

# Regulating Within a Floodway

## FREQUENTLY ASKED QUESTIONS

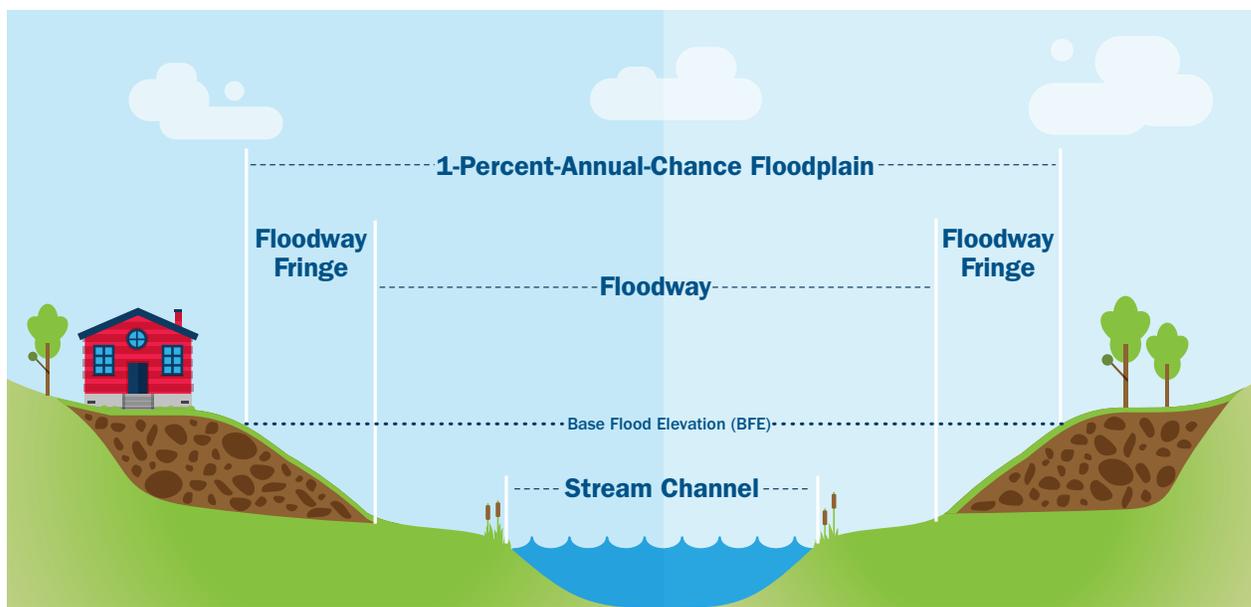
*Addressing the regulatory implications of a mapped floodway on development and redevelopment and the additional requirements for modifications to the floodway*

### WHAT IS THE DIFFERENCE BETWEEN A FLOODPLAIN AND A FLOODWAY?

**A floodplain** is comprised of the floodway and the floodway fringe. The floodway includes the channel and adjacent overbank areas necessary to effectively convey floodwaters. The flood fringe are lands outside the floodway, at or below the Base Flood Elevation, that store but do not effectively convey floodwaters. FEMA regulates the floodplain to represent the 1 percent-annual-chance flood, known as the base flood.

**A floodway** is the primary conveyance area of a channel's cross-section that is the natural conduit for flood waters. The floodway must remain open in order to allow flood waters to pass. When the floodway is obstructed by buildings, structures, or debris, flood waters will back up, resulting in greater flooding potential upstream.

The distinction between the two is important when considering development and mitigating risk in a community.



## WHY DO WE REGULATE FLOODWAYS AND FLOODPLAINS?

Floodway and floodplain regulations not only enhance a community's resilience, they also:

- **Protect people and property.** Floodplain and floodway management is about building smart and reducing our vulnerability to flooding. If we know the land will flood from time to time, we should make reasonable decisions to help protect our families, homes, and businesses.
- **Reduce future flood losses in North Dakota.** Floodplain and floodway development regulations are designed to protect our citizens from future flood losses. Regulating floodplain development helps keep flooding conditions from worsening as development continues.
- **Ensure federal flood insurance and disaster assistance is available.** The National Flood Insurance Program (NFIP) is a voluntary program that communities may elect to join. By joining the NFIP the community takes responsibility for managing and regulating floodplains and floodways. In turn, residents may purchase federally-backed flood insurance and the community may be eligible for several types of federal assistance. Therefore, not joining and participating in the NFIP means communities will be ineligible for some types of federal assistance and many residents would not be able to secure most types of federally-backed loans to purchase real estate located in a floodplain or floodway.
- **Save tax dollars.** Every flood disaster affects your community's budget. If we build smart, we will have fewer problems the next time the water rises. Remember, federal disaster assistance is not available for all floods. Even when the President declares a disaster, your community still has to pay a portion to cover the costs of evacuation, temporary housing, repair, and cleanup.
- **Avoid liability and lawsuits.** If we know an area is mapped as floodplain or floodway and likely to flood, if we know people could be in danger, and if we know that buildings could be damaged, it makes sense to take reasonable protective steps when we develop and build in such an area.

## CAN I BUILD IN A FLOODWAY?

Communities should limit any and all development in a floodway whenever possible. If you think of the floodway as a highway for floodwaters to travel, it helps visualize the inherent risk of building in that space. Building in a floodway alters that pathway and can increase the flood risk in a community, which is why such activity must be regulated.

For that reason, the local community must review all proposed projects inside the floodway to determine their eligibility for development. Before a local floodplain permit can be issued for proposed development in the floodway, the applicant must provide evidence that "no rise" (see sidebar) will occur or obtain a Conditional Letter of Map Revision (CLOMR) from FEMA. You will need a qualified engineer to make sure your proposed project will not increase flood levels. This ensures it will not have a negative effect on neighboring properties by increasing flood risk.

### "NO RISE" IN THE FLOODWAY

- The floodway is the most dangerous part of the floodplain.
- Development is not allowed unless "no rise" in flood levels is certified. "No rise" means no increase in flood elevations greater than 0.00 feet. Essentially, when it comes to flood level rise, zero means zero.
- A registered professional engineer must evaluate the hydraulic impact of proposed development.
- Check with the Office of the State Engineer for guidance before you decide to work in a floodway.
- The State Engineer shall review all projects before a permit or authorization is allowed.
- In the event a "no rise" certification cannot be obtained, then a Conditional Letter of Map Revision (CLOMR) must be submitted and approved by FEMA before work can be performed.

Please refer to North Dakota State Century Code, Chapter 61-16.2 for additional floodplain management regulations.

## ARE INSURANCE RATES DIFFERENT FOR BUILDINGS IN A FLOODWAY?

Floodways do not affect the cost or availability of flood insurance.

## WHAT ACTIVITIES REQUIRE A PERMIT IN A FLOODWAY?

A permit is required for ALL of these activities, if located in the floodway. Other activities not listed below may require permits as well so it is important to talk with your local community.

- Constructing new buildings
- Additions to existing buildings
- Substantially improving existing buildings
- Placing manufactured (mobile) homes
- Construction of fences and decks
- Temporary buildings and accessory structures
- Agricultural buildings
- Parking or storage of recreational vehicles
- Storing materials, including gas/liquid tanks
- Roads, bridges, and culverts
- Fill, grading, excavation, mining, and dredging
- Altering stream channels

## WHERE CAN I GO FOR MORE INFORMATION?

- For advice on flood information and permits, call your community's building permitting office or planning department.
- The North Dakota State Water Commission administers the NFIP along with the local community. Information on the commission is available online at <http://www.swc.nd.gov>.
- For question about flood maps, contact a Map Specialist by phone (877) FEMA MAP (1 877-336-2627) or by email at [FEMAMapSpecialist@riskmapcdfs.com](mailto:FEMAMapSpecialist@riskmapcdfs.com). Hours of Operation: Monday through Friday, 8 a.m. through 6:30 p.m. Eastern Time (ET).
- Learn more about flood maps and check the status of Map Change Requests at <http://www.fema.gov/national-flood-insurance-program/flood-map-information>.
- To learn about flood insurance, call your insurance agent or visit [www.FloodSmart.gov](http://www.FloodSmart.gov). Most insurance companies can write an NFIP policy for you. For the name of an agent in your area, visit [www.FloodSmart.gov](http://www.FloodSmart.gov) or call 1-888-379-9531.



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