

**ORDINANCE NO. 19-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0001 AMENDING CHAPTER 9.31 (FLOODPLAIN OVERLAY DISTRICT) AND CHAPTER 9.75 (DEFINITION AND ILLUSTRATIONS OF TERMS) TO MEET MINIMUM NATIONAL FLOOD INSURANCE PROGRAM REQUIREMENTS AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.**

Applicant: City of Dana Point  
File No.: ZTA19-0001/LCPA19-0001

The City Council of the City of Dana Point does hereby ordain as follows:

WHEREAS, in 1993, the City of Dana Point approved, and the California Coastal Commission certified, the Zoning Ordinance (Dana Point Zoning Code (DPZC)) of the City of Dana Point; and

WHEREAS, the City desires to update the DPZC by amending or adding portions of Chapter 9.31 (Floodplain Overlay District) and associated definitions in Chapter 9.75 (Definition and Illustrations of Terms) to meet minimum National Flood Insurance Program (NFIP) requirements; and

WHEREAS, the Zone Text Amendment (ZTA) and LCPA will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on February 11, 2019, to consider said LCPA and ZTA and recommended approval of the proposed amendments to City Council; and

WHEREAS, the City Council held a duly noticed public hearing as prescribed by law on March 19, 2019, to consider said ZTA and LCPA; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA19-0001, and LCPA19-0001; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct and incorporated

herein by reference;

- B. The revisions to the DPZC are attached hereto as Exhibit "A" showing all proposed changes in a strikethrough/underline format and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of state law and local Ordinances;
- D. That the ZTA19-0001 and LCPA19-0001 is in the public interest;
- E. The City Council has reviewed the environmental analysis consistent with the California Environmental Quality Act (CEQA) and determined that the project is exempt from CEQA as follows: (1) pursuant to Section 15265 of the California Guidelines for Implementation of the CEQA ("CEQA Guidelines") and Section 21080.9 of the California Public Resources Code, CEQA does not apply to a local government's preparation of a local coastal program amendment; and (2) pursuant to section 15061(b)(3) of the CEQA Guidelines, the proposed amendments to the DPZC will not result in any physical change to the environment, and thus the project has no possibility to have a significant effect on the environment;
- F. The proposed amendment to the DPZC is consistent with the General Plan;
- G. The City Council adopt Zone Text Amendment ZTA19-0001 for the reasons outlined herein including but not limited to: **revising the City's floodplain management ordinance to comply with minimum requirements of the NFIP pursuant to Title 44 of the Code of Federal Regulations (CFR), Sections 59, 60.3-60.6 and 65.3;**
- H. That the City Council adopt the following findings:
  - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA and ZTA process in **that proper availability of draft amendment materials and noticing in accordance with the LCPA procedures has been followed. Notice of availability of review drafts of LCPA materials were; 1) mailed on February 5, 2019, to adjacent jurisdictions, agencies and districts, the California Coastal Commission's Long Beach office and 2) made available to for public review at City Hall, and in local libraries, and posted on the City's web site on February 5, 2019. Public notice of the Planning**

Commission Public Hearing was; 1) published in the Dana Point Times on February 1, 2019, and 2) posted at Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, the Dana Point Library, and on the City's web site on January 31, 2019, while public notice of the City Council Public Hearing was; 1) published in the Dana Point Times on March 8, 2019, and 2) posted at City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, and the Dana Point Library on March 7, 2019.

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. **The amendments to the Zoning Code are minor updates to ensure the City's Floodplain Overlay District regulations conform with minimum NFIP requirements and the amendments will not impact coastal resources or coastal access and are consistent with and adequate to carry out the policies of Chapter Three of the Coastal Act.**
3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **The Local Coastal Plan Amendment and Zone Text Amendment do not change the kind, locations, and intensity of land and water uses and the amended DPZC sections thereby continue to be consistent with Coastal Act policies related to coastal resources, hazard areas, coastal access concerns and land use priorities contained in the certified local coastal program:**
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. **The level and pattern of development reflected in the Zoning Code will not change as a result of the minor amendments proposed for compliance with Federal requirements related to the NFIP, and the Land Use Plan and the Zoning Map are not being modified as part of the proposed amendments.**
5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA.

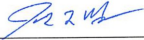
**Procedures and regulations contained Chapter 9.61 "Administration of Zoning" and Chapter 9.69 "Coastal Development Permit" constitute minimum standards for all development within the City's Coastal Zone and would be applied to subsequent development requests if proposed amendments are approved.**

6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **These amendments will update and add provisions of the City's existing floodplain management ordinance consistent with Federal NFIP requirements, and do not change existing zoning measures that have been previously certified for conformance with and deemed adequate to carry out coastal policies of the City's Land Use Plan.**
- I. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
  2. The City include the proposed LCPA19-0001 and ZTA19-0001 to the DPZC in accordance with minimum NFIP requirements in its submittal to the Coastal Commission and state that the amendment is to the Implementing Actions only, and the nature of the proposed changes are described in the attached Exhibit "A".
  3. The City certifies that the land use plan is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act in that no changes are proposed to the Land Use Plan.
  4. The City certifies the Implementing Actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
  5. The Ordinance of the City Council include the Zone Text Amendment, and Local Coastal Program Amendment numbers ZTA19-0001 and LCPA19-0001 when submitted to the Coastal Commission.

6. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- J. That the City Council adopts the amendments to the DPZC as follows:
- Revisions to Chapters 9.31 (Floodplain Overlay District) and 9.75 (Definition and Illustrations of Terms) of the DPZC as shown in the attached Exhibit "A". This amendment to the DPZC constitutes the LCPA.
- K. That the City Council adopts Zone Text Amendment ZTA19-0001, which would amend the Dana Point Local Coastal Program pursuant to LCPA19-0001. The City Council approves the amendment for the reasons outlined herein and in the City Council Agenda Report, including but not limited to: revising the City's floodplain management ordinance to comply with minimum requirements of the NFIP pursuant to Title 44 of the Code of Federal Regulations (CFR), Sections 59, 60.3-60.6 and 65.3.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 2<sup>nd</sup> day of April, 2019



JOE MULLER, MAYOR

ATTEST:



KATHY WARD  
City Clerk

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 19-01 was duly introduced at a regular meeting of the City Council on the 19<sup>th</sup> day of March, 2019, and was duly adopted and passed at a regular meeting of the City Council on the 2<sup>nd</sup> day of April, 2019, by the following vote, to wit:

AYES: Council Member Jamey M. Federico, Council Member Debra Lewis, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt, and Mayor Joseph L. Muller

NOES: None

ABSTAIN: None

ABSENT: None

  
KATHY WARD, CITY CLERK

ORDINANCE NO. 19-01

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

AFFIDAVIT OF POSTING  
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 19-01, being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA19-0001 AMENDING CHAPTER 9.31 (FLOODPLAIN OVERLAY DISTRICT) AND CHAPTER 9.75 (DEFINITION AND ILLUSTRATIONS OF TERMS) TO MEET MINIMUM NATIONAL FLOOD INSURANCE PROGRAM REQUIREMENTS AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.**

was published in summary in the Dana Point News on the 19<sup>th</sup> day of March, 2019, and in further compliance with City Resolution No. 19-03-19-01 on the 2<sup>nd</sup> day of April, 2019, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall  
Capistrano Beach Post Office  
Dana Point Post Office  
Dana Point Library

  
KATHY WARD, CITY CLERK  
Dana Point, California

**Exhibit "A"**

**ZONE TEXT AMENDMENT ZTA19-0001**

**KEY:**

Normal Text=Existing unmodified language

Deletions are shown as ~~strikethrough~~ and additions are **bold underlined**.

**Chapter 9.31 FLOODPLAIN OVERLAY DISTRICT**

**9.31.010 Intent and Purpose.**

**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 City of Dana Point does hereby adopt the following floodplain management regulations.**

The three (3) Floodplain Overlay (FP) districts protect the public health, safety, and general welfare from flood hazards by assuring proper use and development.

The FP-1 district is applied to areas shown as "floodway" areas on the FEMA Flood Insurance Rate Map (FIRM), as "floodway" on the other areas in which the City has determined that a floodway exists.

The FP-2 district is applied to "areas inundated by 100 year flood" which are shown as "A," "A1" through "A30," "AO," "AH," "A99," and "M" on FEMA Flood Insurance Rate Maps and areas in which the City has determined to be a special flood hazard area.

The FP-3 district is applied to coastal areas subject to wave action, which are specifically shown as "AE," "E," "VE," "V," and "V1" through "V30" on the FEMA Flood Insurance Rate Maps and areas in which the City has determined to be a coastal high hazard area.

The Floodplain Overlay districts are overlay districts which may be combined with any other zoning district. The floodplain overlay districts provide use, development, and permit requirements that are applied in addition to the underlying zoning district and the requirements of other overlay districts. In the event of conflicting provisions between the underlying district and the overlay districts, the more restrictive requirements shall prevail.

The purposes of the Floodplain Overlay Districts include:

(a) The Floodplain Overlay districts and the flood hazard areas of the City of Dana Point are subject to periodic inundation which may result in loss of life 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 the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and when inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

(c) 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 provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) 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 hazard;
- (6) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions on the property.

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

- (1) Restricting or prohibiting uses within the Floodplain Overlay Districts 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;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Added by Ord. 93-16, 11/23/93)

**9.31.050 Administration.**

(a) Site Development Permit Required. A Site Development Permit according to Chapter 9.71 of this Code shall be obtained before construction or development begins within any area of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards established in or pursuant to Section 9.31.020. Application for a Site Development Permit shall be made on forms furnished by the Director of Community Development and may include, but not be limited to:

- (1) Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures; structure occupancy, topography, landscape and hardscape, drainage and utility facilities, and the storage of materials;
- (2) A certificate from a registered civil engineer stating that the information in the application is correct;
- (3) Proposed elevation in relation to mean sea level of the lowest floor including the basement of all structures; in Zone AO, AE, or VE, V, and V1 through V30, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;
- (4) Proposed elevation in relation to mean sea level to which any structure will be floodproofed;
- (5) All appropriate certifications listed in Section 9.31.050 of this Chapter;
- (6) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- (7) A statement that the standards in Section 9.31.060 have been satisfied.

(b) Director of Community Development. The Director of Community Development is hereby appointed to administer and implement this Chapter by granting or denying Site Development Permits in accordance with this Code. Appeals are covered in Section 9.31.070(a). The duties

and responsibilities of the Director of Community Development shall include, but not be limited to:

(1) Permit Review. Review all development permits to determine that:

(A) The permit requirements of this Chapter have been satisfied;

(B) All other required State and Federal permits have been obtained;

(C) The site is reasonably safe from flooding;

(D) 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. For purposes of this Chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development which will not increase the water surface elevation of the base flood more than one (1) foot at any point.

(E) For the FP-3 District, the development satisfies the design criteria of the Coastal Floodplain Development Study.

(2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 9.31.020, the Director of Community Development shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer this Chapter. Any such information shall first be submitted to the City Council for adoption.

(3) Alteration or Relocation of Watercourses. Whenever a watercourse is to be altered or relocated, the Director of Community Development shall:

(A) Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;

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

(4) **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 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.**

**(4)(5)** Maintain Certifications. Obtain and maintain for public inspection and make available as needed:

(A) The certification required in Section 9.31.060(a)(3)(A) (floor elevations);

(B) The certification required in Section 9.31.060(a)(3)(B) (elevations in areas of shallow flooding);

(C) The certification required in Section 9.31.060(a)(3)(C)3 (elevation or floodproofing of non-residential structures);

(D) The certification required in Section 9.31.060(a)(3)(D) or 9.31.060 (a)(3)(D)2 (wet floodproofing standard);

(E) The certified elevation required in Section 9.31.060(c)(2) (subdivision standards);

(F) The certification required in Section 9.31.060 (e)(1) (floodway encroachments); and

(G) The information required in Section 9.31.060(f)(6) (coastal high hazard construction standards).

**(5)(6)** Interpretations. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. Any person contesting such interpretation may appeal as provided in Section 9.31.070.

**(6)(7)** Remedy Violations. Take action to remedy violations of this Chapter as specified in Section 9.31.020 (c) herein.

**(7)(8)** Act on Site Development Permits. Approve, conditionally approve, or deny Site Development Permits.

(c) Nonconforming Uses and Structures in the Floodplain Overlay Districts. Any use or structure lawfully existing on any premises that is made nonconforming by the application of this Chapter, or by any amendment of this Chapter, shall be subject to the provisions of Chapter 9.63, Nonconforming Uses and Structures, except as follows:

(1) Any nonconforming structure located outside the coastal zone may be expanded, enlarged, reconstructed or structurally altered without conforming to the standards of this Chapter, provided that such expansion, enlargement, reconstruction or structural alteration does not constitute a substantial improvement. Any substantial improvement to a nonconforming structure shall be subject to all the regulations of this Chapter.

(2) Any nonconforming structure located outside the coastal zone which sustains substantial damage shall be subject to all the regulations of this Chapter.

(3) The following regulations shall apply to nonconforming uses and structures located in Floodplain Overlay Districts in the coastal zone:

(A) No nonconforming use or structure shall be enlarged, expanded, reconstructed or structurally altered, with the limited exception of a one-time, ten percent (10%) square footage improvement that may be allowed on the inland side or within the sideyard setback areas of an existing residence, unless the entire structure is made to conform with the development standards contained in this Chapter (excepting the provisions contained in subsections (c)(1) and (c)(2) above). In addition, that work done in any period of twelve (12) months on ordinary alterations or replacement of walls, fixtures or plumbing not exceeding ten percent (10%) of the value of the building, as determined by the Director of Community Development, shall be permitted provided that the cubical contents of the building, as it existed at the time this subsection or amendments thereto take effect, are not increased.

(B) If any nonconforming use or structure shall be destroyed or damaged to any extent by flood or wave action or accident, then said use or structure and the land on which said use or structure was located or maintained shall be allowed up to a fifty percent (50%) building valuation increase without any change in the structure's footprint once in a twelve month period. (Coastal Act/30600(e)).

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97; Ord. 99-05, 4/27/99)

**9.31.060 Provisions for Flood Hazard Reduction.**

(a) Standards of Construction. In all areas of special flood hazards, the following standards are required:

- (1) Anchoring.
  - (A) All new constructions and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (B) All manufactured homes shall meet the anchoring standards of Section 9.31.060(d).
- (2) Constructions Materials and Methods.
  - (A) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (B) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - (C) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (D) Within Zones A, AH, AO, AE, or VE, adequate drainage paths around structures on slopes shall be installed to guide flood waters around and wary from proposed structures.
- (3) Elevation and Floodproofing.
  - (A) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. Nonresidential structures may meet the standards in Section 9.31.060(a)(3)(C). Upon the completion of the structure of the elevation of the lowest floor, including basement, such structure shall be certified by a registered professional engineer or surveyor and verified by the City Building Inspector to be properly elevated. Such certification shall be provided to the Director of Community Development.
  - (B) New construction and substantial improvement of any structure in Zone AO or A shall have the lowest floor, including basement, elevated about the highest adjacent grade at least as high as the depth number specified in feet on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in Section 9.31.060(a)(3)(C). Upon the completion of the structure, the elevation of the lowest floor, including basement, such structure shall be certified by a

registered professional engineer or surveyor and verified by the City Building Inspector to be properly elevated. Such certification shall be provided to the Director of Community Development.

(C) Nonresidential construction shall either be elevated in conformance with Section 9.31.060 (a)(3)(A) or 9.31.060(a)(3)(B) or shall conform to the following requirements together with attendant utility and sanitary facilities:

1. Be floodproofed so that below the base flood level the structure is watertight with walls substantial impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydronamic loads and effects of buoyancy; and
3. Be certified by a registered professional engineer or architect that the standards of this Subsection are satisfied. Such certification shall be provided to the Director of Community Development.

(D) New construction and substantial improvements of any structure with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

1. Either a minimum of two openings having a total net area of not less than one (1) square inch for every square foot enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screen louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or
2. Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration.

(E) Manufactured homes shall also meet the standards in Section 9.31.060 (d).

(b) Standards for Utilities.

- (1) All new and replacement water supply and sanitary sewage systems shall be designed to eliminate or minimize infiltration of flood water into the system and discharge from systems into flood waters.

- (2) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.
- (c) **Standards for Subdivisions.**
- (1) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.
  - (2) All final subdivision plans shall provide the elevation of proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the Director of Community Development.
  - (3) All subdivision proposals shall be consistent with the need to minimize flood damage.
  - (4) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
  - (5) All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.
- (d) **Standards for Manufactured Homes.** All new and replacement manufactured homes and additions to manufactured homes shall:
- (1) Be elevated so that the lowest floor is at or above the base flood elevation; and
  - (2) Be securely anchored to a permanent foundation system to resist flotation, collapse, or lateral movement.
- (e) **Standards for Recreational Vehicles.**
- (1) **All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:**
    - (A) Be on the site for fewer than 180 consecutive days; or**
    - (B) 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**
    - (C) Meet the permit requirements of Section 9.31.050 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 9.31.060(d).**
  - (2) **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 Section 9.31.060(e)(1) and Section 9.31.060(g).**

~~(e)~~**(f)** Floodways. Lands located within an Area of Special Flood Hazard established in Section 9.31.020(b) are designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

(1) Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) If Section 9.31.060(e)(1) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 9.31.060.

~~(f)~~**(g)** Coastal High Hazard Areas. Within coastal high hazard areas established in Section 9.31.020(b), the following standards shall apply:

(1) All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor excluding the pilings or columns is elevated to or above the base flood elevation.

(2) All new construction shall be located on the landward side of the reach of mean high tide.

(3) All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such temporarily enclosed space shall not be used for human habitation.

(4) Fill shall not be used for structural support of structures or decks.

(5) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

(6) The Director of Community Development shall obtain and maintain the following records:

(A) Certification by a registered engineer or architect that the proposed structure complies with Section 9.31.060(f)(1).

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

(7) Satisfy the design criteria of the Coastal Floodplain Development Study and provide the required wave calculations

prepared by a qualified registered Civil Engineer experienced in coastal engineering.

- (8) Decks shall be constructed to meet the following criteria:
- (A) Wood and raised concrete decks shall be constructed and adequately anchored on caissons or piles installed below the scour elevation and shall be designed by a structural Civil Engineer to withstand the forces of breaking waves and uplift forces to the satisfaction of the Building Official.
  - (B) Concrete decks constructed on existing ground do not require caissons or pile systems.
  - (C) All decks shall be designed to allow wave run-up to go over and under the deck without obstructions.
- (9) Accessories, such as awnings, patio covers, or trellises, shall be adequately anchored and constructed on caisson or pile footing installed below the scour elevation.
- (10) Spas shall be constructed to allow wave run-up under the spa without obstructions. Swimming pools and spas located below the base flood elevation are prohibited.
- (11) The standards for seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes are contained in Section 9.31.040(d)(3) and in Section 9.27.030(f)
- (12) Garages may be constructed at the existing beach elevation and below the base flood elevation if they are anchored on pilings or columns and designed with breakaway panel walls. Subterranean garages are prohibited.

**(g)(h)** Mudslide (i.e., Mudflow)-Prone Areas.

- (1) The Director of Community Development shall review permits for proposed construction or other development to determine if it is located within a mudslide area.
- (2) Permits shall be reviewed to determine whether the proposed development is reasonably safe from mudslide hazards. Factors to be considered in making this determination include, but are not limited to:
- (A) The type and quality of soils;
  - (B) Evidence of ground water or surface water problems;
  - (C) The depth and quality of any fill;
  - (D) The overall slope of the site; and
  - (E) The weight that any proposed development will impose on the slope.

(3) Within areas which have mudslide hazards, the following requirements shall apply:

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

(B) The proposed grading, excavation, new construction, and substantial improvements shall be adequately designed and protected against mudslide damages;

(C) The proposed grading excavation, new constructions, and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances; and

(D) Drainage planting, watering, and maintenance shall not endanger slope stability. Erosion-Prone Areas.\

(1) The Director of Community Development shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the City.

(2) Such permits shall be reviewed to determine whether the proposed site alterations and improvements will be reasonable safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

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

(4) Within Zone "E" on the Flood Insurance Rate Maps, 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 characteristic 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.

(Added by Ord. 93-16, 11/23/93; amended by Ord. 97-05, 9/9/97)

### **9.31.070 Exception Procedure**

(a) Appeal Board.

(1) The City Council of the City of Dana Point shall hear and decide appeals from the requirements of this Chapter.

(2) The City Council shall hear and decide appeals when it is alleged there is an error in any requirements, decision, or determination made by the Director of Community Development in the enforcement and administration of this Chapter.

(3) In acting upon such appeals, the City Council shall consider all technical evaluations, all relevant factors, standards specified in this Chapter, and:

(A) The danger that materials may be swept onto other lands to the injury of others;

(B) The danger of life and property due to flooding or erosion damage;

(C) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(D) The importance of the services provided by the proposed facility to the City;

(E) The necessity to the facility of a waterfront location, where applicable;

(F) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(G) The compatibility of the proposed use with existing and anticipated development;

(H) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(I) The safety of access to the property in time of flood for ordinary and emergency vehicles;

(J) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and

(K) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

(4) Generally, exemptions may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided Sections ~~9.31.070(a)(3)(A) through 9.31.070(a)(3)(K)~~ **9.31.050 and 9.31.060**

have been fully covered considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the exemption increases.

(5) Upon consideration of the factors of Section 9.31.070(a)(3)(4) and the purposes of this Chapter, the City Council may attach such conditions to the granting of exemptions as it deems necessary to further the purposes of this Chapter.

(6) The Director of Community Development shall maintain the records of all appeal actions and report any exemptions to the Federal Insurance Administration upon request.

(b) Conditions for Exemption.

(1) Exemptions may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to other conditions set forth herein.

(2) Exemptions shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(3) Exemptions shall only be issued upon a determination that the exemption is the minimum necessary, considering the flood hazard, to afford relief.

(4) Exemptions shall only be issued if the Zoning Map includes property within a Floodplain Overlay District of that property does not meet the purpose and intent for that district. The determination to exempt a property shall be based on a study of topographic and design flood elevation contours on the subject property and on such additional information as he finds necessary or appropriate.

(5) Exemptions shall only be issued if flood protection or floodproofing work adequate to protect against the design flood, and in compliance with City and other applicable flood control and flood protection standards and policies, has been completed. The finding of exemption shall confirm that any stream, channel, storm drain, or landfill improvements fully offset flood surface elevations established by the applicable map and that, if the property is included on a Flood Insurance Rate Map or a Flood Boundary and Floodway Map, all such flood protection or flood control work has been approved by the appropriate Federal agency and the property removed from the floodplain designation on such maps.

(6) Exemptions shall only be issued upon:

(A) A showing of good and sufficient cause;

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

(C) A determination that the granting of an exemption 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.

(7) Exemptions may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that **all** the provisions of Sections 9.31.070(b)(1) through 9.31.070(b)(4) are satisfied and that the structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(8) Any applicant to whom an exemption is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the Floodplain Board in the Office of the County of Orange County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Added by Ord. 93-16, 11/23/93)

## Chapter 9.75 DEFINITIONS AND ILLUSTRATIONS OF TERMS

### 9.75.130 "M" Definitions and Illustrations.

Mean Sea Level — 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 the City's Flood Insurance Rate Map are referenced.

### 9.75.140 "N" Definitions and Illustrations

New Construction in the Floodplain Overlay Districts — for floodplain management purposes, structures for which the "start of construction" commenced on or after **September 14, 1979**, the effective date of a floodplain management regulation adopted by the City **the area within the City's boundaries were first included on the Flood Insurance Rate Maps (FIRM)**.

### 9.75.190 "S" Definitions and Illustrations.

**Structures, Historic in the Floodplain Overlay Districts means any structure that is:**

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