



Floodplain Compliance

Permitting floodplain development is only the first step of the management process. Violations can, and do, occur. Once an activity is permitted, the development should be inspected to help ensure that it meets all its permit requirements to reduce its risk of flooding. When a floodplain violation is found, it is the local administrator's duty to enforce the community's floodplain ordinance and to help the property owner make corrects.

Authorities

There are many different laws and regulations that have been passed at the federal, state, and local level related to floodplain development. The following Federal, State, and Local authorities authorize communities to regulate development in Special Flood Hazard Areas (i.e. floodplains):

- The National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.)
- The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.)
- The National Flood Insurance Reform Act of 1994, as amended (42 U.S.C. § 4001 et seq.)
- Title 44 Code of Federal Regulations (CFR), Parts 59, 60, and 73
- Kentucky Revised Statute (KRS), 151 Parts 250, 280, and 320
- Title 401 of the Kentucky Administrative Regulations, Chapter 4, Parts 50 and 60
- Your community's local Flood Damage Prevention Ordinance

For local communities, the two most common authorities that you will be dealing with are your community's Flood Damage Prevention Ordinance (FDPO) and Kentucky's state regulations [401 KAR 4:060]. See the 'Regulations' section on pg. 4 of this guidance for links to the above regulations and statutes.

FEDERAL AND STATE ROLES

Federal

FEMA Region IV staff is responsible for assisting communities in managing their flood risk, monitoring activities to ensure compliance, managing the community probation & suspension process, and the 1316 process.

State

The Division of Water (DOW) is Kentucky's coordinating agency with FEMA. DOW is responsible for issuing state floodplain permits for any development along or across a stream in Kentucky. Some of DOW's other responsibilities include enabling local communities to manage their floodprone areas, providing technical assistance as needed, providing model ordinances for communities to adopt, offering training opportunities, providing outreach to local communities and their citizens, and monitoring local community's management programs to ensure compliance with federal and state minimum requirements

Kentucky's NFIP Coordinator is a valuable resource to local communities and is available to assist local officials in their floodplain management activities.

Inspection Process

Floodplain managers cannot assume that development will proceed as described in floodplain permit requirements. Follow-up inspections are vital to ensuring that the applicant adheres to their permit.

There are 3 times when an inspection by the local floodplain administrator, or staff, is recommended, if not required, during the floodplain development process: 1) Pre-Construction, 2) During Construction, and 3) Final Construction.

As part of the Pre-Construction inspection, the local official is looking that any boundary markers such as building footprint and flood hazard areas are present and staked out according to the approved application.

The During Construction inspection, local officials are looking at the physical aspects of the project. Deficiencies in the development are MUCH easier and cheaper to correct during construction, rather than after the development is completed. Features to look at can include, the placement of fill in the floodplain, footing locations, elevation of the structures foundation, crawl space openings including the number and their elevation, that all elements below the Base Flood Elevation are flood damage resistant materials (i.e. concrete, metal, plastic, etc.). Other project specific features include floodproofing designs for non-residential structures, and to ensure manufactured homes are properly anchored & secured to a permanent foundation. For help understanding development requirements, see the link to FEMA's Technical Bulletins in the 'Additional Resources' section on pg. 4 of this guidance.

Final Construction inspections are done to ensure that the floodplain development met all of the minimum standards listed in the state and local permits. Features to look for include the first floor elevations, are the required number of vents present and are the properly placed, are all the materials below BFE flood damage resistant and are the utilities properly elevated and protected. A final construction elevation certificate may be required.

Enforcement Process

The best way to enforce your community's ordinance is to convince the developer or property owner that complying is in their best interest. By following the federal, state, and local floodplain development requirements, the property owner can help ensure that their structure is reasonably safe from flooding. Even when the current owner is not concerned with flood insurance, any future owners will be unable to obtain a mortgage or loan without flood insurance coverage; expensive flood insurance coverage can make a property much more difficult to sell.

There are several actions a community, along with the Division of Water, can take to remedy a violation to its Flood Damage Prevention Ordinance (FDPO). The enforcement procedures on the following page provides a step-by-step process that local officials should follow when correcting floodplain violation. Officials should document each stage of their enforcement process by taking pictures, keeping copies of all documents including letters & emails, and using certified mail when appropriate.

Contact Kentucky's NFIP Coordinator for help enforcing your local ordinance at water@ky.gov.

Compliance Effects on the Owner

When property owners comply with state and local requirements for floodplains, they benefit in several ways, both in the short and long term.

Some of these benefits may include:

1. Reduced risk of incurring flood damages
2. Reduced flood insurance premiums
3. Increased property values
4. Better resale value

When Property owners go above and beyond their local requirements, they can realize additional savings due to:

1. Protecting the property from larger than expected floods (i.e. greater than the 1%)
2. Additional reductions on flood insurance premiums due to property's reduced risk
3. Return on investment in higher standards
 - Property owner can often recover additional construction costs in 3-5 years, on average, due to reductions in insurance premiums

Enforcement Procedures for Local Officials

The Property Owner Has A Permit

- 1) Right to Inspection *[Article 4 Section C(6)]*
 - Local floodplain coordinators have the legal authority to make inspections to enforce the ordinance
- 2) Forward the violation to the appropriate Division of Water Field Office staff
- 3) Issue a Stop Work Order *[Article 3 Section H]*
- 4) Issue a Notice of Citation (NOC) or Notice of Violation (NOV) *[Article 3 Section H]*
 - Notifies the property owner in writing
 - NOC or NOV should include:
 - Identify the ordinance being violated
 - Identify the noted violations
 - Identify approximate date of violation
 - Identify the actions the property owner must take to comply with the ordinance
 - Give a time allowed to make corrections (generally 7 days)
- 5) If the property owner fails to comply with NOV or NOC, revoke their permit *[Article 4 Section C(8)]*
- 6) Proceed with legal action *[Article 3 Section H]*
 - Penalties
 - Fine and/or jail time
 - Violator shall pay all costs and expenses involved in the case
 - Recordation (if applicable)
 - Depending on your community's statutory authority, violations may be recorded on the property's deed.
 - Injunction
- 7) Withhold the Certificate of Occupancy (CO) until the problem is corrected
- 8) Section 1316: Denial of Insurance
 - Authorizes FEMA to deny flood insurance to a property declared by a State or community to be in violation of their floodplain management regulations. Section 1316 is used when all other legal means to remedy the violation have been exhausted.

The Property Owner DOES NOT Have A Permit

- 1) Right to Inspection *[Article 4 Section C(6)]*
 - Local floodplain coordinators have the legal authority to make inspections to enforce the ordinance
- 2) Forward the violation to the appropriate Division of Water Field Office staff.
- 3) Issue a Stop Work Order *[Article 3 Section H]*
- 4) Notice of Citation (NOC) or Notice of Violation (NOV) *[Article 3 Section H]*
 - Notifies the property owner in writing
 - NOC or NOV should include:
 - Identify the ordinance being violated,
 - Identify the noted violations,
 - Identify approximate date of violation
 - Identify the actions the property owner must take to comply with the ordinance
 - Give a time allowed to make corrections (generally 7 days)
- 5) Proceed with legal actions *[Article 3 Section H]*
 - Penalties
 - Fine and/or jail time
 - Violator shall pay all costs and expenses involved in the case
 - Recordation (if applicable)
 - Depending on your community's statutory authority, violations may be recorded on the property's deed.
 - Injunction
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Note: If your community has adopted Kentucky's state model Flood Damage Prevention Ordinance (FDPO), the included citations correspond with the appropriate sections of your ordinance

Appeals, Variances, and Special Uses:

If a property owner disagrees with the local official's assessment, interpretation of the regulations, or development requirements, they are able to appeal to a "Board Of Appeals". The appeals process and makeup of the Board of Appeals is discussed in your community's Flood Damage Prevention Ordinance (FDPO). Other instances where the Board of Appeals may be required would be for Special Uses or for Variance requests. Special uses would be for NFIP allowable activities that the local community's FDPO does not allow. Variances are a way for the property owner to request permission to vary from the letter of the rules due to a special situation.

Because variances can create an increased risk to life and/or property, variances from your local FDPO should be rare. An application for a variance must be done in writing to the community's floodplain administrator. A review by the Board of Appeals will then be conducted. The property owner requesting the variance must show an unnecessary hardship. The applicant has the burden of proving unnecessary hardship to the Board of Appeals. The claimed hardship must be exceptional, unusual, and peculiar to the property involved, not to the owners or residents. Financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of neighbors DO NOT qualify as exceptional hardships. Any variances issued must be the minimum necessary to afford relief, with minimal deviation from the overall ordinance as possible.

Variances issued by a community can put the entire community's NFIP participation in jeopardy. Communities allowing variances without requiring the property owner to show unnecessary hardship may be subject to probation and/or suspension from the NFIP, or a subrogation action against the community by FEMA.

Contact Kentucky's NFIP Coordinator before approving **ANY** Variances at water@ky.gov.

Regulations:

See the table below for links to the federal and state laws and regulations. **ORANGE** rows are federal regulations and **BLUE** rows are Kentucky laws and regulations. Contact Kentucky's NFIP Coordinator or DOW's Floodplain Permitting Section for help with the statutes and regulations.

44 CFR 59.1	Floodplain Definitions	https://bit.ly/2J5EyIL
44 CFR 60.3	Floodplain Development Requirements	https://bit.ly/309yeFI
KRS 151.250	Floodplain Permit Requirements	https://bit.ly/2V5U1ua
KRS 151.280	Work Begun Without a Permit	https://bit.ly/2WrQoQL
KRS 151.320	Officers Required to Enforcing the Law	https://bit.ly/2ZWS9r7
401 KAR 4:060	Kentucky Floodplain Development Requirements	https://bit.ly/2VgqOBA

Additional Resources:

NFIP Ordinance Administration: https://www.fema.gov/pdf/floodplain/nfip_sg_unit_7.pdf

FEMA Technical Bulletin: <https://www.fema.gov/nfip-technical-bulletins>

Kentucky Floodplain Maps: <https://watermaps.ky.gov/RiskPortal/>

Contact the Division of Water: water@ky.gov or (502) 564-3410