Reducing Risks and Legal Challenges Within Projected Floodplains

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100 Year Floodplains for the Lamprey River & Legal Research Project Participants

Mapping and Evaluation Team
- Cameron Wake & Fay Rubin, EOS, University of New Hampshire
- Steve Miller, Great Bay National Estuarine Research Reserve
- Robert Roseen, Ann Scholz & Tom Ballestero, UNH Stormwater Center
- Michael Simpson, Antioch University New England
- Julia Peterson & Lisa Townson, UNH Cooperative Extension

Legal Research Leaders
- John Echeverria, Katherine Garvey & Peg Elmer, Vermont Law School
Project Components

- Assess “new” flood risk and produce “new” 100 year floodplain maps
- Include advisory committee
100-Year Floodplains in the Lamprey River Watershed: Flood Insurance Rate Maps (FIRMs), Updated (2005) Conditions, and 2100 Conventional Buildout

Map Description:
This map illustrates the 100-year floodplain for the Route 108 corridor near the Newmarket/Orange town line for three conditions: (1) the FEMA Flood Insurance Rate Maps (FIRM) shown with blue cross-hatching; (2) the current floodplain based on 2005 land use conditions and updated 100-year 24-hour rainfall of 11.4" shown in pink; and (3) the modeled future 100-year 24-hour rainfall of 11.4" shown in orange. The map and tables below show the increase in the extent of the floodplain based on current and future conditions compared to FIRM conditions.

Map Key:
- Updated (2005) 100-Year Floodplains
- 2100 100-Year Floodplains
- Conventional Buildout
- Effective Zone A 100-Year Floodplains
- Special Flood Hazard Areas with Base Flood Elevations (SFHA) determined
- Effective Zone A 100-Year Floodplains Special Flood Hazard Area with no SFHA determined
- Floodplains with 3% AFE
- Limits of Inundation Mapping
- Lamprey River Watershed Boundary
- Subdivision & Boundary
- Brook/Stream Networks
- Town/County Boundaries

Assessment Summary:

Technical Notes:

Map Data Sources:

Assessing Flood Risk in the Lamprey River Watershed
Advisory Committee

- Cliff Sinnott, Rockingham Planning Commission (Chair)
- Joanne Cassulo, NH Office of Energy and Planning
- David Cedarholm, Durham Public Works
- Cynthia Copeland, Strafford Regional Planning Commission
- Michael Goetz and David Knowles, FEMA Region 1
- Diane Hardy, Newmarket Planning Department
- Sharon Meeker, Lamprey River Advisory Committee
- Jack Munn, Southern New Hampshire Planning Commission
- Jennifer Perry, Exeter Public Works
- Ron Poltak, NEIWPCC
- Keith Robinson, USGS
- Carl Spang/Dawn Genes, Lamprey River Watershed Association
- Eric Williams, NH Department of Environmental Services
Legal Concerns

- Maps go beyond FEMA/Flood Insurance Rate Maps
- Maps are based on future, predicted scenarios
Types of Legal Challenges

1. Is a municipality liable for acting OR not acting?

2. Does it have authority to act on the mapped data?

3. Can the mapped data be challenged?

4. Would a municipality be accused of a “taking” if it acted?

5. What options do communities have to protect health and property within projected floodplains?
Legal Questions and Recommendations*

http://100yearfloods.org

*Small print - Of course the following should NOT be considered legal advice. Seek legal counsel for your particular needs.
1. Municipal Liability

What if municipalities fail to take steps to reduce the vulnerability of its landowners and other citizens to the risk of flood and storm damage as revealed by UNH’s research efforts and mapping information?
1. Recommendation

- There is no need for towns to take any specific action related to municipal liability from adopting or failing to adopt floodplain maps.

1. Negligence

2. Doctrines of Governmental Immunity
2. Enabling Statutes

Do New Hampshire communities have the legal authority under state planning and zoning enabling legislation, or other state legislation, to design and implement regulatory controls based on current and predicted environmental conditions, specifically projected flooding levels?
2. Recommendation

- Identify and clearly state which enabling statutes authorize the sections of your ordinance. Check the language of the statute to make sure specific authorizations are not being exceeded.

1. Environmental Protection
2. Duties of the Planning Board
3. Duties of the Municipality
3. Challenges to Technical Information

What legal standard of scientific and technical reliability must planners and other officials meet in order to support regulatory measures that are based on current and future—as opposed to past—environmental conditions?
3. Recommendation

- **Identify** in the ordinance the reason you are adopting or referencing the maps. As long as you have a reasonable justification for using the maps, the maps will be upheld e.g. protecting the health and welfare of the community from the dangers of flood hazards.
4. Takings

What is the potential regulatory takings exposure of New Hampshire communities if they impose regulatory controls that are designed at least in part to address anticipated future environmental conditions?
4. Recommendations

- Make the basis for floodplain regulation clear in the master plan and the hazard mitigation plan.
- Provide flexibility in zoning and regulations in order to preserve some economically viable use of the land.
  - E.g. Setbacks should not create distance requirements that cover an entire parcel.
  - Include a mechanism for providing minimum relief from standards.
  - Indicate that the purpose of the regulation is to implement hazard mitigation.
5. Community Options

- Planning Tools
- Non-regulatory Tools
- Regulatory Tools