

17: CONSERVATION
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER h: WATER RESOURCES

PART 3710
FLOODPLAIN DEVELOPMENT REQUIREMENTS FOR STATE OWNED PROPERTIES

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AUTHORITY: Implementing and authorized by Sections 18k and 30 of the Rivers, Lakes and Streams Act [615 ILCS 5/18k and 30].

SOURCE: Emergency rule adopted at 49 Ill. Reg. 1883, effective January 30, 2025, for a maximum of 150 days; emergency rule expired June 28, 2025; adopted at 49 Ill. Reg. _____, effective July 8, 2025.

Section 3710.10 Purpose

This Part is adopted to meet the requirements of 615 ILCS 5/18(k) of the Rivers, Lakes and Streams Act and to comply with the rules and regulations of the Federal Emergency Management Agency's National Flood Insurance Program codified as 44 CFR 59 to 60, as amended.

Section 3710.15 Definitions

For the purposes of this Part, the following definitions are adopted:

"Accessory Structure" means a non-habitable building, used only for parking of vehicles or storage, that is on the same parcel of property as the principal building, and which is incidental to the use of the principal building.

"Agricultural Structure" means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection

with these purposes or uses are also considered to have agricultural purposes or uses.

"Applicant" means the state agency that is applying for a Special Flood Hazard Area Development Permit.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. (see 44 CFR 59.1)

"Base Flood Elevation" (BFE) means the height in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified) of the crest of the base flood.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides. (see 44 CFR 59.1)

"Building" has the same meaning as "structure". (see 44 CFR 59.1)

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction (see 44 CFR 59.1).

"Conditional Letter of Map Revision" means a letter providing FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing floodway, the BFEs, or the floodplain.

"Critical Facility" means any facility that is critical to the health and welfare of the population and, if flooded, would create an added dimension to the disaster. Critical facilities include, but are not limited to, police or firefighting buildings, corrections facilities, hazardous materials storage units (chemicals, petrochemicals, hazardous or toxic substances), nursing homes, hospitals, health care facilities, assisted living facilities, residential educational facilities, retirement care facilities, critical utility sites (telephone switching stations or electrical transformers), and facilities used to store critical records. Roads and bridges are not defined as critical facilities for purposes of this Part.

"Dam" means all obstructions, wall embankments or barriers, together with their abutments and appurtenant works, if any, constructed for the purpose of storing or diverting water or creating a pool. Dams may also include weirs, restrictive

culverts, or impoundment structures. Underground water storage tanks are not included.

"Department" means the Illinois Department of Natural Resources [615 ILCS 5/18k(a)].

"Development" and "developed" mean any man-made change to real estate, including, but not limited to:

(1) demolition, construction, reconstruction, repair, placement of a building, or any structural alteration to a building;

(2) substantial improvement of an existing building;

(3) installation of a manufactured home on a site, preparing a site for a manufactured home, or installing a travel trailer on a site for more than 180 days per year;

(4) installation of utilities, construction of roads, bridges, culverts, or similar projects;

(5) redevelopment of a site, or clearing of land as an adjunct of construction or construction or erection of levees, dams, walls, or fences;

(6) drilling, mining, filling, dredging, grading, excavation, paving, or other alterations of the ground surface;

(7) storage of materials, including the placement of gas or liquid storage tanks, and channel modifications or any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" and "developed" do not include resurfacing of pavement when there is no increase in elevation; construction of farm fencing; or gardening, plowing, and similar practices that do not involve filing, grading, or construction of levees. [615 ILCS 5/18K(a)]

"Elevation Certificate" means a form published by FEMA that is used to certify the elevation to which a building has been constructed.

"Existing Construction" means the structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures". (see 44 CFR 59.1)

"Existing Structures" – has the same meaning as "existing construction".

"FEMA" means the Federal Emergency Management Agency and its regulations at 44 CFR 59 through 79, as amended.

"Flood" or "Flooding" means:

A general and temporary condition of partial or complete inundation of normally dry land areas from:

The overflow of inland or tidal waters;

The unusual and rapid accumulation or runoff of surface waters from any source; or

Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event.

"Flood Fringe" means that portion of the floodplain outside of the regulatory floodway.

"Flood Insurance Rate Map" or "FIRM" means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM). (see 44 CFR 59.1)

"Flood Insurance Study" or "FIS" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

"Floodplain" and "Special Flood Hazard Area" means those lands within the jurisdiction of the State of Illinois that are subject to inundation by the base flood and are identified on the Flood Insurance Rate Maps (FIRM) for the State of Illinois. See the definition of "Special Flood Hazard Area".

"Flood Protection Elevation" means the elevation of the base flood plus one foot of freeboard at any given location in the floodplain.

"Floodway" means that portion of the floodplain required to store and convey the base flood. The floodway for the floodplains of the State of Illinois shall be as delineated on the FIRM of Illinois prepared by FEMA.

"Freeboard" means an increment of elevation added to the BFE to provide a factor of safety for uncertainties in calculations, future watershed development, unknown localized conditions, wave actions and unpredictable effects such as those caused by ice or debris jams.

"Historic Structure" means any structure that is:

- Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- By an approved state program as determined by the Secretary of the Interior; or

- Directly by the Secretary of the Interior in states without approved program. (see 44 CFR 59.1)

"Letter of Map Amendment" means an official determination by FEMA that a specific building, defined area of land, or a parcel of land, where there has not been any alteration of the topography since the date of the first NFIP map showing the property within the floodplain, was inadvertently included within the floodplain and that the building, defined area of land, or a parcel of land is removed from the floodplain.

"Letter of Map Revision" means a letter granted by FEMA that revises BFEs, floodplains or floodways as shown on an effective FIRM.

"Lowest Floor" means the lowest floor of the enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 3710.40.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle". (44 CFR 59.1)

"NAVD 88" means the North American Vertical Datum of 1988.

"New Construction" means, for floodplain management purposes structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (see 44 CFR 59.1)

"NFIP" means the National Flood Insurance Program operated by the Federal Emergency Management Agency.

"Recreational Vehicle" means a vehicle which is:

Built on a single chassis;

400 square feet or less when measured at the largest horizontal projection;

Designed to be self-propelled or permanently towable by a light duty truck; and

Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. (44 CFR 59.1)

"Repetitive Loss" means flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

"Special flood hazard area" means an area having special flood, mudflow or flood-related erosion hazards and shown on a Federal Emergency Management Agency Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A-30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE or V. [615 ILCS 5/18k(a)]

"Special Flood Hazard Area Development Permit" or "Permit" means, unless the context of the language states otherwise, the permit that all State agencies are required to obtain from the Department before undertaking development activity on State-owned property that is in a special flood hazard area as required by 615 ILCS 5/18k.

"State Agencies" means any department, commission, board, or agency under the jurisdiction of the Governor, any board, commission, agency, or authority which has a majority of its members appointed by the Governor, and the Governor's Office. [615 ILCS 5/18k(a)]

"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other

structural part of a building, whether or not that alteration affects the external dimensions of the building. (44 CFR 59.1)

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Substantial Damage" means damage of any origin sustained by a structure whereby the percentage of damage sustained during a 10-year period equals or exceeds 50% of the market value of the structure before the damage occurred regardless of actual repair work performed. Volunteer labor and materials must be included in this determination. The term includes "Repetitive Loss Buildings" (see definition).

"Substantial Improvement" means any reconstruction, rehabilitation, addition or improvement of a structure during the last ten years in which the percentage of improvements equals or exceeds 50% of the market value of the structure before the improvement or repair is started. Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred repetitive loss or substantial damage, regardless of the actual repair work done.

Substantial improvement does not include:

Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

Any alteration of a structure listed on the National Register of Historic Places or the Illinois Register of Historic Places.

"Watercourse" means any channel through which water flows including rivers, streams, creeks, drains, or culverts. This includes any channel that takes seasonal flows and which may at times be dry.

Section 3710.20 Development Standards

All State development activity must first comply with and obtain required permits pursuant to 17 Ill. Adm. Code 3700, 3704, and 3708. After compliance with 17 Ill. Adm. Code 3700, 3704, and 3708, all development activity located in a floodplain, which includes both floodway and flood fringe, shall comply with all requirements of 44 CFR 60 as effective on January 1, 2025 and does not include any later editions or amendments. This Part applies to State development on both

new and existing construction. The following are additional standards to the requirements of 44 CFR 60 that all State development activity must also comply with:

- a) All new, substantially improved, or substantially damaged structures must have the lowest floor, including basements, at or above the flood protection elevation.
- b) Critical facilities that are new, substantially improved, or substantially damaged must have the lowest floor, including basements, elevated or structurally dry floodproofed to the 0.2% annual chance flood elevation when delineated on the FIRM or three feet above the BFE, whichever is greater. Adequate parking shall be provided for staffing of the critical facilities at or above the BFE or 0.2% chance flood when delineated on the FIRM, when defined.
- c) For all projects involving channel modification, fill, or stream maintenance (including levees), the flood carrying capacity of the watercourse shall be maintained. In addition, the State agency performing the development activity shall notify communities, that are both adjacent to the impacted watercourse and adjacent to the project, in writing thirty days prior to applying for a permit for the alteration or relocation of the watercourse. A copy of this notification shall be included with the permit application.
- d) If the proposed development activity modifies the FIRM, then the agency that is applying for the permit is responsible for submitting an application to FEMA for a formal determination to change the map. This process is done through the Letter of Map Change request and includes Letter of Map Amendment, Letter of Map Revision, and the Conditional Letter of Map revision.

Section 3710.25 Application

Special Flood Hazard Area Development Permit. All activity requiring a permit pursuant to this Part shall file an application with the Department as required in this Section.

- a) All permit applications shall be on forms provided by the Department.
- b) The application for a permit shall be accompanied by the following:
 - 1) A site plan or drawings, drawn to scale using NAVD 88, showing:
 - A) property lines and dimensions;
 - B) existing grade elevations;
 - C) all changes in grade resulting from excavation or filling;

- D) description of the benchmark or source of survey elevation control;
 - E) sewage disposal facilities;
 - F) water supply facilities;
 - G) floodplain limits based on elevation or depth, as applicable;
 - H) floodway limits, as applicable;
 - I) the location and dimensions of all buildings and additions to buildings;
 - J) the location and dimensions of all structures, including but not limited to roads, bridges, fences, culverts, decks, gazebos, agricultural structures, and accessory structures; and
 - K) the elevation of the lowest floor (including basement) of all proposed buildings subject to the requirements of this Part. This may be included as an elevation certificate.
- 2) The cost of the project or the improvements, including all materials and labor, as estimated by a licensed professional engineer or architect. A signed estimate by a contractor may also meet this requirement.

Section 3710.30 Requirements to Obtain and Contents of a Development Permit

- a) No State agency shall commence any development in a floodplain without first obtaining a permit from the Department and shall follow all requirements and standards as specified in the issued permit for all development activity.
- b) No State agency shall commence any development of a critical facility on land below the 0.2% annual chance flood elevation without first obtaining a permit from the Department.
- c) The Department will only issue a permit for development activities, including new construction and substantial improvements, that meet the requirements of this Part.
- d) The Department shall notify an applicant of any deficiencies in their application, if the application is denied, and the reasons for the denial.

- e) The start of construction, as defined, for work authorized by a permit issued under this Part, shall commence within 180 days after its issuance. All permitted work shall be completed by the permit expiration date located on the permit or the permit shall expire.
- f) Time extensions for the completion of permitted work may be granted, in writing, by the Department. If a time extension is granted by the Department, the extension shall be granted only if the original permit is compliant with this Part, the FIRM, and the FIS in effect at the time the extension is granted.

Section 3710.35 Variances

- a) Whenever the standards of this Part place undue hardship on a specific development proposal, the applicant may apply to the Department for a variance, of this Part.
- b) No variances shall be granted within a floodway if any increases in the base flood elevation would result.
- c) No variance shall be granted unless the applicant demonstrates and the Department finds that all of the following conditions are met:
 - 1) The development activity cannot be located outside the floodplain.
 - 2) A failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
 - 3) The variance granted is the minimum necessary, considering the flood hazard, to afford relief.
 - 4) There will be no additional threat to public health, public safety, destruction of beneficial stream uses and functions including, aquatic habitat, causation of fraud on or victimization of the public, conflict with existing local laws or administrative rules, or creation of a nuisance. There will be no additional State expense for flood protection, rescue or relief operations, policing, lost environmental stream uses and functions, repairs to streambeds and banks, or repairs to roads, utilities, or other public facilities.
 - 5) The circumstances of the property are unique and do not establish a pattern inconsistent with the intent of the NFIP.

- 6) Good and sufficient cause has been shown that the unique characteristics of the size, configuration, or topography of the site renders the requirements of this Part inappropriate.
 - 7) All other State and federal permits, other than the permit required by this Part, have been obtained.
- d) Considerations for Review. In reviewing applications for variances, the following shall be considered:
- 1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
 - 2) The danger to life and property due to flooding or erosion damage.
 - 3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
 - 4) The importance of the services provided by the proposed development to the State agency.
 - 5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion.
 - 6) The compatibility of the proposed development with existing and anticipated development.
 - 7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
 - 8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - 9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - 10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

- 11) All technical evaluations, all relevant factors, all other portions of this Part.
- e) Historic Structures. Variances issued for the reconstruction, repair, or alteration of a historic site or historic structure may be granted subject to the conditions that:
 - 1) The repair or rehabilitation is the minimum necessary to preserve the historic character and design of the structure.
 - 2) The repair or rehabilitation will not preclude the structure's continued designation as a historic structure.

Section 3710.40 Reports and Certification

- a) Certification and As-Built Documentation. The applicant is required to submit certification by a licensed professional engineer or registered land surveyor that the finished fill and building elevations were accomplished in compliance with Section 3710.20. Floodproofing measures must be certified by a registered professional engineer or registered architect as being compliant with applicable floodproofing standards.
- b) All certifications that are required by this Section shall be filed with the Department within 90 days after completion of the permitted activities.

Section 3710.45 Suspension of Permit

- a) The Department shall suspend a permit and no further construction or development may continue if any of the following occurs:
 - 1) Any requirements of this Part have been violated or any development is not in compliance with all standards, laws, or rules of this State or of the United States.
 - 2) The start of construction for work authorized by a permit issued under this Part, is not commenced within 180 days after its issuance or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. All permitted work shall be completed by the permit expiration date located on the permit or the permit shall expire.
- b) Suspensions shall be rescinded by the Department upon the Department's satisfaction that the permittee is in compliance with this Part.
- c) The Department shall notify the permittee, in writing:

- 1) all violations of the requirements of this Part;
 - 2) that the permit is suspended; and
 - 3) what is needed to correct the violations.
- d) The permittee shall have 90 days to provide the Department, in writing, proof that continued activity that is authorized under the permit is in compliance with this Part, and all measures that will be taken to correct any violations of this Part, including a timeline of completion of those corrections.
- e) The Department may allow, in writing, continued construction or development while a permit is suspended, but only to the extent that the activity is to correct a violation of this Part.
- f) Failure to obtain a permit for development in the floodplain or failure to comply with the conditions of a permit or a variance shall be deemed to be a violation of this Part.