

State of Nebraska

5-Year CAP-SSSE

Floodplain Management Plan



September 2004

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NEBRASKA

Community Assistance Program–State Support Services Elements

(CAP-SSSE)

5-YEAR FLOODPLAIN MANAGEMENT PLAN

September 2004

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NEBRASKA CAP-SSSE
5-YEAR FLOODPLAIN MANAGEMENT PLAN

Introduction

For many years the State of Nebraska Department of Natural Resources (NDNR) has had a well-rounded, state-funded floodplain management program in place. In Nebraska, floodplain management regulation occurs entirely at the local level. The purpose of the state program is to provide Nebraska citizens and industry with the tools and knowledge so that they may be protected from known flooding hazards. The Nebraska program emphasizes ordinance assistance; mitigation assistance; and technical assistance - including hydrology and hydraulics; and survey and photogrammetry.

Nebraska augments the existing floodplain management program with funding from the federal *Community Assistance Program – State Support Services Element* (CAP-SSSE). CAP-SSSE supplements Nebraska's floodplain management program to provide additional support to communities in Nebraska that participate in the National Flood Insurance Program. In addition, the NDNR continues to encourage and support the enrollment of non-participating communities into the NFIP.

This 5-Year Floodplain Management Plan (hereafter referred to as "5-yr Plan") was prepared at the request of the Federal Emergency Management Agency (FEMA) to describe Nebraska's CAP-SSSE program and perform a gap analysis of those elements of Nebraska's floodplain management program that are supported under this cooperative agreement. The analysis assesses these program elements over the next five-year period, FY2005 through FY2009.

This 5-yr Plan is intended to be a *living document* and may require updating each year during the five years to reflect changes in Nebraska. The 5-yr Plan addresses the portion of Nebraska's floodplain management activities funded under CAP-SSSE.

Additional information may be found in other plans produced by NDNR in recent years. The 5-yr Plan references and includes elements from the Flood Mitigation Plan that Nebraska developed and provided to FEMA in April of 2002. The Flood Mitigation Plan included a strategic plan for floodplain management in Nebraska. The 5-yr Plan is linked to and supports Nebraska's Map Modernization Business Plan, dated March 2004.

I. State Authority

The State of Nebraska has strong floodplain management statutes that reflect, and in some instances, exceed federal minimum standards. Chapter 31, Reissued Statutes of Nebraska, 1943, Article 10, Flood Plain, Chapter 31, Article 10, Sections 31-1001 through 31-1023 provides the NDNR the authority to implement floodplain management. The statute is included as Attachment 1. This statutory authority has enabled NDNR to implement a floodplain management program that has been carefully structured and staffed to provide a full range of floodplain management services for the citizens of Nebraska:

II. Nebraska Vision for Floodplain Management

DEPARTMENT STRENGTHS

The Floodplain Management Section at NDNR provides a complete resource for floodplain officials at all levels of government. In Nebraska, floodplain management responsibilities reside at the local unit of government. NDNR is the state NFIP coordinator, and is responsible for assisting local communities with floodplain management regulations, ordinances, and community assistance visits. Among other duties, NDNR is directed to provide floodplain information to local units of government, and to assist the federal government with mapping flooding hazards. The floodplain management section of NDNR is providing mitigation assistance, technical assistance, and mapping and engineering services.

PROGRAM WEAKNESSES

There are three major program weaknesses that the Floodplain Management Section has identified. The primary issue for floodplain management in Nebraska is that approximately half of the state has not been mapped for flooding hazards. Communities without a Flood Insurance Rate Map (FIRM) typically have no interest in managing existing hazards or joining the NFIP. FEMA's Flood Hazard Map Modernization Program is addressing the floodplain mapping issue by mapping unmapped areas, and making existing maps accessible in an electronic (Internet or CD) format.

The second program weakness identified is that the Floodplain Map Modernization process will increase the workload of the Floodplain Management Section. Resources of the NDNR will be stretched during the Map Modernization Process due to the expected large volume of new community contacts ordinance assistance required during the map adoption process, and maintinance of the existing local capabilities in floodplain management.

The third program weakness is that the State has limited floodplain management resources available via the Internet. Forms, guidance, community status and contact information is available on the NDNR website. In the future, NDNR plans to make existing flood studies, floodplain maps, and public files available on the Internet. In the long run this should decrease the workload of the section by making more information available to the public in an easily accessible way..

III. Strategy To Improve Floodplain Management In Nebraska

As countywide maps become effective and as additional community assistance is needed, the floodplain management staff of NDNR plans to meet those needs and support the enrollment of new communities into the NFIP, within the staffing capability enabled by the State. Elements to achieve the objectives of the CAP-SSSE agreement include the following:

FUNDABLE FLOODPLAIN MANAGEMENT ACTIVITIES

The following list of activities was taken from FY-2004 guidance.

1. PROVIDE ASSISTANCE AND PROGRAM SUPPORT TO COMMUNITIES TO ENHANCE FLOODPLAIN MANAGEMENT COMPLIANCE AND UNDERSTANDING

The desired result of this activity is that communities will understand the requirements of their floodplain management ordinances and will effectively permit floodplain development.

- Conduct Nebraska - Contacts to Assist Local Coordinators (N-CALCs). These contacts consist of a one-on-one visit with the local floodplain administrator. NDNR will provide desk reference and discuss floodplain management program with community.
- Coordinate and participate with FEMA on selected Community Assistance Visits (CAVs).
- Maintain a database of N-CALCs to assess community needs. The database includes overview, agenda of meeting, inventory of materials provided, and a photo album of the community providing typical community view and special considerations noted.
- Provide workshops for floodplain management administrators. These workshops have been arranged in conjunction with other entities (Nebraska Association of County Officials (NACO), The Municipal Clerk's Academy, Nebraska Planning and Zoning Administration (NPZA), and others.

- Provide a specialized workshop to enhance floodplain management capabilities among floodplain administrators and other floodplain management professionals. Nebraska has worked with the Omaha District of the U.S. Army Corps of Engineers to present specialized workshops on floodproofing.
- Provide ordinance assistance to communities. NDNR provides model ordinances, resolutions, and NFIP application information to communities, upon request. We also are called on to meet with governing boards to answer questions about NFIP participation when communities are determining their options regarding NFIP participation.
- Provide technical assistance to communities. NDNR floodplain staff, upon request, provides technical information to community officials and other interested parties. This information involves interpretation of the ordinance and guidance that has been made available from FEMA, ASFPM and other organizations.
- Provide floodplain management information to the public. This information is requested by correspondence and telephone calls. NDNR floodplain management staff, upon request, provides floodplain management and flood insurance information to lenders, agents, and the general public. This can be in the form of assisting individuals determine the need to purchase flood insurance, or to provide guidance/alternatives for proposed floodplain development.
- Statewide Newsletter and Mailing. NDNR prints and distributes a newsletter targeted to floodplain management administrators. This newsletter is produced annually, and mailed to the floodplain administrator of each participating community and others. The newsletter is also posted on the agency's webpage.
- Coordinate with Nebraska Attorney General's office to ensure ordinance language regarding automatic adoption of maps is lawful in Nebraska. NDNR will request guidance from the state Attorney General on the legality of certain model ordinance language in Nebraska as necessary.
- Continue support for State Association of Floodplain Managers. The Nebraska Floodplain and Stormwater Managers Association d(NeFSMA) has passed a constitution and plans to become associated with ASFPM. In conjunction with several other interested parties, NDNR has supported the formation and productive operation of a state association for floodplain and stormwater management. The state association is tailored to assist local floodplain and stormwater managers, surveyors, engineers, consultants, and other government entities to better understand and coordinate floodplain management programs in Nebraska. Continuing education credit for professional certifications is an important element of the organization. A website is available at http://www.nefsma.net. Access to a link for members only information sharing area, is being planned.

2. PROVIDE ENGINEERING ASSISTANCE TO COMMUNITIES

- Communities that do not have the technical capability to assess the impacts of floodplain development (to ensure compliance with floodplain management regulations) may submit information to the NDNR for evaluation. This activity helps to prevent floodplain management compliance issues.
- Provide Base Flood Elevation (BFE) information to participating communities. Many of Nebraska's FIRMs have extensive areas where BFEs are not provided. Nebraska minimum standards for floodplain management programs state that all structures located in special flood hazard areas will be built at least one-foot above BFE. If BFE data is not provided by FEMA, or other agencies, NDNR will, upon request, provide BFE data to local units of government as best available data.
- Provide Map Change information to participating communities.
- Review proposed projects for participating communities to ensure compliance. Several state agencies request NDNR to review projects for floodplain management or critical facility considerations. NDNR routinely reviews and provides comments/guidance to requests.
- Conduct detailed engineering and field survey studies in participating communities. Nebraska statute 31-1018 charges NDNR with preparation of flood hazard data and maps. In this capacity, NDNR has conducted detailed analysis in several watersheds in Nebraska.

3. ENHANCE NDNR STAFF CAPABILITY AND UNDERSTANDING OF THE NFIP REQUIREMENTS THROUGH PROGRAMS, TRAINING, AND INTERACTION WITH FEMA AND OTHER STATES

Training and interaction with other floodplain management professionals will improve the capabilities and skills of NDNR staff resulting in improved program delivery to communities.

- NDNR staff will attend selected training sessions available at the Emergency Management Institute. As needed, NDNR staff has and will attend training provided by FEMA to better fulfill their responsibility as the state coordinating office for NFIP.
- Attend appropriate conferences and seminars such as the ASFPM Conference, meetings at FEMA Region VII, and other National Flood Conferences. NDNR strongly supports the Association of State Floodplain Managers and is annually represented at their national conference.

- Maintain affiliation and actively participate in the network of NFIP State Coordinators and ASFPM. NDNR continues to support networking with the other states in Region VII at the semi-annual joint meetings held with FEMA Regional staff and other Region VII states.
- Provide technical assistance and support to other states as requested. NDNR spent considerable time and resources to develop model-planning tools for Floodplain Map Modernization. These tools were shared within the Region and beyond to help states prioritize their needs.

4. UPDATE AND MAINTAIN DATABASE FOR FEMA'S REPETITIVE LOSS PROPERTIES IN NEBRASKA

Knowing the location and condition of each repetitive loss property will enhance NDNR's capability to target mitigation funding and other program support. The project includes:

- Site visits to each repetitive loss property identified in the state.
- Pictures of each property collected with a digital camera.
- Collecting a GPS reading for each property for use in future mapping.

5. ASSISTANCE TO COMMUNITIES IN RESPONDING TO DISASTERS

A team approach in handling floodplain management issues after a disaster will result in consistent program delivery.

- NDNR staff will be available and will coordinate activities with FEMA after a declared disaster. The NDNR staff has been and will be available to assist FEMA and other state agencies, as needed, in times of disaster in Nebraska. In past declared disasters NDNR staff have assisted, as requested, other agencies, and the citizens of the state with recovery by providing staff, materials, training and guidance as requested.

6. FLOODPLAIN MAP MODERNIZATION

NDNR will continue to coordinate with FEMA Region VII on activities associated with Floodplain Map Modernization.

- NDNR will attend NFIP Coordinator's meeting with Region. NDNR continues to support Map Mod by attending meetings with FEMA, on this important initiative.
- Organize and conduct State agency coordination meetings between various agencies who will be involved in State flood studies.

- NDNR continues to support FEMA when Final Meetings for Preliminary maps are held. NDNR Engineering staff supports these meetings providing technical guidance to assist FEMA's State Specialists in these presentations.
- When requested by FEMA, NDNR will prepare Cooperating Technical Partnership (CTP) agreements between the State and FEMA, which ensures coordination, performance, established timelines, provides monitoring and guarantees deliverables. NDNR supports this program as a CTP partner in the mapping of rural areas using approximate methods. NDNR provides technical support to other CTP partners in Nebraska, assisting, upon request, with this important program.
- Nebraska has a history as an active mapping partner with FEMA. Nebraska intends to continue with an aggressive in-house program of Approximate Zone A mapping.
- NDNR will continue to create methodologies and capabilities for the State to establish a hydraulic, hydrologic and topographic repository. Nebraska Statute 31-1017 establishes NDNR as the repository for all known flood data in the state. As state coordinator for the NFIP, NDNR houses all records and maps relating to this program.
- NDNR will make its floodplain repository more accessible to the public by moving it to an Internet website. Section 1.3.1 of Nebraska Business Plan for Map Modernization carefully documents NDNR's goal to provide an interactive Internet portal for the distribution of natural hazards information including digital flood map information for the state. This clearinghouse would include the distribution of D-FIRM products.
- NDNR will continue to determine funding needs to conduct identified and prioritized studies.
- NDNR will continue to determine what existing information is available at the State level to assist the study process.
- NDNR will continue to identify specific studies that are suitable for using advanced technology.

MILESTONES FOR YEARS 2005-2009

The following proposed milestones (in Table 1) address the three program weaknesses identified above. Milestones are not listed for specific ongoing NDNR activities. These milestones will demonstrate progress in meeting the State's vision and strategy.

Table 1. Proposed Milestones

Program Weakness	Proposed Solution	Proposed Milestone
Inadequate floodplain maps	NDNR will continue to participate in FEMA's Cooperating Technical Partners program, with an emphasis on cost-effective mapping of counties with low populations.	NDNR participation during particular years will vary depending on available federal funding. It is anticipated that all Nebraska counties will have Preliminary maps by FY2009.
Inadequate ordinance assistance	NDNR will continue to train and fully utilize existing staff. If necessary, contract employees will be hired on an annual basis to assist with telephone calls, correspondence, and meeting preparation.	NDNR proposes to hire at least one contract employee or soft-money full time equivalent employee (FTE) during FY2005, and a total of two employees for FY2006 and following, depending on the availability of funds.
Inadequate floodplain information available via Internet	NDNR will begin placing all public floodplain information on the Internet, including floodplain maps, studies, hydraulic models, etc.	FY2005: A website with available flood maps. Best available BFE data (for areas mapped Approximate Zone A) will be added as available. FY2006: All public community files scanned and available on the website.

PARTNERSHIPS

NDNR continues to coordinate with all appropriate state agencies, to increase understanding of, and compliance with, good floodplain management practices. NDNR coordinates with other state agencies on the Governor's Task Force.

NDNR coordinates with Nebraska Emergency Management Agency (NEMA) on matters relating to Hazard Mitigation Grant Programs. NDNR coordinates with NEMA when assisting FEMA following disasters.

NDNR coordinates with Nebraska Department of Roads, Nebraska Game and Parks Commission, Nebraska Department of Economic Development and Nebraska Department of Environmental Control routinely on project reviews to coordinate floodplain management programs with projects undertaken by those agencies. Recently, NDNR assisted the Nebraska Department of Administrative Services on an inventory of state structures that will ensure that flood hazards are inventoried as a part of the threat risk for all state-owned

buildings. NDNR has assisted the Nebraska Department of Economic Development with training on environmental review to ensure that Executive Order 11988 is incorporated as a part of the process in developing projects using state and federal funds.

TIME ESTIMATE

NDNR floodplain management staff time is currently allocated as shown in Table2.

Table 2. Allocation of Time

Element	% Time Allocated (4 FTE)	Strength/Weakness (Rate 5 to 0)
General technical assistance	25	5
N-CALCs	10	4
Provide engineering assistance to communities	10	5
Ordinance assistance	5	5
CIS data entry	5	5
Update and maintain database for FEMA's Repetitive Loss Properties in Nebraska	1	3
Program Administration	5	5
Mapping assistance	(Other funding)	5
Post-disaster assistance to communities	4	3
Coordination with other State programs to ensure State NFIP compliance	3	5
Workshops and other training	3	3
Provide technical assistance and support to other states as requested	3	5
Training and interaction with other floodplain management professionals	2	4
Newsletter	4	3
Interactive Internet Map Repository	(Other funding)	0
Developing the 5-Year Floodplain Management Work Plan	4	5
State model ordinance research	1	5
Map Modernization	15	4
Map Delivery Meetings	(Other funding)	5

ELEMENTS NOT INCLUDED

NDNR does not conduct CAV/CAC activities as defined in CAC/CAV guidance documents. Instead, Nebraska has adopted the Nebraska-Contact to Assist Local Coordinators (N-CALC) program.

If during the course of an N-CALC, program violations are determined, NDNR works closely with the community to seek resolutions. If communities aren't responsive, FEMA Region VII is notified.

*NOTE: N-CALC contact visits are included in CIS data support as a CAC, though technically, the directives in the CAC/CAV Guidance Document are not fully followed.

MIX OF ACTIVITIES

Map Modernization and mapping activities will increase or decrease depending on available funding. However, due to projects already in the pipeline and being completed year-by-year, the support activities (including ordinance and adoption assistance) will continue to increase. Placing floodplain information on the Internet is expected to require a large effort initially, with ongoing level of effort for maintenance, information updates, hardware replacement and software licensing.

IV. NEEDS ANALYSIS AND GAP ASSESSMENT

There were three primary needs identified in Section II. The associated funding gap is described in Table 3.

Table 3. Gap Assessment

Program Weakness	Proposed Solution	Funding Gap
Inadequate floodplain maps	Continue to participate in FEMA's Cooperating Technical Partners program.	(Funded by CTP, not CAP-SSSE)
Inadequate ordinance assistance	NDNR may hire contract or soft-money employees on an annual basis to assist with telephone calls, correspondence, and meeting preparation	FY2005: $50,000 FY2006 and following: $100,000 per year
Inadequate floodplain information available via Internet	Placing all public floodplain information on the Internet, including floodplain maps, studies, hydraulic models, etc.	FY2004/2005: $100,000 FY2006 and following: $35,000 per year

V. MAP MODERNIZATION ACTIVITIES

NDNR will continue to support Floodplain Map Modernization. A major component of this support will be activities directed at assisting communities with adoption of the new floodplain maps, and associated ordinance changes. Communities in the State of Nebraska have historically had a very high rate of ordinance adoption when the associated FIRM has been published. While the State cannot force a community to adopt the new maps, education and outreach have been found to be effective tools for working with local governments.

An outreach strategy for a countywide Approximate Zone A mapping effort typically includes the following components:

- An initial letter to the county, all included communities, and the associated Natural Resources District(s). The letter is typically addressed to the chief elected official, with a copy addressed to the floodplain manager if that position is filled. The letter gives the schedule for mapping and asks for any appropriate information such as updated topographic or survey data, bridge and dam information.
- A follow-up phone call to see if the letter arrived, and to inquire whether there are any questions about the mapping.
- A meeting is held, if requested by the community.
- When mapping is completed, a meeting is scheduled with the county boards. The Preliminary Maps are hand-delivered to the County Board meeting. At the same time, Preliminary Maps and a copy of the mapping report are mailed to towns and villages, making them aware of the County Board meeting and offering to meet with them.
- Maps are finalized, or further analysis is conducted, based on comments received from the communities.

VI. PERFORMANCE EVALUATION

Many of the performance measures that have been suggested either have been adequately covered or do not apply to the State of Nebraska. For example, increasing the number of Certified Floodplain Managers among Floodplain Section staff is a mute point because all staff members are already CFMs and/or Professional Engineers (with a practice area in hydrology and hydraulics). Additionally, the performance measures should be simple and easy to confirm, without spending a large portion of each day recording daily activities.

Nebraska believes the so-called *shared* outcome of maintaining or increasing the percentage of communities adopting new maps by the effective date is not appropriate for two reasons:

- Nebraska has worked very hard to convince communities to join the NFIP and adopt the current maps. During the period of Map Modernization there will be many communities that are new to the process that will require time to become familiar with the NFIP. A more fair measurement method would separate communities that have previously had floodplain maps from those that are newly mapped.
- Finalized maps have been received from the Government Printing Office as little as two weeks prior to the effective date. It is difficult, if not impossible, to convince a community to adopt a map they have not reviewed. It would be better to count communities that adopt maps in time to avoid suspension from the program.

Given the above concerns, the Performance Measures listed in Table 4 are proposed:

Table 4. Proposed Performance Measures

Outcome/Output	Method of Measurement
Maintain or improve the % of communities that adopt new maps within 6 months from the date the Director of FEMA provides the data upon which the floodplain regulations shall be based.(44 CFR 59.24) The State is not ultimately responsible for the map adoption process.	Compare the number of communities, which currently have effective FIRMs, receiving new maps with how many adopted the new maps and have compliant ordinances.
Increase the number of flood-prone communities in Nebraska enrolled in the NFIP.	Compare the number of flood-prone communities enrolled in the program at the end of FY-2004 with the number in subsequent years.
Increase (or maintain) the number of communities that have adopted the latest Nebraska model ordinances, or have adopted ordinances that meet or exceed State minimum standards.	Compare the FY-2004 number of communities that have adopted the latest model ordinance, with the number in subsequent years.
Increase floodplain management training in the state.	Compare the number of local officials, surveyors, and engineers attending workshops in FY-2004 and compare to subsequent years.
Establish or increase participation in the Nebraska Floodplain and Stormwater Managers Association (or equivalent organization(s).	Compare the number of Association participants in FY-2004 with the number in subsequent years.

SUMMARY

NDNR is currently funded by the state to implement the statutory obligations of the agency. Additional CAP-SSSE funds have allowed NDNR to develop and expand program capabilities that would have been difficult to achieve during current state budget shortfalls. The 5-Year CAP-SSSE Floodplain Management Plan will assist NDNR and FEMA Region VII in visualizing Nebraska's floodplain management program and its relationship to the CAP-SSSE Program and the new maps produced under the Multi-hazard Floodplain Map Modernization Program.

With recent emphasis from FEMA on the Map Modernization program and the additional funds that have been provided by Congress for this important program, it is essential that the NDNR and FEMA Region VII keep **flood loss reduction** firmly established as the overall target of floodplain management's goal and purpose. Maintaining and improving the ability of local units of government to properly regulate their floodplain management programs and be provided with all of the tools required to serve the public must remain our focus. If any of the elements of a sound program are overlooked, the overall goal of flood loss reduction will be compromised. Even though the Internet and other sources have become available to support the program, all too frequently, individual assistance is required in the form of a friendly voice on the telephone, or a concerned and interested government employee attending meetings and providing training. This assistance provided by NDNR is required in order for local floodplain administrators and communities to make confident, sound decisions.

The current lack of floodplain maps is being resolved by FEMA's Multi-hazard Floodplain Map Modernization program.

Map Modernization, if implemented as planned, will require additional efforts by NDNR staff. Meetings and travel as part of outreach, communication, and adoption assistance will stretch manpower capabilities.

When developed, Nebraska's digital map portal and associated CD distribution system will provide a valuable resource for the distribution of floodplain map products to Nebraska's customers. This distribution system will reduce the reliance on distributing paper products and make them readily available in in an easy-to-access digital format.

ATTACHMENT 1

NEBRASKA FLOODPLAIN STATUTE

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

FLOOD PLAIN

CHAPTER 31, ARTICLE 10

DECEMBER 2003

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CHAPTER 31, ARTICLE 10

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CHAPTER 31
REISSUE REVISED STATUTES OF NEBRASKA, 1943

ARTICLE 10

FLOOD PLAIN

31-1001. Legislative findings; purpose of sections. (1) The Legislature finds that recurrent flooding in various areas of the state presents serious hazards to the health, safety, welfare, and property of the people of the state, both within and outside such areas. The hazards include loss of life, loss of and damage to private and public property, disruption of lives and of livelihoods, interruption of commerce, transportation, communication, and governmental services, and unsanitary and unhealthy living and environmental conditions. The wise use of land subject to flooding is a matter of state concern. The Legislature further finds that the establishment of improved flood plain management practices and the availability of financial assistance to citizens of the state whose property is damaged during times of flooding are essential to the health, safety, and general welfare of the people of Nebraska.

(2) The purposes of sections 31-1001 to 31-1023 shall be to:

(a) Accelerate the mapping of flood-prone areas;

(b) Assist local governments in the promulgation and implementation of effective flood plain management regulations and other flood plain management practices;

(c) Assure that when state lands are used and state-owned and state-financed facilities are located and constructed, flood hazards are prevented, flood losses are minimized, and the state's eligibility for flood insurance is maintained; and

(d) Encourage local governments with flood-prone areas to qualify for participation in the national flood insurance program.

Source: Laws 1983, LB 35, § 1; Laws 1993, LB 626, § 1.

31-1002. Definitions, where found. For purposes of sections 31-1001 to 31-1023, unless the context otherwise requires, the definitions in sections 31-1003 to 31-1016 shall apply.

Source: Laws 1983, LB 35, § 2; Laws 1993, LB 626, § 2.

31-1003. Department, defined. Department shall mean the Department of Natural Resources.

Source: Laws 1983, LB 35, § 3; Laws 2000, LB 900, § 75.

31-1004. Repealed. Laws 1993, LB 626, s. 8.

31-1005. Base flood, defined. Base flood shall mean the flood having a one percent chance of being equalled or exceeded in magnitude in any given year.

Source: Laws 1983, LB 35, § 5.

31-1006. Drainway, defined. Drainway shall mean any depression two feet or more below the land which serves to give direction to a current of water less than nine months of the year, and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 6.

31-1007. Flood, defined. Flood shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

Source: Laws 1983, LB 35, § 7.

31-1008. Floodway, defined. Floodway shall mean the channel of a watercourse or drainway and the adjacent land areas that are necessary to be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a reasonable height, as designated by the department.

Source: Laws 1983, LB 35, § 8; Laws 2000, LB 900, § 76.

31-1009. Flood fringe, defined. Flood fringe shall mean that portion of the flood plain of the base flood which is outside of the floodway.

Source: Laws 1983, LB 35, § 9.

31-1010. Flood plain, defined. Flood plain shall mean the area adjoining a watercourse or drainway which has been or may be covered by flood waters.

Source: Laws 1983, LB 35, § 10.

31-1011. Flood plain management, defined. Flood plain management shall mean the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, flood control works and flood plain management regulations.

Source: Laws 1983, LB 35, § 11.

31-1012. Flood plain management regulations, defined. Flood plain management regulations shall mean and include zoning ordinances, subdivision regulations, building codes, and other applications of the police power which are authorized by law to secure safety from floods and provide for the reasonable and prudent use of flood plains.

Source: Laws 1983, LB 35, § 12.

31-1013. Local government, defined. Local government shall mean a county, city, or village in the state.

Source: Laws 1983, LB 35, § 13.

31-1014. National flood insurance program, defined. National flood insurance program shall mean the program authorized by the United States Congress under the National Flood Insurance Act of 1968, as amended, 42 U.S.C., 4001 to 4128.

Source: Laws 1983, LB 35, § 14.

31-1015. Obstruction, defined. Obstruction shall mean any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. Obstruction shall not include a dam designed to store or divert water for which permission for construction has been obtained from the Department of Natural Resources pursuant to section 46-257.

Source: Laws 1983, LB 35, § 15; Laws 1993, LB 626, § 3; Laws 2000, LB 900, § 77.

31-1016. Watercourse, defined. Watercourse shall mean any depression two feet or more below the surrounding land which serves to give direction to a current of water at least nine months of the year and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 16.

31-1017. Department; flood plain management; powers and duties. The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify by mail the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78.

Cross Reference

Administrative Procedure Act, see section 84-920.

This section requires the Nebraska Natural Resources Commission to adopt, at a minimum, flood plain regulations promulgated by the Federal Emergency Management Agency. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

31-1018. Preparation of flood hazard data and maps; department; duties; considerations. In determining areas of the state for which state-prepared flood hazard data and maps are needed by local governments or by state or federal agencies and the order in which such data and maps are to be prepared, the department shall consider the following factors in such areas:

(1) Potential for future development;

(2) Potential for flood damage or loss of life;

(3) Probability that adequate data and maps will be prepared within a reasonable time by other sources;

(4) Availability and adequacy of any existing maps;

(5) Availability of flood data and other information necessary to produce adequate maps; and

(6) Degree of interest shown by the local governments in the area in utilizing flood data and maps in an effective flood plain management program.

Flood area data and maps produced by the department may be provided either directly to the local government which has jurisdiction over such area or indirectly through the national flood insurance program if the department and the federal agency responsible for administering the national flood insurance program agree to such an arrangement. Such maps shall delineate the flood plain of the base flood and, when information is available, the floodway and flood fringe of such flood plain. Such maps shall also contain or be accompanied by such other information as the department deems appropriate.

Source: Laws 1983, LB 35, § 18; Laws 1993, LB 626, § 5; Laws 2000, LB 900, § 79.

31-1019. Local government; flood plain management; duties. When the department, a federal agency, or any other entity has provided a local government with sufficient data and maps with which to reasonably locate within its zoning jurisdiction any portion of the flood plain for the base flood of any watercourse or drainway, it shall be the responsibility of such local government to adopt, administer, and enforce flood plain management regulations which meet or exceed the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017. The authority of a local government to adopt flood plain management regulations in accordance with this section shall not be conditional upon a prior appointment of a planning commission or the adoption of a comprehensive development plan pursuant to sections 14-403, 14-404, 14-407, 15-1101, 15-1102, 19-901, 19-929, 23-114.01 to 23-114.03, or 23-174.04 to 23-174.07.

Source: Laws 1983, LB 35, § 19; Laws 2000, LB 900, § 80.

31-1020. Local government; failure to implement flood plain management regulations; department; powers and duties. If a local government does not adopt and implement flood plain management regulations in accordance with section 31-1019 within one year after flood hazard data and maps have been provided to it pursuant to such section, the department shall, upon petition of at least ten percent of the owners of the land located within the flood plain of the base flood delineated in such maps, or upon the written request of the board of directors of the natural resources district in which such land is located, conduct a public hearing after providing notice pursuant to section 31-1022. If the department finds after such hearing that the data and maps available are sufficient to reasonably locate the boundaries of the base flood, the department shall determine and fix by order the boundaries of the base flood and, where deemed appropriate, the boundaries of the floodway within the zoning jurisdiction of such local government. If within three months after the date of such order the local government still has not adopted and implemented flood plain management regulations for the area subject to such order in accordance with section 31-1019, the department shall be vested with the power and authority to adopt flood plain management regulations for the area and shall adopt and promulgate such regulations for the identified base flood within the zoning jurisdiction of such local government. Such regulations shall be consistent with the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017 and shall take effect on the date prescribed by the department. All ordinances or other actions by the local government which are contrary to the rules and regulations of the department shall be null and void.

Source: Laws 1983, LB 35, § 20; Laws 1993, LB 626, § 6; Laws 2000, LB 900, § 81.

31-1021. Local government; enforce department regulations. It shall be the duty of the local government to administer and enforce any regulations adopted by the department pursuant to section 31-1020 in the same manner as if the local government had enacted such regulations. Such duty may be enforced in a mandamus action brought against such local government by any resident or landowner within the jurisdiction of such local government. If such mandamus action is successful, the local government may be held responsible for all reasonable and actual costs of the plaintiff, including, but not limited to, attorney's fees. Neither the regulations enacted by the department nor the boundaries of the base flood or floodway adopted by the department may be modified by the local government without the written consent of the department, except that a local government may adopt a measure more restrictive than that adopted by the department.

Source: Laws 1983, LB 35, § 21; Laws 2000, LB 900, § 82.

31-1022. Adoption of regulations; notice; hearing; appeal. Notice of any hearing to be conducted by the department pursuant to section 31-1020 shall be given to the clerk of the local government and to such other local officials as the department deems appropriate, at least thirty days prior to the hearing. Notice shall also be published

in a newspaper of general circulation in the area involved at least once each week for three consecutive weeks, the last publication of which shall be not less than five days prior to the date set for the hearing. The rules and regulations of the department adopted and promulgated in accordance with section 31-1020 shall not be subject to the provisions of the Administrative Procedure Act. Appeals from department determinations pursuant to section 31-1020 may be taken by any aggrieved party, and the appeals shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 35, § 22; Laws 1988, LB 352, § 28; Laws 2000, LB 900, § 83.

Cross Reference

Administrative Procedure Act, see section 84-920.

31-1023. State agencies, boards, and commissions; flood plain management duties. (1) All state agencies, boards, and commissions shall take preventive action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads, and other facilities, and shall take such steps as are necessary to insure compliance with the minimum standards adopted by the department in accordance with subdivision (5) of section 31-1017 when such facilities are being located or constructed in any area where no local government is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021. If a local government with jurisdiction over the land upon which any such facility is to be located or constructed is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021, the state agency, board, or commission locating or constructing such facility shall comply with such regulations unless such compliance is specifically waived by the department.

(2) The department shall assist state agencies, boards, and commissions in determining and evaluating flood hazards and alternative flood protective measures and shall establish by rule or regulation, standards and procedures to govern its review of proposed state-owned and state-financed facilities not subject to local flood plain management regulations. Such standards and procedures shall meet the minimum criteria necessary to maintain the state's eligibility for flood insurance under the national flood insurance program.

Source: Laws 1983, LB 35, § 23; Laws 1993, LB 626, § 7; Laws 2000, LB 900, § 84.