

2026 Nebraska Model Floodplain Management Ordinance

Meeting the Minimum Requirements of the Nebraska Minimum Standards for Floodplain Management Programs, Title 455 Neb. Admin. Code Chapter 1, and Title 44 of the Code of Federal Regulations, Chapter 1, Part 60.3(b)

v1.4 - Revised October 8, 2026

NEBRASKA
DEPT. OF WATER, ENERGY, AND ENVIRONMENT

This guide is produced by the Nebraska Department of Water, Energy, and Environment (DWEE) Floodplain Management Division. The contents of this guide do not necessarily reflect the views and policies of the Federal Government.

Revision Number	Revision Date	Reason for Revision
1.0	8/11/2025	Initial Version
1.1	8/11/2025	Updated agency name to Department of Water, Energy, and Environment (DWEE). Corrected CFR reference in Section 2.2 to CFR 60.1(b). Added the option to reference an “extraterritorial jurisdiction” under Section 3.1 “Lands to Which Ordinance Applies.” Corrected language in Section 4.2 to include the placement of manufactured homes to meet CFR 60.3(b)(1). Added language related to accumulation of floodwater in Section 4.42(e) to meet CFR 60.3(a)(3). Added template language for adopting setbacks to Higher Standards Guide.
1.2	11/24/2025	Added CFR reference 44 CFR 59.22(b)(1) under Section 1.3 and 44 CFR 60.2(h) under Section 3.1. Corrected language in Section 3.52 to state that less than one foot of rise is cumulative. Corrected language in higher standards Section 5.25.A.ii to say flood resistant materials are required below one foot above the BFE. Corrected language in higher standard for Section 4.4 to clarify permits are only valid if

		construction begins within 180 days of issuance otherwise a new permit is required.
1.3	3/27/2026	Updated document for compliance with Americans with Disabilities Act (ADA). Corrected reference to “Floodplain Management Standards” in Section 3.1
1.4	10/8/2026	Added language to Section 3.52 requiring proposed encroachments to comply with 44 CFR 65.3; submission of as-built certifications within 6 months of project completion. Added definitions to Section 10.0 for “Chief Executive Officer (CEO)” and “Administrator” following 44 CFR 59.1. Added definition to Section 10.0 for “Floodplain Administrator.”

Cover: Residential structure elevated above an enclosure in Cass County, Nebraska. Photo by DWEE.

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Forward

Letter from the Nebraska State NFIP Coordinator

Dear Floodplain Managers,

The State of Nebraska has long experienced the disastrous effects of flooding which inflicts unimaginable damage to residences, community buildings, critical infrastructure, and state and local economies. In 1967, before the National Flood Insurance Act of 1968 was passed by Congress, the Nebraska Legislature created a Floodplain Management Program through the Nebraska Floodplain Regulations Act with the intent to establish State minimum standards for development in flood prone areas. This effort allowed local governments to create and enforce local floodplain regulations to reduce the future impact of flooding on their residents and business owners. Today, Nebraska's minimum standards for floodplain management programs exceed those established by the National Flood Insurance Program (NFIP) and are intended to protect against the unique flood hazards present in our State.

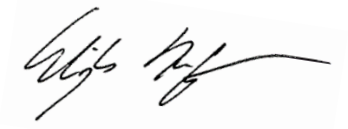
The foundation of any local floodplain management program starts with the adoption of floodplain regulations that establish your community's minimum standards for floodplain development and list your administrative procedures for reviewing floodplain development proposals. For a community to participate in the NFIP, the adopted floodplain ordinance must meet or exceed State and Federal minimum standards. The Nebraska Model Floodplain Development Ordinance this letter precedes contains suggested provisions that meet Nebraska's minimum standards, and may be used as a basis for drafting your local development standards. This Model Ordinance was designed with direct input from FEMA Region 7 and Nebraska floodplain administrators, emergency managers, zoning administrators, and other local community officials to ensure usability, applicability, and reasonability for those directly involved with enforcement of these regulations.

Before adoption, this document should be reviewed by your community's governing body, planning officials, and legal counsel to ensure they understand Nebraska's minimum standards for floodplain development. By including your community's leadership during the draft process, you will ensure that your unique flood hazards are addressed in a manner that is applicable and reasonable. Your community may also choose to adopt and enforce higher standards than those required by the State.

Remember, newly drafted floodplain ordinances must be reviewed by an NFIP Specialist with the Nebraska Department of Water, Energy, and Environment (DWEE) Floodplain Management Division *before* adoption by your community. Please ensure you are working closely with a DWEE Floodplain Management Division staff member to avoid adopting a floodplain ordinance that does not meet State or Federal Minimum Standards, which could impact your community's participation in the NFIP. Please visit https://dwee.nebraska.gov/floodplain **to connect with a member of our team.**

We greatly appreciate your commitment to promoting the health, safety, and general welfare of your community. The floodplain ordinance that you adopt will set the standards for development in one of the most hazardous areas to Nebraska residents, and will improve your community's protection and resilience when facing the disastrous effects of flooding.

Sincerely,



Elijah Kaufman, CFM
Nebraska State NFIP Coordinator

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DRAFTING INSTRUCTIONS

This suggested ordinance was created to help communities meet the Nebraska Minimum Standards for Floodplain Management Programs and the requirements in Title 44 of the Code of Federal Regulations, Chapter 1, Part 60.3(b) as part of the National Flood Insurance Program. This ordinance is a guide only and must be thoroughly evaluated by the community's staff, the planning commission, the community attorney, and the community leadership as to the ordinance's adequacy and suitability for the community's needs.

The following points are specific guidance on using this suggested ordinance language:

1. The ordinance establishes areas identifiable as "flood prone", within which the regulations apply. This ordinance can be incorporated with existing community ordinance or may be adopted as a stand-alone floodplain management ordinance. The entirety of this ordinance must be included if broken into various other sections of a community's code, including all the definitions.
2. Do not adopt this ordinance verbatim. Each community must review the suggested ordinance to ensure all required components are included and that the ordinance integrates into the broader set of community ordinances.
3. This ordinance does not eliminate flood risk but instead has been created to meet the minimum standards for floodplain management. Adopting and enforcing this ordinance does not eliminate flood risk or establish the ideal floodplain management program. Communities should analyze and consider adopting the higher standards described on the DWEE Floodplain Management Division Guide to Optional or Higher Standards for Floodplain Administration to provide greater protection from flooding. Communities should also evaluate developing additional community administrative and emergency preparedness procedures to ensure the best possible floodplain management program.
4. This ordinance meets the minimum standards but does not establish the best possible construction methods to provide for the lowest flood insurance premiums possible. Communities should understand the impact of the adopted regulations on flood insurance when administering the ordinance.
5. Higher standards and optional regulations are available for adoption in addition to the required language in this model ordinance. See the DWEE Floodplain Management Division Guide to Optional or Higher Standards for Floodplain Administration to evaluate each option and for directions on how to incorporate these standards into your community's ordinance.
6. The community's proposed floodplain management ordinance must be sent to DWEE Floodplain Management Division for review before adopting to ensure compliance with the Nebraska Minimum Standards for Floodplain Management Programs and the National Flood Insurance Program. Any revision of this ordinance in the future must be reviewed by DWEE Floodplain Management Division before adopting.

Failure to fully enforce this ordinance may result in the community being suspended from the National Flood Insurance Program, pursuant to Title 44 of the Code of Federal Regulations, Chapter 1, Part 59.24. Flood insurance is not available to a community suspended from the NFIP. All violations must be corrected before the community is eligible to rejoin the program.

Any community wanting additional information about adopting these provisions or higher regulatory standards can contact the State NFIP Coordinator with DWEE Floodplain Management Division at (402) 471-2186.

DRAFTING CHECKLIST

Your community may use the following checklist to ensure an efficient and compliant ordinance drafting and adoption process.

Before Ordinance Adoption

- ☐ Insert the necessary information into all brackets [BLANK].
- ☐ Reference the correct FIRM panels and FIS (if applicable) by identification number and effective date in Sections 3.1 and 3.2 of the Model Ordinance (I.e., …panel 31000C0010A dated September 15, 2024). A list of effective panels and flood insurance studies for your community can be found on FEMA's Map Service Center.
- ☐ Designate the position that will hold the title of "Floodplain Administrator." This must be the official title of a community position (Clerk, Zoning Administrator, Building Inspector, etc.).
- ☐ Review the *Guide to Optional or Higher Standards for Floodplain Administration* and determine which additional regulations align with your community's needs.
- ☐ Add selected higher standards and optional language to the draft ordinance.
- ☐ Review and add any necessary definitions related to higher standards and optional language.
- ☐ Review the floodplain ordinance paragraph numbering system and alter as needed. Modify the numbering system to follow other community ordinances if desired.
- ☐ Review all in-text references to ensure they are referring to the correct section and information.
- ☐ Receive approval of *draft* ordinance from the community's governing body.
- ☐ Submit the draft ordinance to DWEE Floodplain Management Division for review prior to adoption.
- ☐ Make necessary modifications based on DWEE Floodplain Management Division review comments.
- ☐ *Receive approval of draft ordinance from DWEE Floodplain Management Division and proceed to adoption steps. Do not proceed to adoption without first having checked this box.

Adopting the Ordinance

- ☐ Ensure the correct ordinance number is listed at the top of the document.
- ☐ Fill in the "ordinance adoption date" on the ordinance adoption page. This should be the date of passage by the local governing body.
- ☐ Fill in the "ordinance effective date" on the ordinance adoption page. This date represents when the ordinance regulations will take effect and may be set as a future date from the date of adoption. Communities adopting new FIRM panels or Flood Insurance Studies must set the effective date as no later than one day before the new product effective date.

☐ Introduce the ordinance to the governing body for adoption.

☐ Conduct three readings of the ordinance on three separate occasions. The three readings requirement can be waived if three-fourths of the governing body vote to suspend it.

- ☐ Reading #1
  - ☐ *Board voted to suspend the requirement for readings #2 and #3.
- ☐ Reading #2
- ☐ Reading #3

☐ Vote to adopt the ordinance. May only be adopted with votes from a three-fourths majority of the quorum present and acting.

☐ Have the necessary community officials sign and date on their line.

☐ Place your community's seal on the bottom-right of the adoption page.

☐ Publish the adopted copy of the new floodplain ordinance for public access within 15 days of the ordinance effective date. Appropriate publishing mediums may include a general circulation newspaper, book, pamphlet, or electronic form (Neb. Rev. Stat. §17-613 and §23-191).

☐ Submit the final adopted copy of the ordinance to your representative NFIP Specialist with DWEE Floodplain Management Division.

ORDINANCE/RESOLUTION NO. [Number]

Floodplain Management Ordinance

Pursuant to 44 CFR 60.3(b),
Neb. Rev. Statutes Chapter 31 Article 10, and
Neb. Admin. Code Title 455 Ch. 1

AN ORDINANCE INTRODUCED BY THE [GOVERNING BODY] IDENTIFYING FLOODPLAIN AREAS DEFINING THE SAME AND SETTING FORTH REGULATIONS THEREOF.

BE IT ORDAINED by the [Title of Chief Executive Officer] of [Community], Nebraska as follows:

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSE

1.1 STATUTORY AUTHORIZATION

The Nebraska Legislature delegated the responsibility to local governmental units to adopt regulations designed to protect the public health, safety, general welfare, and property of the people of the state. In Neb. Rev. Stat. §§ 31-1001 to 31-1022, the Nebraska Legislature further delegated the responsibility to such local governments to adopt, administer, and enforce floodplain management regulations which meet or exceed the standards adopted by the Nebraska Department of Water, Energy, and Environment (DWEE). Therefore, the [Governing Body] of [Community Name], Nebraska ordains as follows:

1.2 FINDINGS OF FACT

1.21 Flood Losses Resulting from Periodic Inundation

The flood hazard areas of [Community Name], Nebraska are subject to inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
(Neb. Rev. Stat. §31-1001)

1.22 General Causes of Flood Losses

These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities as well as the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others that are inadequately elevated or otherwise unprotected from flood damages.
(Neb. Rev. Stat. §§ 31-1001, 31-1015)

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance/regulation to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.2 by applying the provisions of this ordinance/regulation to:

1.31 Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

1.32 Require that uses vulnerable to floods, including public facilities that service such uses, be provided with flood protection at the time of initial construction;

1.33 Reduce financial burdens from flood damage borne by the community, its governmental units, its residents, and its businesses by preventing excessive and unsafe development in areas subject to flooding;

1.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance from the National Flood Insurance Program (NFIP).

(Neb. Rev. Stat. §§ 31-1001, 31-1019) (44 CFR 59.22(b)(1))

1.4 ADHERENCE TO REGULATIONS AND LAWS

The regulations of this ordinance are in compliance with the NFIP regulations as published in Title 44 of the Code of Federal Regulations (CFR), the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455, Chapter 1, and the floodplain management statutes (Neb. Rev. Stat. §§ 31-1001 to 31-1023). Prior to the [Community Name]'s adoption of these regulations, this ordinance must have been reviewed by the DWEE Floodplain Management Division for compliance with NFIP and State minimum standards.
(Neb. Rev. Stat. §31-1019)

SECTION 2.0 GENERAL PROVISIONS

2.1 COMPLIANCE

Within identified special flood hazard areas of this community, no development shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
(44 CFR 60.3(b))

2.2 ABROGATION AND GREATER RESTRICTIONS

This ordinance does not intend to repeal, abrogate, or impair any existent easement, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
(44 CFR 60.1(b))

2.3 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

2.4 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodplain boundaries or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of [Community Name] or any officer or employee thereof for any flood damages that may result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

2.5 SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

SECTION 3.0 REGULATED FLOOD HAZARD AREAS

3.1 LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the [incorporated area [including the extraterritorial jurisdiction] of the [City/Village] of [Locality] OR unincorporated area of [County]] identified on the Flood Insurance Rate Map (FIRM) panels [List of FIRM Panel ID Number(s)] dated [List of FIRM Panel Effective Date(s)] as Zone A and within the floodplain areas established in Section 3.2 of this ordinance. In all areas covered by this ordinance, no development shall be allowed except upon the issuance of a floodplain development permit to develop, granted by the floodplain administrator as identified in Section 4.1 of this ordinance, or the governing body under such safeguards and restrictions as the governing body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and where specifically noted in Section 5.0.
(44 CFR 59.2(c)) (44 CFR 60.3(b)) (44 CFR 60.2(h))

3.2 ESTABLISHMENT OF FLOOD HAZARD AREA BOUNDARIES

The mapped floodplain areas are hereby established [as identified in the Flood Insurance Study (FIS) [FIS ID Number] dated [FIS Effective Date] and] on accompanying FIRM panels as established in Section 3.1. The floodplain shall correspond to flood zone A that are identified on the FIRM panels. Within the floodplain, all uses not meeting the standards of this ordinance and those standards of the floodplain shall be prohibited.
(44 CFR 59.2(c))

3.3 FLOOD DATA REQUIRED

3.31 All Zone A areas on the FIRM are subject to inundation of the base flood; however, the base flood elevations are not provided. Zone A areas shall be subject to all development provisions of this ordinance. If FIS data is not available, the community shall utilize any base flood elevation or floodway data currently available from federal, state, or other sources, including from a study commissioned by the applicant pursuant to best technical practices.
(44 CFR 60.3(b)(4))

3.32 In Zone A areas where base flood elevations are not provided, the DWEE may determine base flood elevations and provide such data to the floodplain administrator upon request for applicable projects. Such base flood elevation data may not be used for the design of developments greater than 5 acres or 50 lots or for the design of hydraulic structures. (Neb. Rev. Stat. §31-1017(4)(6)) (44 CFR 60.3(b)(3) and (b)(4))

3.4 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES

The boundaries of the floodplain shall be determined by scaling distances on the official zoning map or on the FIRM. Where interpretation of the exact location of floodplain boundaries as shown on the zoning or other community map is needed, the floodplain administrator shall make the necessary interpretation. In such cases where interpretation is contested, the [Appeals Board] will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the floodplain boundary on the land. The person contesting the location of the boundary shall be given reasonable opportunity to present their case to the [Appeals Board] and to submit their own technical evidence, if so desired.
(Neb. Rev. Stat. §14-401, §14-408, §19-910, §19-911, and §23-168.02)

3.5 ALTERATION OF A REGULATED FLOOD HAZARD AREA

3.51 Alteration or Relocation of a Watercourse

A. A watercourse or drainway shall not be altered or relocated in any way that in the event of a base flood or more frequent flood will alter the flood carrying capacity characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations.
(Neb. Admin. Code, Title 455, Ch. 1, §004.14) (44 CFR 60.3(b)(6) and (7))

B. The community responsible for the alteration or relocation of a watercourse or drainway or for approving any such alteration or relocation shall notify the DWEE and adjacent communities prior to commencing or approving such activity.
(Neb. Admin. Code, Title 455, Ch. 1, §004.14) (44 CFR 60.3(b)(6))

3.52 Encroachments

A. Any floodplain development permit application proposing any of the following encroachments shall not be approved by the floodplain administrator unless the standards of Section 3.52(B) and 3.52(C) are met:

i. Any development in Zones A, A1-30, and Zone AE without a designated floodway that will cause a rise of more than one (1) foot in the base flood elevation when combined with all other existing and reasonably anticipated developments or substantial improvements; or
(44 CFR 60.3(c)(13))

ii. Alteration or relocation of a stream; then

B. The applicant shall apply to FEMA for conditional approval of such action via the Conditional Letter of Map Revision (CLOMR) process (as per Title 44 of the Code of Federal Regulations, Chapter 1, Part 65.12) prior to the permit for the encroachments. When applying to FEMA for a conditional approval, the following information must be included:

i. Certification that no structures are located in areas which would be impacted by the increased base flood elevation;
(44 CFR 65.12(a)(5))

ii. Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property.
(44 CFR 65.12(a)(3))

iii. An evaluation of alternatives that would not result in an unacceptable base flood elevation increase that demonstrates why such alternatives are not feasible;
(44 CFR 65.12(a)(2))

iv. The floodplain administrator may represent the permit authority for any necessary applications, approvals or endorsements such as the FEMA Community Acknowledgement Form to FEMA where affecting the special flood hazard area;

v. Any other supporting information and data as needed for approval.
(44 CFR 65.12)

C. The permit applicant shall supply the full package approved by FEMA to the floodplain administrator including any required notifications to potentially affected property owners.
(44 CFR 60.3(d)(4) and 65.12)

D. Within six months of completion of the proposed encroachments, the permit applicant shall provide as-built certifications to FEMA in accordance with the provisions of 44 CFR 65.3.
(44 CFR 65.12(c))

3.6 ANNEXATION OR DETACHMENT

Upon occurrence, the floodplain administrator shall notify the DWEE and FEMA in writing whenever the boundaries of the [Community Name] have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. The floodplain administrator must include within such notification a copy of a map of the [Community Name] suitable for reproduction, clearly showing the new corporate limits or the new area for which the community has assumed or relinquished floodplain management regulatory authority.
(Neb. Rev. Stat. §31-1019) (44 CFR 60.2(h))

SECTION 4.0 FLOODPLAIN MANAGEMENT ADMINISTRATION

4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The [Position Title] of the [Community Name] is hereby designated as the community's local Floodplain Administrator. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of these regulations. The floodplain administrator must serve to meet and maintain the commitments pursuant to 44 CFR 59.22(a) to remain eligible for National Flood Insurance for individuals and business within the political subdivision. If the local

floodplain administrator position is unfilled, the [Community Name]'s Chief Executive or Chief Elected Official shall assume the duties and responsibilities herein.
(Neb. Rev. Stat. §31-1019) (44 CFR 59.22(b)(1))

4.2 PERMITS REQUIRED

A floodplain development permit shall be required before any development, construction, substantial improvement, or other development including placement of manufactured homes is undertaken within the lands regulated by this ordinance is undertaken within the lands regulated by this ordinance. No person, firm, corporation, government agency, or other entity shall initiate floodplain development without first obtaining a floodplain development permit from the local floodplain administrator.
(44 CFR 60.3(a)(1) and (b)(1))

4.3 DUTIES OF THE FLOODPLAIN ADMINISTRATOR

4.31 Duties of the floodplain administrator shall include, but not be limited to the following:

A. Review, approve, or deny all applications for floodplain development permits from any entity, including permits for structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, improvements, or repairs;
(44 CFR 59.1) (44 CFR 60.3(a)(3))

B. Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of this ordinance have been satisfied;
(44 CFR 60.3(a)(3))

C. Review applications for proposed development to assure that all necessary permits have been obtained from those federal, state, or local government agencies from which prior approval is required;
(44 CFR 60.3(a)(2))

D. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
(44 CFR 60.3(a)(4))

E. Notify adjacent communities and the DWEE prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA;
(44 CFR 60.3(b)(6))

F. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished;
(44 CFR 60.3(b)(7))

G. Along watercourses where FIS data is provided, determine the elevation of the base flood utilizing the FIS referenced in Section 3.2 of this ordinance. In Zone A areas where base flood elevation data is not provided, request such data produced by a registered, professional engineer or architect from the applicant or the DWEE.
(44 CFR 60.3(b)(4), (c), and (d))

H. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures in the floodplain;
(44 CFR 60.3(b)(5))

I. Verify, record, and maintain record of the actual elevation (in relation to mean sea level) to which all new or substantially improved structures have been floodproofed;
(44 CFR 60.3(b)(5))

J. Verify, record, and maintain record of all improvements or repairs to existing structures to ensure compliance with Section 6.0 of this ordinance;
(Neb. Admin. Code, Title 455, Ch. 1, §002.21, §002.22, §004.07, and §004.08))

K. Ensure the comprehensive development plan as amended is consistent with this ordinance;
(44 CFR 60.2(g))

L. In the event the floodplain administrator discovers work done that does not comply with applicable laws or ordinances, the floodplain administrator shall revoke the permit and work to correct any possible violation. Procedures for violations and enforcement actions are established in Section 7.0 of this ordinance.
(Neb. Rev. Stat. §31-1019)

4.32 Regarding the implementation of Neb. Admin. Code Title 455 Ch. 1 §002.21 "Substantial Damage", duties of the floodplain administrator in times of disaster shall include, but not be limited to the following:

A. Review areas within the regulatory floodplain for damages to existing structures or other developments;

B. Review, approve, or deny all applications for floodplain development permits to complete any repairs in the floodplain.

C. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the damage occurred and before any repairs are made;

D. Compare the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

E. Determine and document whether the proposed work constitutes repair of substantial damage; and

F. Notify the applicant if it is determined that the work constitutes repair of substantial damage and that compliance with the provisions of Section 6.0 of this ordinance is required;

4.33 Regarding the implementation of Neb. Admin. Code Title 455, Ch. 1 §002.22 "Substantial Improvement", duties of the floodplain administrator reviewing permits to improve structures, including additions, alterations, reconstruction, or improvements of any kind including repairs, shall include, but not be limited to the following:

A. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work;

B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

C. Determine and document whether the proposed work constitutes substantial improvement; and

D. Notify the applicant if it is determined that the work constitutes substantial improvement and that compliance with the provisions of Section 6.0 of this ordinance is required.

4.4 APPLICATION FOR PERMIT AND DEMONSTRATION OF COMPLIANCE

4.41 To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

A. Identify and describe the proposed development and estimated cost to be covered by the floodplain development permit;

B. Describe the land on which the proposed development is to occur by lot, block, tract, house and street address, or similar description that will readily identify and definitively locate the proposed building or development;

C. Indicate the use or occupancy for which the proposed development is intended;

D. Be accompanied by plans and specifications for proposed construction; and

E. Be signed by the permittee and authorized agent who may be required to submit evidence to indicate such authority.

4.42 If any proposed development is located entirely or partially within a floodplain, applicants shall provide all information in sufficient detail and clarity to enable the floodplain administrator to determine that:

A. All utilities and facilities such as sewer, gas, water, electrical, and other systems are located and constructed to minimize or eliminate flood damage;

B. Structures will be anchored to prevent flotation, collapse, or lateral movement;

C. Construction materials are resistant to flood damage;

D. Appropriate practices to minimize flood damage have been utilized; and

E. Electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities have been designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

(Neb. Admin. Code Title 455, Ch. 1, §004.02) (44 CFR 60.3(a)(3))

4.43 For all new construction, substantial improvements, or repairs to substantial damage, an elevation certificate based upon the finished construction certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator. Such certification shall be completed by a licensed land surveyor, professional engineer or architect.
(44 CFR 60.3(b)(5)(i))

4.44 When floodproofing is utilized for a non-residential structure, a floodproofing certificate shall be provided to the floodplain administrator. Such certification shall be completed by a licensed professional engineer or architect.
(44 CFR 60.3(b)(5)(ii))

4.45 For all development involving storage of materials or equipment, the applicant shall provide the floodplain administrator with plans and specifications for the operation consistent with Section 5.36 “Storage of Materials and Equipment”.
(Neb. Admin. Code, Title 455, Ch. 1, §004.15)

4.46 For all development involving the placement of recreational vehicles, the applicant shall provide plans and specifications for the operation consistent with the provisions of Section 5.37 “Recreational Vehicles”.
(Neb. Admin. Code, Title 455, Ch. 1, §004.13)

4.47 The floodplain administrator may request any other documentation or information related to the proposal as may reasonably be required to support compliance with the provisions of this ordinance.

SECTION 5.0 STANDARDS FOR FLOODPLAIN DEVELOPMENT

5.1 GENERAL FLOODPLAIN PROVISIONS

5.11 Until a floodway has been designated, no development or substantial improvement may be permitted within the floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown in the FIS or on base flood elevation determinations.
(Neb. Admin. Code, Title 455, Ch. 1, §004.01) (44 CFR 60.3(c)(10))

5.12 A community may permit encroachments within the floodplain that would result in an increase in base flood elevations of more than one (1) foot, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements of such revisions as established under the provisions of Section 3.52 of this ordinance, and receives FEMA approval.
(44 CFR 60.3(c)(13))

5.2 ELEVATION AND FLOODPROOFING REQUIREMENTS

5.21 Residential Structures

A. In Zone A, all new construction, substantially improved, or substantially damaged residential structures shall have the lowest floor, including basement, elevated to or

above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect. (Neb. Admin. Code, Title 455, Ch. 1, §004.07)

5.22 Nonresidential Structures

A. In Zone A, all new construction, substantially improved, or substantially damaged nonresidential structures shall:

i. Have the lowest floor, including basement, elevated to or above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect; or

ii. Be dry-floodproofed so that below one (1) foot above the base flood elevation, the structure along with attendant utility and sanitary facilities:

1. Is watertight with walls substantially impermeable to the passage of water;

2. Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

3. Is certified by a registered professional engineer or architect to meet the standards of 5.22(A)(ii)(1-2). A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.44 of this ordinance.

(Neb. Admin. Code, Title 455, Ch. 1, §004.08)

5.23 Enclosures Below Lowest Floor

A. For all new construction, substantially improved, or substantially damaged structures, fully enclosed areas below the lowest floor (excluding basements) and below one (1) foot above the base flood elevation shall be used solely for the parking of vehicles, building access, or limited storage of readily removable items.
(Neb. Admin. Code, Title 455, Ch. 1, §004.10)

B. For all new construction, substantially improved, or substantially damaged structures, fully enclosed areas below the lowest floor (excluding basements) and below one (1) foot above the base flood elevation shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters. Designs for this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

i. A minimum of two openings on different sides of each enclosed area having a net total open area of not less than one (1) square inch for every one (1) square foot of enclosed space;

ii. The bottom of all openings shall not be higher than one (1) foot above the interior or exterior grade, whichever is higher; and

iii. Openings may be equipped with screens, louvers, valves, or other coverings provided that they allow the automatic entry and exit of floodwaters and shall be accounted for in the determination of net total open area.

(Neb. Admin. Code, Title 455, Ch. 1, §004.10) (44 CFR 60.3(c)(5)) (2018 IRC R322.2.2)

5.24 Manufactured or Mobile Homes

A. All new, substantially improved, or substantially damaged manufactured or mobile homes to be placed within all unnumbered and numbered A zones shall be installed using methods and practices that minimize flood damage. For the purposes of meeting this requirement, all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement in accordance with local building codes or FEMA guidelines. If over-the-top ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

   i. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than fifty (50) feet long requiring one (1) additional tie per side;

   ii. Frame ties be provided at each corner of the manufactured home with five additional ties per side at intermediate points and manufactured homes less than fifty (50) feet long requiring four additional ties per side; and

   iii. Any additions to the manufactured home be similarly anchored.
   (44 CFR 60.3(b)(8))

B. All new, substantially improved, or substantially damaged manufactured or mobile homes located within floodplains on sites:

   i. Outside of a manufactured or mobile home park or subdivision;

   ii. In a new manufactured or mobile home park or subdivision;

   iii. In an expansion to a new manufactured or mobile home park or subdivision; or

   iv. In an existing manufactured or mobile home park or subdivision on which a manufactured or mobile home has incurred substantial damage as the result of a flood

   Shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.24(A).
   (Neb. Admin. Code, Title 455, Ch. 1, §004.11)

C. All new, substantially improved, or substantially damaged manufactured or mobile homes on sites in an existing manufactured or mobile home park or subdivision within floodplain areas that are not subject to the provisions of Section 5.24(B) must be elevated so that either:

   i. The lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor, professional engineer or architect; or

   ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six

(36) inches in height above grade, and is securely anchored to an adequately anchored foundation system in accordance with Section 5.24(A).
(Neb. Admin. Code, Title 455, Ch. 1, §004.12)

D. New manufactured or mobile home parks of five (5) acres or fifty (50) lots, whichever is less, shall follow the standards of Section 5.38 “Subdivisions”.
(44 CFR 60.3(b)(3))

5.3 DESIGN AND CONSTRUCTION STANDARDS

5.31 Anchoring

A. All new construction and substantial improvements, including repairs to substantial damage, must be designed and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
(Neb. Admin. Code, Title 455, Ch. 1, §004.02(i)) (44 CFR 60.3(a)(3)(i))

5.32 Building Materials and Utilities

A. All new construction and substantial improvements, including repairs to substantial damage, must be constructed with materials and utility equipment resistant to flood damage.
(Neb. Admin. Code, Title 455, Ch. 1, §004.02(ii)) (44 CFR 60.3(a)(3)(ii))

B. All new construction and substantial improvements, including repairs to substantial damage, must be constructed by methods and practices that minimize flood and flood-related damages.
(Neb. Admin. Code, Title 455, Ch. 1 §004.02(iii)) (44 CFR 60.3(a)(3)(iii))

C. All new construction and substantial improvements, including repairs to substantial damage, must be constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
(Neb. Admin. Code, Title 455, Ch. 1 §004.02 (iv)) (44 CFR 60.3(a)(3)(iv))

5.33 Drainage

A. Within any flood prone area, subdivision proposals or other new development proposals including manufactured or mobile home parks or subdivisions must have adequate drainage to reduce exposure to flood hazards.
(44 CFR 60.3(a)(4)(iii))

5.34 Water Supply and Sanitary Sewer Systems

A. All new or replacement water supply and sanitary sewer systems shall be located, designed, and constructed to minimize or eliminate flood damages to such systems and the infiltration of floodwaters into the systems.
(Neb. Admin. Code, Title 455, Ch. 1, §004.04) (44 CFR 60.3(a)(5))

B. All new or replacement sanitary sewage systems shall be designed to minimize or eliminate discharge from the system into floodwaters.
(Neb. Admin. Code, Title 455, Ch. 1, §004.05) (44 CFR 60.3(a)(6)(i))

C. On-site waste disposal systems shall be located and designed to avoid impairment to them or contamination from them during flooding.
(Neb. Admin. Code, Title 455, Ch. 1, §004.06) (44 CFR 60.3(a)(6)(ii))

5.35 Other Utilities

A. All public utilities such as gas lines, electrical, telephone, and other utilities shall be located and constructed to minimize or eliminate flood damage to such utilities and facilities.
(Neb. Admin. Code, Title 455, Ch. 1, §004.03) (44 CFR 60.3(a)(4)(ii))

B. Recreational vehicles placed in flood prone areas must only be attached to the site by quick-disconnect type utilities as established in Section 5.37 of this ordinance.
(Neb. Admin. Code, Title 455, Ch. 1, §004.13) (44 CFR 60.3(c)(14))

5.36 Storage of Materials

A. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

B. The storage of other material or equipment may be allowed if the stored materials or equipment:

i. Are not subject to major damage by flood; and

ii. Are firmly anchored to prevent flotation and lateral movement resulting from hydrodynamic and hydrostatic loads; or

iii. Are readily removable from the flood prone area within the time available after flood warning.
(Neb. Admin. Code, Title 455, Ch. 1, §004.15)

5.37 Recreational Vehicles

A. Recreational vehicles to be placed on sites within the floodplain must:

i. Be on site for fewer than one hundred and eighty (180) consecutive days; and

ii. Be fully licensed and ready for highway use. A recreational vehicle that is ready for highway use:

1. Must be on its wheels or jacking system;

2. Must be attached to the site only by quick-disconnect type utilities and security devices; and

3. Must not have any permanently attached additions.

iii. Recreational vehicles that cannot meet the provisions of Section 5.37(A)(i – ii) must meet the permit requirements and elevation and anchoring requirements for manufactured homes established in Section 5.24 of this ordinance.

B. Evidence to support that the recreational vehicles are not located on site for longer than the allowable period or that they are ready for highway use may be requested by the floodplain administrator as established in Section 4.46 and 4.47 of this ordinance.
(Neb. Admin. Code, Title 455, Ch. 1, §004.13) (44 CFR 60.3(c)(14))

5.38 Subdivisions

A. Subdivision proposals and other proposed new development in the floodplain or partially in the floodplain, including manufactured or mobile home parks or subdivisions, are required to assure that:

i. All such proposals are consistent with the need to minimize flood damage;

ii. All public utilities and facilities such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage;

iii. Adequate drainage is provided so as to reduce exposure to flood hazards; and

iv. Proposals for development (including proposals for manufactured or mobile home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, where base flood elevation data are not available, must be supported by hydrologic and hydraulic analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letters of Map Revision and Letters of Map Revision.
(44 CFR 60.3(a)(4), (b)(3))

SECTION 6.0 EXISTING AND NONCONFORMING USE STRUCTURES

6.1 DAMAGE TO EXISTING OR NONCONFORMING USE STRUCTURES

6.11 The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing or nonconforming use structures. However, when a structure in the floodplain incurs damage by any means, including flood, a floodplain development permit is required for any repairs completed, and the following provisions apply:

A. If any existing or nonconforming use structure is destroyed by any means, including flood, it shall not be reconstructed if the cost to return the structure to pre-damaged conditions when combined with any additional proposed improvements is equal to or exceeds fifty (50) percent of the pre-damage market value of the structure except that if the structure and any additions are (re)constructed in conformity with the provisions of this ordinance. Such damage shall constitute “substantial damage” as defined in Section 10.0 of this ordinance.

B. These limitations do not include the cost of any alteration to comply with existing state or local health, sanitary, or safety code or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

(Neb. Admin. Code, Title 455, Ch. 1, §002.21) (44 CFR 59.1 "Substantial damage")

6.2 IMPROVEMENTS TO EXISTING OR NONCONFORMING USE STRUCTURES

6.21 The provisions of this ordinance do not require any changes or improvements to be made to lawfully existing or nonconforming use structures. However, when an improvement is made to a structure in the floodplain, a floodplain development permit is required, and the following provisions apply:

A. Any additions, alterations, reconstruction, or improvements of any kind including repairs to an existing or nonconforming use structure where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall require the structure and any additions to fully comply with the provisions of this ordinance. Such improvements shall constitute a "substantial improvement" as defined in Section 10.0 of this ordinance.

B. Any addition, alteration, reconstruction, or improvement of any kind to an existing or nonconforming use structure that will change the compliance requirements of the structure shall require the structure and the addition to comply with the provisions governing such uses.

C. These limitations do not include the cost of any alteration to comply with existing state or local health, sanitary, or safety code or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

(Neb. Admin. Code, Title 455, Ch. 1, §002.22) (44 CFR 59.1 "Substantial improvement")

6.3 DISCONTINUED USE OF EXISTING OR NONCONFORMING USE STRUCTURES

6.31 A structure or use of a structure or premises that was lawful before the passage or amendment of this ordinance, but that is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

A. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance.

B. The Utility Department shall notify the floodplain administrator in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.

(Neb. Rev. Stat. §19-904.01 and §23-173.01)

SECTION 7.0 VIOLATIONS AND ENFORCEMENT

7.1 VIOLATIONS

7.11 Failure by any person, firm, corporation, government agency, or other entity to obtain a floodplain development permit from the floodplain administrator prior to any floodplain development shall constitute a violation of Section 4.2 of this ordinance.

7.12 Failure of a structure or other development to be fully compliant with the applicable provisions of this ordinance shall constitute a violation.

7.13 A structure or other development without a floodplain development permit, elevation certificate, applicable certification by a licensed professional engineer, or other evidence of compliance with these regulations is presumed to be in violation until the time at which such documentation is provided.

(Neb. Rev. Stat. §31-1021) (44 CFR 59.1 "Violation")

7.2 NOTICES

7.21 When the floodplain administrator or other authorized community representative determines, based on reasonable grounds, that there has been a violation of the provisions of this ordinance, the floodplain administrator shall provide the alleged violator with a notice of such alleged violation. Such notice shall:

A. Be in writing;

B. Include a location and description of the development;

C. Include an explanation of the alleged violation, including a reference to the local, state, or federal regulation the development is allegedly violating;

D. Provide an outline of remedial actions that, if taken, will bring the development into compliance with the provisions of this ordinance;

E. Allow a reasonable time for the performance of any remedial act required;

F. Include a warning of the penalty that may ensue for any unresolved confirmed violations;

G. Include contact information for the community's designated floodplain administrator or other authorized community representative; and

H. Be served upon the property owner or their agent as the case may require;

(Neb. Rev. Stat. §31-1021)

7.3 PENALTIES

7.31 Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granted variances or special exceptions) shall constitute a misdemeanor.
(Neb. Rev. Stat. §19-913, §23-114.05)

7.32 Any person, firm, corporation, government agency, or other entity that violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $[Maximum Fine Amount], and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
(Neb. Rev. Stat. §19-913, §23-114.05)

7.33 The imposition of such fines or penalties for any violation or non-compliance with this ordinance shall not excuse the violation or non-compliance or allow it to continue. All such violations or non-compliant actions shall be remedied within an established and reasonable time.

7.34 Nothing herein contained shall prevent the [Community Name] or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy violation.

(Neb. Rev. Stat. §31-1021)

SECTION 8.0 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

8.1 VARIANCE AND APPEALS PROCEDURES

8.11 The [Appeals Board] as established by [Community] shall hear and decide appeals and requests for variances from the requirements of this ordinance.
(Neb. Rev. Stat. §19-907 and §23-168.01)

8.12 The [Appeals Board] shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this ordinance.
(Neb. Rev. Stat. §19-910 and §23-168.02)

8.13 Any person aggrieved by the decision of the [Appeals Board], or any taxpayer may appeal such decision to the District Court.
(Neb. Rev. Stat. §19-912 and §23-168.04)

8.14 In evaluating such appeals and requests, the [Appeals Board] shall consider technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:

A. The danger of life and property due to flooding or erosion damage;

B. The danger that materials may be swept onto other lands to the injury of others;

C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner, future owners, and neighboring properties;

D. The importance of the services provided by the proposed facility to the community;

E. The necessity of the facility to have a waterfront location, where applicable;

F. The availability of alternative locations that are not subject to flooding or erosion damage for the proposed use;

G. The compatibility of the proposed use to the comprehensive plan and the floodplain management program for that area;

H. The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;

I. The safety of access to the property in times of flood for ordinary and emergency vehicles;

J. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters at the site; and

K. The costs of providing government services during and after flood conditions including emergency management services and maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges.

(Neb. Admin. Code, Title 455, Ch. 1, §006)

8.2 CONDITIONS FOR VARIANCES

8.21 Variances shall only be issued upon a showing of good and sufficient cause and also upon a determination that failure to grant the variance would result in exceptional hardship to the applicant.

8.22 Variances shall only be issued based upon a determination that the granting of the variance will not result in increased flood heights.

8.23 Variances shall only be issued based upon a determination that the granting of a variance will not result in additional threats to public safety, extraordinary expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

8.24 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided items 8.25-8.29 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

8.25 Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure on the National Register of Historic Places and that the variance is the minimum necessary to preserve the historic character and design of the structure.

8.26 Variances shall not be issued within any designated floodway if any increase in water surface elevations along the floodway profile during the base flood discharge would result.

8.27 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

8.28 The applicant shall be given a written notice signed by a community official that:

A. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as $25 for every $100 of insurance coverage; and

B. Such construction below the base flood elevation increases risks to life and property.

C. Such notification shall be maintained with a record of all variance actions as required in this Section.

8.29 All requests for variances and associated actions and documents, including justification for their issuance, shall be maintained by the [Community Name].

(Neb. Admin. Code, Title 455, Ch. 1, §006) (44 CFR 60.6(a))

SECTION 9.0 AMENDMENTS

9.1 The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any changes in federal, state, or local regulations provided, however, that no such action may be taken until after a public hearing in relation thereto, at which citizens and parties in interest shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the [Community Name]. At least [Number] days shall elapse between the date of this publication and the public hearing.

9.2 A copy of such amendments will be provided to the DWEE and FEMA for review and approval before being adopted.

(Neb. Rev. Stat. §31-1017) (44 CFR 60.2(e))

SECTION 10.0 DEFINITIONS

The terms defined below are considered necessary for the enforcement of this ordinance. 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. Unless otherwise specified, all terms defined below follow the definitions established in Title 44 of the Code of Federal Regulations Part 59.1 and the Nebraska Minimum Standards for Floodplain Management Programs as published in the Nebraska Administrative Code Title 455:

1% Annual Chance Flood Hazard. See "Base Flood".

Addition. An extension or increase in floor area, number of stories, or height of an existing building or structure.
(Nebraska Existing Building Code 2018, Chapter 202)

Administrator. The Administrator of the Federal Emergency Management Agency.

Alteration. Any construction or renovation to an existing structure other than a repair or addition.
(Nebraska Existing Building Code 2018, Chapter 202)

Appeal means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding. A designated AO or AH zone on a community's FIRM with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood. The flood having a one (1) percent chance of being equaled or exceeded in magnitude in any given year.

Base Flood Elevation. The elevation to which floodwaters are expected to rise during the base flood.

Base Flood Elevation Determination. A determination by the local floodplain administrator of the elevation of the base flood using data provided by federal, state, or other sources.

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Building. See definition for "structure."

Chief Executive Officer (CEO). The official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

Community. Any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

Development. 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. See also "obstruction."

Drainway. Any depression two feet or more below the land which serves to give direction to a current of water less than nine (9) months of the year, and which has a bed and well-defined banks.

Existing Construction. Any structure for which the "start of construction" commenced before the effective date of the floodplain management regulations adopted by the community as a basis for that community's participation in the NFIP. "Existing construction" may also be referred to as "existing structures.

Existing Manufactured Home Park or Subdivision. 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 pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by a community.

Existing Structures. See "existing construction."

Expansion to an Existing Manufactured Home Park or Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding.

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

    i. The overflow of inland or tidal waters;

    ii. The unusual and rapid accumulation or runoff of surface waters from any source;

    iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(i) of this definition.

Flood Fringe. The portion of the floodplain of the base flood which is outside of the floodway.

Flood Hazard Boundary Map. An official map of a community where the boundaries of the special flood hazard area have been designated as Zone A.

Flood Insurance Rate Map (FIRM). An official map of a community delineating both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS). An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Floodplain. Any land susceptible to being inundated by water from any source (see definition for "flooding"). Floodplain includes flood fringe and floodway. Floodplain and special flood hazard area are the same for use by this ordinance.

Floodplain Administrator. The community official designated to administer and enforce the floodplain management regulations.

Floodplain Management. The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such regulations which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, and structures and their contents.

Flood damage resistant material. Any building product capable of withstanding direct and prolonged contact with floodwaters, without sustaining significant damage. Prolonged contact is defined as at least 72 hours. (FEMA Technical Bulletin 2)

Floodway or Regulatory Floodway. 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.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade. The highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

Historic Structure. Any structure that is:

A. Listed individually in the National Register of Historic Places maintained by the U.S. Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the 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;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

   i. By an approved state program as determined by the Secretary of the Interior; or

   ii. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Change (LOMC). An official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

A. ***Letter of Map Amendment (LOMA).*** An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure is not located in a special flood hazard area.
(FEMA MT-1 Form Instructions)

B. ***Conditional Letter of Map Revision Based on Fill (CLOMR-F).*** A determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed.
(FEMA MT-1 Form Instructions)

C. ***Letter of Map Revision Based on Fill (LOMR-F).*** A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
(FEMA MT-1 Form Instructions)

D. ***Conditional Letter of Map Revision (CLOMR).*** A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective FIRM.
(FEMA MT-2 Form Instructions)

E. ***Letter of Map Revision (LOMR).*** Letter of Map Revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the

effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.
(FEMA MT-2 Form Instructions)

Lowest Floor. 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 storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built or modified so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" shall include "mobile home" but does not include "recreational vehicle."
(Neb. Rev. Stat. §76-1463)

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

Mobile Home. See definition for "Manufactured Home."

New Construction. Any developments for which the "start of construction" commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision. 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) is completed on or after the effective date of floodplain management regulations adopted by a community.

Nonresidential Structure. A commercial or mixed-use building where the primary use is commercial or non-habitational.

Obstruction. Any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation (including the alteration or relocation of a watercourse or drainway), channel rectification, bridge, conduit, culvert, building, stored equipment or material, wire, fence, rock, gravel, refuse, fill or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. Dams designed to store or divert water are not obstructions if permission for the construction thereof is obtained by the DWEE pursuant of the Safety of Dams and Reservoirs Act (Neb. Rev. Stat. §§46-1601 to 46-1670, as amended).

Post-FIRM Structure. A building that was constructed or substantially improved after December 31, 1974, or on or after the community's initial FIRM dated [Initial FIRM Effective Date], whichever is later.

Pre-FIRM Structure. A building that was constructed or substantially improved on or before December 31, 1974, or before the community's initial FIRM dated [Initial FIRM Effective Date], whichever is later.

Principally Above Ground. At least fifty-one (51) percent of the actual cash value of the structure is above ground.

Recreational Vehicle. A vehicle which is:

A. Built on a single chassis;

B. Four hundred (400) square feet or less when measured from the largest horizontal projections;

C. Designed to be self-propelled or permanently towable by a light duty truck; and

D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Flood Elevation. The Base Flood Elevation (BFE) plus a freeboard factor as specified in this ordinance.

Repetitive Loss. Any flood-related damage sustained by a structure on two separate occasions during a ten-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.

Residential Structure. A non-commercial structure designed for habitation by one or more families or a mixed-use structure that qualifies as a single-family, two-to-four family, or other residential structure.

Special Flood Hazard Area (SFHA). The floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

Start of Construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. “Start of construction” also included substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means 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 preparations, 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 shed 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 a building, whether or not the alteration affects the external dimensions of the building.

Structure. A walled and roofed building that is principally above ground, as well as a manufactured home and a gas or liquid storage tank that is principally above ground.

Subdivision. The division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels, or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership, building or lot development.

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (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 either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Variance. A grant of relief to an applicant from the requirements of this ordinance that allows construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in exceptional hardship.

Violation. A failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without a floodplain development permit, elevation certificate, certification by a licensed professional engineer, or other evidence of noncompliance with these regulations is presumed to be in violation until such time as documentation is provided.

Watercourse. Any depression two (2) feet or more below the surrounding land that serves to give direction to a current of water at least nine (9) months of the year and that has a bed and well-defined banks. See also "drainway".

SECTION 11.0 EFFECTIVE DATE, PUBLICATION, AND ORDINANCE ADOPTION

This ordinance shall be in full force and take effect from and after its passage, adoption, and publication

this _____ day of _____, 20_____ in accordance with the [County/City/Village] of [Community], Nebraska.

ADOPTED AND APPROVED by the [Governing Body] of [County/City/Village] of [Community], Nebraska

this _____ day of _____, 20_____.

_____

Signature of [Title of Chief Executive Officer] Date

Attest:_____

Signature of [Attesting Position] Date

Date of Publication: _____

SEAL

Guide to Optional or Higher Standards for Floodplain Administration

Introduction

Nebraska Administrative Code Title 455 Chapter 1 "Nebraska Minimum Standards for Floodplain Management Programs" establishes the standards that all Nebraska communities participating in the National Flood Insurance Program (NFIP) must enforce in their floodplain areas. Nebraska's standards include provisions that exceed the federal minimum standards in the Code of Federal Regulations Title 44 Part 60.3. Such higher standards include:

- 1-foot of freeboard (additional elevation of protection above the Base Flood Elevation).
- Prohibited development of structures for human habitation in the floodway.
- Prohibited storage of hazardous materials in any floodplain.

Nebraska's standards, while higher than federal standards, are the *minimum* required for Nebraska communities and are found in the State of Nebraska Model Floodplain Ordinance. However, as flood frequency and severity increases, communities across Nebraska are recognizing the need to further reduce flood risk through the establishment of local higher standards for development in flood hazard areas. Communities are granted the authority to adopt such higher standards through Nebraska Revised Statute § 31-1019.

Communities may also choose to adopt *optional* standards that expand the permitting options for new developments or implement new administrative procedures. While these standards may not be higher than state or federal minimums, they allow for flexibility within permitting procedures by defining optional structure types or permit review procedures.

Based on common practices in other states and communities, this document includes a wide range of possible additional standards that communities may choose to implement. The standards included in this document may be inserted into the draft floodplain regulations using the section numbers as they correspond to the State of Nebraska Model Floodplain Ordinance.

This guide should not be seen as a comprehensive list of every possible higher standard for floodplain development. Your community may choose to customize your floodplain ordinance with other local higher standards not included in this document to best address specific flood hazards. The Association of State Floodplain Managers (ASFPM) Floodplain Regulations Committee also produced "A Guide for Higher Standards in Floodplain Management" which includes additional higher standards not listed in this guide.

Optional Standards

The following standards are considered optional and are not considered a "higher" regulatory standard than state or federal requirements for NFIP participating communities. These standards include language defining **accessory structures** and **agricultural structures** for the purposes of floodplain management, and for establishing **wet-floodproofing procedures** for such structures as an acceptable compliance method.

Wet-floodproofing of Agricultural Structures

The NFIP and state minimum standards delineate structural development by residential or nonresidential, and do not directly define agricultural structures. However, the Federal Emergency Management Agency (FEMA) Policy #104-008-03 issued February 2020 allows communities to define agricultural structures and establish variance procedures for such structures to utilize wet-floodproofing as a floodplain development compliance option. For agricultural structures to use wet-floodproofing as a compliance option, the developer must request and have an approved variance from the community's governing body responsible for variance review. **Communities do not need to adopt this language if the community intends to require elevation or dry-floodproofing as the only acceptable compliance options for agricultural and accessory structures.**

Adopting this language will allow the community to have flexibility when establishing the floodplain design requirements for a proposed structure that is exclusively used for agricultural purposes. Communities should note that placing a structure with the lowest floor below one (1) foot above the base flood elevation leaves the contents of the structure at risk of flood damages.

Model Language

The following language from Floodplain Management Bulletin P-2140 includes the floodplain management definition for agricultural structures, the variance procedures to allow wet-floodproofing of an agricultural structure, and the design requirements for wet-floodproofing. The language below must be included in its entirety in the floodplain management ordinance to allow such development to occur:

5.25 Wet-floodproofing of Agricultural Structures by Variance

A. All new, substantially improved, or substantially damaged agricultural structures utilizing wet-floodproofing shall:

   i. Be anchored to resist flotation, collapse, and lateral movement.

   ii. Have flood damage-resistant materials below one (1) foot above the base flood elevation in compliance with the requirements of Section 10 "Flood Damage Resistant Material."

   iii. Have mechanical, electrical, and utility equipment elevated to or above one (1) foot above the base flood elevation.

   iv. Have flood openings in compliance with the requirements for Enclosures Below Lowest Floor established in Section 5.23 of this ordinance.

B. If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

8.30 Variances shall only be issued for new, substantially improved, or substantially damaged agricultural structures to utilize wet-floodproofing provided the following provisions are satisfied:

A. The structure is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses;

B. The structure has low damage potential including the amount of physical damage, contents damage, and loss of function;

C. The structure does not increase risks or pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials;

D. The structure has flood openings in compliance with the wet-floodproofing construction requirements established in Section 5.23 “Enclosures Below the Lowest Floor” of this ordinance.

Definition:

Agricultural Structure. For floodplain management purposes shall mean a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

Wet-floodproofing of Accessory Structures

While state minimum standards define accessory structures and allow the usage of wet-floodproofing as a compliance option for floodplain development, they do not fully align with FEMA Policy #104-008-03 issued February 2020. For communities to adopt language for accessory structures that is compliant with FEMA’s policy, the following language is recommended.

Accessory structures that fully meet the definition and size requirements for such use may utilize wet-floodproofing without the need for a variance from the community. A variance would still be required for the structure to utilize wet-floodproofing if the structure does not fully meet the definition or size requirements of an accessory structure.

Adopting this language will allow the community to have flexibility when establishing the floodplain design requirements for a small structure that is accessory to a principal building. Communities should note that placing a structure with the lowest floor below one (1) foot above the base flood elevation leaves the contents of the structure at risk of flood damages.

Model Language

The following language includes the floodplain management definition for accessory structures and the design requirements for wet-floodproofing. All language below must be included in the floodplain management ordinance to allow such development to occur.

5.26 Wet-floodproofing of Accessory Structures

A. All new, substantially improved, or substantially damaged accessory structures with the lowest floor below one (1) foot above the base flood elevation shall:

i. Not be used for human habitation;

ii. Be anchored to resist flotation, collapse, or lateral movement;

iii. Be used solely for the parking of vehicles or limited storage of readily removable items;

iv. Not have a floor area exceeding 800 square feet;

v. Have low damage potential including the amount of physical damage, contents damage, and loss of function;

vi. Have mechanical, electrical, and utility equipment elevated to or above one (1) foot above the base flood elevation;

vii. Have flood openings in compliance with the requirements for Enclosures Below Lowest Floor established in Section 5.23 of this ordinance.

B. If the structure is converted to another use, it must be brought into full compliance with the minimum standards governing such use.

8.31 Variances shall only be authorized to be issued for new, substantially improved, or substantially damaged large accessory structures to utilize wet-floodproofing provided the following provisions are satisfied:

A. The structure represents minimal investment and has low damage potential (amount of physical damage, contents damage, and loss of function).

B. The structure is larger than the size limits specified in [insert section number where requirements for accessory structures, including size limits, are specified].

C. The structure has flood openings in compliance with the wet floodproofing construction requirements established in Section 5.23 “Enclosures Below the Lowest Floor” of this ordinance.

Definition:

Accessory Structure. A structure on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure. Also shall be known as “appurtenant structure.”

Time Limit for Floodplain Development Permit Validity

Under the minimum standards of the NFIP, developers have 180 days to begin construction after receiving an approved floodplain development permit. After construction has started, permits are then valid for as long as the development takes to complete, which may vary from weeks to years depending on the scope of the project. However, due to changes in floodplain conditions over time, some communities may choose to specify a time limit on how long construction can take place under an issued permit. Once the time limit expires, the developer must reapply or request to renew their existing floodplain development permit. Enacting this policy ensures that developers are routinely aware of their requirements for floodplain compliance and helps to avoid any breakdowns in communication between the developer and the floodplain administrator over time.

Communities may establish a timeline of their choice for the validity of a floodplain development permit. It is recommended that this timeline be aligned with any other existing timelines for local permits, including building, zoning, or utility permits, to ensure consistency across administrative procedures.

Model Language

To establish a written time limit for how long floodplain development permits are valid, the following language must be adopted in Section 4.4 "Application for Permit and Demonstration of Compliance" in the Model Ordinance:

4.48 Completion of the development shall occur within [Time Period (i.e. one (1) year)] from the date the floodplain development permit is issued by the floodplain administrator or a time limit commensurate with the project construction timeline. The applicant may request an extension for up to [Extension Time Period (i.e. one (1) year)]. The request must be made at least 30 days prior to the permitted completion deadline. Construction must start within 180 days of the issuance of the permit. If construction does not begin within this timeframe, a new permit must be issued;

Time Limit for Developer to Provide Proof of Compliance

For any permitted development in the floodplain, the developer must provide "proof of compliance" to the floodplain administrator upon completion of the project. Not obtaining proof of compliance is considered a violation, per the definition in 44 CFR 59.1 "Violation." Proof of compliance means any post-construction documentation; including photos, engineering certificates, or elevation certificates, that verify compliance with the issued floodplain development permit. Unfortunately, this step is occasionally missed by communities or the developer, and proof of compliance with the floodplain development permit is not obtained.

To help ensure this permitting procedure is not missed, communities may choose to establish a timeframe for when proof of compliance must be provided upon completion of a project. Establishing this timeline will help communities obtain proof of compliance within a reasonable time after completion of a development, and including such model language gives communities additional legal backing for enforcement in the event that the required documentation is not provided by the developer.

Model Language

To establish a written time limit for developers to provide proof of compliance documentation upon completion of a development, paragraphs 4.43 - 4.44 in Section 4.4 “Application for Permit and Demonstration of Compliance” must be modified in the following manner:

4.43 For all new construction, substantial improvements, or repairs to substantial damage, an elevation certificate based upon the finished construction certifying the elevation of the lowest floor, including basement, and other relevant building components shall be provided to the floodplain administrator. Such certification shall be completed by a licensed surveyor, engineer, or architect within [Time Period (i.e. 30 days)] of finished construction.

4.44 When floodproofing is utilized for a non-residential structure, a floodproofing certificate shall be provided to the floodplain administrator. Such certification shall be completed by a licensed professional engineer or architect within [Time Period (i.e. 30 days)] of finished construction.

Higher Regulatory Standards

The following standards are considered **higher** than the state or federal minimum standards for floodplain administration and development. These standards include the establishment of higher flood protection elevations, limits on development types, and limits or prohibitions on enclosures below the lowest floor.

Floodplain Administrator Certified Floodplain Manager (CFM) Requirement

This language requires any person that assumes the community's floodplain administrator position to become a Certified Floodplain Manager (CFM) through the Association of State Floodplain Managers (ASFPM). Communities can set any timeline for when this credential must be obtained after start of employment. This requirement ensures that the floodplain administrator is trained in the minimum standards of the NFIP, can accurately determine base flood elevations, understands the floodplain development permit process, and can be a trusted resource in the community.

CFMs are required to obtain Continuing Education Credits (CECs) to maintain their credential, meaning the community will be consistently represented by a knowledgeable floodplain manager. Floodplain administrators can attend education opportunities hosted by the Nebraska Department of Natural Resources (NeDNR), the Nebraska Floodplain and Stormwater Managers Association (NeFSMA), ASFPM, FEMA or other providers throughout the year to obtain CECs. For communities with limited floodplain development, the credential may not be necessary to adequately enforce the floodplain management ordinance.

Model Language

The following underlined language must be added to the paragraph identifying the position of the enforcement officer of the floodplain ordinance:

4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The [Position Title] of the community is hereby designated as the community's local Floodplain Administrator. The floodplain administrator shall, within [Time Period (i.e. one (1) year)] of being designated, become a Certified Floodplain Manager through the Association of State Floodplain Managers. The floodplain administrator is authorized and directed to administer, implement, and enforce all provisions of this ordinance. The floodplain administrator must serve to meet and maintain the commitments pursuant to 44 CFR 59.22(a) to remain eligible for National Flood Insurance for individuals and business within the political subdivision. If the local floodplain administrator position is unfilled, the community's Chief Executive or Chief Elected Official shall assume the duties and responsibilities herein.

Administrative Procedures for Reviewing Letter of Map Revision Requests

This language creates administrative procedures for the community to follow when a Letter of Map Revision based on Fill (LOMR-F) is submitted to their floodplain management office. Any property owner looking to obtain a LOMR-F must obtain a community acknowledgement form before FEMA will review the application. The community acknowledgement form requires the community to certify the following statement:

"We have determined that the land and any existing or proposed structures to be removed from the Special Flood Hazard Area (SFHA) are or will be reasonably safe from flooding as defined in 44CFR 65.2(c), and that we have available upon request by DHS-FEMA, all analyses and documentation used to make this determination."

This statement could expose the community to liability if the floodplain administrator does not have the documentation supporting that the structure(s) to be removed are "reasonably safe from flooding." In March of 2023, FEMA published the latest edition of Technical Bulletin 10, which outlines the parameters for building reasonably safe from flooding on filled land.

Model Language

By including the following language in the permit review procedures, the community will have written administrative procedures for reviewing LOMR-F applications.

4.48 The floodplain administrator shall not sign a community acknowledgement form for any Conditional Letter of Map Revision based on Fill (CLOMR-F) or Letter of Map Revision Based on Fill (LOMR-F) applications unless all criteria set forth in the following paragraphs are met:

A. Applicant has obtained a floodplain development permit before applying for a LOMR-F;

B. No fill has been placed in the regulatory floodway;

C. All necessary Federal, State, and local permits have been obtained;

D. For CLOMR-F requests, the applicant has documented or will document Endangered Species Act (ESA) compliance prior to issuance of the CLOMR-F determination. For LOMR-F requests, compliance with Sections 9 and 10 of the ESA has been achieved; and,

E. Applicant has demonstrated that the property and any existing or proposed structures will be reasonably safe from flooding, according to the minimum design standards in FEMA Technical Bulletin 10 dated March 2023.

Higher Freeboard Requirements

Nebraska's Minimum Standards for Floodplain Management Programs require that communities regulate development to an additional one (1) foot above the Base Flood Elevation (BFE). This means that new, substantially improved, or substantially damaged residential structures must elevate so that the lowest floor is above the BFE an additional foot, and that commercial/nonresidential buildings must elevate or dry-floodproof above the BFE an additional foot. This additional level of protection, referred to as "freeboard", is used as a factor of safety (44 CFR 59.1 "Freeboard"). The higher freeboard acknowledges that larger floods than the base flood may occur, and that new developments in the floodplain may result in increased flood heights. Some communities in Nebraska have decided that one foot of freeboard is not enough to address their flood risk, and that additional protections are needed.

FEMA estimates that every one foot of freeboard adds only 0.25-1.5% to total construction costs for new buildings, and The National Institute of Building Sciences states that communities save around $7 for every $1 spent on resilience. Additionally, property owners would save around 20% per year on flood insurance costs with additional freeboard (NFIP Flood Insurance Discount Tool). The costs for additional

freeboard will typically pay for themselves within the first 10 years of a structure's lifetime through reduced damages and insurance costs (ASFPM "A Guide to Higher Standards in Floodplain Management").

Your community has been granted the authority by statue to enact reasonable requirements for floodplain development, including any additional freeboard as may be required to address local flood hazards.

Model Language

If the community chooses to adopt a higher freeboard elevation than Nebraska's minimum one foot, the following paragraphs from the model ordinance must be modified to include the new freeboard requirement:

- Section 5.21(A) and (B)
- Section 5.22(A)(i) and (ii)
- Section 5.22(B)(i)
- Section 5.23(A)
- Section 5.24(B)
- Section 5.24(C)(i)

**Modifications may also be required for any other optional or higher standards adopted.*

Additional Note: CRS Credit

Significant Community Rating System (CRS) credit is available for communities that adopt higher freeboard standards, which leads to lower flood insurance premiums for all policy holders in the participating jurisdiction. The Nebraska standard 1-foot freeboard will earn any community 100 points towards their CRS class rating. Adopting a 2-foot freeboard can earn a community up to 225 points towards their CRS class rating, while a 3-foot freeboard can earn up to 375 points. More information on freeboard requirements and available CRS credits can be found in the CRS Coordinator's Manual on the Community Rating System (CRS) resources page.

Elevating or Floodproofing Mechanical and HVAC Equipment Servicing a Building

Nebraska's Minimum Standards for Floodplain Management Programs explicitly require that new residential structures must be elevated with the lowest floor one (1) foot above the base flood elevation and nonresidential structures must be elevated or floodproofed to one (1) foot above the base flood elevation. For mechanical and HVAC equipment, Nebraska's standards meet those of the NFIP which require that electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities must be designed and/or located to prevent water from accumulating in their components during flooding. Federal requirements also state that all public utilities and facilities such as sewer, gas, electrical, and water systems are to be located and constructed to minimize flood damage.

Most developers will construct new homes and businesses with the HVAC equipment elevated to the same elevation of the lowest floor, however, this is not explicitly required by state minimum standards. Not elevating such equipment can lead to increased flood insurance costs, loss of services to the building, and increased risks of property damage during a flood.

To best protect utilities and equipment for new construction, communities may choose to require that such equipment be elevated or dry-floodproofed to the same elevation of the structure it is servicing.

Model Language

To enact the requirement that all structures must have their equipment or mechanical services elevated or dry-floodproofed to the same elevation as the structure itself, the following sentences must be added to the regulations for residential and nonresidential structures as shown below:

5.21 Residential Structures

A. …

B. All machinery and equipment, such as electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities, must be elevated to the same level as the lowest floor. The elevation of the lowest floor and all machinery and equipment servicing the structure shall be certified by a licensed land surveyor, professional engineer, or architect.

5.22 Nonresidential Structures

A. …

B. All machinery and equipment, such as electrical, heating, ventilation, air conditioning, plumbing, and any other service facilities, must be elevated the same level as the structure being serviced. The elevation of the lowest floor and all machinery and equipment servicing the structure shall be certified by a licensed land surveyor, professional engineer, or architect.

Additional Note: CRS Prerequisites

Communities looking to achieve a Class 8 rating or higher in the Community Rating System are required to adopt and enforce at least a one (1) foot freeboard requirement for machinery and equipment servicing a residential structure. This requirement is described in the 2021 Addendum to the CRS Coordinator's Manual, 2017 Edition. The addendum can be found on the Community Rating System (CRS) resources page.

Removal of Language Allowing Dry-floodproofing for Nonresidential Structures

Nebraska's Minimum Standards for Floodplain Management Programs allow nonresidential structures to be constructed with the lowest floor below one (1) foot above BFE if the structure is dry-floodproofed and has certification from an engineer that all dry-floodproofing requirements are met. The issue with most dry-floodproofing measures is that they require human action to install or maintain the equipment used to make the structure watertight. This requires the development of an action and maintenance plan that includes adequate warning time for the floodproofing measures to be installed. In many cases, there is not enough warning before a flood event for these actions to take place, or the building does not have enough trained staff to complete the actions in time, leading to property damage and loss of function. Communities may choose to require elevation of the lowest floor to the community's required protection level as the only compliance method for both residential and nonresidential structures.

Model Language

To remove the option for dry-floodproofing non-residential structures, remove lines 5.22(A)(ii)(1-3) from the model ordinance.

5.22 Nonresidential Structures

A. …

i. ….

ii. -REMOVE- Be dry-floodproofed so that below one (1) foot above the base flood elevation, the structure along with attendant utility and sanitary facilities:

1. Is watertight with walls substantially impermeable to the passage of water; and,

2. Has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

3. Is certified by a registered professional engineer or architect to meet the standards of 5.22(A)(ii)(1-2). A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.44 of this ordinance. -REMOVE-

Regulation of Critical Facilities

Communities may choose to regulate activities that are vital to the continuous operation of the community in times of disaster such as hospitals, first responder facilities, facilities that store hazardous materials, or other community lifelines to higher standards than those established by the regulations for residences and nonresidences. These higher standards may include higher freeboard requirements and/or regulating these facilities within both the 1% and 0.2% annual chance floodplain boundaries.

Model Language

The following language defines critical facilities, and establishes the higher standards for critical facilities to satisfy FEMA's FFRMS requirements for critical actions:

5.25 Critical Facilities

A. New construction, substantially improved, or substantially damaged critical facilities are prohibited in all areas of the floodplain and the 0.2% annual chance floodplain unless the following provisions are met:

i. No feasible alternative site exists for the construction of an equivalent action within the corporate or extraterritorial jurisdiction boundaries of [community name].

ii. The facility has the lowest floor, including basement, of all structures elevated to one (1) foot above the 0.2% annual chance flood elevation or three (3) feet above the base flood elevation, whichever is higher; or,

iii. Together with attendant utility and sanitary facilities, nonresidential structures are dry-floodproofed so that below the flood protection elevation identified in Section 5.25(A)(ii):

a. The structure is watertight with walls substantially impermeable to the passage of water;

b. The structure has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. A registered professional engineer or architect shall certify that the standards of 5.25(A)(ii)(a-b) are satisfied. A floodproofing certificate shall be provided to the floodplain administrator as set forth in Section 4.44 of this ordinance.

iv. The facility has at least one access road connected to land outside the 0.2% annual chance floodplain that is capable of carrying emergency support vehicles and the top of the access road is no lower than the flood protection elevation identified in Section 5.25(A)ii.

Definition:

Critical Facility. Any property that, if flooded, would result in severe consequences to public health and safety. Critical facilities include, but are not limited to:

A. Facilities that produce, use, or store hazardous materials;

B. Hospitals, nursing homes, and housing likely to contain vulnerable populations;

C. Emergency support function facilities such as police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers; and,

D. Public and private utility facilities vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

Prohibiting Enclosures Below the Lowest Floor

This prohibition enacts that new or substantially improved/damaged structures cannot have enclosed spaces below the lowest floor. Enclosures below the lowest floor include crawlspaces, above ground garages, or any area for storage, parking, or building access that is placed lower than the lowest floor of a structure. Typically, this construction method is used to elevate the lowest floor of a structure to be compliant with local freeboard standards while maintaining usable space beneath the elevated area. However, such development practices can increase the impacts of the development of floodwater flows and leaves the materials or vehicles stored in the area susceptible to flood damages. These structures may also be at an increased risk for foundational collapse if the enclosed space is inundated by floodwaters that exceed the elevation or flood forces of the base flood.

This prohibitory language requires that for any elevated structure, the structure must be elevated using posts, piles, piers, or fill (if the use of fill is allowed by the community).

Model Language

To enact this prohibition, the following sentence must replace all of Section 5.23 "Enclosures Below Lowest Floor":

5.23 Enclosures Below Lowest Floor

A. All new construction, substantially improved, or substantially damaged structures shall not have fully enclosed areas below the lowest floor below one (1) foot above the base flood elevation.

Additional Note: Adopting Wet-floodproofing Language for Ag. or Accessory Structures

If the community chooses to adopt a prohibition of enclosures *and* the language for wet-floodproofing agricultural structures or accessory structures, the requirements for flood openings typically included in Section 5.23 will need to be moved to those respective sections. Both the agricultural structure and accessory structure sections reference the flood opening requirements in Section 5.23, and the placement of the above statement would eliminate this language.

Limiting the Size of Enclosures Below the Lowest Floor

Limiting enclosure sizes below the lowest floor will reduce the structure's impact on floodwater elevations and will help to minimize the amount of stored items or vehicles at risk of incurring flood damages. Such size limits may also encourage that the enclosure only be used as a stairway to access the lowest floor of the structure. This language does not require such size limits for crawlspaces with heights lower than five (5) feet below the top of the next higher floor.

Model Language

To enact these size limits, the following language must be added to Section 5.23 "Enclosures Below Lowest Floor":

5.23 Enclosures Below Lowest Floor

A. …

B. …

C. The size of such enclosed areas shall not exceed [insert size limit (recommended 299)] square feet except for buildings where the minimum clearance height of the enclosed area is less than five (5) feet.

Non-conversion Agreements for Enclosures Below Lowest Floor

When a community permits a development to occur with an enclosed space below the lowest floor, it is required by state and federal minimum standards that such areas are not used for human habitation or any purposes besides limited storage, parking, or access to upper floors. However, because the usage of the area is internal to the structure, it can be difficult for a community to enforce this requirement without additional written procedures. Communities can choose to implement additional standards for ensuring the usage of the area is not converted after construction is completed. These options include:

- Deed restrictions filed with the county office of the Register of Deeds; or,
- Signed non-conversion agreement between the community and property owner.

Communities interested in this language are highly encouraged to discuss the formatting and language for deed restrictions or non-conversion agreements with their local legal counsel to verify that no other procedures or local regulations are being impacted. Non-conversion agreements should allow for inspection by the community at any time. The language provided below allows the community to enact a non-conversion agreement document that must be signed by both the property owner and the floodplain administrator, allowing for periodic inspections of the enclosed space.

Model Language

To require non-conversion agreements signed by the community and property owner for enclosures below the lowest floor to not be used for human habitation, the following language must be added to Section 5.23 “Enclosures Below Lowest Floor”:

5.23 Enclosures Below Lowest Floor

A. …

B. …

C. For all new construction, substantially improved, and substantially damaged structures, fully enclosed areas below the lowest floor and below one (1) foot above the base flood elevation shall have a non-conversion agreement signed by both the floodplain administrator and the property owner and filed with the office of the Register of Deeds. The non-conversion agreement must establish the following provisions:

1. That the enclosed area below the lowest floor shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the flood damage prevention ordinance in effect at the time of conversion.

2. That all interior walls, ceilings, and floors below one (1) foot above the base flood elevation shall be unfinished or constructed of flood-resistant materials.

3. That mechanical, electrical, or plumbing devices that service the building shall not be installed below one (1) foot above the base flood elevation.

4. That the openings in the walls of the enclosed area below the lowest floor shall not be blocked, obstructed, or otherwise altered to reduce the size of the openings or restrict the automatic entry and exit of floodwater.

5. That any variation in construction beyond what is permitted shall constitute a violation of this agreement and Section 5.23 “Enclosures Below the Lowest Floor” of this ordinance.

6. That the owner and subsequent owners agree to allow a representative of [Community Name] in the premises to verify compliance with this agreement at least [Inspection Period (i.e. once each year)]. The representative will provide notice at least 48 hours in advance.

7. That this agreement shall be recorded with the deed to the above property so that proper notice of such restrictions shall be made to subsequent owners.

Additional Note: Non-conversion Agreements and Accessory/Agricultural Structures

Communities should file copies of any signed non-conversion agreement with the permit files for the structure. For communities that have chosen to adopt language to allow for wet-floodproofing of accessory and/or agricultural structures, the provisions of 5.23(C)(1-7) will apply, meaning non-conversion agreements must be signed for each structure type when wet-floodproofing is utilized. Approval of a variance for such agricultural structures must be conditional upon the signing of a non-conversion agreement, and a copy of the agreement must be maintained with the variance documentation. An example non-conversion agreement form can be found on the Community Rating System (CRS) resources page.

Prohibiting the Construction or Placement of Manufactured Homes

Manufactured homes are typically at a higher risk of incurring flood damages due to the types of materials used to construct them. Additionally, manufactured home parks may house lower-income families, many of whom may not have the means to evacuate or find alternative living arrangements in the event of a flood. Requiring new, substantially improved, or substantially damaged manufactured homes to be located outside of the floodplain can help mitigate these risks and helps to maintain the natural functions of the floodplain. Some Nebraska communities already prohibit manufactured homes in their corporate limits or extraterritorial jurisdictions through other local zoning regulations or building codes. Communities should ensure this language aligns with any existing prohibitions.

Model Language

To enact this prohibition, the following sentence must replace all of Section 5.24 “Manufactured or Mobile Homes”:

5.24 Manufactured or Mobile Homes

A. New or substantially improved manufactured or mobile homes shall be prohibited within any floodplain.

B. The repair or replacement of substantially damaged manufactured or mobile homes shall be prohibited within any floodplain.

Prohibiting the Placement of Fill

Fill refers to earthen material that is used to raise ground elevations. The use of fill in the floodplain may occur to elevate a structure to be compliant with local floodplain regulations, to elevate or level ground for property access, to improve the conditions of the land for agricultural use, or for landscaping or other projects involving earthwork. Fill must be permitted by the local floodplain administrator for use in a floodplain, and the developer must demonstrate that the fill will not result in unacceptable increases in floodwater elevations. However, the placement of fill in a floodplain may still result in increases in floodwater elevations that are not anticipated by the engineering analysis during the permitting process.

Some communities choose to prohibit the use of fill in the floodplain to maintain their carrying capacity and natural functions. Such prohibitions extend to the use of fill to elevate a structure, meaning elevated structures must instead be placed on posts, piles, or piers; or, above an enclosure (if enclosures are not prohibited elsewhere in the ordinance).

Model Language

To enact this prohibition, the following sentence must be added to Section 5.3 “Design and Construction Standards”:

5.39 Placement of Fill

A. The placement of fill shall be prohibited within any floodplain.

Prohibiting the Placement or Replacement of On-site Waste Disposal Systems

Storage receptacles for on-site waste disposal systems such as septic tanks or dump stations can break open, become buoyant, or contaminate floodwaters if not properly installed. Communities may enact regulations that prohibit such systems from being placed in any floodplain. This prohibition may not be feasible for counties or rural communities without public wastewater systems. Many communities already prohibit septic tanks within their corporate limits and/or extraterritorial jurisdictions. Communities should ensure this language aligns with any existing prohibitions.

Model Language

To enact this prohibition, the following sentence must replace line “C” of Section 5.34 “Water Supply and Sanitary Sewer Systems”:

5.34 Water Supply and Sanitary Sewer Systems

C. The placement of new or substantially improved on-site waste disposal systems shall be prohibited within any floodplain.

D. The repair or replacement of substantially damaged on-site waste disposal systems shall be prohibited within any floodplain.

Prohibiting Recreational Vehicles from the Floodplain

Recreational vehicles are at a significantly higher risk of incurring flood damages when placed in any floodplain. Because recreational vehicles are not considered "structures" by NFIP and state definitions, there are no elevation or anchoring requirements that they must adhere to. The expectation is that any recreational vehicle placed in the floodplain must only be located on site temporarily or must be removed from the floodplain in the event of a flood warning. Enforcing these standards can be difficult for a community, especially when the community has limited flood warning times, or the recreational vehicle park has limited road access. Recreational vehicles that are not relocated in the event of flooding can be quickly swept away by floodwaters and may cause damage to neighboring properties or infrastructure.

In communities where these enforcement challenges are too great, it is highly recommended that the floodplain ordinance prohibit the placement of recreational vehicles in the floodplain. This prohibition serves to protect both the health and safety of campers and the health and safety of the community.

Model Language

To enact a prohibition on Recreational Vehicles in the floodplain, the following sentence must replace all language in Section 5.37 "Recreational Vehicles" in the model ordinance:

5.37 Recreational Vehicles

A. The placement of recreational vehicles and new recreational vehicle parks shall be prohibited within any floodplain.

Lowering the Threshold for Substantial Improvement and Substantial Damage

Federal and state regulations require that structures that experience repairs to damage and/or improvements that cost more than 50% of the structure's market value must be brought into compliance with the community's floodplain ordinance. However, many communities have found that the 50% threshold is too high, resulting in at-risk structures not being mitigated even after multiple flood events have impacted the property.

Communities may adopt a local lower threshold of their choice for what is considered a "substantial" improvement or repair. Lowering this threshold will eventually result in more structures being better protected from the impacts of flooding. Over time, the lower threshold will help bring nonconforming structures into compliance by elevation or floodproofing, reducing the overall risk to citizens and structures in the community's flood hazard areas.

Model Language

To enact a lower threshold for substantial improvement and substantial damage, the following language must be modified in Section 6.0 "Existing and Nonconforming Use Structures":

SECTION 6.0 EXISTING AND NONCONFORMING USE STRUCTURES

6.1 DAMAGE TO EXISTING OR NONCONFORMING USE STRUCTURES

6.11 …

A. If any existing or nonconforming use structure is destroyed by any means, including flood, it shall not be reconstructed if the cost to return the structure to pre-damaged conditions when combined with any additional proposed improvements is equal to or exceeds [Lower Number Threshold] percent of the pre-damage market value of the structure except that if the structure and any additions are (re)constructed in conformity with the provisions of this ordinance. Such damage shall constitute "substantial damage" as defined in Section 10.0 of this ordinance.

6.2 IMPROVEMENTS TO EXISTING OR NONCONFORMING USE STRUCTURES

6.21 …

A. Any additions, alterations, reconstruction, or improvements of any kind including repairs to an existing or nonconforming use structure where the costs of which would equal or exceed [Lower Number Threshold] percent of the pre-improvement market value shall require the structure and any additions to fully comply with the provisions of this ordinance. Such improvements shall constitute a "substantial improvement" as defined in Section 10.0 of this ordinance.

Definitions:

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed [Lower Number Threshold] percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction , rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds [Lower Number Threshold] 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 either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

B. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Cumulatively Tracking Costs of Improvements or Repairs

Determinations of substantial improvement or substantial damage are typically made per occurrence and are not required to be tracked over time. However, structures that experience improvements consistently below the threshold for substantial improvement are not being built safe from flooding, which continuously puts the community at an increased risk for more property damage. While the NFIP requires phased projects to be considered as one substantial improvement determination, it can be difficult for communities to know when a phased project is occurring when separate permits are submitted over longer durations of time.

Additionally, structures that are routinely damaged by flooding below the substantial damage threshold present additional costs to the community. Because these structures are not being mitigated or repaired to be safe from future damages, the occupants of the structure and the surrounding community are consistently put at risk each time a flood event occurs.

To ensure that property owners are not purposefully completing projects in phases that are below the substantial improvement threshold, and to help mitigate more structures that are repeatedly damaged by flooding, communities have the option to adopt cumulative requirements for tracking improvement and repair costs over time. Communities that adopt this language will need to develop administrative procedures for tracking permit applications for improvements or repairs on the same structure. Communities will also need to choose a reasonable period of time that costs will be tracked.

Model Language

To require that costs of improvements and repairs are tracked over time, the following language must be modified in Section 6.0 "Existing and Nonconforming Use Structures":

SECTION 6.0 EXISTING AND NONCONFORMING USE STRUCTURES

6.1 DAMAGE TO EXISTING OR NONCONFORMING USE STRUCTURES

6.11 …

A. If any existing or nonconforming use structure is destroyed by any means, including flood, it shall not be reconstructed if the cost to return the structure to pre-damaged conditions when combined with any additional repairs or improvements within [Time Period (i.e. ten (10) years)] prior to the date of the permit application is equal to or exceeds fifty (50) percent of the pre-damage market value of the structure except that if the structure and any additions are (re)constructed in conformity with the provisions of this ordinance. Such damage shall constitute "substantial damage" as defined in Section 10.0 of this ordinance.

6.2 IMPROVEMENTS TO EXISTING OR NONCONFORMING USE STRUCTURES

6.21 …

A. Any additions, alterations, reconstruction, or improvements to an existing or nonconforming use structure when combined with any additional improvements or repairs within the [Time Period (i.e. ten (10) years)] prior to the date of the permit application where the costs of which would equal or exceed fifty (50) percent of the pre-improvement market value shall require the structure and any additions to fully comply with the provisions of this ordinance. Such improvements shall constitute a "substantial improvement" as defined in Section 10.0 of this ordinance.

Definitions:

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition when combined with any additional repairs or improvements within [Time Period (i.e. ten (10) years)] prior to the floodplain development permit

application would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement, when combined with any additional repairs or improvements within [Time Period (i.e. ten (10) years)] prior to the floodplain development permit application. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

B. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Expansion of Substantial Damage to Include Repetitive Loss Structures

A structure is considered to have experienced "repetitive loss" when it has experienced any flood-related damage on two separate occasions during a ten-year period, where the cost to repair after each event averages 25 percent of the structure's market value. Repetitive loss structures have a history of being damaged by flooding and are at a higher risk of continuing to incur flood damage if they are not mitigated. Communities have the option to include structures that experience repetitive losses in their definition of substantial damage. This implies that any structure that is substantially *or* repetitively damaged must be brought into compliance with the current floodplain regulations for the community, further reducing the number of at-risk structures over time.

Additionally, NFIP policyholders that meet this threshold will qualify for Increased Cost of Compliance (ICC) coverage. ICC coverage allows for up to an additional $30,000 on top of any flood insurance claim related to a substantially damaged structure. If the community chooses to include repetitive loss structures in their definition for substantial damage, the NFIP will help pay the added costs of bringing buildings into compliance with the community's floodplain management requirements for new construction through the ICC claims process.

Model Language

To require repetitive loss structures to be constructed in compliance with the local floodplain management ordinance, the definition for Substantial Damage must be modified to include cumulative cost tracking, and in the following manner:

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition when combined with any additional repairs or improvements within ten (10) years) prior to the floodplain development permit application would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. The term also includes 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

average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Setbacks

In the context of floodplain management, a setback is an expansion of the regulated area under the floodplain ordinance that requires developments to be located a set distance away from a watercourse or floodplain/floodway boundary. Adopting a setback improves the community's ability to require safe development practices on adjacent land to a stream or mapped special flood hazard area and ensures the natural and beneficial functions of the floodplain are better preserved. A setback can be especially helpful for communities regulating Zone A or Zone AE areas without a floodway, as the setback creates an area that is "set-aside" from development similar to a floodway.

Communities looking to adopt setbacks need to decide (1) along which watercourses the setbacks will apply to, (2) if the setback will be measured from the floodway boundary, or the top of the channel bank or the centerline of a watercourse if a floodway has not been established (3) how large the setback area will be, and (4) what types of development will be prohibited in the setback area.

Model Language

To require setbacks prohibiting proposed development within a set distance from the centerline of a stream or from the top of the channel bank, add the following language to Section 5.1 "General Floodplain Provisions":

5.1 GENERAL FLOODPLAIN PROVISIONS

5.11 …

5.12 …

5.13 Along [[all] or [specific name]] watercourse(s) where a floodway has not been established, [[all proposed development] or [all new or substantially improved structures]] adjacent to or within any floodplain shall be setback [50', 100', 200'…] from the [[top of channel bank] or [from the centerline of the stream]]. Within this setback area, [[all proposed development] or [all new or substantially improved structures, including manufactured homes]] shall be prohibited.