

# CITY OF FLAGSTAFF

## STAFF SUMMARY REPORT

**To:** The Floodplain Board

**From:** Malcolm Alter, Stormwater Manager *MA*  
Utilities Division

**Date:** July 12, 2009

**Meeting Date:** July 28, 2009




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**TITLE:** Consideration of Public Hearing: Variance Extension Request from Ordinance 2001-06, "Floodplain Management Regulations", at 216 W. Phoenix Ave.

**RECOMMENDED ACTION:** The Water Commission recommends granting a variance of Floodplain Management Regulations, Section 12-1-6-8.L. to Flagstaff Shelter Services (FSS), with a termination of overnight stays on September 23, 2011 and a waiver of the variance of the \$300 processing fee.

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### ACTION SUMMARY:

The Water Commission recommends granting the variance request with an expiration of September 23, 2011 and waiving the application fee of \$300.

### DISCUSSION:

#### Background/History:

The Flagstaff City Council is specifically appointed as the Floodplain Board pursuant to Ordinance 2001-06. The Floodplain Board renders decisions on variance requests to the Ordinance. Council is requested to sit as the Floodplain Board to consider this variance.

FSS is proposing to obtain a variance extension from the Floodplain Regulations to continue the use of a city-owned building, located at 216 W. Phoenix Ave, as a homeless shelter. A variance was granted by City Council on January 15, 2008. The variance was granted for a period of 6 months. The 6 month period commenced on October 18, 2008 and ended on April 18, 2009. Presently, no overnight stays are permitted at the facility. Day-time office use is permitted without a variance.

The structure was formerly used as a commercial business known as Home Alternatives. The proposed use includes day use as well as overnight stays. Please find attached the variance request letter from FSS.

The structure is located in the 100 year floodplain of the Rio De Flag watercourse with expected flooding depths of 4-5 feet. Please reference attached location map. The structure is not elevated appropriately and is not designed to withstand the hydrostatic pressures anticipated during the flood event.

Section 12-1-6-8.L of the Floodplain Management Regulations (Regulations) specifically prohibits the change of use from non-residential to residential unless compliance with the provisions of the Regulations are achieved. In this case, the finish floor elevation (FFE) would need to be raised 5-6 feet, utilities raised to the same elevation and openings provided at the base of the structure to ensure structural stability. Section 12-1-6-8.L reads as follows:

“No person shall change the use of an existing structure from a nonresidential use to a residential use without compliance with the provisions of these regulations”.

The overnight use clearly constitutes a residential use as contained within the Ordinance definition of “Residential Structure”:

“Residential Structure means any structure or any portion of a structure that is used for, or designed as and capable of being used for, the temporary or permanent domicile of persons, including without limitation a dwelling unit, apartment house, boarding house, hotel, motel, nursing home, lodging house, congregate residence, jail, prison, and similarly used structures.”

**Key Considerations:**

The Water Commission considered this request at their meeting of June 18, 2009. The Water Commission voted unanimously to recommend approval to Council.

The City of Flagstaff is a participant in the Federal Emergency Management Agency’s (FEMA) National Flood Insurance Program (NFIP). As such, flood insurance is made available to the community, as well as Federal disaster assistance. The City also participates in the NFIP Community Rating System (CRS) that provides reduced Flood Insurance rates based on floodplain management activities performed by the community. Presently, a 15% discount is available for Flood Insurance as the result of the City’s Floodplain Management activities.

FEMA reviews all variances granted by the City of Flagstaff. If a variance is granted without justification, severe penalties can be assessed by FEMA including suspension from the NFIP and reductions in the CRS discount resulting in increased insurance premiums. In conversations with the CRS representative, little, if any credit is given for the specific requirement subject to this variance request.

The Regulations contain criteria on which to grant a variance. These criteria are contained in Section 12-1-7-1 and 12-1-7-2. A number of criteria to consider when granting a variance are contained within these sections, including clauses that address hardship, good and sufficient cause and flooding considerations. Also note the applicability of Section 12-1-7-1.G.4. to this project, “The importance of services provided by the proposed facility to the community”. Staff believes that a variance can be granted pursuant to these Sections.

City staff has contacted FEMA staff to discuss this variance extension. FEMA is supportive of the variance request provided that it is temporary in nature and the flood evacuation plan remains in effect. The Flood Evacuation Plan is attached for reference. FEMA acknowledges the benefit of the shelter and the community need. FEMA suggests the establishment of a specific date for the termination of the temporary use. The recommended termination date was chosen to coincide with possible lease extensions by the City. The initial lease will expire on September 23, 2009. Should the applicant wish to pursue additional time for the proposed use, an additional variance would need to be granted prior to the proposed variance termination on

September 23, 2011. The establishment of a termination date is important to comply with FEMA's position. Also, a re-evaluation of the permit and associated issues, such as the construction of the Rio De Flag Flood Control Project could occur prior to the issuance of another variance.

One other consideration to note is the requirements set forth in the Regulations for "substantial improvements". Specifically, if the value of any proposed improvements exceeds 50% of the value of the structure, compliance with the Regulations is required. This variance request does not include a request related to the substantial improvement provision. Improvements made to date do not effect compliance at this time. Future improvements to the building may effect compliance and will be tracked through the Floodplain Use Permit process.

City and FEMA staff concur that the granting of this variance is warranted. Our recommendation is based off the following observations:

- Community need for temporary shelter for the homeless.
- Risk of loss of life from winter cold and summer wildfire.
- Existing Flood Evacuation Plan.
- Temporary nature of variance.

**Community Benefits and Considerations:**

The homeless shelter will provide overnight lodging during the cold winter nights and throughout the year, including times of high wildfire danger during the summer.

**Community Involvement:**

For Council consideration, who will sit as the Floodplain Board, a Public Hearing has been scheduled and Public Notice provided in the Daily Sun Newspaper on June 11, 2009, pursuant to the Regulations.

**Financial Implications:**

The Regulations require an application fee of \$300 for a variance consideration. The applicant has requested that the fee be waived for this request. The fee is intended to help cover administrative staff time in preparation of the variance.

**Options and Alternatives:**

The Council, acting as the Floodplain Board, may;

- Agree with the Water Commission recommendations as presented approving the Variance and waive the Application Fee.
- Recommend approval of the variance but require FSS to pay the Application Fee.
- Denial of the variance.

**Attachments/Exhibits:**

- Water Commission Draft Minutes of June 18, 2009
- Location map
- Flagstaff Shelter Services Variance Request Letter
- Emergency Response Plan



**Department Head** *(Acknowledgment that all reviews have been completed and required approvals initialed below.)*

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
_____	LEGAL	_____	_____	IGAS	_____

DATE OF COUNCIL APPROVAL: \_\_\_\_\_

**WATER COMMISSION  
June 18, 2009**

**DRAFT**

**MINUTES**

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<u>MEMBERS PRESENT</u>	<u>MEMBERS ABSENT</u>	<u>STAFF PRESENT</u>	<u>OTHERS PRESENT</u>
Paul Turner Bob Shinham Dan Burke Richard Kersey Jeff Oravits Jim McCarthy	Gay Chanler Patrick Hurley Rick Swanson Lindsay Wagner	Malcolm Alter Marion Lee	

**I. CALL TO ORDER**

There being a quorum present Paul Turner, Vice Chair called the meeting to order at 4:06 p.m.

**II. APPROVAL OF MINUTES – May 21, 2009**

Moved by Dick Kersey and seconded by Bob Shinham that the May 21, 2009 be approved. Motion passed unanimously.

**III. PUBLIC PARTICIPATION**

Representatives from the Sierra Club, Northern Ariz. Audubon and Friends of the Rio were present and requested to be kept informed on future agenda item on Reclaimed Water Code Modifications. Paul indicated that Staff will be notified to inform them on this agenda item. These organizations all support reclaimed water use for environmental concerns.

**IV. NEW BUSINESS**

**A. Variance Extension Request to the Floodplain Regulations – Malcolm Alter**

Malcolm gave a brief history on the Floodplain Regulations. Flagstaff Shelter Services (FSS) is proposing to obtain a variance extension from the Floodplain Regulation to continue the use of a city-owned building, located at 216 W. Phoenix Avenue, as a homeless shelter. A variance was granted by City Council on January 15, 2008 for six months. The six month period commenced on October 18, 2008 and ended on April 18, 2009. Presently, no overnight stays are permitted at the facility. Day-time office use is permitted without a variance.

The City of Flagstaff is a participant in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP). As such, flood insurance is made available to the community, as well as Federal disaster assistance. The City also participates in the NFIP Community Rating System (CRS) that provides reduced Flood Insurance rates based on floodplain management activities performed by the community. Presently, a 15% discount is available for Flood Insurance as the result of the City's Floodplain Management activities.

FEMA reviews all variances granted by the City of Flagstaff. If a variance is granted without justification, severe penalties can be assessed by FEMA including suspension from the NFIP and reductions in the CRS discount resulting in increased insurance premiums. Staff has contacted FEMA to discuss this variance extension. FEMA is supportive of the request provided that it is temporary in nature and the flood evacuation plan remains in effect. The initial lease will expire on

September 23, 2009. Should the applicant wish to pursue additional time for the proposed use, an additional variance would need to be granted prior to the proposed variance termination on Sept. 23, 2011.

Other consideration to note in the requirements set forth in the Regulations for "substantial improvements." Specifically, if the value of any proposed improvements exceed 50% of the value of the structure, compliance with the Regulations is required. This variance request does not include a request related to the substantial improvement provision.

Wendy White, Chair of Flagstaff Shelter Services indicated the City has approved land next to the Guidance Center to build a Shelter in the future but in the mean time will remain at the Phoenix Avenue address.

Staff recommends granting a variance to the Floodplain Regulations, with a termination of overnight stays on September 23, 2011. Staff also recommends the waiver of the variance processing fee of \$300.

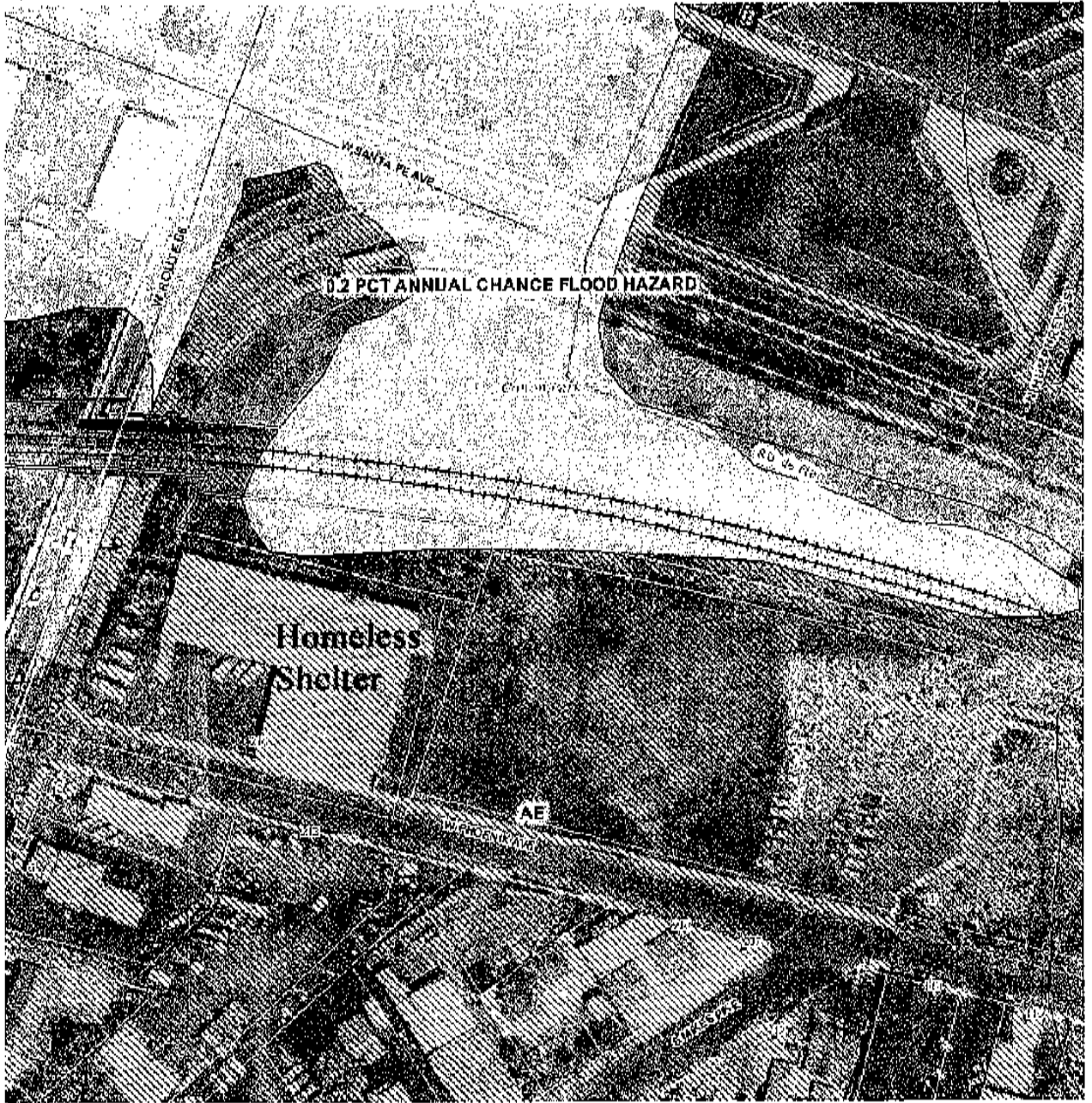
Moved by Jeff Oravits and seconded by Dick Kersey to recommend to City Council granting a variance to the Floodplain Regulations, with a termination of overnight stays on September 23, 2011. This will include waiving the variance processing fee of \$300. Motion passed unanimously.

**V. OLD BUSINESS**

**VI. INFORMATIONAL ITEMS TO/FROM THE CHAIR, COMMISSION OR STAFF**

**VII. ADJOURNMENT**

Moved by Dan Burke and seconded by Jeff Oravits that the meeting be adjourned. Motion passed unanimously. The meeting adjourned at 4:36 p.m.



Location Map



# Flagstaff Shelter Services Inc.

Mailing: PO Box 1808 | Flagstaff, Arizona 86002  
Physical: 216 W Phoenix Ave. | Flagstaff, Arizona  
Telephone: 928/225-2533 | Email: info@flagstaffshelter.org

*Mission Statement: To ease the suffering of homeless men and women by providing shelter and services in a safe, supportive and caring environment and to assist them in overcoming the obstacles to obtaining permanent housing.*

Website: www.flagstaffshelter.org

Malcolm Alter, Floodplain Administrator and  
City of Flagstaff Floodplain Board  
211 W. Aspen  
Flagstaff, AZ 86001

RE: Request for Extension of Flood Plain Ordinance Variance

As discussed Flagstaff Shelter Services would like to request an extension of the current variance of Flagstaff City Floodplain Ordinance SECTION 12-01-001-0006.8 ("No person shall change the use of an existing structure from a nonresidential use to a residential use without compliance with the provisions of these regulations") that was granted to us in 2007 for a period of six months so that we can continue to use the building at 216 W. Phoenix Avenue for the purposes of an interim overnight homeless shelter. We are requesting that the variance be extended for the term of our lease and any extensions to the lease.

When this issue first arose I did not have time to review the NFIP provisions or FEMA regulations. Having now had the chance to do that I don't think that this variance will have any adverse impact on the City or community's discounted flood insurance rating. The section of the Flagstaff City Ordinance that required us to get a variance in the first place is neither mandated nor recommended by FEMA and appears to be a local restriction only. Even if it were a FEMA required restriction the grant of the variance would be clearly supported after considering the factors listed by FEMA to take into consideration in determining variance applications. An analysis of the FEMA and NFIP regs shows the following.

In order to participate in the NFIP program a community must adopt minimum flood plain management standards. These minimum standards are set out in 44 CFR 60.3 and are described in "*Floodplain Management Requirements: A Study Guide and Desk Reference for Local Officials*" available on line at the FEMA website. The requirement in the Flagstaff City Ordinance that any building that undergoes a change of use from non-residential to residential be brought into compliance with the flood plain ordinance is not mandated by FEMA. Our local ordinance is therefore more restrictive than the FEMA regulations.

The NFIP and FEMA do encourage communities to adopt more restrictive flood plain regulations than the minimum established by Federal Law. Communities can receive credit for certain additional restrictions which then triggers discounted rates for flood insurance for community members. Flagstaff has taken advantage of this and does receive discounted flood insurance rates. The additional restrictions that qualify for credit are described in Unit 6 of *Floodplain Management Requirements*. There is no mention of restrictions based on change of use of an existing building either in the minimum regulations or the list of qualifying restrictions that are greater than the minimum. The Flagstaff City Floodplain Ordinance section that applies to us is not a restriction that adds to or impacts the discount for flood insurance under NFIP for Flagstaff community members.

Flagstaff Shelter Services is a 501(c)(3) charity, tax ID number 20-4921369. In accordance with the IRS Code, your donations are tax deductible.

Housing homeless men and women with compassion and dignity.

#### 2008-2009 Board of Directors

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CFR 44 also sets out when a community can be *penalized* for not enforcing its flood plain management plan. Failure to enforce flood plain ordinance restrictions can result in the suspension of eligibility. However, with respect to the granting of variances the rule is that a community can only be placed on probation or suspended from eligibility if the NFIP administrator reviews a community's findings justifying variances and finds "*a pattern inconsistent with the objectives of sound flood plain management.*" 44 CFR 60.6. If I remember correctly, there has only been one other variance ever granted by the City of Flagstaff since the adoption of the Flood Plain Ordinance. Consequently, the issuance of this variance could not be considered as part of a *pattern*. Again, because the section involved is neither mandated nor suggested by FEMA or NFIP it could also not be viewed as "inconsistent with the objectives of sound flood plain management" to grant a variance to it.

As noted in the Handbook cited above, "(flood damage prevention ordinances are intended to help protect the health, safety, well-being and property of the local citizens. Variances must not create threats to public safety or nuisances." In this case, the provision of overnight shelter to homeless Flagstaff community members *increases* the protection, health, safety and well being of our citizens. Looking at the safety of the community from a more global standpoint the threat to our homeless community members from the flooding of the current shelter is much more tenuous and unlikely than the very real threat to their safety on a nightly basis every time they have to sleep unsheltered in our forests, ditches and culverts. In fact every year several homeless individuals die either from the elements, accident or even from acts of violence by other persons.

The Flagstaff City Floodplain Ordinance lists the following specific factors that should be taken into consideration when deciding whether to grant a variance. This list of factors is also found in the FEMA regulations. I've noted my response to each in red.

#### **SECTION 12-01-001-0007.1 APPEAL AND VARIANCE BOARD**

G. In passing upon such applications, the Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of these regulations, and:

1. The danger that materials may be swept onto other lands to the injury of others; (*No additional impact*)
2. The danger of life and property due to flooding or erosion damage; (*We have a flood evacuation plan in place and have 24 hour awake staff. The individuals that stay at the shelter are ambulatory and are used to being awakened in the middle of night and asked to move on. They are at much greater risk of death or injury sleeping in the streets than in this location.*)
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner; (*No additional impact related to the change of use*)
4. The importance of the services provided by the proposed facility to the community; (*The use of the facility for overnight shelter for homeless men is of vital importance to the community. No other facility exists in Flagstaff offering shelter to the majority of the individuals that we serve.*)
5. The necessity to the facility of a waterfront location, where applicable; (*Not applicable*)
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage; (*There is no other alternative location for the proposed use because of zoning restrictions and the lack of suitable buildings for this purpose. When the permanent facility is constructed the use at this site will be abandoned*)
7. The compatibility of the proposed use with existing and anticipated development; (*Not applicable*)
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area; (*None of the other existing structures including nearby hotels is*

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*elevated above the BFE for the area. These buildings are grandfathered in under pre-flood ordinance codes. This building has been on the site for years and for commercial purposes would also be grandfathered in under old codes.)*

9. The safety of access to the property in time of flood for ordinary and emergency vehicles; *(All the existing structures in the area including nearby hotels will have the same issues to address in terms of safety access. We have a flood evacuation plan in place and 24 hour staff. Additionally, as we understand it, any flooding that could occur is likely to be a slower flood event with sufficient time to plan and evacuate)*

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; *(We are unsure of this technical information but from what we have been told we would be in somewhat of a back wash area of perhaps 4 feet of standing water at most. Again there would be plenty of time to plan and evacuate in the event of a flood emergency) and,*

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system, and streets and bridges. *(No additional impact)*

In addition to the factors listed above the Ordinance states that "(v)ariances shall only be issued upon:

a. A showing of good and sufficient cause; *(there is no other alternative location for the shelter at the present time. Failure to extend the variance will result in an increase in the number of unsheltered individuals sleeping on the streets and forests of Flagstaff. Having people sleeping on the streets and in the forests endangers those individuals, increases fire danger to the community and increases "quality of life" crimes.)*

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; *(see above.)*

c. A showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 12-1-3 of these regulations in the definition of "Functionally Dependent Use"; *(Not applicable) and*

d. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of, the public, or conflict with existing local laws or ordinances. *(None of these issues will occur or be created by the issuance of this variance.)*

For all of the above reasons I am requesting a variance of Flagstaff City Floodplain Ordinance Section 12-01-001-0006.8 on behalf of Flagstaff Shelter Services in order to continue to operate a year round overnight homeless shelter at 216 West Phoenix Avenue until such time as the lease expires or terminates.

Respectfully,



Wendy F. White

Chair, Flagstaff Shelter Services.

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## Flagstaff Shelter Services Emergency Response Plan

When weather conditions make flooding possible, because of rainfall or snowmelt, the senior staff member on shift or designee will monitor the National Weather Service for flood warnings and watches. *This can be done by web site at <http://www.wrh.noaa.gov/fz/> or NOAA weather radio.* The website is marked as a favorite on the office computers.

When flood warnings and/or watches are issued for the Flagstaff area, senior staff will monitor flow in the Rio de Flag to check the water level and trend (rising or falling). This needs to be done along the Rio de Flag between the BNSF Railroad tracks and Phoenix Avenue near the pedestrian footbridge. During a flood **warning** staff will assess flood waters **every 30 minutes**. When a change of shift occurs, outgoing staff will explain the flow trends to incoming staff.

If the Rio de Flag does overflow its banks or if senior staff believes that overflow is imminent or if flooding is anticipated from another source, the Senior Staff member on shift will commence preparations and order the evacuation of the building.

All staff will be trained on these emergency procedures at the time of hire. Staff will be taken to the monitoring point on the Rio and will also be shown where utility shut offs are located in the building. This plan will be posted in the dormitory room, the day room and both offices. Staff will be shown where emergency contact numbers are located and where flashlights and vests are kept. Emergency contact information will be posted in multiple locations away from client view, but easily accessible to staff.

### Evacuation

*Senior Staff on shift is responsible for the safe and calm evacuation of the building. Senior staff will:*

1. Contact the Director, Assistant Director, Board Chair and Emergency Services (911) to advise them that you are evacuating the building. Call the Flagstaff Police Department to assist with traffic control for the crossing of Milton if needed. FSS Director, Assistant Director, and Board Chair will provide additional guidance and support. An FSS representative will contact the Red Cross for emergency relief.
2. Contact our pre arranged evacuation site, **Flagstaff Federated Community Church** to alert them that we are evacuating to their facility. [Flagstaff Federated Community Church, 400 W. Aspen Ave. (corner of Aspen and Sitgreaves across from the Library) Contact numbers are listed at the end of this plan.]
3. Assign staff, volunteers and responsible clients to assist with the evacuation. (This should be done prior to the evacuation event during the monitoring phase)
4. Advise all clients (if during sleeping hours, awaken sleeping clients) that the building is being evacuated. Advise clients to leave personal property at the shelter.
5. Distribute flashlights and neon vests as needed to staff and volunteers, and extras to clients. These are located in the Fire Riser room and should not be used for any other purpose.
6. Have clients assemble for evacuation in the Day Center and double check against overnight check-in list. Make a note of any client that chooses to leave the building prior to the evacuation. Bring this list with you to the church.
7. Make arrangements for any person who is physically unable to walk to the church to transport them to the church or other safe location.
8. Have everyone exit the building and wait in the Shelter parking lot on the west side while staff closes building. If Police assistance is expected, wait for patrol car before walking to the church.
9. After everyone has exited, designated staff will lock both doors and turn off the electricity at the outside breaker box on the rear west side of building and the gas at the outside meter next to the side walk if it can be done in a safe and timely manner, then rejoin the group.
10. Flood Evacuation Walking Route: One staff member should lead the group and one should take up the rear. Staff should use flashlights to carefully alert traffic to the pedestrian traffic. If police assistance is provided, follow the directions of the officer. Cross Milton at corner of Phoenix, turn right on sidewalk and go up the stairs. At the top of the stairs, cross Santa Fe and continue straight on Sitgreaves St. to the church. (If traffic is too heavy to safely cross at Phoenix, walk south on Milton to the crosswalk at Clay then follow directions above.)
11. When all persons are safely at the church make sure all clients, staff and volunteers are accounted for and call the Director to update him/her on the evacuation.
12. After evacuation, FSS Staff will notify the Storm Water Department that the building was evacuated.
13. If flood waters enter the building, the building must be inspected and the utilities turned back on by utility companies before re-occupying the building.

## Contact Numbers

### ***Federated Community Church:***

Pastor Jed Schenck: (928) 774-3312 or (928) 380-8209(cell);  
Carol Denmark (church sec) (217) 714-3131 or (928) 226-0574 (only call her if you could not reach Pastor Schenck)

### ***FSS Numbers:***

Todd Sherman, Director: (928) 310-1750 (cell);  
Terri Tupper, Assistant Director: (928) 607-6984 (cell);  
Wendy White, Chair (928) 699-1786 (cell)

### ***Emergency Services:***

911 (Fire, Police and Medical)  
Red Cross (928) 779-5494

### ***Stormwater Management Division, City of Flagstaff***

(928) 779-7685 ext. 7213