



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT

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:	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.	
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 draft Boundary County ordinance has been reviewed by FEMA Region X’s Floodplain Management Specialist and approved. However, at the time of this report a new Idaho law (House Bill H0425) was passed by the Legislature and is awaiting the governor’s signature that will affect this draft ordinance. Planning staff is working with Idaho Department of Water Resources to assess the effect of this bill on the Boundary County 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. Since that date, the Idaho Legislature has adopted a revision to the floodplain definitions regarding exceptions to the term "development" within the floodplain. House Bill H0425 removed an exception to flood code development

permitting for canals, irrigation ditching, diversions, and certain other drainage practices. This legislation is awaiting the governor’s signature and would become law upon his signature. This state code change will affect the Boundary County draft ordinance, which includes the exceptions granted by the version of Idaho Code §46-1021 in effect at the time and consistent with the state’s flood code sample.

Review by county civil counsel:

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

Staff Analysis	
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 draft ordinance was reviewed and approved by FEMA prior to consideration by the Board of County Commissioners.	

Draft Motions, Board of County Commissioners – Flood Damage Prevention Code	
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).
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.