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A stylized illustration of floodplains with waves and water, rendered in a dark blue color. The word "FLOODPLAIN" is written in large, bold, white letters across the top of the illustration, and "MANAGEMENT" is written in large, bold, white letters across the bottom of the illustration.

FLOODPLAIN MANAGEMENT

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
VOLUME 13, NO. 47 NEWSLETTER SPRING 1995

COMMUNITY STEPS TO ENSURE COMPLIANCE WITH NFIP

A community participating in the National Flood Insurance Program (NFIP) has adopted an ordinance or a court order that states that the community will regulate any activity in an identified flood hazard area. No construction or development may take place in the identified flood hazard area without a permit from the community. The community may issue a permit only if the proposed development meets the standards of the NFIP. This means that all residential structures must be elevated up to or above the 100-year flood level. Non-residential structures may be dry floodproofed to or above the Base Flood Elevation (the 100-year flood level). It is important to note that the concept of "development" goes beyond the traditional "building" permit. Whereas the building permit is concerned only with buildings, the development permit includes building and alterations to landscape (such as excavation or use of fill) that would affect drainage patterns or the flood carrying capacity of the watercourse.

The community's adopted ordinance/court order designates an official with the responsibilities, authority, and means to implement that ordinance/court order in compliance with the NFIP regulations. Record keeping and enforcement of the floodplain ordinance must not be taken lightly. Communities that do not strictly maintain a permit system, that grant variances regularly, or that are lax in their enforcement responsibilities violate the agreement they have with the NFIP. Negligence on the part of the community cannot be tolerated. The consequences of non-compliance for communities participating in the NFIP are:

1. Flood insurance will not be available;
2. Federal agencies may not provide grants or loans for insurable buildings in identified special flood hazard areas of communities not participating in the NFIP;
3. No Federal mortgage insurance may be provided in identified flood hazard areas;
4. In the event of a federally declared flood disaster, no federal or state disaster assistance would be made available to insurable structures in identified flood hazard areas or nonparticipating communities;
5. Actuarial insurance rates go into effect when the Federal Insurance Administration establishes base flood elevation data regardless of whether or not a community participates in the program; and,
6. Finally, communities may be susceptible to some form of liability by not participating in the NFIP because their action: (1) denies the ability of its citizens to purchase flood insurance, and (2) does not take positive steps to reduce the exposure of life and property to flood damages in the face of authoritative scientific and technical data.

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TWO VIEWS, TWO ISSUES

The Supreme Court and *Dolan v. City of Tigard*

(Rutherford H. Platt, University of Massachusetts, Natural Hazards Observer - September 1994)

On June 24, 1994, the U.S. Supreme Court announced its decision in the Oregon property rights case *Dolan v City of Tigard* (No. 93-518, 62 U.S.L.W. 4576). By a vote of five to four, the Court overturned the 1993 Oregon ruling (854 P.2d 437), and upheld a property owner's challenge to the City's imposition of floodplain/bikeway exactions as conditions of its approval of the expansion of a commercial structure.

The plaintiff, Florence Dolan, owns a plumbing and electric supply store situated on a 1.67-acre parcel adjoining Fanno Creek in the central business district of Tigard, Oregon, a city of 30,000 near Portland. She applied for a permit to double the size of the store to 117,600 square feet and to create a 39-space parking lot, with further commercial development and parking to follow. The City's central business district zoning requires that 15% of a site be reserved for open space and landscaping. About 10% of Dolan's parcel lies in the 100-year floodplain, and under the City's community development codes must be dedicated for improvement of a storm-drainage system and as a "greenway." Bordering the dedicated greenway in the floodplain, the City further acquired the dedication of a 15-foot-wide strip of land for a public pedestrian/bicycle pathway. The two dedications of the floodplain and the bikeway would together satisfy the 15% open space requirement, and the City would maintain a landscaped buffer between the dedicated portions and the rest of the property.

Dolan's request for variances from these requirements were denied by the City Planning Commission in written findings that related the required dedications to the City's interest in mitigating flood damage and traffic congestion. The City's actions were upheld by Oregon courts, but now have been overturned by the U.S. Supreme Court.

Much of the majority opinion, written by Chief Justice William Rehnquist, would scarcely upset planners or floodplain managers. It is rife with language approving of City planning, floodplain management, greenways, bike paths, and other elements of planning. For example, Rehnquist writes, "undoubtedly, the prevention of flooding along Fanno Creek and the reduction of traffic

congestion in the Central Business District qualify as the type of legitimate public purposes we have upheld... It seems equally obvious that a nexus exists between preventing flooding along Fanno Creek and limiting development within the creek's 100-year floodplain."

The "nexus" requirement is derived from the court's opinion in the 1987 case, *Nollan v. California Coastal Commission* (483 U.S. 825), in which it held that an owner of beachfront property could not be required to dedicate a public access easement along his shoreline as condition to building a home because the easement did not have a link (nexus) with the overt public purpose of maintaining an ocean view from the adjoining public street. Rehnquist admits that the nexus test is satisfied in the case of Dolan's property, but adds that there also must be a showing by the City of rough proportionality between the burden upon the property owner and the benefit to the public. "No precise mathematical calculation is required," he wrote, "but the City must make some sort of individualized determination that the required dedication is related both in nature and extent of the impact of the proposed development." The majority thought that such proportionality was not demonstrated, and that the dedications are therefore presumptively invalid.

In a dissenting opinion, Justice Stevens objected that this new test of rough proportionality constitutes another hurdle beyond the rational nexus test. Furthermore, placing the burden of proof on the City reverses the long-standing presumption of validity extended by courts to the regulatory actions of local governments. He pointed out that proportionality is difficult to satisfy in relation to statistically uncertain phenomena like flooding and traffic congestion.

Just what the law is after *Dolan* is difficult to say. The decision may be read narrowly as supporting planning exactions except where public access without compensation is involved. Viewed most benignly, it calls for greater care in imposing exactions to specified public needs. Indeed, the case was remanded to the Oregon Supreme Court, which could require the City to do more homework, leading to eventual approval of the dedications.

However, in other localities, Dolan may join the 1992 *Lucas* decision (see the *Observer*, Vol.XVII, No.1, pp. 8-9) as a club in the hands of the property owners to intimidate elected officials and appointed planning officials with the threat of Fifth Amendment lawsuits. The political fallout of *Dolan* will probably outweigh its importance as a legal precedent.

Ironically, even as the property owners' rights movement claims "victories" in the *Lucas* and *Dolan* cases, demands for federal bailout of communities and property owners stricken by foreseeable natural disasters has never been so intense. In fiscal year 1992, a record 46 presidential disaster declarations were issued. Approximately, \$27.6 billion was spent on disaster assistance from fiscal 1989 through 1993, as compared with \$6.7 billion between 1965 through 1989 (not corrected for inflation). And the proportion of federal to nonfederal cost sharing has increased from 75%-25% to at least 90%-10% for three recent disasters (Hurricane Andrew, the Midwest floods, and the Northridge earthquake). This level of federal largesse is unjustified if local governments and private owners don't mitigate hazards within their control. If private owners are willing to accept limits on unsafe building practices in areas subject to earthquake, flood, hurricane, or urban-wildland fires, why should the nation hold them unaccountable for the results of their "own free choice"?

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION FLOODPLAIN MANAGEMENT WORKSHOPS

Several TNRCC Floodplain Management Workshops have been scheduled for 1995. We hope that you and your community try to attend these workshops, since training will receive more attention in coming years. We look forward to seeing you at the workshops over the next year.

<u>Location</u>	<u>Date</u>	<u>Module</u>
Abilene West Central Council of Governments	April 6, 1995	Basic Floodplain Management 101, 8 a.m.-noon How to Permit Floodplain Development, 1-5 p.m.
College Station	April 12, 1995	Basic Floodplain Management 101, 8 a.m.-noon How to Permit Floodplain Development, 1-5 p.m.
Port Arthur	April 26, 1995	Coastal Floodplain Management 101, 8 a.m.-5 p.m.
Temple	May 17, 1995	Basic Floodplain Management 101, 8 a.m.-noon Map Reading 101, 1-5 p.m.
Corpus Christi	June 14, 1995	Basic Floodplain Management 101, 8 a.m.-noon How to Permit Floodplain Development, 1-5 p.m.
	June 15, 1995	Community Rating System, 8 a.m.-4 p.m.
Uvalde Civic Center, Reading Room	June 27, 1995	Basic Floodplain Management 101, 8 a.m.-noon How to Permit Floodplain Development, 1-5 p.m.
Sherman	August 15, 1995	Basic Floodplain Management 101, 8 a.m.-noon How to Permit Floodplain Development, 1-5 p.m.

A Community Rating System module is being prepared for communities who wish to participate or learn more about this program. If you or your community is interested in this program, please contact Catherine Findley at 512/239-4773.

ANNOUNCEMENT

The Texas Floodplain Management Association (TFMA) is proud to announce its 8th Annual Flood Conference and Floodplain Administrator Training Seminar. This year's conference will be held on **July 12-14, 1995**, at the:

**Sheraton Corpus Christi Bayfront Hotel
707 North Shoreline Boulevard
Corpus Christi, Texas 78401
(800) 288-4786**

The City of Corpus Christi is very excited about hosting this important conference, and looks forward to the opportunity of having most of the State's best Floodplain Administrators sample their brand of Gulf Coast hospitality. As in past conferences, this year will focus on new developments with the National Flood Insurance Program (NFIP), such as legislation, continuing FEMA reorganization, the October 1994 flood, and the Galloway Report. Training sessions will be offered to enhance your management capabilities, and continuing education credits will be awarded to conference participants.

A technical field trip will be offered, which will feature a trip to Padre Island and North Beach to tour new construction designed to withstand hurricane force wind and wave action. This will be a great opportunity for those of you who have never visited coastal high hazard areas where construction on fill is prohibited. Invited Conference Cosponsors include the Federal Emergency Management Agency (FEMA), Texas Natural Resources Conservation Commission (TNRCC), Texas Division of Emergency Management (TDEM), Texas General Land Office (TGLO), Texas Parks and Wildlife Department (TPWD) and the National Weather Service.

**Don't miss out on this year's exciting and informative conference!
Only 60 rooms have been blocked, so make your hotel reservations today!**

HOTEL RESERVATION INFORMATION

**Sheraton Corpus Christi Bayfront Hotel
707 North Shoreline Boulevard
Corpus Christi, Texas 78401
(800) 288-4786 or (512) 882-1700
Room Rates: \$69 Single or Double Occupancy
Room Rates apply two days before and two days after the conference
Registration cut-off date is June 21, 1995**

DON'T FORGET YOUR TAX EXEMPTION FORMS!

**8TH ANNUAL CONFERENCE
TENTATIVE SCHEDULE**

JULY 12-14, 1995
CORPUS CHRISTI, TEXAS

DATE	TIME	EVENT
Wednesday, July 12, 1995	12:00 pm to 1:00 pm	Conference Registration
	1:00 pm to 5:00 pm	Topical Presentations
	7:00 pm to 10:00 pm	Annual TFMA Banquet and Tour of Texas State Aquarium
Thursday, July 13, 1995	8:00 am to 5:00 pm	Topical Presentations and Training Sessions
Friday, July 14, 1995	8:00 am to Noon	Concurrent Coastal Workshop and FPM 101
	Noon to 8:00 pm	Technical Field Trip and Bay Cruise

Please submit this form to request Conference Registration materials today.

**TFMA 8th ANNUAL FLOOD CONFERENCE
TEXAS FLOODPLAIN MANAGEMENT ASSOCIATION
131 EAST LIVE OAK, ROOM 104
ANGLETON, TEXAS 77515**

INFORMATION REQUEST FORM

Name:

Title:

Employer:

Address:

City:..... State:..... Zip:

Telephone:..... FAX:

Please mark with "X":

- Yes, I will attend.
- I may attend but need more information.
- I am interested in Friday's Training Course.
- I am interested in the Technical Field Trip.

HURRICANES

For the Atlantic, Caribbean, and Gulf of Mexico, the prime time for tropical formations is from June 1st through November 30th, with the most storms occurring in August, September, and early October.

1995 WORSE GUEST LIST

(Atlantic Tropical Storm & Hurricane Names)

ALLISON	HUMBERTO	OPAL
BARRY	IRIS	PABLO
CHANTAL	JERRY	ROXANNE
DEAN	KAREN	SEBASTIEN
ERIN	LUIS	TANYA
FELIX	MARILYN	VAN
GABRIELLE	NOEL	WENDY

As you can see, these are "retreads" from 1989. The National Hurricane Center uses the same names (excepting major hurricanes) every six years.

AND SOME PAST VISITORS TO TEXAS WE WISH HAD STAYED AT HOME:

♦	Sept. 1973	--Tropical Storm--	Delia
♦	July 1979	--Tropical Storm--	Amelia
♦	July 1979	--Tropical Storm--	Claudette
♦	Sept. 1979	--Tropical Storm--	Elena
♦	Aug. 1980	--Hurricane--	Allen
♦	Aug. 1983	--Hurricane--	Alicia
♦	June 1986	--Hurricane--	Bonnie
♦	June 1989	--Tropical Storm--	Allison
♦	Aug. 1989	--Hurricane--	Chantal
♦	Oct. 1989	--Hurricane--	Jerry

Remember it has been: Six (6) years since we have had a MINOR hurricane;
Twelve (12) years since we have had a MAJOR hurricane; and
Twenty-eight (28) years since we have had an EXTREME hurricane.

What are the Consequences of Owning or Buying a Nonconforming House in the FLOODWAY?

Minnesota Department of Natural Resources - 1994

Floodways usually have the deepest water and the fastest current during a flood and are very dangerous places to live. In all cases, a home located in a floodway will be considered a nonconforming use.

A home located in the **floodway** is usually a building built before a community adopted Federal Emergency Management Agency (FEMA) Floodplain Ordinance. According to FEMA regulations, new homes are not allowed to be built in the floodway. For this reason, it is wise to specifically look for land with buildable area outside of the floodway, if purchasing adjacent to a watercourse.

Owners or purchasers of floodway homes should be aware that additions or extensions to the outside dimensions are not allowed because they would cause addition blockage of flood flows. Normal upkeep and maintenance is allowed, if done on an ongoing, as needed basis.

Owners or purchasers of a home in the floodway should also be aware that there are restrictions on what can be done to repair the structure if it is damaged by a flood, tornado, fire or other disaster. If the cost to repair the damage is less than 50% of the pre-damage market value of the structure, then the structure can be repaired to its pre-flood condition. If damage to the floodway structure from any source exceeds 50% of the pre-damage market value of the structure, the structure cannot be repaired or occupied any longer. Should the property owner violate the community's ordinance on rebuilding/reoccupying the structure, the owner would be subject to legal action by the community, and the subsidy to the structure's flood insurance premiums would be lost.

What are the Consequences of Owning or Buying a Nonconforming House in the FLOOD FRINGE?

Houses located in the flood fringe that are not properly elevated above the regulatory flood protection elevation (RFPE) would also likely have been constructed before the community received its first Flood Insurance Rate Map (FIRM) and adopted floodplain regulations. These homes are considered to be nonconforming structures. Structures built after a community received its initial FIRM and adopted floodplain regulations must be properly elevated according to the local Floodplain Ordinance.

There are restrictions on what can be done to nonconforming structures located in the flood fringe, but these restrictions are not as stringent as the restrictions on nonconforming uses in the floodway. Normal upkeep and maintenance is allowed, if done on an ongoing basis.

The following table illustrates the different levels of regulation between the floodway and flood fringe:

Floodway

- o No fill
- o No structure
- o No rebuilding, if destroyed
- o No additions to structures

Flood Fringe

- o Fill allowed
- o Elevated home allowed
- o Floodproofing, if certified
- o Rebuilding allowed, if destroyed
- o Elevated additions allowed

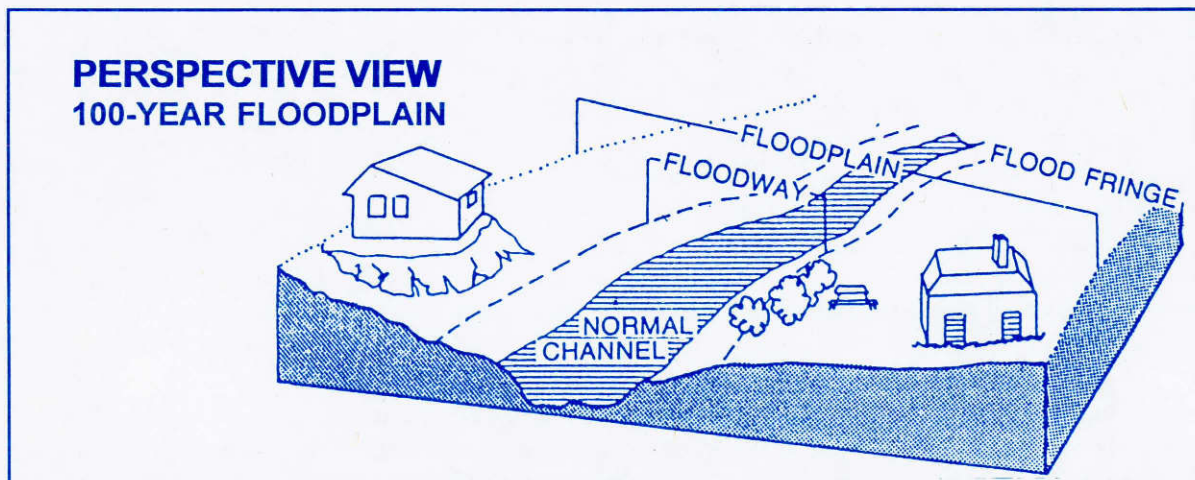
Unlike the floodway building restrictions, additions and structural alterations can be made to nonconforming structures in the flood fringe. However, the alteration or addition must not increase the flood damage potential of the structure. Therefore, additions and structural alterations must be protected by elevating them on fill above the RFPE. Alternatively, a community may allow structural floodproofing (consult your local building official for details).

Improvements and alterations to nonconforming homes in the flood fringe are allowed, if they are protected to the RFPE and their cumulative cost (in today's dollars) is less than 50% of the market value of the house. This applies to improvements and alterations that have occurred since the community received its initial FIRM and adopted floodplain regulations. Once the cumulative cost of improvements is equal to or greater than 50% of the market value of the home, the whole structure must be elevated to the RFPE. This can be very difficult and expensive.

If the structure is damaged in excess of 50% of its pre-damaged market value by any cause, the structure **can** be repaired and reoccupied, provided the whole structure is elevated to the RFPE during the process of repair. If during the repair process, it is decided to construct an addition, the addition must be elevated. If an addition causes the cost of repairs plus improvements to exceed 50% of the market value of the structure, the whole structure must be elevated.

If a community has been doing a good job of administering its floodplain ordinance, homes constructed in the **flood fringe** should be properly elevated to the RFPE. This applies to construction that has occurred since the community received its initial FIRM and adopted floodplain regulations. Because the structure has been elevated to the RFPE, normal upkeep and maintenance is allowed and all amounts of repair after damage can be made as long as all parts of the structure remain above the RFPE. Improvements, such as an addition, are allowed as long as they are properly elevated to the RFPE.

Flood insurance may still be required. Oftentimes, when a structure located in the floodplain has been properly elevated to the RFPE, the owner will request FEMA to waive the requirement for flood insurance for a federally insured or financed loan. FEMA can do this by issuing what is called a **letter of map revision (LOMR)**, once proper documentation has been provided that the structure's lowest floor (including basement) and lowest adjacent grade have been elevated on fill to the 1% chance flood level. FEMA can also issue a **letter of map amendment (LOMA)**, waiving the mandatory insurance requirement to those structures inadvertently or incorrectly mapped in the 1% chance floodplain. Information on LOMR's and LOMA's is available from the local building official, zoning administrator.



The Floodplain and Its Natural Values

Minnesota Department of Natural Resources - 1994

Floodplains are lowland areas adjacent to lakes, wetlands, and rivers that are covered by water during a flood. The most easily seen function of a floodplain is its ability to carry and store floodwaters. In Texas, typically, floods occur due to excessive rain. Undeveloped floodplain also provides many other natural and economic resource benefits. Floodplain often contain wetlands and other areas important in a diverse, healthy ecosystem. By making wise land use decisions in the development and management of floodplains..., beneficial functions are protected and negative impacts to the quality of the environment are reduced.

Parts of the floodplain that are also considered wetlands will, in addition to floodplain zonings, have the protection of federal, state or local wetland protection laws. These laws regulate alterations to the wetlands to preserve both the amount and integrity of remaining wetlands. The wetland protection laws most common in Texas are the U.S. Army Corps of Engineers' Section 404 Permit Program.

The values and benefits of land located in floodplain include:

Habitat For Plants And Animals - Floodplain vegetation provides important resting, feeding and nesting areas for many waterfowl species. Undisturbed floodplains have high natural biological diversity and productivity. River corridors are frequently used as flyways for migrating birds. Fragmentation of continuous natural areas reduces their appeal and function for a wide variety of wildlife species.

Water Quality - Floodplain vegetation and soils serve as water filters, intercepting surface water runoff before it reaches the lake, stream or river. This process aids in the removal of excess nutrients, pollutants and sediments from the water and helps reduce the need for costly clean-ups and sediment removal.

Flood Damage Reduction - Undeveloped floodplains function as natural reservoirs, temporarily holding flood waters and gradually releasing them. They can reduce the extent and frequency of flooding and result in substantial reductions in community costs for flood control measures.

Green Space Corridors - Landowners and community partnerships can be formed in some cases to preserve a "green space corridor" or a multi-use area where trails, flood hazard reduction, wetland protection, fish and wildlife habitat improvement, water quality protection, environmental education, and other beneficial uses can exist side by side.

Further benefits of undeveloped floodplain can be realized in:

- o Stormwater Management
- o Erosion Control
- o Cultural Resources
- o Natural Products
- o Scientific Study
- o Outdoor Education
- o Recreational Opportunities, and
- o Aesthetic Values

By being informed about the regulations that effect the use of your floodplain and about the natural values associated with floodplain, we can make intelligent decisions and reduce our impact to this important natural resource.

**FLOOD INSURANCE REQUIREMENTS
for
TYPICAL RESIDENTIAL SITINGS
in
FEMA/HUD DESIGNATED SPECIAL FLOOD HAZARD AREAS**

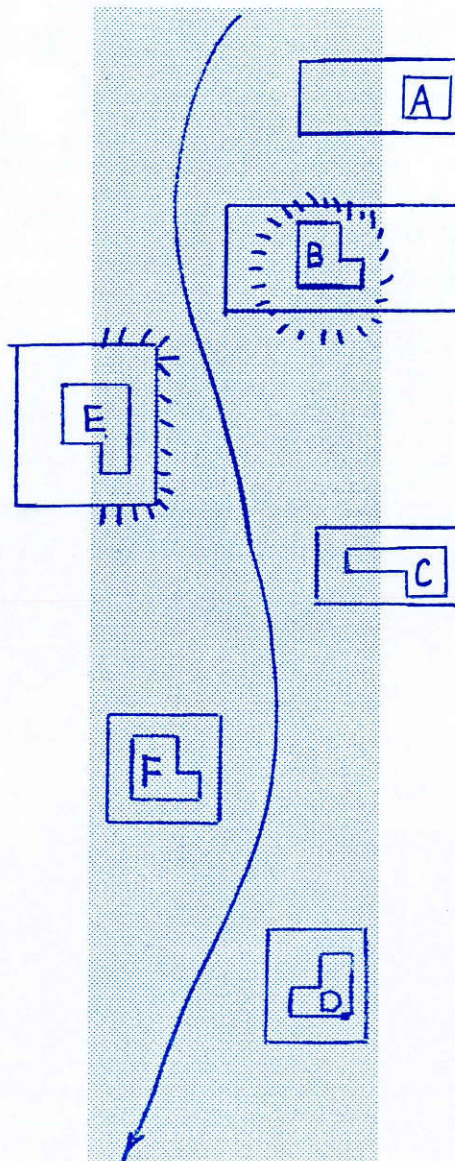
Structure (E) in flood hazard area although on a high bluff. This situation can result from inadequate base data and/or maps: Lender must require insurance initially but buyer (or builder) may request "Letter of Map Amendment." Also, community can appeal maps to more accurately reflect boundaries. Upon approval of "Letter of Map Amendment" or insurance or revised maps, buyer (or builder) may receive a refund.

Structure (F) located in the flood hazard area:

- (1) substantially elevated on fill insurance is initially required but buyer (or builder) may request Letter of Map Revision (LOMR).
- (2) elevated through means other than fill (post, piers, pilings, etc.): Insurance is always required.

NOTE: in reading FEMA/HUD maps, always utilize the scale found on the map (e.g., 1" = 1000', etc.)

Floodplain identified on current Flood Insurance Rate Map (FIRM) of Flood Hazard Boundary Map (FHBM).



Property in flood hazard area but structure (A) is not: Insurance is NOT required.

Structure (B) in flood hazard area, but substantially elevated on natural knoll too small to be shown on map: Lender must initially require insurance, but buyer (or builder) can request "Letter of Map Amendment" (LOMA). If request is granted, insurance may be refunded.

Structure (C) partially in hazard area: Insurance IS required.

Structure (D) located in flood hazard area, not elevated: Insurance ALWAYS required.

The burden of determining the location of the real property to be financed is on the lender and cannot be discharged merely by obtaining a self-certification from the borrower that the property is not located in an area having special flood hazards. If an appraisal of the property is required, its location in relation to an identified special flood hazard area should be part of the appraisal. If no appraisal is obtained, then the lending institution should verify the location.

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REMEMBER

Your community receives one copy of this Newsletter. Please circulate to all key personnel with responsibilities in Floodplain Management or Emergency Management.

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