

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT TECHNICAL PROCEDURE

PROCEDURE NO.: Technical Procedure, TECH-103 **EFFECTIVE DATE:** June 19, 2007
REVISED: November 15, 2013

PROCEDURE TITLE: Covenant (Indemnification Agreement) Use Guidelines

PURPOSE: The purpose of this policy is to establish clear and consistent guidelines for when covenants are required for a permit and offer direction on the appropriate use and preparation of covenants. This policy also details the use of “covenant only” permits.

BACKGROUND: Section 16.20.040.B.11 of the Ordinance states that indemnification agreements (hereafter covenants) may be required as a condition of a floodplain use permit. The purpose of the covenants is to ensure disclosure of flood or erosion hazards that either impact the property or limit access to the property. Covenants may also be used to establish maintenance responsibilities for riparian mitigation or infrastructure constructed to address flood and/or erosion hazards.

PROCEDURE:

There are three basic types of covenants currently in use; General Covenants, Specific Covenants, and Access Covenants. There are two versions of each type of covenant, one for individuals and one for corporations, companies, L.L.Cs, etc. (hereafter corporate covenants). Additional documentation is required for corporate covenants to ensure that covenants are signed by someone who is authorized to represent the entity named on the deed. The types of covenant are described as follows.

General Covenants:

General Covenants are standard covenants that should be used whenever a property contains regulatory floodplains and/or mapped erosion hazard areas. General Covenants are not required if the entire property is in a mapped floodplain identified as having a BFE less than 0.5 ft. The covenant requirement may be waived if the floodplain and/or erosion hazard area impacts a relatively small portion of the parcel, the proposed improvement does not encroach into this area, and the hazard does not include a mapped floodway. The covenant requirement may also be waived if the parcel contains a platted drainage easement, floodplain and/or erosion hazard area and all existing and proposed improvements are located outside those platted areas.

Specific Covenants:

Specific Covenants are appended to General Covenants and include language that addresses issues specific to the property, such as to address maintenance of constructed flood or erosion protection, riparian mitigation, etc. and are used under the following circumstances:

- A fence or wall is permitted with openings designed to allow for water to flow through the wall. This covenant is used to ensure that there is adequate notification to current and future property owners that the openings are to be left open and maintained free of debris.
- A fence or wall is permitted with an elevation requirement.
- A structure or portion of a structure is permitted that is flood-vented and floodproofed in lieu of having the finished floor elevated to the Regulatory Flood Elevation. This covenant is used to notify current and future owners that the structure (or a portion of a structure) shall remain non-habitable unless brought into compliance with all applicable rules and regulations for habitable structures or areas.

- A permit that is issued contingent upon the construction of certain engineered flood and/or erosion protection. This covenant is used to notify current and future owners that certain constructed features on the property are necessary for protection against flood and/or erosion hazards, and that they shall be regularly inspected and properly maintained to serve their originally designed function. This includes the use of fill pad erosion protection measures that are “standard details” developed by the District, such as rip-rap protection for a fill pad. Structural foundation features such as piers and stem walls do not require a specific covenant, as they are features that are not likely to be modified by present or future owners.
- A permit that involves the alteration of a platted floodplain or erosion hazard area.
- A permit that includes riparian habitat mitigation. This covenant is used to notify current and future owners that riparian habitat mitigation has occurred on the subject parcel, that it is the responsibility of the owner(s) to maintain the riparian habitat, and that the area mitigated shall not be disturbed by any future activity.
- A permit that includes a riparian habitat mitigation credit transfer from one property to another. This covenant is used to notify current and future owners of both of the properties in question that a mitigation transfer has taken place, and that the area mitigated shall not be disturbed by any future activity. This covenant shall be signed by the owners of both properties.
- A permit that is subject to Variance by the Board of Supervisors. This covenant is used to notify future owners that the improvement does not comply with the Ordinance, was subject to a variance by the Board, that flood hazards are present, and that the property is not eligible for acquisition under the Floodprone Land Acquisition Program.
- A permit for a non-conforming use structure.
- A permit that includes an improved driveway crossing.

Other special covenants may be created, as needed, to address any specific need.

Access Covenants:

Access Covenants are required by Section 16.44.030 B. and are designed for use when private vehicular access to and from the subject property crosses any regulatory floodplain on a road or easement that is not a paved, publicly maintained road. The area of coverage includes that area between the end of the paved publicly maintained road and the beginning of the private access, as defined by the property boundary of the subject property.

“Covenant Only” Permit:

A “Covenant Only” permit may issued if:

- 1) The subject property requires Regular Covenants but the activity being permitted does not impact any regulatory floodplain, erosion hazard area, riparian habitat, or other area that requires additional consideration including the presence of any violations on the property.
- 2) The subject property only requires Access Covenants

See the “Preparing Covenant Only Permits” section below.

Preparing the Covenant:

Covenants shall be prepared by the Counter Hydrologist or Area Hydrologist, as appropriate. Generation of covenants for FPUPs at the time of permit intake must be done cautiously, as it may not be known which specific covenants may be required, if any. General guidelines for covenant preparation are as follows:

- Signed originals are required, photocopies of signed covenants are not acceptable.
- In order to prepare covenants, it is necessary to obtain the latest recorded deed for the subject property. A list of documents that are acceptable and not acceptable to convey ownership are shown in Attachment 1.
- All persons or entities named on the deed as an owner of the subject parcel are required to sign the covenants. If covenants will be signed by multiple owners in front of separate notaries, each name should have a separate area for the notary to sign and seal the document.
- Each covenant document shall have its own legal description attached. For example, if both General Covenants and Access Covenants are required, each covenant shall have the legal description attached to it.
- Legal descriptions shall be labeled Exhibit A.
- Photocopied legal descriptions shall be legible and shall be in a font size equivalent to 10-point font or larger.
- Previous recordation information shall be removed from all documents used as exhibits.
- Covenants shall NOT be faxed to customers, nor should they be faxed at any time during the process. Faxing can render covenants illegible and subject to rejection by the Recorder's Office.
- Powers of Attorney are acceptable for one individual to sign for another individual.
- If an owner named on the deed is deceased, a death certificate is acceptable in lieu of that persons signature provided at least one other owner is listed on the deed and all other named owners sign the covenant. If the deceased is the sole named owner, it shall be necessary for the heir(s) to provide adequate documentation demonstrating inheritance of the property.
- The FPUP number shall be placed in the footer of the covenant document along with information on whose attention the Recorder's Office should return the covenants to.
- Corporate covenants shall be used whenever the owner named on the deed is a company, corporation, L.L.C, etc.
 - For corporate covenants, in addition to the latest deed, it is necessary for the individual(s) signing the covenant to demonstrate that they are authorized to sign the covenant on behalf of the corporation. Acceptable documents include: Articles of Incorporation, documentation demonstrating ownership of the corporation, copy of board minutes, statement of Power of Attorney, a resolution, a letter on company letterhead signed by an authorized person allowing another individual to sign.

Preparing Covenants Only Permits:

Covenant only permits do not require completion of a green FPUP form, but do require the issuance of an FPUP number. The procedure for covenant only permits is as follows:

1. Assign an FPUP number for the permit. If General Covenants or General and Access Covenants are required, place a "C" suffix after the FPUP number. If only Access Covenants are required, place an "AC" suffix after the FPUP number.
2. Create an FPUP file for the permit. This file shall include:
 - a. A photocopy of the Development Services Department (DSD) Activity permit.
 - b. A photocopy of the approved site plan.
 - c. Covenants (either original signed or photocopies labeled "Out to customer" with the date they were given to the customer.)
 - d. Copy of the latest recorded deed.
 - e. All other information required pursuant to *ADM-201* in the *Policies and Procedures Handbook*
3. If the covenants are signed at the time of intake:
 - a. Sign and stamp the DSD Activity sheet and site plan.

- b. Make two photocopies of the DSD Activity sheet and one photocopy of the site plan. These will be the file copies for the permit folder and permit log.
 - c. Complete the Permits Plus workflow and any applicable conditions (i.e. setback requirements, etc.)
 - d. Return the original DSD Activity sheet and site plan(s) to the customer.
 - e. Place the file in the completed FPUPs tray.
4. If the owner(s) are not able to sign the covenants at the time of intake:
- a. Sign and stamp the DSD activity sheet and site plan and place the ORIGINALS in the FPUP folder for later issuance upon the return of the covenants.
 - b. Make two photocopies of the DS Activity sheet and one photocopy of the site plan. These will be the file copies for the permit folder and permit log.
 - c. Place any applicable conditions in Permits Plus (i.e. setback requirements, etc.)
 - d. If the deed is not available to prepare the covenants, let the applicant know that the deed must be provided before the covenants can be prepared and the permit approved. Annotate the FPUP file chart documenting this conversation.
 - e. If the deed is available and the covenants can be prepared, print the covenants and either;
 - i. give them to the applicant to have them signed, or
 - ii. leave them in the FPUP folder for the owner to come and sign.
 - iii. Write "WAIT Status" along with the date and your initials in the upper right-hand corner of the District copy of the DSD Activity sheet.
 - f. Give the FPUP folder to the proper administrative staff for intake into the database.
 - g. Administrative staff shall place the FPUP folder in the Ready File.
5. When the signed covenants (with original signatures and notary seals) are received by the District,
- a. Verify that steps 2 and 3 above have been completed.
 - b. Make photocopies of the covenants for the customer, if desired.
 - c. Complete Permits Plus workflow, if applicable.
 - d. Place the photocopy of the activity sheet in the FPUP log and log the permit out.
 - e. Return original DSD Activity sheet and site plan(s) to the customer.
 - f. Give the FPUP folder to the proper administrative staff to update the database.
 - g. Administrative staff shall place the FPUP folder in the FPUP file cabinet.

APPROVED BY:



Suzanne Shields
Director

Date

11/15/2013

Original Policy Approved: 6/19/2007
Date(s) Revised: 11/15/2013

ATTACHMENT 1

DEEDS & DOCUMENTS THAT CAN BE TRANSFERRED

GROUP A

1. Affidavit of Succession (need signature page also)
2. Affidavit of Successors Rights
3. Any deed coming out of a personal representative is acceptable
4. Bankruptcy Trustee Deed
5. Bargain and Sale Deed
6. Commissioner Deed in Partition
7. Court Orders with legal descriptions vesting title
8. Deed in Lieu of Foreclosure
9. Deed in Trust
10. Distribution of Estate
11. Duly Appointed Fiduciary of the Estate of _____
12. Executor or Executrix Deed
13. Gift Deed
14. Grant Deed
15. Indenture
16. Instrument of Distribution
17. Join Tenancy Deed
18. Life Estate Deed
19. Marshall's Deed (same as Sheriff's Deed)
20. Order Approving Final (Accounting and Final Decree of Distribution of Estate)
21. Partition Deed (Segregation of Property – Split)
22. Quit Claim Deed (Docket/Page go on bottom sometimes)
23. Resignation of Trust & Consult of Successor Trust
24. Sheriff's Deed
25. Successor Trustee
26. Treasurer's Deed
27. Trustees Deed
28. Trustees Deed Upon Sale
29. Vendor's Deed (providing chain is correct)
30. Warranty Deed

*To Transfer a deed that has trustees deeding out, you do not need all the trustees signatures in order to Transfer out.

DEEDS & DOCUMENTS THAT CAN BE TRANSFERRED

GROUP B

1. Affidavit Evidencing Termination of JT/RS is acceptable only if accompanied by Death Certificate.
2. Affidavit of Completion of Foreclosure (Remove C/O and contract or agreement)
3. Burial Permit (Same as Death Certificate)
4. Death Certificate is acceptable alone and without affidavit terminating joint tenancy. (Docket/Page for on bottom sometimes)
5. Decree of Dissolution (Watch for restoration of Wife's name) (Docket/Page go on bottom sometimes).
6. Divorce Decree (same as above)
7. Termination of Joint Tenancy (If in JT/RS, need Death Certificate) (Docket/Page go on bottom sometimes)
8. Vendor's Deed (transfers, leave C/O, Contract, Agreement or Vendee's Deed on.)
9. Waiver of Estate Tax (Remove deceased Joint Tenant and add Docket and Page to legal. Can remove any deceased person's name from any record we have if it has been established by DOR, State Tax Commission or a Court.)

DOCUMENTS THAT ARE QUESTIONABLE

1. Certificate of Heirship (Involves community property or tenants in common only. Must have death date. It must also be 3 years since person died and no probate ever done. All heirs and their relationship to the deceased must be listed. Usually accompanied by Quit Claim Deeds of heirs not interested in property. This takes place of the Probate.)
2. Judgment and Decree of Foreclosure [Depending on type of foreclosure, must determine time frame involved (i.e. 6, 12, 18, and 24 months) before sheriff's Deed is acceptable].
3. Order Setting aside to Spouse Homestead (will transfer if no recorded Deed of Dist.)

DEEDS & DOCUMENTS THAT CAN NOT BE TRANSFERRED

1. Agreement (Put C/O and add Docket and Page and return to “Hold File”).

2. Contract for sale of Real Estate (Put C/O and return to “Hold File”).

3. Deed and Assignment of Contract (Usually Vendor’s Deed, but it could be Vendees Deed. It goes by names involved whether vendor or vendees. Return to “Hold File”).

4. Purchase Agreement (Put C/O and return to “Hold File”) [Vendees Deed should be treated like a contract or agreement. However, underlying transfers (deeds, contracts, etc.) may complete chain for full transfer. Any parcel having several underlying deeds and/or contracts, etc. should be read and chained with extreme care before conveyances are made. Return to “Hold File”].

5. Sales Agreement (Same as Contract. Return to “Hold File”).

Certificate of Purchase (but if from State OK)	Nun Pro Tunc (Correction Court order) ⁵
Collateral Deed	Order Abandoning property
Deed of Release and Full Reconveyance	Order Confirming Sale of Real Property
Deed of Trust	Real Property Agreement
Homestead	Realty Mortgage
Joint Venture Agreement	Sheriff’s Certificate of Sale
Memorandum of Contract	Sheriff’s Levy on Real Property
Notice of Trustee’s Sale	Subordination Agreement
Novation Agreement	Trust deed