

Chapter 92
F, FLOODPLAIN OVERLAY DISTRICT

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XX-92-1: STATUTORY AUTHORIZATION AND PURPOSE:

- A. Statutory Authorization: This chapter is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103F; Minnesota Rules, parts 6120.5000 – 6120.6200; the rules and regulations of the National Flood Insurance Program in 44 CFR § 59 to 78; and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.
- B. Purpose:
1. This chapter regulates development in the flood hazard areas of the town. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this ordinance to promote the public health, safety, and general welfare by minimizing these losses and disruptions.
 2. This chapter is adopted in the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

3. This chapter is adopted to maintain eligibility in the national flood insurance rate program.
4. This chapter is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

XX-92-2: GENERAL PROVISIONS:

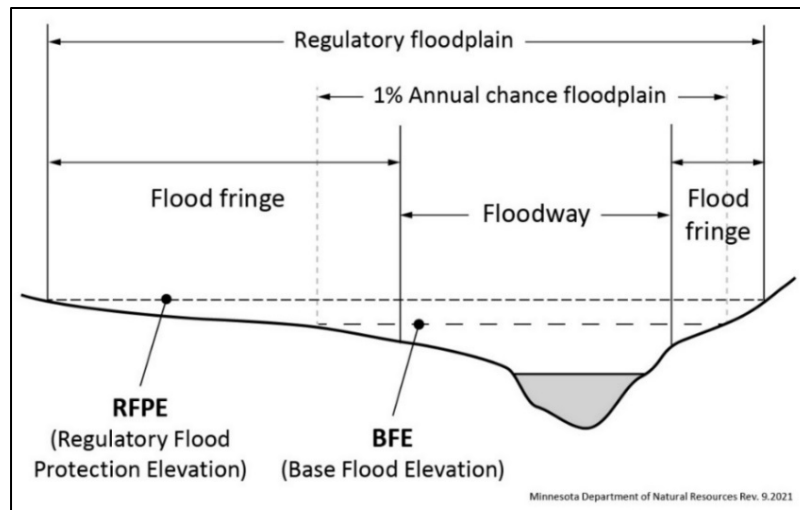
- A. **Abrogation and Greater Restrictions:** It is not intended by this chapter to repeal, abrogate, or impair any existing easements, covenants, or private agreements. The standards in this chapter takes precedence over any less restrictive, conflicting local laws, ordinances, or codes. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- B. **Warning and Disclaimer of Liability:** This chapter does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. This chapter does not create liability on the part of the town or its officers and employees for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

XX-92-3: ESTABLISHMENT OF FLOODPLAIN DISTRICT:

- A. **Application:** This chapter applies to all lands within the town within the boundaries of the Floodway, Flood Fringe and General Floodplain Districts.
 1. The Floodway, Flood Fringe or General Floodplain Districts are overlay districts. The standards imposed in the overlay districts are in addition to any other requirements. In case of a conflict, the more restrictive standards will apply.
 2. Where a conflict exists between the floodplain limits illustrated on the official floodplain maps and actual field conditions, the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain.



3. The regulatory limits of the F district boundaries shall be further extended outward based on the horizontal extension of the Regulatory Flood Protection Elevation (RFPE).



4. Persons contesting the location of the district boundaries will be given a reasonable opportunity to appeal their case and to submit technical evidence as provided for in chapter 7 of this ordinance.

- B. Incorporation of Maps By Reference: The following maps together with all attached material are hereby adopted by reference and declared to be a part of the zoning map established by section XX-45-3 of this ordinance and this chapter and shall be maintained on file at the town hall by the zoning administrator. The attached material includes the Flood Insurance Study for Sherburne County, Minnesota, and Incorporated Areas, and the Flood Insurance Rate map panels enumerated below, all dated November 16, 2011, and prepared by the Federal Emergency Management Agency:

27141C0120F
27141C0140F
27141C0145F
27141C0160F
27141C0180F
27141C0185F

- C. Districts:

1. Floodway District. Those areas within Zones A and AE areas as shown on the Flood Insurance Rate Maps adopted in section XX-92-3.B of this chapter, which are determined to be located in the floodway based on the delineation methods outlined in section XX-92-7.D of this chapter.
2. Flood Fringe District. Those areas within Zones A and AE areas as shown on the Flood Insurance Rate Maps adopted in section XX-92-3.B of this chapter, which are determined to be located in the flood fringe based on the delineation methods outlined in section XX-92-7.D of this chapter. This district also includes any additional area encompassed by the Regulatory Floodplain.
3. General Floodplain District. Those areas within Zone A and AE areas that do not have a floodway delineated as shown on the Flood Insurance Rate Maps referenced in section XX-92-3.B of this chapter. This district also includes any additional area encompassed by the Regulatory Floodplain.

- D. Annexations: The Flood Insurance Rate Map panels adopted in section XX-92-3.B of this chapter may include floodplain areas that lie outside of the corporate boundaries of the town at the time of adoption of this ordinance. If any of these floodplain land areas are annexed into the town after the date of adoption of this chapter, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation. Annexations into panels not referenced in section XX-92-3.B of this chapter require an ordinance amendment in accordance with Section XX-92-11.D of this chapter.

- E. Detachments. The Flood Insurance Rate Map panels adopted in section XX-92-3.B of this chapter will include floodplain areas that lie inside the corporate boundaries of municipalities at the time of adoption of this ordinance. If any of these floodplain land areas are detached from a municipality and come under the jurisdiction of the town after the date of adoption of this chapter, the newly detached floodplain lands will be subject to the provisions of this ordinance immediately upon the date of detachment.

XX-92-4: REQUIREMENTS FOR ALL FLOODPLAIN DISTRICTS:

- A. Permit Required. A permit must be obtained from the zoning administrator to verify compliance with all applicable standards outlined in this chapter prior to the following uses or activities:
1. The erection, addition, modification, rehabilitation, repair, or alteration of any building, structure, or portion thereof. Normal maintenance requires a permit to determine if such work, either separately or in conjunction with other planned work, constitutes a substantial improvement, as specified in section XX-92-12.B of this chapter.
 2. The construction of a fence, pool, deck, or placement of anything that may cause a potential obstruction. Farm fences, as defined in Section 2.0 of this ordinance, are not considered to be an obstruction, and as such, do not require a permit.
 3. The change or expansion of a nonconforming use.
 4. The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 5. The placement of fill, excavation, utilities, on-site sewage treatment systems, or other service facilities.
 6. The storage of materials or equipment, in conformance with section XX=92-4.C.2 of this chapter.
 7. Relocation or alteration of a watercourse (including stabilization projects or the construction of new or replacement dams, culverts and bridges). A local permit is not required if a public waters work permit has been obtained from the department of natural resources, unless a significant area above the ordinary high water level is also to be disturbed.
 8. Any other type of "development," as defined in section XX-2-2 of this ordinance.

- B. No Permit Required. Certain uses or activities may be exempt from obtaining a permit, such as planting a garden, farming, or other obviously insignificant activities such as putting up a mailbox or flagpole. The continuation of existing uses, when the associated activities do not encroach further on the regulatory floodplain or trigger associated standards in this ordinance, do not require a permit.
- C. Minimum Development Standards
1. All development shall:
 - a. Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - b. Be constructed with materials and equipment resistant to flood damage;
 - c. Be constructed by methods and practices that minimize flood damage;
 - d. Be constructed with heating, ventilation, duct work, and air conditioning equipment and other service facilities elevated at least up to the Regulatory Flood Protection Elevation (RFPE). Water, sewage, electrical, and other utility lines below the RFPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding;
 - e. Be reasonably safe from flooding and consistent with the need to minimize flood damage;
 - f. Be assured to provide adequate drainage to reduce exposure to flood hazards;
 - g. Not be detrimental to uses in adjoining areas; and
 - h. Not adversely affect the efficiency or restrict the flood carrying capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system
 2. Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the Regulatory Flood Protection Elevation (RFPE), floodproofed, or protected by other measures as approved by the Zoning Administrator. Storage of materials likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded

equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, section 115.01, are prohibited unless adequate safeguards approved by the Minnesota Pollution Control Agency are provided. For projects not requiring approvals by the Minnesota Pollution Control Agency, adequate safeguards must be approved by the Zoning Administrator prior to issuance of a permit.

3. Critical facilities shall be located so that the lowest floor is not less than two feet above the Base Flood Elevation (BFE), or the 0.2% annual chance flood elevation, whichever is higher.

XX-92-5: FLOODWAY DISTRICT:

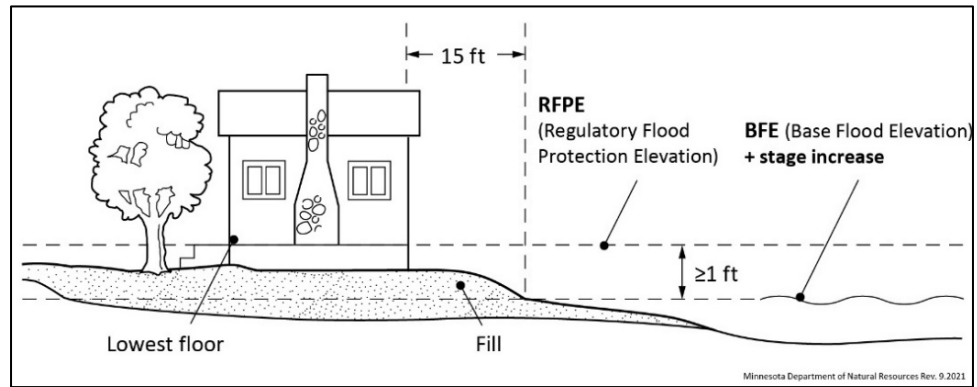
- A. Permitted Uses in Floodway. Development allowed in the floodway district is limited to that which has low flood damage potential and will not obstruct flood flows, increase velocities, or increase the water surface elevations of the one-percent annual chance flood. The following uses and activities may be allowed with a permit, subject to the standards in section XX-92-5.B of this chapter:
 1. Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, as well as public open space uses.
 2. Roads, railroads, trails, bridges, and culverts.
 3. Public utility facilities and water-oriented industries which must be in or adjacent to watercourses.
 4. Grading, filling, land alterations, and shoreline stabilization projects.
 5. No structures, as defined in section XX-2-2 of this chapter, are allowed in the Floodway District, except structures accessory to the uses detailed in sections xx-92-5.A.1 and XX-92-5.C.1 of this chapter, which shall require a conditional use permit in accordance with section XX-92-5.C.2 of this chapter.
 6. Levees or dikes intended to protect agricultural crops, provided the top of the dike does not exceed the 10-percent annual chance flood event.
- B. Standards for Permitted Uses in Floodway. In addition to the applicable standards detailed in section XX-92-4 of this chapter:

1. The applicant shall demonstrate that the development will not result in any of the following during the one-percent chance flood: cause a stage increase of 0.00 feet or greater, obstruct flood flows, or increase velocities. This shall be demonstrated through hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices (e.g. projects that restore the site to the previous cross-sectional area). This is commonly documented through a “no-rise certification.”
 2. Any development that would result in a stage increases greater than 0.00 feet may only be allowed with a permit if the applicant has applied for and received approval for a Conditional Letter of Map Revision (CLOMR) in accordance with 44 CFR § 65.12. Map revisions must follow the procedures set forth in sections XX-92-11.A and XX-92-14 of this chapter.
 3. Any development resulting in decreases to the water surface elevation of the base flood identified in the Flood Insurance Study requires a Letter of Map Revision (LOMR) following the procedures in sections XX-92-11.A.5 and XX-92-14 of this chapter.
 4. Any development in the beds of public waters that will change the course, current or cross section is required to obtain a public waters work permit in accordance with Minnesota Statutes, section 103G.245 or a utility crossing license in accordance with Minnesota Statutes, section 84.415, from the Department of Natural Resources, or demonstrate that no permit is required, before applying for a local permit.
 5. Any facility used by employees or the general public must be designed with a flood warning system acceptable to the Zoning Administrator that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.
 6. Fill and other land alteration activities must offer minimal obstruction to the flow of flood waters, and be protected from erosion and sediment entering surface waters by the use of vegetative cover, riprap or other methods as soon as possible.
- C. Conditional Uses in Floodway. The following uses and activities may be permitted as conditional uses, subject to the standards detailed in sections XX-92-4.D and XX-92-11.C of this chapter:
1. Commercial extractive uses, and storage and stockpiling yards.

2. Structures accessory to uses detailed in Sections XX-92-4.A and XX-92-5.C.1 of this chapter.
- D. Standards for Conditional Uses in Floodway. In addition to the applicable standards detailed in sections XX-92-4, XX-92-5.B and XX-92-11.C of this chapter:
1. Extractive uses and storage of materials shall require the completion of a site development and restoration plan, to be approved by the town board.
 2. Accessory Structures. Structures accessory to the uses detailed in sections XX-92-5.A.1 and XX-92-5.C.1 of this chapter shall be constructed and placed so as to offer a minimal obstruction to the flow of flood waters, and are subject to the standards in section XX-92-6.B.3 of this chapter.

XX-92-6: FLOOD FRINGE DISTRICT:

- A. Permitted Uses in Flood Fringe. Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Sections XX-92-6.B of this chapter.
- B. Standards for Permitted Uses in Flood Fringe. In addition to the applicable standards detailed in section XX-92-4 of this chapter:
1. Residential Structures:
 - a. Elevation on Fill. All structures to be erected, constructed, reconstructed, altered, or moved on fill within the Flood Fringe District shall be placed so that the lowest floor, as defined in section XX-2-2 of this ordinance, is elevated at or above the Regulatory Flood Protection Elevation (RFPE). The finished fill elevation shall be at or above the elevation associated with the base flood plus any stage increases that result from designation of a floodway. Fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the Zoning Administrator. Elevation methods alternative to these fill standards are subject to a Conditional Use Permit, as provided in section XX-92-6.C.1 of this chapter.



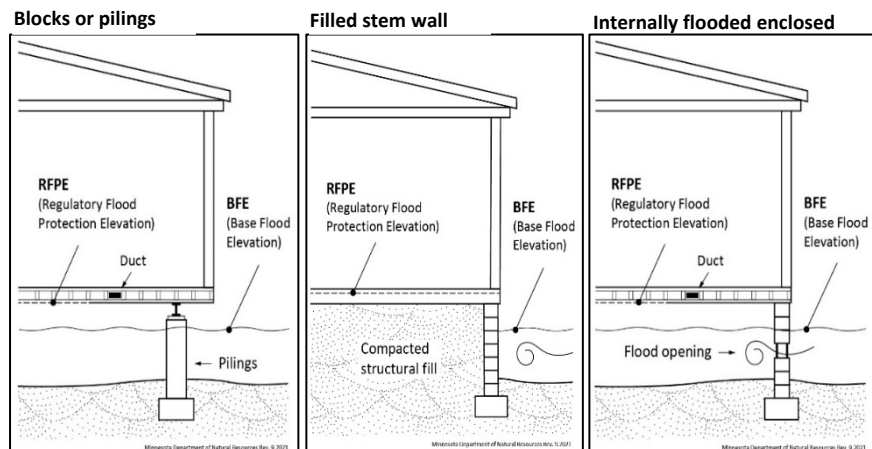
2. Nonresidential Principal Structures. Nonresidential principal structures must meet one of the following construction methods:

a. Elevation on Fill.

(1) Structures may be elevated on fill, meeting the standards in section XX-92-6.B.1.a of this chapter. Fill for nonresidential structures is not required to be extended 15 feet beyond the outside limits of the structure.

b. Alternative Elevation Methods.

(1) Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill standards in section XX-92-6.B.1.a of this chapter. Such methods include the use of blocks, pilings, filled stem walls, or internally-flooded enclosed areas such as crawl spaces, attached garages, or tuck under garages.



- (2) Designs accommodating for internally-flooded enclosed areas must be certified by a registered professional engineer or architect, or meet or exceed the standards detailed in FEMA Technical Bulletin 1, as amended, as well as the following standards:
 - (a) The floor of the enclosed area must be at or above the exterior grade on at least one side of the structure.
 - (b) To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings below the base flood elevation on at least two sides of the structure. The bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.
 - (c) Internally flooded enclosed areas shall only be used for the parking of vehicles, building access, or storage. Bathrooms and toilet rooms shall not be allowed.
 - c. Dry Floodproofing. Structures having watertight enclosed basements or spaces below the Regulatory Flood Protection Elevation (RFPE) must meet the following standards:
 - (1) Walls shall be substantially impermeable to the passage of water, with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, at least up to the Regulatory Flood Protection Elevation (RFPE);
 - (2) Shall meet the standards of FEMA Technical Bulletin 3, as amended; and
 - (3) A registered professional engineer or architect shall be required to certify that the design and methods of construction meet the standards detailed in this section.
3. Accessory Structures. All accessory structures must meet the following standards:
 - a. Structures shall not be designed or used for human habitation.

- b. Structures will have a low flood damage potential.
 - c. Structures with fewer than two rigid walls, such as carports, gazebos, and picnic pavilions, may be located at an elevation below the Regulatory Flood Protection Elevation.
 - d. Structures with two or more rigid walls, must meet one of the following construction methods:
 - (1) Wet Floodproofing. Structures may be floodproofed in a way to accommodate internal flooding. Such structures shall constitute a minimal investment not to exceed 576 square feet in size, one-story in height, and shall only be used for parking and storage. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.
 - (2) Elevation on Fill. Structures may be elevated on fill, meeting the standards in section XX-92-6.B.1.a of this chapter. Fill is not required to be extended 15 feet beyond the outside limits of the structure.
 - (3) Alternative Elevation Methods. Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) through methods alternative to the fill standards in section XX-92-6.B.3.d(2) of this chapter, meeting the standards in section XX-92-6.B.2.b of this chapter.
 - (4) Dry Floodproofing. Structures may be dry-floodproofed, or watertight, meeting the standards in section XX-92-6.B.2.c of this chapter.
4. Fill. The cumulative placement of fill or other materials for any purpose, up to 1,000 cubic yards, is permitted. Additional fill over 1,000 cubic yards is only permitted if the fill is specifically intended to elevate a structure in accordance with sections XX-92-6.B.1 or XX-92-6.B.2.a of this chapter, or for a transportation project in accordance with section XX-92-9.A of this chapter. Fill over 1,000 cubic yards for purposes other than these purposes requires a conditional use permit as

provided for in Section XX-92-6.C.2 of this chapter. Materials shall be protected from erosion, discharge, and sediment entering surface waters by the use of vegetative cover or other methods as soon as possible.

5. All new principal structures shall provide for vehicular access no lower than one foot below the Base Flood Elevation (BFE), unless a flood warning/emergency evacuation plan has been approved by the zoning administrator.
 6. Any facilities used by employees or the general public must be designed with a flood warning system approved by the zoning administrator that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.
 7. Manufactured homes and recreational vehicles shall meet the standards of section XX-92-10 of this chapter.
- C. Conditional Uses in Flood Fringe. The following uses and activities may be permitted as conditional uses, subject to the standards in sections XX-92-6.D and XX-92-11.C of this chapter:
1. Alternative Elevation Methods – Residential Structures. Residential structures with their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill requirements in Section XX-92-6.B.1 of this chapter.
 2. Fill. The cumulative placement of more than 1,000 cubic yards of fill or other materials, when the fill is not being used to elevate a structure or for a transportation project.
- D. Standards for Conditional Uses in Flood Fringe. In addition to the applicable standards detailed in sections XX-92-4, XX-92-6.B, and XX-92-11.C of this chapter:
1. All residential structures with lowest floors elevated through alternative elevation methods shall meet the standards for nonresidential structures in section XX-92-6.B.2.b of this chapter.
 2. The placement of more than 1,000 cubic yards of fill or other materials (other than for the purpose of elevating a structure or for a transportation project) shall comply with a site development and restoration plan approved by the town engineer that details the anticipated topographic alterations and identify actions to be taken to mitigate environmental impacts, particularly erosion.

XX-92-7: GENERAL FLOODPLAIN DISTRICT:

A. Permitted Uses:

1. The uses listed in the Floodway District, section XX-92-5 of this ordinance are allowed with a permit or Conditional Use Permit. Development is also subject to the standards provided in sections XX-92-7.B and XX-92-7.C of this chapter.
2. All other uses are subject to a floodway/flood fringe determination as provided in Section XX-92-7.D, in addition to the standards provided in sections XX-92-7.B and XX-92-7.C of this chapter. Permitted uses shall be determined as follows:
 1. If the development is determined to be in the Floodway District, section XX-92-5 of this chapter applies.
 2. If the development is determined to be in the Flood Fringe District, section XX-92-6 of this chapter applies.

B. Standards for Determining Flood Elevations:

1. All development requires a determination of the Base Flood Elevation (BFE). Exceptions to this requirement include projects that restore the site to the previous cross-sectional area, such as shore stabilization or culvert replacement projects. Base Flood Elevations (BFE) may be found using best available data from any Federal, State, or other source (including MNDNR's Lake & Flood Elevations Online (LFEO) Viewer).
2. The Regulatory Flood Protection Elevation (RFPE) can be determined by assuming a one-half (0.5) foot stage increase to accommodate for future cumulative impacts. A stage increase does not need to be assumed along lakes, wetlands, and other basins that are not affected by velocities.

C. Encroachment Analysis: Encroachments due to development may not allow stage increases more than one-half (0.5) foot at any point. This evaluation must include the cumulative effects of previous encroachments, and must be documented with hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices. A lesser water surface elevation increase than one-half (0.5) foot is required if, due to the water surface level increase, increased flood damages would potentially result.

D. Standards for the Analysis of Floodway Boundaries:

1. Requirements for Detailed Studies. Any development, as requested by the Zoning Administrator, shall be subject to a detailed study to determine the Regulatory Flood Protection Elevation (RFPE) and the limits of the Floodway District. This determination must be consistent with the minimum standards for hydrologic and hydraulic mapping standards and techniques, as detailed in Minnesota Rules, part 6120.5600, Subp. 4 and FEMA Guidelines and Standards for Flood Risk Analysis and Mapping, as revised. Additionally:
 - a. A regulatory floodway necessary to carry the discharge of the one-percent annual chance flood must be selected without increasing the water surface elevation more than one-half (0.5) foot at any point. This determination should include the cumulative effects of previous encroachments. A lesser water surface elevation increase than one-half (0.5) foot is required if, due to the water surface level increase, increased flood damages would potentially result; and
 - b. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries, unless topography, existing development patterns, and comprehensive land use plans justify a modified approach, as approved by the department of natural resources.
2. Other Acceptable Methods. For areas where a detailed study is not available or required:
 - a. Development prohibited in floodways (e.g. most buildings) requires a floodway/flood fringe determination to verify the development is within the flood fringe. This determination must be done by a professional engineer or utilize other accepted engineering practices. The department of natural resources may also provide technical assistance and must approve any alternative methods used to determine floodway boundaries.
 - b. For areas where the floodway has not been determined in and along lakes, wetlands, and other basins, the following methodology may be used as an alternative to Item A above, provided these areas are not affected by velocities and the lot is able to accommodate a building site above the Regulatory Flood Protection Elevation (RFPE):

- (1) All areas that are at or below the ordinary high water level, as defined in Minnesota statutes, section 103G.005, Subd. 14, will be considered floodway, and all areas below the Base Flood Elevation (BFE) but above the ordinary high water level will be considered flood fringe, provided that within 25 feet of the ordinary high water level, or within the Shore Impact Zone as identified in the community's Shoreland ordinance, whichever distance is greater, land alterations shall be restricted to:
 - (a) The minimum required to accommodate beach areas, access areas, and accessory structures as permitted, not to exceed a volume greater than 10 cubic yards; projects involving volumes exceeding 10 cubic yards require floodway/flood fringe determination in accordance with the procedures in section XX-92-7.D.2.a of this chapter; and
 - (b) The minimum required to accommodate shoreline stabilization projects to correct an identified erosion problem as verified by a qualified resource agency or the town engineer.

XX-92-8: SUBDIVISION STANDARDS: All subdivided land must meet the following requirements. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this chapter.

- A. All lots within floodplain districts must be suitable for a building site outside of the Floodway District.
- B. Subdivision of lands within the floodplain districts may not be approved if the cost of providing governmental services would impose an unreasonable economic burden on the town.
- C. All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been approved by the zoning administrator.
- D. The Floodway and Flood Fringe District boundaries, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

XX-92-9: RAILROADS, ROADS, BRIDGES, AND PUBLIC AND PRIVATE UTILITIES AND SERVICE FACILITIES:

- A. Public Transportation Facilities. Railroad tracks, roads, and bridges shall be elevated to the Regulatory Flood Protection Elevation (RFPE) where such facilities are essential to the orderly functioning of the area, or where failure or interruption would result in danger to public health or safety. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. All public transportation facilities should be designed to minimize increases in flood elevations.
- B. Public Utilities. All utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated and/or floodproofed to the Regulatory Flood Protection Elevation (RFPE), be located and constructed to minimize or eliminate flood damage, and be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. All public utilities should be designed to minimize increases in flood elevations. New solid waste management facilities, as defined in Minnesota Rules, part 7035.0300, are prohibited in the one-percent annual chance floodplain. Water supply systems are subject to the provisions in Minnesota Rules, part 4725.4350.
- C. Private On-site Water Supply, Individual Sewage Treatment Systems, and other Service Facilities. Private facilities shall be subject to applicable provisions detailed in section XX-92-9.B of this chapter. In addition, new or replacement on-site sewage treatment systems are to be located to avoid impairment to them or contamination from them during times of flooding, shall not be located in a designated floodway, and are subject to the provisions in Minnesota Rules, parts 7080.2270.

XX-92-10: MANUFACTURED HOMES AND RECREATIONAL VEHICLES:

- A. Manufactured Homes. Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:
 - 1. New and replacement manufactured homes shall be placed and elevated in compliance with section XX-92-6 of this chapter and shall be securely anchored to a system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
 - 2. New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions in section XX-92-8 of this chapter.

- B. Recreational Vehicles. New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed in existing recreational vehicle parks, campgrounds or lots of record in the floodplain must either:
1. Meet the requirements for manufactured homes in Section XX-92-10.A, or
 2. Be travel ready, meeting the following criteria:
 - a. The vehicle shall be fully licensed.
 - b. The vehicle shall be ready for highway use, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities.
 - c. No permanent structural type additions may be attached to the vehicle.
 - d. Accessory structures may be permitted in the Flood Fringe District, provided they do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in sections XX-92-4 and XX-92-6.B.3 of this chapter.

XX-92-11: ADMINISTRATION:

- A. Zoning Administrator:
1. Permit Application Requirements. Permit applications shall be submitted to the zoning administrator. The permit application shall include the information required by section XX-9-4 of this ordinance and the following, as applicable:
 - a. A site plan showing all existing or proposed buildings, structures, service facilities, potential obstructions, and pertinent design features having an influence on the permit.
 - b. Location and detail of grading, fill, or storage of materials.
 - c. Copies of any required local, state or federal permits or approvals.
 - d. Other relevant information requested by the zoning administrator as necessary to properly evaluate the permit application.

2. Recordkeeping. The zoning administrator shall maintain applicable records in perpetuity documenting:
 - a. All certifications for dry floodproofing and alternative elevation methods, where applicable.
 - b. Analysis of no-rise in the Floodway District, as detailed in section XX-92-5.B.1 of this chapter, and encroachment analysis ensuring no more than one-half foot of rise in the General Floodplain District, as detailed in sections XX-92-7.B.2 and XX-92-7.C.1 of this chapter.
 - c. Final elevations, as applicable, detailing the elevation to which structures and improvements to structures are constructed or floodproofed. Elevations shall be determined by an engineer, architect, surveyor or other qualified individual, as approved by the zoning administrator.
 - d. Substantial damage and substantial improvement determinations, as detailed in section XX-92-12.A.3 of this chapter, including the cost of improvements, repairs, and market value.
 - e. All variance actions, including justification for their issuance, and shall report such variances as requested by the Federal Emergency Management Agency.
3. Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the zoning administrator stating that the finished fill and building floor elevations or other flood protection measures are in compliance with the requirements of this chapter.
4. Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the zoning administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters in accordance with Minnesota Statutes, section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to FEMA.
5. Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. Where physical changes affecting flooding conditions may increase or decrease the water surface elevation of the base flood, the [community] must notify FEMA of the changes in order to obtain a Letter of Map Revision (LOMR), by submitting a copy of the relevant technical or scientific data as soon as

practicable, but no later than six months after the date such supporting information becomes available.

6. Notifications to the Department of Natural Resources:

- a. All notices of public hearings to consider variances or conditional uses under this chapter must be sent via electronic mail to the department of natural resources respective area hydrologist at least 10 days before the hearings. Notices of hearings to consider subdivisions/plats must include copies of the subdivision/plat.
- b. A copy of all decisions granting variances and conditional uses under this chapter must be sent via electronic mail to the department of natural resources respective area hydrologist within 10 days of final action.

C. Conditional Uses and variances:

1. Process.

- a. An application for a conditional use permit will be processed and reviewed in accordance with the provisions of section 4 of this ordinance and this chapter.
- b. An application for a variance to the provisions of this chapter will be processed and reviewed in accordance Chapter 6 of this ordinance and this chapter.

2. Adherence to State Floodplain Management Standards. Variances must be consistent with the general purpose of these standards and the intent of applicable provisions in state and federal law. Though variances may be used to modify permissible methods of flood protection, no variance shall permit a lesser degree of flood protection than the Regulatory Flood Protection Elevation (RFPE).

3. Additional Variance Criteria. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- a. Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- b. Variances from the provisions of this chapter may only be issued by a community upon:

- (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Considerations for Approval. The planning commission and town board may consider the following factors in granting variances and imposing conditions on variances and conditional uses in floodplain districts:
 - a. The potential danger to life and property due to increased flood heights or velocities caused by encroachments.
 - b. The danger that materials may be swept onto other lands or downstream to the injury of others.
 - c. The safety of access to the property in times of flood for ordinary and emergency vehicles.
5. Conditions of Approval. The town board may attach such conditions to the granting of variances and conditional use permits as it deems necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:
 - a. Limitations on period of use, occupancy, and operation.
 - b. Imposition of operational controls, sureties, and deed restrictions.
 - c. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
6. Flood Insurance Notice. The zoning administrator must notify the applicant for a variance in writing that:

- a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- b. Such construction below the base flood level increases risks to life and property.
- c. The notification shall be maintained with a record of all variance actions.

D. Amendments:

1. Any revisions to the floodplain maps by the Federal Emergency Management Agency or annexations of new map panels require an ordinance amendment to update the map references in section XX-92-3.B of this chapter.
2. All amendments to this chapter must be submitted to the department of natural resources for review and approval prior to adoption, for compliance with state and federal rules and requirements. The floodplain ordinance shall not be considered valid until approved.

XX-92-12: NONCONFORMITIES:

- A. Continuance of Nonconformities. A use, structure, or occupancy of land which was lawful before the passage or amendment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the provisions of chapter 15 of this ordinance and the following conditions:
1. Within the floodway and general floodplain districts (when a site has been determined to be located in the floodway following the procedures in Section XX-92-7.C, or when the floodway has not been delineated), expansion or enlargement of uses or structures is prohibited.
 2. Within all districts, any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of this ordinance, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).
 3. If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in section XX-92-12.B of this chapter, it may not be reconstructed except in conformity with the provisions of this chapter. Existing structures within the regulatory floodplain, but outside of

the one-percent annual chance floodplain, as detailed in Section XX-92-3.A.3 of this chapter, are exempt from this provision.

4. If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- B. Substantial Improvement and Substantial Damage Determinations. Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to structures that do not comply with the provisions of this chapter, the zoning administrator is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:
1. Estimate the market value of the structure. In cases where the property has sustained damage, the market value of the structure shall be the market value before the damage occurred and before any restoration or repairs are made.
 2. Estimate the cost of the project. The property owner shall accommodate for inspection, and furnish other documentation needed by the zoning administrator to evaluate costs.
 - a. Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.
 - b. Costs to restore damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.
 3. Compare the cost of the project and/or repairs to the estimated market value of the structure, and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure, as defined in Section XX-2-2 of this ordinance.
 - a. For the purposes of determining whether the proposed work would constitute substantial improvement, the evaluation shall also include all rehabilitations, additions, or other improvements completed since the community has adopted floodplain standards impacting this structure.

- b. If any nonconforming structure experiences a repetitive loss, as defined in Section XX-2-2 of this ordinance, it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this ordinance.
4. Based on this determination, the zoning administrator shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this ordinance.

XX-92-13: VIOLATIONS AND PENALTIES:

1. Uses in Violation. Every structure, fill, deposit, or other use placed or maintained in the floodplain in violation of this chapter shall be considered a public nuisance.
2. Civil Remedies. The creation of a public nuisance may be enjoined and the maintenance of a public nuisance under this chapter may be abated by an action brought by the town or the department of natural resources.
3. Enforcement. Violations of the provisions of this ordinance constitutes a misdemeanor and is punishable as defined by law. The zoning administrator may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance. The town must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.