

CHAPTER 61-16.2 FLOODPLAIN MANAGEMENT

61-16.2-01. Legislative intent and purpose. The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this chapter to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this chapter to provide state coordination and assistance to communities in floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the state engineer with authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

61-16.2-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "Community" means any political subdivision that has the authority to zone.
3. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. "District" means a water resource district, as defined in chapter 61-16.1.
5. "Flood fringe" means that portion of a floodplain outside of the floodway.
6. "Floodway" or "regulatory floodway" means 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 foot [30.48 centimeters].
7. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.
8. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.

For the purposes of this chapter, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this chapter by reference.

61-16.2-03. Duties of state engineer. The state engineer shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the division of homeland security.
4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the state engineer shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

61-16.2-04. Delineation of floodplains and floodways. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the state engineer shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

61-16.2-05. Floodplain management ordinances.

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the state engineer for review.
2. If the state engineer determines that there is a failure by a community to comply with the intent, purposes, and provisions of this chapter and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the state engineer shall notify the appropriate federal agency and the community of those findings. The state engineer shall also notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the state engineer determines that the community will or is complying.

61-16.2-06. Permissible floodway uses. Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the

floodway to the extent that they do not cause any measurable decrease in the hydraulic conveyance in the affected area.

61-16.2-07. Prohibited uses within floodway. Repealed by S.L. 1983, ch. 682, § 1.

61-16.2-08. Community standards - Permissible uses within flood fringe. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the regulatory floodway pursuant to section 61-16.2-06.
2. Structures, including residential and nonresidential structures; provided, that:
 - a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood elevation unless granted a residential basement floodproof exception under the national flood insurance program.
 - b. Nonresidential structures are either constructed on fill as specified in subdivision a elevated to at least one foot [30.48 centimeters] above the base flood elevation or are adequately floodproofed up to an elevation no lower than two feet [.61 meter] above the base flood elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

61-16.2-09. Enforcement and penalties.

1. It is unlawful for any person to establish any use which is not in accordance with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or community may obtain a court order directing the removal or elimination of such public nuisance, or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

61-16.2-10. Exceptions. This chapter shall not apply to the following actions or construction, as long as the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.

2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program [42 U.S.C. 4001 et seq.] shall be an approved exception pursuant to this section.

61-16.2-11. Authority to enter and investigate lands or waters. The state engineer or any community must notify all landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this chapter. An investigation of a nonconforming use or existing construction or structure shall be made by the state engineer either on the state engineer's own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

61-16.2-12. State property. Notwithstanding any other statutes or regulations, all state property and structures thereon shall be subject to the provisions of this chapter and any ordinances adopted pursuant to this chapter or the national flood insurance program [42 U.S.C. 4001 et seq.].

61-16.2-13. Flood insurance. Communities that have residential and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

61-16.2-14. State engineer review of development in regulatory floodways - Exceptions. Before issuing a permit or authorization to allow a use in a regulatory floodway, the community responsible for permitting or authorizing such use shall notify the state engineer of the proposed use. The state engineer shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer, the community shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other technical information needed for the state engineer's review to analyze the proposed use and to identify its proposed impact. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption on a case-by-case basis from this section. The state engineer may grant the exemption if the state engineer determines that the community, by using its own technical review, can determine if the proposed use is in compliance with state and federal law.