

**COUNCIL ACTION FORM**

**REQUEST: REZONE PROPERTIES WITH A FEMA-DESIGNATED FLOODWAY TO INCLUDE THE ENVIRONMENTALLY SENSITIVE AREA OVERLAY (O-E)**

**BACKGROUND INFORMATION:**

The City's Zoning Ordinance (Chapter 29) includes specific base zoning districts that articulates allowed uses and development standards that govern most aspects of the use of a property. In addition to base zones, the City in some instances applies Overlay Zones to address issues that are broader than one zoning district or affect a subset of properties within a base zoning district.

**In an effort to manage natural resource protection and development activities within floodways and riparian areas within the flood plain, the City now seeks to apply an "Environmentally Sensitive Area Overlay" (Section 29.1103) to properties throughout the city that have a Floodway designation by the Federal Emergency Management Agency (FEMA).** The Overlay does not change the base zoning for allowed principal use, but changes the permitting process for activities within the Overlay. It also does not change the location or designation of the Floodway.

The purpose of the Environmentally Sensitive Overlay (O-E) Zone is quoted below. The full text is found in Attachment A.

The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks, and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

The ordinance allows such overlays to be mapped based on a scientific study that concludes the area is "especially sensitive to adverse public impact from development due to unique environmental concerns." The ordinance notes that flood plains, designated natural resource areas, parks and open spaces, greenways, and lands above aquifers are eligible based on existing scientific evidence, such as a FEMA Flood Insurance Study, the Norris Study of 1994, etc. A map of the FEMA-designated Floodway, Floodway Fringe and General Flood Plain can be found in Attachment B. Other areas may be so designated by the City Council based on other scientific studies done by the City or by other parties. **The proposed rezoning will be the first application of the O-E to specific properties within the City.**

**Staff believes the overlay should apply to all FEMA floodways within the City with two exceptions.** Staff recommends that the O-E rezoning not apply to areas mapped as the General Flood Plain. These are very limited areas of the City and are designated as such by FEMA because a detailed study delineating base flood elevations and defining the Floodway has not been done. The General Flood Plain is treated as if it were the Floodway for development purposes until a detailed study is completed. A map showing the three areas in Ames having a General Flood Plain is found in Attachment C. The regional commercial site on East 13<sup>th</sup> Street is already governed by a major site development plan requiring City Council approval and would not benefit from addition of the Overlay. The Rose Prairie development area will be governed by a preliminary plat that will be coming forward soon and is in an area that will be defined as a conservation area within the subdivision. The third area is within the boundaries of the Ames Municipal Airport. No development activity is expected in the General Flood Plain at the airport, and if it were to occur it would be subject to City Council approval of the project.

The second exception is to exclude a small number of properties of a mapped Floodway in south Ames (Attachment D). This is an area bounded by South Duff Avenue, Crystal Street, Opal Drive, and Jewel Drive in which the drainage way was placed in a culvert several decades prior and development has already occurred above it. FEMA maps have not been updated and still designate it as Floodway, but staff believes there is no environmentally sensitive area to be concerned with that should be subject to the O-E Overlay. The designation of the Floodway would not change at this time and it would still be subject to the administrative review requirements and standards of Chapter 9.

Currently, the City restricts the types of uses allowed in the Floodway and Floodway Fringe through standards in Chapter 9 of the Ames Municipal Code. Chapter 9 includes restrictions on types of uses as well as performance standards for uses that are allowed. There is a fundamental difference in Chapter 9 between Floodways and Floodway Fringe areas. The approach for Floodways is to restrict activities that impact flood events while in the Floodway Fringe, the intent is to ensure actives are protected during a 100-year flood event.

The minimum standard for an activity that would be permitted in a Floodway is to ensure there is “no rise” in the 100-year flood level. Improvement activities within the Floodway generally necessitate approval of a Conditional Use Permit by the Zoning Board of Adjustment based upon criteria found in Chapter 9. Within the Floodway Fringe, the City requires protection of property and improvements through either flood proofing or a standard of elevating improvements to three feet above the base flood elevation. There are additional requirements for receiving a flood plain permit, but that is the most important.

**The O-E does not contain specific regulatory standards, such as use limitations or design standards. Rather, it changes the process for approval and requires the applicant to prepare an Environmental Assessment Report on how the development will “address, obviate, or mitigate” the environmental issues which led to the designation.**

**If the O-E rezoning is approved, it is proposed to only affect activities within the overlay area and not to the whole of the property.** This means that with the O-E applied to properties within a Floodway, development in the Floodway Fringe can occur as it does today. It will continue to follow the same process and standards and be unaffected by the overlay. **However, any activity within the O-E (i.e., the Floodway) will have a different approval process that will require City Council approval of a Major Site Development Plan following a recommendation by the Planning and Zoning Commission. If a project is proposed within both the Floodway and the Fringe, the whole plan will be subject to the Major Site Development Plan process.**

Staff notes that there are companion text amendments on this same agenda that are proposed to Chapter 9 (Flood Plain Zoning Regulations) and Section 29.1103 (O-E) to implement the O-E as intended for the floodway. The language of these text amendments more fully explains the types of activities regulated by the O-E and Chapter 9 and the process for their review.

Staff identified all properties for which at least part of the property was covered by the Floodway designation by FEMA. There are in excess of 400 properties with either a floodway or general flood plain designation. Staff has notified 300 property owners of the proposed rezoning action—some property owners control multiple properties. Further analysis of the proposal is found in the Addendum. A map of the FEMA-designated Floodway and Floodway Fringe is found in Attachment B.

**Planning and Zoning Commission Recommendation:** At a public hearing on January 20, 2016, the Planning and Zoning Commission voted 3 to 2 with one abstention to recommend that the City Council add the O-E overlay district to Floodway areas of the City. Scott Renaud of FOX Engineering spoke against the proposal, stating that the provisions of other City ordinances, such as the Flood Plain regulations and the City's storm water ordinances, already accomplish the desires of the City and it was an unnecessary layer of regulatory process. **Staff notes that although the Commission voted to approve the rezoning, it later recommended not adopting the accompanying text amendments, and by those recommendations indicated that the rezoning should not occur as they are necessary to administer the O-E effectively.**

### **ALTERNATIVES:**

1. The City Council can approve the first reading of an ordinance to place the Environmentally Sensitive Area Overlay (O-E) on the Floodway as part of the City's Official Zoning Map (with the exceptions noted above), based upon staff's analysis as found in the addendum.
2. The City Council can choose not to place the Environmentally Sensitive Area Overlay (O-E) on the Floodway.
3. The City Council can refer this item back to staff for additional information,

### **CITY MANAGER'S RECOMMENDATION:**

As explained more fully in the accompanying Council Action Forms on the text amendments to Chapter 9 and to Section 29.1103, the development standards for the O-E zone require the developer or owner to better address potential development issues with activities in the Floodway. The most common types of features that appear in a Floodway on private property are accessory site improvements, such as parking lots or stormwater drainage facilities. Principal buildings are not permitted in a Floodway. Applying the O-E will require an applicant to mitigate adverse impacts and consider a more comprehensive set of issues beyond just the potential rise in base flood elevation. The current language of Chapter 9 is more limited in scope in not requiring mitigation of adverse impacts of the development as a whole, including that portion of the property that may lie within the Floodway Fringe.

Staff supports the placing of the O-E overlay district over the Floodway (but not the General Flood Plain) with the exception of the block in south Ames, but only in conjunction with the recommended text amendments to Chapter 9 and Section 29.1103, also presented to the City Council at this meeting. The combined text amendments clarify the standards and process for administration of the overlay.

**Therefore, it is the recommendation of the City Manager that the City Council accept Alternative #1, thereby approving the request to place the Environmentally Sensitive Area Overlay (O-E) on the Floodways with the exception of the single square block in south Ames.**

## **ADDENDUM**

### **REZONING BACKGROUND:**

**Land Use Policy Plan.** The LUPP provides several references to protection of waterways. These include:

#### **Chapter 1. Planning Base: Goals for a New Vision**

**Goal No. 3.** *It is the goal of Ames to assure that it is an “environmentally-friendly” community and that all goals and objectives are integrated with this common goal. In continuing to serve as a concentrated area for human habitat and economic activity, Ames seeks to be compatible with its ecological systems in creating an environmentally sustainable community.*

**Objectives.** *In assuring the community’s “environmental-friendliness”, Ames seeks the following objectives.*

- 3.A. *Ames seeks to provide biodiversity through the inclusion of plant and animal habitats. Their inclusion shall be provided through such methods as conservation management, protection, replacement, etc.*
- 3.B. *Ames seeks to maintain and enhance the value of its stream corridors as drainageways and flood management areas, plant and animal habitats, recreational and scenic areas, and pathways for linking the overall community.*
- 3.C. *Ames seeks to protect and conserve its water resources for the following purposes: aquifer protection; water quality protection; user conservation management; plant and animal life support; water-borne recreation; scenic open space; and, provision of a long-term/reliable/safe source of water for human consumption and economic activities.*
- 3.D. *Ames seeks to protect and conserve its energy sources for the following purposes: energy consumption reduction through provision of an integrated multi-modal transportation system, and through land use practices that minimize vehicular trips; user conservation management; material recycling; and, long-term/reliable/safe source for the support of human and economic activities.*

#### **Chapter 2. Land Use: Future Land Use Classification**

**Environmentally Sensitive Areas.** *The designation involves flood prone areas, wetlands, water bodies and designated natural resources that should be protected from detrimental use. Included are areas previously identified as “Floodway” and “Floodplain”; plus selective natural resources from the “Natural Resources Inventory”. Areas designated*

*“Environmentally Sensitive Areas” may or may not be suitable for development. In the event that development is determined to be appropriate, special requirements may be necessary to ensure environmental compatibility.*

**Findings of Fact.** Based upon an analysis of the proposed rezoning and laws pertinent to the proposed map amendment, staff makes the following findings of fact:

1. Ames Municipal Code Section 29.1507(1) allows the City Council to initiate an amendment to the Official Zoning Map, which occurred on November 10, 2015.
2. The subject properties are located within the Floodways as defined by FEMA.
3. The LUPP Goals 1 and 2 supports identifying and conserving water resources for multiple purposes.
4. Chapter 2 of the LUPP anticipates a correlation between areas identified as Floodways and as Environmentally Sensitive Areas.
5. Chapter 9 of the Ames Municipal Code governs development within the Floodway and Floodway Fringe, limiting certain uses and providing development standards.
6. Section 29.1103 of the Ames Municipal Code describes the approval mechanism for proposed development within any area zoned as O-E.

**Public Notice.** The City identified all properties in which at least a portion lies within the Floodway. Staff mailed approximately 300 letters in December stating the intent and direction of the City Council. Additional notices of public hearing was sent prior to the Planning and Zoning Commission and City Council meetings in accordance with the notification requirements of Chapter 29.

**Conclusions.** Based upon the analysis in this report, staff concludes that the proposed placement of the O-E overlay district on the Floodway within the City limits is consistent with the Goals and Objectives of the City of Ames Land Use Policy Plan.

## ATTACHMENT A: FULL TEXT OF SECTION 29.1103 [CURRENT]

### Sec. 29.1103. "O-E" ENVIRONMENTALLY SENSITIVE AREA OVERLAY.

(1) **Purpose.** The Environmentally Sensitive Overlay (O-E) Zone is intended to supplement the City's flood plain regulations and to protect designated natural resource areas by using the natural resources inventory to identify and preserve natural resources and by establishing parks and open space areas. Greenways are included in this district for stream corridors, linear parks and open spaces adjacent to environmentally sensitive areas to create a continuous system throughout the City.

(2) **Designation of Environmentally Sensitive Areas.** Any area may be designated an O-E Zone by ordinance of City Council, after the advice and recommendation of the Planning and Zoning Commission, if the results of a scientific study of the area support the conclusion that the area so designated is especially sensitive to adverse public impact from development due to unique environmental circumstances. Examples of such areas that may be designated as an O-E zone are:

- (a) Flood Plain Areas. Those areas defined in Chapter 9 of the Municipal Code;
- (b) Designated Natural Resource Areas. Those areas defined in "A Natural Areas Inventory of Ames" (July 18, 1994);
- (c) Park and Open Space Areas. Those areas defined in the City's Parks and Recreation Master Plan of the Municipal Code;
- (d) Green-ways. Those areas as may be defined as Green-ways by the City Council; and
- (e) Aquifer Protection Areas. Those areas as may be defined as Aquifer Protection Areas as defined by the City Council.

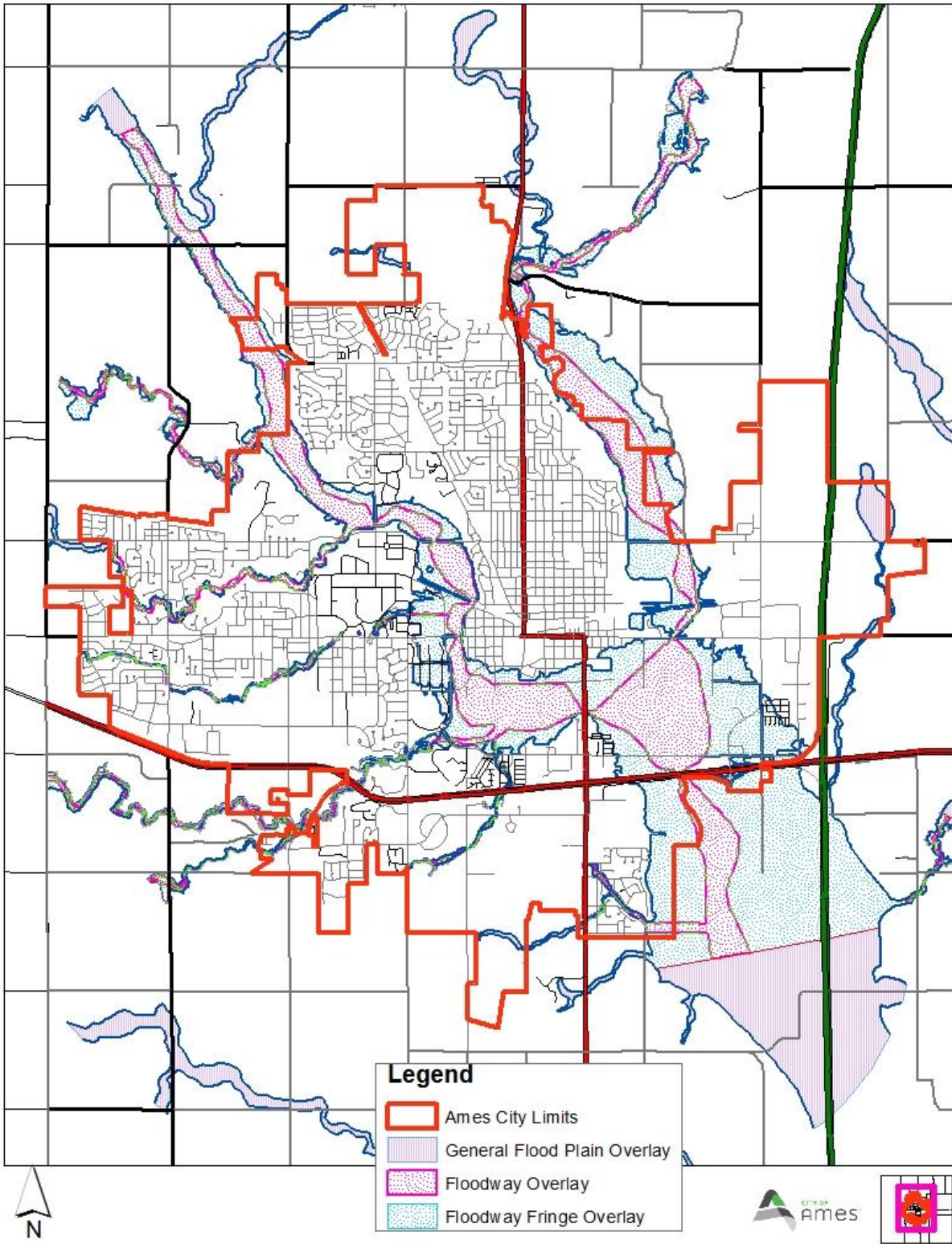
(3) **Studies.** The Department of Planning and Housing and the Planning and Zoning Commission are authorized to conduct studies in order to evaluate areas for environmental sensitivity as part of the continuing process of maintaining a current comprehensive land use plan for the City. Additionally, studies done by or for other governmental or private parties may be adopted for the purposes of this section.

(4) **Procedures.** No Building/Zoning Permit shall be issued and no grading, excavation, construction or change in use shall occur in an area designated as an O-E Zone except in accordance with the procedures set forth in Section 29.1503(4), "Major Site Development Plan Review". In addition, the applicant shall prepare and submit an Environmental Assessment Report which shall detail how the problems identified in the study on which the O-E Zone designation was based will be addressed, obviated or mitigated. City Council shall not approve the Major Site Development Plan unless it has reviewed and approved the Environmental Assessment Report.

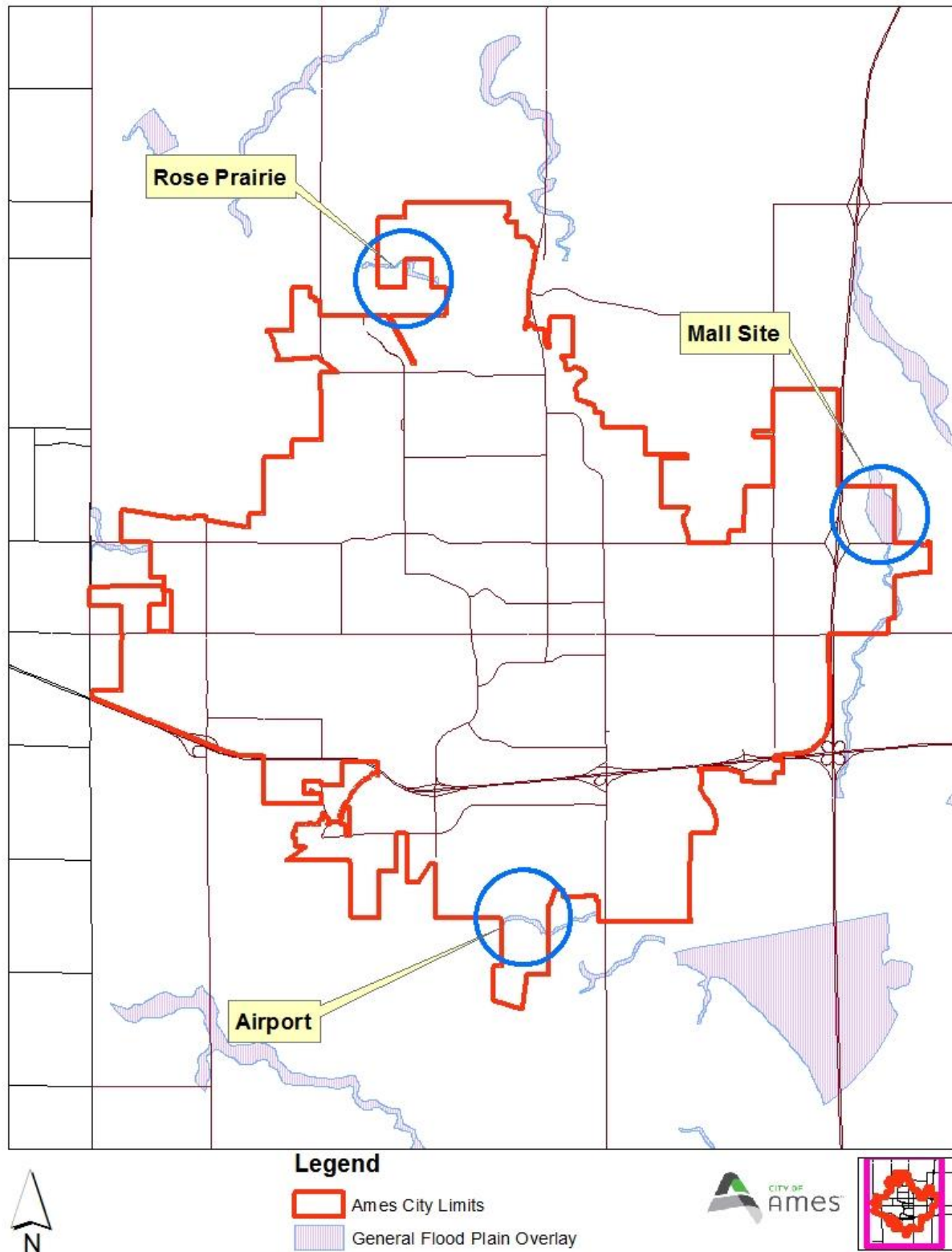
(5) **Enforcement.** Development or other activities in conflict with the Major Site Development Plan, or a failure to implement the Plan, including the measures set out in the Environmental Assessment Report shall constitute the violation of this section for which any and all enforcement means and remedies established by law or zoning

regulations may be invoked and instituted.

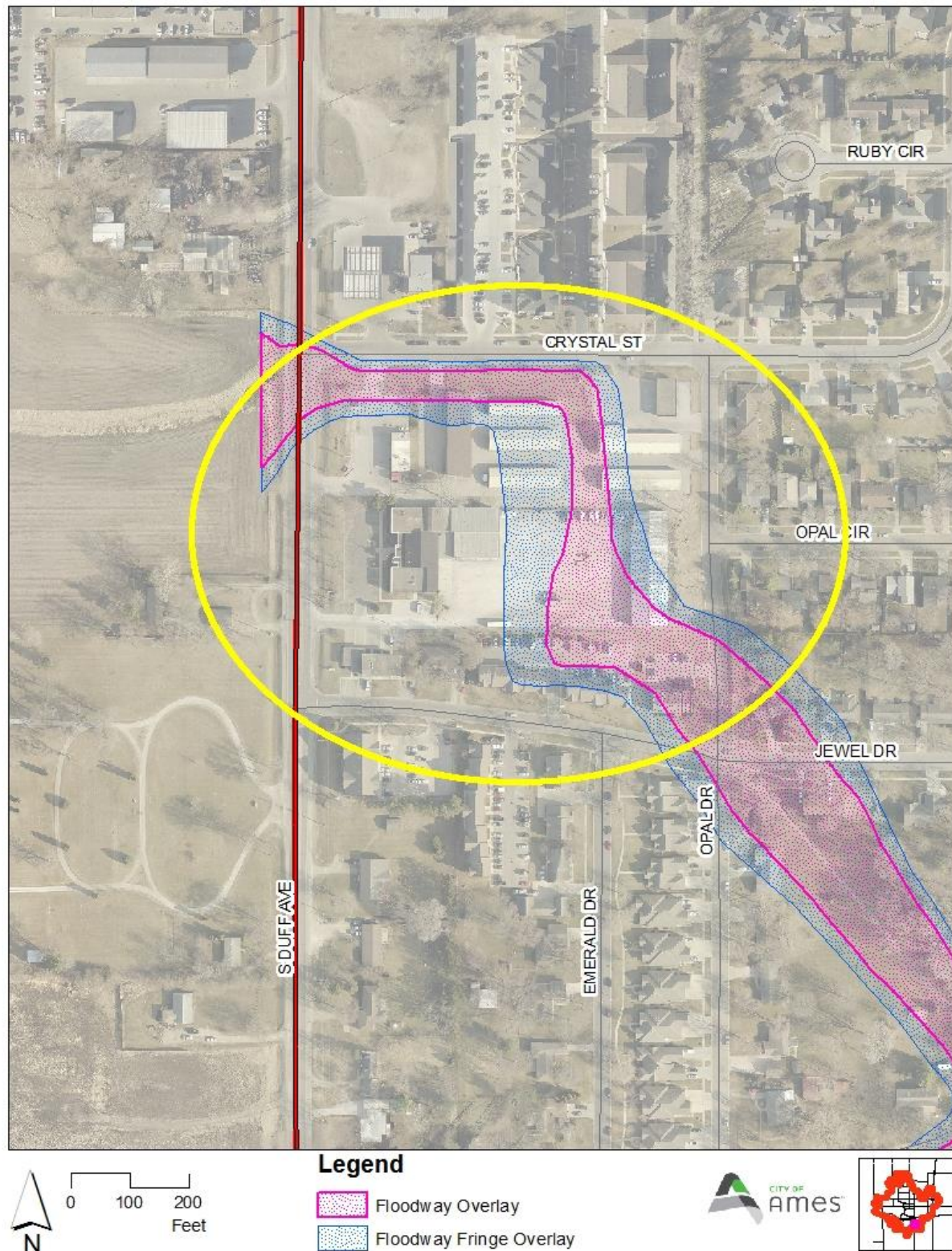
**ATTACHMENT B: FLOOD PLAIN MAP**



## ATTACHMENT C: GENERAL FLOOD PLAIN MAP



## ATTACHMENT D: SOUTH AMES EXCLUSION AREA



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DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER  
Prepared by: Charles Kuester, City Planner, 515 Clark Avenue, Ames, IA 50010 Phone: 515-239-5146  
Return to: Ames City Clerk, P.O. Box 811, Ames, IA 50010 Phone: 515-239-5105

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF AMES, IOWA, AS PROVIDED FOR IN SECTION 29.301 OF THE *MUNICIPAL CODE* OF THE CITY OF AMES, IOWA, BY CHANGING THE BOUNDARIES OF THE DISTRICTS ESTABLISHED AND SHOWN ON SAID MAP AS PROVIDED IN SECTION 29.1507 OF THE *MUNICIPAL CODE* OF THE CITY OF AMES, IOWA; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH AND ESTABLISHING AN EFFECTIVE DATE**

**BE IT HEREBY ORDAINED** by the City Council of the City of Ames, Iowa;

Section 1: The Official Zoning Map of the City of Ames, Iowa, as provided for in Section 29.301 of the *Municipal Code* of the City of Ames, Iowa, is amended by changing the boundaries of the districts established and shown on said Map in the manner authorized by Section 29.1507 of the *Municipal Code* of the City of Ames, Iowa, as follows: That the Floodway designated by the Federal Emergency Management Agency in the Flood Insurance Study with an effective date of October 16, 2014, and all subsequent Letters of Map Change within the Corporate Limits of the City of Ames, Iowa, is hereby amended to also include the Environmentally Sensitive Area Overlay Zoning District (O-E), except for the block bounded by South Duff Avenue, Crystal Street, Opal Drive, and Jewel Drive.

Section 2: All other ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: This ordinance is in full force and effect from and after its adoption and publication as provided by law.

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor