



National Flood Insurance Program – Floodplain Management Compliance

Natural Resources Conservation Service -
Wetland Reserve Program Projects



Easement Program Funding Expiration - Update

The Agricultural Act of 2014 establishes the Agricultural Conservation Easement Program (ACEP).

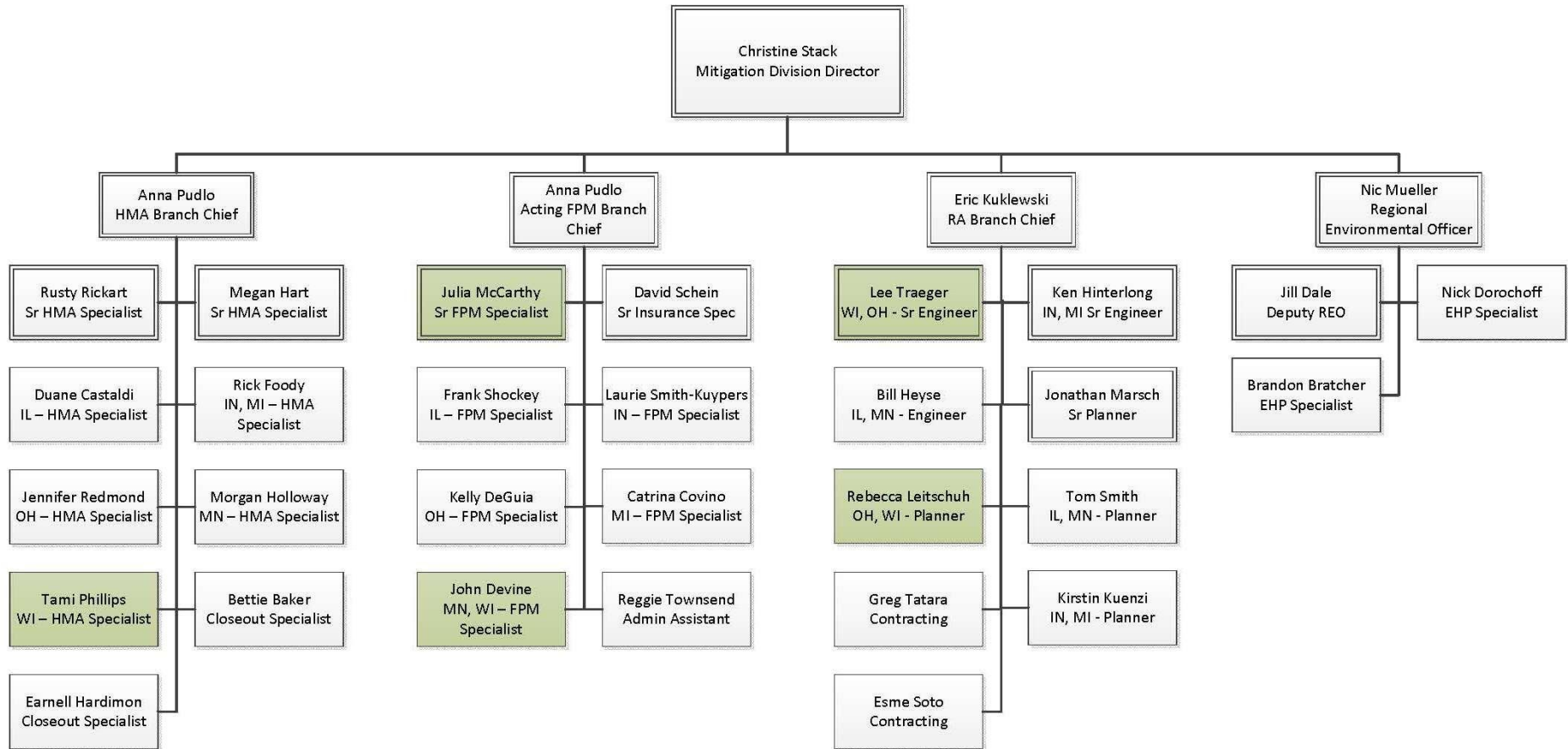
It repeals Farm and Ranch Protection Program (FRPP), Grassland Reserve Program (GRP), and **Wetland Reserve Program (WRP)** but does not affect the validity or terms of any FRPP, GRP, or WRP contract, agreement or easement entered into prior to the date of enactment on February 7, 2014 or any associated payments required to be made in connection with an existing FRPP, GRP, or WRP contract, agreement or easement.

For more information on ACEP, please [visit the ACEP web page.](#)

Overview

- **FEMA Region V Mitigation Division**
 - Organization
 - Points of Contact for Local officials
- **National Flood Insurance Program - Floodplain Management Requirements**
- **USDA – NRCS Wetland Reserve Program**
- **Issue – Community Compliance**
 - FEMA decision
 - Executive Orders 11988 and 11990

FEMA Region V Mitigation Division



Wetland Reserve Program

- For 20 years the Wetlands Reserve Program has restored more than 2.6 million acres of wetlands habitat across the U.S, creating prime wildlife habitat and helping the environment by holding and cleaning water.
- The WRP was a voluntary program that worked with landowners to protect, restore and enhance wetlands on private and tribal lands, a mission that helps rural and urban communities throughout the country by reducing flood damage, contributing to groundwater recharge and carbon sequestration, and providing recreational opportunities.



Manitowoc, WI WRP



National Flood Insurance Program

A *voluntary* program based on a mutual agreement between the Federal government and the local community:

In exchange for **adopting** and **enforcing** a Floodplain Management ordinance, Federally-backed flood insurance is made available to property owners throughout the community.



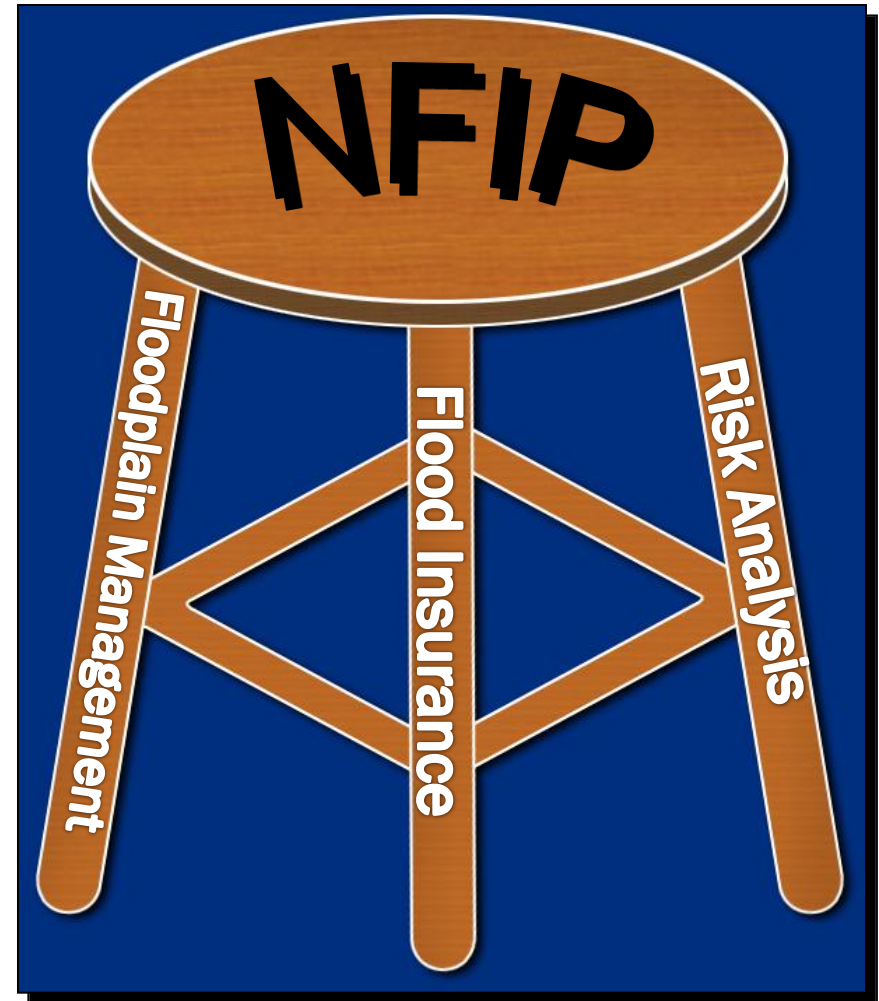
Wisconsin Stats

- **548 participating communities**
 - 543 Regular Program
 - 5 Emergency Program
 - 17 NSFHA
 - 64 Sanctioned
- **Insurance Stats**
 - Total Premiums = \$13,056,217
 - Total Coverage = \$2,824,387,700
 - Total Claims since 1978 = 7,223
 - Total Paid since 1978 = \$76,641,338

“The Three-Legged Stool”

■ Three related program areas support the NFIP:

- Risk Analysis and Flood Hazard Identification (mapping)
- Floodplain Management (regulations such as building codes and zoning)
- Flood Insurance (provision of reasonably priced insurance for property owners in participating communities)



FEMA's responsibilities

- 44CFR 60 Subpart A – Requirements for Flood Plain Management Regulations
 - 60.3 Floodplain management Criteria for flood-prone areas
 - *Require permits for all proposed construction and other developments, including the placement of manufactured homes, within in SFHA*

What is development?

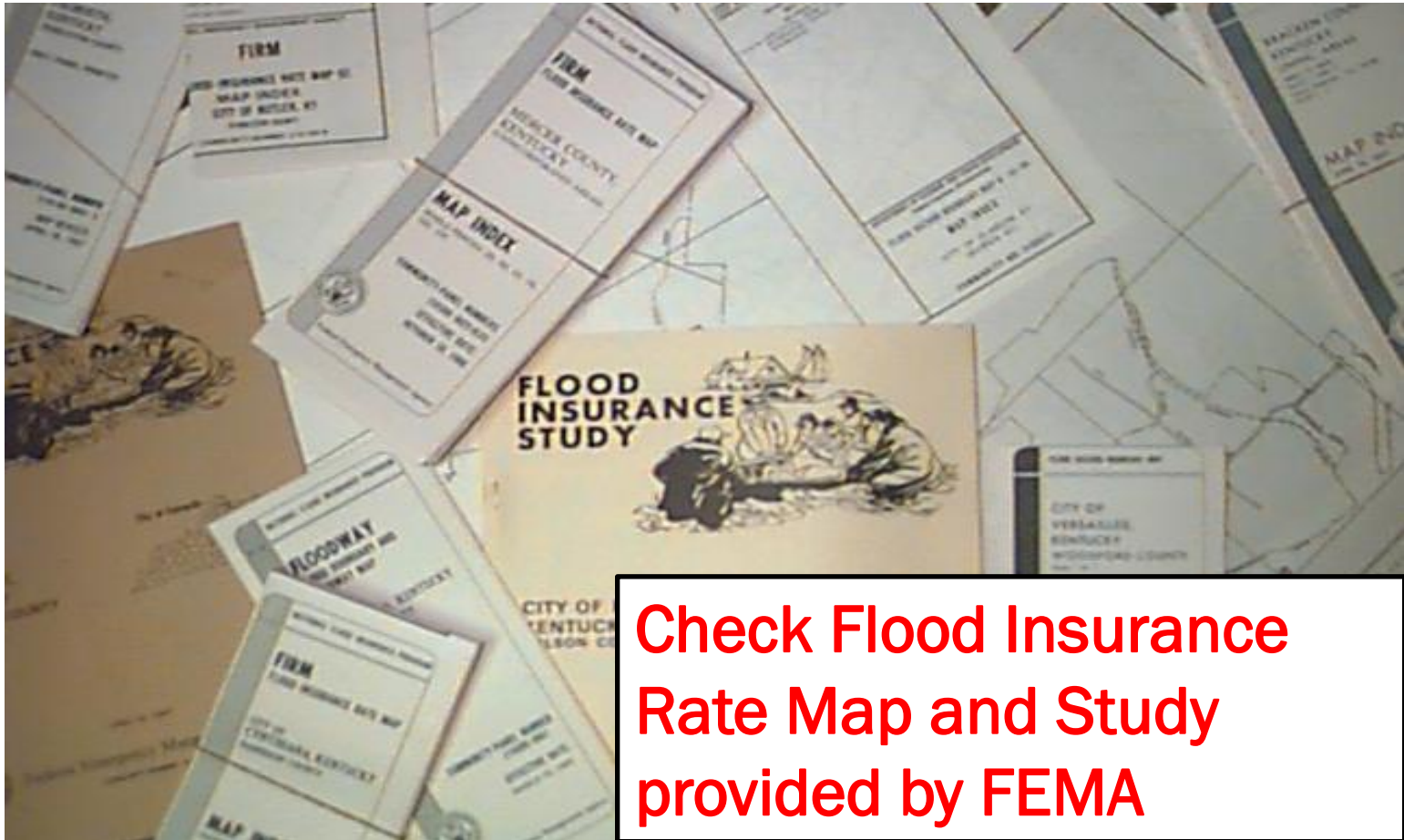
Where is the SFHA?

Development is

- Construction of new buildings
- Addition or substantial improvements to existing buildings
- Manufactured (mobile) homes and RVs
- Subdivisions or commercial developments
- Storage of materials
- Fill, grading, excavating
- Fences, culverts, bridges, roads
- And ANYTHING else that changes the floodplain

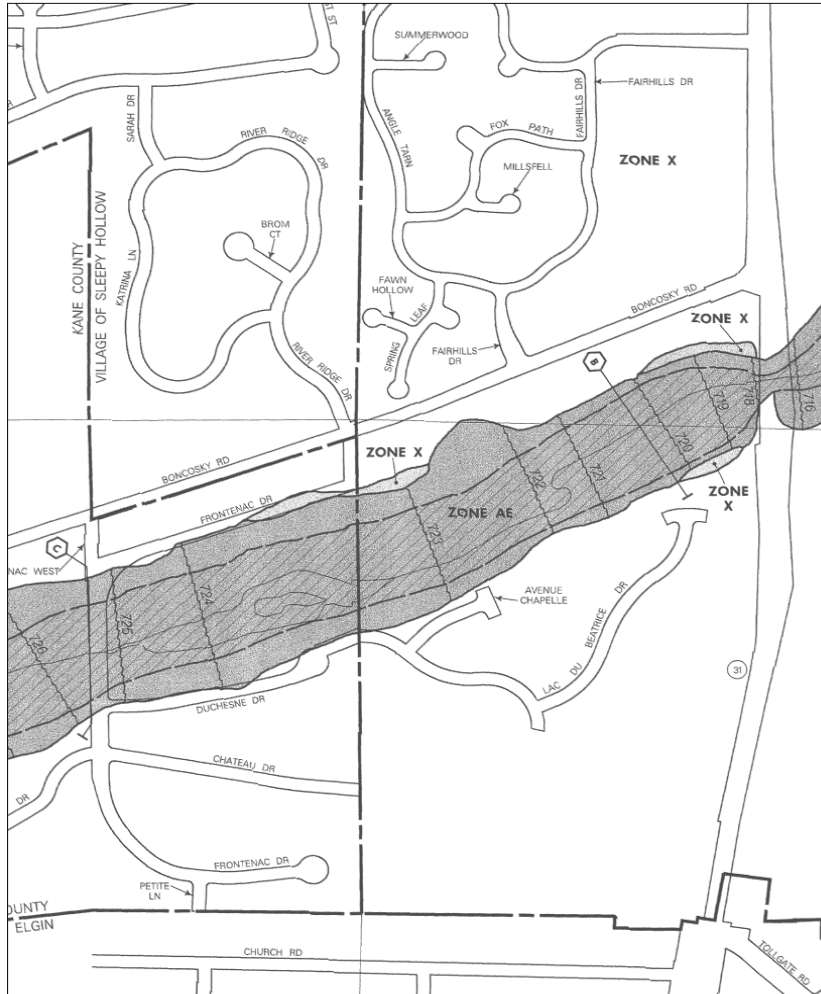


Where is the SFHA?

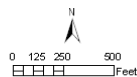


Flood Insurance Rate Maps

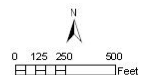
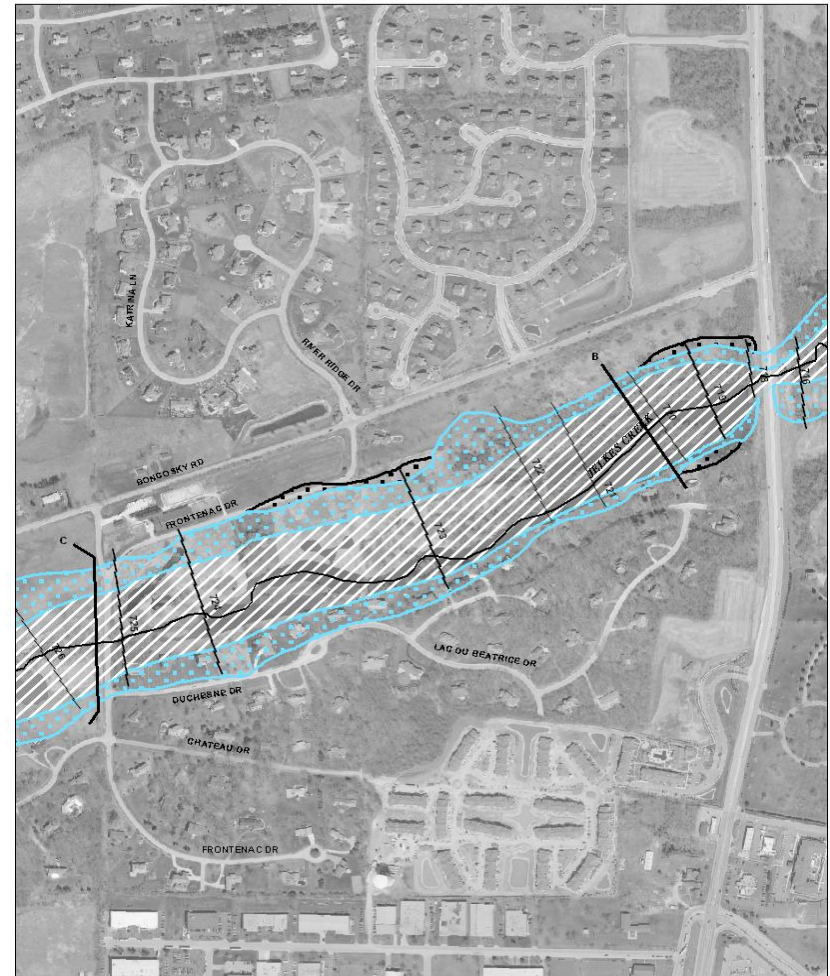
Original FIRM (Flood Insurance Rate Map)
Kane County - Jelkes Creek



KANE COUNTY, ILLINOIS AND INCORPORATED AREAS
PANEL 158 OF 410



DFIRM (Digital Flood Insurance Rate Map)
Kane County - Jelkes Creek

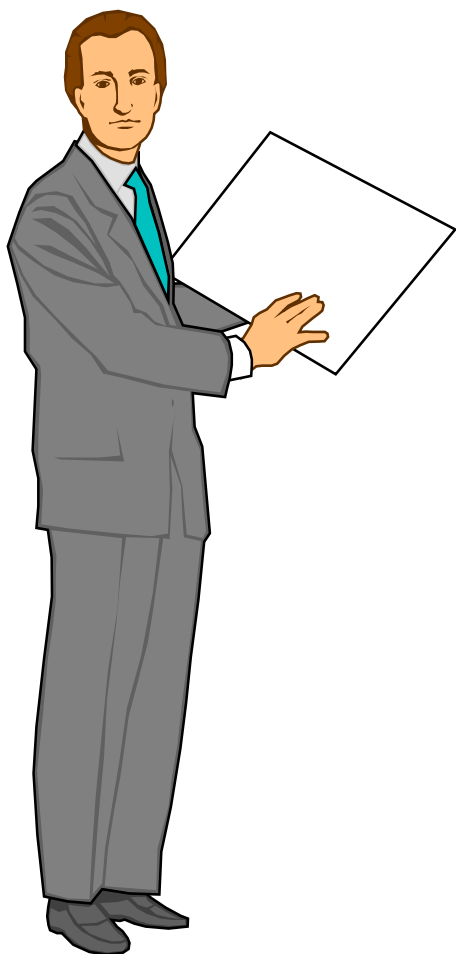


FEMA responsibility (cont'd)

- 44CFR 60 Subpart A – Requirements for Flood Plain Management Regulations
 - 60.3 Floodplain management Criteria for flood-prone areas
 - *Notify adjacent communities of alterations or relocations of a watercourse and submit copies to FEMA*
 - *Maintain carrying capacity of streams*
 - *Prohibit floodway encroachments*



Local Permit Responsibilities



Per Ordinance:

- Review applications
- Provide base flood data (where available)
- Review plans and specifications
- Ensure that other permits are obtained
- Provide notice of water course alterations
- Issue/deny permits
- Inspect development
- Look out for violations

USDA NRCS Wetland Reserve Program

- The Wetlands Reserve Program (WRP) was a voluntary program that offered landowners the opportunity to protect, restore, and enhance wetlands on their property.



Lands that were eligible for WRP

- Wetlands farmed under natural conditions
- Farmed wetlands
- Prior converted cropland
- Farmed wetland pasture
- Certain lands that had the potential to become a wetland as a result of flooding
- Rangeland, pasture, or forest production lands where the hydrology had been significantly degraded and could be restored
- Riparian areas that linked protected wetlands
- Lands adjacent to protected wetlands that contributed significantly to wetland functions and values
- Wetlands that had previously been restored under a local, State, or Federal Program that need long-term protection

WRP – Enrollment Options

- Under the easement options, the USDA paid all costs associated with recording the easement in the local land records office, including recording fees, charges for abstracts, survey and appraisal fees, and title insurance.
 - Permanent Easement
 - 30-Year Easement
 - Restoration Cost-Share Agreement
 - 30-Year Contract

WRP – Rights Retained by Landowners

- **Speaking generally, under the voluntary easement the landowner retains the rights to:**
 - control of access
 - title and right to convey title
 - quiet enjoyment
 - undeveloped recreational uses
 - subsurface resources
 - and water rights

So, What's the Issue?

- Where are these projects located?
- Are permits required for these projects when they are in the SFHA?
- Who needs to obtain the permits?
- If permits haven't been obtained, does the community face enforcement actions, or risk their participation in the NFIP?
- What about mapping requirements if the projects impact the base flood elevation?

Sovereign Immunity

- As a Federal entity, the NRCS is sovereign and immune from suit. The NRCS is therefore not legally bound to comply with the state and local floodplain permitting requirements or enforcement actions.
- Accordingly, FEMA will not pursue any enforcement or compliance actions against communities participating in the NFIP for failure to require a permit from the NRCS for WRP projects.
- Further, there is no requirement on the community or the landowner to obtain the permit themselves with respect to any WRP project taking place within the community.

Letters of Map Change

Requirement to submit new data:

Where a community's base flood elevations have increased or decreased due to physical changes affecting flooding conditions, "[a]s soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data..."

- The community is still under its obligation to obtain a LOMC for increases or decreases to BFEs due to physical changes affecting flooding conditions.

Data Share

- FEMA HQ is exploring options for facilitating the acquisition of such data from NRCS, including looking at the possibility of developing a data sharing agreement with NRCS in order to revise FIRMs to accurately reflect mapped areas where BFEs may have changed due to WRP projects.



Executive Orders

E.O. 11988 (Floodplain Management) and 11990 (Wetland Protection):

- Requires Federal Agencies to:
 - *Avoid development in FP*
 - *Avoid adverse effect to FP*
 - *Conduct an eight step process for federal actions in floodplains and wetlands (including studying alternatives to project)*
- *The NRCS is still required to comply with Executive Orders*

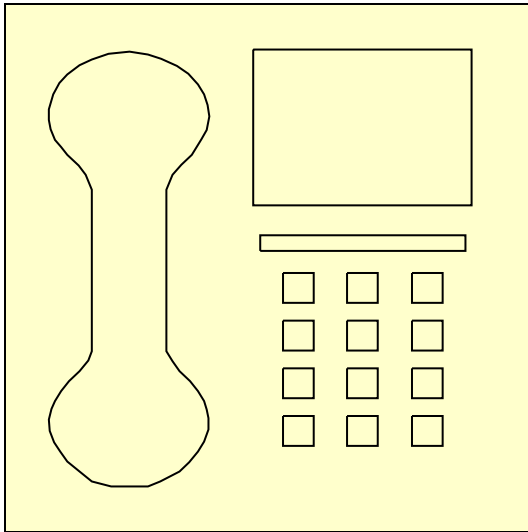
Eight Step Planning Process For Floodplain / Wetland Management



Bottom Line

- **FEMA reviewed the NRCS WRP and made the following decisions regarding community compliance with the NFIP:**
 - Development associated with the WRP is considered federal action and therefore permits are not required.
 - Participating NFIP communities are still required to submit updated map data when projects increase or decrease BFEs
 - FEMA and NRCS are exploring data sharing possibilities
- **Until we receive further guidance from NRCS, FEMA cannot opine upon the interaction between the new consolidated program and the NFIP.**
- **The legal analysis supporting the decision was based on the specific terms and conditions of the WRP program as it existed prior to the Agricultural Act. If the terms and conditions have changed, the legal analysis may change.**

Wisconsin Contacts



Questions?

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