

Floodplain and Shoreland Management

Notes

Communities Responsible for Inspecting Flood Damaged Properties

The recent flood disaster in Wisconsin has prompted state and local officials to re-examine how we manage nonconforming uses and structures both before and after a flooding event.

All levels of floodplain regulations place limits on alterations, additions, repairs and rebuilding of structures that do not comply with current zoning ordinance provisions. Since the intent of nonconforming law is to eventually bring nonconforming structures into compliance, courts throughout the country, including Wisconsin, have tried to find a balance between the rights of property owners to maintain and repair a structure and the community's interest in ensuring that all structures meet the minimum floodplain management standards.

As water levels in flood-stricken areas recede, local officials will be inspecting flooded properties to determine the amount of damage and whether a building permit will be needed to make repairs. This applies to all structures in the floodplain, including those which were constructed before the community's floodplain zoning ordinance was adopted and are considered legal nonconforming structures. The owners of these structures, which were not properly elevated or were built in hazardous floodway areas, can only make limited repairs or modifications to the structure. If local officials determine that a nonconforming structure is "substantially damaged" (damages exceed 50% of the structures equalized assessed value), the structure must be declared uninhabitable and cannot be

replaced, reconstructed or rebuilt unless it is compliant with floodplain standards.

All communities participating in the National Flood Insurance Program (NFIP) have adopted floodplain zoning ordinances with language regulating the permitting of repairs to flood-damaged structures. In order for residents of the community to remain eligible for subsidized flood insurance, disaster assistance and flood mitigation grants, the community has agreed to regulate all development activity in the floodplain. Development includes repairs or reconstruction of damaged structures.

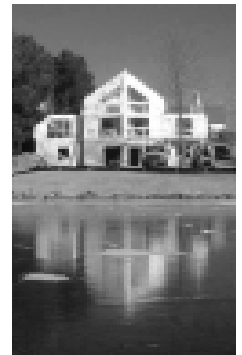
If a building is substantially damaged, no repairs can be authorized until the community determines if the requirements of the floodplain zoning ordinance can be met. State administrative codes and local ordinances define substantial damage provisions: "If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of the current floodplain zoning ordinance are met. For the purposes of this subsection, restoration is deemed impracticable where the total cost of such restoration would equal or exceed 50 percent of the present equalized assessed value of the structure."

"Destroyed or is so badly damaged" and "total cost" are the key provisions. Unlike repairs or modifications to undamaged structures, where a distinction is made between ordinary maintenance and struc-

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Flood Insurance Explained

Flood insurance is available to all property owners and renters in the over 500 communities in Wisconsin that participate in the National Flood Insurance Program (NFIP). FEMA publishes maps indicating a community's special flood hazard areas (SFHA) and the degree of risk in those areas. A community's Flood Insurance Rate Maps (FIRM) usually are on file at the local planning and zoning or engineering office. A property owner may consult these maps to find out if the property is in an SFHA. Some communities may have placed their maps on-line as part of a GIS database.

Almost every type of walled and roofed building that is principally above ground and not entirely over water may be insured. This generally includes both manufactured homes and travel trailers without wheels that are anchored to permanent foundations and are regulated under the community's floodplain management and building ordinances or laws. Contents of insurable walled and roofed buildings also may be insured under separate coverage.

Some buildings cannot be covered, including those entirely over water or prin-

cipally below ground. Items which cannot be insured include gas and liquid storage tanks, animals, birds, fish, aircraft, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, machinery or equipment in the open, and most motor vehicles. Most contents and finishing materials located in a basement or in enclosures below the lowest elevated floor of an elevated building constructed after the FIRM became effective are not covered.

Flood insurance is not available for buildings that FEMA determines have been declared by a State or local zoning authority or other authorized authority to be in violation of State or local floodplain management regulations or ordinances. No new policies can be written to cover such buildings; nor can an existing policy be renewed.

Flood insurance cost is dependent on a number of factors, including: amount of coverage purchased; location; age of the building; building occupancy; design of the building; and, for buildings in SFHAs, elevation of the building in relation to the

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Floodplain and Shoreland Management Notes

"Floodplain and Shoreland Management Notes" is published by the WDNR, Bureau of Watershed Management. Its purpose is to inform local zoning officials and others concerned about state and federal floodplain management, flood insurance, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome.

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base flood elevation. Buildings eligible for special low-cost coverage at a pre-determined, reduced premium rate are single-family and one- to four-family dwellings located in Zones B, C, and X.

The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 mandate the purchase of flood insurance as a condition of Federal or Federally related financial assistance for acquisition and/or construction of buildings in SFHAs in any community. This includes all conventional loans which are sold on the secondary market to Fannie Mae or Freddie Mac. The voluntary purchase of flood insurance is frequently prudent even outside of SFHAs.

For virtually every mortgage transaction, the lender reviews the community's current NFIP maps to determine its location relative to the published SFHA. If the structure is within the SFHA in a community participating in the NFIP, the borrower is then notified that flood insurance is required as a condition of receiving the loan. A similar review and notification is completed whenever a loan is sold on the secondary loan market or perhaps when the lender completes a routine review of its mortgage portfolio.

Property owners who disagree with the lender's determination may, for a fee, submit a joint request with the lender to FEMA asking for a review. This request must be submitted within 45 days of the date the lending institution notified the property owner that a building or manufactured home is in the SFHA and flood insurance is required. In response, FEMA will issue a Letter of Determination Review (LODR). The LODR does not result in an amendment or revision to the FIRM. It is only a finding as to whether the structure is in the SFHA shown on the NFIP map. The LODR remains in effect until the NFIP map panel affecting the subject building or manufactured home is revised. There is normally a 30-day waiting period before flood insurance goes into effect.

There are two exceptions:

- If the initial purchase of flood insurance is in connection with the making, increasing, extending, or renewing of a loan, there is no waiting period. The coverage becomes effective at the time of the loan, provided the application and presentment of premium are made at or prior to loan closing.
- If the initial purchase of flood insurance is made during the 13-month period following the revision or update of a FIRM for the community, there is a 1-day waiting period.

Flood insurance can be canceled, and a refund issued, only in certain circumstances, because all of the premium is fully earned on the first day of the policy term. Premiums will be refunded on a pro-rata basis when the policyholder no longer owns or has an insurable interest in the insured property, provided no claim has been paid or is pending. There are other limited cancellation provisions for the refunding of premium. To discuss cancellation criteria and procedures, policyholders should contact the insurance agent who wrote the policy or call the NFIP toll-free at 1-800-427-4661.

For anyone who suffers a loss to real or personal property due to a flood disaster and subsequently files a claim for federal assistance, they must purchase and maintain flood insurance coverage for as long as they live in the dwelling. If flood insurance is not purchased and maintained, future disaster assistance will be denied. If the structure is sold, the current owner is required to notify the buyer of the need to purchase and maintain flood insurance. If the buyer is not notified, suffers uninsured flood losses, and receives Federal disaster assistance, the seller may be required to repay the Federal Government any Federal disaster assistance the buyer received.

Further information on flood insurance can be found at www.floodsmart.gov.

Flood Mitigation Funds Available

As a result of flooding and severe storms, a federal disaster declaration (FEMA-1719-DR) was declared on August 26, 2007. Mitigation dollars will be available statewide through the Hazard Mitigation Grant Program (HMGP). HMGP assists state and local communities in implementing long-term hazard mitigation measures and is administered by Wisconsin Emergency Management (WEM). Projects are 75% federally funded through the Federal Emergency Management Agency (FEMA), 12.5% state funded through WEM, and the remaining 12.5% is a local match requirement. The 75% federal funding under HMGP is based on 15% of the federal funds spent on FEMA Public Assistance and Individual Assistance programs for each disaster. However, Wisconsin will be eligible for 20% as it has an approved State Enhanced Mitigation Plan. Based on the Federal/State Preliminary Damage Assessment, it is estimated that \$4 million may be available for HMGP.

State and local governments; certain private, non-profit organizations or institutions; and Indian tribes or authorized tribal organizations and Alaska Native villages or organizations are eligible to apply as long as they have a FEMA approved all hazard mitigation plan with the proposed project identified in the plan. In addition, the community must be participating and in good standing in the National Flood Insurance Program if special flood hazard areas have been identified.

The HMGP can be used to fund projects to protect either public or private property. Examples include:

- Acquisition, demolition, and relocation of structures from hazard prone areas;
- Retrofitting such as floodproofing to protect structures from future damages;
- Structural hazard control or protection projects such as debris

- basins or floodwalls;
- Wind resistant retrofitting or construction
- Construction of safe rooms/storm shelters
- Development of state and local mitigation standards;
- Development of comprehensive hazard mitigation programs with implementation as an essential component; and
- Development or updates of all-hazards mitigation plans.

Projects must be technically feasible, cost-effective, and environmentally sound. In addition, the proposed project should be long-term, and permanent in nature. Projects that require future maintenance typically are not eligible for funding. In addition, the application should identify other alternatives and why the proposed project is the best alternative.

Per the Wisconsin Hazard Mitigation Plan, mitigation priorities are as follows:

- Acquisition/demolition of flood damaged/floodprone structures
- Floodproofing or retrofitting flood damaged/floodprone structures
- Other hazard reduction projects (retention ponds, storm sewer improvement for flood reduction, protection of utilities, safe rooms/storm shelters, etc.)

Applicants are encouraged to apply for mitigation projects as soon as possible after a disaster occurs so that opportunities to do mitigation are not lost during reconstruction. Local officials who are interested in applying for the program should contact Roxanne Gray, State Hazard Mitigation Officer, 608-242-3211 or 1-800-943-0003. Additional information on the HMGP as well as other mitigation programs can be found at the following web sites: <http://emergencymanagement.wi.gov> or www.fema.gov and typing in *HMGP* under *Search*.

tural work, all costs to restore a flood-damaged structure are counted against the 50 percent limit on such costs.

For properties in floodfringe areas, this usually means the structure will need to be elevated. Substantially damaged floodway properties cannot be repaired or rebuilt, but are eligible for state and federal mitigation programs to acquire or re-locate the damaged structure.

The cost of repairs must be calculated by assuming the building will be fully repaired to its pre-damaged condition, even if the owner elects to do less. The total cost of repair includes the fair market value of labor, structural and finish materials. Labor costs must be calculated even if the owner elects to do his own repairs.

If a structure did not reach the substantial damage threshold, a recent change in Chapter NR 116 provides more flexibility for property owners who wish to protect a structure at risk of flooding. Prior to 2004, all costs to elevate a floodplain structure counted against the 50 percent cumulative cap on improvements to nonconforming structures. NR 116.15(1)(c) now allows those costs to be excluded from the cap provided that the lowest floor of the structure is elevated to or above the flood protection elevation, which is two feet above the base flood elevation, as shown on the floodplain map.

To minimize obstructions to flood flows and debris accumulation, it is best to elevate on piers or pilings. If a property owner wishes to elevate on a continuous wall foundation, FEMA requires specifically sized and placed openings to allow the entry and exit of floodwater into the enclosed area in order to equalize water pressure.



Flood damaged residence in Richland Center

Because communities have adopted floodplain zoning ordinances pursuant to the requirements of state administrative codes, the Wisconsin Department of Natural Resources is the agency charged with follow-up on this matter to ensure compliance with both local floodplain ordinances and the NFIP.

Flooding is the most common natural disaster and Wisconsin has certainly received its share. Starting with the floods of 1978, the DNR has been working closely with at-risk communities to minimize rising flood damage costs, in part due to continued development and redevelopment in flood hazard areas. To better protect people and property and minimize disaster assistance costs for taxpayers, we are working to ensure that floodplain ordinances are properly enforced. Communities that do not enforce their regulations risk the loss of flood insurance, disaster assistance and flood mitigation grants for their residents and the community.

Wisconsin has been a leader in floodplain management for over 30 years. The cooperation of local communities and property owners in responding to the latest flood disaster will guarantee that the state continues to lead the way in flood damage reduction and community revitalization.

WAFSCM Conference Registration

November 7th, 8th, & 9th 2007

Radisson Paper Valley Hotel, Appleton WI

Local Municipal Officials \$50	WAFSCM Members \$50	Non- Members \$70
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Make checks payable to "WAFSCM"

Please check if you plan to attend Flood Management
101 Workshop (Wednesday Noon-5 PM) (Free) _____

Fox River and Stormwater BMP Tour (\$5)
(Friday 9 AM – Noon) _____

Registration Fee: _____

Tour Fee: _____

Total: _____

Conference Registration Form
Please print

Registrant's Name: _____

Affiliation: _____

Address: _____

City: _____

State/Zip: _____

Phone: _____

Email: _____

Registration Fee covers conference, workshop, breakfast buffet, breaks, Thursday's lunch, Thursday night reception, hand-out materials and association membership for 2008.

Mail to:
Roxanne Gray
Wisconsin Emergency Management
2400 Wright Street
P.O. Box 7865
Madison, WI 53707-7865

DNR Staff Changes

Map Modernization Staff

The DNR's Flood Map Modernization staff has expanded over the past 5 months with the hiring of 5 new Limited Term Employees (LTEs). Since May, Erik Binnie, Katie McMahan, John Roncke, Kiah Sagami and Emily Szajna have been hired as GIS Technicians. They will be applying FEMA cartographic specifications to the new Digital Flood Insurance Rate Maps (DFIRMs) being produced for Burnett, Dane, Milwaukee, Rock and Waukesha Counties.

DSF Section Moves

The Dam Safety and Floodplain Management Section has moved from the 2nd floor to the 3rd floor of GEF 2 at 101 South Webster Street in Madison. Mail should now be addressed:

Staff Name WT/3
P. O. Box 7921
Madison, WI 53707-7921

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Certified Floodplain Managers Exams

November 7, 2007 - WAFSCM Annual Conference, Appleton, WI.

Application to take the CFM exam must be made at least two weeks in advance through the Association of State Floodplain Managers at: www.floods.org/Certification/certcal.asp or cfm@floods.org

May 19 and 23, 2008 - ASFPM Annual Conference, Reno-Sparks, NV.

Application to take the CFM exam must be made at least two weeks in advance through the Association of State Floodplain Managers at: www.floods.org/Certification/certcal.asp or cfm@floods.org

2007 Conference

The 5th annual Wisconsin Association of Floodplain, Stormwater and Coastal Managers conference will be held November 7-9, 2007 in Appleton, Wisconsin. The focus of the conference will be sustainable flood, stormwater and coastal management solutions in Wisconsin. Information on the conference can be found on the WAFSCM website: <http://wi.floods.org>.



2008 Conference

The 32nd Annual National Floodplain Managers Conference will be held May 18-23, 2008 in Reno-Sparks, Nevada. The theme of the conference will be "A Living River Approach to Floodplain Management." ASFPM is accepting abstracts for presentations until October 31, 2007. Further information on the conference and abstract submittal requirements can be found on the ASFPM website: www.floods.org.

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