
Floodplain – Shoreland Management Notes

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Flood Insurance Reform Act Passes

A new era in planning for and mitigating flooding problems arrived recently when President Clinton signed into law the Reigle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325). Title V of this Act contains the long-awaited National Flood Insurance Reform language.

Mitigation Planning & Projects

The Act authorizes a \$20 million per year transfer from the National Flood Insurance Fund to the Mitigation Fund. These funds will be awarded to local communities to develop mitigation plans and implement mitigation projects.

Many different mitigation activities are eligible for these grants, including elevation, relocation, demolition or floodproofing of

structures; acquisition of substantially damaged properties for public use; provision of technical mitigation assistance by states to communities and individuals; and other measures determined by FEMA or in mitigation plans.

\$1.5 million in annual planning grants will be available nationally, with annual limits of \$150,000 for state agencies, \$50,000 per community, and not more than \$300,000 total in any state per year. The cost-share formula is 75% federal and 25% local, with up to 12.5% allowed for in-kind contributions for the local share. Mitigation plan criteria have not yet been determined by FEMA, but communities may review the Community Rating System's guidelines for plans (CRS' Example Plans can be ordered by calling 317-848-2898.)

The remaining \$18.5 million - using the same cost-share and in-kind formula as above - is targeted to states and communities with approved mitigation plans to implement technically feasible and cost-effective flood mitigation projects. Funding limits are \$10 million per state, \$3.3 million per community and \$20 million in any state in any 5-year period. The funding limits can be waived if a major flood disaster occurs.

Mitigation Insurance Now Available

A "mitigation insurance" provision is another important feature of the act. Also referred to as "ICC" (increased cost of compliance), this additional insurance will cover the costs of complying with land use and control measures adopted by states and communities for the following floodplain properties: (1) repetitive loss structures; (2) structures that have sustained flood damages in which the cost of repairs equals or exceeds 50% of the value of the structure prior to damage; (3) structures that have sustained flood damage on multiple occasions if FEMA determines that it is cost-effective and desirable to require compliance with floodplain measures.

Repetitive losses are defined as an insured building that is flooded at least twice over a 10-year period for which the cost of repairs averages 25% of the value of the building. A surcharge of up to \$75 shall be imposed to pay for coverage.

Lending Practices Will Be Closely Monitored

The Act also strengthens federal regulatory review and control of mortgage lending procedures for floodplain properties. The following requirements now apply to all federally regulated lending institutions, government lending agencies (VA, FHA, etc.) and "government-sponsored enterprises for housing" such as "Fannie Mae" or "Freddie Mac":

- All lenders that escrow for any purpose must escrow flood insurance premiums beginning one year from enactment
- Lenders must notify purchases of residential real estate in Special Flood Hazard Areas that flood insurance is required.

- Lenders now have the authority to purchase flood insurance for borrowers and charge the appropriate premiums and fees to the borrower's account. This would apply both at the time a loan is made and at any time during the life of the loan if better information (new study/maps) indicates that the property is in a SFHA.
- To assist lenders, FEMA will develop standard flood hazard determination forms for use by the lender or a qualified third party.
- Lenders will be monitored for compliance with the above and are subject to civil penalties of not more than \$350 per violation and not more than \$10,000 per lender per year.

Federally regulated lending institutions are defined in the act as "*any bank, savings & loan, credit union, farm credit bank, federal land bank association or similar institution that is subject to supervision of a federal entity for lending regulation.*" This definition covers all institutions except for a few private lenders and developers that are state regulated.

Coverage Limits Raised

The Act raises maximum coverage for flood insurance policies to \$250,000 for residential structures, \$100,000 for residential contents and \$500,000 each for nonresidential structures and contents. The waiting period between purchase and the effective date for policies has been increased from five days to 30 days, except for the initial purchase of insurance required by a lender.

Other Notable Changes

A Technical Mapping Advisory Council was created to provide advice on accuracy,

quality, use, distribution and digitization of flood insurance maps. FEMA is now required to review maps every five years to determine whether revisions are needed. Re-mapping priority will be given to projects where the community is willing to pay up to 50% of the costs.

Other key components of the Act include:

- Parties required to purchase flood insurance as a condition for receiving federal disaster aid can no longer have that requirement waived.
- Past aid recipients who were required to purchase flood insurance are not eligible for future aid if they failed to obtain or maintain insurance.
- FEMA has two years to study communities with coastal erosion hazard areas, including the Great Lakes. The study will look at the cost benefits of mapping, regulation and insuring these areas, including the impacts of mapping and regulating on property values, tax revenue, and other economic factors.
- The Community Rating System can now provide incentives for reducing the risk of flood or erosion damage, including protection of natural and beneficial floodplain functions, effective erosion management practices and flood loss reduction techniques.
- The Act creates two new task forces. The Flood Insurance Interagency Task Force will study recommendations for improving lender compliance. The other body will develop recommendations for reducing flood losses by protection of natural and beneficial floodplain functions.

Preserve Your Endangered Benchmarks

The Department recently noted a number of USGS Benchmarks that were being destroyed during highway projects. These were usually bridge replacements, culvert replacements or realignments. In some cases, the contractor may not recognize the benchmark and destroy it along with the rest of the old structure. In other instances, it is reattached to the new structure but at a different elevation, which is not entered in the database.

Regardless of the circumstances, you will not know it is missing or improperly placed unless you knew it was there to begin with. While not mandatory, an up-to-date inventory of benchmarks in your community is an invaluable resource. You can begin compiling your inventory by contacting your county surveyor or Tim Fox in the Bureau of Water Regulation & Zoning at (608) 267-9798. Tim can provide you with a partial list of USGS & NGS benchmarks for your community.

The DOT has agreed to notify communities when a bridge replacement will affect a benchmark. Be sure to insist that a proper survey is performed after construction to accurately reference the benchmark. By following these steps, you are preserving an invaluable resource for properly administering your floodplain management program.

Anatomy Of A Buyout

With mitigation on the minds of everyone from local planners and property owners to the President, it's an opportune time to review a successful buyout plan and point

out the do's and don'ts involved in making it work.

Like much of the Midwest, Louisa County, Iowa was severely flooded during the summer of 1993. Bordered by the Mississippi River to the east and bisected by the Iowa River, the county has significant floodplain resources that in the past have been controlled by a series of levee districts set up to protect the fertile cropland.

Levee District 8 on the Iowa River, only six miles from its confluence with the Mississippi, was built in 1927 to protect 2,000 acres of cropland. Although built as a 25-year levee, it has been breached 15 times in the last 60 years, including the 1993 breach.

The damages from the flooding were spectacular: scour holes up to 100 feet long and 17 feet deep, up to six feet of sand deposits and the usual collection of flotsam. The Natural Resource Conservation Service (NRCS) estimated cropland damages at \$3,000 an acre while costs to repair the roads, drainage systems and levees came to almost \$3 million, not including disaster and crop insurance payments or property owner's personal losses.

In past floods, the disaster aid would have been applied for, approved, and spent on restoring land and structures to pre-flood conditions. But not this time. This time landowners, conservationists and public officials all agreed on a common goal that had eluded them before: stop the endless cycle of destruction and rebuilding and let the land revert to its natural state as floodplain storage and wetland habitat.

To do this, it was proposed that funds from the Emergency Wetland Reserve Program - approved by Congress in October, 1993 - be

used to purchase permanent easements on all the floodplain property in the levee district that suffered damages greater than its easement value. These easements would allow only very limited agricultural practices on these lands.

While recognizing the value of this program, the Iowa office of the NRCS felt that an outright buyout of the entire levee district would be a more effective way of alleviating future flooding problems. The NRCS decided it would only deal with willing sellers and only under the condition that the levee district was permanently dissolved.

The NRCS did not have the funds or the statutory authority to purchase the district, so meetings were held with the Fish and Wildlife Service (FWS), the Federal Emergency Management Agency (FEMA), the Environmental Protection Agency (EPA), the Army Corps of Engineers (USACE), the Iowa Department of Natural Resources (IDNR), the Iowa Natural Heritage Foundation and other interested parties to seek solutions.

The Foundation, a private, non-profit organization, was selected to facilitate the project. The agencies recognized that the efficiencies, flexibility and local goodwill to be gained by using the Foundation were critical to the process. The Foundation coordinated the offers to purchase property, coordinated the various funding sources and oversaw the property transfers to the FWS as part of the Mark Twain National Wildlife Refuge.

To make this project happen, a Cooperative Agreement was signed by the NRCS, the FWS and the Foundation, detailing the responsibilities of each party and outlining procedures for coordination and problem-solving by all partners to keep the process

moving forward. Different agencies involved in this project fulfilled different roles. The Foundation served as the implementing organization, chosen because of its expertise in land acquisition, real estate negotiations, conservation education and protection, and coordinating public-private partnerships.

The agencies decided to combine the EWRP payments with other funding sources in order to offer fair market value to the sellers. The Foundation applied to the Iowa Disaster Management Office for FEMA disaster assistance monies and to have the buyout declared an alternative floodplain project. This declaration would enable 90 percent of the disaster payments to be applied to the buyout. Additional funds were contributed by the FWS and several local conservation organizations.

A critical part of the property negotiations was insuring that all offers were based on a consistently applied valuation formula. Private contractors were hired to appraise the properties and determine a well-supported fair market value for each. While several owners were initially dissatisfied with the offers, they eventually consented when satisfied that the appraisals were equitable and consistent. This approach eliminated the need for individual negotiations.

The three jurisdictional agencies involved - NRCS, FEMA, FWS - had a variety of responsibilities. NRCS evaluated the flood damages to the land and provided the EWRP funding. FWS handled the technical work of wetland restorations and handled the environmental impact studies. FEMA conducted damage assessments and developed the project as an alternative floodplain project. All three agencies also provided funding.

Funding non-profit agencies involved were the Iowa Natural Heritage Foundation, the National Fish and Wildlife Foundation, The Conservation Fund, Pheasants Forever, and the Izaak Walton League. The fifth category of partners - project managing agencies - were the NRCS, FWS and the COE.

To make this project work, all the agencies involved agreed to compromise and cooperate for the common good. For example, since NRCS had already defined the value of land damages to qualify for EWRP payments, FWS appraisers used the same data and valuation premises, eliminating costly and time-consuming duplication efforts.

Another example: Regulations for the NRCS for EWRP easements and the FWS for land acquisitions required their respective legal counsel to determine that landowners had marketable title to the land. For this project, NRCS agreed to accept FWS's opinions of title.

Finally, NRCS waived the requirement that all easements be surveyed, an expensive and time-consuming process.

The accomplishments of this diverse and unusual coalition are impressive and instructive for everyone involved in mitigation planning with government agencies or the private sector. The short and long-term savings to the taxpayer attributable to this buyout are significant and worth repeating: no disaster assistance payouts, no crop insurance payouts, no land reclamation expenses, no levee or dam rebuilding, no drainage district maintenance, no individual and business insurance payouts, and no loss in productivity due to business or farm work interruptions.

Of course, the positive benefits of restored wetlands, shorelands, and floodplain functional values are just icing on the cake. By using different levels of private and government funding, employing flexible practices in administering programs, and agreeing to cooperate and compromise, projects such as this provide many tangible benefits for both the human and natural community.

Philandering Levee Vandal Sent Up The River

James Scott was an unhappy man. Trapped in a loveless marriage, Scott yearned to spend time with other women, but his wife wasn't very understanding. His solution? Scott sabotaged a levee along the Mississippi River near Quincy, Illinois by removing five sandbags, allowing waters swollen by the 1993 summer floods to inundate 14,000 acres of farmland and close a key bridge for 71 days.

This action, Scott cleverly deduced, would strand his wife - along with thousands of other innocent folks - on one side of the breach while he would be free to carry on his nefarious liaisons on the other.

His big mistake? Scott was so proud of his brilliant scheme that he bragged to a TV reporter that he was actually trying to save the levee when the unfortunate breach occurred. Local police, who apparently were on a first-name basis with Scott, were not as impressed as the reporter.

Convicted on charges of "causing a catastrophe", Scott was sentenced to life in prison. With all that time to think about his actions, hopefully Scott can come up with a better way to sneak out of the house. Any of

the local levee districts will probably be happy to give him suggestions.

Ozaukee County Board Denies Floodway Development

A proposal to build three homes in the floodway of Cedar Creek was denied by the Ozaukee County Board of Adjustment in December. The action was taken after town officials had permitted the developer to place over 14,000 cubic yards of fill and build an access road through the floodway.

The developer never performed the detailed engineering analysis required under the floodplain regulations to determine backwater impacts and increases to the regional flood elevation. This analysis is required for all floodway development and most other floodplain projects. The prohibition on new habitable buildings in floodway areas was never addressed by either party.

When the County discovered the illegal development, it issued a stop-work order. Building had begun and the road through the floodway was in. The developer applied for a conditional use permit to place fill in the floodway that was denied by the BOA.

The Board, in denying the CUP, directed that the following actions be taken:

1. All fill placed in the floodplain or shoreland area be removed and the area restored as close as practical to the conditions that existed prior to the development.
 2. The fill be removed as soon as the soil is frozen adequately to permit truck or equipment access.
 3. All exposed soil which includes areas stripped, filled or otherwise disturbed
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shall be mulched immediately and the mulch be maintained to minimize the erosion potential until the area is revegetated.

4. All spoil piles have erosion control barriers and mulching as specified in the Construction Site Control Best Management Practices Handbook.
5. All exposed soil be reseeded in the spring of 1995 using Land Conservation Department recommended seed mixtures and application rates.

The town, and not the developer, will be cited for the illegal road construction because the town had earlier agreed to take jurisdiction of the road from the developer. Steve Narveson, County Zoning Administrator, will be working with the town on the required corrective actions.

The developer has filed suit against the town, alleging it has suffered about \$200,000 in damages due to the town's erroneous approval of the development. The town has filed a counterclaim accusing the developer of negligence.

Both parties suffered errors in judgment. Real estate professionals should know the content and applicability of all laws affecting their business. Ignorance of the law is no excuse. And this case demonstrates the importance of gathering all the needed information and then verifying it. Know the law and its applicability to the project. Check the facts yourself.

Town and county officials should work closely together to avoid serious mistakes which can be "red flagged" before the damage is done. Sometimes the right decision could have been made with one call to the county zoning administrator - as in this case. Other situations are more ambiguous and may call for advice from

legal counsel, the DNR, the Army Corps of Engineers, or other experts. In any case, know the law and know which agencies should be involved. It's a lot simpler, cheaper and more efficient to make a couple of phone calls rather than spend your summers in court.

"Submit To Rate" Process Explained

Within the National Flood Insurance Program (NFIP), a Flood Insurance Rate Map (FIRM) identifies the flood hazard areas in a community. Post-FIRM flood insurance rates are calculated for residences using the lowest floor elevation of each structure constructed after the date of the FIRM. Each NFIP community has a different FIRM date established dependent on when the initial FIRM went into effect. A one-page explanation of the "submit-to-rate" process is initiated when flood insurance on a post-FIRM residence cannot immediately be written by an insurance agent because the lowest floor is more than one foot below the base flood elevation (BFE). In this case, the flood insurance policy application must be sent to the NFIP for rating because the building exceeds the risk factors used to determine the coverage rates on the Flood Insurance Rate Table. The submit-to-rate process also investigates why a structure is non-compliant with the community's floodplain management ordinance. The community floodplain administrator is usually contacted by FEMA for information why the residence's lowest floor was built so low in elevation. The submit-to-rate process can identify weaknesses in the community administration of its floodplain ordinance. It also raises the thorny issues of how to correct this mistake and who will pay to make those corrections. The flood insurance premium (building and

contents) on a residence constructed in 1994 with its lowest floor more than two feet below the BFE, can approach \$1,000 annually.

Lawsuit Against Agent In Orange County, Calif.

A consumer protection lawsuit was filed against an insurance agent in Orange County, Calif. The lawsuit alleged that the agent sold flood insurance policies under the provisions of the NFIP at reduced rates by misrating the policies in terms of Federally designated flood zones. The lawsuit also alleged that this agent charged an illegal "brokerage fee" on top of the commission permitted by law. The terms of the settlement include an injunction precluding future sales of such policies unless the agent is in full compliance with the law; restitution to the victims of the illegal brokerage charge; and recovery of cost of investigation and payment of civil penalties. The lawsuit followed a joint investigation by FEMA's Inspector General's Office and the Orange County District Attorney's Consumer Protection Unit. The information that led to this investigation was provided by an insurance agent in Southern California. To report fraud, waste, and abuse, call FEMA's hotline at 1-800-323-8603.

Flood Myths

By Bill Stuart, Vice President,
The Seibels Bruce Insurance Companies

Recently, *USA Today* articles, including a notable one by IAA President Courtney Wood, focused on the necessity for increased awareness and education about flood and flood insurance in all regions of the country. The floods in Georgia and the

Midwest are also indicative of the need to provide a program of awareness that would make flood insurance a necessity rather than a misconceived option.

Many property owners think they are not in a flood zone and therefore cannot purchase insurance from the National Flood Insurance Program (NFIP). Sadly, 11 years experience with the Write Your Own (WYO) flood programs tells me that many insurance agents have the same misconception! According to IAA, flood-related claims are the most frequent cause of errors and omissions claims.

How can this be true? What could lead a property owner (or even worse, an agent) to think this? I believe the answer is The Mandatory Purchase Requirement, which is embodied in The Flood Disaster Protection Act passed by Congress in 1973. This act instructs most lending institutions to require the purchase of flood insurance in order to grant a mortgage loan. This requirement has saved many property owners from disastrous financial losses.

Here is the other side of this two-edged sword: the act only requires the purchase of flood insurance if a property is located in a Special Flood Hazard Area (SFHA), which consists of only two of six flood zones, the A and V zones. The B, C, D, and X zones are outside the SFHA. Are these properties in a flood zone? Can these property owners purchase national flood insurance? Do floods occur in these Non-SFHAs? Yes to all. In fact, NFIP states that almost one third of all losses occur in the B, C, D, and X zones!

Where is the misconception? For the past 21 years, the only requirement for flood insurance has been in the SFHA zones. This condition has trained the public and many

agents to ignore the other zones, or worse, to think that A's and V's are the only flood zones ("If the lender doesn't require flood insurance, then it must not be needed! Then I must not be in a flood zone!")

Everyone who knows anything about flood insurance knows that the only flood insurance being sold, primarily, is that which is required. Even in the A and V zones, lenders only require protection of their interest. Property coverage is often inadequate, and personal property coverage is frequently not written. What about properties with no mortgage?

I believe when people state that they are not in a flood zone, what they are saying is that their mortgage lender does not require flood insurance. I invite you to interrogate this statement the next time you hear it, or the next time someone suggests that they (or their clients) cannot buy flood insurance. When the community, city, county, etc., does not participate in the NFIP, flood insurance cannot be purchased. However, once in the NFIP, almost all properties are eligible.

The NFIP states that only about 25 percent of the properties eligible for flood insurance are covered. Less than 20 percent of eligible properties in the 1993 Midwest and less than 10 percent in the 1994 Georgia floods were covered. Congress is taking steps to deal with this issue. However, to my knowledge, Congress is mostly going to put more force behind the Act of 1973. This is needed and will help: however, the misconception may get worse.

Therefore, all of us in this industry need to be aware of the potential problem. A fundamental change of attitude must take place if we are ever going to achieve the goals of the NFIP: "A 20 percent net growth in the policy base and thereby reduce the annual taxpayer subsidy when floods occur." Independent agents, WYO companies, FEMA, NFIP, the media, and community officials need to dedicate themselves to making sure the risk is understood and misconceptions are at a minimum.

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