Violations and Enforcement

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Agenda

- NFIP overview & FEMA expectations
- Common Violations & Minimum Requirements
- Issuing and Correcting violations
- Best Practices and Tools for Compliance
- Q&A

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National Flood Insurance Program (NFIP)

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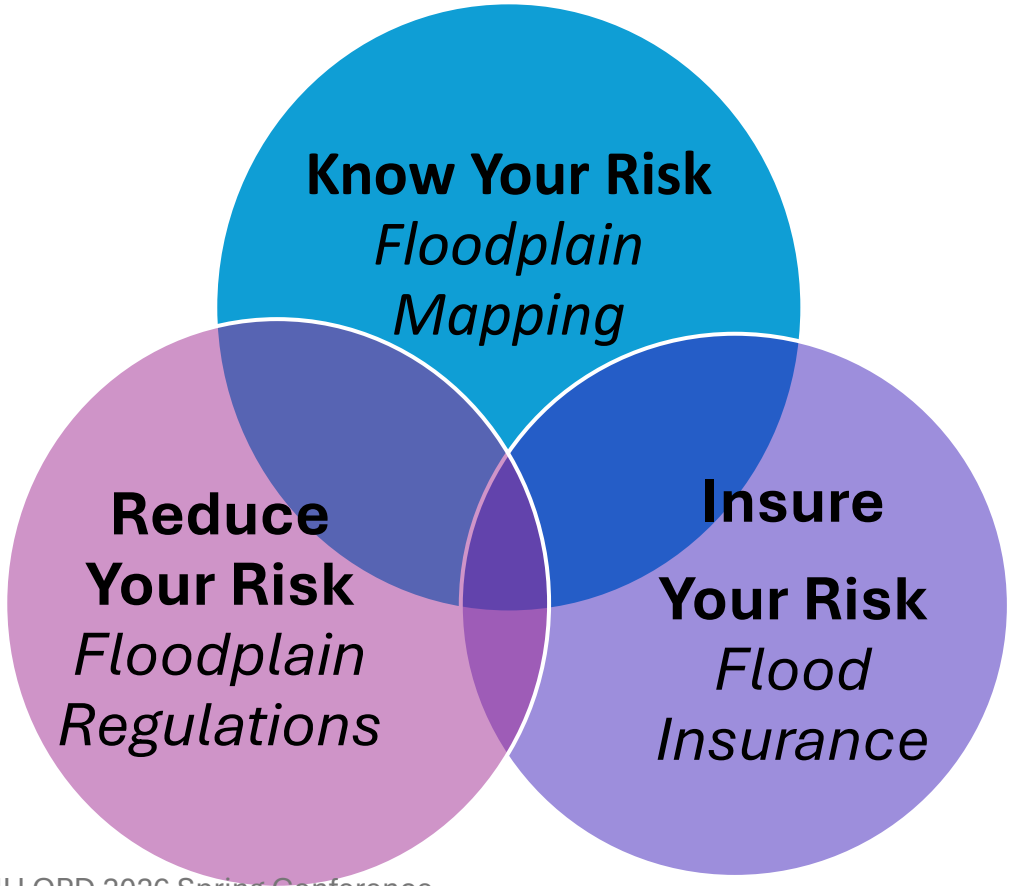
National Flood Insurance Program

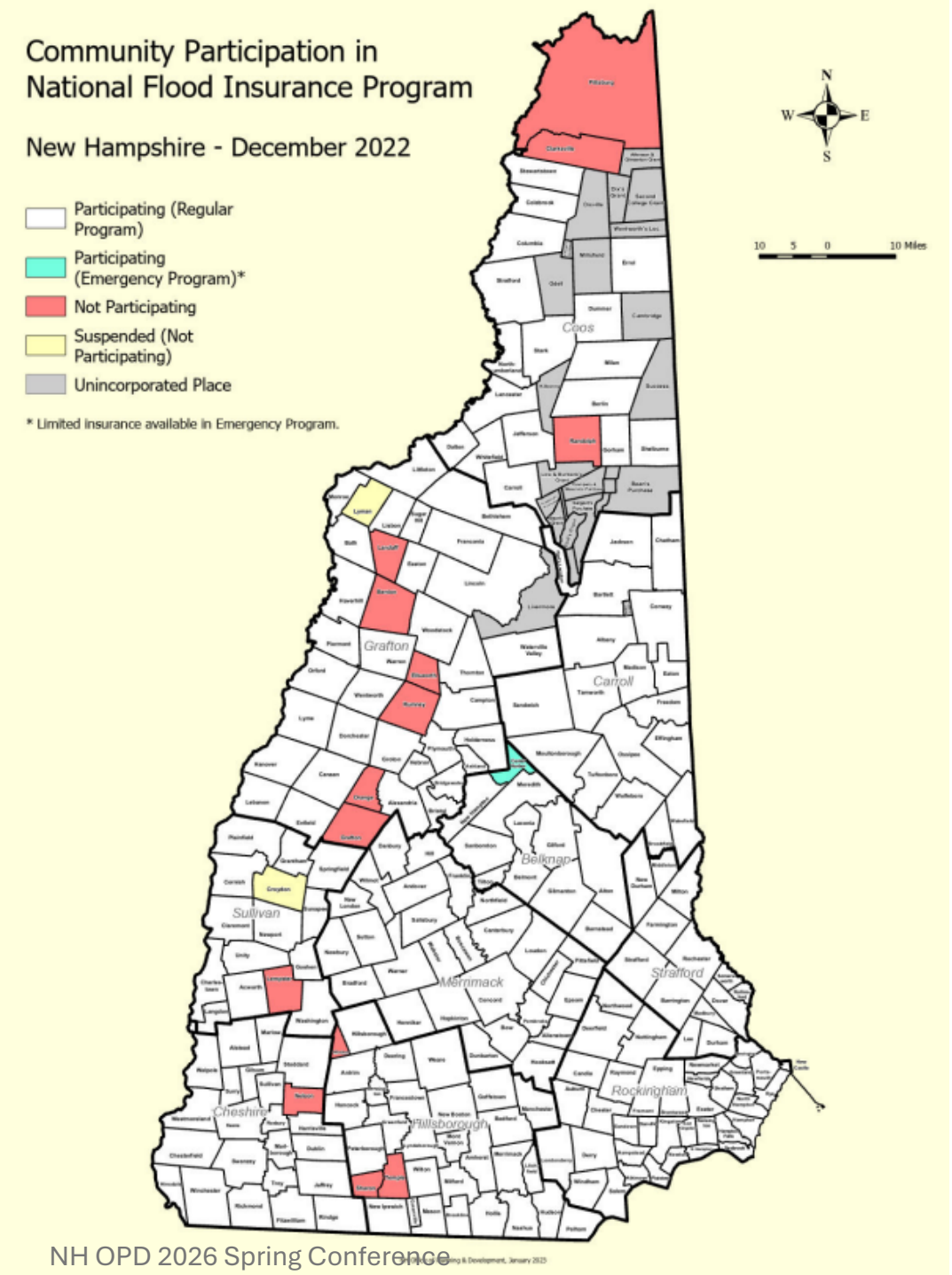


- Created by Congress in 1968
- Voluntary partnership between FEMA and participating communities

Voluntary Partnership

Community agrees to adopt local floodplain regulations and enforce them through a local permitting process.

NFIP flood insurance is available for purchase, for all property owners and renters in the community.



NFIP Participation

- 220 communities (94%) participate
- 16 communities (6%) do not participate

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Roles and Responsibilities

- Federal, State, Community

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FEMA Roles & Responsibilities

- Makes available flood insurance for purchase in participating communities
- Risk identification (mapping)
- Establish development/building standards and guidance
- Monitor compliance

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State Roles & Responsibilities

- Technical assistance to all stakeholders
- Education and outreach
- Model floodplain regulations
- Assist communities in evaluating compliance of floodplain activities and post-disaster activities
- Ordinance reviews for compliance

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Community Roles & Responsibilities

- Understand your community's regulations and FEMA maps.
- Ensure that local permits are applied for for all development in Special Flood Hazard Areas within the community.
- Review and process permit applications for floodplain development.
- Ensure floodplain development (including community's) is built according to approved permits and floodplain regulations.
- Take enforcement actions; correct violations.

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Suspension

- NFIP flood insurance policies cannot be purchased or renewed
- Federal grants not available for development/disaster recovery
- If suspended and then reapply, address any floodplain development that occurred after suspension (per 44 CFR 59.24(f))

Join the NFIP - NH Economy – see FAQs on this webpage; #4 is consequences of suspension

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Common Violations and Minimum Requirements

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What are common violations?

- Unpermitted development in the floodplain.

  - All proposed development in any special flood hazard area shall require a permit.

  - Development is defined:
    any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filing, grading, paving, excavating, or drilling operations or storage of equipment or materials.

What are common violations?

- <u>Unpermitted</u> development in the floodplain.

  - Structures being constructed
  - Improvements to structures without SI determination
  - Repair to structures without SD determination
  - Placement of fill
  - Excavating of earth/materials
  - Storage of equipment or materials

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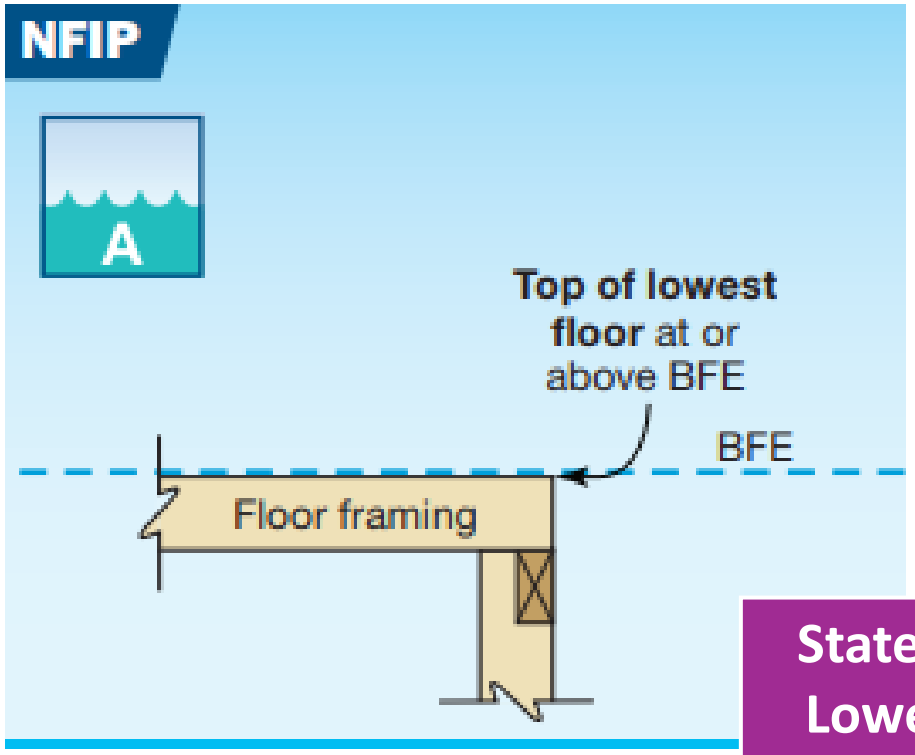
What are common violations?

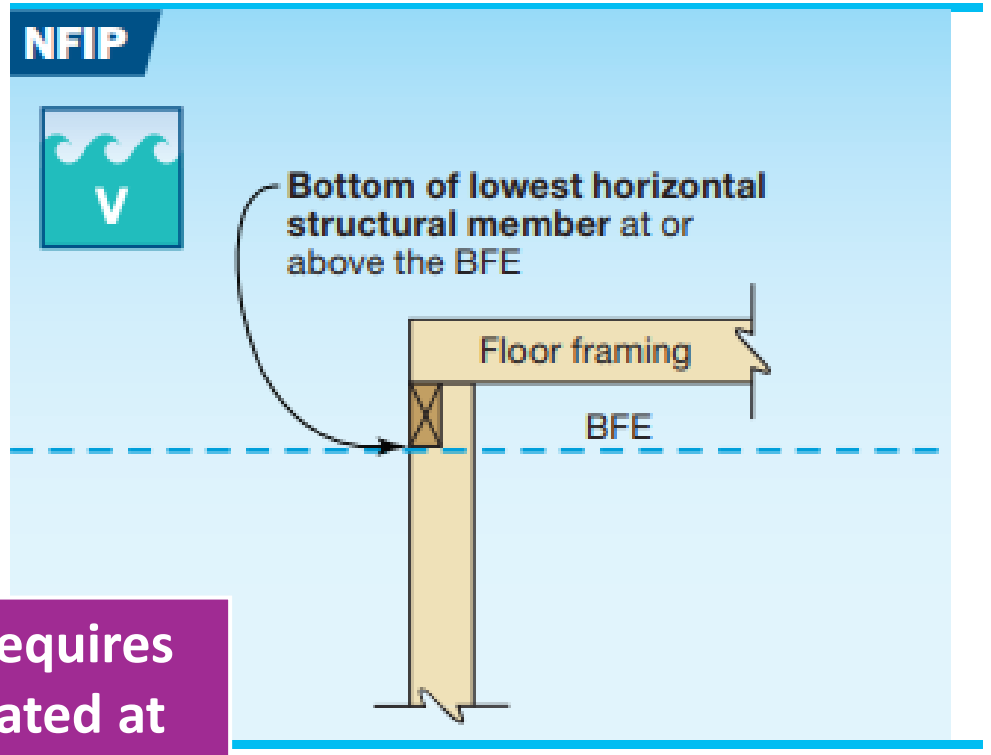
- Development in the floodplain does not follow issued permit.
  - Lowest flood / lowest horizontal member below BFE or freeboard
  - Structure has a basement
  - Enclosures accidently become a “basement”
  - Missing flood openings
  - SI/SD requirements not met
  - Recreational vehicle requirements are not met

- Lowest floor/Lowest horizontal member below BFE or freeboard

A Zones: Top of lowest floor at or above BFE

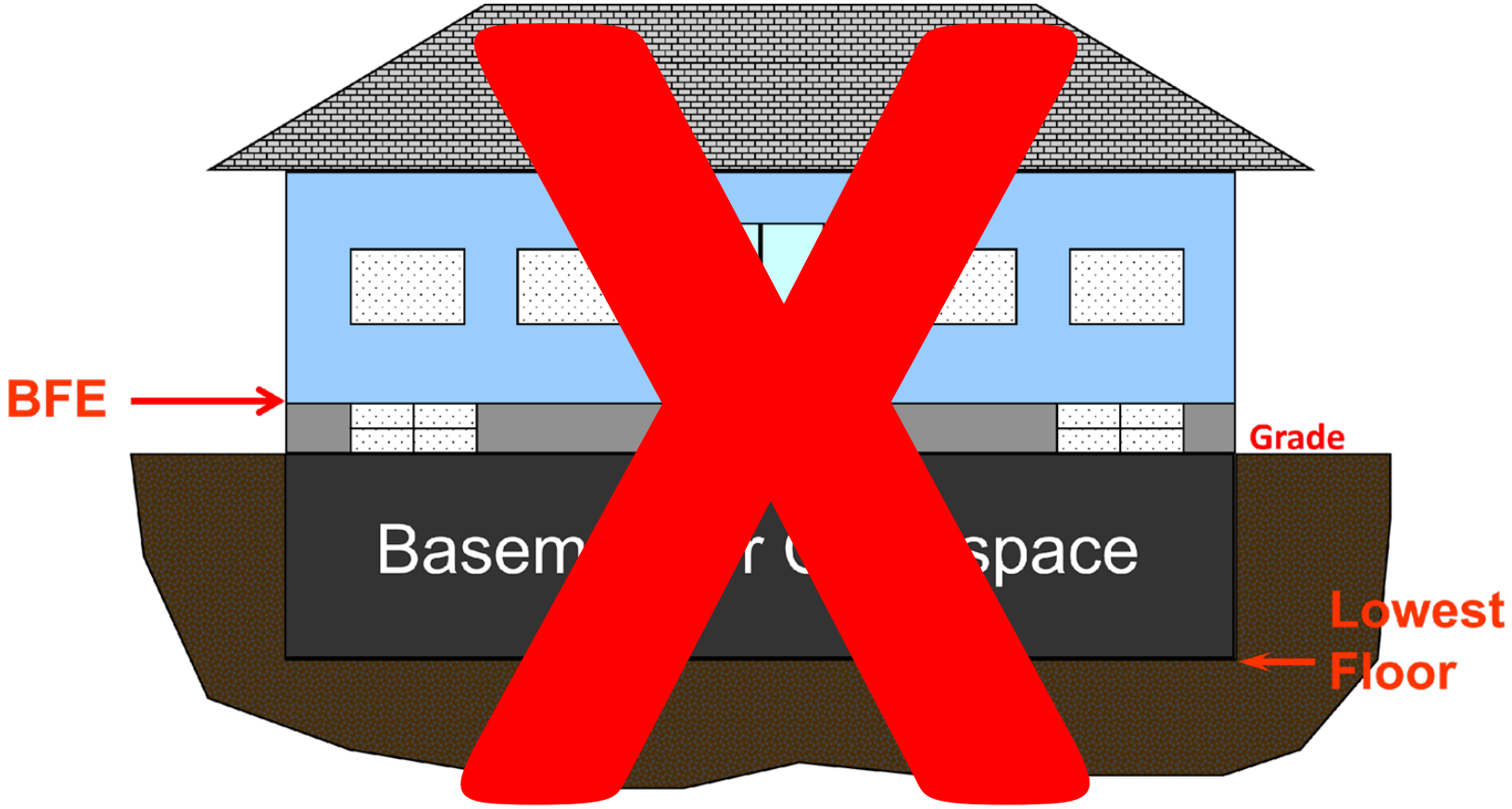
V Zones: Bottom of lowest horizontal structural member at or above BFE





State Building Code requires Lowest Floor be elevated at least 1 ft above BFE or DFE

Structure has a basement



Basements for new construction or substantial improvements in a Special Flood Hazard Area are prohibited.

Enclosures accidently become a “basement”

- Enclosures under the lowest floor are allowed, but **must**:
  1. Be used solely for storage, building access, or parking;
  2. Not be below grade on all sides (a basement); and
  3. Meet NFIP requirements related to flood openings
- When any of these criteria are not met, what is considered the lowest floor changes.

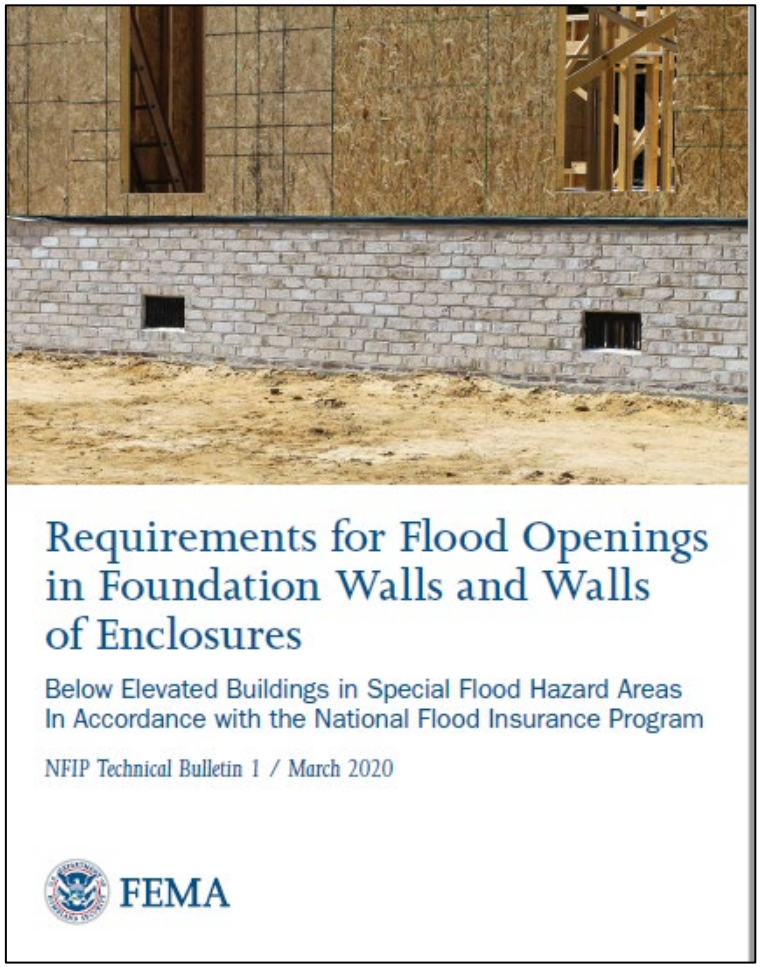
Enclosures accidently become a “basement”

In Coastal High Hazard Areas (Zone VE):

- The space below the lowest floor must:
  - be free of obstructions; or
  - constructed with non-supporting breakaway walls, open lattice-work, or insect screening, and be used only for parking, building access, or storage.

Missing flood openings

Great resource: FEMA Technical Bulletin #1



Updated in March 2020

SI/SD requirements not met

Ensure work performed aligns with the local substantial improvement requirements.

Substantial Improvement:

$$\frac{\textit{Cost of improvement}}{\textit{Pre} - \textit{improved market value of the structure}} \geq 50\%$$

Substantial Damage:

$$\frac{\textit{Cost of repairs}}{\textit{Pre} - \textit{Damage market value of the structure}} \geq 50\%$$

Recreational vehicle requirements are not met

Ensure requirements for recreational vehicles are met:

- On-site for fewer than 180 consecutive days, or
- Fully licensed and ready for highway use
  - No structures attached to RVs
- If not, must comply with manufactured home requirements

Best Practices & Tools for Compliance

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Ways to Bring a Structure into Compliance

- **F-R-E-D:**
  - Floodproofing
  - Relocation
  - Elevation
  - Demolition

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F-R-E-D

Floodproofing

Dry Floodproofing means a combination of measures that make a building and attendant utilities and equipment watertight and substantially impermeable to floodwater, with structural components having the capacity to resist flood loads.

Wet Floodproofing means the use of flood damage-resistant materials and construction techniques to minimize flood damage to structures by intentionally allowing floodwater to enter and exist automatically (without human intervention) to minimize unequal pressure of water on walls (called hydrostatics load or pressure).

F-R-E-D

Floodproofing

- **Dry-** Primarily for non-residential structures (A Zones).
- **Wet-** Enclosures, garages, accessory structures can be wet floodproofed.

Figure 4-14. Non-residential structure retrofitted with flood openings following Hurricane Katrina (New Orleans, LA, 2008)

F-R-E-D

Floodproofing

- Dry Floodproofing:
  - Designs must be certified by a registered design professional.
  - Accepted standard of practice for design of dry floodproofing measures is ASCE 24.
  - NFIP Floodproofing Certificate for Non-Residential Structures should be used for this purpose.

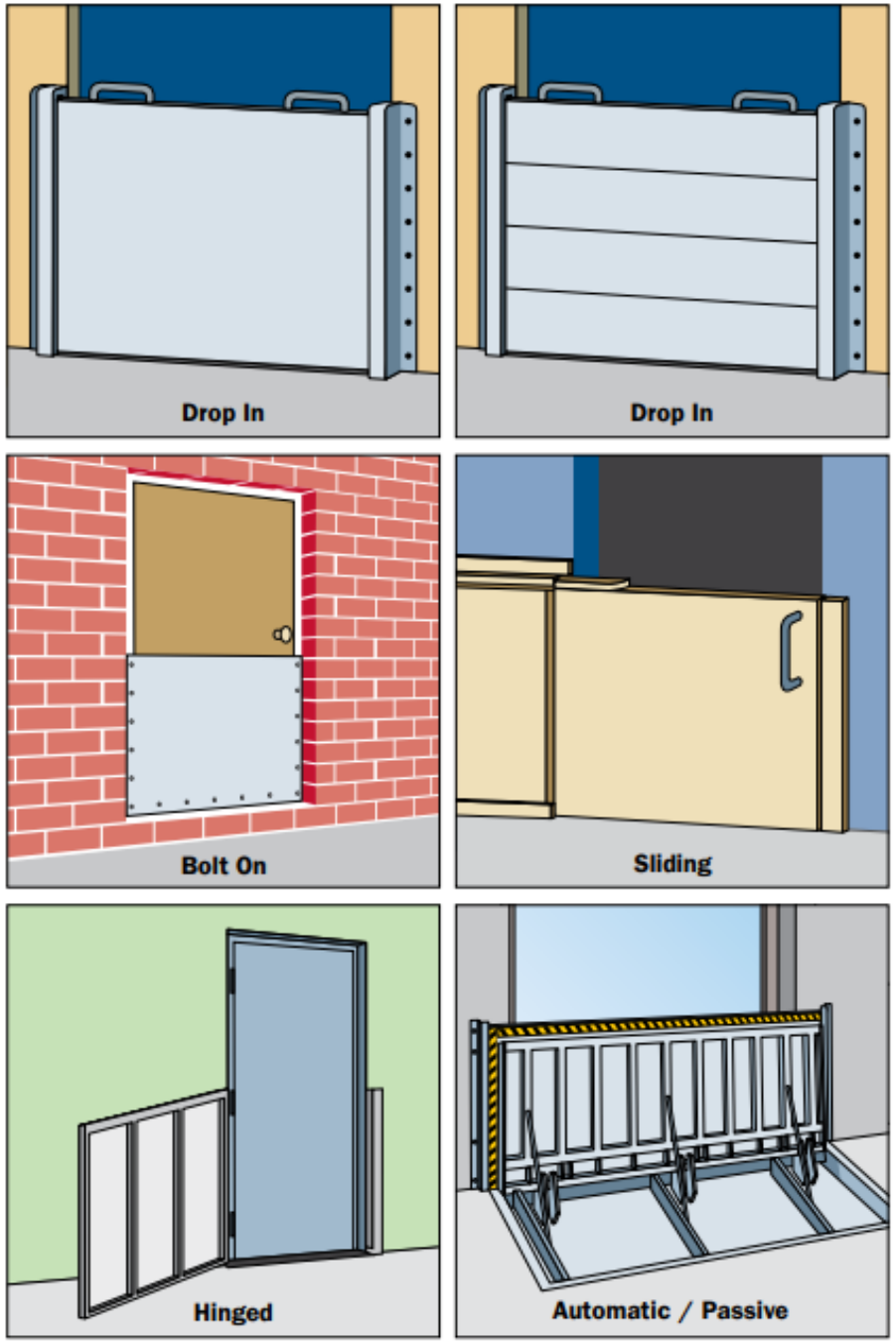


Figure 6: Common types of flood shields

F-R-E-D

Floodproofing

Dry Floodproofing methods:

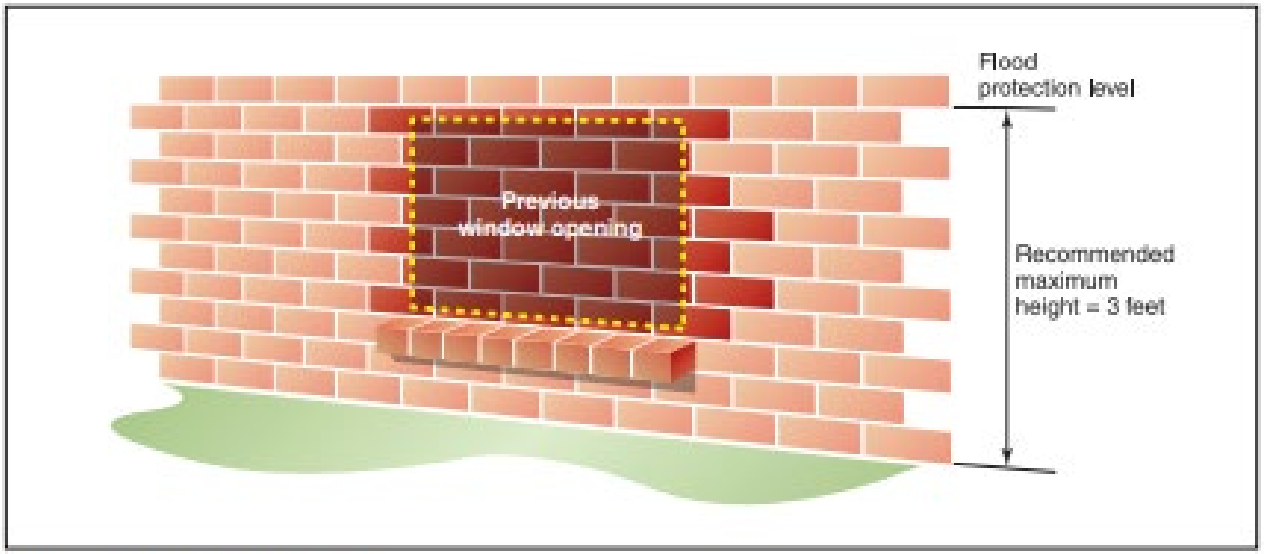


Figure 3-1. Filled window opening

- Temporary installation of waterproof membranes to prevent water from entering structure.
- Use of sealants applied to walls, joints, and other openings.
- Openings in walls are temporarily or permanently sealed shut.
- Temporary watertight shields can be placed over windows or doors.
- Addressing interior drainage to collect leaking water.

F-R-E-D

Floodproofing

Wet Floodproofing:

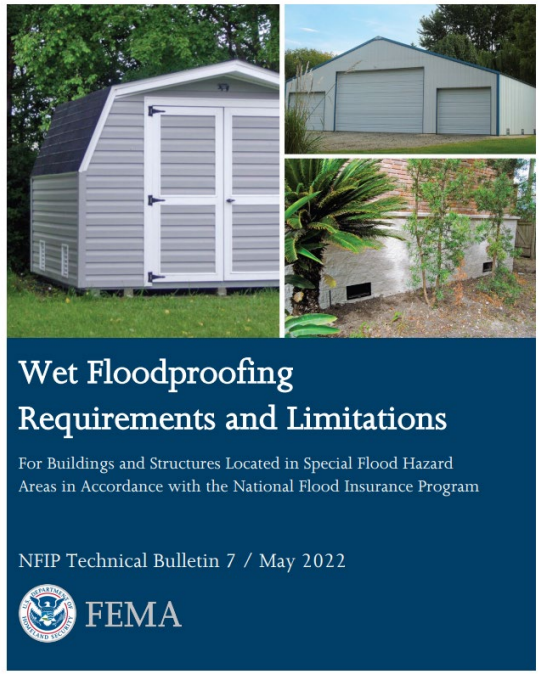
- Enclosures below elevated buildings used solely for parking of vehicles, building access, or storage.
- Attached garages.
- Agricultural structures and accessory structures in accordance with FEMA Bulletin P-2140.
- Historic Structures when authorized by variances.
- Functionally dependent uses when authorized by variances.

Figure 16: Storage Shed, with Flood Openings
(Source: Kevin Wagner, Maryland Department of the Environment)

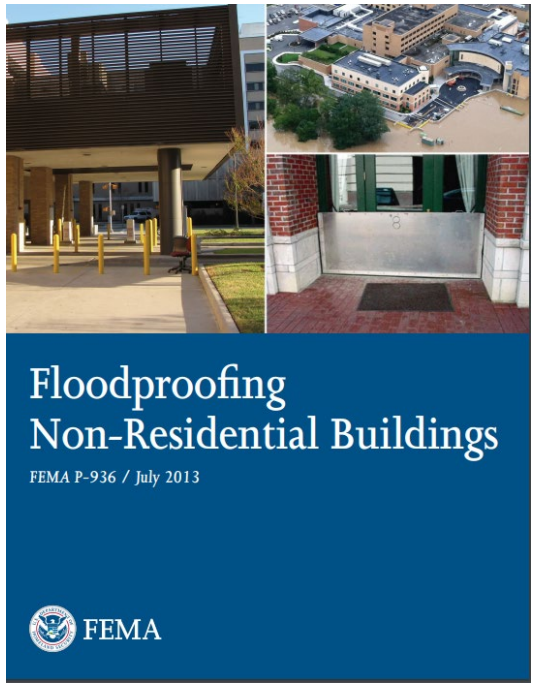
F-R-E-D

Floodproofing resources:

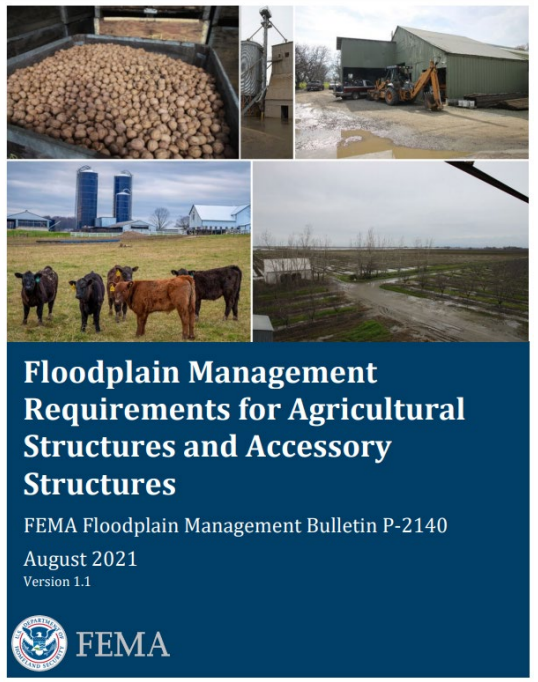
FEMA TB 1: Requirements of Dry Floodproofed Non-Residential and Mixed-Use Buildings



FEMA TB 7: Wet Floodproofing Requirements and Limitations



FEMA P-936: Floodproofing Non-Residential Buildings



FEMA P-2140: Requirements for Agricultural and Accessory Structures

F-R-E-D

Relocation

- Sometimes an option is to move a structure out to the floodplain.
- Can provide the greatest security when flood hazard is severe.
- Can reduce flood insurance premiums.
- A very expensive mitigation method!

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F-R-E-D

Elevation

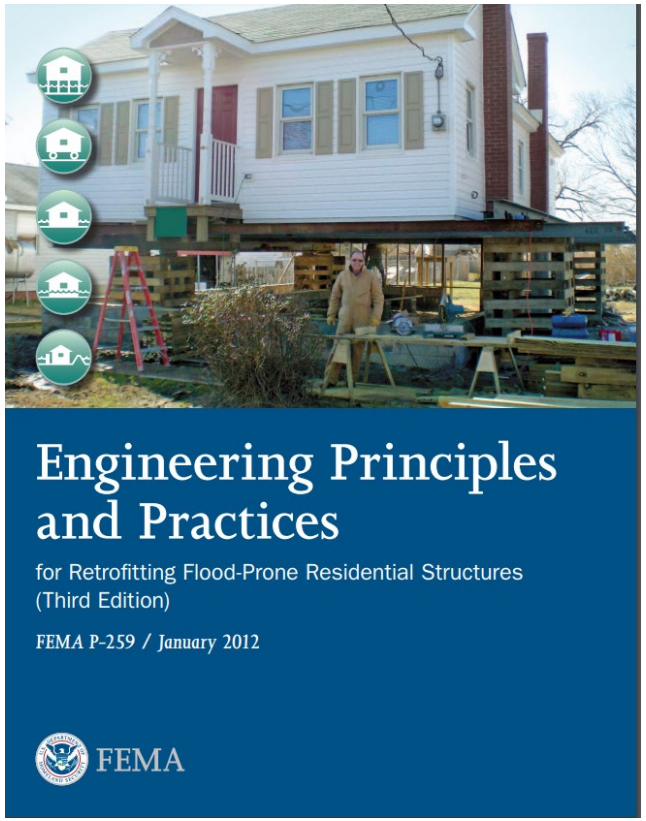
- Raise building to or above the flood elevation level adopted by your community.
- Sometimes only need to elevate the utilities or a portion of the structure to bring it into compliance.

F-R-E-D

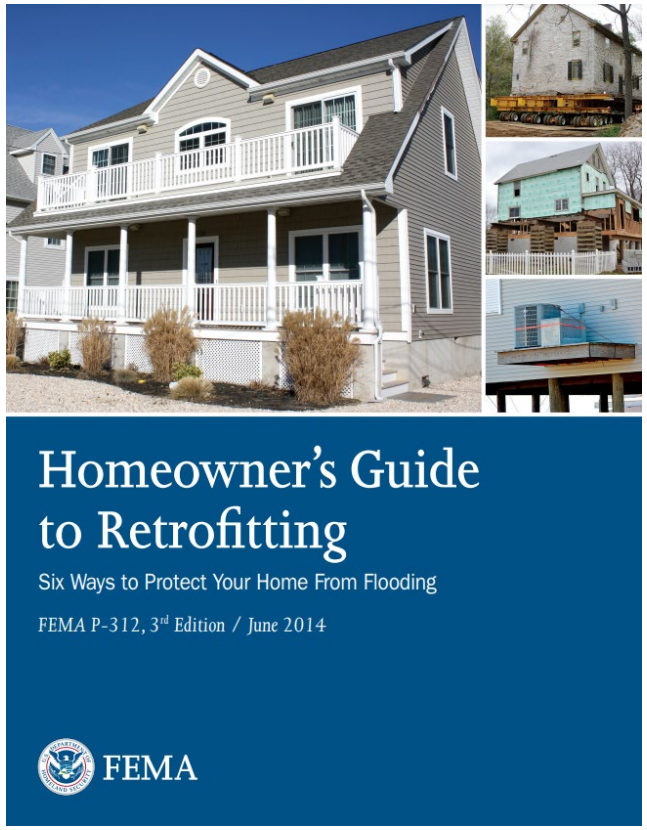
Demolition

- Removing a structure that was out of compliance.
- Used to bring a severely substantially damaged structure into compliance.
- Could be most affordable way to bring a low-cost structure into compliance.

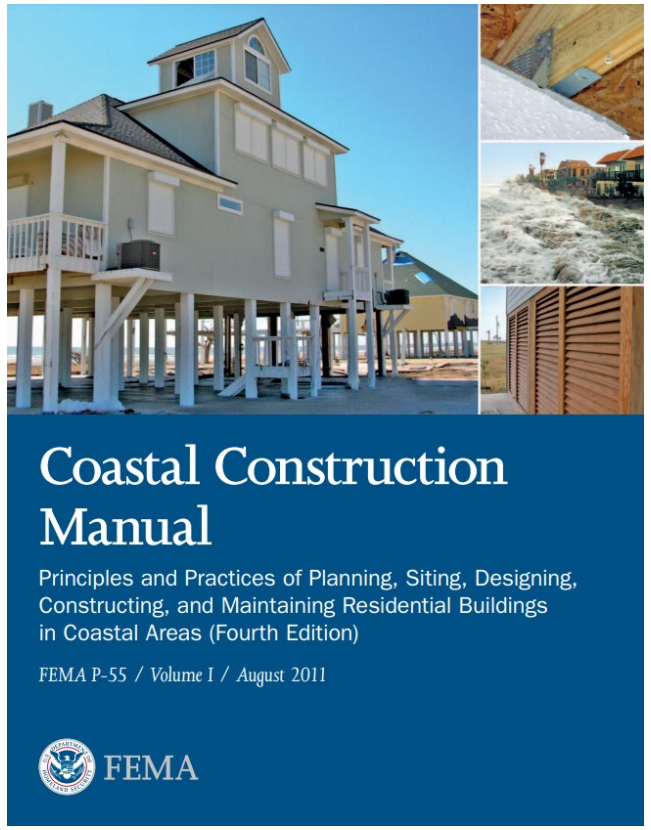
Retrofitting Resources



FEMA P-259: Engineering Principals and Practices for Retrofitting Floodprone Residential Structures



FEMA P-312: Homeowner's Guide to Retrofitting



FEMA P-55: Coastal Construction Manual

Enforcement Procedures

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Enforcement procedures

Issue violation via mail, cite code, give a timeline to correct violation.

Track responses and document follow up. Send second and third notices if needed.

Laws for **Fines and Penalties**

Legal Action for noncompliance

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Tools for compliance

KNOW YOUR ORDINANCE!

- These are <u>your</u> community's floodplain regulations.
- Know where your floodplain regulations apply- remember only FEMA can change the maps!
- It is OK to get more information before providing an answer and/or permit to a property owner.

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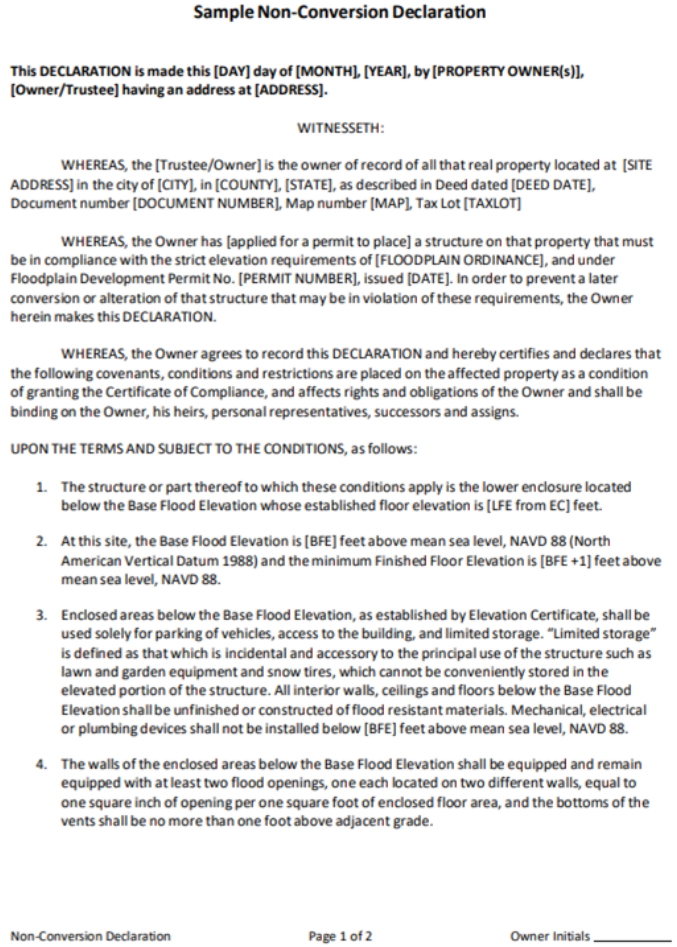
Tools for compliance

Require other documentation

- Non-Conversion Declaration
  - A declaration by the property owner as a condition of granting the Certificate of Compliance to make no modifications to an enclosed area below the base flood elevation.
  - A sample declaration available on OPD's website.



Sample Non-Conversion Declaration

This DECLARATION is made this [DAY] day of [MONTH], [YEAR], by [PROPERTY OWNER(s)], [Owner/Trustee] having an address at [ADDRESS].

WITNESSETH:

WHEREAS, the [Trustee/Owner] is the owner of record of all that real property located at [SITE ADDRESS] in the city of [CITY], in [COUNTY], [STATE], as described in Deed dated [DEED DATE], Document number [DOCUMENT NUMBER], Map number [MAP], Tax Lot [TAXLOT]

WHEREAS, the Owner has [applied for a permit to place] a structure on that property that must be in compliance with the strict elevation requirements of [FLOODPLAIN ORDINANCE], and under Floodplain Development Permit No. [PERMIT NUMBER], issued [DATE]. In order to prevent a later conversion or alteration of that structure that may be in violation of these requirements, the Owner herein makes this DECLARATION.

WHEREAS, the Owner agrees to record this DECLARATION and hereby certifies and declares that the following covenants, conditions and restrictions are placed on the affected property as a condition of granting the Certificate of Compliance, and affects rights and obligations of the Owner and shall be binding on the Owner, his heirs, personal representatives, successors and assigns.

UPON THE TERMS AND SUBJECT TO THE CONDITIONS, as follows:

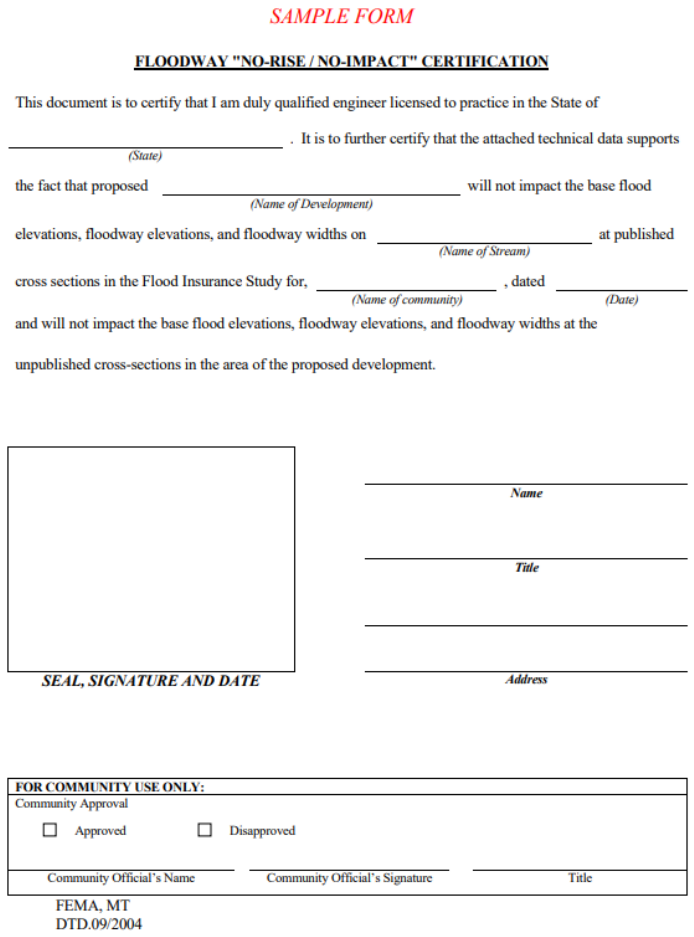
1. The structure or part thereof to which these conditions apply is the lower enclosure located below the Base Flood Elevation whose established floor elevation is [LFE from EC] feet.
2. At this site, the Base Flood Elevation is [BFE] feet above mean sea level, NAVD 88 (North American Vertical Datum 1988) and the minimum Finished Floor Elevation is [BFE +1] feet above mean sea level, NAVD 88.
3. Enclosed areas below the Base Flood Elevation, as established by Elevation Certificate, shall be used solely for parking of vehicles, access to the building, and limited storage. "Limited storage" is defined as that which is incidental and accessory to the principal use of the structure such as lawn and garden equipment and snow tires, which cannot be conveniently stored in the elevated portion of the structure. All interior walls, ceilings and floors below the Base Flood Elevation shall be unfinished or constructed of flood resistant materials. Mechanical, electrical or plumbing devices shall not be installed below [BFE] feet above mean sea level, NAVD 88.
4. The walls of the enclosed areas below the Base Flood Elevation shall be equipped and remain equipped with at least two flood openings, one each located on two different walls, equal to one square inch of opening per one square foot of enclosed floor area, and the bottoms of the vents shall be no more than one foot above adjacent grade.

Non-Conversion Declaration Page 1 of 2 Owner Initials _____

Tools for compliance

Require other documentation

- No-Rise Certificate
  - A certificate that can be used for development projects in floodways, which are required to not cause any increase in flood levels within the community during the base flood discharge.
  - A sample declaration available on OPD's website.



SAMPLE FORM

FLOODWAY "NO-RISE / NO-IMPACT" CERTIFICATION

This document is to certify that I am duly qualified engineer licensed to practice in the State of _____ (State). It is to further certify that the attached technical data supports the fact that proposed _____ (Name of Development) will not impact the base flood elevations, floodway elevations, and floodway widths on _____ (Name of Stream) at published cross sections in the Flood Insurance Study for, _____ (Name of community), dated _____ (Date) and will not impact the base flood elevations, floodway elevations, and floodway widths at the unpublished cross-sections in the area of the proposed development.

SEAL, SIGNATURE AND DATE

Name

Title

Address

FOR COMMUNITY USE ONLY:

Community Approval

☐ Approved ☐ Disapproved

Community Official's Name | Community Official's Signature | Title

FEMA, MT
DTD.09/2004

Tools for compliance

Require other documentation

- Flood Openings Certificate
  - A certificate that can be used in situations where it is not feasible or desirable to meet the minimum openings criteria as detailed in a community's floodplain ordinance.
  - A sample declaration available on OPD's website.

Sample Openings Certificate

_____
Project Name

I, _____ do hereby certify that the opening(s) designed for installation in the aforementioned building will allow for the automatic equalizing of hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater during floods up to and including the base (100-year) flood.

_____ _____
Signature Date

_____
Title

_____ _____
Type of License License No.

_____
Address

Professional Seal

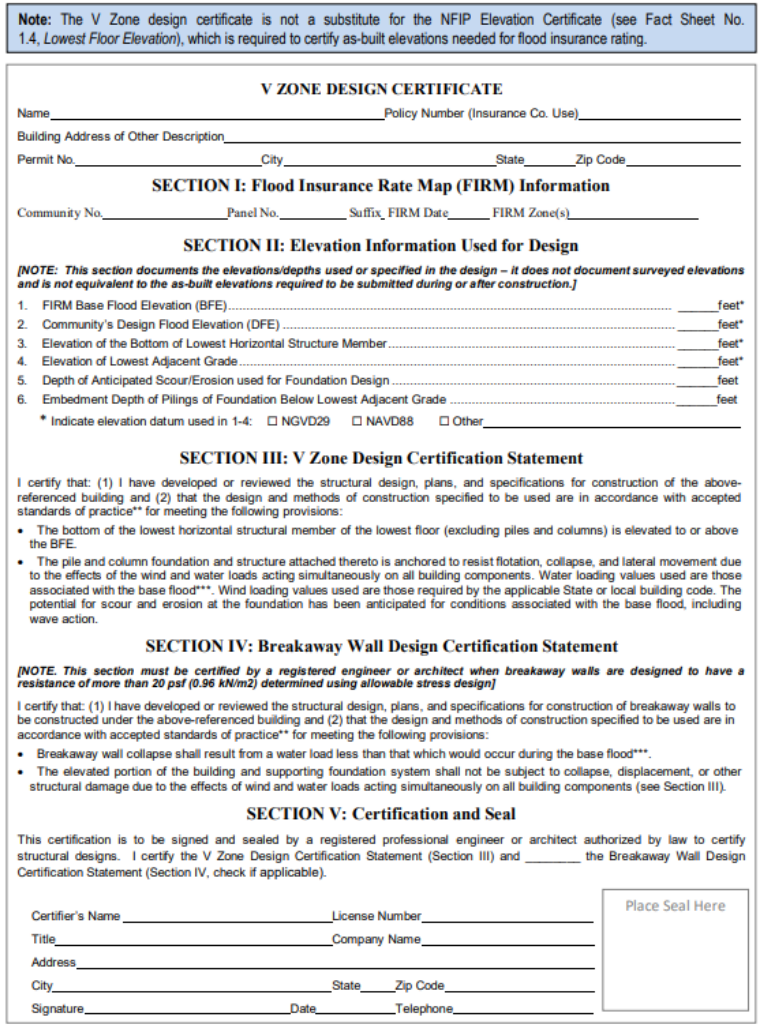
Tools for compliance

Require other documentation

V Zone certification

- A certificate that can be used to ensure that all new or substantially improved buildings in V Zones (Coastal High Hazard Areas) are designed and the methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions in a community's floodplain ordinance.

- A sample declaration available on OPD's website.



Note: The V Zone design certificate is not a substitute for the NFIP Elevation Certificate (see Fact Sheet No. 1.4, *Lowest Floor Elevation*), which is required to certify as-built elevations needed for flood insurance rating.

V ZONE DESIGN CERTIFICATE

Name_____ Policy Number (Insurance Co. Use)_____

Building Address of Other Description_____

Permit No._____ City_____ State_____ Zip Code_____

SECTION I: Flood Insurance Rate Map (FIRM) Information

Community No._____ Panel No._____ Suffix_ FIRM Date_____ FIRM Zone(s)_____

SECTION II: Elevation Information Used for Design

[NOTE: This section documents the elevations/depths used or specified in the design – it does not document surveyed elevations and is not equivalent to the as-built elevations required to be submitted during or after construction.]

1. FIRM Base Flood Elevation (BFE) ..... _____feet*
2. Community's Design Flood Elevation (DFE) ..... _____feet*
3. Elevation of the Bottom of Lowest Horizontal Structure Member ..... _____feet*
4. Elevation of Lowest Adjacent Grade ..... _____feet*
5. Depth of Anticipated Scour/Erosion used for Foundation Design ..... _____feet
6. Embedment Depth of Pilings of Foundation Below Lowest Adjacent Grade ..... _____feet

* Indicate elevation datum used in 1-4: ☐ NGVD29 ☐ NAVD88 ☐ Other_____

SECTION III: V Zone Design Certification Statement

I certify that: (1) I have developed or reviewed the structural design, plans, and specifications for construction of the above-referenced building and (2) that the design and methods of construction specified to be used are in accordance with accepted standards of practice** for meeting the following provisions:

- The bottom of the lowest horizontal structural member of the lowest floor (excluding piles and columns) is elevated to or above the BFE.
- The pile and column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of the wind and water loads acting simultaneously on all building components. Water loading values used are those associated with the base flood***. Wind loading values used are those required by the applicable State or local building code. The potential for scour and erosion at the foundation has been anticipated for conditions associated with the base flood, including wave action.

SECTION IV: Breakaway Wall Design Certification Statement

[NOTE. This section must be certified by a registered engineer or architect when breakaway walls are designed to have a resistance of more than 20 psf (0.96 kN/m2) determined using allowable stress design]

I certify that: (1) I have developed or reviewed the structural design, plans, and specifications for construction of breakaway walls to be constructed under the above-referenced building and (2) that the design and methods of construction specified to be used are in accordance with accepted standards of practice** for meeting the following provisions:

- Breakaway wall collapse shall result from a water load less than that which would occur during the base flood***.
- The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (see Section III).

SECTION V: Certification and Seal

This certification is to be signed and sealed by a registered professional engineer or architect authorized by law to certify structural designs. I certify the V Zone Design Certification Statement (Section III) and _____ the Breakaway Wall Design Certification Statement (Section IV, check if applicable).

Certifier's Name_____ License Number_____

Title_____ Company Name_____

Address_____

City_____ State____ Zip Code_____

Signature_____ Date_____ Telephone_____

Place Seal Here

Tools for compliance

Inspections

Inspection	What to check for:
First Inspection – before ground is broken	• Location of the floodplain and floodway boundaries • Setbacks from lot lines, channel banks, etc. • Floodway encroachments, if applicable.
Second Inspection – before installation of the lowest floor	• If slab foundation, inspection is best done when forms are placed. • If elevated foundation (crawlspace, piles, etc.), inspection is best done when foundation is complete. • If building is floodproofed and technique is easy to identify, inspection should be done when that portion of the project is complete.
Third Inspection – as project nears completion	• Ensure foundation and floor elevation has not been altered. • Obtain as-built elevation or floodproofing certificate • Verify enclosure below lowest floors have adequate openings. • Check breakaway walls in V Zones. • Check for floodway encroachments, if applicable.

Tools for compliance

Legal Tools

- Examples of tools that can be used to correct violations- think about how your community enforces other zoning violations.
  - Fines
  - Stop work order / Cease and desist order
  - Withholding a Certificate of Occupancy (CO)

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Laws for Fines and Penalties

- RSA 31:39-c Administrative Enforcement of Ordinances
- Section 31:39-d Local Ordinance Citations; Pleas by Mail.
- Section 47:17 Bylaws and Ordinances.
- Section 676:5 Appeals to Board of Adjustment.
- Section 676:15 Injunctive Relief.
- Section 676:17 Fines and Penalties; Second Offense.

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Tools for compliance

The best time to start to prepare for legal action is TODAY!

- Discuss with your community's Legal Counsel
  - Explain why it is important for the community to stay in good standing with the NFIP.
  - Ask what tools are in place to use if a violation is found.
  - Remember to document, document, document!

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Takeaways

- Community is responsible for correcting violations and enforcement of floodplain regulations
- Correcting violations can take many approaches, unique to the community and the violation type
- There are laws that enable communities to take enforcement action
- If attempts to correct violation fail, FEMA will require judicial ruling to consider community enforcement exhausted

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