ORDINANCE NO. NS-1100.106

AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA REPEALING
CHAPTER VII OF DIVISION C12 OF THE COUNTY OF SANTA CLARA
ORDINANCE CODE AND ENACTING A NEW CHAPTER VII
RELATING TO SPECIAL FLOOD HAZARD AREAS

Summary

This ordinance repeals Chapter VII of Division C12 and enacts a new
Chapter VII of Division C12 of the Santa Clara County Ordinance Code to
reflect updates to floodplain management policies affecting real property
located in designated flood hazard areas of the unincorporated territory of
Santa Clara County.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:

SECTION 1. Chapter VII of Division C12 of the Santa Clara County Ordinance
Code is hereby repealed in its entirety and a new Chapter VII of Division C12 is hereby
added to read as follows:

CHAPTER VII
FLOODPLAIN MANAGEMENT

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS, PURPOSE AND
METHODS


The Legislature of the State of California has in Government Code Sections
65302, 65560, and 65800 conferred upon local governments the authority to adopt
regulations designed to promote the public health, safety, and general welfare of its
citizenry. Therefore, the Board of Supervisors of the County of Santa Clara does hereby
adopt the following floodplain management regulations.

Sec. C12-801. Findings.

A) The flood hazard areas of the unincorporated territory of Santa Clara County are
subject to periodic inundation which results in loss of life and property, health and
safety hazards, disruption of commerce and governmental services, extraordinary
public expenditures for flood protection and relief, and impairment of the tax base,
all of which adversely affect the public health, safety, and general welfare.
B) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities also contributes to flood losses.

Sec. C12-802. Purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the unincorporated territory of the Santa Clara County to all publicly and privately owned land within flood prone, mudslide [i.e. mudflow] or flood related erosion areas. These regulations are designed to:

A) Protect human life and health;

B) Minimize expenditure of public money for costly flood control projects;

C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D) Minimize prolonged business interruptions;

E) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, and streets and bridges located in special flood hazard areas;

F) Help maintain a stable tax base by providing for the sound use and development of special flood hazard areas so as to minimize future blighted areas caused by flood damage;

G) Ensure that potential buyers are notified that property is in a special flood hazard area; and

H) Ensure that those who occupy the special flood hazard areas assume responsibility for their actions.


In order to accomplish its purposes, this chapter includes regulations to:

A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood
heights or velocities;

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

C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

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

E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

ARTICLE 2. DEFINITIONS


A) The definitions in this section shall apply to this chapter. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

A zone see Special flood hazard area.

Accessory structure means a structure that is either:

1. Solely for the parking of no more than 2 cars; or

2. A small, low cost shed for limited storage, less than 150 square feet and $1,500 in value.

Accessory use means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

Alluvial fan means a geomorphologic feature characterized by a cone or fan shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

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.
**Appeal** means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

**Area of shallow flooding** means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** see Special flood hazard area.

**Area of special flood-related erosion hazard** is the land which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Insurance Rate Map (FIRM).

**Area of special mudslide (i.e., mudflow) hazard** is the area subject to severe mudslides (i.e., mudflows). The area is designated as Zone M on the Flood Insurance Rate Map (FIRM).

**Base flood** means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100 year flood"). Base flood is the term used throughout this chapter.

**Base flood elevation** (BFE) means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Basement** means any area of the building having its floor subgrade - i.e., below ground level - on all sides.

**Breakaway walls** are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
2. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

Building see Structure.

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. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE, or V.

Department means the Department of Planning and Development.

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 or drilling operations or storage of equipment or materials.

Director means the Director of Planning and Development or the person authorized to act on behalf of the Director.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

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 August 21, 1982.

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).

Flood, flooding, or flood water means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and

2. The condition resulting from flood-related erosion.
**Flood Boundary and Floodway Map (FBFM)** means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the special flood hazard areas and the floodway.

**Flood Hazard Boundary Map (FHBM)** is based on approximate data and identifies, in general, the Special Flood Hazard Area within a community. It is used in the National Flood Insurance Program’s Emergency Program for floodplain management and insurance purposes.

**Flood Insurance Rate Map (FIRM)** means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the unincorporated territory of Santa Clara County.

**Flood Insurance Study** means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

**Floodplain or flood-prone area** means any land area susceptible to being inundated by water from any source - see **Flood, flooding, or flood water**.

**Floodplain Administrator** is the person recommended by the Development Services Manager and designated by the Director to administer and enforce the floodplain management regulations.

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain management regulations** means this chapter and the County’s zoning ordinance, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and any other exercise of police power which control development in flood-prone areas. This term includes federal, state or local regulations and any combination thereof that provide standards for preventing and reducing flood loss and damage.

**Floodproofing** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.
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. Also referred to as "Regulatory Floodway."

Floodway fringe is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

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 level 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.

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

Fraud and victimization as related to Sec. C12-823 through Sec. C12-825 of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Board of Supervisors will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the County as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

Functionally dependent use means a use that 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, and does not include long-term storage or related manufacturing facilities.
Governor body is the County Board of Supervisors, which is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

Hardship as related to Sec. C12-823 through Sec. C12-825 of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Supervisors requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

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 United States 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 the California Register of Historic Places; or

4. Individually listed on the Santa Clara County Heritage Resource Inventory.

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 accord with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area, including basement (see Basement definition).
1. An unfinished or flood resistant enclosure below the lowest floor that is 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 it conforms to applicable non-elevation design requirements, including, but not limited to:

a. The flood openings standard in Sec. C12-816(C)(3);

b. The anchoring standards in Sec. C12-816(A);

c. The construction materials and methods standards in Sec. C12-816(B); and

d. The standards for utilities in Sec. C12-817.

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 is defined in the Substantial Improvement and Substantial Damage Procedures developed pursuant to Sec. C12-813(B)(1).

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mudslide describes a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain.

Mudslide (i.e., mudflow) prone area means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

New construction, for floodplain management purposes, means structures for which the "start of construction" commenced on or after August 21, 1982 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the
manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 21, 1982.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, 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.

One-hundred-year flood or 100-year flood, see Base flood.

Person means an individual or their agent, firm, partnership, association or corporation or agent of the aforementioned groups, of this State or its agencies or political subdivisions.

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 mild slope.

Program deficiency means a defect in the County’s floodplain management regulations or administrative procedures that impairs effective implementation of this chapter.

Public safety and nuisance as related to Sec. C12-823 through C12-825 of this chapter, means that the granting of a variance must not result in anything which is injurious to the public health, safety or welfare of the County, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and,
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Remedy a violation means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

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

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

Sheet flow area, see Area of shallow flooding.

Special flood hazard area (SFHA) means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

Start of construction includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. 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. Permanent construction does not include any of the following:

1. Land preparation, such as clearing, grading, and filling;
2. Installation of streets and/or walkways;
3. Excavation for a basement, footings, piers, or foundations or the erection of temporary forms;
4. Installation on the property of accessory buildings, such as garages or sheds
not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building that is principally above ground and includes a gas or liquid storage tank or a manufactured home.

*Substantial damage* means:

1. 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; or

2. 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 event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”

*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 "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 violations or state or local health, sanitary, or safety code specifications which have been identified by the County code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

*V zone*, see *Coastal high hazard area.*

*Variance* means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

*Violation* means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
*Watercourse* means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**ARTICLE 3. GENERAL PROVISIONS**

**Sec. C12-805. Lands to which this chapter applies.**

This chapter shall apply to all special flood hazard areas within the unincorporated territory of Santa Clara County.

**Sec. C12-806. Basis for establishing the special flood hazard areas.**

The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for Santa Clara County, "Flood Insurance Study Santa Clara County, California and Incorporated Areas Volumes 1, 2, 3 and 4 of 4" dated May 18, 2009, with accompanying Flood Insurance Rate Maps (FIRM’s) and Flood Boundary and Floodway Maps (FBFM’s), dated May 18, 2009, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the Board of Supervisors by the Floodplain Administrator. The study, FIRM’s and FBFM’s are on file with the Department at 70 West Hedding Street, 7th Floor, East Wing, San Jose, California, 95110.

**Sec. C12-807. Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a infraction. Nothing herein shall prevent the Board of Supervisors from taking such lawful action as is necessary to prevent or remedy any violation.

Any person or business entity, whether as principal, agent, employee or otherwise, who violates any of the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punishable by a fine not exceeding $50.00 for a first violation, $100.00 for a second violation within one year, and $250.00 for each additional violation within one year. Such person or business entity shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued or permitted by such person or business entity and shall be punishable as herein provided. The County's Zoning Investigators and Building Inspectors are authorized to issue citations for the violation of any provision of this chapter.
Any structure or improvement constructed, affixed, located, extended, enlarged, converted or altered contrary to the provisions of this chapter and/or any use of any land or structure contrary to the provisions of this chapter or contrary to a permit or variance or the terms and conditions imposed therein shall be, and the same is hereby declared to be, unlawful and a public nuisance; and the duly constituted authorities of the County shall, upon order of the Board of Supervisors, immediately commence action or proceedings to abate, remove and enjoin thereof in the manner provided by law.

The remedies provided for herein shall be cumulative and not exclusive.

Sec. C12-808. 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 ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. C12-809. 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 decision-making authority; and

C) Deemed neither to limit nor repeal any other powers granted by statute, the Charter, or other applicable ordinances related to flood control or protection.

This Chapter shall supersede any building code provisions which impose lesser standards. Agricultural structures shall not be exempt from the provisions of this Chapter.

Sec. C12-810. 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. 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 special flood hazard areas 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 County or any official, officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by a court to be unconstitutional or invalid or to result in a taking of private property without just compensation, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

ARTICLE 4. ADMINISTRATION

Sec. C12-812. Designation of the Floodplain Administrator.

The Department is hereby appointed to administer, implement, and enforce this chapter and is authorized to grant or deny development permits in accord with its provisions.

Sec. C12-813. Duties and responsibilities of the Floodplain Administrator.

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

A) Review all development permits to determine:

1) Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;

2) All other required state and federal permits have been obtained;

3) The site is reasonably safe from flooding;

4) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than 1 foot at any point within Santa Clara County; and

5) All Letters of Map Revision (LOMR’s) for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR’s). Approved CLOMR’s allow construction of the proposed flood control project and land preparation as specified in the “start of construction”
definition.

B) Development of Substantial Improvement and Substantial Damage Procedures.

1) Using FEMA publication FEMA 213, “Answers to Questions About Substantially Damaged Buildings,” the Department shall develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, this shall include defining “Market Value.”

2) Assure procedures are coordinated with other County departments and implemented by County staff.

C) Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided in accordance with Sec. C12-806, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal or state agency, or other source, in order to administer Sec. C12-816 through Sec. C12-822.

A base flood elevation shall be obtained using one of two methods from the FEMA publication, FEMA 265, “Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations” dated July 1995.

D) Notification of Other Agencies.

1) Alteration or relocation of a watercourse:

(a) Notify adjacent communities and the California Department of Water Resources and the Santa Clara Valley Water District prior to alteration or relocation of a water course;

(b) Submit evidence of such notification to the Federal Emergency Management Agency; and

(c) Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

2) Base Flood Elevation changes due to physical alterations:

(a) Within 6 months of information becoming available or project completion, whichever comes first, the floodplain administrator shall
submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

(b) All LOMR’s for flood control projects are approved prior to the issuance of building permits. Building Permits shall not be issued based on a Conditional Letter of Map Revision (CLOMR). Approved CLOMR’s allow construction of the proposed flood control project and land preparation as specified in the “start of construction” definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

3) Changes in County Boundaries:

The Flood Plain Administrator shall notify FEMA in writing whenever the County boundaries have been modified by annexation or other means and include a copy of a map of the County clearly delineating the new territorial limits and boundaries.

E) Documentation of Floodplain Development.

The Flood Plain Administrator shall obtain and maintain for public inspection and make available as needed the following:

1) Certification required by Sec. C12-816(C)(1) and Sec. C12-819;

2) Certification required by Sec. C12-816(C)(2) (elevation or floodproofing of nonresidential structures);

3) Certification required by Sec. C12-816(C)(3) (wet floodproofing standard);

4) Certification of elevation required by Section C12-818(A)(3) (subdivisions and other proposed development standards);

5) Certification required by Sec. C12-821(B) (floodway encroachments);

6) Information required by Sec. C12-822(F) (coastal construction standards); and

7) Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.
F) Map Determination.

The Flood Plain Administrator shall make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas, 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 as provided in Sec. C12-815.

G) Remedial Action.

The Flood Plain Administrator shall take action to remedy violations of this chapter as specified in Sec. C12-807.

H) Biennial Report.

The Flood Plain Administrator shall complete and submit Biennial Report to FEMA.

I) Planning.

The Flood Plain Administrator shall assure the County’s General Plan is consistent with floodplain management objectives herein.

J) Non-conversion of Enclosed Areas Below the Lowest Floor.

To ensure that the areas below the BFE shall be used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation without first becoming fully compliant with the floodplain management chapter in effect at the time of conversion, the Floodplain Administrator shall:

1) Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are 5 feet or higher;

2) Enter into a “NON-CONVERSION AGREEMENT FOR CONSTRUCTION WITHIN FLOOD HAZARD AREAS” or equivalent with the County. The agreement shall be recorded with the County Clerk-Recorder as a deed restriction. The non-conversion agreement shall be in a form acceptable to the Floodplain Administrator and County Counsel; and

3) Have the authority to inspect any area of a structure below the base flood elevation to ensure compliance upon prior written notice of at least 72
hours to the real property owner.


A development permit shall be obtained from the Department before any construction or other development, including manufactured homes, within any area of special flood hazard established in Sec. C12-806. Application for a development permit shall be made on forms furnished by the County. The applicant shall provide the following minimum information:

A) Plans in duplicate, drawn to scale, showing:

1) Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;

2) Proposed locations of water supply, sanitary sewer, and other utilities;

3) Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;

4) Location of the regulatory floodway when applicable;

5) Base flood elevation information as specified in Sec. C12-806 or Sec. C12-813(C);

6) Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and

7) Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Sec. C12-816(C)(2) of this chapter and detailed in FEMA Technical Bulletin TB 3-93.

B) Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Sec. C12-816(C)(2).

C) For a crawl-space foundation, location and total net area of foundation openings as required in Sec. C12-816(C)(3) of this chapter and detailed in FEMA Technical Bulletins 1-93 and 7-93.

D) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

E) All appropriate certifications listed in Sec. C12-813(E) of this chapter.
Sec. C12-815. Appeals.

Any person who is dissatisfied with the decision of the Department on any application for a development permit or variance pursuant to this chapter may, within 15 calendar days after final action is taken, file an appeal to the Director. The appeal shall be filed with the Department and shall be accompanied by a nonrefundable filing fee in an amount prescribed by resolution of the Board of Supervisors.

The appeal shall be heard by the Director within 30 days after the filing of the appeal. The Clerk of the Board shall set the time and place for the hearing and shall cause public notice of the hearing to be mailed to the owners of all property within 300 feet of the subject property and to the applicant for the permit and the appellant.

The Floodplain Administrator shall transmit to the Director all maps, records, papers and files which constitute the record in the action from which the appeal was taken. The Director shall hear and decide the matter de novo.

A decision of the Director may be appealed to the Board of Supervisors. Appeals shall be filed in writing with the Clerk of the Board within 15 days after the date of the Director’s decision. The Board of Supervisors shall hear the matter de novo and approve or deny the application. The decision of the Board of Supervisors on appeal is final.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. C12-816. Standards of construction.

In all special flood hazard areas the following standards are required:

A) Anchoring.

All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B) Construction Materials and Methods.

All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:

1) With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;
2) Using methods and practices that minimize flood damage;

3) 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; and

4) Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

C) Elevation and Floodproofing.

1) Residential construction.

   All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:

   (a) In AE, AH, A1-30 Zones, elevated 2 feet above the base flood elevation.

   (b) In an AO zone, elevated above the highest adjacent grade to a height 2 feet above the depth number specified in feet on the FIRM, or elevated at least 4 feet above the highest adjacent grade if no depth number is specified.

   (c) In an A zone, without BFE’s specified on the FIRM [unnumbered A zone], elevated 2 feet above the base flood elevation; as determined under Sec. C12-813(C).

   Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

2) Nonresidential construction.

   All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with Sec. C12-816(C)(1) or:

   (a) Be floodproofed, together with attendant utility and sanitary
facilities, below the elevation recommended under Sec. C12-816(C)(1), so that the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(c) Be certified by a registered civil engineer or architect that the standards of Sec. C12-816(C)(2)(a) and Sec. C12-816(C)(2)(b) are satisfied. Such certification shall be provided to the Floodplain Administrator.

3) Flood openings.

All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, 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 floodwater. Designs for meeting this requirement must meet the following minimum criteria:

(a) For non-engineered openings:

(1) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(2) The bottom of all openings shall be no higher than one foot above grade;

(3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and

(4) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or

(b) Be certified by a registered civil engineer or architect.

4) Manufactured homes.

(a) See Sec. C12-819.
5) Garages and low cost accessory structures.

(a) Attached garages.

(1) A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters. See Sec. C12-816(C)(3). Areas of the garage below the BFE must be constructed with flood resistant materials. See Sec. C12-816(B).

(2) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

(b) Detached garages and accessory structures.

(1) “Accessory structures” used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Sec. C12-804, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:

   i) Use of the accessory structure must be limited to parking or limited storage;

   ii) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;

   iii) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

   iv) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;

   v) The accessory structure must comply with floodplain encroachment provisions in Sec. C12-821; and

   vi) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Sec. C12-816(C)(3).

(2) Detached garages and accessory structures not meeting the above
standards must be constructed in accordance with all applicable standards in Sec. C12-816.

6) Crawlspace Construction.

This sub-section applies to buildings with crawl spaces up to 2 feet below grade. Below-grade crawl space construction in accordance with the requirements listed below will not be considered basements.

(a) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Crawl space construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer;

(b) The crawl space is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. For guidance on flood openings, see FEMA Technical Bulletin 1-93;

(c) Crawl space construction is not permitted in V zones. Open pile or column foundations that withstand storm surge and wave forces are required in V zones;

(d) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawl space used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE; and

(e) Any building utility systems within the crawl space must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.

(f) Requirements for all below-grade crawl space construction, in addition to the above requirements, to include the following:

(1) The interior grade of a crawl space below the BFE must not be more than 2 feet below the lowest adjacent exterior grade (LAG), shown as D in figure 3 of Technical Bulletin 11-01;

(2) The height of the below-grade crawl space, measured from the
interior grade of the crawl space to the top of the crawl space foundation wall must not exceed 4 feet (shown as \( L \) in figure 3 of Technical Bulletin 11-01) at any point;

(3) There must be an adequate drainage system that removes floodwaters from the interior area of the crawl space within a reasonable period of time after a flood event, not to exceed 72 hours; and

(4) The velocity of floodwaters at the site should not exceed 5 feet per second for any crawl space. For velocities in excess of 5 feet per second, other foundation types should be used.

7) Mudslide (i.e., Mudflow) Prone Areas. (Zone M)

(a) The Floodplain Administrator shall review permits for proposed construction of other development to determine if it is proposed within a mudslide area.

(b) Permits shall be reviewed to determine that the proposed site and improvement will be reasonably safe from mudslide hazards. Factors to be considered in making this determination include, but are not limited to:

(1) The type and quality of soils;

(2) Evidence of ground water or surface water problems;

(3) Depth and quality of any fill;

(4) Overall slope of the site; and

(5) Weight that any proposed development will impose on the slope.

(c) Within areas which may have mudslide hazards, the Floodplain Administrator shall require:

(1) A site investigation and further review by persons qualified in geology and soils engineering;

(2) The proposed grading, excavation, new construction, and substantial improvement be adequately designed and protected against mudslide damages;
(3) The proposed grading, excavations, new construction, and substantial improvement not aggravate the existing hazard by creating either on-site or off-site disturbances; and

(4) Drainage, planting, watering, and maintenance not endanger slope stability.

8) Flood-related Erosion-prone areas. (Zone E)

(a) The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas known to the community.

(b) Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion, and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

(c) If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

(d) Within Zone E on the Flood Insurance Rate Map, a setback is required for all new development from the ocean, lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

Sec. C12-817. Standards for utilities.

A) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:

1) Infiltration of flood waters into the systems; and

2) Discharge from the systems into flood waters.
B) On site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

Sec. C12-818. Standards for subdivisions and other proposed development.

A) All new subdivisions 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:

1) Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFE).

2) Identify the elevations of lowest floors of all proposed structures and pads on the final plans.

3) If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
   
   (a) Lowest floor elevation.
   
   (b) Pad elevation.
   
   (c) Lowest adjacent grade.

B) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

C) All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

D) All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

Sec. C12-819. Standards for manufactured homes.

A) All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial
damage" as the result of a flood, shall:

1) Within Zones A1 30, AH, and AE on the County’s Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

2) Within Zones V1 30, V, and VE on the County’s Flood Insurance Rate Map and meet the requirements of Sec. C12-822.

B) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1 30, AH, AE, V1 30, V, and VE on the County’s Flood Insurance Rate Map that are not subject to the provisions of Sec. C12-819(A) will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1) Lowest floor of the manufactured home is at least 2 feet above the base flood elevation; or

2) 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 grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.


A) All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:

1) Be on the site for fewer than 180 consecutive days; or

2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is 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; or

3) Meets the permit requirements of Sec. C12-814 of this chapter and the elevation and anchoring requirements for manufactured homes in Sec. C12-
B) Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's Flood Insurance Rate Map will meet the requirements of Sec. C12-819(A) and Sec. C12-822.

Sec. C12-821. Floodways.

Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A) Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within Santa Clara County.

B) Within an adopted regulatory floodway, the County shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

C) If Sec. C12-821(A) and Sec. C12-821(B) are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Sec. C12-816 through Sec. C12-822.

Sec. C12-822. Coastal high hazard areas.

Within coastal high hazard areas, Zones V, V1-30, and VE, as established under Sec. C12-806, the following standards shall apply:

A) All new residential and non-residential construction, including substantial improvement/damage, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those
required by applicable state or local building standards.

B) All new construction and other development shall be located on the landward side of the reach of mean high tide.

C) All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Sec. C12-804 of this chapter. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.

D) Fill shall not be used for structural support of buildings. [Should define “fill”]

E) Man made alteration of sand dunes that would increase potential flood damage is prohibited.

F) The Floodplain Administrator shall obtain and maintain the following records:

1) Certification by a registered engineer or architect that a proposed structure complies with Sec. C12-822(A); and

2) The elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement.

ARTICLE 6. VARIANCE PROCEDURE


The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section are based on the general principle that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the County to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood
level are so serious that variances from the flood elevation or from other requirements in this chapter are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.


A) Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one half acre or less in size that is contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the procedures of Sec. C12-812 through Sec. C12-822 of this chapter have been fully considered. As the lot size increases beyond one half acre, the technical justification for issuing the variance increases.

B) Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Sec. C12-804 of this chapter) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

C) Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

D) Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, the Floodplain Administrator need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Floodplain Administrator believes will both provide relief and preserve the integrity of the local ordinance.

E) Any applicant to whom a variance is granted shall be given written notice from the Floodplain Administrator that:

1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance; and

2) Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator.
Administrator with the County Clerk-Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

F) The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

Sec. C12-825. Scope of review.

A) In passing upon requests for variances, the Floodplain Administrator shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter, and all of the following:

1) Danger that materials may be swept onto other lands to the injury of others;

2) Danger of life and property due to flooding or erosion damage;

3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;

4) Importance of the services provided by the proposed facility to the County;

5) Necessity to the facility of a waterfront location, where applicable;

6) Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7) Compatibility of the proposed use with existing and anticipated development;

8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9) Safety of access to the property in time of flood for ordinary and emergency vehicles;

10) Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and

11) 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 system, and streets and bridges.
B) Variances shall only be issued upon a:

1) Showing of good and sufficient cause;

2) Determination that failure to grant the variance would result in exceptional "hardship" to the applicant; and

3) Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a public nuisance, cause fraud and victimization of the public, or conflict with any existing local laws or ordinances.

C) Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Sec. C12-825(A)-(D) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

D) Upon consideration of the factors of Sec C12-824(A) and the purposes of this ordinance, the Floodplain Administrator may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

Sec. C12-826. Appeals.

Variance Appeals shall follow the procedures contained within Section C12-815 of this chapter.
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on APR 21, 2009 by the following vote:

AYES: COTTO, GAGE, KNISS, SHIRAKAWA, YEAGER

NOES: NONE

ABSENT: COTTO

ABSTAIN: NONE

Liz Kniss, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

Maria Marinos
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Elizabeth G. Pianca
Deputy County Counsel

03/24/2009