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# Floodplain – Shoreland Management Notes

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## Are You Liable For Making Flood Zone Determinations?

The new Fannie Mae/Freddie Mac flood insurance guidelines require lenders to determine whether a structure is in a Special Flood Hazard Area (SFHA). Since most lenders don't do their own determinations, this guidance will help lenders select a knowledgeable and reputable flood zone determination company.

Many of these companies belong to the National Flood Determination Association, whose members subscribe to the code of ethical practices printed in our last newsletter.

This code applies only to association members, governing their business practices when providing flood zone determination services to a buyer, lender, insurance agent, real estate agent or other private party. This code does not apply to non-members or government officials who provide flood

zone information to these companies or any other party. Lenders, owners and other parties are advised to regard this code as the minimum acceptable standards when contracting for determination services.

The key distinction for government officials is between providing information and making a determination that a property is in or out of a SFHA. If you do make a determination and fill out the Standard Flood Hazard Determination Form (SFHDF), you could be liable for inaccuracies or misrepresentations. Your only obligation is to have the information available and accessible to the public, including the determination companies.

The department advises local officials to be extremely cautious about making flood zone determinations. The determination companies are being paid to use their expertise to make this determination and to guarantee that it is accurate. These companies cannot expect you to make the determination. That is not your responsibility, it is the lenders in this case under federal law.

If you have previously assisted property owners determine their flood zone status and choose to continue to do so, make it clear that your determination is for informational purposes only. Their lender must still have

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an official determination done on an approved form, with the preparer's name, address and telephone number listed. The preparer is the individual or company that made the determination, not the government agency or official that provided information. Local planning and zoning officials' names should never appear in this space. Make sure the lenders in your area understand this.

Flood zone determinations is a growing business and competition is keen. There are over 100 companies providing this service, but only 30 belong to the National Flood Determination Association. To cut costs, some companies simply call local officials, asking them to interpret a flood map over the phone. Our advice: don't do it! You have no way of knowing if the property information they are giving you is accurate. It is their responsibility to visually interpret the correct map in making a determination.

Anyone can purchase flood maps through the federal government. Any reputable company will have all the current maps for any area in which they do business. Local governments simply need to make the flood maps available for public review.

Communities currently participating in the Community Rating System program may wish to take note of the requirements of activity 320 - Map Information. This CRS activity is designed to reward communities for informing a requester of a property's flood zone status. It does not determine whether flood insurance is required and cannot substitute for a proper flood zone determination as required by the National Flood Insurance Reform Act. This activity does not create any liability for government officials. Make it clear to all requesters that the lender (or a third party hired by the lender) is still required to do an accurate

determination and fill out the determination form.

To avoid confusion or misunderstandings, ask the party to either come to your office with an exact legal description of the structure in question or provide the same information in writing. Respond only in written form and keep a copy of all documents. By doing this, you will provide the most valuable service possible to your citizens: complete and accurate information that enables them to make an informed decision.

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## **State Land Use Report Recommendations**

A new report, entitled "Land Use Issues Facing Wisconsin", offers a compelling look at the changing face of the state's landscape as we move toward the 21st century. A strong economy, stable work force, good schools, low crime, abundant recreational opportunities and proximity to major population centers has fueled the state's region-leading population growth in recent years and will continue to do so for the foreseeable future.

To address concerns over population growth and the current state of land use policies in Wisconsin, the governor created the Wisconsin Strategic Growth Task Force in September 1994 in conjunction with the State Interagency Land Use Council. Executive Order 236 declared that "land use issues are becoming increasingly challenging for all levels of government in Wisconsin due to the multiple objectives and diverse viewpoints involved."

The task force was formed "to recommend processes for coordinating land use activities

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and issues between state agencies and local public and private interests." Members of the task force represent government agencies, environmental groups, private businesses, development interests, utilities and labor organizations. Three teams were formed to perform the following tasks:

- collect and evaluate information about land use planning processes and programs in other states;
- document Wisconsin state and local government involvement in land use, including strengths and weaknesses;
- collect public sentiments and expert opinions about land use procedures and options in Wisconsin.

The work of these teams, together with the consensus judgments of the task force as a whole, forms the core of this report. Some of the major findings of the teams are highlighted below.

### **Wisconsin Trends**

The state's large metropolitan areas - southeastern Wisconsin, the Fox River Valley and the Madison area - continue to add high-value jobs and businesses in their markets. Smaller urban areas are seeing similar trends as companies seek out low land and utility costs, easy access to major transportation routes, low business taxes and dependable work forces. Quality-of-life has become a leading factor for business locations.

In Wisconsin's northwoods, an unprecedented surge in affluent retirees and vacation homeowners has contributed to a feverish rise in construction activity and property values. Waterfront prices in some areas have tripled in the past five years and show no signs of abating. The first wave of

baby boomers turn 50 this year and have catapulted Vilas County into one of the top 10 retirement spots in the entire country.

While most people would agree that growth is vital to the state's well being, how and where we grow is not so settled. Over the past 150 years, human activity has altered Wisconsin's landscape more radically than anything since the retreat of the last glacier some 12,000 years ago.

Nearly half of the state's ten million acres of wetlands have been lost to urban and agricultural development. Prairie lands that covered much of southern Wisconsin like a great golden carpet have been reduced to a few isolated remnants. Rivers whose clear waters once flowed freely toward their confluence are now dammed, channeled, straightened and cut off from their natural floodplain.

Wisconsin's changing land use patterns mirror changes in how we live, work and play, as can be seen in the following trends:

- **Population growth** - Urban fringe areas are growing fastest, but rural recreation areas are also booming.
- **Household patterns** - Houses are bigger while families are smaller. Average household size has shrunk from 3.43 in 1950 to 2.61 in 1994. The numbers of single and elderly people living alone has increased dramatically.
- **Farmland conversion** - Farmland acreage is down from 23.2 million acres (1950) to 16 million acres in 1990.
- **Employment location** - Most new jobs are in rural/suburban areas. Tele-commuting and flexible work schedules are also factors.

- **Transportation** - Vehicle miles traveled has far outpaced the state's population growth. Vehicle occupancy has also declined precipitously.
- **Natural resources** - Water and air quality, wetlands, farmland and green corridors are all threatened by unplanned growth and development.

### **Inventory of Government Land Use Tools**

State, regional and local agencies affect land use policies either directly through land acquisition or indirectly through regulation or review functions. Some of these activities include:

- **Municipal boundaries** - Annexation, consolidation, incorporation, and boundary planning functions are all coordinated and approved through the state.
- **Land acquisition** - State and local agencies have the authority to acquire land for a variety of public purposes.
- **Planning authority** - Master plans, official maps, parks, historic sites, transportation corridors, and utility services are all examples of government planning.
- **Subdivision regulation** - Review and approval, exactions, extraterritorial oversight.
- **Zoning** - General zoning, shoreland, floodplain and wetland, erosion control, and historic district.
- **Tax and fiscal policy** - Direct payments, shared revenues, TIF districts and targeted property tax relief.

### **Intergovernmental Relationships**

Because land use planning is complex and controversial, a number of problems were noted. **Conflicting priorities** are common due to overlapping jurisdictions and fragmented priorities. **Poor communication** occurs when municipalities are competing for the same development projects and are unwilling to cooperate on regional issues. **Legal considerations** arise because planning and regulatory activities are not well integrated. Takings are a prime example. **Data compatibility** is a concern. Geographic information systems and other computer data technologies will help improve land records systems.

### **Strengths and Weaknesses**

The task force identified the following weaknesses in the current land use decision-making process:

- Lack of a common land use vision.
- Land use planning is under-utilized and poorly implemented at all levels
- Conflicting organizational goals undercut sound decision-making.
- Infrastructure decisions ignore land use impacts.
- Tax and fiscal policies hamper good land use planning.
- Lack of needed financial and technical land use resources.

The following strengths were noted:

- Wisconsin has a strong environmental protection program.
- Community leaders are more aware of the importance of land use planning and regulation.

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- Some success stories in cooperative planning were noted.
  - Downtown revitalization programs are growing in the state.

### **Public Attitudes**

Survey data and feedback from discussion groups show strong continued support for preserving local land use control, but with definite roles for the state. The state should encourage local governments to prepare and administer land use plans by providing guidelines, coordination, technical assistance and appropriate tax policy.

Most agreed that agricultural lands and family farms should be preserved and that government policies should assist that goal. Most also felt that urban areas must be made more livable, which would help preserve agricultural land.

There was a strong sense that good land use planning was only part of the solution; other programs, policies and preferences must also be addressed. Finally, most felt that private property rights would always be part of the equation.

### **Issues and Options**

The task force members all assigned high, medium or low priority to each action item developed by the committees. The consensus judgments of the members are reflected in this section. Some of the key high priority items include:

- Define a land use vision for Wisconsin.
- Improve land use coordination between state agencies.
- Develop new economic incentives to meet environmental goals.

- Modernize land use and planning related statutes and regulations.
- Tie state aids to local land use plans.
- Provide incentives for infill development.
- Change inheritance tax laws to keep farms in the family.

Copies of the report are available by contacting Ann Moses at:

Wisconsin Department of Natural Resources  
EA/6  
P.O. Box 7921  
Madison, WI 53707  
(608) 267-7535

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### **FEMA News**

FEMA's flood map distribution facility has moved and has a new name. To order flood maps, please write to:

Map Service Center  
6730 (A-G) Santa Barbara Court  
Baltimore, Maryland 21227-5623  
Toll-free phone number: 1-800-358-9616.

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The FEMA Community Status Book is now available on the internet. This document is packed with information about the floodplain program status of all Wisconsin communities. It is a valuable resource for government officials, lenders, insurance agents, real estate agents and anyone else who deals with floodplain issues. The status book can be accessed through FEMA's home page:

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<http://www.fema.gov> (it's in the "What's New" section)

FEMA staff recommends that if you plan to print the document, first download the book to a disk and then print it.

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FEMA has issued its final rule for resolving disputes concerning Special Flood Hazard Area (SFHA) determinations. A review will cost \$80.00, but who will pay the fee and whether it can be considered a finance charge has not been determined. If FEMA fails to respond before a loan closing, the property owner is still required to purchase flood insurance if the determination is judged to be accurate; it merely delays the purchase requirement. FEMA has ruled that a review can only be done if both the purchaser and lender request one. This procedure applies to all loans, including existing loans. The rule details can be found in the **Federal Register**, Vol. 60, No. 233, December 5, 1995, pp. 62213-62218. For further information, contact:

Michael Buckley  
Hazard Identification Branch  
Mitigation Directorate  
FEMA  
500 C Street, S.W.  
Washington, D.C. 20472  
(202) 646-2756  
FAX: (202) 646-4596

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Floods have caused a greater loss of life and property and disrupted more communities in the United States than all other natural hazards combined. In an effort to reduce these impacts, FEMA has released a new publication aimed at local officials, citizens, landowners and groups interested in

protecting and restoring the natural resources and functions of floodplains.

*Protecting Floodplain Resources - A Guidebook for Communities* (1996, free) focuses on local, grassroots efforts to manage and protect the floodplain environment, including wetlands, wildlife habitat, historic sites and aesthetic aspects. It provides planning guidelines that can be used by flood-prone communities to ensure this environment is maintained.

Published under the auspices of the Federal Interagency Floodplain Management Task Force, the book draws on two years of research that included surveying local officials and private interest groups to identify their specific needs and concerns.

It presents case studies of communities that have transformed riverine areas at risk from flooding into community assets, including the Chattahoochee River near Atlanta; the Wildcat/San Pablo Creek in Richmond, California; the Blackstone River between Worcester, Massachusetts and Providence, Rhode Island; and the Verde River north of Phoenix.

Copies of the guidebook can be obtained from:

FEMA Distribution Center  
P.O. Box 2012  
Jessup, MD 20794  
(800) 480-2520  
FAX: (301) 497-6378

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## Exemptions For State-Sponsored Wetland Projects Explained

Since the inception of a Private Lands Management program in the late 1980's, the

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DNR has been working with private groups, local governments and federal agencies to restore 500 to 700 wetlands per year in Wisconsin. Most of these projects are in shoreland areas and are permitted uses under existing shoreland-wetland zoning regulations.

DNR staff has traditionally applied for shoreland-wetland zoning permits and, in some cases, township pond permits for restorations in which the DNR designs, contracts and oversees the project. Although these permits have historically been issued free of charge, several counties are now charging application fees, significantly increasing project costs and decreasing the benefits of wetland restoration to the counties.

It must be noted that the State of Wisconsin and its agencies are not subject to local zoning ordinances unless a statute specifically provides otherwise. Section 13.48(13), Stats., requires the State to comply with procedural and substantive requirements of local zoning ordinances in every case which involves the construction of a "building, structure, or facility" for the benefit of the state or its agencies.

Wetland restoration projects do not involve construction of "buildings or facilities" as those terms are used above, and are therefore not subject to local zoning. Even if a project was construed to be a facility, it is exempt because project benefits accrue to the general public and the environment. Therefore, as long as the DNR applies for the permit and sponsors the project, even if other entities will fund or conduct the project, the project is exempt from all local zoning requirements, including permit application fees.

Even though permits and fees are not required for DNR-sponsored wetland restoration projects, the DNR will apply for permits to ensure that local zoning requirements are met whenever possible.

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## Shoreland Zoning Study Underway

The Department of Natural Resources' Shoreland Zoning staff is in the midst of a one-year EPA-funded project to analyze the clarity and effectiveness of NR 115 (the Shoreland Zoning Administrative code) in meeting statutory objectives. DNR staff have been reviewing the program and its implementation from several different angles: 1) reviewing the scientific literature; 2) looking at other states and the planning literature to see how others deal with these issues; and 3) talking with professionals working in shoreland zoning and related fields about what works or doesn't work.

One of the project products will be a report summarizing the literature review, state program evaluation, and recommendations for improving the program standards and their administration.

The success of this project depends on input from a variety of persons/organizations affected by the current and any proposed changes to the shoreland zoning program. External reviewers representing a variety of perspectives have agreed to review materials produced by the project. Their role will be to a) comment on the priority of specific issues identified in the study, b) assist DNR in better understanding the impact of shoreland zoning (current and proposed program) on those affected by the program, c) provide input on proposals for addressing issues identified in the program review, d) help ensure that no issues are missed as the

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study goes forward, and e) assist DNR by reviewing policy recommendations for improving the effectiveness and efficiency of the shoreland zoning program.

Perspectives represented are: zoning administrators and building inspectors who administer shoreland zoning ordinances, development professionals, environmental groups concerned about planning and land use issues, professionals who assist local governments and citizens with resource and land use issues, local elected officials who make planning and zoning decisions, and waterfront property owners who must comply with shoreland zoning requirements.

To contact Sue Jones or Tom Bernthal, the DNR project coordinators, with questions or comments, use whatever technology suits you best:

Mail: Wisconsin Department of Natural Resources (WZ/6)  
101 S. Webster St.  
Madison, WI 53707-7921

FAX: (608) 264-9200  
Phone: (608) 266-8032 for Sue or  
(608) 266-3033 for Tom

email: [jones@dnr.state.wi.us](mailto:jones@dnr.state.wi.us) (Sue) or  
[berntt@dnr.state.wi.us](mailto:berntt@dnr.state.wi.us) (Tom)

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“Floodplain – Shoreland Management Notes” is published by the Wisconsin Department of Natural Resources’ Bureau of Water Regulation and Zoning. Our purpose is to inform local zoning officials and others concerned with state and federal floodplain management and flood insurance issues, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome, call (608) 266-3093.

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