The Floodplain Administrator shall maintain a record of all variance actions and appeal actions, including justification for their issuance. Report any variances to the Federal Emergency Management Agency Region 4 and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (3) A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the City Clerk and shall be recorded in a manner so that it appears in the chain of title (i.e., deed) of the affected parcel of land.

Sections 42-201 through 42-204 reserved

DIVISION 6. - DEFINITIONS

Sec. 42-205. - Definitions.

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

A Zone means the special flood hazard areas on a FIRM without base flood elevations determined.

Accessory structure (also referred to as appurtenant structures) means a structure which is located on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Detached garages and small sheds used for limited storage are considered accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings. An accessory structure specifically excludes structures used for human habitation.

Addition (to an existing building) means any improvement that increases the square footage of a structure. These include lateral additions added to the front, side, or rear of a structure, vertical additions added on top of a structure, and enclosures added underneath a structure. NFIP regulations for new construction apply to any addition that is considered a substantial improvement to a structure.

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

AE Zone means the special flood hazard areas on a FIRM with base flood elevations determined.

Agricultural structure means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Aquaculture structures are included within this definition. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

AH Zone means area of special flood hazards on a FIRM having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet, and with water surface elevations determined.

AO Zone means an area of special flood hazards on a FIRM having shallow water depths and/or unpredictable flow paths between one (1) and three (3) feet.

Appeal means a request for a review of the Floodplain Development Ordinance Board interpretation of any provision of this article.

Appurtenant structure (see definition for “accessory structure”)

AR/AE, AR/AH, AR/AO, and AR/A Zones means an area of special flood hazard on a FIRM that results from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

A99 Zone means an area of special flood hazard on a FIRM where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

Area of future-conditions flood hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH or VO zone on a community's FIRM with a 1 percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard (see definition for "special flood hazard area")

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the “one percent chance flood”).

Base flood elevation (BFE) means the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year. The BFE is shown on the FIRM

for zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, AR/AO, V1–V30 and VE. It is the regulatory requirement for the elevation of flood proofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium.

Basement means any portion of a building having its floor sub grade (below ground level) on all sides.

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 (also see "structure") means a structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site; a manufactured home or a mobile home without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws. "Building" does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle.

Coastal A Zone means the area landward of a V Zone, or landward of an open coast without mapped V Zones. In a Coastal A Zone, the principal source of flooding will be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During base flood conditions, the potential for breaking wave heights between 1.5 feet and 3.0 feet will exist.

Coastal Barrier Resources System means the system of protected coastal areas that includes ocean-front land, the Great Lakes and Other Protected Areas (OPAs). Coastal barriers serve as important buffers between coastal storms and inland areas, often protecting properties on land from serious flood damage. Also, coastal barriers provide a protective habitat for aquatic plants and animals. The Coastal Barrier Resources Act (CBRA) of 1982 restricted development on the CBRS, in an effort to protect the barrier system and prevent future flood damage. If you live in a CBRS area, you are eligible for federally regulated flood insurance only if your property was built before 1982 and your community participates in the NFIP.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Community means any State or area or political subdivision thereof, or any Native American tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Community rating system (CRS) means a voluntary program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Condominium building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

Critical facility (also referenced as "critical action") means facilities or activities for which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These facilities should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible.

Cumulative substantial improvement/damage means any combination of reconstruction, alteration, or improvement to a building, taking place during a 10-year period, in which the cumulative percentage of improvement equals or exceeds 50 percent of the current market value of the structure before the "start of construction" of the initial improvement. Any subsequent

improvement project costs shall be added to the initial costs for the initial improvement project. At the end of a 10-year period from the initial improvement project, an updated valuation for the structure can be used for the next time period. Damages can be from any source.

Design flood elevation (DFE) means the locally adopted regulatory flood elevation. It is the minimum elevation to which a structure must be elevated or floodproofed. DFE is the sum of the base flood elevation and freeboard, based a building's structural category. In areas designated as Zone AO on a community's flood map, the DFE is the elevation of the highest existing grade of a building's perimeter plus the depth number specified on the flood hazard map. In areas designated as Zone AO where a depth is not specified on the map, the depth is two feet. In all cases, the DFE must be at least as high as the base flood elevation.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.

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, pilings, posts, columns, piers, or shear walls.

Elevation certificate means a FEMA form used as an administrative tool of the NFIP to provide building elevation information necessary to ensure compliance with community floodplain management ordinances, to inform the proper insurance premium, and to support a request for a LOMA, CLOMA, LOMR-F, or CLOMR-F.

Encroachment means activities or construction within the floodway including fill, new construction, substantial improvements, and other development.

Existing construction means, for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 12, 1973, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

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

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Fair market value means the price that the seller is willing to accept and the buyer is to pay on the open market and in an arm's length transaction.

Flood or flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - i. The overflow of inland or tidal waters;
 - ii. The unusual and rapid accumulation or runoff of surface waters from any source; or
 - iii. Mudslides which are proximately caused by flooding as described in paragraph "b" of this definition and are akin to a river of liquid and flowing mud on the surfaces of

normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (b) 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 highwater level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph “a” of this definition.

Flood damage-resistant material means any building product capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Prolonged contact is defined as at least 72 hours. Significant damage is any damage requiring more than low-cost cosmetic repair (such as painting).

Flood elevation determination means a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood 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 (see definition for "flood elevation study ")

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition for “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 this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as those for floodplain management, stormwater management, watershed management, grading/ earthwork, and erosion control), and other applications of police power. This term describes state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

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 hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

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 an abnormal tidal surge, 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.

Floodway (see definition for “regulatory floodway”)

Floodway fringe or *flood fringe* means the portion of the Special Flood Hazard Area outside of the floodway, which experiences shallower, lower-velocity floodwater than in the floodway. It serves as a temporary floodwater storage area during a flood.

Floodway encroachment lines means the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain 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.

Future-conditions flood hazard area or *future-conditions floodplain* (see definition for “area of future-conditions flood hazard”)

Future-conditions hydrology means the flood discharges associated with projected land-use conditions based on a community's zoning maps and/or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

Hazardous substance/material means any substance or material that, when involved in an accident and released in sufficient quantities, poses a risk to people’s health, safety, and/or property. These substances and materials include explosives, radioactive materials, flammable liquids or solids, combustible liquids or solids, poisons, oxidizers, toxins, and corrosive materials. It includes any substance defined as a hazardous substance pursuant to 42 U.S.C. §9601(14) or listed as a hazardous waste pursuant to the Hazardous Wastes Management Act, Section 22-30-1 et seq. and the regulations promulgated thereunder.

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:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) 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;

- (c) Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
 - i. By an approved state program as determined by the Secretary of the Interior, or
 - ii. Directly by the Secretary of the Interior in states without approved programs.

Increased cost of compliance (ICC) means a claim under a standard NFIP flood insurance policy, available to flood insurance policyholders who need additional funding to rebuild after a flood. It provides up to \$30,000 to help cover the increased cost of mitigation measures to bring a building into compliance with the latest state or local floodplain management ordinances. Acceptable mitigation measures are elevation, floodproofing, relocation, and demolition, or any combination of these measures.

Letter of map change (LOMC) is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:

- (a) *Letter of map amendment (LOMA)* means an amendment based on technical data showing that a property was incorrectly included in a designated SFHA, was not elevated by fill (only by a natural grade elevation), and will not be inundated by the one percent chance flood. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
- (b) *Letter of map revision (LOMR)* means a revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.
- (c) *Conditional letter of map revision (CLOMR)* means a formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Levee 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.

Levee 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 adjacent grade means the lowest elevation of the natural or regraded ground surface, or structural fill (or concrete slab or pavement), at the location of a structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this article. This definition applies even when the floor below ground level is not enclosed by full-height walls.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value (see definition for “fair market value”)

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mixed-use building means a building that has both residential and non-residential uses.

National flood insurance program (NFIP) is a federal program created by the United States Congress in 1968 to identify flood-prone areas nationwide and make flood insurance available for properties in participating communities. Communities must enact and enforce floodplain management regulations that meet or exceed the criteria established by FEMA in order to participate in the program. This program requires properties within the floodplain with a federally backed or regulated mortgage, or those that receive federal housing subsidies, to buy flood insurance.

National geodetic vertical datum (NGVD) of 1929 a national standard reference datum for elevations, formerly referred to as Mean Sea Level (MSL) of 1929. NGVD 1929 may be used as the reference datum on some Flood Insurance Rate Maps (FIRMs).

New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

An existing building is considered to be new construction if it is substantially improved or once it has been repaired after being substantially damaged/improved.

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 January 12, 1973.

Non-residential building means a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-residential property means either a non-residential building, the contents within a non-residential building, or both.

North American Vertical Datum (NAVD) of 1988 means the vertical control datum established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988. It replaces the National Geodetic Vertical Datum (NGVD) of 1929. Used by FEMA in many recent Flood Insurance Studies as the basis for measuring flood, ground, and structural elevations.

Obstruction means, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channel construction, bridge, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any

watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Post-FIRM means, for floodplain management purposes, a post-FIRM building is one for which construction began after the effective date of a community's NFIP-compliant floodplain management ordinance. For the purpose of determining flood insurance rates under the NFIP, a post-FIRM building is a building for which construction began on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, including any subsequent improvements to such structures.

Pre-FIRM means, for floodplain management purposes, a building for which the start of construction occurred before the effective date of the community's NFIP-compliant floodplain management ordinance. For the purpose of determining flood insurance rates under the NFIP, a pre-FIRM building is a building for which construction began prior to the effective date of an initial Flood Insurance Rate Map or on or before December 31, 1974, whichever is later.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Recreational vehicle means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regular program means the program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRMs effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

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 structures or other development into full or partial compliance with State or local regulations or, if this is not possible, to reduce the impacts of its non-compliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provision of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive loss agricultural structure means an agricultural structure covered by a NFIP contract for flood insurance that has incurred flood-related damage on two (2) separate occasions in which

the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event.

Repetitive loss property means any NFIP-insured single family or multi-family residential building for which two or more claims of more than \$1,000 were paid by the NFIP within any rolling 10-year period, since 1978. A repetitive loss property may or may not be currently insured by the NFIP.

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.

Residential property means either a residential building or the contents within a residential building, or both.

Riverine means floodplain relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. Riverine floodplains have readily identifiable channels.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Section 1316 means Section 1316 of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property which the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Once a duly constituted State or local authority declares a structure as being in violation, the Administrator must deny flood insurance coverage provided that the individual or office making the declaration has the authority to do so and that the law or regulations violated was, in fact, intended to discourage or otherwise restrict land development or occupancy in the flood-prone area.

Section 1316 was intended for use primarily as a backup for local enforcement actions (i.e., if a community could not force compliance through the enforcement mechanisms in its regulations, it could use Section 1316 as additional leverage) and was not intended merely as a mechanism to remove bad risks from the policy base. Section 1316 will only be implemented in instances where States or communities submit declarations specifically for that purpose.

Severe repetitive loss structure means a single family property (consisting of 1 to 4 residences) that is covered under flood insurance by the NFIP and has incurred flood-related damage for which four or more separate claims payments have been paid under flood insurance coverage, with the amount of each claim payment exceeding \$5,000 and with cumulative amount of such claims payments exceeding \$20,000; or for which at least two separate claims payments have been made with the cumulative amount of such claims exceeding the reported value of the property.

Sheet flow area (see definition for "area of shallow flooding")

Single-family dwelling means either (a) 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 (b) 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 (SFHA) means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year as shown on a FHBM or FIRM as Zones A, AE, AH, AO, AR, AR/AE, AR/AO, AR/AH, AR/A, A99, or VE. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) means the date the development or building permit was issued (includes substantial improvement), provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation.

"Permanent construction" does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a liquid or gas storage tank, that is principally above ground, as well as a manufactured home. The terms "structure" and "building" are interchangeable in the NFIP. For insurance purposes, structure means:

- (a) A building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;
- (b) 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
- (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (c) of this definition, or a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "repetitive loss" or "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions (provided that said code deficiencies were not caused by neglect or lack of maintenance on the part of the current or previous owners); or
- (b) 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 the City of Orange Beach from the terms of a floodplain management regulation.

V Zone (see definition for “coastal high hazard area”)

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the Code of Federal Regulations (CFR) §44, Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Watercourse means only the channel and banks of an identifiable watercourse and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wet floodproofing means a method of construction that involves modifying a building to allow floodwaters to enter it in order to minimize damage to the building, using flood damage-resistant materials below the DFE throughout the building, raising utilities and important contents to or above the DFE, installing and configuring electrical and mechanical systems to minimize disruptions and facilitate repairs, installing flood openings or other methods to equalize the hydrostatic pressure exerted by floodwaters, and, where required, installing pumps to gradually remove floodwater from basement areas after the flood.

Wet floodproofing shall not be utilized as a method to satisfy the requirements of this article for bringing substantially damaged or improved structures into compliance. Wet floodproofing is not allowed in lieu of complying with the lowest floor elevation requirements for new residential buildings.

X Zones (shaded) means the areas on a FIRM subject to inundation by the flood that has a 0.2-percent chance of being equaled or exceeded during any given year, often referred to as the 500-year flood.

X Zones (unshaded) designates areas on a FIRM where the annual probability of flooding is less than 0.2 percent.

Zone of imminent collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

Sections 42-206 through 42-209 reserved

DIVISION 7. - LEGAL STATUS PROVISIONS

Sec. 42-210. - Severability.

If any section, clause, sentence, or phrase of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this article.

Sec. 42-211. - Enforceability of ordinance and future revisions.

The provisions within this article must be legally enforceable; applied uniformly throughout the community to all privately and publicly owned land within any regulated flood hazard areas; meet the minimum standards set forth in §60.3 of the Code of Federal Regulations Title 44; and the community must provide that the provisions of this article take precedence over any less restrictive

conflicting local laws, ordinances, or codes.

If the City of Orange Beach repeals its floodplain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §60.3 of the Code of Federal Regulations Title 44, it shall be suspended from the National Flood Insurance Program (NFIP). The community eligibility shall remain terminated after suspension until copies of adequate floodplain management regulations have been received and approved by the Federal Insurance Administrator. To avoid such occurrences, the City of Orange Beach will coordinate with the Alabama NFIP State Coordinator and FEMA Regional Office prior to any revisions to this article. Without prior approval of the Federal Insurance Administrator, the community shall not adopt and enforce revised floodplain management regulations.

From time-to-time Part 60 of the Code of Federal Regulations Title 44 may be revised to advance flood risk reduction measures as experience is acquired under the NFIP and new information becomes available. The City of Orange Beach agrees to revise its floodplain development ordinance to comply with any such changes within six months from the effective date of any new federal regulation.

2. That Ordinance No. 2019-1314 of the City of Orange Beach, Alabama, is hereby repealed. This repealer shall not, however, affect, terminate, or preclude any rights, duties, requirements, or terms which arose or existed while said ordinance was in effect, all of which are specifically preserved. All other ordinances, resolutions, or parts in conflict with this ordinance, to the extent of such conflict, are repealed; and
3. That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 5th DAY OF MARCH, 2024.

Renee Eberly
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2024-xxxx**
was posted on _____ in the following three

(3) public places:

Orange Beach City Hall _____

Orange Beach Post Office _____

Orange Beach Public Library _____

Renee Eberly, City Clerk



**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: Community Development

Description of Topic: Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0204-PUD-24, Admiral Self Storage PUD. (Suggested date 3/19/2024) (KA)

Background/Description: Sawgrass Consulting LLC, on behalf of Collins Enterprises and Cactus Properties LLC, requests **Preliminary and Final PUD Approval** to rezone 3.14 acres to Planned Unit Development (PUD) for an enclosed self-storage facility. The property is located at 4251 Orange Beach Boulevard at the northwest corner of the intersection of Orange Beach Boulevard and Rose Lane.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None



**REGULAR COMMITTEE OF THE WHOLE MEETING
FEBRUARY 20, 2024**

Departments: Community Development

Description of Topic: Set a public hearing date for an ordinance amending Ordinance No. 172, the Zoning Ordinance, Case No. 0205-PUD-24, Mill's Row Beachside PUD. (Suggested date 3/19/2024) (KA)

Background/Description: Rockpoint Development LLC, on behalf of Isle of Wight Property Development LLC, requests **Preliminary and Final PUD Approval** to rezone 0.89 acres from Neighborhood Business (NB) to Planned Unit Development (PUD) for a residential development containing 16 townhome units. The property is located at 25086, 25100 and 25122 Perdido Beach Boulevard.

Action Options/Recommendation:

Source of Funding (if applicable):

ATTACHMENTS:

None