

**2011 FLOODPLAIN MANAGEMENT ORDINANCE
FOR LINCOLN COUNTY**

First Reading:
Second Reading:
Publication Date:
Effective Date:

ORDINANCE NO. _____

AN ORDINANCE ENACTING THE 2011 FLOODPLAIN MANAGEMENT ORDINANCE FOR LINCOLN COUNTY AND REPEALING THE 1989 FLOOD DAMAGE PREVENTION ORDINANCE AS AMENDED

WHEREAS, the flood hazard areas of Lincoln County are subject to periodic inundation which results in the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, these flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage; and

WHEREAS, the Legislature of the State of South Dakota has in SDCL §§ 7-18-14 and 7-18-15 delegated the authority to adopt regulations designed to minimize flood losses to local governmental units; and

WHEREAS, the enactment and implementation of floodplain regulations is required for participation in the National Flood Insurance Program;

NOW, THEREFORE, BE IT ORDAINED by the Lincoln County Board of Commissioners that the 2011 Floodplain Management Ordinance for Lincoln County is hereby adopted;

BE IT FURTHER ORDAINED that the 1989 Flood Damage Prevention Ordinance, as amended, is hereby repealed;

BE IT FURTHER ORDAINED that copies of the 2011 Floodplain Management Ordinance for Lincoln County shall be filed with the County Auditor and Register of Deeds.

The public may inspect the entire 2011 Floodplain Management Ordinance at the Office of the Lincoln County Auditor during regular business hours.

Dated this _____ day of _____, 2011.

Chairman, Lincoln County Commissioners

ATTEST:

Auditor, Lincoln County

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ARTICLE 1.00 GENERAL PROVISIONS

1.01 Title

These regulations shall be known as the 2011 Floodplain Management Ordinance for Lincoln County.

1.02 Statutory Authorization

Lincoln County has elected to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid act, provides that areas of the County having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. The National Flood Insurance Program was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Program is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

The Legislature of the State of South Dakota has, in SDCL §§ 7-18-14 and 7-18-15, delegated the authority to adopt regulations designed to minimize flood losses to local governmental units. Therefore, as a basis for adopting such regulations, the Lincoln County Board of Commissioners does hereby make the following legislative findings of fact:

- 1) The flood hazard areas of Lincoln County are subject to periodic inundation which results in the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- 2) These flood losses are created by the cumulative effect of obstructions in floodplains, which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

1.03 Objectives

The objectives of this ordinance are to protect human life, minimize the expenditure of public money for flood control projects, minimize the need for rescue and relief efforts associated with flooding, minimize prolonged business interruption, minimize damage to public facilities and utilities, help maintain a stable tax base by providing for the sound use and development of flood-prone areas, contribute to improved construction techniques in the floodplain, and ensure that potential owners and occupants are notified that property is within the flood hazard areas.

1.04 Scope

The provisions of this ordinance shall apply to all proposed development in a flood hazard area within the unincorporated area of Lincoln County.

1.05 Applicability

This ordinance provides minimum requirements for development located in flood hazard areas, including the subdivision of land, installation of utilities, placement and replacement of manufactured homes, new construction and repair, reconstruction, rehabilitation, or additions to new construction, and substantial

improvement of existing building and structures, including restoration after damage and the placement of fill, debris, equipment, or materials.

1.06 Establishment of flood hazard areas

Areas of Special Flood Hazard have been identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "Flood Insurance Study, Lincoln County, South Dakota and Incorporated Areas," dated together with the accompanying Flood Insurance Rate Map (FIRM), dated April 2, 2008, including flood hazard boundaries, floodways and related supporting data. The flood hazard map and supporting data are hereby adopted by this reference and declared to be part of this ordinance.

1.07 Abrogation and greater restrictions

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

1.08 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.

1.09 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 may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of Lincoln County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made hereunder.

1.10 Severability

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

ARTICLE 2.00 POWERS AND DUTIES

2.01 General.

The Lincoln County Geographic Information Services (GIS) Coordinator is hereby appointed the Floodplain Administrator. The Floodplain Administrator is hereby authorized and directed to enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance and to adopt policies and procedures to clarify the application of its provisions. Such interpretations, policies and procedures shall be in conformance with the intent and purpose of this ordinance. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this ordinance.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- 1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- 2) Review permit applications to determine whether proposed building sites, including the placement of manufactured homes, will be reasonably safe from flooding.
- 3) Review, approve or deny all applications for development permits required by this ordinance.
- 4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344) from which prior approval is required.
- 5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- 6) Notify, in riverine situations, adjacent communities, the State Coordinating Agency, the Department of Public Safety, and the Office of Emergency Management prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
- 7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- 8) When base flood elevation data has not been provided in accordance with Article 2.06, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 4.
- 9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- 10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A, AE, and AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

2.02 Delegation of power.

The Floodplain Administrator shall have the authority to delegate power to other employees to assist in the administration and enforcement of this ordinance.

2.03 Permit applications.

The Floodplain Administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:

- 1) 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;
- 2) Constructed with materials resistant to flood damage;
- 3) Constructed by methods and practices that minimize flood damages; and
- 4) 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.

2.04 Phased approval.

The Floodplain Administrator is authorized to issue permits for the construction of foundations or any other part of a building or structure pending the submission of certificates required in Section 3.06. The holder of such permit for the foundation or other parts of the building or structure shall proceed at the holder's own risk without assurance that a permit for the entire structure will be granted.

2.05 Other permits.

It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by federal or state agencies having jurisdiction over such development.

2.06. Determination of base flood elevations.

If base flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:

- 1) Obtain, review and reasonably utilize data available from a federal, state or other source; or
- 2) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques; such analyses shall be undertaken by a professional engineer licensed in this state, who shall certify that the technical methods used reflect currently accepted

engineering practices. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

2.07 Watercourse alteration.

Prior to issuing a permit for any alteration or relocation of any watercourse in a flood hazard area, the Floodplain Administrator shall require the applicant to:

- 1) Provide notification of the proposal to the appropriate authorities of all affected adjacent government jurisdictions, the South Dakota Division of Emergency Management, and the Federal Insurance Administrator. A copy of the notification shall be maintained as a permanent record by the Floodplain Administrator.
- 2) Demonstrate that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

2.08 Records.

The Floodplain Administrator shall maintain a permanent record of all permits issued in flood hazard areas, including copies of inspection reports, required certifications, and notifications.

2.09 Subdivisions.

Any subdivision proposal, including proposals for manufactured home parks and subdivisions greater than ten lots or five acres, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- 1) All such proposals are consistent with the need to minimize flood damage;
- 2) All public utilities and facilities, such as sewer, gas, electric, and water systems are located and constructed to minimize or eliminate flood damage;
- 3) Adequate drainage is provided to reduce exposure to flood hazards.

ARTICLE 3.00 PERMITS AND CERTIFICATES

3.01 Required.

Any person who intends to conduct any development in a flood hazard area or buffer zone shall first make application to the Floodplain Administrator and shall obtain the required permit prior to the start of development. Permits are required for all proposed construction and other developments, including the placement of manufactured homes, within Zone A or AE on the community's FIRM and within 100 feet of distance or 8 feet of elevation (whichever comes first) from a special flood hazard area.

3.02 Application for permit.

The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. Such application shall:

- 1) Identify and describe the development to be covered by the permit;
- 2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and locate the site;
- 3) Indicate the use and occupancy for which the proposed development is intended;
- 4) Be accompanied by construction documents, grading and filling plans, and other information deemed appropriate by the Floodplain Administrator;
- 5) State the valuation of the proposed work when required;
- 6) Be signed by the owner or the owner's authorized agent.

3.03 Validity of permit.

The issuance of a permit under this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of this ordinance.

3.04 Expiration.

A permit shall become invalid if the proposed development is not commenced within one year after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, extensions of time.

3.05 Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a permit issued under this ordinance whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of Lincoln County.

3.06. Flood hazard certificates.

The following certificates shall be submitted to the Floodplain Administrator:

- 1) *Elevation certificate* upon the placement of the lowest floor, including basement, prepared by a registered professional engineer or land surveyor, of the elevation of the lowest floor, including the basement. The Floodplain Administrator may require submission of the certificate upon the placement of the lowest floor, including basement, prior to further vertical construction;
- 2) *Designed opening certificate* prepared by a registered professional engineer for fully enclosed areas below the base flood elevation where provisions to allow for the automatic entry and exit of flood waters do not meet the minimum requirements in section 6.02;
- 3) *“No-rise” certificate* along with supporting hydraulic computations, prepared by a registered professional engineer, that development in a designated floodway will result in no increase in the base flood heights during the occurrence of a base flood (100-year) discharge;
- 4) *Fill placement certification* prepared by a registered professional engineer when required by the Floodplain Administrator to insure proper compaction and slope protection for fill placed in the floodplain;
- 5) *Manufactured home foundation design certification* to meet the requirements in Section 6.02.
- 6) *Lowest Floor TB 10-01 certification* prepared by a professional engineer, professional geologist, professional soil scientist, or other qualified design professional when required by the Floodplain Administrator for properties that have or will receive a Letter of Map Amendment or Letter of Map Revision based upon fill or are located within the community’s flood hazard area buffer zone.

3.07. Permit Fees.

A fee of \$50.00 shall be charged for the filing of a Floodplain Management Ordinance Permit.

ARTICLE 4.00 FLOOD HAZARD AREA DEVELOPMENT STANDARDS

401 General Standards.

In all areas of flood hazards the following provisions are required for new construction or substantial improvements:

- 1) All new construction or 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;
- 2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- 3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- 4) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least one foot above the base flood elevation. Electrical wiring and outlets, switches, junction boxes, and panels shall be elevated at least one foot above the base flood elevation unless they conform to the provisions of the electrical code for location of such items in wet locations. Duct systems shall not be installed below one foot above the base flood elevation;
- 5) Sewer facilities. All new or replaced sanitary sewer facilities, sewer treatment plants (including all pumping stations and collector systems) and onsite waste disposal systems shall be designed to minimize or eliminate infiltration of flood waters into the facilities and discharges into flood waters;
- 6) All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- 7) Protection of water supply and sanitary sewage systems. All new and replacement water supply systems shall be designed to minimize infiltration of flood waters into the systems in accordance with the plumbing code. New and replacement sanitary sewage systems shall be designed to minimize infiltration of flood waters into the systems and discharges from systems into flood waters in accordance with the plumbing code;
- 8) Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property;
- 9) All materials or equipment placed in a flood hazard area that are flammable, explosive, or injurious to human, animal or plant life is prohibited unless elevated two feet above the base flood elevation. Other buoyant materials, equipment, or debris shall be anchored to prevent movement due to flood waters.

4.02 Specific Standards

In all areas of flood hazard where base flood elevation data has been provided as set forth in this ordinance, the following provisions are required:

- 1) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall certify to the Floodplain Administrator that the standard has been satisfied. Properties that have received a Letter of Map Amendment or Letter of Map Revision based upon fill must have the lowest structure opening elevated to one foot above the base flood elevation and conform to the provisions of FEMA/FIA-TB-10.

2) Nonresidential Construction

New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect 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 accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained by the Floodplain Administrator.

3) Enclosures

New construction or substantial improvements, including crawl spaces, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
- b) The bottom of all openings shall be no higher than one foot above grade;
- c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4) Manufactured Homes

- a) *Elevation.* All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation.
- b) *Foundations.* All new and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on a permanent, reinforced foundation (including pile or column foundations) that is adequately anchored to resist flotation, collapse, and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components.
- c) *Anchoring.* All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage. Manufactured homes shall be securely anchored to an

adequately anchored foundation system to resist flotation, collapse, and lateral movement. Methods of anchoring are authorized to 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 anchoring requirements for resisting wind forces.

5) Recreational Vehicles

- a) *Temporary placement.* Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.
- b) *Permanent placement.* Recreational vehicles that are not ready for highway use or that are to be placed on a site for more than 180 consecutive days shall meet the requirements of Section 6.07 for Manufactured Homes.

4.03 Subdivision Standards.

The following requirements shall apply in the case of any proposed subdivision, including proposals for manufactured home parks and subdivisions, any portion of which lies within a flood hazard area:

- 1) The flood hazard area, including floodways shall be delineated on preliminary and final subdivision plans;
- 2) Base flood elevations shall be shown on preliminary and final subdivision plans;
- 3) Residential building lots shall be provided with adequate buildable area outside the floodway;
- 4) The design criteria for utilities and facilities set forth in this ordinance and appropriate code, ordinances and laws shall be met;
- 5) Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.
- 6) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions which are greater than 10 lots or 5 acres, whichever is less.

4.04 Buffer Zone Standards

For areas located within 100 feet (or 8 feet of increase in elevation, whichever occurs first) of a flood hazard area, the following minimum requirements shall apply to construction of residential and commercial structures:

- 1) The minimum setback distance from the edge of a flood hazard area to the nearest wall of a basement shall be 20 feet;
- 2) The lowest floor level elevation (including basement) shall be no more than 5 feet below the closest adjacent base flood elevation;
- 3) The lowest opening shall be no less than 1 foot above the base flood elevation;
- 4) Additional requirements in conformance with the provisions of FEMA/FIA-Technical Bulletin10-01 may be required to insure that a structure is reasonably safe from flooding.

ARTICLE 5.00 FLOODWAY DEVELOPMENT STANDARDS

5.01 Development in floodways.

Floodways located within areas of special flood hazard established in Section 1.07, are extremely hazardous areas due to the velocity of flood waters which carry debris, potential projectiles and erosion potential. Encroachments are prohibited, including fill, new construction, substantial improvements and other development. Development or land disturbing activity may be authorized in the floodway when the following requirements are met:

- 1) Submission of a “no-rise” certificate along with supporting hydraulic computations (in accordance with standard engineering practices) that the proposed development will result in no increase in the base flood heights during the occurrence of a base flood (100-year) discharge;
- 2) Buildings shall not be used for human habitation;
- 3) Pipeline crossings through a river or stream shall be buried in the river or stream bed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation, meandering or the action of flood flows;
- 4) Storage of material, equipment or debris is prohibited.
- 5) All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this ordinance.

5.02 Floodway revisions.

A floodway encroachment that increases the level of the base flood may be authorized under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, if the applicant has received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency.

ARTICLE 6.00 BOARD OF ADJUSTMENT.

6.01 Establishment.

The Lincoln County Board of Commissioners shall act as the Board of Adjustment. The Board may, in appropriate cases, and subject to appropriate conditions and safeguards, grant variances and hear appeals to the terms of these regulations in harmony with the general purpose and intent, and in accordance with general and specific rules contained herein.

6.02 Operational procedure.

The Board of Adjustment shall meet at the regularly scheduled meetings of the County Commissioners. All meetings of the Board of Adjustment shall be open to the public, and all business coming before the Board shall be transacted at such meetings. The Board of Adjustment shall keep minutes of its proceedings, records of examinations, and other official actions, all of which shall be filed in the Auditor's Office and shall be public record. The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for their issuance.

6.03 Appeals.

The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

6.04 Variance for historic structures.

A variance is authorized to be issued for the repair or rehabilitation of a historic structure upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

6.05 Variance for accessory buildings and certain agricultural structures.

A variance is authorized to be issued for the construction or substantial improvement of a minor accessory buildings (two-car garages and smaller) used solely for parking or limited storage and certain agricultural structures provided the structure conforms to the provisions of FEMA/FIA-TB-2-93 AND TB 7-93 and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

6.06 Restrictions.

The Board of Adjustment shall not issue a variance for any proposed development in a floodway that would have the effect of waiving requirements set forth in Article 5.00 of this ordinance.

6.07 Considerations.

In reviewing applications for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all other portions of this ordinance, and the following:

- 1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- 2) The danger to life and property due to flooding or erosion damage;
- 3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- 4) The importance of the services to the community which will be provided by the proposed development;
- 5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion;
- 6) The compatibility of the proposed development with existing and anticipated development;
- 7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area;
- 8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- 9) The expected heights, velocity, duration, rise and debris and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- 10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

6.08 Conditions of issuance.

Variances shall only be issued by the Board of Adjustment upon the following conditions:

- 1) A technical showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site renders the elevation standards inappropriate;
- 2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;
- 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- 4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and
- 5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that

the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

6.09 Fees.

Upon the filing of any application for a variance by the Board, the applicant shall pay to Lincoln County a fee of \$250.00. Upon the filing of any application for an appeal to the Board, the application shall pay to Lincoln County \$250.00. These fees shall be utilized to help defray necessary administrative costs of processing the application as required

6.10 Appeals from Decision of Board.

Appeals may be taken to Circuit Court by an person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment in the manner and form provided by the statutes of the State of South Dakota, in such cases made and provided.

6.11 Limitations.

Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two (2) years from the date of such order. The Floodplain Administrator shall notify the property owner of record upon invalidation of a variance.

ARTICLE 7.00 ENFORCEMENT

7.01 Stop work order.

- a) *Authority.* Whenever the Floodplain Administrator finds any work or activity regulated by this ordinance being performed in a manner contrary to the provisions of this ordinance, the Floodplain Administrator is authorized to issue a stop work order.
- b) *Issuance.* The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.
- c) *Unlawful continuance.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

7.02 Violations.

- a) *Unlawful acts.* It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this ordinance, or cause same to be done, in conflict with or in violation of any of the provisions of this ordinance.
- b) *Notice of violation.* The Floodplain Administrator is authorized to serve a notice of violation on the person responsible for any development in violation of the provisions of this ordinance. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.
- c) *Prosecution of violation.* If the notice of violation is not complied with promptly, the appropriate authorities of Lincoln County, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the real estate or structure in violation of the provisions of this ordinance or of the order or direction made pursuant thereto.
- d) *Violation penalties.* In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of federally-subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions."

In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e. mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances or codes."

THEREFORE:

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor and shall be punished pursuant to SDCL 7-18A-2. Each and every day of the

continued violation may constitute a separate offense. In addition to any fine and imprisonment for each violation, violators shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Lincoln County from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 8.00. Definitions

For purposes of these regulations certain terms are hereby defined as follows. Any word that is not defined herein shall be defined as in any recognized Standard English dictionary. Additional definitions are also found in the Code of Federal Regulations for the National Flood Insurance Program in Title 44, Section 59.1.

Alluvial Fan Flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can-occur.

Approximate studies means flood hazard mapping using approximate study methods that show the approximate outline of the base floodplain. An approximate study does not produce a base flood elevation.

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

Area of Special Flood Hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AE, AH, or AO on the Lincoln County Flood Insurance Rate Map.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. The base flood is used by the NFIP as the basis for mapping, insurance rating, and regulating new construction. Base flood is also referred to as the 100 year flood.

Base flood elevation (BFE) means the elevation of the base flood, relative to the North American Vertical Datum (NAVD 88) specified on the Lincoln County Flood Insurance Rate Map (FIRM).

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

Benchmark is a monument on the ground which shows the elevation of that monument above sea level within a standard datum.

Buffer zone (see Flood hazard area buffer zone).

Critical Feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Datum means a common vertical elevation reference usually in relation to sea level such as the National Geodetic Vertical Datum (NGVD 29), North American Vertical Datum (NAVD 88) or other datum.

Detailed studies means flood hazard mapping studies that are done using hydrologic and hydraulic methods that produce base flood elevations, floodways and other pertinent flood data.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, operations and other land disturbing activities.

Elevated building means a non-basement building to have the top of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. "Elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

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 either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a 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).

Existing construction means any buildings and structures for which the start of construction commenced before October 1, 1986. Existing construction may also be referred to as existing structures.

Existing structures (see existing construction).

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood hazard area means the greater of the following two areas:

- 1) The area within a floodplain subject to a one percent or greater chance of flooding in any given year;
- 2) The land area subject to flood hazards and shown on the Flood Insurance Rate Map as Zone A, AE, AO, AH or other flood hazard map.

Flood hazard area buffer zone means an area regulated by the community which is outside of and adjacent to a flood hazard area where residual flood hazards may exist and where typical damage from sub-surface flood conditions and by flooding events that exceed the base flood elevation are anticipated and reasonably preventable by compliance with specific design requirements.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

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 areas within a community subject to a “special flood hazard area” and the extent of the depths of associated flooding.

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

Flood resistant materials means any construction material capable of withstanding direct and prolonged contact with flood waters without sustaining any damage that requires more than low-cost repair (such as painting).

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

Floodway means the channel of the river, creek, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing that water surface elevation more than a designated height. The Lincoln County FIS used the minimum Federal standard limitation of 1 foot, with provision that hazardous velocities are not produced.

Floodplain Administrator means the Geographic Information Services (GIS) Coordinator, designated by the Lincoln County Board of Commissioners.

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.

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

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.

Highest Adjacent Grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- 4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified:
 - a) by an approved state program as determined by the Secretary of the Interior, or
 - b) by the Secretary of the Interior in states without approved programs.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance program regulations.

Manufactured home means a structure that is transportable in one or more sections, built on a permanent chassis, 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.

Mean sea level means, for purposes of this ordinance, the North American Vertical Datum (NAVD) of 1988, to which base flood elevations shown on Lincoln County's Flood Insurance Rate Map are referenced.

NAVD means North American Vertical Datum of 1988

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

New Construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the October 1, 1986 effective date of Lincoln County's initial FIRM 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 Lincoln County's floodplain management regulations adopted February 28, 1989 and includes any subsequent improvements to such structures.

NGVD means National Geodetic Vertical Datum of 1929

Person means any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate or any other legal entity, including any officer or governing or managing body thereof.

Recreational vehicle means a vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. A recreational vehicle is ready for highway use if it is fully licensed on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Residual flood hazard means risks associated with subsurface flood conditions and flooding from events that exceed the base flood in areas near to flood hazard areas.

Special Flood Hazard Area (SFHA) see “area of special flood hazard”).

Start of construction (for other than new construction) includes substantial improvement and means the date the building permit was issued for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns, or any work beyond the stage of excavation: or the placement of a mobile home on a foundation. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means any walled and roofed building or manufactured home, including a gas or liquid storage tank which is principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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

- 1) Any project for improvement of a structure to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary conditions; or
- 2) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

Variance means a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where strict enforcement would result in unnecessary hardship. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

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 is presumed to be in violation until such time as that documentation is provided.

Zone A is a high risk special flood hazard area shown on the Lincoln County Flood Insurance Rate Map developed using approximate study methods and therefore no base flood elevations are provided.

Zone AE is a high risk special flood hazard area shown on the Lincoln County Flood Insurance Rate Map developed using detailed study methods and includes base flood elevations.

Zone X is an area of minimal flood hazard depicted on the Lincoln County Flood Insurance Rate Map as all areas outside of the A Zones. Zone X may still have flooding that does not meet the criteria to be mapped as a special flood hazard area, especially ponding and local drainage problems. Zone X replaces zone C of the previous FIRM