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University of Miami
School of Law

OCEAN LAW PROGRAM

COMMUNITY LEGAL PROBLEM SERVICES

Title: A Guide for Florida Localities in
Qualifying for National Flood
Insurance Benefits

Requested by: State of Florida Coastal Coordinating
Council

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THE NATIONAL FLOOD INSURANCE PROGRAM

PURPOSE

The National Flood Insurance Program was established by the National Flood Insurance Act of 1968 (42 USC 4001-4127). This act was passed in recognition of a nationwide need for flood insurance. In the past, flood insurance was virtually nonexistent. Flood damages of hundreds of millions of dollars were recorded annually. A program was designed to make Federally subsidized flood insurance available to eligible areas and to encourage an awareness of the risk in occupying flood plains. In return for insurance benefits, participating states and localities must adopt land use controls that will avoid or reduce future flood damage.

ADMINISTRATION

The program is funded and administered through the cooperative efforts of the Federal Government and the private insurance industry. The insurance industry is represented by the National Flood Insurers Association (NFIA), 160 Water Street, New York, New York, 10038. Any qualified company licensed to write insurance in any state is eligible for membership. The Federal Insurance Administration (FIA), Department of Health and Urban Development, 451 Seventh Street, Southwest, Washington, D.C., 20410, under the Department of Health, Education and

Welfare administers the program on the national level. On the state level, the National Flood Insurers Association designates a servicing company (The Travelers Insurance Company, Flood Service Office, 1516 East Colonial Drive, Orlando, Florida, 32803) to provide information to insurance agents and the public. This servicing company also processes all insurance policies and claims for loss payments.

COVERAGE

Flood insurance coverage may be extended to all structures in business, residential, religious or agricultural use. Also eligible for coverage are structures occupied by nonprofit organizations or owned by state or local government. Any property owner in a participating area may purchase flood insurance coverage from any licensed property and casualty insurance agent within the state. Insurance coverage of up to \$17,500 for single family residential structures, up to \$30,000 for all other structures, and \$5,000 per unit for contents is available at subsidized rates. The chart on the next page sets forth the subsidized premium rates.

<u>TYPE OF STRUCTURE</u>	<u>VALUE OF STRUCTURE</u>	<u>RATE PER YEAR PER \$100 STRUCTURAL COVERAGE</u>	<u>RATE PER YEAR PER \$100 CONTENTS COVERAGE</u>
(1) Single family residential	\$17,500 and under \$17,501 - 35,000 \$35,001 and over	\$0.25 .30 .35	\$0.35 .40 .45
(2) All other residential	\$30,000 and under \$30,001 - 60,000 \$60,001 and over	.25 .30 .35	.35 .40 .45
(3) All non- residential (including hotels and motels with normal occupancy of less than six months in duration)	\$30,000 and under \$30,001 - 60,000 \$60,001 and over	.40 .50 .60	.75 .75 .75

(24 CFR 1911, section 1911.9)

A policy covers losses caused by a flood which is defined as "a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of streams, rivers, or other inland water, or (b) abnormally high tidal water on rising coastal waters resulting from severe storms, hurricanes, or tsunamis (24 CFR 1909, Subpart A, section 1909.1).

ELGIBILITY REQUIREMENTS
FOR THE
NATIONAL FLOOD INSURANCE PROGRAM

GENERAL INFORMATION

A locality must apply to the Administrator of the Federal Flood Insurance Administration for eligibility. A locality may receive aid in qualifying for the National Flood Insurance Program from the Federal Insurance Administration or the State coordinating agency (Department of Community Affairs, 309 Office Plaza, Tallahassee, Florida, 32301) appointed by the Governor of the State. On request, the Administrator of the National Flood Insurance Administration will supply a packet of information and suggested forms to aid localities in meeting eligibility requirements.

A locality must adopt land use and control measures which comply with the regulations (24 CFR 1910, Subpart A) enacted pursuant to the National Flood Insurance Act of 1968. Under the regulations, other items of information on flood danger in the locality must also be sent to the FIA. Certain minimum requirements must be met plus additional requirements depending on the amount known about the potential hazards of the area in question.

**GENERAL PREREQUISITES FOR THE
SALE OF FLOOD INSURANCE**

As a prerequisite for the sale of flood insurance, a locality must apply for eligibility for the entire area within its jurisdiction and submit the following:

- 1) copies of executive and legislative action indicating the need and desire for flood insurance under the program;*
- 2) citations to and copies of state and local statutes, ordinances, and regulations pertaining to land use controls;*
- 3) a summary of state and local public and private flood plain management, if any, including copies of easement, zoning, building, subdivision, health or other regulations pertaining to flood plain management;*
- 4) a large scale map of the locality including flood plain areas and bodies of water that cause floods;*
- 5) a short summary of the locality's history of flooding and the characteristics of its flood plain (a current flood plain information report by the U. S. Army Corps of Engineers or similar report is satisfactory);*
- 6) a clean map capable of being reproduced for publication delineating the corporate limits of the locality;*
- 7) a list of incorporated entities within the boundaries of the applicant, if any;*
- 8) estimates of population, one to four family residences and the number of small businesses in the flood prone area;*

- 9) *the address of a place, such as a municipal building, where flood insurance and flood hazard maps can be available for public inspection;*
- 10) *copies of land use control measures adopted by the locality to satisfy the requirements of section 1910.3 of the regulations (see SPECIFIC CRITERIA FOR LAND MANAGEMENT AND USE for details on page 9);*
- 11) *a commitment, in relation to all official actions pertaining to land use in areas having special flood hazards, to recognize and evaluate flood hazards;*
- 12) *a commitment to delineate or aid the Administrator of FIA in delineating limits of special flood hazard areas on local maps of sufficient scale to identify building site locations;*
- 13) *a commitment to provide the Administrator of FIA information on present uses of the flood plain area, if requested;*
- 14) *a commitment to provide and maintain for public inspection information on elevations of the lowest floors and, if a basement, the distance between the first floor and bottom of the lowest opening where water could enter on all new and substantially improved structures in areas having special flood hazards;*
- 15) *a commitment to cooperate with federal, state and local agencies and private firms studying, surveying, mapping and identifying flood plain areas; and cooperate with neighboring communities in management of adjoining flood areas common to both.*

By legislative action, an applicant must:

- 1) *designate an official or agency with the authority to implement the fifteen prerequisites previously listed,*
- 2) *designate an official to submit on the anniversary date of eligibility an annual report of progress made in the past year in the implementation of flood plain management measures.*

All of the documents and evidence of legislative action must be submitted to the Federal Insurance Administrator, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, D. C. , 20410 (24 CFR 1909, Subpart B, section 1909.22).

Once the FIA determines a locality has complied with the prerequisites, it is placed on a register of localities eligible for rate-making studies. On the basis of the following criteria, localities will be selected for a ratemaking study:

- 1) *the locality's location and urgency of need for flood insurance;*
- 2) *the locality's population and the existing or proposed intensity of development in the flood plain area;*
- 3) *the information available on flood characteristics and on previous losses of the locality;*
- 4) *the recommendation of state officials as to which localities should have priority;*
- 5) *the extent of state and local progress in flood plain*

management measures.

EMERGENCY PROGRAM

Under an emergency program ending December 31, 1973, the FIA is authorized to provide flood insurance without first conducting a ratemaking study which is a prerequisite under the regular program (section 1336 added by section 408 of Public Law 91-152, approved December 24, 1969, 83 Stat. 379, 396). After December 31, 1973, no properties can be newly insured or renewed except in localities where rates have been established.

SPECIFIC CRITERIA FOR LAND MANAGEMENT AND USE

GENERAL INFORMATION

The Administrator of FIA has the responsibility of determining the adequacy of a locality's land use and control measures. An applicant to be eligible for flood insurance must meet the requirements of section 1910.3, paragraph (a) of the regulations enacted under the National Flood Insurance Act of 1968 which sets forth minimum standards for land use and control measures a locality must comply with to be considered for the program. After satisfying section 1910.3, paragraph (a), a locality has six months from the date it receives the data set forth in section 1910.3, paragraphs (b), (c), (d) or (e) to comply with the requirements in the applicable paragraph. After minimum standards are met, additional requirements must be satisfied depending on the data available about the potential hazards of the area in question.

Localities identified as having special flood hazards must comply with specific standards set out in 1910.3 in relation to such hazards. A special flood hazard area exists where there is a 1% chance of a flood each year or, in other words, an area that is flooded once every hundred years (24 CFR 1909, Subpart A, section 1909.1). The Administrator of the FIA has the responsibility for designating special flood hazard areas and to furnish a locality with the data necessary to develop a flood management program. Costs of obtaining such data are not born by the

locality.

Flood land use and control measures adopted by a locality should be submitted to the State Coordinating Agency for suggestions and approval. The local official designated to submit annual reports to the Administrator of the FIA must also submit copies of the report to the State Coordinating Agency and any other appropriate state agencies. The Administrator of the FIA must receive a list of the agencies receiving copies.

**MINIMUM STANDARDS FOR LAND USE AND
CONTROLS UNDER VARIOUS CIRCUMSTANCES**

I. Situation One:

When the Administrator of the FIA has not:

- (A) defined special flood hazard areas (1 % chance of flood each year),*
- (B) provided water surface elevation data,*
- (C) provided enough data to identify the floodway or coastal high hazard area,*

then the locality must meet the following minimum standards in establishing land use and control measures:

- (1) Building permits must be required for proposed construction or improvements.*
- (2) All building permit applications for new construction*

or substantial improvements must be reviewed to see if the proposed sites will be reasonably safer from flooding. If a site is in a flood hazard area, the construction must:

- (a) be designed and anchored to prevent floatation, collapse or lateral movement,*
- (b) use materials resistant to flood damage,*
- (c) be of a method to minimize flood damage.*

(3) New developments and subdivision proposals must be reviewed to assure:

- (a) proposals are consistent with the need to minimize flood damage,*
- (b) sewer, gas, electric and water systems are constructed to minimize or eliminate flood damage,*
- (c) sufficient drainage exists in order to reduce flood hazards.*

(4) New or replacement water or sewage systems must be designed to minimize or eliminate flood effects

(24 CFR 1910, Subpart A, section 1910.3, paragraph (a)).

II. Situation Two:

When the Administrator of FIA has:

(A) delineated special flood hazard areas,

but has not:

(B) provided water surface elevation data,

(C) provided enough data to identify the floodway or coastal high hazard area,

then the locality must meet the following minimum standards in establishing land use and control measures:

(1) Flood plain management programs in neighboring localities must be considered.

(2) Land use and control measures adopted must apply to all areas having special flood hazards.

(3) Within the flood plain area having special flood hazards, laws and ordinances designed to reduce flood damage must take precedence over conflicting laws, ordinances or codes.

(4) Building permits must be required for all proposed construction or improvements in the flood plain area having special flood hazards.

(5) Building permit applications for major repairs in a flood plain area having special flood hazards must be reviewed to insure construction methods and materials will minimize flood damage.

(6) Building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards must be reviewed

to assure that the proposed construction is:

- (a) protected against flood damage,*
- (b) designed and anchored to prevent floatation, collapse or lateral movement,*
- (c) of material resistant to flood damage.*

(7) see Situation One, minimum standard (3).

(8) see Situation One, minimum standard (4). (24 CFR 1910, Subpart A, section 1910.3, paragraph (b)).

III. Situation Three:

When the Administrator of FIA has:

- (A) delineated special flood hazard areas,*
- (B) provided water surface elevations data for the one hundred year flood,*

but has not:

- (C) provided enough data to identify the floodway or coastal high hazard area,*

then the locality must meet the following minimum standards in establishing land use and control measures:

- (1) All of the minimum standards (1-8) under Situation Two in the preceding section.*
- (2) New construction or substantial improvements of residential structures in special flood hazard areas must have the lowest floor (including basement)*

elevated to or above the one hundred year flood level or, including attendant utilities and facilities, be floodproofed up to the one hundred year flood level.

(4) In a riverine situation, until a floodway has been designated no use, including land fill, may be permitted within the special flood hazard area unless the applicant for the land use can show when considering all existing and anticipated uses that the proposed use will not cause an increase in the water surface elevation of the one hundred year flood by more than one foot at any point (24 CFR 1910, Subpart A, section 1910.3 (c)).

IV. Situation Four:

When the Administrator of FIA has:

(A) identified the riverine flood plain area having special flood hazards,

(B) provided water surface elevation data for the one hundred year flood,

(C) provided floodway data,

then the locality must meet the following minimum standards in establishing land use and control measures:

(1) All of the minimum standards (1-8) under Situation Two.

(2) see Situation Three, minimum standard (3).

(3) see Situation Three, minimum standard (3).

(4) A floodway for passage of the one hundred year flood must be designated. The area selected must be able to carry the waters of the one hundred year flood without increasing the water surface elevation of that flood more than one foot at any point.

(5) Existing nonconfirming uses in the floodway must not be expanded, but may be modified or repaired to incorporate flood proofing measures as long as such measures would not raise the level of the one hundred year flood.

(6) Any fill or encroachments within the designated floodway that would diminish its capacity to carry or discharge the waters of the one hundred year flood are prohibited unless the effect of flood heights is fully offset by stream improvements (24 CFR 1910, Subpart A, section 1910.3, paragraph (d)).

V. Situation Five:

When the Administrator of the FIA has:

(A) delineated special flood hazard areas,

(B) provided water surface elevation data for the one hundred year flood,

(C) identified the coastal high hazard area,

then the locality must meet the following minimum standards

in establishing land use and control measures:

(1) All of the minimum standards (1-8) under Situation Two.

(2) see Situation Three, minimum standard (2).

(3) see Situation III, minimum standard (3).

(4) Existing uses of land located below the elevation of the one hundred year flood cannot be expanded.

(5) No land below the one hundred year flood level in a coastal high hazard area can be developed unless the new construction or substantial improvement is:

(a) located landward of the mean high tide,

(b) elevated on anchored piles to a lowest floor level at or above the one hundred year flood level and is adequately anchored to the piles,

(c) has no basement or obstructions below the lowest floor in order to minimize the impact of abnormally high tides or wind driven water

(24 CFR 1910, Subpart A, section 1910.3, paragraph (e)).

EXCEPTIONS DUE TO LOCAL CONDITIONS

A locality may adopt land use and control measures that vary

with the standard set forth by regulations if exceptional conditions exist. Such conditions would have to make compliance with the standards premature or uneconomic. A copy of the proposed land use measures must be submitted to the Administrator of the FIA by the locality. A locality must support its claim for a variance from regulatory standards by a written explanation including supporting economic, topographic, hydrologic and other appropriate data (24 CFR 1910, Subpart A, section 1910.5).

NOTICE OF ELIGIBILITY

When a locality becomes eligible for participation, notice will be published in the Federal Register. Local officials will be advised by letter of the date sale of insurance will commence. Local papers and radio and television stations will receive press releases announcing the eligibility of the locality. The National Flood Insurers Association informs local agents and brokers of the availability of coverage.

APPENDIX

DEFINITIONS

The following definitions may be particularly useful to the potential applicant.

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|---------------------------------|--|
| <i>coastal high hazard area</i> | - <i>the portion of a coastal flood plain having special flood hazards that is subject to high velocity waters, including hurricane wave wash and tsunamis.</i> |
| <i>flood</i> | - <i>a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of streams, rivers, or other inland water or (b) abnormally high tidal water on rising coastal waters resulting from severe storms, hurricanes, or tsunamis.</i> |
| <i>flood plain management</i> | - <i>the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and land use and control measures.</i> |
| <i>floodproofing</i> | - <i>any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.</i> |
| <i>floodway</i> | - <i>the channel of a river or other watercourse and the adjacent land areas required to carry and discharge a flood of a given magnitude.</i> |

- one hundred year flood*
- *the highest level of flooding that, on the average, is likely to occur once every one hundred years (i. e., that has a 1 % chance of occurring each year).*
- special flood hazard area*
- *maximum area of the flood plain that, on the average, is likely to be flooded once every one hundred years (i. e., that has a 1 % chance of being flooded each year).*
- substantial improvement*
- *any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 % of the actual cash value of the structure either (a) before the improvement is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. Substantial improvement is started when the first alteration of any structural part of the building commences.*
- water surface elevation*
- *the heights in relation to Mean Sea Level expected to be reached by floods of various magnitudes and frequencies at pertinent points in the flood plains of coastal or riverine areas.*

For additional definitions, consult 24 CFR 1909, Subpart A, section 1909.1 .

ADDRESSES

The following addresses may be helpful to a potential applicant.

*Federal Insurance Administration
Department of Health and Urban Development
451 Seventh Street, Southwest
Washington, D. C. 20410*

*National Flood Insurers Association
160 Water Street
New York, New York 10038*

*Department of Community Affairs
309 Office Plaza
Tallahassee, Florida 32301
(the State coordinating agency)*

*The Travelers Insurance Company
Flood Service Office
1516 East Colonial Drive
Orlando, Florida 32803
(the servicing company for the State of Florida)*