2020 MA Model Floodplain Bylaw **Frequently Asked Questions**

These questions were posed during the 2020 Model Bylaw training sessions offered by the state and FEMA in early October 2020. To access the Model and the presentation, go to:

https://www.mass.gov/guides/floodplain-management

Adoption deadline

By what date will these bylaws need to be adopted?

If your community will be receiving new maps, then the 2020 Model will be used to review your bylaws (or ordinances) as a part of your map adoption process by the effective date of the new maps.

If the state or FEMA conducts a monitoring visit or interview with your community, the 2020 Model will be used in reviewing your bylaws, and you will need to provide a date by which you will adopt them.

If neither of the above applies to your community within the next year, then we will expect that you will adopt the 2020 Model bylaws at your next earliest convenience.

Location of bylaws in local codes

In what part of the local code should a community place these floodplain bylaws?

This decision is up to the community, but the bylaws need to reside in an adopted and enforceable part of your codes (bylaws or ordinances.) You may gather them together under your Floodplain Overlay District section of your zoning bylaws, put them together in your wetlands bylaws, or other reasonable location where citizens and floodplain developers can find them. Some of these pertain to subdivisions, and may go in that section. Wherever the bylaws reside, we will need you to cite them for us when we review your code if we cannot find them.

What about towns that don't have wetlands bylaws?

Many communities put these bylaws in their zoning regulations, typically under a Floodplain Overlay District section.

If we address subdivisions and flood elevations in the Subdivisions Rules & Regulations, do we also need to include the subdivision language in our Floodplain Overlay District zoning bylaw?

The bylaws do not need to be duplicated in different parts of your local codes, but you will need to enforce them throughout your floodplains, so it would be best to put them where developers can find them for proposed projects.

Map references

How do we know whether to use the community or county map references section?

On your community's flood maps, the name of the community (town, city, or county) is shown on the title panel at the lower right corner. If you need assistance in making this determination, you can contact Eric Carlson at eric.carlson@mass.gov.

Do we still need to insert all the panel numbers and dates as we did before?

FEMA is no longer requiring that each map panel be separately referenced. The date of the Index (of maps) and the Flood Insurance Study must each be referenced. Using the provided bylaw text should make this easy.

Legal purpose bylaws

What if we have these (abrogation/ greater restriction, disclaimer of liability, severability) **in a different part of our local codes? Do we have to move or add them to the Floodplain Overlay District section?**

No. As long as you can cite them from an enforceable part of your adopted code, they can stay right where they are. No need to add to another section.

Floodplain Administrator (FPA)

Can a Floodplain Administrator be designated as more than one position?

No. The purpose of designating an FPA is so that both FEMA and the state will have one contact for the community for communication regarding NFIP and floodplain matters. While we understand that best practice floodplain management means that an integrated team of people will review and enforce floodplain development, we will still need the position (and thereby the name, title, and contact information) of your designated FPA.

For FPA, is it acceptable for a community to designate an entire board or committee?

No, it's not acceptable for an entire board or committee to be the FPA. You may, however, designate the head of that group as the FPA, or perhaps the staff contact for the group.

Does the floodplain administrator need to be a Certified Floodplain Manager (CFM)?

No, but that's a worthy goal as this certification indicates both the person's and the community's desire to put forth the best floodplain management possible. Also, there are additional points for a CRS community that has certified staff.

Can you define the role of the Administrator more specifically?

The role of the FPA is more fully explained in the 2020 Model Bylaw, section 4.

Variances

Which communities have the authority to issue a variance to the state building code? How do we know if we are one of them?

There are very few. These communities have local Building Code Appeals Boards (in contrast to a Zoning Code Appeals Board.) If you aren't sure, you're probably not one of them. To find out, contact the staff at the Board of Building Regulations and Standards: Dan Walsh, Chief of Inspections, 617-826-5236 or dan.p.walsh@mass.gov

If building code variances are issued by the state, why is the town held responsible?

The community is not held responsible for actions by the state. The variance sections found in the 2020 Model Bylaw are there to assure that 1) the community is aware of the request for a variance from floodplain regulations; 2) if the variance is granted, that the community notify the applicant in writing that there may be increased flood risk associated with the variance, and an increase in annual flood insurance premiums; and 3) the community documents the variance and notification in their permit files for future reference.

Would allowing a variance disqualify a community from the Community Rating System?

The allowance of a variance does not disqualify a community from the Community Rating System (CRS.) A pattern of allowing frequent or unjustified variances may impact a community's standing in the NFIP (and therefore CRS), however, and may be investigated in order to find a way to reduce this practice. If the state is approving the variances, the state will be involved in such an inquiry.

Is a variance also required from the ordinance/bylaw itself?

Yes, if the variance is to the floodplain development regulations found in your local code. See the explanation for bylaw #9 in the Model, section 4.

Permit for all development

The suggested bylaw states that the community will require "a permit for all proposed construction or other development in the floodplain…" Does this mean that we have to institute a new permit form and fees for things other than the building code?

Not necessarily. Different communities use different methods to assure that all floodplain development is reviewed. The intention here is to assure that all development in the floodplain is reviewed by the community, using whatever tools the community deems best for this practice. For example, some communities use an integrated online review tool for every activity in their floodplains. Others use a checklist showing that pertinent departments and boards have signed off on the development as proposed. You may develop or use a form if that best fits your needs—whatever assures that appropriate review is being conducted for all development in the floodplain. Please see the NFIP definition of "development" in the Model to understand the reach of this bylaw.

Can things like fences and driveways be permitted through a building permit, rather than a special permit?

Your local building official knows which things can be permitted through the building code. Paving is generally covered under local bylaws; some communities put these in their zoning regulations and some in their stormwater management plans. If the pavement is to be placed where it will impact a resource area, the conservation commission will most likely need to review the proposal to determine its impact on area resources including the floodplain. However your community reviews these development types, the review needs to be documented.

Do solar arrays need to be permitted?

If the development (e.g. proposed solar arrays) is in the floodplain, then yes—it needs to be fully reviewed using some kind of documentable process such as described above.

All permits must be acquired

How do we know what other permits would apply to a particular development?

There is currently no complete checklist for permits required, but relevant state and federal agencies can help you determine what permits might be required. Here are a few suggestions:

MA Office of Coastal Zone Management (CZM) can assist with understanding coastal permits: https://www.mass.gov/orgs/massachusetts-office-of-coastal-zone-management

MA Dept. of Environmental Protection regional coordinators can advise on soil, water and air quality permits: https://www.mass.gov/orgs/massachusetts-department-of-environmental-protection DEP can also advise for mining, dredging and drilling operations, as well as federal permits required by the EPA.

The US Army Corps of Engineers has permits for some work in waterways and tidal wetlands: https://www.usace.army.mil/ CZM will often know about these, too.

Who is responsible to get these permits?

The applicant is responsible to get the permits, but this bylaw states that the community will assure that the necessary permits are obtained for all development in the floodplain.

More restrictive codes—compensatory storage vs. hydrologic & hydraulic study-- Floodway Encroachments

Is the NFIP requirement more restrictive than the MA Wetlands Protection Act for compensatory storage in the floodplain?

Possibly. The Wetlands Protection Act requires that *"Compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within Bordering Land Subject to Flooding…"* [310 CMR 10.57(4)(a)]

The NFIP requires that the developer prove that a) in floodplains without a regulatory floodway, the development will cause no more than one foot of rise in the base flood, or b) in regulatory floodways the development will cause absolutely no rise in the base flood. This certification needs to be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice. For more information, see the Model, section 4, item 15, or contact the state or FEMA references at the bottom of this document.

Submitting technical data & watercourse alteration notifications

What's the difference between these two bylaws? (See bylaws #7 and #16 in the Model)

Bylaw #7 regards the submission of new technical data that the community may have about the floodplain maps. This needs to go to FEMA for their files. Bylaw #16 regards changes in a watercourse (if this is allowed to happen in a community)—this information needs to be shared with adjacent communities and FEMA for their awareness. In both cases, the information should be copied to the state NFIP coordinator. See section 4 of the model for further explanation.

How do you define watercourse alteration?

A watercourse is any natural channel conveying water such as a river, stream, or creek. The alteration of this might include such practices as channelization, culverting, diversion or even daylighting a stream that was previously channeled underground.

Does the watercourse alteration bylaw apply when changing a water course in land subject to coastal storm flowage?

This bylaw (#16) is specifically for riverine situations, but if changes will affect up or downstream neighbors, these should still be notified. And of course, if there is new technical data involved, this would be submitted to FEMA under bylaw #7, Requirement to submit new technical data.

Does this only apply to watercourses within the mapped flood zones?

Good question! Most watercourses will be found in the mapped floodplain, but yes, in any case the alteration of a watercourse must be notified as written in the bylaw requirement.

Local Enforcement

Is there model language for bylaws item #20 on local enforcement?

No. A community can describe their process of local enforcement, but many of those "pieces" are found in existing codes such as the building code. Please see the explanation for this in section 4 in the Model.

What about towns that don't have non-criminal disposition to be able to issue fines?

Even if your community has not adopted the provisions of Mass General Law chapter 40, section 21D (non-criminal disposition), you must still be able to levy some type of penalty for non-compliant floodplain development. The NFIP community should work with their attorney to assure that non-compliant floodplain development will be addressed through both violation notifications and penalties. *"The NFIP requires that the floodplain management ordinance be legally enforceable and enforced uniformly throughout the community."* [44 CFR 60.1(b)]

Recreational Vehicles

Is recreational vehicle defined? Would it apply to food trucks?

Yes, the definition for a recreational vehicle is found in section 3 of the Model. Since part of the definition includes *"designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use,"* a food truck may or may not be considered a recreational vehicle.

Is there a difference between a recreational vehicle and a park model?

Typically a park model is treated like a manufactured home, and would need to be installed on a permanent foundation. The primary concern with a park model is that to fit under the definition of recreational vehicle, it must be self-propelled or towable by a "light-duty truck." A light-duty truck is a United States designation for trucks and vehicles that have a gross vehicle weight of up to 8500 pounds and payload capacities of up to 4000 pounds. [https://www.epa.gov/moves/how-does-moves-define-light-duty-trucks]

Is there a grandfather clause for recreational vehicles?

No. All RVs must be either installed on a permanent foundation (as would a manufactured home), or be highway ready.

What about an RV sales operation?

Great question. In most cases the RV dealership will have temporary tags so they can move the RVs (hopefully all in good operating order!) out of the floodplain should a flood alert be issued. This type of development is storage in the floodplain and should be permitted as such.

Protection of dunes

If we don't have dunes do we have to include the #19 bylaw about dunes?

No.

Definitions

Since these definitions seem to come primarily from the federal code, could we simply reference that code instead of adopting in local bylaw/ordinance?

No. The definitions have been in the federal code for more than four decades, but there have been many instances where local folks don't seem to be aware of them. Many other states require a much longer list of definitions (e.g. Florida), but we've slimmed down the list to those that are critical to compliant floodplain management.

The definition of structure does not appear to include decks or carports because they don't have walls and roofs. Correct?

Correct, although if a deck or carport is attached to a structure then it would be a part of the structure. A self-standing deck or carport would not necessarily be a structure, per this definition, although these are still considered to be development.

If we do not have the Flood Boundary & Floodway Map (FBFM) or the Flood Hazard Boundary Map (FHBM), do we have to include these definitions?

If you do not have these types of map as your current effective maps, then you do not need to include these terms in your list of definitions.

Subdivisions

Please provide some guidance regarding Approval Not Required (ANR) plans, as we have limited control and some can be over 5 acres. Right now we cannot treat these as a subdivision.

Even though you do not treat ANR dispositions as subdivisions, if the structure or other development in the ANR is sited in a regulated floodplain you will need to apply all of the requirements for flood resistant construction and drainage, just as you would for any other development in the floodplain.