

# **PART 3:**

## **REGULATORY STANDARDS**

Part 3 covers the requirements of local floodplain management regulations. The first five sections review the rules that an Illinois community in the NFIP must follow.

- ◆ Section 8 sets the basis for local regulatory programs.
- ◆ Section 9 covers the use of flood data and maps in the ordinance.
- ◆ Section 10 describes what permits are required.
- ◆ Section 11 deals with the special rules in floodways.
- ◆ Section 12 reviews how new buildings must be protected from flooding.
- ◆ Section 13 examines optional additional requirements that many communities have found to be more effective in protecting floodprone properties than the minimum state and federal requirements.

# SECTION 8: REGULATORY BASIS

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Note: This section covers the legal basis for floodplain regulations, i.e., what is needed to make the regulations fair and enforceable. It then discusses the NFIP and State floodplain management requirements

## 8.1. THE LEGAL BASIS

Designing and administering a floodplain management program is essentially a job of writing and enforcing the law. In some communities, legal challenges have prevented implementation of well-planned programs. Therefore, we must know some basics about the law of regulating what people can do on their property.

### 8.1.1. Statutory authority

“Statutory authority” means the powers given to a community by state law. The problem of statutory authority arises from Dillon's Rule, a Nineteenth Century court ruling that found that because they are created by State government, local governments can do only what State laws specifically authorize. If an action is not authorized by statute, a community cannot do it.

In Illinois and some other states, larger communities may be granted “home rule.” In Illinois, a city or village with a population over 25,000 is automatically granted home rule powers as are counties with elected administrators. Smaller communities may become home rule by passing a referendum. Cities, villages, and counties can also repeal their home rule status through a referendum.

A home rule community is authorized to do anything that is not prohibited by statute. There can be state laws that specifically restrict all communities from doing something, including those with home rule.

To show that a regulation has a sound legal basis, it is a good idea to include the statutory authority for the regulations at the beginning of the ordinance. These are:

- Basic authority to regulate the construction of buildings, subdivisions, and setbacks from streams (floodway regulations) for cities and villages: 65 IL. Compiled Statutes 5/1-2-1, 5/11-12-12, 5/11-30-2, 5/11-30-8, 5/11-31-2.
- Basic authority to regulate the construction of buildings, subdivisions, and setbacks from streams (floodway regulations) for counties: 55 Illinois Compiled Statutes 5/5-1041, 5/5-1042, and 5/5-1063.
- Authority for five northeastern Illinois counties to impose additional requirements on their communities: 55 Illinois Compiled Statutes 5/5-1062. Home rule cities must comply with the countywide regulations.
- Communities with zoning should include their zoning authority: 65 ILCS 5/11-13.
- Home rule communities can add their home rule authority as granted by the Illinois Constitution.

### 8.1.2. Limitations on local authority

Cities, villages, and counties are created by the State. They have only those powers granted to them by state law or assumed under home rule powers. The General Assembly did not grant cities and counties the authority to regulate state construction. Similarly, Federal government development is exempt from local regulation.

Local governments such as school districts, sanitary districts, park districts, cities, and counties were created by the legislature to perform specific duties. A city or county does not have the authority to regulate where the regulation would conflict with or "frustrate" the functions of a public agency specifically granted by law. This rule is from a study of Illinois court cases made for IDNR.

In 1982, the Attorney General was asked whether a non-home rule county could enforce its floodplain ordinance within the boundaries of a drainage district and against the drainage district itself. He concluded that the county could not exercise its authority if it meant that the drainage district would be prevented from carrying out its statutory powers and duties. Wherever the drainage district's plans could be reconciled with the county's ordinance, the ordinance must be followed.

The ruling may very well have been the opposite if the county had been one of the five north-eastern Illinois counties with the special countywide stormwater management authority. Their enabling legislation clearly gives the county stormwater management agencies authority to regulate other local governments.

There are similar statutory limitations on enforcing zoning ordinances on public utilities and churches. Generally these do not apply to public safety, building code, and floodplain management requirements.

IDNR recommends that if a local government or other organization undertakes a development project that would violate the flood protection standards of the community's ordinance, it should be required to show how its statutory authority exempts the project. Each situation will be different, but let the developer have the burden of proof that the local ordinance "frustrates" its statutory responsibilities or privileges.

### **8.1.3. Taking**

Why not simply tell people that they can't build in the floodplain? If we did, we wouldn't have to worry about new buildings getting flooded and the regulations would be simple to administer: Just say "No."

While this regulatory standard appears desirable, it has one fatal legal problem: It could be a "taking."

The Fifth Amendment to the U.S. Constitution states, "Nor shall property be taken for public use without just compensation." The Constitution contains this provision because in England, the king could take property and use it for his own purpose — such as quartering troops or hunting— without compensation.

The term "taking" has come to mean any action by a government agency that relieves a person of his or her property without payment.

Government agencies possess the authority to *condemn* and *acquire* privately owned land. Under the power of eminent domain, they can acquire land without the owner's agreement provided the acquisition clearly is for a demonstrably public purpose, official condemnation proceedings are

followed, and the owner is paid for the value of the land. Some common examples of eminent domain actions are:

- Purchase of land for roads and public works projects.
- The development of public park land.
- Utility acquisition of rights of way for transmission lines, etc.

Courts have ruled that a taking may occur when the government enacts a law, standard or regulation that limits the use of the land to the extent that the owner has been deprived of *ALL* of his or her economic interest in using the property. Thus, the government has “taken” the property under a legal provision known as inverse condemnation.

In cases where a court has found a taking, the governmental body has been required to pay the property owner for the value of the loss. Often, though, the regulations are retracted as applied to that property.

Usually, courts undertake a complicated balancing of public and private interests in deciding a taking issue. The courts will consider such factors as:

- Regulatory objectives,
- The harm posed by uncontrollable development,
- Reasonableness of the regulations, and
- Severity of the economic impact upon the private property owner.

Very restrictive floodplain regulations and the State and NFIP regulatory standards have been challenged as a taking in a number of cases. Figure 8-1 summarizes important cases challenging the legality or constitutionality of NFIP regulations.

Most NFIP criteria are performance standards that do not prohibit development of a floodplain site provided the performance standards are met. For example, development in the floodway is prohibited only if it increases flood heights. In Downstate Illinois, permit applicants who can find a way to develop in the floodway without increasing the flood problem are permitted to do so (a more restrictive floodway standard applies in northeastern Illinois, see Section 11).

These performance-oriented standards of the NFIP have never been ruled as a taking. This is highly significant, given that more than 19,000 communities nationally and 750 in Illinois administer floodplain management ordinances.

One reason for this success rate is that property owners must prove that they have lost all economic return on their parcels. It is hard to prove that nothing can be done on a piece of land, especially since the NFIP and State rules do allow many types of activities.

Case	Issue	Decision/Impact
Village of Euclid v. Ambler Realty Company (1926)	The use of police power to regulate land use	The court upheld the basic concept of zoning.
Turnpike Realty Co. v. Town of Dedham (1972)	Challenge to the constitutionality of the NFIP	The court upheld the floodplain management regulations.
Just v. Marienette (1972)	A wetland regulatory case	The court decided that a landowner does not have the unlimited right to use the land for a purpose which is unsuited to its natural state or that will injure the rights of others.
Texas Landowners Association v. Harris (1978)	Challenge to the validity of the NFIP and its mitigation requirements	The courts held that the NFIP was reasonable. A community could not claim a taking if insurance or disaster relief was denied for failure to comply with NFIP standards, because they are benefits, not rights.
First Evangelical Lutheran Church of Glendale v. Los Angeles County, LA (1987)	Whether a temporary building moratorium that was deemed a taking would require compensation	The U.S. Supreme Court held that temporary regulatory takings could require compensation. This case was sent back to the state to decide if a taking had occurred. The state endorsed the floodplain regulations and held that the regulations were not a taking.
Adolph v. FEMA (1988)	Whether the parish floodplain management regulations adopted constituted a taking	The court upheld that the NFIP as a whole is not a taking, nor are the parish regulations.
April v. City of Broken Arrow (1989)	Whether two Oklahoma floodplain ordinances constituted a taking (requirement for elevation of new homes to 1 foot above the 100-year flood elevation)	The courts accepted the general proposition that local public officials must be afforded reasonable <i>elasticity</i> in planning and implementing legitimate state interests and held that regulations were valid.
Lucas v. South Carolina Coastal Council (1992)	South Carolina Supreme Court—whether the South Carolina Beachfront Management Act constituted a taking.  U.S. Supreme Court—whether the property owner was entitled to compensation for his alleged “total loss of value” attributed to the Beachfront Management Act	The South Carolina Supreme Court ruled that the Act did not constitute a taking and reversed the trial court's award of \$1.2 million to Lucas.  The U.S. Supreme Court ruled that where the value of a property is essentially “destroyed” by regulation, compensation should be paid.
Dolan v. Tigard (1994)	Imposition of a floodplain bike path as a condition of a permit to expand commercial structures	The U.S. Supreme Court found that the business owners should not be required to construct a bike path to obtain the permit.

**Figure 8-1: Selected cases of challenges to land use regulations**

**Note:** These are brief summaries of the court cases. They should not be quoted without reading the full text of the ruling.

Although it may be more costly to build according to the floodplain management standards and, in some instances, it may not be economical to develop a property, the performance standard is a valid exercise of the police power because it is based on a legitimate public purpose: preventing flood damage. Floodway requirements in particular are defensible because they prevent the actions of one property owner from increasing flood damage to his or her neighbors.

The NFIP regulatory criteria have not lost a taking case because they allow most floodprone sites to be built on as long as precautions are taken to protect new structures and neighboring property from flood damage. The owners are not denied all economic uses of their properties as long as their construction accounts for the level of hazard.

Courts have supported regulatory standards that are more restrictive than NFIP regulations, such as complete prohibitions of new buildings or new residences in the floodway. These cases tied the prohibition to the hazard and the need to protect the public from hazards created by the development.

Things need to be reasonable. For example, a complete prohibition of development in a shallow flooding area where there is no velocity may not be considered as “reasonable” by a court.

The rationale does not always have to be tied to property damage. For example, in upholding the State’s prohibition of new buildings in the northeastern Illinois floodways, the Illinois Supreme Court noted that while buildings could be protected, the residents would be surrounded by moving water during floods, preventing access by emergency vehicles.

“The prohibition takes into consideration not only the concern about preventing further flooding, but also the concern about the need to provide disaster relief services and the need for the expenditure of state funds on shelters and rescue services for victims of flooding.” (Beverly Bank v. Illinois Department of Transportation, September 19, 1991).

The lesson is that before a community enacts a regulatory provision that severely restricts the use of property, the community’s attorney should review the provision to be sure it will not be overturned as a taking. Regulatory standards that are reasonable, tied to the hazard and support public objectives should be upheld.

#### **8.1.4. Liability**

Ordinance administrators naturally fear they could be held liable if a person gets flooded or if a building that they permit is damaged by a flood. Debated nationally for some time, this issue has been studied extensively by Dr. Jon Kusler, a nationally known attorney in floodplain management law.

Dr. Kusler summarized his most recent findings in *Floodplain Management in the United States: An Assessment Report*, Volume 2, prepared for the Federal Interagency Floodplain Management Task Force, 1992.

Excerpts from that report are quoted here. However, the community's legal department should provide more specific guidance.

- Government agencies are generally not liable for flood damage unless the flood was caused by a government action. “Except in a few instances, governments are not liable for naturally occurring flood damages. Government has, in general, no duty to construct dams, adopt regulations, or carry out other hazard reduction activities unless required to do so by a statute. It is only where a government unit causes flood damages or increases natural flood damages that liability may arise.” (*Floodplain Management in the United States: An Assessment Report, Volume 2, Page 1012*)
- Liability is based on negligence; a community is well defended by a properly administered program. “In general, government units are not 'strictly or absolutely' responsible for increased flood damages. Liability usually results only where there is a lack of reasonable care. ... Where the standard of reasonable care is judicially applied to an activity, the seriousness of foreseeable threat to life or economic damage is an important factor in determining reasonableness of conduct. In general, the more serious the anticipated threat, the greater the care the government entity must exercise.” (*Floodplain Management in the United States: An Assessment Report, Volume 2, Page 1013*)
- Policy or discretionary actions are more defensible than nondiscretionary, ministerial actions. It is better to have clear standards spelled out in the ordinance adopted by your governing board than to leave a lot of interpretation up to the administrator. “As a general rule, courts do not hold legislative bodies or administrative agencies liable for policy decisions or errors in judgment where the legislature or agency exercises policymaking or discretionary powers. But they often hold agencies responsible for failure to carry out nondiscretionary duties or for negligence in carrying out ministerial actions.” (*Floodplain Management in the United States: An Assessment Report, Volume 2, Page 1013*)
- “... from a legal perspective it may be desirable to submit proposed standards ... to a community's legislative body (e.g., community council) for debate and approval. Due to the special way legislative decisions are treated by the courts, legislative judgments, particularly those of a discretionary nature, are less likely to result in a successful liability suit than are agency decisions. Courts generally defer to legislative judgment.” (*Floodplain Management in the United States: An Assessment Report, Volume 2, Page 1017*)
- Government employees are usually protected from liability suits. “Although governments may be liable for increased flood or drainage losses in a broad range of contexts, government employees are usually not personally liable for planning, permit issuance, operation of dams, adoption of regulations or other activities. ... No personal liability results where a government employee acts in good faith, within the scope of his or her job, and without malice. Successful lawsuits for hazard-related damages against government employees under common law theories or pursuant to Section 1983 of the Civil Rights Act are apparently nonexistent.” (*Floodplain Management in the United States: An Assessment Report, Volume 2, Pages 1013 - 1014*)



Based on these findings, the floodplain administrator can protect him or herself from lawsuits by:

- Adopting sound and appropriate flood protection standards: Remember, NFIP standards are minimums. Buildings should not be allowed in a mountainous floodplain with no warning time and very high velocities, even though the NFIP minimums would allow it. If it is known that flooding could be or has been higher than the BFE shown on the FIRM, then the floodplain administrator is not doing the residents any favors by allowing them to build buildings exposed to a known hazard.
- Becoming technically competent in the field: A floodplain administrator won't be sued if he/she has ensured that the project was properly constructed. There is no grounds for a suit if no one is damaged by flooding: "... 'liability can be avoided if flood damages are avoided.' From a legal perspective, this is a sound philosophy." (*Floodplain Management in the United States: An Assessment Report, Volume 2, Page 1017*)
- Insuring the community: A community may want to purchase liability insurance or establish a self-insurance pool or plan to protect itself.
- Encouraging property owners to buy flood insurance coverage. If people are compensated for any flood losses, they are less likely to file a lawsuit.
- Adopting an ordinance provision that exempts the community from liability. IDNR's model ordinances has a section entitled "Disclaimer of Liability" that may well already be in most local ordinances.

## **8.2. THE ORDINANCE**

This desk reference assumes that the community has a floodplain regulation ordinance in effect and that it is based on one of the two IDNR/OWR models. While the desk reference does not provide a model ordinance or ordinance language, it does describe the significance of an ordinance, and provides guidance on how to enforce some of its provisions.

If a community needs to enact or revise its floodplain regulations, they should contact IDNR/OWR to double check that the proposed provisions will still comply with State and NFIP requirements.

### **8.2.1. Types of ordinances**

Floodplain regulations are usually found in one of four types of regulations: zoning ordinances, building codes, subdivision regulations, and "stand alone" ordinances. Each is explained below.

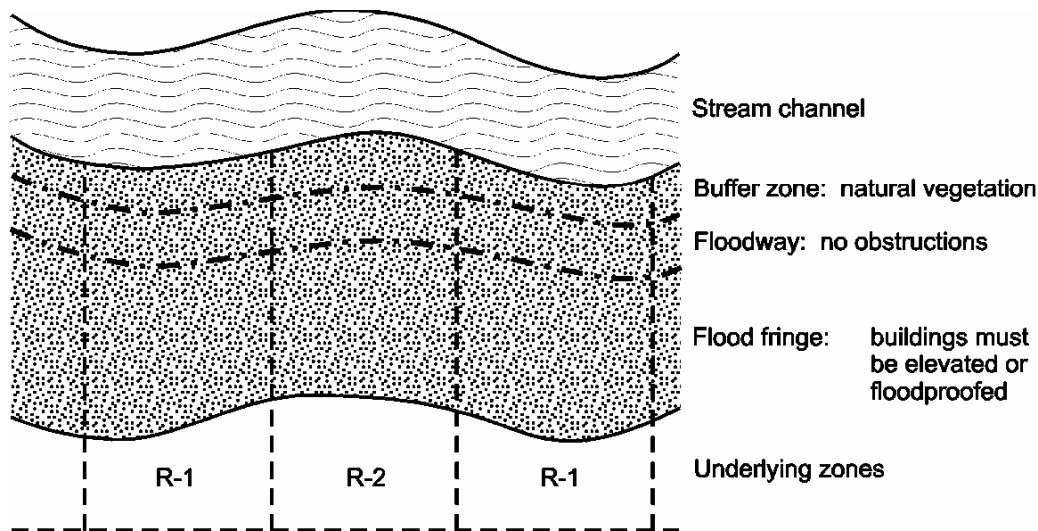
#### **Zoning ordinance**

A zoning ordinance regulates development by dividing the community into zones or districts and setting development criteria for each district. Two approaches address development in flood-prone areas: separate districts and overlay zoning.

In a separate district, the floodplain can be designated as one or more separate zoning districts that only allow development that is not susceptible to damage by flooding. Appropriate districts

include public use, conservation, agriculture, and cluster or planned unit developments that keep buildings out of the floodplain, wetlands, and other areas that are not appropriate for intensive development.

Overlay zoning adds special requirements in areas subject to flooding. The areas can be developed in accordance with the underlying zone, provided the flood protection requirements are met. As illustrated in Figure 8-2, there may also be setbacks or buffers to protect stream banks and shorelines or to preserve the natural functions of the channels and adjacent areas.



**Figure 8-2: Example of overlay zoning**

### **Building codes**

A building code establishes construction standards for new buildings. The code may or may not set site or location requirements as a zoning ordinance does.

Many Illinois communities have adopted the International Code Council’s International Codes, such as the “International Residential Code” and the “International Building Code.” The floodplain administrator should not assume that since a community uses one of these codes that all the regulatory requirements are covered.

The International Code series (I-Codes) includes provisions that address all NFIP minimum floodplain management requirements. Those NFIP requirements related to the actual construction of buildings are contained in the bodies of the International Building Code and International Residential Code. Requirements related to building utilities are contained in the International Plumbing Code, International Mechanical Code, International Fuel Gas Code, and International Private Sewage Disposal Code.

The other NFIP requirements, such as administrative provisions and requirements that apply to floodways, subdivisions, and manufactured homes, are contained in Appendix G of the Interna-

tional Building Code. Communities that adopt the I-Codes have the option of either adopting Appendix G or addressing these other requirements through other ordinances and regulations.

In the past, the model national building codes have included, to a variable extent, provisions related to natural hazards, such as seismic hazards, high winds, severe winter storms, and flood hazards. The I-Codes address all of these hazards on a consistent, rational basis that allows mitigation of the effects of those natural hazards that are found within each jurisdiction's boundaries.

FEMA and the International Code Council have jointly developed a publication that provides a comprehensive explanation of how the International Code Series can be used to meet the requirements of the NFIP. The publication is entitled *Reducing Flood Losses Through the International Code Series* and is available from the following code groups:

- Building Official and Code Administrators International, Inc. (800) 214-4321;
- International Conference of Building Officials (888) 699-0541, and
- Southern Building Code Congress International, Inc. (888) 447-2224.

If a community will be adopting the I-Codes, they should obtain a copy of this publication.

### **Subdivision regulations**

Subdivision regulations govern how land will be divided into single lots. They set construction and location standards for the infrastructure the developer will provide, including roads, sidewalks, utility lines, storm sewers, and drainage ways. Subdivision regulations offer an opportunity to keep buildings out of the floodplain entirely with cluster developments.

They can also require that every lot have a buildable area above the BFE, include dry land access and meet other standards that provide more flood protection than a building code can.

Subdivision regulations can specify what appears on the recorded plat of the subdivision, something that is checked whenever a property is purchased. This offers the community a chance to clearly designate the hazard. In fact, State law (55 ILCS 5/3-5029) requires filed plats to have a surveyor's statement as to whether part of the property is in a floodplain as identified by FEMA.

### **“Stand alone” ordinance**

Many, if not most, Illinois communities have enacted a separate ordinance that includes all the NFIP and State regulatory requirements, usually based on one of the two IDNR/OWR models.

The advantage of doing this is that one ordinance contains all floodplain development standards. Developers can easily see what is required of them, and FEMA and the state can easily see if the local community has adopted the latest requirements.

The disadvantage to a separate ordinance is that it may not be coordinated with other building, zoning, or subdivision regulations. Some communities have found that by adopting a stand alone model, they adopt standards that are inconsistent or even contrary to the standards in the other

regulations. For example, a building code may require crawlspace vents to be high, near the floor joists, while the floodplain ordinance requires them to be no more than one foot above grade.

With a stand-alone ordinance, the floodplain administrator should review its provisions with all other offices and ordinances that regulate land development and building construction. Make sure that others know the floodplain regulations and that there are no internal inconsistencies. For example, a floodplain ordinance administered by the city engineer may not be coordinated with the permit process conducted by the building department.

### **8.2.2. Contents**

Whether the floodplain regulations are in one ordinance or several, they should have these provisions:

- **Purpose:** Why was the ordinance adopted? What are its objectives? This provision helps set the tone for regulatory standards. For example, if the only purpose of the ordinance is to meet the NFIP minimum building requirements, a court may rule that it should not have higher regulatory standards that protect life safety.
- **Definitions:** What technical terms are needed? Most ordinances have to define terms like “development,” “building,” “base flood elevation,” and “lowest floor” in order for the regulations to be clearly understood.
- **Adoption of flood data:** The community needs to adopt the flood maps, profiles, and other regulatory flood data. This provision may need to be amended when new studies and maps are published or new areas are annexed.
- **Requirement for a development permit:** The ordinance must have a development permit process. Relying on a community’s building code or zoning ordinance permit process may not be sufficient because those programs may not require permits for all development, including fill, mining, etc.
- **Construction standards:** This is the meat of the ordinance. It should cover all of the NFIP and State standards discussed in Part 3 and additional regulatory standards that the community deems appropriate. The standards should include provisions for:
  - Building protection standards (elevation, floodproofing, anchoring)
  - Standards for manufactured homes and mobile home parks
  - Construction standards peculiar to the flood zones in the community, such as AO and AH
  - Construction in the floodway and standards for encroachments where floodways are not mapped
  - Standards for subdivisions
  - Standards for water and sewer service
  - Rules on water course alterations

- Designation of administrator: The community must officially designate one person responsible for administering the ordinance. This provision may list that person's duties, as detailed in Section 14.
- Appeals process: The regulations need to provide a way for people to appeal or request a variance when they feel that the construction standards are overly harsh or inappropriate. This process should be handled by a separate body, such as a board of appeals or planning commission; it should not be left up to the decision of a single person, such as the administrator. (See also the discussion on variances in Section 14.)
- Enforcement: The ordinance must have enforcement procedures clarifying penalties for violations. These are usually fines and orders to correct the violation.
- Abrogation and greater restriction: This is a legal provision that specifies that the ordinance take precedence over less restrictive requirements.
- Severability: This is a statement that the individual provisions are separable and if any one is ruled invalid, it does not affect the rest of the ordinance.

## 8.3. THE NFIP'S REGULATIONS

For a community to participate in the National Flood Insurance Program, it must adopt and enforce floodplain management regulations that meet or exceed the minimum NFIP standards and requirements. These standards are intended to prevent loss of life and property, as well as economic and social hardships that result from flooding.

The NFIP standards work – as witnessed during floods in areas where buildings and other developments have been built in compliance with them. Nationwide each year, NFIP-based floodplain management regulations help prevent more than \$1 billion in flood damages.

It is important to emphasize that the NFIP criteria are minimums. There are some more restrictive state standards and they must also be met by Illinois communities in the NFIP. Communities are also encouraged to enact their own higher regulatory standards, as discussed in Section 13.

### 8.3.1. 44 Code of Federal Regulations

The NFIP requirements can be found in Chapter 44 of the *Code of Federal Regulations* (44 CFR). Revisions to these requirements are first published in the *Federal Register*, a publication the Federal Government uses to disseminate rules, regulations and announcements.

Most of the requirements relative to the community's ordinance are in Parts 59 and 60. They can be viewed on the Government Printing Office (GPO) web site.

Figure 8-3 shows how the regulations are organized. The sections are referred to in shorthand, such as 44 CFR 60.1 — Chapter 44, *Code of Federal Regulations*, Part 60, Section 1. In this desk reference, excerpts are shown in blue boxes:

**44 CFR 59.2(b)** *To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at Part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.*

## **Part 59 — General Provisions**

### Subpart A — General

- 59.1 Definitions
- 59.2 Description of program
- 59.3 Emergency program
- 59.4 References

### Subpart B — Eligibility Requirements

- 59.21 Purpose of subpart
- 59.22 Prerequisites for the sale of flood insurance
- 59.23 Priorities for the sale of flood insurance under the regular program
- 59.24 Suspension of community eligibility

## **Part 60 — Criteria for Land Management and Use**

### Subpart A — Requirements for Flood Plain Management Regulations

- 60.1 Purpose of subpart
- 60.2 Minimum compliance with flood plain management criteria
- 60.3 Flood plain management criteria for floodprone areas
  - (a) When there is no floodplain map
  - (b) When there is a map, but not flood elevations
  - (c) When there are flood elevations
  - (d) When there is a floodway mapped
  - (e) When there is a map with coastal high hazard areas
- 60.6 Flood plain management criteria for mudslide-prone areas
- 60.7 Flood plain management criteria for erosion-prone areas
- 60.6 Variances and exceptions
- 60.7 Revisions of criteria for flood plain management regulations
- 60.8 Definitions

### Subpart B — Requirements for State Flood Plain Management Regulations

### Subpart C — Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

**Figure 8-3: 44 CFR Parts 59 and 60**

As noted in Section 3, when a community joined the NFIP, it agreed to abide by these regulations. When a community's FIRM was published, it had to submit its ordinance to FEMA to ensure that it met these requirements.

Note: Periodically, the NFIP regulations are revised to incorporate new requirements or clarify old ones. These changes are published in the *Federal Register*. Some revisions require local ordinance amendments. A local community may or may not have made the amendments needed to stay updated. It's a good idea to check with the state NFIP coordinator or FEMA Regional Office to verify that the local ordinance is currently in full compliance with the latest NFIP requirements.

### 8.3.2. Community types

NFIP regulations identify minimum requirements that communities must fulfill to join and stay in the program. The requirements that apply to a particular community depend on its flood hazard and the level of detail of the data FEMA provides to the community. The specific requirements are in Section 60.3, and apply to communities as follows:

- 60.3(a) FEMA has not provided any maps or data.
- 60.3(b) FEMA has provided a map with approximate A Zones.
- 60.3(c) FEMA has provided a FIRM with base flood elevations.
- 60.3(d) FEMA has provided a FIRM with base flood elevations and a map that shows a floodway.
- 60.3(e) FEMA has provided a FIRM that shows coastal high hazard areas (V Zones - not relevant in Illinois).

Two important notes:

*The NFIP requirements and model ordinances are minimums.* As noted in 44 CFR 60.1(d), "Any floodplain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence."

*These requirements are cumulative.* A 60.3(c) community must comply with all appropriate requirements of sections 60.3(a) and (b). For example, 60.3(a) includes basic requirements for subdivisions and utilities that are not repeated in the later sections. *All* communities in the NFIP must comply with these subdivision and utility requirements.

For example, a 60.3(c) community must use the base flood elevations provided on the FIRM. If that community has an approximate A Zone without a BFE, it must comply with the requirements of 60.3(b) for that area.

The rest of this Part 3 explores the requirements of 44 CFR 60.3. It is organized by subject matter, so it will not correspond with the sections in 44 CFR. Where appropriate, the specific section numbers are referenced.

A floodplain administrator should be able to identify where the requirements discussed in this section appear in their ordinance. If they cannot find a specific reference or if they are not comfortable with the ordinance's regulatory language, they should contact their IDNR/OWR or the FEMA Regional Office. FEMA and IDNR/OWR will expect the floodplain administrator to enforce these minimum requirements as agreed to.

### 8.3.3. CRS credit

This section covers the minimum requirements for participation in the NFIP. As noted, communities are encouraged to enact regulatory standards that exceed these minimums and that are more appropriate for local conditions.



The Community Rating System (CRS) is a part of the NFIP that rewards communities that implement programs that exceed the minimums. It is explained in more detail in Section 18. Where provisions that can receive CRS credit are mentioned in this desk reference, they are highlighted with the CRS logo.

## 8.4. IDNR/OWR REQUIREMENTS

The State of Illinois regulated development in channels and public waters long before there was a National Flood Insurance Program. The State's lawmakers recognized the need for a State agency to provide the expertise and objectivity to protect citizens from unwise development.

Over the years, the State's program has evolved from one of direct permitting over projects in a stream channel to permitting projects throughout certain floodplains to setting standards for local floodplain management programs. Today, these programs are administered by the Illinois Department of Natural Resources, Office of Water Resources (IDNR/OWR).

There are two main approaches to IDNR/OWR's floodplain management regulations, direct State regulation of certain developments and setting standards for local programs.

### 8.4.1. Direct State regulation

IDNR/OWR directly regulates certain developments:

- Developments that have a major impact on public safety, such as the construction and maintenance of dams,
- Developments that have an impact on the public waters, including Lake Michigan, and
- Where the regulatory requirements are highly technical and projects need to be reviewed by trained and experienced engineers, such as in channels and floodways.

In northeastern Illinois, IDNR/OWR may delegate some of its regulatory authority to counties or communities that can demonstrate that they have the expertise and adequate staff. This allows the counties or communities to speed up the permit review process for their developers.



### 8.4.2. State standards for local programs

IDNR/OWR's second approach is to set standards for local regulatory programs. The State's 0.1 foot floodway encroachment rule is a more restrictive requirement than the NFIP's floodway standard and is more appropriate for Illinois' flat terrain.

From the community's perspective, it should not matter whether a regulatory requirement is from the NFIP or IDNR/OWR. This desk reference does not differentiate between them as they are all required.

IDNR/OWR has prepared two model ordinances that meet both State and NFIP requirements. One model is for the six counties in northeastern Illinois and was prepared with help from the Northeastern Illinois Planning Commission. It is found in *Floodplain Management in Northeastern Illinois, Local Floodplain Administrator's Manual*, 1996. The other model is for downstate communities. It is found in "*Floodplain Management, Local Floodplain Administrator's Manual*."

Illinois is not alone in setting higher regulatory requirements than the NFIP minimums. According to a 1995 survey by the Association of State Floodplain Managers:

- 24 states have some kind of riverine standards more restrictive than those of the NFIP. Of those, 10 require that communities regulate to the higher standard; three states have opted to implement and enforce the higher standard directly; and the rest use a combination of both approaches.
- 8 states prohibit buildings or residences from their floodways at least in some areas.
- 12 states allow less than the NFIP's one-foot rise in the floodway.
- 19 states have stricter building construction requirements than does the NFIP.

### 8.4.3. Northeastern Illinois

Following severe floods in 1986 and 1987, the Illinois General Assembly enacted laws that set different standards in the six northeastern counties.

Because of these laws, there are essentially two different programs and they are conducted out of two different offices: downstate activities are coordinated out of the Springfield office and northeastern Illinois activities are run out of the Bartlett office.

Generally, the requirements for northeastern Illinois are more restrictive than those for the rest of the State. In places, this desk reference refers to these different requirements. If there is no mention, then the rules are the same for both areas.

*For the purposes of IDNR floodplain management programs, "northeastern Illinois" includes the counties of*

-- Cook      -- Lake  
-- DuPage   -- McHenry  
-- Kane      -- Will

*The other 96 counties are considered as "downstate Illinois."*