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# Floodplain – Shoreland Management Notes

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August 1995

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<b>Articles in This Issue</b>	<b>Page</b>
Floodplain Camping Rule Hearings Set	1
Wanted: Your Input On DNR Reorganization	2
DNR Land Use Report Released	2
Revisions To The Shoreland Annexation Statute: A Case Study	3
Partnerships In Mitigation: The Reinvention Of FEMA	4
Mitigation Efforts In The Midwest Move Forward	6
Department Wins Wolf River Floodway Case	8

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## **Floodplain Camping Rule Hearings Set**

Proposed changes to Wisconsin Administrative Code Chapter NR116 will be presented at three public hearings next month. The changes address concerns with the regulation of camping in floodplain areas outside of DNR-approved campgrounds.

The current rules specifically authorize floodplain camping only in DNR-approved campgrounds in floodway areas if certain criteria are met. Since the rules do not address camping outside of approved campgrounds or in floodfringe areas, it is unclear what rules apply to camping in these areas.

The rule changes would create a PERMITTED USES section that would

allow camping outside of approved campgrounds in both the floodway and floodfringe without a permit if: 1) the camping unit consists of nothing more than an easily removed tent; or 2) the camping unit is a mobile recreational vehicle placed on a parcel of land that has less than four camping sites; and 3) the vehicle does not occupy the site between December 1st and April 15th.

The Department will give a short presentation on the rule and then take comments and questions from the audience. All interested members of the public are invited to attend. The hearings are scheduled for:

Madison - Tuesday, September 12, 1:30 p.m., GEF 2, Room 611B, 101 South Webster Street, (one block east of the Capitol)

Stevens Point - Wednesday, September 13, 1:30 p.m., Portage County Courthouse, Conference Room A, 1516 Church Street

LaCrosse - Thursday, September 14, 1:30 p.m., LaCrosse County Office Building, IM Conference Room, 300 North Fourth Street

If you have any questions or special needs, please contact Gary Heinrichs at (608) 266-3093.

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## Wanted: Your Input On DNR Reorganization

The next issue of this newsletter will address the DNR reorganization effort currently underway. A conceptual plan for reorganizing divisions, functions, staff assignments & duties, work locations, and district (now called regional) boundaries was approved by the Natural Resources Board at its July meeting.

This plan represents the most far-reaching and comprehensive reorganization of the agency since it was formed by consolidating the Wisconsin Conservation Commission (resource management) and the Public Service Commission (environmental protection) in 1967 following the Kellett Commission recommendations.

The plan is bold, ambitious and visionary - designed to help the department function effectively into the next century and accomplish the following goals:

- Increase efficiency and effectiveness;
- Manage resources and the environment on a natural geographic basis;
- Better integrate resource and environmental programs;
- Facilitate public and private partnerships that benefit environmental management and increase department effectiveness;
- Meet increasing demands for front line services; and
- Better empower the department's staff to get the job done.

The department believes that building partnerships begins with the implementation of this plan. Your comments, suggestions and questions are encouraged. Please write or call:

Gary Heinrichs  
DNR  
P.O. Box 7921  
Madison, WI 53707  
(608) 266-3093 FAX: (608) 264-9200

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## DNR Land Use Report Released

*Common Ground*, a report outlining the DNR's strategic direction for land use efforts, is now available for distribution. Two years of public discussion, input from diverse interest groups and extensive staff analysis helped capture the range of opinions on what the department's role should be in shaping land use decisions and how it should manage the land it controls.

The department recognizes that the vast majority of land in Wisconsin is, and will remain, privately owned, and that individual landowners and developers and local governments are the principal land use decision-makers. In order to be successful in addressing environmental concerns, the department must work with others to help guide development patterns.

*Common Ground* focuses specifically on DNR programs and policies and is not intended to address all of the land use issues in Wisconsin. This report is intended to get our own house in order. Policies to be decided by the Interagency Land Use Council and the Strategic Growth Task Force are beyond the scope of this report.

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*Common Ground* is being distributed to all community chief executive officers and county zoning administrators. If you need an additional copy or know someone else who would like one, please write or call:

Ann Moses  
DNR  
P.O. Box 7921  
Madison, WI 53707  
(608) 267-7535

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## **Revisions To The Shoreland Annexation Statute: A Case Study**

by Kathy Moore  
Waukesha County Park and Planning Department

Section 59.971 of the Wisconsin Statutes requires a county to adopt shoreland zoning regulations for all unincorporated areas which are within 300 feet of the ordinary high water mark of a navigable stream or river or the landward side of the floodplain, whichever is greater, or 1000 feet from the ordinary high water mark of any lake, pond or flowage.

Wisconsin Administrative Code Chapter NR115 prescribes the minimum standards which counties must adopt under shoreland zoning ordinances. These regulations address minimum lot sizes and frontage, building setbacks, vegetation removal restrictions, limits on earth-moving activities, shoreland-wetland regulations and non-conforming use standards.

Under NR115, a county may adopt ordinance requirements that are more restrictive than the minimum standards of the rules. Some counties have also adopted use regulations in the shoreland area to support good shoreland management objectives.

Under 59.971(7), cities and villages which annex a shoreland area must continue to administer the provisions of the county shoreland ordinance or adopt an ordinance for the annexed area that complies with the shoreland zoning standards and is at least as restrictive as the county ordinance in effect at the time of annexation.

Prior to a 1994 statutory change, the annexing municipality usually could not change the use category of any annexed shoreland area. Waukesha County felt it was inappropriate to retain all county use categories/zoning districts in annexed shoreland areas.

In Waukesha County, most annexed areas were served by municipal utilities that protect water quality. A change to a more intensive use district was appropriate for these urbanizing areas. County staff felt that the previous statute precluded the logical and orderly expansion of a city or village.

The staff began working with county board representatives and local legislators to amend the statute. We pointed out that many communities in Waukesha County had adopted long-range master plans that zoned lands as currently used. The county designated upland zoning districts within the shoreland jurisdiction so that the districts would be compatible with those of the township.

The areas were usually zoned in agricultural holding districts with the premise that the district could not be rezoned until a development proposal consistent with the long-range community master plan was submitted. Prior to the 1994 amendment, the statute didn't allow a change to an agricultural holding district within shorelands after annexation.

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The 1994 statutory revision allows communities to rezone districts after annexation with concurrence of the county board. It prohibits deleting or modifying any county shoreland provisions that relate to the protection of navigable waters.

The statute now allows for county review of a specific development proposal to determine if it is consistent with the adopted land use plans, promotes good water quality and complies with the county shoreland ordinance. The revised statute also requires that newly incorporated areas comply with the same requirements as annexed shoreland areas. Previously, new incorporations, like existing cities and villages (excluding annexed shoreland areas), were only required to regulate wetlands within the shoreland area.

Since the statutory revision, Waukesha County staff has participated in a number of zoning changes within annexed shoreland areas of cities and villages. The zoning change process in annexed areas works the same as in townships. The staff conducts joint public hearings with the local planning commission. After recommendation by the planning commission and boards/councils of the municipality, the zoning changes are forwarded to the County Board for adoption.

The changes to the statute benefits the public because municipalities with development proposals in annexed or proposed annexed areas are working with county staff to determine shoreland jurisdiction and navigability, ordinary high water mark or wetland determinations. Both developers and local officials are satisfied because technical and ordinance issues can be resolved early in the process before significant amounts of time and money are spent.

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## Partnerships In Mitigation: The Reinvention Of FEMA

by Gary Heinrichs

After a relative lull in natural disasters during the 1980's, mother nature has plagued the country with an unprecedented string of floods, earthquakes and hurricanes the past five years. The tremendous costs to rebuild buildings, communities and lives has affected all segments of society.

Major insurance companies flirted with bankruptcy in the aftermath of hurricane Andrew in Florida. The great flood of 1993 crippled the farm economy and prompted entire communities to relocate to higher ground. Later flooding in Georgia, Texas and Missouri reminded the nation that the Midwest floods were not an aberration.

Prodded by the tremendous outlays of taxpayer dollars for disaster aid, the push to downsize and "reinvent" government, and new attitudes in Congress toward government intervention and assistance for those who choose to live in hazard areas, the president directed the Federal Emergency Management Agency (FEMA) to develop a strategy to reduce the loss of life and property through mitigation.

The commitment is this: to deliver disaster assistance more efficiently and effectively, and to rebuild **safer communities** by mitigating the impacts of future disasters.

Despite efforts to educate people about the dangers of building in hazard areas, the attraction of these areas and the comfort level provided by federal disaster aid and subsidized flood insurance has spawned an unprecedented growth in building activities

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along the coasts, in floodplains and other hazardous areas.

While mitigating natural hazards is the focus for many federal and state agencies, more intergovernmental cooperation and public/private partnerships are needed to get the job done. Further, a comprehensive and cohesive vision of what our mitigation goals should be, how to measure progress in reaching those goals, and how to stimulate public involvement and acceptance of the strategy needs to be worked out.

To do all this, countless government regulations, financial aid, technical assistance and community development programs, and complex and hierarchical working relationships must be broken down, evaluated, broken or obsolete parts thrown out and the rest reassembled according to a new blueprint (vision).

The end product - the **National Mitigation Strategy** - is derived from the concept that government, like any individual, must act responsibly and with the interests of the greater community in mind. By subsidizing (and therefore encouraging) development in hazardous areas, the government was not meeting its obligations.

Natural disasters are not "Acts of God" nor are they necessarily caused by nature. As Gilbert White, the father of floodplain management said many years ago, "Floods are an act of nature, flood disasters are an act of man."

To end the cycle of development, destruction and rebuilding, FEMA enlisted the help of partners at all levels of government, the scientific community, businesses and foundations, and individuals, families and communities across the nation. The foundation of the mitigation strategy is

to strengthen existing partnerships and build new ones with the core value of civic responsibility guiding their formation and purpose.

Four sub-strategies are part of the overall concept. They are:

- **Public awareness and education** - A successful mitigation strategy can only succeed with broad public involvement and acceptance of its goals. Two benchmarks will be used to measure the effectiveness of this outreach: Does the message reach the widest possible audience? Is it presented in unique and thought-provoking ways that help the public to accept and advocate mitigation?
- **Hazard identification and risk assessment** - Mitigation efforts can only succeed if the credibility of the data is assured. Studies to identify hazards and assess the associated risks for communities must be based on the latest technology coupled with the most rigorous quality control checks to assure fair and reliable information. This effort must identify all relevant hazards, determine the degree of risk, and address the vulnerability of people and the built and natural environment.
- **Applied research and technology transfer** - Does the mitigation effort effectively transfer ideas or technology to messages or products that can be readily understood and applied to identify,

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assess, and mitigate natural hazards risks.

- **Incentives and resources** - Eliminating incentives to build in hazard areas is half the equation. The other half is to redirect scarce resources from the public and private sectors to achieve national mitigation goals. The challenge will be to convince the public that it is cost-effective in the long run to floodproof or relocate people and structures out of the floodplain and that tax dollars and other resources should be used for that purpose.

To make it happen, the private sector and all levels of government must work together to assure that the necessary leadership and coordination is in place to bring this strategy to fruition.

Does the mitigation effort demonstrate the benefits of mitigation, encourage mitigation on the part of others, or challenge old assumptions about natural hazards? Does it build coalitions or partnerships to maximize benefits or enhance resources? Does it encourage individual, family, or private-sector participation or cooperation in support of hazard identification and mitigation?

Overseeing the effort will be the **National Multi-Hazard Mitigation Council**, responsible for management, functional evaluation, and implementation of the process. Partners from government, foundations, universities and the business community will provide services and resources to keep it going.

Implementing the strategy won't be easy or cheap. We have spent billions of dollars and put decades of work into developing hazard

areas, devising structural projects to protect these areas from the forces of nature, and rebuilding them after nature defeated our best efforts. To undo what has been done will take time, money, dedication, and a commitment from people and institutions.

The political will is growing to move our strategy from disaster aid and rebuilding to disaster mitigation. The National Mitigation Strategy will take the next steps: creating the public support, scientific credibility, and financial incentives to move people and structures out of harms way and return our most fragile natural areas to the open space uses for which they were intended.

*For more information, a recent report describing the Mitigation Directorate's activities during its first year, **Placing the Cornerstone - A year in Review** (1995, 16 pp., free), can be obtained from FEMA, Publications Distribution Facility, 8231 Stayton Drive, Jessup, MD 20794; (800) 480-2520; (202) 646-3484; fax: (301) 497-6378.*

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## **Mitigation Efforts In The Midwest Move Forward**

by Gary Heinrichs

Two years after the Midwest floods receded, a consortium of local, state and federal agencies are busy working on a variety of mitigation projects. As of June, 1995, FEMA has approved and will be funding approximately 170 mitigation projects affecting 7,400 structures or parcels in nine Midwest states. In addition, approximately 650 more structures or parcels will be acquired with funds from the Department of Housing and Urban Development.

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FEMA estimates that 160 different communities will undertake an elevation, relocation or acquisition project. Projects range in size and complexity from one to two home elevations, to communities such as Valmeyer and Grafton, IL and Rhineland and Pattonsburg, MO, which are relocating significant portions of their towns.

Of the \$152.3 million available in the Hazard Mitigation Grant Program (HMGP), about \$106 million has been committed. Another \$4.1 million from another program will be spent on acquisition projects. FEMA estimates that these investments will save \$304.5 million in future disaster damages over the next 50 years.

In Wisconsin, the state Division of Emergency Government (DEG) and FEMA are working together to reduce future flooding problems. Other agencies involved include the state Departments of Natural Resources; Development; Administration; and Industry, Labor and Human Relations; along with the State Historical Society; the Soil Conservation Service; and the Economic Development Administration. Currently, HMGP projects worth over \$10 million are being funded in four Wisconsin communities:

### **Pierce County**

Trenton Island, WI, lies between two channels of the Mississippi River, east of Red Wing, MN. The entire island is floodway, putting the numerous houses and businesses at great risk. Concerned about threats to human life and health, Pierce County applied for HMGP funds after the 1993 floods. The county is using the awarded funds to purchase properties on the island and in other areas and relocate the occupants.

The first purchase offer was made at the end of March, 1995. It was accepted and the residents will be moving off the island this summer. To date, 23 offers have been made, 19 have been accepted and nine have closed. 93 properties (68 island, 25 mainland) are eligible for the project.

### **City of Darlington**

Because the city's often-flooded downtown business district is a registered historical area, mitigation projects face unique problems. An architectural and engineering firm was retained to help design functional and historically accurate elevation options for the old brick structures. Some of the challenges include the varying elevations of the buildings, the extensive use of common walls and basements, and the low ceiling heights.

In addition to floodproofing 38 downtown businesses, the city is also proposing to purchase 17 businesses along the riverbanks. Appraisals for these businesses were completed at the end of May. Some of these will be located in a new business park to be financed with an Economic Development Administration (EDA) grant. Some residences near the business district have already been floodproofed. Others are in the decision process.

### **City of Eau Claire**

Situated at the confluence of the Chippewa and Eau Claire Rivers, the city is attempting to purchase up to 80 homes near the rivers using HMGP grants. Properties are currently being appraised and the city plans to make offers in early August.

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## Eau Claire County

The county's goal is to reduce flooding damage in the Eau Claire and Chippewa River floodplain areas. HMGP funds will be used to purchase 14 homes and floodproof 35 to 40 others. Appraisals were completed in May. As of July 1st, the county had made 11 offers with seven accepted. The county is working to develop floodproofing techniques for the affected homes.

It is interesting to note that both Eau Claire County and the City of Eau Claire traditionally have had strong, pro-active floodplain management programs. Therefore, when mitigation was made available under HMGP, these communities could implement projects more easily and effectively.

Communities should keep this in mind as the new mitigation funds will be a permanent pool of money, awarded on an annual basis through a competitive application process as part of the new Flood Mitigation Assistance (FMA) program.

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## Department Wins Wolf River Floodway Case

by Gary Heinrichs

A recent Court of Appeals decision denying an after-the-fact variance granted for a new habitable structure in the Wolf River floodway provides strong support for the soundness of local floodplain ordinances and the zoning administrators and building inspectors charged with upholding them.

The facts in the case are quite simple. William Levezow owned a cottage in the floodway of the Wolf River in poor condition. He began construction of a new

cottage adjacent to the existing one in the floodway without applying for a building permit. The Outagamie County Zoning Administrator issued a stop work order and the township then denied Levezow's subsequent building permit application.

Levezow ignored the order and completed construction of the cottage without a permit, including a private septic system and a propane tank. When the county sought removal of the cottage, Levezow applied for a variance from the Floodplain Zoning Ordinance from the Outagamie County Board of Adjustment. The Board granted the variance on April 2, 1993. The Board reasoned that "the literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district."

The DNR requested a certiorari review of the decision in a brief filed by the DOJ in November, 1993. The Department contended that the variance was erroneous and inadequate as a matter of law since the variance was not supported by the evidence in the record and the Board treated the new cottage as a modification or addition to an existing structure. The Department also argued that the storage of flammable materials, such as propane, was prohibited in the floodway and that Levezow had failed to establish the elements of a variance.

On June 23, 1994, the Outagamie County Circuit Court Branch IV released its decision. The Court accepted the Department's arguments on all points, finding that the cottage had been substantially damaged and could not be rebuilt; that flammable materials and on-site septic systems were prohibited in the floodway; and that none of the required elements of a variance had been established.



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Based on these facts, the Court reversed the decision and the variance was denied. Levezow also argued that denial of the building permit was an unconstitutional taking of his property. Upon consideration of the briefs filed by both parties, the Court determined that "the Constitutional issue is procedurally not applicable in this case." Levezow subsequently filed an appeal.

On February 28, 1995, The Court of Appeals for District III released a decision affirming the Circuit Court order. In his appeal, Levezow relied upon a section in the County's floodplain zoning ordinance that allows continued use of nonconforming structures subject to the 50% rule. However, this provision only applies to alterations, additions or repairs to an existing structure. The Court correctly noted that the ordinance provides no authority for the board to grant a waiver for a new structure.

Levezow also claimed that the Board had the power to grant a variance to the floodway standards. The Court again correctly held that this authority only applied to dimensional standards such as building setbacks or amount of fill around a structure. The Court quoted directly from the County ordinance that flatly prohibits

construction of structures designed for human habitation in floodway areas.

The Department also successfully argued that the new cottage exceeded 50% of the assessed value of the old one, that Levezow failed to prove any of the variance criteria, and that any hardship created was self-imposed. Levezow had also argued that the Department action would cause an unconstitutional taking of his property. It was noted that the Circuit Court had already ruled that the issue was procedurally not applicable.

These two rulings by the Court affirm the Department's authority in restricting floodway development and limit the effect of the takings law on state floodplain regulations. Laws that prevent a public nuisance and protect life, health and property will generally be upheld by the courts. This case also demonstrates that the courts will not show any sympathy for self-imposed hardships or after-the-fact variances.

While these were unpublished decisions and cannot be used as legal precedents, they are sound guidelines for ordinance interpretation questions and in discussions with property owners.

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Bureau of Water Regulation and Zoning  
Wisconsin Department of Natural Resources  
Box 7921  
Madison, Wisconsin 53707-7921

"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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