

	<b>WATER RESOURCES DIVISION RESCISSION OF POLICY AND PROCEDURE</b>		DEPARTMENT OF ENVIRONMENTAL QUALITY
Rescinded Date: March 24, 2014	Subject: Residential Additions in the Floodway		Category: <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
	Program Name: Water Resources Program		
	Number: 31-94-02	Page: 1 of 1	

Water Resources Division (formerly Land and Water Management Division) Guidance Memo No. 31-94-02, Residential Additions in the Floodway, dated September 8, 1994, is rescinded. This procedure was created 20 years ago and is no longer followed. Opinions have changed over the years and we do not allow additions to residential structures that increase the horizontal footprint of the structure within the floodway portion of the floodplain. This procedure as written could allow an addition to occur on a residential structure if it did not cause a harmful interference. Section 3104 of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, states, "The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that all channels and the portions of the floodplains that are floodways are not inhabited...." Based on this, we do not allow new residential construction or additions to existing residences to occur within the floodway.

DIVISION CHIEF APPROVAL:




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William Creal, Chief  
Water Resources Division

 <b>MICHIGAN DNR DEPARTMENT OF NATURAL RESOURCES</b>	<b>DIVISION GUIDANCE MEMO LAND AND WATER MANAGEMENT DIVISION</b>	<b>NUMBER:</b> 31-94-02
		<b>PAGE:</b> 1 of 2
		<b>EFFECTIVE DATE:</b> 09/08/94
<b>SUBJECT:</b> Residential Additions in the Floodway		<b>ALSO SEE:</b>
<b>SECTION AND/OR UNIT:</b>  Flood Hazard Management Lansing and Field	<b>APPROVAL SIGNATURE:</b> 	
	<b>TITLE:</b> Chief, Land and Water Protection Section	

**ISSUES:**

The LWMD often receives requests for approval of additions to residential structures that are located within the floodways of watercourses under the Flood Hazard Regulatory Authority as found in Act 245, P.A. 1929, as amended. Section 323.2a(1) of Act 245 states "the department shall...assure that the channels and the portions of the floodplains that are the floodways are not inhabited...." There have been a variety of approaches utilized to assess the impacts of these structures on flood flows and to insure compliance with local building codes and the National Flood Insurance Program (NFIP).

**DISCUSSION:**

Questions have arisen as to how applications should be evaluated and what considerations are to be given depending upon the community's participation in the NFIP, the location of the structure in relation to the floodway and whether or not the addition is a substantial improvement. The following guidance is based upon the interpretation of the statute that "habitation" already exists when the applicant seeks a permit for an addition. By issuing a permit for an addition, we are not permitting a new habitation.

**AUTHORITY:**

The Flood Hazard Regulatory Authority as found in Act 245, P.A. 1929, as amended.

**GUIDANCE/ACTION:**

To be followed for requests for additions to residential structures located within the floodway.

1. Determine if the existing residence was constructed in violation of this Act. If so, deny the application in accordance with Section 323.5b of the Act and determine if corrective action is necessary. If so, initiate corrective action.
2. Determine if the proposed occupation is an addition or totally new construction. If it is new, residential construction, deny the application in accordance with Section 323.2a of the Act.
3. Determine if the addition causes a harmful interference with the discharge and stage characteristics of the watercourse. If it does, deny in accordance with Section 323.2a and 323.5b of the Act. If not, continue processing the application.

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		<b>PAGE:</b> 2 of 2
		<b>EFFECTIVE DATE:</b> 09/08/94
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4. Make a determination as to whether or not the addition is a substantial improvement.
  - A. If the addition is a substantial improvement (more than 50% as found in 44 CFR, Chapter 1, Sub-Chapter B, Part 59, Sub-Part A, Section 59.1) it must be elevated in accordance with the NFIP [44 CFR, Chapter 1, Section 60.3 (c) (2)] and the state or nationally recognized building codes. Continue processing application.
  - B. If the addition is not a substantial improvement, it may not require elevation, however some local ordinances may still require elevation (see Part 5). Continue processing application.
  
5. Send a letter to the clerk of the community and the building inspector, with a copy to the applicant, advising them of the application and informing them the proposed occupation will be within the floodway. The letter should define the term floodway, explain the type of hazard associated with floodway occupation and cite the depth of flow and velocity that may be expected during a 100-year flood event. Ask if this proposal meets with their approval and conforms to their building codes, floodplain management ordinance, and other ordinances or codes which they administer. If you have received no response from the community within 30 days of the date of the letter, initiate a follow-up contact with the building inspector, requesting the status of their review. If their response is negative, inform the property owner and tell them to work out the non-conformance issues with the local community and building inspector. Indicate we will continue processing the permit application after clearance from the community or building inspector is received. If no response is received within 45 days of the date of the initial letter to the community, assume agreement by the community and go to Part 6.
  
6. Upon receipt of local clearance, issue the permit if all of our other requirements are met. This should include review for authority under all other applicable statutes administered by the LWMD, including, but not limited to, the Natural Rivers Program, the Wetlands Protection Act, etc. The permit should also contain a statement defining the floodway and identifying it as an area of hazard to occupants and to rescue personnel. It should also indicate the depths of flow and velocities to be expected during a 100-year event.