

Flood News for Michigan Floodplain Managers



A quarterly newsletter of the
Land and Water Management Division
Michigan Department of Environmental Quality

www.deq.state.mi.us/lwm

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FINAL RULE ON LETTERS OF MAP REVISION PUBLISHED

(George Hosek, Land and Water Management Division,
Michigan Department of Environmental Quality)

The Federal Emergency Management Agency (FEMA) on May 4, 2001, published its revised final rule dealing with Letters of Map Revision based on fill (LOMR-f). It is expected that these new rules will have a profound effect on Michigan communities participating in the National Flood Insurance Program (NFIP) and the usual practices of the land development industry.

The old rules were changed to end confusion and the promoting of unwise development in floodplains. Under the old rules, land within the floodplain could be filled and raised above the base (one-percent chance or 100-year) flood elevation (BFE) and an application could be filed with the FEMA to have the filled land removed from the floodplain. Once that land was removed from the mapped floodplain, the NFIP floodplain management regulations no longer applied; and the required purchase of flood insurance connected with a federally regulated, supervised, or insured mortgage also disappeared; thus, structures could be built at risk with their lowest floors (basements) below the BFE. The revised final rule discourages this practice and empowers local governments to make decisions to assure existing and proposed structures in and near floodplains are reasonably safe from flooding.

The new rule more closely links the flood hazard identification process (mapping) with existing floodplain management requirements by mandating that minimum floodplain management requirements be met before land (or structures) can be removed from a FEMA mapped floodplain.

The FEMA now requires a community to sign a form acknowledging that a map revision request has been made and that all applicable floodplain management requirements have been met. The FEMA will use those forms as its assurance that the structure(s) or filled area are and will remain reasonably safe from flooding, a long-standing minimum floodplain management requirement. The instructions for the forms have been revised to reference the new rule and to more explicitly state the meaning of the local official's signature.

Specifically, the crucial revisions are found at 44 CFR Part 65.5 (a) (4) and (5), as follows:

- (4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements under §60.3. This includes the requirements that:

- i) Existing residential structures built in the Special Flood Hazard Area (SFHA) have their lowest floor elevated to or above the base flood;
 - ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding," and that they have on file, available upon request by the FEMA, all supporting analyses and documentation used to make that determination;
 - iii) The participating community has issued permits for all existing and proposed construction or other development; and
 - iv) All necessary permits have been received from those governmental agencies where approval is required by federal, state, or local law.
- (5) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under §60.3, of this chapter, the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with the FEMA. Once the remedies are in place, and the community assures that the land and structures are "reasonably safe from flooding," we will process a revision to the SFHA using the criteria set forth in §65.5(a). The community must maintain on file, and make available upon request by the FEMA, all supporting analyses and documentation used in determining that the land or structures are "reasonably safe from flooding."

It is clear from these revisions that local communities will have to change past practices and that developers that fill parcels of floodplain and later build structures with basements below the BFE are endangering that community's standing in the NFIP. In addition, if communities cannot give assurances that the filled land and structures are "reasonably safe from flooding," the FEMA will consider such projects to be NFIP violations, thereby raising the possibility of community probation or suspension. Suspension from the NFIP makes flood insurance unavailable in the community. If the insurance coverage is not available, federally insured, regulated, or supervised mortgages cannot be obtained.

Community officials that assure structures are reasonably safe from flooding could be exposing their communities to future lawsuits if the structure does flood.

The new rule can be downloaded at: <http://www.fema.gov/library/lomrAD13.pdf>. You can also download Technical Bulletin 10-01 entitled, "Ensuring that Structures Built on Fill in or Near SFHAs Are Reasonably Safe From Flooding in Accordance with the National Flood Insurance Program," from: <http://www.fema.gov/mit/tb1001.pdf>.

If you have specific questions about the rule, you may contact a map specialist at 1-877-FEMA-MAP (336-2627), or George Hosek, State NFIP Coordinator, MDEQ, LWMD, P.O. Box 30458, Lansing, MI 48909-7958, 517-335-3182, hosekg@state.mi.us.

FUTURE CONDITIONS HYDROLOGY

(Taken from the June 14, 2001 Federal Register)

Note: The FEMA has published a proposed rule regarding the use of future conditions hydrology for new flood insurance rate maps (FIRMs). The following is an excerpt from that proposed rule.

Historically, flood hazard information presented on the NFIP flood maps has been based on the existing conditions of the floodplain when mapping of flood hazards was initiated under the NFIP, the intent was to reassess each community's flood hazards periodically and, if needed, revise the flood map for that community. Flood hazards may change significantly in areas experiencing urban growth. For example, in Flood Insurance Study Guidelines and Specifications for Study Contractors (FEMA 37, January 1995) specifies that flood hazard determinations should be based on conditions that are planned to exist in the community within 12 months following completion of the draft Flood Insurance Study (FIS). Examples of future conditions to be considered in the context of the FEMA 37 are public works projects in progress, such as channel modifications, hydraulic control structures, storm drainage systems, and various other flood protection projects. These are projects that will be completed in the near future for which completion can be predicted with a reasonable degree of certainty and their completion can be confirmed prior to the new or revised flood map becoming effective. By contrast, future land-use development, such as urban growth, is uncertain and difficult to predict, and is not considered in the context of the FEMA guidelines.

Communities experiencing urban growth and other changes have expressed a desire to use future conditions hydrology in regulating watershed development. While some communities do regulate based on future development, others are hesitant to enforce more restrictive standards without federal support. From a floodplain management standpoint, future conditions floodplains can be used, and are being used, by communities to enforce more stringent floodplain management policies than those required by the FEMA. By displaying future conditions floodplains on the flood map, the community and the FEMA are alerting the public that flood hazards may increase in the future due to urban development. Many communities throughout the United States develop future conditions hydrology and create their own maps to regulate floodplain development. This has resulted in two sets of maps being produced for a community: future conditions maps for local floodplain management and FIRMs for flood insurance determinations. As a result, these progressive communities have not had a sense of ownership for the FIRMs, and their resources have been directed toward maintaining their own future conditions maps.

Recent Evaluation and Conclusions

To assist officials in such progressive communities, the FEMA undertook an evaluation to determine whether future conditions flood hazard information could and should be placed on flood maps and in the accompanying study reports. The results of that extensive evaluation are documented in a FEMA report entitled "Modernizing

FEMA's Flood Hazard Mapping Program: Recommendations for Using Future Conditions Hydrology for the National Flood Insurance Program," (see www.fema.gov/mit/tsd/FT_hydro.htm). The specific conclusions reached in the report are as follows:

The local community should determine the future conditions land-use and hydrology.

If the community chooses to adopt a regulatory floodway based on future conditions hydrology, the use of this floodway should be supported by local ordinances.

If the community requests that the FEMA do so, the future conditions 100-year (base flood) floodplain should be shown on the printed FIRM and be designated as Zone X with no base flood elevations (BFEs) shown.

When possible, all three floodplains—existing conditions 100-year floodplain, existing conditions 500-year floodplain, and future conditions 100-year--should be shown on the FIRM. However, when the future conditions 100-year floodplain and existing conditions 500-year floodplain are so close together, as to be confusing if both are shown on the printed FIRM, the future conditions 100-year floodplain should be shown in lieu of the existing conditions 500-year floodplain. When this occurs, appropriate reference should be made to the existing conditions 500-year floodplain information being shown in the FIS report. For a Digital Flood Insurance Rate Map (DFIRM), appropriate reference also should be made to the existing conditions 500-year floodplain information being included in an associated database.

From a floodplain management standpoint, the FEMA should continue to require flood insurance for structures shown in the existing conditions 100-year floodplain, or Special Flood Hazard Area. Showing the future conditions floodplain as Zone X should avoid any confusion regarding the mandatory flood insurance requirement. It also will allow insurance policies to be purchased at a reduced rate, as insurance is currently available for structures in the existing conditions 500-year floodplain.

As recommended in the previously referenced FEMA report, the FEMA intends to show future conditions flood hazard information on FIRMs and in collateral FIS reports. This information will be for informational purposes only. No change will be made in the use of existing conditions data for establishing flood insurance rates. Through community participation in the Community Rating System, however, reduced flood insurance rates are available for those communities that enforce more stringent regulatory standards than required by the NFIP.

NFIP

ANSWERS TO QUESTIONS ABOUT THE NFIP

What happens when a community does not enforce its floodplain management ordinances?

Communities are required to adopt and enforce a floodplain management ordinance that meets minimum NFIP requirements. Communities that do not enforce these ordinances can be placed on probation or suspended from the program. This is done only after the FEMA has provided assistance to the community to help it become compliant.

What is probation?

Probation is the formal notification by the FEMA to a community that its floodplain management program does not meet NFIP criteria. It is an action authorized under federal regulations.

When can a community be placed on probation?

A community can be placed on probation 90 days after the FEMA provides written notice to community officials of specific deficiencies. Probation generally is imposed only after the FEMA has consulted with the community and has not been able to resolve deficiencies. The FEMA Regional Director has the authority to place communities on probation.

How long will probation last?

Probation may be continued for up to one year after the community corrects all program deficiencies and remedies all violations to the maximum extent possible.

What penalties are imposed when a community is placed on probation?

An additional \$50 charge is added to the annual premium for each policy sold or renewed in the community. The additional charge is effective for at least one year after the community's probation period begins. The surcharge is intended to focus the attention of policyholders on the community's non-compliance to help avoid suspension of the community, which has serious adverse impacts on those policyholders. Probation does not affect the availability of flood insurance.

What is suspension?

Suspension of a participating community (usually after a period of probation) occurs when the community fails to solve its compliance problems or fails to adopt an adequate ordinance. The community is provided written notice of the impending suspension and granted 30 days in which to show cause why it should not be suspended. Suspension is imposed by the Associate Director, Mitigation Directorate, FEMA. If suspended, the community becomes non-participating and flood insurance policies cannot be written or renewed. Policies in force at the time of suspension continue in force for the policy term. Three-year policies remain in force until the next annual anniversary date of the policy.

What happens if a community does not participate in the NFIP?

Flood insurance under the NFIP is not available within that community. Furthermore, Section 202(a) of Public Law 93-234, as amended, prohibits federal officers or agencies from approving any form of financial assistance for acquisition or construction purposes in a Special Flood Hazard Area (SFHA). For example, this would prohibit loans guaranteed by the Department of Veterans Affairs, insured by the Federal Housing Administration, or secured by the Rural Housing Services. Under Section 202(b) of Public Law 93-234, if a Presidentially declared disaster occurs as a result of flooding in a non-participating community, no federal financial assistance can be provided for the permanent repair or reconstruction of insurable buildings in the SFHAs. Eligible applicants may receive those forms of disaster assistance that are not related to permanent repair and reconstruction of buildings.

CERTIFIED FLOODPLAIN MANAGER EXAM

(George Hosek, Land and Water Management Division,
Michigan Department of Environmental Quality)

The Michigan Stormwater/Floodplain Association intends to offer the nationwide Certified Floodplain Manager (CFM) exam this fall. The date and location of the exam will be provided to all registered applicants. You must pay the fees and complete the application package before a testing date can be arranged. Information on the CFM Program can be reviewed on the Association of State Floodplain Manager's homepage at www.floods.org.

An alternative to a group-scheduled exam is to arrange to take the exam at the Department of Environmental Quality offices. The contact is George Hosek, Land and Water Management Division, Michigan Department of Environmental Quality, P.O. Box 30458, Lansing, MI 48909-7958, telephone 517-335-3182, or e-mail hosekg@state.mi.us.

<p>For questions, comments, or information, contact:</p>	<p>The MDEQ will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. Questions or concerns should be directed to:</p>	<p>This newsletter is supported by funding under a Cooperative Agreement with the Federal Emergency Management Agency. The substance and findings are dedicated to the public. The MDEQ, LWMD, is solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the federal government.</p>	<p>Printed by Authority of the MDEQ, LWMD.</p>
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