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Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

RESOLUTION FCD 2016R004

Text Amendment to the Board of Hearing Review Procedures of the Flood Control District of Maricopa County

Agenda Item: C-69-16-035-6-00

WHEREAS, the Flood Control District of Maricopa County (District) was established in accordance with provisions of Arizona Revised Statutes, Title 48, Chapter 21, to identify flood problems, and control waters of rivers, streams and other surface waters to eliminate or minimize flooding of property and the endangering of lives of residents in Maricopa County; and

WHEREAS, protection of the integrity of flood control district facilities and property through the enforcement of the Floodplain Regulations for Maricopa County is essential to the District's ability to prevent flooding damage to property and the endangering of lives; and

WHEREAS, Arizona Revised Statutes (A.R.S.) section 48-3603(C)24 require for a district that intends to take enforcement action pursuant to section 48-3615.01 to adopt written rules of procedure for the hearing and review of decisions by the Board of Hearing Review; and,

WHEREAS, procedures for the Board of Hearing Review were previously adopted by Resolution FCD 2012R002 dated March 14, 2012; and,

WHEREAS, the procedures are revisited to conform with changes in state legislation, and to add additional detail to the procedures that will clarify burden of proof and order of argument before the Board; and,

WHEREAS, the Board of Directors of the Flood Control District of Maricopa County (Board) has held a public hearing as required under A.R.S. section 48-3609.

NOW, THEREFORE, BE IT RESOLVED, the Board in order to carry out its statutory duty to protect the Flood Control District, life, health and property of county residents hereby adopts the Text Amendment to the Board of Hearing Review Procedures for the Flood Control District of Maricopa County as attached hereto and marked as Exhibit A; and

BE IT FURTHER RESOLVED, the Board designates the Chief Engineer and General Manager for the District to administer and enforce the decisions of the Board of Hearing Review for the Flood Control District of Maricopa County.

Dated this 2nd day June, 2016.

Chairman, Board of Directors

ATTEST:

Clerk of the Board

Exhibit A

Board of Hearing Review Procedures

A. The Board of Hearing Review ("Board") shall consider only the record of proceedings. No new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted to the Hearing Officer at the hearing, a copy of the audiotape of the hearing, a copy of the Chief Engineer's final decision and order, and any prior orders of the Board or a reviewing court. If the Board determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.

B. The person requesting review by the Board of the Chief Engineer's final decision and order shall deliver a written request for review to the Clerk of the Board of Directors within 15 days after the date of the Chief Engineer's final decision and order.

C. Within 30 calendar days of receipt of the written request for review, the Chief Engineer shall prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the request for review to be heard by the Board.

D. Not fewer than 10 working days prior to the date of the hearing, the clerk of the Board of Hearing Review shall notify all parties of the date, time, and place of the hearing by certified mail to the last known address of the parties.

E. The Chairperson of the Board, or designee, shall preside at all hearings and shall decide on all questions pertaining to procedure. When appropriate, the Chairperson may issue a prehearing order providing guidance to the parties on the conduct of the hearing.

F. Each party shall have 10 minutes to present oral arguments. The Chairperson or Board may extend this time.

G. Each member of the Board and Board counsel may question representatives of any party appearing before them as to the party's view of the law and record.

H. The findings of fact of the Hearing Officer and conclusions of law accepted by the Chief Engineer shall carry with them a rebuttable presumption of validity. The party requesting review before the Board shall bear the burden of demonstrating by a preponderance of the evidence that either these findings of fact or conclusions of law are arbitrary, capricious, unreasonable or unsubstantiated by the record established before the Hearing Officer. As to any penalty imposed by the Chief Engineer, the Chief Engineer shall bear the burden of persuasion that the penalty is just and equitable under the circumstances. Once that initial burden is met, the party

requesting review before the Board shall bear the burden of demonstrating that the penalty imposed is unjust and/or inequitable under the circumstances or is inconsistent with the law.

I. Based on the record before the Board, the Board may deny, approve, modify or return to the Chief Engineer for further consideration, the Chief Engineer's final decision or order. The Board shall issue a written order of its decision including findings of fact and conclusions of law, and shall submit its final written order on the matter to the Chief Engineer within 30 days after completion of the hearing. The Board shall decide by a majority vote of the participating members. The clerk of the Board of Hearing Review shall serve copies of the Board's order on all parties to the hearing.

J. The final decision of the Board is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Appendix
Typical Order of Argument Before the Board

Except as otherwise provided by order of the Chairperson under Section E or by the Board, the order of argument before the Board will generally be as follows:

Representatives of each party may submit a brief, not to exceed 10 pages in length, to the clerk of the Board of Hearing Review not less than five days before the hearing to assist the Board in understanding their arguments. The clerk will promptly distribute copies to the Board and Board counsel.

The representative of the party requesting review of the Chief Engineer's final decision and order shall speak first and present argument as to why the Chief Engineer's final decision and order is in error and should be denied or modified. The representative of the party requesting review may, with the approval of the Chairperson, reserve time for rebuttal. Board members or Board counsel may ask questions of the representative.

The representative of any other party properly admitted to the hearing shall speak next and present argument as to why the Chief Engineer's final decision and order should be approved, denied, or modified. If there are multiple such parties, they shall speak in an order determined by the Chairperson. Board members or Board counsel may ask questions of the representatives.

The representative of the Flood Control District shall speak after all other parties and present argument as to why the Chief Engineer's final decision and order should be approved. Board members or Board counsel may ask questions of the representative.

The representative of the party requesting review may, if time was reserved for rebuttal, present rebuttal solely to argument presented by another party. Board members or Board counsel may ask questions of the representative.

Following presentation of all argument, the Board Chairperson, or designee, will enquire of Board members and Board counsel whether there are any additional questions. When appropriate, representatives of all parties may be invited to provide responses to questions.

The Chairperson, or designee, will ask the Board members and Board counsel if executive session is needed. If so and otherwise allowed under law, the Board will go into executive session to hear advice of counsel. If needed, the Board may schedule an executive session in accordance with applicable law.

Following executive session, if any, the Board will deliberate in open session. The Board may make a decision, ask Board counsel to research and/or draft a decision, or take the matter under advisement or any combination of the above. Upon deciding what action it is taking, the Board will adjourn until it is ready to complete its deliberations and adopt an order. Notice will be provided of such time to the parties at least 10 days in advance, unless the parties agree on the record to a different schedule.