



Floodplain Manager's Notebook

By Rebecca Quinn, CFM

I expect many of your enforcement challenges can be described as “Property owner A did something and property owner B complained.” It’s true of any regulatory program that many people subject to the rules either don’t realize there are requirements, or know and choose to do something without getting a permit. Either way, once the regulatory entity knows about it, action must be taken. In communities that participate in the NFIP, it means enforcing adopted floodplain management regulations.

Most people know permits are needed before they start constructing buildings. Fewer people know they need permits before performing some types of work on existing buildings (haven’t we all heard “I thought the contractor got the permits”). Now, ask a dozen people with property in the SFHA if they have to get permits for other (non-building) activities on their land, and I’ll bet everyone will say no.

Consider this scenario: Property owner A and property owner B, both in flood Zone AE, share a backyard lot line. Property owner A removed trees and undergrowth in the backyard and brought in a large quantity of fill. No surprise, property owner B is concerned the dirt will push more water onto her property. After some online research, owner B discovers a FEMA publication she thinks indicates filling in the SFHA is illegal and calls City Hall.

Now, if you know your floodplain management regulations, the first thing you’ll think of is the definition for “development,” which specifically includes “any manmade change to improved or unimproved real estate...filling, grading, paving...or any other land disturbing activities.” So that clears that up – it’s not illegal to place fill, but filling does require permits and placing fill without a permit is a violation. Like all violations, that doesn’t mean a permit can’t be issued. It just means the community must examine the unauthorized work and evaluate it against the requirements.

The next step is figuring out which requirements apply. Those of you in riverine communities should immediately ask whether the properties are in a floodway. If that’s the case, the requirements for floodway encroachments must be satisfied to determine whether the fill can remain (floodway encroachment analyses evaluate the impact of encroachments on water surface elevations).

Let’s assume neither property A where the filling occurred, nor property B, is in the floodway. The next question is whether there’s anything in the floodplain management regulations that applies to the placement of fill not used to elevated buildings. Perhaps more important, what would you look at if there aren’t specific provisions in your regulations? Let’s break it down, with example language from Florida’s [model floodplain management ordinance](#).

What’s supposed to be shown on plans submitted for permits? Even when surveyed topography or preparation by an engineer isn’t required, plans should have enough detail to illustrate the

work, show the area impacted, property lines and locations of existing buildings. Some communities allow owners to provide this detail on a sketch, with distances between measurable features noted. Florida's model ordinance also requires the following:

- Location, extent, amount and proposed final grades of any filling, grading or excavation.
- Where the placement of fill is proposed, the amount, type and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

What about adequate drainage? Most communities have ordinances that specifically require adequate drainage to reduce exposure to flood hazards, although that phrasing may appear only in requirements for subdivisions or Zone AO/AH. If your ordinance doesn't specifically address impacts of development on drainage, look to the overall intent. You probably have a purpose or intent section that includes some or all of the following phrases: "...minimum requirements to safeguard the public health, safety and general welfare and to minimize public and private losses due to flooding...appropriate construction practices in order to prevent or minimize future flood damage...manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or material, and other development which may increase flood damage or erosion potential..." These broad objectives give communities enough authority to look at adverse impacts on other properties, even if there are no explicit requirements.

What about specific requirements for fill? Some communities have specific requirements for fill used to elevate buildings, such as compaction specifications, but few have requirements for fill placed for other purposes. Very few are like Florida's model, which requires "evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose." This should preclude dumping fill just for the purpose of getting rid of it. Importantly, it also helps deal with the property owner who allows contractors to dump a load now and then, until voila! there's enough filled area to put buildings on top (perhaps ignoring the requirements for compaction, clean fill, etc.). For specific requirements for fill not used to support buildings, Florida's model also includes:

303.5 Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid draw-down of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

Failure to enforce adopted regulations can cause communities any number of headaches. We've all heard stories of the local official not exactly paying attention to the details, perhaps with a little "political" influence. These days, that's just as likely to end in legal hot water as not, especially in states where building officials and inspectors are licensed. Be aware communities that fail to enforce their floodplain management regulations can be sanctioned by FEMA, starting with probation (imposes a surcharge on NFIP flood insurance policyholders) and resulting in suspension if the communities refuse to resolve problems.

What's a good way to minimize liability for failure to enforce? Knowledge, as they say, is power. A good first step for any floodplain administrator is to become a Certified Floodplain Manager. But what about other staff in your community, including permit intake technicians, plans reviewers and inspectors? What else do they say? A little knowledge goes a long way. By that I mean you don't need to wait for a FEMA or state training course to teach other community staff all the ins and outs of floodplain management. Those other staff don't need that level of detail (and usually can't take that much time away from the job). But you can do it! You can prepare a few 45-minute-long sessions to go over key points they should know. For example, inspectors naturally focus on inspecting permitted development. They drive all over the community to get to sites with issued permits. When inspectors have a basic understanding of development subject to the rules, and when they know which areas are SFHAs (or have access to GIS layers showing SFHAs), they can report back when they see unpermitted activities.

Sample Ordinance Language

Inspections. The floodplain administrator shall inspect development that is not subject to the Building Code, including buildings and structures exempt from the Building Code. The floodplain administrator shall inspect special flood hazard areas to determine if development is undertaken without issuance of a permit.

Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed! Explore back issues of the [Floodplain Manager's Notebook](#).

Grant Opps...

Just a reminder to bookmark the Florida Climate Institute's website for a comprehensive list of [funding opportunities](#). It's a fabulous resource.