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May 23, 1975

Honorable James Cooper
Arizona House of Representatives
State Capitol
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Representative Cooper:

You have asked whether the Flood Plain Management Act provides a "grandfather" exemption for a subdivision which was 75% or more completed at the time the law became effective on August 8, 1973.

A.R.S. Section 45-2342.F. provides:

"One hundred eighty days after the effective date of this article, and at all times thereafter, all subdivision of land, construction of dwelling units or commercial or industrial structures or future development within delineated floodplain areas is prohibited unless:

1. Seventy-five percent of such floodplain area within a platted and approved subdivision to be developed and utilized for such units and structures has been so developed and utilized on the effective date of this article."

The foregoing provision makes it clear that the exemption would apply where 75% of the floodplain area within a previously platted and approved subdivision has been "utilized" for dwelling units on the effective date of the Act.

You have also inquired whether a floodplain board as defined in the Act could properly modify the foregoing "grandfather" provision by additional and presumably more stringent

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requirements for meeting the exemption. While the Act, in Section 45-2342.C., grants local floodplain boards broad authority to adopt flood protection regulations, it would be entirely inconsistent to infer regulatory power to alter or modify the "grandfather" exemption specifically set forth by the Legislature. The applicable principles of law are discussed in City of Phoenix v. Breuninger, 50 Ariz. 372, 72 P.2d 580, and City of Tucson v. Sigma Alpha Epsilon, 195 P.2d 562, 67 Ariz. 330 (1948).

Accordingly, the exemption must be construed by reference to the statute alone.

Sincerely,

Bruce E. Babbitt
Attorney General

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