

FACT SHEET



NONSUBSTANTIAL IMPROVEMENT OF STRUCTURES ALONG OR ADJACENT TO A STREAM

FACT SHEET

**Floodplain General Permit for Nonsubstantial
Improvement of Structures
Permit No.: KY FGP-NSUB
Agency Interest No.: AI# 35050**

Date: February 18, 2023

Public Notice Information

Public Notice Start Date: 2/20/2023

Comment Due Date: 3/22/2023

General information concerning the public notice process may be obtained on the Division of Water Public Notice Webpage at the following internet address: <https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx>.

or by mailing to the Division of Water, Water Resources Branch, 300 Sower Blvd, Frankfort KY 40601

Public Notice Comments

Comments must be received by the Division of Water no later than 4:30 PM on the closing date of the comment period. Comments may be submitted by emailing DOWPublicNotice@ky.gov or mailing to the Division of Water, Water Resources Branch, 300 Sower Blvd, Frankfort, Kentucky 40601.

Reference Documents

A copy of this proposed fact sheet and proposed General Permit may be obtained from the Division of Water Public Notice Webpage, under the "Search Public Notices" and Floodplain General Permit tabs, <https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx>.

or by mailing to the Division of Water, Water Resources Branch, 300 Sower Blvd, Frankfort KY 40601

Open Records

Copies of publicly-available documents may be obtained from the Department for Environmental Protection Central Office, Open Records Coordinator, at (502) 782-6849 or by e-mail at: EEC.KORA@ky.gov.

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water, 300 Sower Blvd, Frankfort, Kentucky 40601**

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Section 1

1. FACILITY SYNOPSIS

1.1. Introduction

KRS 151.250 of the Kentucky Revised Statutes (KRS), states that a person shall not construct across, along, or adjacent to a stream or in the floodway of a stream, unless a permit from the Division of Water (“Division”) is issued as established in 401 KAR 4:060, Section 2 of the Kentucky Administrative Regulations (KAR).

As established in KRS 151.250 and 401 KAR 4:050, the Division may allow development along or adjacent to streams without requiring a permit if the actions or proposed actions are of such nature or location that the development will not change the Base Flood Elevation, and is of such nature or action that minimal potential for damage or flooding impacts beyond the local area of the action exist.

Proposed development with the potential to change the Base Flood Elevation shall require an application for an Individual Floodplain Development Permit to Construct Along or Across a Stream as established in 401 KAR 4:060.

The Division is issuing this Floodplain General Permit for Nonsubstantial Improvement of Structures (“General Permit”) for activities and structures that will not impact or result in an increase in the Base Flood Elevation during a base flood discharge. This is consistent with the Code of Federal Regulations (CFR) 44 CFR 60.3, 44 CFR 80.19, and satisfies the requirements of 44 CFR 59.

1.2. Permitting Action

This is the first issuance of a Floodplain General Permit for Nonsubstantial Improvement of Structures for the improvement or repair of existing structures that are located on land along or adjacent to a stream, meet the eligibility requirements outlined in this General Permit, and do not change the Base Flood Elevation.

1.3. Location

This General Permit covers development activities within the 120 counties of the Commonwealth of Kentucky.

1.4. Permit Coverage

All eligible development shall comply with the terms and conditions of the General Permit within 90 days of its effective date through the completion of development. General Permit requirements for improvement or repair of existing structures after the effective date of this General Permit shall be met from the time an eligible activity begins through the completion of development. Coverage under this General Permit is consistent with KRS 151.250, 401 KAR 4:060, 44 CFR 80.19, and 44 CFR 60 regarding development along a stream only, and does not constitute certification of any other aspect of proposed development, construction, or stream obstruction.

1.5. Definitions

The following selected definitions established in KRS 151.100, 401 KAR 4:060, 405 KAR 5:002, and 44 CFR 59.1, are provided for clarification.

Base Flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year, also called the 100-year frequency flood.

Base Floodplain: The area along, adjacent to, and including a stream, which is inundated by the base flood on that stream. Also defined as Special Flood Hazard Area (SFHA).

Base Flood Elevation (BFE): The elevation of the water surface measured above mean sea level, as defined on the applicable FEMA Flood Insurance Rate Map in either the NGVD 1929 or NAVD 1988 vertical datum, reached during the base flood event.

Cabinet: The Energy and Environment Cabinet.

Community: Any State, area, or political subdivision which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Dam: Any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either: (a) is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the cabinet; or (b) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Division: The Kentucky Division of Water.

Director: The Director of the Kentucky Division of Water.

Eligible Community or Participating Community: A community for which the Federal Insurance Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

Flood Frequency: A statistical expression of the average time period between floods equaling or exceeding a given magnitude.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas.

Floodplain or flood-prone area: Any land area susceptible to being inundated by water from any source (see definition of "flooding").

Manufactured Home: A structure which is transportable in one or more sections, and is built on a permanent chassis and designed for use with or without a permanent foundation when connected to utilities; but does not include recreational vehicles placed on a site for less than 180 consecutive days.

National Flood Insurance Program: A federal program which makes available flood insurance protection to property owners in flood prone areas.

Nonsubstantial improvement means any combination of repairs, reconstruction, alteration, or improvement to a structure in which the cumulative cost does not exceed fifty (50) percent of the present market value of the structure.

100-year Flood: A flood of a magnitude having a one (1) percent chance of occurring in any given year; this is the same as "base flood".

Permit: Written approval for any construction across, along, or adjacent to a stream subject to the provisions of KRS 151.250.

Regulatory Floodway: The stream channel and that portion of adjacent land area that is required to pass flood flows without raising the base flood elevation by more than one (1) foot; the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special Flood Hazard Area (SFHA): The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A.

Stream: Any river, creek or channel, having well defined banks, in which water flows for substantial periods of the year to drain a given area, or any lake or other body of water in the Commonwealth.

Structure: An object constructed or installed which may be an obstruction to flood flows such as buildings, manufactured homes, towers, smokestacks, and overhead transmission lines.

Substantial damage Damage of any origin sustained by a structure whereby the cost of restoring the structure to before-damaged conditions would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement Any combination of repairs, reconstruction, alteration, or improvements to a structure, taking place during a one (1) year period, in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure, excluding periodic maintenance and upkeep that does not increase the value of the structure.

Water or Waters of the Commonwealth: Includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.

Watershed: All the area from which all drainage passes a given point downstream.

SECTION 2

2. PERMIT CONDITIONS

The General Permit conditions comply with the regulations contained in 401 KAR Chapter 4, which were promulgated pursuant to KRS Chapters 13A, 151, and 224.

2.1. Exclusions

In accordance with 401 KAR 4:060, development, activities, and structures with the potential to change the Base Flood Elevation, or which meet the definition of Substantial Damage Repair or Substantial Improvement of an existing structure, shall require an application for an Individual Floodplain Development Permit for Construction Along or Across a Stream. The Exclusions set forth in this General Permit are consistent with KRS 151.250, 401 KAR 4:060, 401 KAR 9:010, and 401 KAR 10:030

2.2. Eligibility

The eligibility requirements are consistent with KRS 151.250, 401 KAR 4:050, 401 KAR 4:060, 44 CFR 60, 44 CFR 64, and 44 CFR 80, which establish the authority and criteria to allow activities, uses, and development along or adjacent to a stream that will not change the Base Flood Elevation, and are of such nature or action that minimal potential for damage or flooding impacts beyond the local area of the action exists.

2.3. Permit Requirements

The General Permit requirements are necessary to comply and are consistent with KRS 151.110, which states that the duties of the Cabinet are to protect the use and availability of water, to prohibit the pollution of water resources, and to maintain normal flow of all streams so that quantity and quality of water are available to people of the Commonwealth. Permitting actions are also necessary for compliance with 44 CFRE 59, the National Flood Insurance Act.

2.4. Other Conditions

The criteria are consistent with KRS 151.110, KRS 151.182, and KRS 151.280 which allow permit conditions that, in the best professional judgment of the Cabinet, are necessary to comply with referenced statutes.

SECTION 3

3. PERMIT APPLICATION REQUIREMENTS

An application is not required for coverage under this General Permit. This is consistent with KRS 151.250 and 401 KAR 4:050, which establish criteria for development along or adjacent to streams without requiring a permit if the actions or proposed actions are of such nature or location that the development will not change the Base Flood Elevation, and are of such nature or action that minimal potential for damage or flooding impacts beyond the local area of the action exists.

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