



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT - UPDATED
BOUNDARY COUNTY BOARD OF COUNTY COMMISSIONERS
FILE #24-0047, FLOOD CODE TEXT AMENDMENT
BOUNDARY COUNTY FLOOD DAMAGE PREVENTION ORDINANCE

Prepared By:	Clare Marley, AICP Acting Zoning Administrator Ruen-Yeager & Associates, Inc
Project Description:	Continuation of public hearing from April 2nd: Boundary County has initiated an amendment to its flood damage prevention codes to repeal Section 16.1 “flood overlay” of the Boundary County Zoning and Subdivision land use ordinance and repeal the flood damage prevention ordinance known as Flood Damage Prevention Ordinance 2015-1 and adopt a new flood damage prevention ordinance that reflects the requirements of the national flood insurance program and the standards of the State of Idaho Disaster Preparedness Act. The ordinance provides definitions, a basis for the floodplain and regulations, administrative procedures, development permitting and standards, appeal and variances processes, exceptions for low-cost accessory structures, a violation process, establishment of penalties as a misdemeanor, civil remedies, severability and an effective date. The Board of Commissioners continued the April 2 nd hearing to allow time for revisions to the draft ordinance resulting from an amendment to Idaho Code adopted this legislative session. Revisions to the original staff report are in bold type .
Applicants:	Boundary County Board of Commissioners
Date Application Initiated:	Following May 17, 2023, FEMA Community Assistance Visit
Hearing Date:	Board of County Commissioners 04/02/2024
Legal Notice Provided:	Newspaper: 03/14/2024 Site Posting: N/A Mailed to media & taxing districts: 03/13/2024
BOCC Decision:	PENDING
Staff Report Attachments	Legal notice, draft ordinance, Flood Damage Prevention Ordinance 2015-1

Project Summary

Boundary County is proposing to update its flood damage prevention code by replacing the existing 2015 flood damage prevention code known as Flood Damage Prevention Ordinance 2015-1. The county also proposes to repeal the flood overlay of Chapter 16 “Overlay Zones” of the current land use code known as 9B18LOV2. The two current codes overlap each other in some respects, contain some contradictory sections elsewhere, and together do not contain all of the minimum flood damage prevention standards, as determined by Idaho Department of Water Resources and the Federal Emergency Management Agency (FEMA). FEMA Region X visited with Boundary County officials and planning staff May 17, 2023, to review floodplain administration in Boundary County. The visit, known as a Community Assistance Visit (CAV), is done every five years or so by FEMA to communities in the National Flood Insurance Program. Boundary County first adopted its flood codes November 13, 1984, and flood rate maps date back to August 2, 1982. Boundary County has been a part of the national floodplain program since 1984. FEMA advised after its May 17, 2023, visit that the current, nine-year old county code needed some adjustments. FEMA determined that Boundary County’s flood damage prevention codes were outdated and did not entirely comply with the National Flood Insurance Program (NFIP), and state standards for procedures, definitions, and standards. Some additional exceptions for small accessory structures and the addition of mudslides as flood events are new provisions that are a part of this draft amendment.

Repeal of the zoning code floodplain overlay will require a recommendation from the Planning and Zoning Commission, because it is a part of the zoning code and governed by Idaho’s Local Land Use Planning Act (LLUPA). Therefore, this hearing before the Board of County Commissioners will address the stand-alone flood damage prevention code ordinance only, which is not under the authority of LLUPA.

FEMA provided an ordinance template that is compliant with required minimum state standards of the Disaster Preparedness Act and the Code of Federal Regulations Title 44 regarding floodplain management. The **initial** draft Boundary County ordinance has been reviewed by FEMA Region X’s Floodplain Management Specialist and approved.

As the draft Boundary County flood code was being prepared for hearing, Idaho legislation regarding flood damage prevention was enacted into law, necessitating some changes to the county’s proposed amendment. The legislation considered under House Bill H0425 revised the Idaho Disaster Preparedness Act to ensure Idaho remained compliant with the National Flood Insurance program. The bill was signed into law by the governor on March 25th and became effective immediately. The new law amends Idaho Code §46-1021 (1) and §46-1022 and strikes provisions that had allowed canal, ditch, and irrigation operation and maintenance within the floodplain to be exempt from floodplain regulations and prevented local jurisdictions from regulating them. The draft Boundary County flood code contained the exemptions. Idaho Department of Water Resources and FEMA provided the original draft ordinance to Boundary County for consideration. Staff sent a revised ordinance that removes these exemptions to Idaho Department of Water Resources (IDWR) and FEMA, requesting review and approval prior to the continuation of the public hearing. A response was still pending as of the date of this staff report. Boundary County’s revised flood code now includes the canal and irrigation work in the definition of floodplain development that requires permitting. However, a simplified process for floodplain permitting is an option for irrigation works under the revised draft ordinance.

The county ordinance is similar to the City of Bonners Ferry flood code, adopted in 2022. A summary of the proposed ordinance follows:

Article 1: Provides statutory authorizations, findings, and purpose.

Article 2: Definitions.

- Base flood elevation, a common FEMA term, is added to define the level of the expected “100-year” flood;
- Existing construction is added to define projects started before the floodplain program;
- Flooding is expanded to include mudslides and collapse or subsidence as a result of erosion or high waves brought on by storms or unusually high water levels;
- Flood protection elevation, a state term, is equated with the federal term of base flood elevation plus any freeboard. Boundary County has 1 foot of “freeboard.”
- Freeboard is any additional feet above base flood elevation designated by the community as an added level of protection. Boundary County adds 1 foot of additional protection;
- Highest adjacent grade, meaning the highest natural elevation of the ground surface prior to construction, which is adjacent to the proposed structure. This term is used in regulations for areas where no base flood elevation is established.
- Various types of “Letters of floodplain map amendment” are new definitions;
- Mudslide is a new definition, in recognition of more frequent occurrences of this type of disaster nationwide;
- New construction now includes the actual date of the county’s entrance into the floodplain program, which is November 13, 1984. Construction started before floodplain codes are “Pre-FIRM,” and construction started after floodplain codes are “Post-FIRM.” These terms are also new definitions.

Article 3: General Provisions. This “general provisions” chapter covers the basis for flood mapping in the county, compliance requirements, and penalties for violation reflecting the misdemeanor standard punishment of a maximum of 6 months in jail, a \$1,000 fine or both.

Article 4: Administration. The administration chapter covers the local floodplain administrator’s duties, including authority to issue and revoke development permits, and to perform compliance tasks such as inspections or issuance of stop work orders. The draft adds a reference to the floodplain administrator “or designee,” since there may be other duties the county administrator or Board of Commissioners may wish to assign to planners or engineers. This chapter also contains specific development permit application requirements and certification requirements. New certificate language for exemptions are provided for recreational vehicles, temporary structures, and low-cost accessory structures. Corrective procedures are also addressed. This chapter contains new procedures to address violations and appeals resulting from corrective orders. Rather than adopt the state model ordinance creating a new, separate board of appeals, the Boundary County draft ordinance calls for the Board of Commissioners to consider appeals and variances.

Article 5: Provisions for Flood Hazard Reduction. This section provides the specific new construction requirements for structures and other development within the floodplain, including flood venting, elevating on fill or foundation, crawlspace construction, manufactured home installations, additions, and improvements. A new exception for agricultural buildings or residential accessory structures is granted for buildings less than 200 square feet or a cost of \$7,500 or less. Such structures would still require a floodplain permit, but could be allowed to be vented rather than elevated to meet flood standards. Specific standards for development within the floodway are included in this section. Floodways are those areas of the floodplain that carry the stream velocity and debris during a flood event.

Article 6: Legal Status Provisions. Contains language addressing the legal status of existing flood damage codes, the rights for continued work on floodplain permits already issued under former codes, severability and an effective date upon publication.

Authority

The authority for cities and counties to enact local floodplain standards is provided in Idaho’s Disaster Preparedness Act, Title 46, Chapter 10.

Agency/Public Comments

Notice of the proposed ordinance was published in the official newspaper of record a minimum of 15 days prior to the public hearing. Taxing districts and the media were also given notice at least 15 days prior to the hearing. Agency comments were limited to replies by FEMA and Idaho Department of Water Resources to the draft ordinance. No written public comment was provided at the time of this staff report.

FEMA Comments

On February 21, 2024, FEMA Region X Floodplain/Mitigation Specialist Suzanne Sarpong approved the draft ordinance, assuming there are no revisions to the document provided to her. **Due to the new Idaho Code floodplain changes, a revised draft county ordinance has been resubmitted to FEMA and IDWR for review. The previously approved version included exceptions granted by Idaho Code prior to the change in law and consistent with the state’s flood code sample at the time.**

Review by county civil counsel:

Planning staff provided the draft **and revised** flood damage prevention code to previous and current civil counsels when the drafts were sent to FEMA.

<u>Staff Analysis</u>	
To remain in the National Flood Insurance Program and to allow landowners access to flood insurance programs, the county must continue to enforce the minimum federal and state flood damage prevention standards and have in place a flood code that reflects these minimum standards. The proposed ordinance meets the objectives of the Idaho’s State Disaster Preparedness Act, Title 46, Chapter 10. The county has reviewed the draft amendment and revisions to ensure the potential flooding hazards are mitigated through the proposed ordinance amendment, while protecting property rights of its landowners. The original draft ordinance was reviewed and approved by FEMA prior to consideration by the Board of County Commissioners.	

<u>Draft Motions, Board of County Commissioners – Flood Damage Prevention Code</u>	
Motion to Approve	I move to approve the request to repeal the current flood damage prevention code known as Flood Damage Prevention Ordinance 2015-1, and adopt a new Flood Damage Prevention Ordinance, File #24-0047, finding that the proposal IS in accord with the authority granted to the County by the State of Idaho under the State Disaster Preparedness Act, and based upon the findings as written in the staff report (or as amended). I further move to direct staff to prepare written findings, a decision letter, ordinance, and ordinance summary for Board of Commissioners’ consideration.
Motion to Table	I move to table or continue the hearing to <i>[insert date, time and place]</i> to allow further consideration of the proposed amendment or to allow review and approval of written findings and decision.
Motion to Deny	I move to deny the request finding that the proposal IS NOT in accord with the authority granted to the County by the State of Idaho under the State Disaster Preparedness Act, for the following reasons (STATE REASONS). I further move to direct staff to prepare written findings and a decision for Board of Commissioners’ consideration.

Draft findings and conclusions for discussion/adoption:

1. The Board of Commissioners conducted a duly notice public hearing to consider the proposed Flood Damage Prevention Ordinance.
2. Idaho Code’s State Disaster Preparedness Act, §46-1022, provides local governments with the authority to enact floodplain ordinances.
3. FEMA Region X has reviewed and approved the draft Boundary County flood damage prevention ordinance (February 21, 2024). **A revised amendment that reflects the recent changes to Idaho Code regarding floodplain standards has been provided to FEMA Region X and Idaho Department of Water Resources for comment.**
4. Boundary County has participated in the National Flood Insurance Program since 1984.
5. Boundary County’s comprehensive plan Hazards Component acknowledges that the county participates in the flood insurance program, and that all development within the floodplains shall meet flood prevention standards prior to county approval.