

Considerations for Township Adoption of a Floodplain Ordinance

I. Intro & Purpose

Taking on floodplain zoning authority is a big responsibility and has implications for a community's flood risk and the ability of citizens to purchase flood insurance through the National Flood Insurance Program (NFIP). There are many layers of federal and state law, regulations, and technical requirements that local governments must understand and comply with, which can be confusing and complex. This guidance has been developed by the Minnesota Department of Natural Resources (DNR) in consultation with the Minnesota Association of Townships (MAT) and the Minnesota Association of County Planning & Zoning Administrators (MACPZA) to provide townships and counties with more clarity on their roles and responsibilities. This guidance represents our shared understanding of federal and state law as applied to townships and provides best practices to help townships understand what they are taking on, avoid litigation risk, and successfully adopt and administer compliant floodplain ordinances consistent with the NFIP.

Specifically, this guidance:

- explains the purpose and importance of floodplain regulations for protecting communities from flood risk,
- identifies what townships must do under state law, and
- clarifies roles of townships, counties, and the DNR and provides recommended strategies and suggested approaches where there is complexity or ambiguity in federal and state law.

This guidance does not constitute legal guidance and does not have the force and effect of law. Townships and counties are encouraged to contact their legal staff with specific questions.

II. Floodplain Program Overview

A. Floodplain Management Regulations

Minnesota Statutes establishes policy for floodplain management in Minnesota – notably to ensure sound land use development in floodplains which will minimize loss of life and threat to health, and reduce the private and public economic loss caused by flooding.

See [DNR Floodplain Management page](#) for more information. Questions can be directed to floodplain.dnr@state.mn.us.

B. Township Floodplain Zoning Authority and Regulatory Framework

1) Ordinances

- Floodplain ordinances adopted by “local government units” are invalid unless they are approved by the DNR ([MS 103F.121, Subd. 2\(d\)](#)). As such, any township that does not have an enforceable ordinance does not have floodplain zoning authority. The County would therefore maintain authority.
- MS [394.33 Subd. 1](#) requires that townships shall not enact or enforce official controls **inconsistent with or less restrictive** than county controls.

- Under [44 CFR 64.4](#), any community that chooses to exercise floodplain zoning authority must adopt an ordinance complying with all state and federal standards.
- 2) **National Flood Insurance Program (NFIP)**
 - The NFIP is managed by FEMA, and is made up of four intertwined components:
 - floodplain management (regulations),
 - flood hazard modeling and mapping,
 - flood insurance, and
 - mitigation grants
 - FEMA wants all communities to participate in the NFIP. In order for residents to be eligible for flood insurance and for the community to be eligible for mitigation grants, a community must adopt and enforce minimum floodplain standards and be enrolled in the NFIP. Those communities are solely responsible for floodplain management for lands under their jurisdiction. Responsibility cannot be shared between communities (i.e., between a township and a county).
 - For those townships that do not exercise floodplain authority, their participation in the NFIP is extended to them due to the County's enrollment in the NFIP.
 - The primary situation in which a township would be considered "non-participating" by FEMA is if the county recognizes them to be completely independent, and the township does not have a DNR-approved ordinance. Impacts for non-participating communities:
 - Disaster assistance – not eligible for many forms of post-disaster assistance
 - NFIP flood insurance not available
 - Public waters work permits may not be granted (see 103G.245, Subd. 9 – Projects affecting floodwaters)

III. Procedures for Floodplain Ordinance Adoption

A. Drafting and adopting the ordinance

- Townships must adopt ordinances satisfying all state and federal requirements (i.e., all or none). Due to the way in which FEMA recognizes communities, there is no opportunity to share enforcement authority under a floodplain ordinance.
- DNR will provide assistance to any townships interested in ordinance adoption and NFIP enrollment. DNR would typically recommend townships adopt a variation of the most recent version of the model floodplain ordinance, available [here](#) (as opposed to adoption of the county's ordinance). DNR will help communities incorporate any unique county standards to satisfy MS 394.33.
- NFIP enrollment is required if township has adopted an ordinance and is exercising floodplain zoning authority, per 44 CFR 64.4. DNR Floodplain Program staff will provide assistance with this process.

IV. Ongoing Floodplain Ordinance Administration

A. Administration Requirements

Townships must fully comply with administrative requirements or their standing in the NFIP is jeopardized. This includes:

- A local permit is required for all development within floodplains (e.g., buildings, including accessory and agricultural buildings; earth moving or filling and grading; ditch repair, improvement or reestablishment; and bridge and culvert construction, repair, replacement or modification, including new and in-kind replacements).

- Engineering analysis, when applicable.
- Enforcement and ensuring compliance, including addressing violations to floodplain standards.
- Recordkeeping – including documenting as-builts, documenting substantial damage and improvements

B. Monitoring

- All communities exercising floodplain authority are subject to regular DNR monitoring and inspections/audits on a 5-year cycle to ensure compliance as required by FEMA (detailed in [FEMA Publication F-776](#)) and Minnesota Statutes ([103F.135](#)).

C. DNR Notification Requirements

- Townships are required to submit ordinances to the DNR for review and approval prior to adoption. The DNR shall approve or disapprove the ordinance within 120 days of receipt.
- Townships are required to send notices to consider variances and CUPs to the DNR at least 10 days prior to public hearings. A copy of all decisions must be sent to the DNR within 10 days of final action.

D. Best Practices

- Township should have administrative capacities to administer the ordinance, and have access to a contracted engineer or work through county staff. Staff should have the skills to review site plans, flood maps, contour lines, and other best available data.
- Township administrators should utilize available resources:
 - Townships should attend DNR and FEMA floodplain management trainings for LGUs (posted [here](#)).
 - Townships may attend DNR/FEMA Floodplain office hours as needed.
 - Subscribe to [Water Talk Newsletter](#).
 - Engage DNR Area Hydrologist and Central Office floodplain program staff (floodplain.dnr@state.mn.us).

V. Considerations/Implications of Townships taking on Floodplain Zoning

A. FEMA Oversight

- FEMA treats townships who exercise floodplain zoning authority the same as any other “community.”
- Townships recognized as a “community” by FEMA are formally identified in FEMA’s [Community Status Book](#). Only those townships that have (or had) exercised floodplain zoning authority are identified as follows:
 - “Participating Communities.” The first 14 pages of this document identifies counties, cities, and townships, that have a DNR-approved floodplain ordinance and are formally enrolled in the NFIP.
 - “Non-Participating Communities.” The last two pages of this document identify counties, cities, and townships that have FEMA-mapped flood risk and are “non-participating” and/or “sanctioned” by FEMA. At some point, the townships listed here have been identified as independent or separate from the county by FEMA, and were sanctioned because they were not in compliance with floodplain management requirements and did not have DNR-approved floodplain ordinances).
- Townships not recognized as a “community” by FEMA are not identified in the Community Status Book. These townships have never exercised floodplain zoning authority.

- These townships are effectively enrolled in the NFIP through the county, and the county maintains floodplain zoning authority within the townships.
- There may be townships in the state that have been operating independently or separate from the county, but are not yet enrolled in the NFIP or recognized by FEMA as one that exercises floodplain zoning authority. If those townships do not yet have a DNR-approved ordinance, then that ordinance is not effective. As such, the county maintains authority and is responsible for ensuring all floodplain development within the township meets the county's floodplain regulations, including issuing permits and record-keeping. If coordination between county and township is not occurring, it needs to be re-established. Otherwise, the townships would not be in compliance and they would need to be identified by FEMA as "non-participating."

B. FEMA mapping implications

Townships identified in the FEMA Community Status Book must be given an opportunity to participate in the map update process, including notifications of meetings and formal appeal periods, and the community boundaries must be shown on FEMA preliminary and final maps (whether they are enrolled in the NFIP or not).

When FEMA discovers townships that exercise floodplain zoning authority during the map update process, it leads to delays in the map update for all communities in the county. Revised preliminary map panels must be produced to identify these townships, and extra community meetings and appeal periods must be provided for these townships.

C. Post-disaster roles and responsibilities for NFIP-enrolled communities

- The floodplain zoning authority is responsible for making substantial damage determinations and issuing post-disaster permits for repairs to homes and businesses.
- Nothing changes for assessing and reporting damages to public facilities for the purposes of obtaining Public Assistance. Townships are already engaging with County Emergency Managers in post-disaster situations, and they will continue to operate the same way.

The statements in this document do not have the force and effect of law. This document is informational only and should not be interpreted as creating new criteria or requirements beyond what is already established in the relevant statutes and rules. Whether a local shoreland ordinance or zoning decision complies with the relevant statutes and rules will be determined on a case-by-case basis. Nothing in this document should be considered legal advice. Local governments should consult their attorney for specific advice in adopting, amending, and administering ordinances.

Contributors. The following individuals contributed to this work:

Minnesota Association of Townships (MAT): Steve Fenske

Minnesota Association of County Planning and Zoning Administrators (MACPZA): Brian Martinson, Association of Minnesota Counties. Caleb Anderson, Pine County. Angie Berg, Stearns County. Kristi Gross, Olmsted County. Lynn Waytashek, Sherburne County

Minnesota Department of Natural Resources (MNDNR): Matt Bauman, Ceil Strauss, Rob Cary, Jenny Shillcox