

ARTICLE 11 "FRD" FLOODWATER RETARDING DAM BREACH IMPACT DISTRICT REGULATIONS

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11-101 Purpose: Certain areas of Marion County below Floodwater Retarding Dams (hereinafter referred to as FRD) would be subject to substantial flooding should a FRD breach occur. This could result in significant losses due to:

1. the cumulative effect of obstructions in the FRD breach impact area district causing increases in flood heights and velocities; and,
2. the occupancy of FRD breach impact area district by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damage.

The FRD breach impact area district is designed to permit the gainful use of certain lands which are considered to be in the path of potential flood waters and from which structures and other valuable property use that is subject to damage by flood water should be regulated. This would permit surface runoff through such areas in the event of a FRD breach with a minimum risk of structural damage or property loss, and a minimum of obligation upon governmental authorities for flood or disaster assistance.

As such, this Article is intended to promote the public health, safety, and general welfare and to minimize these losses by applying the provisions of this Article to the designated areas within Marion County. And by taking action to:

3. Restrict or prohibit uses which are dangerous to health, safety, or property in the FRD breach impact area, or which might cause undue increase in flood heights; and,
4. Protect individuals from buying lands for the purpose of building in the FRD breach impact area which is unsuited for intended purposes because of flood hazard.

11-102 Findings of Fact:

1. The FRD breach impact area district of Marion County, Kansas, are subject to inundation which, in the event of a FRD breach, could result in potential loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.
2. Such flood losses are caused by:
 - A. The cumulative effect of obstructions in FRD breach impact areas causing increases in flood heights and velocities.
 - B. The occupancy of FRD breach impact areas by uses vulnerable to floods or hazardous to others, and which are inadequately elevated or otherwise protected from flood damages.

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3. This Article uses a reasonable method of analyzing FRD breach impact flood hazards which consists of a series of interrelated steps, as follows:
 - A. The use of engineering calculations and breach impact studies which indicate the area and potential depth of inundation for each FRD.
 - B. Computation of floodway required to convey the breach flood waters without increasing flood heights more than one (1) foot at any point.
 - C. Delineation of breach impact area encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

11-103 General Provisions:

1. **Land to which Regulations Apply:** This Article shall apply to all lands within the unincorporated portion of Marion County, Kansas, identified on the Floodwater Retarding Dam Maps as elaborated by the official Professional Engineering Breach Impact Studies. No development shall be permitted in any defined FRD breach impact area except as authorized herein.
2. **The Enforcement Officer:** The Zoning Administrator of Marion County, Kansas, is designated as the enforcement officer.
3. **Rules for Interpretation of District Boundaries:** The boundaries of the FRD breach impact area district shall be determined by scaling distances on the engineering Breach Impact Studies. The Enforcement Officer shall make all interpretations as to the exact location of said boundaries. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute.
4. **Existing Development:** No development or structures presently located within a known FRD breach impact area shall be relocated, extended, converted or structurally altered.
5. **Abrogation and Greater Restrictions:** It is not intended by this Article to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail. All other regulations inconsistent with this Article are hereby repealed to the extent of the inconsistency only.
6. **Interpretation:** In their interpretation and application, the provisions of this Article shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and Marion County.
7. **Warning and Disclaimer of Liability:** The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. In the event of a FRD breach, larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes. This Article does not imply that areas outside boundaries of the FRD breach impact area or land uses permitted within such districts will be free from flooding or flood damages. This Article shall not create liability on the part of Marion County or any officer or employee thereof for any flood damages that may result from reliance on this Article or any administrative decision lawfully made thereunder.

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8. **Appeal:** Where a request for a permit to develop, build, locate, extend, convert or structurally alter any structure or building is denied by the Enforcement Officer, the applicant may appeal such decision and apply for relief to the Board of Zoning Appeals in the method provided in these Regulations for appeals.

11-104 Establishment of Zoning District: The mapped FRD breach impact areas within the jurisdiction of this Article are hereby divided into the following district: a floodwater retarding dam breach impact overlay district "FRD" identified on the Floodwater Retarding Dam Maps and as elaborated by the official Professional Engineering Breach Impact Studies. Within this district all uses not meeting the standards of this Article and those standards of underlying zoning districts shall be prohibited.

11-105 Permitted Uses: Only uses having a low flood damage potential and not obstructing flood flows shall be permitted within the Floodwater Retarding Dam Breach Impact Overlay District to the extent they are not prohibited by any other provision of these Regulations, and provided they do not require structures or storage of materials or equipment. Subject to the requirements of these Regulations, the following uses are permitted:

1. Agricultural uses.
2. Nonbuilding residential accessory uses such as lawns, gardens, parking, play and yard areas.
3. Nonresidential uses such as loading areas, parking, landing strips.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

11-106 Permit Required: No person, firm or corporation shall initiate any development or cause the same to be done without first obtaining a permit as required by these Regulations.