

Testimony
Senate Bill 2081 – State Water Commission
Energy and Natural Resources Committee
Senator Curt Kreun, Chairman
January 7, 2021

Chairman Kreun, and members of the Senate Energy and Natural Resources Committee - I am Aaron Carranza, Director of the Regulatory Division of the State Water Commission (Commission). I am here today to testify in support of Senate Bill 2081, an agency sponsored bill relating to permissible uses in the floodway and flood fringe (see enclosed exhibit) under the National Flood Insurance Program (NFIP).

All communities that participate in the Federal Emergency Management Agency's (FEMA) NFIP must appropriately regulate land use and development within their FEMA-identified Special Flood Hazard Area (SFHA), which is typically referred to as the 100-year floodplain. NFIP regulations direct communities to also prohibit encroachments within the adopted regulatory floodway unless it has been demonstrated through a technical review that the proposed encroachment would not result in any increase in flood levels during the 100-year flood.

Currently, North Dakota Century Code § 61-16.2-06 measures floodway development compliance through hydraulic conveyance instead of flood level impacts.

The inconsistent use of terminology has created confusion regarding the difference between federal and state regulations around floodway and floodplain development. This bill proposes language to better align state law with the regulations of the NFIP by refocusing compliance on flood level impacts.

Additionally, there are permissible exceptions within the NFIP to the minimum federal requirements that empowers participating communities to make decisions that best fit a given set of circumstances. Current state law is vague on the

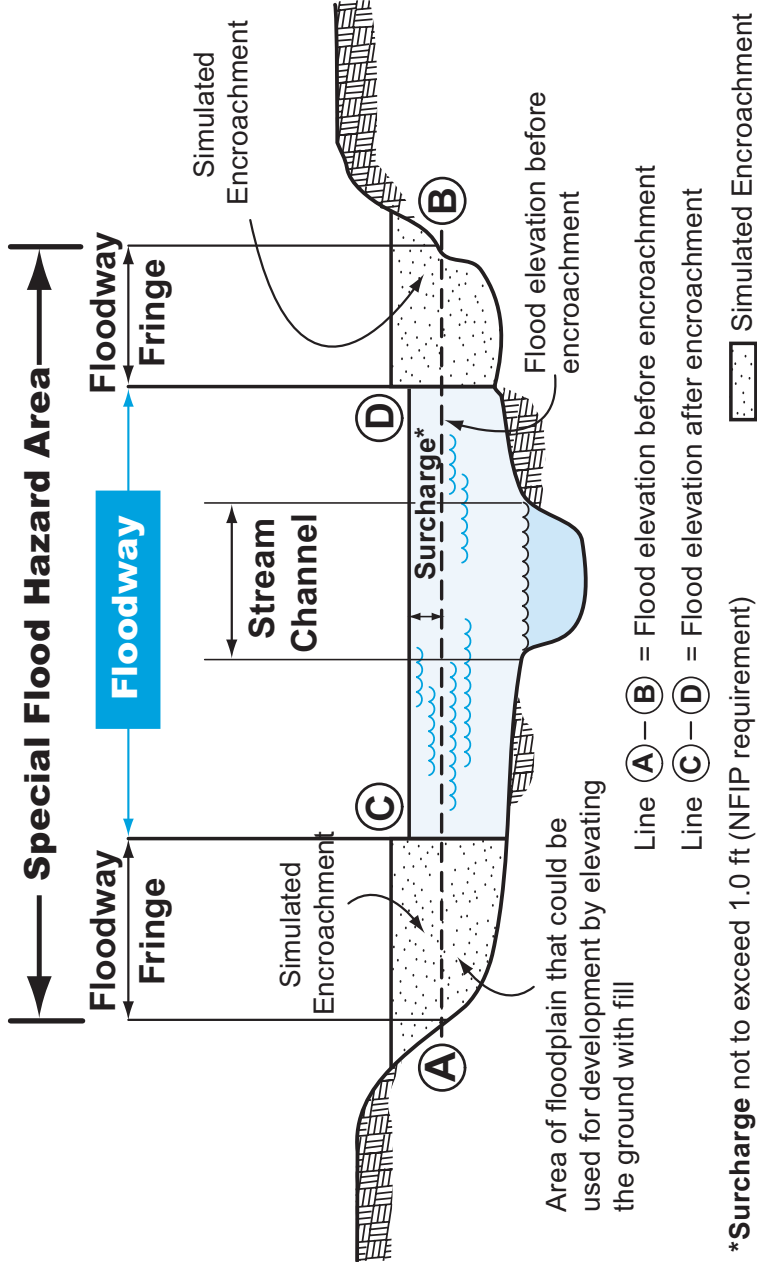
applicability of these exceptions to floodway and flood fringe uses. By adding additional exception language related to floodway and flood fringe uses, the proposed language makes clear the local responsibility in issuing exceptions as well as recognizing the applicability of federally authorized exceptions for floodplain development regulations within the state.

The lack of consistency between state and federal law has caused both extraneous review from agency team members while also needlessly causing project sponsors to provide data not in line with the guiding federal program. By pursuing the proposed changes, a more efficient process will be created that will make submittal requirements more easily understood, avoid additional requirements, and shorten the agency review period while saving project sponsors time and money.

The State Water Commission supports the passage of Senate Bill 2081 and fully supports the sound management of water resources across municipal, county, and state jurisdictions.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

UNDERSTANDING THE FLOODWAY



Terms and Definitions

The **Floodway** is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge without increasing flood depth.

Computer models of the floodplain are used to simulate “encroachment” or fill in the flood fringe in order to predict where and how much the base flood elevation would increase if the floodplain is allowed to be filled.

Before a local floodplain permit can be issued for proposed development in the floodway, the applicant must provide evidence that “no rise” (page 34) will occur or obtain a Conditional Letter of Map Revision (CLOMR) from FEMA. You will need a qualified engineer to make sure your proposed project will not increase flood levels.