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1 AUTHORITY, FINDINGS OF FACT, PURPOSE, & OBJECTIVES

§ 95.001 STATUTORY AUTHORIZATION

The legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. **(Ord. passed 5-13-08)**

§ 95.002 FINDINGS OF FACT

- (A) The flood prone areas within the jurisdiction of Lake Lure are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of 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 floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

§ 95.003 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to accomplish the following:

- (A) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

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- (D) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (E) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

§ 95.004 OBJECTIVES

The following are the objectives of this ordinance:

- (A) Protect human life, safety, and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business losses and interruptions;
- (E) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (F) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (G) Ensure that potential buyers are aware that property is in a special flood hazard area.

2 DEFINITIONS

§ 95.010 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a “special flood hazard area”, it may be obtained from engineering studies available from a federal, state, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the “freeboard”, establishes the “regulatory flood protection elevation”.

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

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

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“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290 (a) (6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or *“Flooding”* means a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of inland or tidal waters; and/or (b) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the flood insurance rate map (FIRM).

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency.

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The flood insurance study report includes flood insurance rate maps (FIRMS) and flood boundary and floodway maps (FBFMs), if published.

“*Flood Prone Area*” see “Floodplain”.

“*Flood Zone*” means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

“*Floodplain*” means any land area susceptible to being inundated by water from any source.

“*Floodplain Administrator*” is the individual appointed to administer and enforce the floodplain management regulations.

“*Floodplain Development Permit*” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

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

“*Floodplain Management Regulations*” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“*Floodproofing*” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“*Floodway*” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“*Flood Zone*” means a geographical area shown on a flood hazard map or flood insurance rate map that reflects the severity or type of flooding in the area.

“*Freeboard*” means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height

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calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“*Functionally Dependent Facility*” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

“*Hazardous Waste Management Facility*” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“*Highest Adjacent Grade (HAG)*” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“*Historic Structure*” means any structure that meets one or more of the following criteria:

- (1) It is listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register.
- (2) It is certified or preliminarily determined by the Secretary of 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) It is individually listed on a local inventory of historic landmarks in communities with a certified local government (CLG) program.
- (4) It is certified as contributing to the historical significance of a historic district designated by a community with a “certified local government (CLG) program.”

Certified local government (CLG) programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966, as amended in 1980.

“*Lowest Adjacent Grade (LAG)*” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

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“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building’s lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal, by replacement cost depreciated for age of building and quality of construction (actual cash value), or by adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the flood insurance rate study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

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“*Recreational Vehicle (RV)*” means a vehicle which is (1) built on a single chassis, (2) is 400 square feet or less in area when measured at the largest horizontal projection, (3) is designed to be self-propelled or permanently towable by a light duty truck, and (4) is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“*Reference Level*” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1- A30, AE, A, or A99.

“*Regulatory Flood Protection Elevation*” means the base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In special flood hazard areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“*Remedy a Violation*” means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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

“*Salvage Yard*” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“*Solid Waste Disposal Facility*” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“*Solid Waste Disposal Site*” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“*Special Flood Hazard Area (SFHA)*” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year as determined in § 95.021, of this ordinance.

“*Start of Construction*” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction,

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rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

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

“*Substantial Damage*” means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“*Substantial Improvement*” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include (1) any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

“*Threat to Public Safety*” and/or “*Nuisance*” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay stream, canal, or basin.

“*Variance*” is a grant of relief from the requirements of this ordinance.

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“*Violation*” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 95.031, § 95.032, § 95.034, § 95.040 and § 95.041 is presumed to be in violation until such time as that documentation is provided.

“*Water Surface Elevation (WSE)*” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“*Watercourse*” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

3 GENERAL PROVISIONS

§ 95.020 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the jurisdiction, including any extra-territorial jurisdiction, of the Town of Lake Lure and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

§ 95.021 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The Special Flood Hazard Areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for Rutherford County, dated 2 July 2008, which are adopted by reference and declared to be a part of this ordinance.

In addition, upon annexation to the Town of Lake Lure or inclusion in its extra-territorial jurisdiction (ETJ), the special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State agreement between the State of North Carolina and FEMA as stated above, for the unincorporated areas of Rutherford County, with accompanying maps and other supporting data are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Rutherford County Unincorporated Area, dated 1 June 1987.

Town of Lake Lure, dated 2 July 2008.

§ 95.022 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of §95.021 of this Chapter

§ 95.023 COMPLIANCE

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of these and other applicable regulations.

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§ 95.024 ABROGATION AND GREATER RESTRICTIONS

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and others conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§ 95.025 INTERPRETATION

In the interpretation and application of these regulations, all provisions shall be (1) considered as minimum requirements, (2) liberally construed in favor of the governing body, and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

§ 95.026 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town of Lake Lure, or any officer or employee thereof, for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

§ 95.027 PENALTIES FOR VIOLATION

Any person who violates any of these regulations or fails to comply with any of their requirements shall be subject to the assessment of a civil penalty in accordance with the provisions of Section 92.999(F) of the Zoning Regulations of the Town of Lake Lure, the terms of which are incorporated herein by reference. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Lake Lure from taking such other lawful action as is necessary to prevent or remedy any violation.

4 ADMINISTRATION

§ 95.030 DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Town of Lake Lure Environmental Management Officer, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

§ 95.031 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS

- (A) ***Application Requirements.*** Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (a) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/paving areas, fill materials, storage areas, drainage facilities, and other development;
 - (b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in §95.021, or a statement that the entire lot is within the special flood hazard area;
 - (c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in §95.021;
 - (d) The boundary of the floodway(s) or non-encroachment area(s) as determined in §95.021;
 - (e) The base flood elevation (BFE) where provided as set forth in §95.021, §95.032, or §95.043;
 - (f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

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- (g) The certification of the plot plan by a registered land surveyor or professional engineer.
- (2) Proposed elevation, and method thereof, of all development within a special flood hazard area including, but not limited to, the following:
 - (a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, or A will be floodproofed; and
 - (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
 - (3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
 - (4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include, but are not limited to, the following:
 - (a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with §95.041(4)(c) when solid foundation perimeter walls are used in Zones A, AE, and A1-30.
 - (5) Usage details of any enclosed areas below the lowest floor.
 - (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (7) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.

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- (8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of §95.041, subsections (6) and (7) of this ordinance are met.
 - (9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on a plot plan) showing the location of the proposed watercourse alteration or relocation.
- (B) Permit Requirements. The floodplain development permit shall include, but not be limited to, the following:
- (1) A description of the development to be permitted under the floodplain development permit.
 - (2) The special flood hazard area determination for the proposed development in accordance with available data specified in §95.021.
 - (3) The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - (4) The regulatory flood protection elevation required for the protection of all public utilities.
 - (5) All certification submittal requirements with timelines.
 - (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
 - (7) The flood openings requirements, if in Zones A, AE or A1-30.
 - (8) Limitations of below-BFE-enclosure uses (if applicable). (i.e., parking, boathouses, building access and limited storage only).
- (C) Certification Requirements.
- (1) *Elevation Certificates.*
 - (a) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to

