

CHAPTER 71
FLOODPLAIN OR FLOODWAY DEVELOPMENT—WHEN APPROVAL IS REQUIRED

[Prior to 7/1/83, INRC, Ch 5, Div. 1]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 6/18/30

567—71.1(455B) State floodplain permits. In the following instances, approval is required by the department for any development including construction, maintenance, and use of a structure, dam, obstruction, deposit, excavation or flood control work on a regulated floodplain or floodway unless the project is otherwise approved by a delegated community's local floodplain ordinances adopted pursuant to 567—71.2(455B) or is exempt under 567—71.4(455B).

71.1(1) Rural areas. In rural areas, projects in or on the floodplain of any stream draining ten or more square miles at the downstream end of the project site.

71.1(2) Urban areas. In urban areas, projects in or on the floodplain of any river or stream draining two or more square miles at the downstream end of the project site.

71.1(3) Protected streams. On protected streams, channel changes at any location on any river or stream designated as a protected stream pursuant to Division III of 567—Chapter 72.

71.1(4) Buildings and other structures adjacent to or downstream from impoundments. For new construction, additions, lowering, or reconstruction of buildings, water and waste water treatment facilities, sanitary landfills, animal feeding operation structures, or other miscellaneous structures and associated fill, without regard to the size of the drainage area, if:

a. The project is adjacent to an impoundment and the lowest floor level, including any basement, is lower than the top of the adjacent dam; or

b. There is an upstream dam and flooding can be reasonably anticipated from principal or emergency spillway discharges; or

c. There is an upstream dam that does not substantially comply with high hazard criteria in these rules and where flooding can be reasonably anticipated from overtopping and failure of the dam.

71.1(5) Dams. For construction, repair, or modification of any dam that exceeds the thresholds under 567—73.3(455B).

[ARC 9209C, IAB 5/14/25, effective 6/18/25]

567—71.2(455B) Delegated state floodplain permitting by local communities. Upon submission to the department for review and approval, a local unit of government may establish encroachment limits, floodplain regulations, and zoning ordinances, subject to the following:

71.2(1) Written approval from the department must be obtained before effective adoption or amendment of a local regulation that would control development in a floodplain or floodway for purposes related to flood protection. A local government may appeal the refusal of the department to approve a proposed regulation by notifying the department and requesting that the proposed local regulation be considered at the next meeting of the commission.

71.2(2) Prior to receiving approval, a community shall demonstrate capacity to properly review applications and issue floodplain permits.

71.2(3) Approved communities shall provide evidence to the department of this capacity at least every five years. Additionally, the department may, from time to time, take action to ascertain the effectiveness of department-approved, locally adopted floodplain management regulations. Upon a finding that the local government has been negligent in administering the approved regulations, the department may revoke approval of same. Floodplain works found to be in violation of department-approved, locally adopted floodplain management regulations may be handled under the provisions of the department's rules for investigation of unauthorized projects.

71.2(4) Where it is unclear whether the works are adequately covered by such local regulations, the department shall make the determination.

[ARC 9209C, IAB 5/14/25, effective 6/18/25]

567—71.3(455B) Review and approval of variances from local regulations. A variance from an approved local floodplain regulation shall not be effective until it has been reviewed and approved by the department in accordance with the following procedures.

71.3(1) *Duty of local government to notify department of each variance request.* After receipt of each request for variance from a local floodplain regulation approved by the department, the local government shall notify the department of the variance request on a form obtained from the department. The notice must be received by the department at least 15 days before any hearing that the local government schedules on the variance request.

71.3(2) *Written comment from the department.* After receipt of notice of a variance request, the department shall mail or deliver a written comment on the variance request. The comment shall be issued within 15 days after receipt of the notice or in time for consideration at any hearing held after expiration of the 15-day period. The comment shall be either a statement of objection or “no objection” as follows:

a. Objection to variance request. The department may issue an objection to the variance request if the requested variance would violate applicable statewide criteria. The objection may be based on a statement that the applicant for the variance has provided insufficient information for the department to determine whether the requested variance would violate applicable minimum statewide criteria. An objection based on a statement of insufficiency of information shall identify the information needed to determine whether the request would violate applicable criteria.

b. No objection to variance requests. The comment issued by the department may state that the department has no objection to the variance request. The comment shall briefly explain why granting of the requested variance would not violate the purposes of minimum statewide criteria. A statement of “no objection” shall constitute approval to grant the requested variance.

71.3(3) *Basis for variance.* A variance from an applicable local permitting requirement should only be granted if the applicant can show that denial of the variance would cause unnecessary hardship and that granting of the variance would not be contrary to the public interest or the underlying purposes of the requirement in question.

71.3(4) *Review or appeal of local ruling on variance request.* The appropriate forum and procedures for review or appeal of the decision of a local government on a request for variance from a regulation approved by the department depend on the relationship between the local decision and the comment submitted by the department as follows.

a. When local government grants variance after objection by department. If the local government grants a variance request after issuance of an objection by the department, the local government shall give written notice of the local action and the supporting reasons to the department. The variance shall not be effective until approved by the commission. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

b. When local government denies variance after objection by department. If the local government denies a variance request on the basis of an objection by the department, the applicant may file a notice of appeal with the department within 20 days following the local action. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

c. When local government grants or denies a variance request after a “no objection” comment by the department. When a local government grants or denies a variance request after receiving a “no objection” comment from the department, any appeal normally should be taken in the manner provided for appeal of other local actions. An appeal should be filed with the department only if the purpose of the appeal is to challenge the basis of the “no objection” comment.

d. Duty of local government to notify department of appeal. The local government shall promptly notify the department of the filing of any petition for judicial review of local action on a variance request so the department may determine whether participation in the judicial review would be in the interest of the state.

[ARC 9209C, IAB 5/14/25, effective 6/18/25]

567—71.4(455B) Exempted activities. Notwithstanding 567—70.3(17A,455B,481A) and 567—71.1(455B), the following activities do not require approval pursuant to this title by the department to construct in a floodplain:

71.4(1) *Rural bridges/culverts/road embankments and associated work.* Construction, maintenance, or use of bridges, culverts, temporary stream crossings, or road embankments in a rural area floodplain with a drainage area less than 100 square miles including associated channel changes not on protected streams with up to 500 feet in length and maximum of 25 percent reduction in length, and associated excavations within 500 feet of the project.

71.4(2) *Federally regulated railroad crossing.* Construction, maintenance, or use of federally regulated railroad crossings having a drainage area of any size.

71.4(3) *Buildings.*

a. Building additions that, when considered in aggregate with all additions constructed after July 4, 1965, increase the original floor area of a building by less than 25 percent.

b. Reconstruction of any portion of a building if the cost of reconstruction, including equivalent professional labor and material costs for proposed or actual volunteer labor and donated materials, and as would be determined by a qualified contractor, does not exceed 50 percent of the market value of the existing building or if reconstruction will not increase the market value by more than 50 percent.

71.4(4) *Pipeline and underground linear utility crossings.* The construction, operation and maintenance of buried pipeline, conduit and linear utility crossings if the natural contours of the channel and floodplain are maintained and no bank stabilization is required.

71.4(5) *Excavations.*

a. Excavations where the channel cross section is increased by 10 percent or less, as determined based on current survey, original engineering plans if being performed by a drainage district, if available.

b. Excavations for the repair and maintenance of a drainage district ditch with less than 100 square mile drainage area.

c. Excavations outside the channel and not impacting streambanks on any floodplain of any river or stream draining more than ten square miles where excess spoil is removed from the floodplain, the project does not reduce capacity of the floodplain, and surface waters are not diverted into a sinkhole or quarry excavated in carbonate rock.

71.4(6) *Boat docks.* Construction, maintenance, or use of floating boat docks on lakes, and those recreational nonfloating style boat docks located on the Mississippi and Missouri rivers, located on reservoirs within state parks, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs.

71.4(7) *Small projects.* For developments in rural areas for any low damage potential project where such works obstruct less than 3 percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct less than 15 percent of the cross-sectional area of that side of the stream's floodplain at any stage.

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These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 4, and sections 459.102, 459.301 and 481A.15.

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