



CDBG-DR/CDBG-MIT Projects in Floodways

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How is a regulatory floodway defined, and how is it correctly defined?

A floodway comprises 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. This segment of the floodplain will generally carry the flow of flood waters during a flood and is typically the area of most significant risk to property and human life. The term “floodway,” as used here, is consistent with “regulatory floodways,” as identified by FEMA.

An applicant or responsible entity must utilize the most stringent of the available FEMA Flood Insurance Rate Maps, also known as FIRM, to determine project viability and compliance with HUD’s Floodplain regulations, respectively. This includes effective, pending, and preliminary FIRMs, if available. Once the project site has been overlain on the appropriate FEMA FIRM, the floodway can be accurately identified.

What HUD-assisted activities are allowable in a floodway?

Under 24 CFR 55.1(c)(1), no HUD financial assistance may be approved concerning any action located in a floodway other than a functionally dependent use project or floodplain function restoration activity, or unless an exception in section § 55.12(c) excludes the action from Part 55 compliance. There is also a strict prohibition on using federal funds for any critical action located in a floodway or coastal high-hazard area [§ 55.2(b)(3)(ii)].

The regulations at § 55.2(b)(6) defines a functionally dependent use as a land use project that must be constructed in close proximity to water (e.g., dams, marinas, port facilities, waterfront parks, culverts, outfalls, and bridges). Floodplain function restoration activities include restoring and preserving the natural and beneficial functions and values of floodplains by clearing out all physical improvements and restoring the area to its natural state. Several activities listed in § 55.12(c) include floodplain restoration with an associated permanent covenant, sites where FEMA has issued a final Letter of Map Revision or final Letter of Map Amendment, actions that are Categorically Excluded and Not Subject to 58.5, and sites where the “incidental floodplain exception” applies. If the project is a functionally dependent use or floodplain restoration activity that does not meet all requirements of § 55.12(c)(3), the 8-Step decision-making process is required.

Housing and construction or repair of most linear infrastructure, such as road improvements, do not fit into the above categories and can present challenges to HUD-assisted projects with activities located in a floodway. For example, HUD will not fund the road replacement of a culvert project or the road approaches to a bridge project in the floodway. However, other non-HUD funds could be used for the associated road improvements.

Is any additional floodway guidance available?

HUD acknowledges that it is sometimes necessary and appropriate for certain linear infrastructure activities to cross a floodway to meet community needs. HUD has provided guidance with Notice CPD-17-013 concerning interpreting the floodway’s vertical limits for linear infrastructure. For the Notice, linear infrastructure projects are defined as installing, constructing, or repairing water and sewer lines, power and broadband transmission lines, and other large-scale corridor projects connecting infrastructure resources to a community. In the guidance provided by the Notice, linear infrastructure as defined above, located entirely below ground level or above base flood elevation, may comply with Part 55. This Notice would not apply to road improvements.

In addition, the GLO Regulatory Oversight team is dedicated to assisting communities in interpreting HUD’s regulations. For questions regarding floodways, please email env.reviews@recovery.texas.gov, and the regional point of contact will be able to provide technical assistance.