

**CITY OF CAPE CORAL, FLORIDA
LAND DEVELOPMENT CODE
ARTICLE 9 – FLOODPLAIN MANAGEMENT**

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93 **CHAPTER 1: ADMINISTRATION**

94

95 **Section 9.1.1. Title.**

96

97 These regulations shall be known as the Floodplain Management Ordinance of the City of Cape Coral.

98

99 **Section 9.1.2. Scope.**

100

101 The provisions of this Article shall apply to all development that is wholly within or partially within any
102 flood hazard area, including the subdivision of land; filling, grading, other site improvements, and utility
103 installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair,
104 relocation, or demolition of buildings, structures, and facilities that are exempt from the Florida Building
105 Code; placement, installation, or replacement of manufactured homes and manufactured buildings;
106 installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools;
107 and any other action or activity defined as development.

108

109 **Section 9.1.3. Purpose and Intent.**

110

111 The purposes of this Article and the flood load and flood resistant construction requirements of the
112 Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and
113 general welfare and to minimize public and private losses due to flooding through regulation of
114 development in flood hazard areas to:

115

116 A. Minimize unnecessary disruption of commerce, access, and public service during times of flooding;

117

118 B. Require the use of appropriate construction practices in order to prevent or minimize future flood
119 damage;

120

121 C. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of
122 equipment or materials, and other development which may increase flood damage or erosion
123 potential;

124

125 D. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact
126 of development on the natural and beneficial functions of the floodplain;

127

128 E. Minimize damage to public and private facilities and utilities;

129

130 F. Help maintain a stable tax base by providing for the sound use and development of flood hazard
131 areas;

132

133 G. Minimize the need for future expenditure of public funds for flood control projects and response to
134 and recovery from flood events; and

135

136 H. Meet the requirements of the National Flood Insurance Program for community participation as set
137 forth in the Title 44 Code of Federal Regulations, Section 59.22.

138

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139 **Section 9.1.4. Coordination with the Florida Building Code.**

140
141 This Article is intended to be administered and enforced in conjunction with the Florida Building Code.
142 Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building
143 Code.

144
145 **Section 9.1.5. Warning.**

146
147 The degree of flood protection required by this Article and the Florida Building Code is considered the
148 minimum reasonable for regulatory purposes and is based on scientific and engineering considerations.
149 Larger floods can and will occur. Flood heights may be increased by man- made or natural causes. This
150 Article does not imply that land outside of mapped special flood hazard areas or that uses permitted
151 within such flood hazard areas will be free from flooding or flood damage. The flood hazard areas and
152 base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps
153 and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the
154 Federal Emergency Management Agency, requiring this city to revise these regulations to remain eligible
155 for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or
156 future use is implied or expressed by compliance with this Article.

157
158 **Section 9.1.6. Disclaimer of liability.**

159
160 This Article shall not create liability on the part of the City of Cape Coral or by any officer or employee
161 thereof for any flood damage that results from reliance on this Article or any administrative decision
162 lawfully made thereunder.

163
164 **Section 9.1.7. Applicability.**

- 165
166 A. Where there is a conflict between a general requirement and a specific requirement, the specific
167 requirement shall be applicable.
168
169 B. This Article shall apply to all development in flood hazard areas within the City of Cape Coral, as
170 established in § 9.1.8. of this Article.

171
172 **Section 9.1.8. Basis for establishing flood hazard areas.**

173
174 The Flood Insurance Study for Lee County, FL and Incorporated Areas dated August 28, 2008, the
175 accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions are
176 adopted by reference as a part of this Article and shall serve as the minimum basis for establishing flood
177 hazard areas. Studies and maps that establish flood hazard areas are on file at the City Clerk's office, City
178 of Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida.

179
180 **Section 9.1.9. Submission of additional data to establish flood hazard areas.**

181
182 To establish flood hazard areas and base flood elevations pursuant to § 9.1.8 of this Article, the
183 Floodplain Administrator may require submission of additional data. Additional data may be required
184 where field surveyed topography prepared by a Florida licensed professional surveyor or digital

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185 topography accepted by the city indicates that ground elevations:

186

187 A. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood
188 hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the
189 requirements of this Article and, as applicable, the requirements of the Florida Building Code: or

190

191 B. Are above the closest applicable base flood elevation, the area shall be regulated as special flood
192 hazard area unless the applicant obtains a Letter of Map Change that removes the area from the
193 special flood hazard area.

194

195 **Section 9.1.10. Other laws.**

196

197 The provisions of this Article shall not be deemed to nullify any provisions of local state or federal law.

198

199 **Section 9.1.11. Abrogation and greater restrictions.**

200

201 This Article supersedes any regulation in effect for management of development in flood hazard areas.
202 However, it is not intended to repeal or abrogate any existing regulations, including land development
203 regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In
204 the event of a conflict between this Article and any other regulation, the more restrictive shall govern.
205 This Article shall not impair any deed restriction, covenant, or easement but any land that is subject to
206 such interests shall also be governed by this Article.

207

208 **Section 9.1.12. Interpretation.**

209

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

211

212 A. Considered as minimum requirements;

213

214 B. Liberally construed in favor of the governing body; and

215

216 C. Deemed neither to limit nor repeal any other powers granted under state statutes.

217

218 **CHAPTER 2. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR.**

219

220 **Section 9.2.1. Designation.**

221

222 The Director of the Department of Community Development is designated as the Floodplain
223 Administrator. The Floodplain Administrator may delegate performance of certain duties to other
224 employees.

225

226 **Section 9.2.2. General.**

227

228 The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this
229 Article. The Floodplain Administrator shall have the authority to render interpretations of this Article
230 consistent with the intent and purpose of this Article and may establish policies and procedures in order

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231 to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have
232 the effect of waiving requirements specifically provided in this Article without the granting of a variance
233 pursuant to § 9.6.1. of this Article.

234

235 **Section 9.2.3. Applications and permits.**

236

237 The Floodplain Administrator, in coordination with other pertinent offices of the city, shall:

238

239 A. Review applications and plans to determine whether proposed new development will be located in
240 flood hazard areas.

241

242 B. Review applications for modification of any existing development in flood hazard areas for
243 compliance with the requirements of this Article.

244

245 C. Interpret flood hazard area boundaries where such interpretation is necessary to determine the
246 exact location of boundaries; a person contesting the determination shall have the opportunity to
247 appeal the interpretation.

248

249 D. Provide available flood elevation and flood hazard information.

250

251 E. Determine whether additional flood hazard data shall be obtained from other sources or shall be
252 developed by an applicant.

253

254 F. Review applications to determine whether proposed development will be reasonably safe from
255 flooding.

256

257 G. Issue floodplain development permits or approvals for development other than buildings and
258 structures that are subject to the Florida Building Code, including buildings, structures, and facilities
259 exempt from the Florida Building Code, when compliance with this Article is demonstrated, or
260 disapprove the same in the event of noncompliance.

261

262 H. Coordinate with and provide comments to the Building Official to assure that applications, plan
263 reviews, and inspections for buildings and structures in flood hazard areas comply with the
264 applicable provisions of this Article.

265

266 **Section 9.2.4. Substantial improvement and substantial damage determinations.**

267

268 For applications for building permits to improve buildings and structures, including alterations,
269 movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations,
270 renovations, substantial improvements, repairs of substantial damage, and any other improvement of or
271 work on such buildings and structures, the Floodplain Administrator, in coordination with the Building
272 Official, shall:

273

274 A. Estimate the market value or require the applicant to obtain an appraisal of the market value
275 prepared by a qualified independent appraiser, of the building or structure before the start of
276 construction of the proposed work; in the case of repair, the market value of the building or

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277 structure shall be the market value before the damage occurred and before any repairs are made.

278

279 B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-
280 damaged condition, or the combined costs of improvements and repairs, if applicable, to the market
281 value of the building or structure.

282

283 C. Determine and document whether the proposed work constitutes substantial improvement or
284 repair of substantial damage; the determination requires evaluation of previous permits issued for
285 improvements and repairs as specified in the definition of substantial improvement.

286

287 D. Notify the applicant if it is determined that the work constitutes substantial improvement or repair
288 of substantial damage and that compliance with the flood resistant construction requirements of
289 the Florida Building Code and this Article is required.

290

291 **Section 9.2.5. Modifications of the strict application of the requirements of the Florida Building Code.**

292

293 The Floodplain Administrator shall review requests submitted to the Building Official that seek approval
294 to modify the strict application of the flood load and flood resistant construction requirements of the
295 Florida Building Code to determine whether such requests require the granting of a variance pursuant to
296 § 9.6.1. of this Article.

297

298 **Section 9.2.6. Notices and orders.**

299

300 The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all
301 necessary notices or orders to ensure compliance with this Article.

302

303 **Section 9.2.7. Inspections.**

304

305 The Floodplain Administrator shall make the required inspections as specified in this Article for
306 development that is not subject to the Florida Building Code, including buildings, structures, and
307 facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard
308 areas to determine if development is undertaken without issuance of a permit.

309

310 **Section 9.2.8. Other duties of the Floodplain Administrator.**

311

312 The Floodplain Administrator shall have other duties, including:

313

314 A. Establish, in coordination with the Building Official, procedures for administering and documenting
315 determinations of substantial improvement and substantial damage made pursuant to § 9.2.4. of
316 this Article.

317

318 B. Require that applicants proposing alteration of a watercourse notify adjacent communities and the
319 Florida Division of Emergency Management, State Floodplain Management Office, and submit
320 copies of such notifications to the Federal Emergency Management Agency (FEMA).

321

322 C. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit

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323 applications to submit to FEMA the data and information necessary to maintain the Flood Insurance
324 Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or
325 floodway designations; such submissions shall be made within six months of such data becoming
326 available.

327

328 D. Review required design certifications and documentation of elevations specified by this Article and
329 the Florida Building Code and this Article to determine that such certifications and documentations
330 are complete.

331

332 E. Notify the Federal Emergency Management Agency when the corporate boundaries of the City of
333 Cape Coral are modified.

334

335 F. Advise applicants for new buildings and structures, including substantial improvements, that are
336 located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier
337 Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591)
338 that federal flood insurance is not available on such construction; areas subject to this limitation are
339 identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise
340 Protected Areas."

341

342 **Section 9.2.9 Floodplain management records.**

343

344 Regardless of any limitation on the period required for retention of public records, the Floodplain
345 Administrator shall maintain and permanently keep and make available for public inspection all records
346 that are necessary for the administration of this Article and the flood resistant construction
347 requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Change;
348 records of issuance of permits and denial of permits; determinations of whether proposed work
349 constitutes substantial improvement or repair of substantial damage; required design certifications and
350 documentation of elevations specified by the Florida Building Code and this Article; notifications to
351 adjacent communities, FEMA and the state related to alterations of watercourses; assurances that the
352 flood carrying capacity of altered watercourses will be maintained; documentation related to appeals
353 and variances, including justification for issuance or denial; and records of enforcement actions taken
354 pursuant to this Article and the flood resistant construction requirements of the Florida Building Code.
355 These records shall be available for public inspection at the City Clerk's office, City of Cape Coral City
356 Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida.

357

358 **CHAPTER 3. PERMITS**

359

360 **Section 9.3.1. Permits required.**

361

362 Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any
363 development activity within the scope of this Article, including buildings, structures, and facilities
364 exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area
365 shall first make application to the Floodplain Administrator and the Building Official, if applicable, and
366 shall obtain the required permit(s) and approvals). No such permit or approval shall be issued until
367 compliance with the requirements of this Article and all other applicable codes and regulations has been
368 satisfied.

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Section 9.3.2. Floodplain development permits or approvals.

Floodplain development permits or approvals shall be issued pursuant to this Article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures, and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

Section 9.3.3. Buildings, structures, and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures, and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this Article:

- A. Nonresidential farm buildings on farms, as provided in section F.S. § 604.50.
- B. Temporary buildings or sheds used exclusively for construction purposes.
- C. Mobile or modular structures used as temporary offices.
- D. Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- E. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida, As used in this paragraph, the term **CHICKEE** means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- F. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- G. Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- H. Structures identified in section F.S. § 553.73(10)(k) are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

Section 9.3.4. Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the city. The information provided shall:

- A. Identify and describe the development to be covered by the permit or approval.

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- 415
416 B. Describe the land on which the proposed development is to be conducted by legal description,
417 street address, or similar description that will readily identify and definitively locate the site.
418
419 C. Indicate the use and occupancy for which the proposed development is intended.
420
421 D. Be accompanied by a site plan or construction documents as specified in § 9.4 of this Article.
422
423 E. State the valuation of the proposed work.
424
425 F. Be signed by the applicant or the applicant's authorized agent.
426
427 G. Give such other data and information as required by the Floodplain Administrator.
428

429 **Section 9.3.5. Validity of permit or approval.**

430
431 The issuance of a floodplain development permit or approval pursuant to this Article shall not be
432 construed to be a permit for, or approval of, any violation of this Article, the Florida Building Codes, or
433 any other regulation of the City of Cape Coral. The issuance of permits based on submitted applications,
434 construction documents, and information shall not prevent the Floodplain Administrator from requiring
435 the correction of errors and omissions.
436

437 **Section 9.3.6. Expiration.**

438
439 A floodplain development permit or approval shall become invalid unless the work authorized by such
440 permit is commenced within 180 days after its issuance, or if the work authorized is suspended or
441 abandoned for a period of 180 days after the work commences. Extensions for periods of not more than
442 180 days each shall be requested in writing and justifiable cause shall be demonstrated.
443

444 **Section 9.3.7. Suspension or revocation.**

445
446 The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or
447 approval if the permit was issued in error; on the basis of incorrect, inaccurate, or incomplete
448 information; or in violation of this Article or any other regulation or requirement of the City of Cape
449 Coral.
450

451 **Section 9.3.8. Other permits required.**

452
453 Floodplain development permits and building permits shall include a condition that all other applicable
454 state or federal permits be obtained before commencement of the permitted development, including
455 the following:
456

- 457 A. The South Florida Water Management District; F.S. § 373.036.
458
459 B. Florida Department of Health for onsite sewage treatment and disposal systems; F.S. § 381.0065
460 and Chapter 64E-6, F.A.C.

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- 461
462 C. Florida Department of Environmental Protection for construction, reconstruction, changes, or
463 physical activities for shore protection or other activities seaward of the coastal construction control
464 line; F.S. § 161.141.
465
466 D. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit;
467 F.S. § 161.055.
468
469 E. Florida Department of Environmental Protection for activities that affect wetlands and alter surface
470 water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water
471 Act.
472
473 F. Federal permits and approvals.
474

475 **CHAPTER 4. SITE PLANS AND CONSTRUCTION DOCUMENTS.**

476
477 **Section 9.4.1. Information for development in flood hazard areas.**

- 478
479 A. The site plan or construction documents for any development subject to the requirements of this
480 Article shall be drawn to scale and shall include, as applicable to the proposed development:
481
482 1. Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood
483 elevation(s), and ground elevations if necessary for review of the proposed development;
484
485 2. Where base flood elevations or floodway data are not included on the FIRM or in the Flood
486 Insurance Study, they shall be established in accordance with § 9.4.2.(B) or (C) of this Article;
487
488 3. Where the parcel on which the proposed development will take place will have more than 50
489 lots or is larger than five acres and the base flood elevations are not included on the FIRM or in
490 the Flood Insurance Study, such elevations shall be established in accordance with § 9.4.2.(A) of
491 this Article;
492
493 4. Location of the proposed activity, and structures, and locations of existing buildings and
494 structures; in coastal high hazard areas, new buildings shall be located landward of the reach of
495 mean high tide;
496
497 5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation;
498
499 6. Where the placement of fill is proposed, the amount, type, and source of fill material;
500 compaction specifications; a description of the intended purpose of the fill areas; and evidence
501 that the proposed fill areas are the minimum necessary to achieve the intended purpose;
502
503 7. Delineation of the coastal construction control line or notation that the site is seaward of the
504 coastal construction control line, if applicable;
505
506 8. Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is

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507 approved by the Florida Department of Environmental Protection; and

508

509 9. Existing and proposed alignment of any proposed alteration of a watercourse.

510

511 B. The Floodplain Administrator is authorized to waive the submission of site plans, construction
512 documents, and other data that are required by this Article but that are not required to be prepared
513 by a registered design professional if it is found that the nature of the proposed development is such
514 that the review of such submissions is not necessary to ascertain compliance with this Article.

515

516 **Section 9.4.2. Information in flood hazard areas without base flood elevations (approximate Zone A).**

517

518 Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been
519 provided, the Floodplain Administrator shall:

520

521 A. Require the applicant to include base flood elevation data prepared in accordance with currently
522 accepted engineering practices.

523

524 B. Obtain, review, and provide to applicants base flood elevation and floodway data available from a
525 federal or state agency or other source or require the applicant to obtain and use base flood
526 elevation and floodway data available from a federal or state agency or other source.

527

528 C. Where base flood elevation and floodway data are not available from another source, where the
529 available data are deemed by the Floodplain Administrator to not reasonably reflect flooding
530 conditions, or where the available data are known to be scientifically or technically incorrect or
531 otherwise inadequate:

532

533 1. Require the applicant to include base flood elevation data prepared in accordance with
534 currently accepted engineering practices; or

535

536 2. Specify that the base flood elevation is two feet above the highest adjacent grade at the location
537 of the development, provided there is no evidence indicating flood depths have been or may be
538 greater than two feet; and

539

540 D. Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA,
541 advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format
542 required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal
543 requirements and pay the processing fees.

544

545 **Section 9.4.3. Additional analyses and certifications.**

546

547 As applicable to the location and nature of the proposed development activity, and in addition to the
548 requirements of this section, the applicant shall have the following analyses signed and sealed by a
549 Florida licensed engineer for submission with the site plan and construction documents:

550

551 A. For development activities in a regulatory floodway, a floodway encroachment analysis that
552 demonstrates that the encroachment of the proposed development will not cause any increase in

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553 base flood elevations; where the applicant proposes to undertake development activities that do
554 increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in §
555 9.4.4. of this Article and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with
556 the site plan and construction documents.
557

558 B. For development activities in a riverine flood hazard area for which base flood elevations are
559 included in the Flood Insurance Study or on the FIRM and floodways have not been designated,
560 hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed
561 development, when combined with all other existing and anticipated flood hazard area
562 encroachments, will not increase the base flood elevation more than one foot at any point within
563 the City of Cape Coral. This requirement does not apply in isolated flood hazard areas not connected
564 to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
565

566 C. For alteration of a watercourse, an engineering analysis prepared in accordance with standard
567 engineering practices which demonstrates that the flood-carrying capacity of the altered or
568 relocated portion of the watercourse will not be decreased, and certification that the altered
569 watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity;
570 the applicant shall submit the analysis to FEMA as specified in § 9.4.4. of this Article.
571

572 D. For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas
573 (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase
574 the potential for flood damage.
575

576 **Section 9.4.4. Submission of additional data.**
577

578 When additional hydrologic, hydraulic, or other engineering data, studies, and additional analyses are
579 submitted to support an application, the applicant has the right to seek a Letter of Map Change from
580 FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood
581 hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be
582 prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and
583 processing fees shall be the responsibility of the applicant.
584

585 **CHAPTER 5. INSPECTIONS.**
586

587 **Section 9.5.1. General.**
588

589 Development for which a floodplain development permit or approval is required shall be subject to
590 inspection.
591

592 **Section 9.5.2. Development other than buildings and structures.**
593

594 The Floodplain Administrator shall inspect all development to determine compliance with the
595 requirements of this Article and the conditions of issued floodplain development permits or approvals.
596

597 **Section 9.5.3. Buildings, structures and facilities exempt from the Florida Building Code.**
598

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599 The Floodplain Administrator shall inspect buildings, structures, and facilities exempt from the Florida
600 Building Code to determine compliance with the requirements of this Article and the conditions of
601 issued floodplain development permits or approvals.
602

603 **Section 9.5.4. Buildings, structures, and facilities exempt from the Florida Building Code, lowest floor**
604 **inspection.**

605
606 Upon placement of the lowest floor, including basement, and prior to further vertical construction, the
607 owner of a building, structure, or facility exempt from the Florida Building Code shall submit to the
608 Floodplain Administrator:

- 609
610 A. If a design flood elevation was used to determine the required elevation of the lowest floor, the
611 certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional
612 surveyor; or
613
614 B. If the elevation used to determine the required elevation of the lowest floor was determined in
615 accordance with § 9.4.2.(C)(2) of this Article, the documentation of height of the lowest floor above
616 highest adjacent grade, prepared by the owner.
617

618 **Section 9.5.5. Buildings, structures, and facilities exempt from the Florida Building Code, final**
619 **inspection.**

620
621 As part of the final inspection, the owner shall submit a final certification of elevation of the lowest floor
622 or final documentation of the height of the lowest floor above the highest adjacent grade; such
623 certifications and documentations shall be prepared as specified in § 9.5.4. of this Article.
624

625 **Section 9.5.6. Manufactured homes.**

626
627 The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood
628 hazard areas to determine compliance with the requirements of this Article and the conditions of the
629 issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest
630 floor shall be submitted.
631

632 **CHAPTER 6. VARIANCES AND APPEALS.**

633
634 **Section 9.6.1. Variances.**

635
636 The Cape Coral Hearing Examiner shall hear and decide on requests for requests for variances from the
637 strict application of this Article. Pursuant to F.S. § 553.73(5), the Cape Coral Hearing Examiner shall hear
638 and decide on requests for appeals and requests for variances from the strict application of the flood
639 resistant construction requirements of the Florida Building Code. This section does not apply to Section
640 3109 of the Florida Building Code, Building.
641

642 **Section 9.6.2. Appeals.**

643
644 The Cape Coral Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any

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645 requirement, decision, or determination made by the Floodplain Administrator in the administration
646 and enforcement of this Article. Any person aggrieved by the decision of Cape Coral Hearing Examiner
647 may appeal such decision to the Cape Coral City Council, as provided by Article 2 of the Land
648 Development Code.

649

650 **Section 9.6.3. Limitations on authority to grant variances.**

651 The Cape Coral Hearing Examiner shall base his or her decisions on variances on technical justifications
652 submitted by applicants, the considerations for issuance in § 9.6.7. of this Article, the conditions of
653 issuance set forth in § 9.6.8. of this Article, and the comments and recommendations of the Floodplain
654 Administrator and the Building Official. The Cape Coral Hearing Examiner has the right to attach such
655 conditions as deemed necessary to further the purposes and objectives of this Article.

656

657 **Section 9.6.4. Restrictions in floodways.**

658

659 A variance shall not be issued for any proposed development in a floodway if any increase in base flood
660 elevations would result, as evidenced by the applicable analyses and certifications required in § 9.4.3. of
661 this Article.

662

663 **Section 9.6.5. Historic buildings.**

664

665 A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building
666 that is determined eligible for the exception to the flood resistant construction requirements of the
667 Florida Building Code, Existing Building, Chapter 11 Historic Buildings, upon a determination that the
668 proposed repair, improvement, or rehabilitation will not preclude the building's continued designation
669 as a historic building and the variance is the minimum necessary to preserve the historic character and
670 design of the building. If the proposed work precludes the building's continued designation as a historic
671 building, a variance shall not be granted and the building and any repair, improvement, and
672 rehabilitation shall be subject to the requirements of the Florida Building Code.

673

674 **Section 9.6.6. Functionally dependent uses.**

675

676 A variance is authorized to be issued for the construction or substantial improvement necessary for the
677 conduct of a functionally dependent use, as defined in this Article, provided the variance meets the
678 requirements of § 9.6.4., is the minimum necessary considering the flood hazard, and all due
679 consideration has been given to use of methods and materials that minimize flood damage during
680 occurrence of the base flood.

681

682 **Section 9.6.7. Considerations for issuance of variances.**

683

684 In reviewing requests for variances, the Cape Coral Hearing Examiner shall consider all technical
685 evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this Article,
686 and the following:

687

- 688 A. The danger that materials and debris may be swept onto other lands resulting in further injury or
689 damage;

690

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- 691 B. The danger to life and property due to flooding or erosion damage;
692
693 C. The susceptibility of the proposed development, including contents, to flood damage and the effect
694 of such damage on current and future owners;
695
696 D. The importance of the services provided by the proposed development to the City of Cape Coral;
697
698 E. The availability of alternate locations for the proposed development that are subject to lower risk of
699 flooding or erosion;
700
701 F. The compatibility of the proposed development with existing and anticipated development;
702
703 G. The relationship of the proposed development to the comprehensive plan and floodplain
704 management program for the area;
705
706 H. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
707
708 I. The expected heights, velocity, duration, rate of rise, and debris and sediment transport of the
709 floodwaters and the effects of wave action, if applicable, expected at the site; and
710
711 J. The costs of providing governmental services during and after flood conditions including
712 maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water
713 systems, streets, and bridges.
714

715 **Section 9.6.8. Conditions for issuance of variances.**
716

717 Variances shall be issued only upon:
718

- 719 A. Submission by the applicant of a showing of good and sufficient cause that the unique
720 characteristics of the size, configuration, or topography of the site limit compliance with any
721 provision of this Article or the required elevation standards;
722
723 B. Determination by the Cape Coral Hearing Examiner that:
724
725 1. Failure to grant the variance would result in exceptional hardship due to the physical
726 characteristics of the land that render the lot undevelopable; increased costs to satisfy the
727 requirements, or inconvenience do not constitute hardship;
728
729 2. The granting of a variance will not result in increased flood heights, additional threats to public
730 safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the
731 public, or conflict with existing local laws and ordinances; and
732
733 3. The variance is the minimum necessary, considering the flood hazard, to afford relief;
734
735 C. Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the
736 Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected

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737 parcel of land; and

738

739 D. If the request is for a variance to allow construction of the lowest floor of a new building or
740 substantial improvement of a building below the required elevation, a copy in the record of a
741 written notice from the Floodplain Administrator to the applicant for the variance, specifying the
742 difference between the base flood elevation and the proposed elevation of the lowest floor, stating
743 that the cost of federal flood insurance will be commensurate with the increased risk resulting from
744 the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and
745 stating that construction below the base flood elevation increases risks to life and property.

746

747 **Chapter 7. VIOLATIONS.**

748

749 **Section 9.7.1. Violations.**

750

751 Any development that is not within the scope of the Florida Building Code but that is regulated by this
752 Article that is performed without an issued permit, that is in conflict with an issued permit or that does
753 not fully comply with this Article, shall be deemed a violation of this Article. A building or structure
754 without the documentation of elevation of the lowest floor, other required design certifications, or
755 other evidence of compliance required by this Article or the Florida Building Code is presumed to be a
756 violation until such time as that documentation is provided.

757

758 **Section 9.7.2. Authority.**

759

760 For development that is not within the scope of the Florida Building Code but regulated by this Article
761 and determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation
762 or stop work orders to owners of the property involved, to the owner's agent, or to the person or
763 persons performing the work.

764

765 **Section 9.7.3. Unlawful continuance.**

766

767 Any person who shall continue any work after having been served with a notice of violation or a stop
768 work order, except such work as that person is directed to perform to remove or remedy a violation or
769 unsafe condition, shall be subject to penalties as prescribed by law.

770

771 **CHAPTER 8. FLOOD RESISTANT DEVELOPMENT**

772

773 **Section 9.8.1. Design and construction of buildings, structures, and facilities exempt from the Florida
774 Building Code.**

775

776 Pursuant to § 9.3.3. of this Article, buildings, structures, and facilities that are exempt from the Florida
777 Building Code, including substantial improvement or repair of substantial damage of such buildings,
778 structures, and facilities, shall be designed and constructed in accordance with the flood load and flood
779 resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that
780 are not walled and roofed buildings shall comply with the requirements of § 9.8.14. of this Article.

781

782

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783 **Section 9.8.2. Buildings and structures seaward of the coastal construction control line.**

784
785 If extending, in whole or in part, seaward of the coastal construction control line and also, in whole or in
786 part, in a flood hazard area:

- 787
788 A. Buildings and structures shall be designed and constructed to comply with the more restrictive
789 applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or
790 Florida Building Code, Residential Section R322; and
791
792 B. Minor structures and non-habitable major structures as defined in F.S. § 161.54, shall be designed and
793 constructed to comply with the intent and applicable provisions of this Article and ASCE 24.
794

795 **Section 9.8.3. Subdivision Minimum requirements.**

796
797 Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be
798 reviewed to determine that:

- 799
800 A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe
801 from flooding;
802
803 B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are
804 located and constructed to minimize or eliminate flood damage; and
805
806 C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate
807 drainage paths shall be provided to guide floodwaters around and away from proposed structures.
808

809 **Section 9.8.4. Subdivision plats.**

810
811 Where any portion of proposed subdivisions lies within a flood hazard area, the following shall be
812 required:

- 813
814 A. Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations,
815 as appropriate, shall be shown on preliminary plats;
816
817 B. Where the subdivision has more than 50 lots or is larger than five acres and base flood elevations are
818 not included on the FIRM, the base flood elevations determined in accordance with § 9.4.2. of this
819 Article; and
820
821 C. Compliance with the site improvement and utilities requirements of § 9.8.5., 9.8.6., 9.8.7., 9.8.8.,
822 9.8.9., and 9.8.10. of this Article.
823

824 **Section 9.8.5. Minimum requirements for site improvements, utilities, dry floodproofing, and**
825 **limitations.**

826
827 All proposed new development shall be reviewed to determine that:
828

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- 829 A. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe
830 from flooding;
831
- 832 B. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are
833 located and constructed to minimize or eliminate flood damage; and
834
- 835 C. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate
836 drainage paths shall be provided to guide floodwaters around and away from proposed structures.
837
- 838 D. All dry-floodproofing projects undertaken where permitted must have flood-resistant materials
839 constructed and installed two additional feet above the minimum floodproofing elevation required
840 by ASCE 24.

841

842 **Section 9.8.6. Sanitary sewage facilities.**

843

844 All new and replacement sanitary sewage facilities, private sewage treatment plants (including all
845 pumping stations and collector systems), and on-site waste disposal systems shall be designed in
846 accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C.
847 and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge
848 from the facilities into flood waters, and impairment of the facilities and systems.

849

850 **Section 9.8.7. Water supply facilities.**

851

852 All new and replacement water supply facilities shall be designed in accordance with the water well
853 construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate
854 infiltration of floodwaters into the systems.

855

856 **Section 9.8.8. Limitations on sites in regulatory floodways.**

857

858 No development, including site improvements and land disturbing activity involving fill or regrading shall
859 be authorized in the regulatory floodway unless the floodway encroachment analysis required in § 9.4.3.
860 of this Article demonstrates that the proposed development or land disturbing activity will not result in
861 any increase in the base flood elevation.

862

863 **Section 9.8.9. Limitations on placement of fill.**

864

865 Subject to the limitations of this Article, fill shall be designed to be stable under conditions of flooding
866 including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against
867 flood-related erosion and scour. In addition to these requirements, if intended to support buildings and
868 structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.

869

870 **Section 9.8.10. Limitations on sites in coastal high hazard areas (Zone V).**

871

872 In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such
873 alteration is approved by the Florida Department of Environmental Protection and only if the engineering
874 analysis required by § 9.4.3.(D) of this Article demonstrates that the proposed alteration | will not increase

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875 the potential for flood damage. Construction or restoration of dunes under or around elevated buildings
876 and structures shall comply with § 9.8.14.(H) of this Article.

877
878
879

880 **Section 9.8.11. Manufactured homes.**

881

882 A. General. All manufactured homes installed in flood hazard areas shall be installed by an installer that
883 is licensed pursuant to F.S. § 320.8249, and shall comply with the requirements of Chapter 15C-1,
884 F.A.C. and the requirements of this Article. If located seaward of the coastal construction control line,
885 all manufactured homes shall comply with the more restrictive of the applicable requirements.

886

887 B. Foundations. All new manufactured homes and replacement manufactured homes installed in flood
888 hazard areas shall be installed on permanent, reinforced foundations that:

889

890 1. In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance
891 with the foundation requirements of the Florida Building Code, Residential Section R322.2 and
892 this Article; and

893

894 2. In coastal high hazard areas (Zone V), are designed in accordance with the foundation
895 requirements of the Florida Building Code, Residential Section R322.3 and this Article.

896

897 C. Anchoring. All new manufactured homes and replacement manufactured homes shall be installed
898 using methods and practices which minimize flood damage and shall be securely anchored to an
899 adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods
900 of anchoring include use of over-the-top or frame ties to ground anchors. This anchoring requirement
901 is in addition to applicable state and local anchoring requirements for wind resistance.

902

903 D. Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply
904 with one of the following requirements, as applicable:

905

906 1. General elevation requirement. Unless subject to the requirements of § 9.8.11.D.2. of this Article,
907 all manufactured homes that are placed, replaced, or substantially improved on sites: (a) outside
908 of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision;
909 (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing
910 manufactured home park or subdivision upon which a manufactured home has incurred
911 substantial damage as the result of a flood, shall be elevated such that the bottom of the frame
912 is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building
913 Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V);

914

915 2. Elevation requirement for certain existing manufactured home parks and subdivisions.
916 Manufactured homes that are not subject to § 9.8.11.D.1. of this Article, including manufactured
917 homes that are placed, replaced, or substantially improved on sites located in an existing
918 manufactured home park or subdivision, unless on a site where substantial damage as result of
919 flooding has occurred, shall be elevated such that either the:

920

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- 921 a. Bottom of the frame of the manufactured home is at or above the elevation required, as
922 applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2
923 (Zone A) or Section R322.3 (Zone V); or
924
925 b. Bottom of the frame is supported by reinforced piers or other foundation elements of at least
926 equivalent strength that are not less than 36 inches in height above grade.
927
928 E. Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements
929 of the Florida Building Code, Residential Section R322 for such enclosed areas, as applicable to the
930 flood hazard area.
931
932 F. Utility equipment. Utility equipment that serves manufactured homes, including electric, heating,
933 ventilation, plumbing, air conditioning equipment, and other service facilities shall comply with the
934 requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard
935 area.
936

937 **Section 9.8.12. Recreational vehicles and park trailers.**

- 938
939 A. Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas
940 shall:
941
942 1. Be on the site for fewer than 180 consecutive days; and
943
944 2. Be fully licensed and ready for highway use, which means the recreational vehicle or park model
945 is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and
946 security devices, and has no permanent attachments such as additions, rooms, stairs, decks, and
947 porches.
948
949 B. Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in §
950 9.8.12.A. of this Article for temporary placement shall meet the requirements of § 9.8.11. of this
951 Article for manufactured homes.
952

953 **Section 9.8.13. Tanks.**

- 954
955 A. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation,
956 collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions
957 of the design flood, including the effects of buoyancy assuming the tank is empty.
958
959 B. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements
960 of § 9.8.13.C. of this Article shall:
961
962 1. Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the
963 tanks are anchored or otherwise designed and constructed to prevent flotation, collapse, or
964 lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the
965 design flood, including the effects of buoyancy assuming the tank is empty and the effects of
966 flood-borne debris; and

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2. Not be permitted in coastal high hazard areas (Zone V).

C. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

D. Tank inlets and vents. Tank inlets, fill openings, outlets, and vents shall be:

1. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

Section 9.8.14. Other development.

A. General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this Article or the Florida Building Code, shall:

1. Be located and constructed to minimize flood damage;

2. Meet the limitations of § 9.8.8. of this Article if located in a regulated floodway;

3. Be anchored to prevent flotation, collapse, or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;

4. Be constructed of flood damage- resistant materials; and

5. Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

B. Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of § 9.8.8. of this Article.

C. Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of § 9.8.8. of this Article.

D. Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings, and similar means for vehicles or pedestrians to travel

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1013 from one side of a watercourse to the other side, that encroach into regulated floodways, shall meet
1014 the limitations of § 9.8.8. of this Article. Alteration of a watercourse that is part of a road or
1015 watercourse crossing shall meet the requirements of § 9.4.3.C. of this Article.
1016

1017 E. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios, and similar
1018 nonstructural uses in coastal high hazard areas (Zone V).
1019

1020 In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks,
1021 walkways, patios, and similar nonstructural uses are permitted beneath or adjacent to buildings and
1022 structures provided the concrete slabs are designed and constructed to be:
1023

- 1024 1. Structurally independent of the foundation system of the building or structure;
- 1025
- 1026 2. Frangible and not reinforced, to minimize debris during flooding that is capable of causing
1027 significant damage to any structure; and
- 1028
- 1029 3. Have a maximum slab thickness of not more than four inches.

1030
1031 F. Decks and patios in coastal high hazard areas (Zone V). In addition to the requirements of the Florida
1032 Building Code, in coastal high hazard areas decks and patios shall be located, designed, and
1033 constructed in compliance with the following:
1034

- 1035 1. A deck that is structurally attached to a building or structure shall have the bottom of the lowest
1036 horizontal structural member at or above the design flood elevation and any supporting members
1037 that extend below the design flood elevation shall comply with the foundation requirements that
1038 apply to the building or structure, which shall be designed to accommodate any increased loads
1039 resulting from the attached deck;
1040
- 1041 2. A deck or patio that is located below the design flood elevation shall be structurally independent
1042 from buildings or structures and their foundation systems and shall be designed and constructed
1043 either to remain intact and in place during design flood conditions or to break apart into small
1044 pieces to minimize debris during flooding that is capable of causing structural damage to the
1045 building or structure or to adjacent buildings and structures;
1046
- 1047 3. A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with
1048 more than the minimum amount of fill necessary for site drainage shall not be approved unless
1049 an analysis prepared by a qualified registered design professional demonstrates no harmful
1050 diversion of floodwaters or wave runup and wave reflection that would increase damage to the
1051 building or structure or to adjacent buildings and structures; and
1052
- 1053 4. A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on
1054 nonstructural fill material that is similar to and compatible with local soils and is the minimum
1055 amount necessary for site drainage may be approved without requiring analysis of the impact on
1056 diversion of floodwaters or wave runup and wave reflection.
1057

1058 G. Other development in coastal high hazard areas (Zone V).

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In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state, or local authority; if located outside the footprint of and not structurally attached to buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

1. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
 2. Solid fences, privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
 3. On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.
- H. Nonstructural fill in coastal high hazard areas (Zone V).
1. Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
 2. Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
 3. Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.