

CHAPTER 4-20 FEMA-NATIONAL FLOOD INSURANCE PROGRAM

GENERAL PROVISIONS

4-20-1 Findings of Fact

(a) The flood hazard areas of the Colville Confederated Tribes (Colville Tribes) are subject to periodic inundation which have sometimes resulted in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are often caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

4-20-2 Purpose

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

(a) To protect human life and health;

(b) To minimize expenditures of public money and costly flood control projects;

(c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(d) To minimize prolonged business interruptions;

(e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazards;

(f) To help maintain a wise pattern of land use by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(g) To ensure that potential buyers are notified that property is in an area of special flood hazard;

(h) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

4-20-3 Definitions

(a) "Appeal" means a request for a review of the interpretation of any provisions of this Chapter or a request for a variance.

(b) "Area of shallow flooding" means designated as AO, or AH zone on the flood insurance rate map (FIRM). AO zones have base flood depths that range from one to three feet above the natural ground; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow; AH indicates ponding, and is shown with standard base flood elevations.

(c) "Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

(d) "Base flood" means the flood having a 1% chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). Designated on Flood insurance Rate Maps by the letters A or V.

(e) “Basement” means any area of a building having its floor subgrade (below ground level) on all sides.

(f) “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.

(g) “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. The area is designated on the FIRM as Zone V1-30, VE or V.

(h) “Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include (but are not limited to) schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

(i) “Cumulative Substantial Damage” means flood-related damages sustained by a structure on two separate occasions during a 10-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.

(j) “Development” means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage or equipment or materials located within the area of special flood hazard.

(k) “Elevation certificate” means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management laws, and determine the proper insurance premium rate with Section B completed by community officials.

(l) “Elevated building” means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

(m) “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 adopted floodplain management regulations.

(n) “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).

(o) “Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters and/or;

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

(p) “Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

(q) “Flood insurance study (FIS)” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood-Boundary-Floodway map, and the water surface elevation of the base flood.

(r) “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 one foot.

(s) “Increased cost of compliance” means a flood insurance claim payment up to \$30,000 directly to a property owner for the cost to comply with floodplain management regulations after a direct physical loss caused by a flood. Eligibility for an ICC claim can be through a single instance of “substantial damage” or as a result of a “cumulative substantial damage.” (more information can be found in FEMA ICC Manual 301).

(t) “Local Administrator” means the Tribal Department designated by resolution as the Department responsible for the administration and enforcement of this Chapter.

(u) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter found at section 4-20-47(b), (i.e. provided there are adequate flood ventilation openings).

(v) “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”.

(w) “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 adopted floodplain management regulations.

(x) “Recreational Vehicle” means a vehicle:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(y) “Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For the purpose of this Chapter, permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the installation on the property 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.

(z) “Structure” means a walled and roofed building, including a gas or liquid storage tank that is principally above ground.

(aa) “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(bb) “Substantial Improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term can exclude:

- (1) Any project for improvement of a structure to correct pre-cited existing violations of tribal, state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(cc) “Variance” means a grant of relief from the requirements of this Chapter that permits construction in a manner that would otherwise be prohibited by this Chapter.

(dd) “Water dependent” means a structure for commerce or industry that cannot exist in any other locations and is dependent on the water by reason of the intrinsic nature of its operations.

4-20-4 Methods to Reduce Flood Losses

In order to accomplish its purposes, this Chapter includes methods and provisions for:

- (a) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (b) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damages at the time of initial construction;
- (c) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (d) Controlling filling, grading, dredging, and other development which may increase flood damages; and
- (e) Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

4-20-5 Lands which apply

This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the Confederated Tribes of the Colville Reservation (44 CFR 59.22(a)).

4-20-6 Basis for Establishing the Areas of Special Flood Hazard (Reserved)

4-20-7 Penalties for noncompliance [NOT MANDATORY—Use different Language] (Reserved)

4-20-8 Abrogation and Greater Restrictions

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

4-20-9 Interpretation

In the interpretation and application of this Chapter, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under Tribal statutes.

4-20-10 Warning and Disclaimer of Liability

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations undertaken by the United States Government. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the Colville Tribes, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

ADMINISTRATION

4-20-20 Establishment of Development Permit

Flood Insurance Rate Maps (FIRM)

4-20-21 Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in section 4-20-6. The permit shall be for all structures including manufactured homes and for all development including fill and other activities.

4-20-22 Application for Development Permit

Application for a development permit shall be made on forms furnished by the Planning Department and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, locations, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of material, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (a) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate (FF 81-31) with Section B completed by the local official.
- (b) Elevation in relation to mean sea level to which any structure has been flood proofed;
- (c) Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet flood proofing criteria in section 4-20-48;
- (d) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

4-20-23 Designation of the Local Administrator

The Planning Department is hereby appointed to be the Local Administer with the authority to administer and implement this Chapter by granting or denying development permit applications in accordance with these provisions.

4-20-24 Duties and Responsibilities of the Planning Department

Duties of the Planning Department shall include, but not be limited to:

- (a) Permit Reviews;
- (b) Use of other base flood data;
- (c) Maintaining and obtaining information required by this Chapter;
- (d) Interpreting FIRM boundaries.

4-20-25 Permit Review

In reviewing permits the Planning Department shall:

- (a) Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, Tribal, State, or local governmental agencies from which prior approval is required.
- (c) Review all development permits to determine if the proposed development is located in a floodway. If located in the floodway, assure that the encroachment provisions of section 4-20-52(a) are met.

4-20-26 Use of other base flood data

When base flood elevation data has not been provided (in A or V Zones) in accordance with section 4-20-6, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, Tribal, State or other source, in order to administer sections 4-20-46 and 4-20-52.

4-20-27 Information to be Obtained and Maintained

(a) Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in section 4-20-46, the Local Administrator shall obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(b) For all new or substantially improved flood proofed non residential structures where base flood elevation data is provided through the FIS, FIRM, or as required in section 4-20-26 the Local Administrator shall:

- (1) Obtain and record the elevation (in relation to mean sea level) to which the structure was flood proofed.
- (2) Maintain the flood proofing certifications required in section 4-20-48(c).

4-20-28 Alteration of Watercourses

The Local Administrator shall:

(a) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4-20-29 Interpretation of FIRM Boundaries

The Local Administrator has the authority and duty to:

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of section 4-20-30 of the Rules of Regulations of the National Flood Insurance Program (44 CFR 59-76).

4-20-30 Conditions for Variances

(a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.

(b) Variances shall not be issued within a designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

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

(d) Variances shall only be issued upon:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

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

(e) Variances as interpreted in the National Flood Insurance Program are based in the general zoning law principle that they pertain to physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

(f) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood proofing than watertight or dry-flood proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except section 4-20-30(b)(2), and otherwise complies with sections Anchoring, Utilities and Subdivision Proposals of the General Standards.

(g) Upon granting the variance, the Local Administrator shall notify the applicant in writing that the permitted structure will be built with its lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk.

PROVISIONS FOR FLOOD HAZARD REDUCTION

4-20-40 General Standards

In all areas of special flood hazards, the following standards are required.

4-20-41 Anchoring

In all areas of special flood hazards:

(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) All manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. For more detailed information, refer to guidebook, FEMA-85, "Manufactured Home Installation on flood Hazard Areas".

4-20-42 **Construction Materials and Methods**

(a) In all areas of special flood hazards, all new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(b) Using methods and practices that minimize flood damage; and

(c) With electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4-20-43 **Utilities**

In flood prone areas:

(a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

(b) All 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; and

(c) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4-20-44 **Subdivision Proposals**

If a subdivision proposal or other proposed development is in a flood-prone area, such proposals shall:

(a) Be consistent with the need to minimize flood damage within the flood-prone area;

(b) Have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

(c) Have adequate drainage provided to reduce exposure to flood damage; and

(d) Include base flood elevation data when the proposal contains greater than 50 lots or 5 acres, whichever is less.

4-20-45 **Review of Building Permits**

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (section 4-20-27), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.

4-20-46 **Specific Construction Standards (Reserved)**

4-20-47 **Residential Construction**

(a) New construction and substantial improvements of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation (BFE).

(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Design for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) 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.
- (2) The bottom of all openings shall be no higher than one foot above grade.
- (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4-20-48 Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base floor elevation; or, together with attendant utility and sanitary facilities, shall:

- (a) Be flood proofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (b) Have structural components capable of resisting hydrostatic loads and effects of buoyancy;
- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in section 4-20-47(b);
- (d) Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in section 4-20-47(b).

4-20-49 Manufactured Homes

All manufactured homes in the floodplain to be placed or substantially improved on sites shall be elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

4-20-50 Recreational Vehicles

Recreational vehicles placed on sites are required to either:

- (a) Be on the site for fewer than 180 consecutive days; or
- (b) Be fully licensed and ready for highway use, on wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
- (c) Meet the requirements of section 4-20-49 above and the elevation and anchoring for manufactured homes.

4-20-51 AE and A1-30 Zones with Base Flood Elevations But no Floodways

In areas with base flood elevations (but where a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

4-20-52 **Floodways**

Located within areas of special flood hazard established in section 4-20-6 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

(a) Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase on flood levels during the occurrence of the base flood discharge.

(b) Construction or reconstruction of residential structures shall be prohibited within designated floodways, except for (1) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (2) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either, (A) before the repair, or reconstruction is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. 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, or to structures identified as historic places, may be excluded in the 50 percent.

(c) If section 4-20-52(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of the subchapter, Provisions for Flood Hazard Reduction of this Chapter.

4-20-53 **Critical Facility**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

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