

Flood News for Michigan Floodplain Managers

A Newsletter of the
Land and Water Management Division
Michigan Department of Environmental Quality
www.michigan.gov/deq

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Guess Who is 40 This Year?

The National Flood Insurance Program!
1968—2008



!!! **The NFIP** !!!

1968 - 2008



What is the NFIP?

The U.S. Congress established the National Flood Insurance Program (NFIP) with the passage of the National Flood Insurance Act of 1968. The NFIP is a federal program enabling property owners in participating communities to purchase insurance as protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages.

Another “Grand” MSFA Conference

For the second consecutive year, the Amway Grand Plaza Hotel in Grand Rapids was the gracious host facility for the 21st annual Michigan Stormwater-Floodplain Association (MSFA) conference held March 18-21, 2008. Conference attendees were offered a variety of informational presentations related to stormwater and floodplain management issues and concepts from a state and national perspective. Community leaders, local building officials, emergency management officials, floodplain management officials, environmental and engineering consultants, and state and federal floodplain management and National Flood Insurance Program staff all participated in the conference.



Mark Walton of NOAA and Sue Conradson of MDEQ and both board members giving a watershed stormwater-flooding model demonstration



MSFA Executive Director George Hosek and ASFPM Executive Director Larry Larson at Registration



MSFA Annual Membership Meeting and Awards Banquet



Scott Cofoid of Insurance Services Office discussing with Kathy Hills the NFIP Community Rating System (CRS)

This year's conference was supported by the following agencies and companies:

Sponsors

FEMA, Region V
Anderson, Eckstein & Westrick, Inc.
Fishbeck, Thompson, Carr & Huber, Inc.
Ledy Design Group
Michigan Department of Environmental Quality
NOAA, National Weather Service
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Stantec Consulting Michigan, Inc.
StormTrap, L.L.C.

Unilock Michigan
USACOE – Detroit District

Next year's conference will be held in Bay City on the Riverfront at the DoubleTree Hotel. The dates for the conference are March 10-13, 2009. March 10 is being planned for a refresher course for the ASFPM Certified Floodplain Manager's exam, which will be scheduled on March 11 in the morning. The main conference program will commence on March 11 in the afternoon and conclude at noon on March 13. Group room rates are confirmed at \$94 plus taxes, and government rates for the same rooms at \$65 plus taxes.

The 2009 conference planning committee will be working on developing a program using this year's conference evaluations and comments as a starting point for program content. If you have any suggestions that you would like the committee to consider, please contact any MSFA officer or regional representative for the Association or Les Thomas, NFIP Coordinator, thomasl@michigan.gov, 517-335-3448.

New 2007/2008 Certified Floodplain Managers Honored



New CFM[®]s left to right: Wendy Ogilvie, Claire Schwartz, Brian McKissen (back), Ian Page, Chuck Wood, Chris Hover, Kyle Carrick, and Craig Hanby. Also pictured in back row: Les Thomas NFIP Coordinator, George Hosek, MSFA Executive Director, and Larry Larson, ASFPM Executive Director. Not pictured: Dave Hallgren, Maria Sedki, and Greg Sondergeld,

Eleven Michigan local officials/engineers involved in floodplain management became Certified Floodplain Managers this past year under the national Association of State Floodplain Managers (ASFPM) certification program. The Michigan Stormwater-Floodplain Association (MSFA) proctors the Certified Floodplain Managers (CFM[®]) exam on behalf of the ASFPM at the MSFA's annual conference every year. The MSFA provides a Michigan certificate of accomplishment to those who successfully pass the certification test. This year the new CFMs were recognized at the MSFA's annual membership awards banquet.

March 11, 2009 (tentative) ASFPM CFM® Exam Offering

The annual Certified Floodplain Manager (CFM®) exam offering as part of the 2009 MSFA conference is scheduled for March 11, 2009, 8:00 a.m. to 12:00 noon at the DoubleTree Hotel on the Riverfront in Bay City, Michigan. The exam will be preceded by a one-day floodplain management refresher course held March 10 from 9:00 a.m. to 5:00 p.m., also at the hotel. The refresher course is not a prerequisite for taking the exam. The refresher course and exam proctoring will make up the pre-conference activities for the 22nd annual conference of the MSFA scheduled for March 10-13, 2009 at the DoubleTree Hotel on the Riverfront in

Bay City, Michigan.

The 2009 MSFA conference details and registration forms will be available on the “conference” page of this website near the end of this year, along with CFM® Exam information:

<http://www.floods.org/certification/certprog.asp>

The CFM point of contact at the ASFPM is: Ms. Anita Larson, cfm@floods.org, phone: 608-274-0123, Fax: 608-274-0696

CRS Website

The address of the FEMA NFIP Community Rating System (CRS) website is <http://training.fema.gov/EMIWeb/CRS/>. It has explanatory materials on each CRS activity, the latest publications available for free downloading (including the latest Coordinator’s Manual), and lots of examples of creditable activities.

MSFA Awards Scholarships

This year the Michigan Stormwater-Floodplain Association (MSFA) awarded two \$1,500 scholarships. The scholarship program is established to support full time Junior, Senior, or Graduate Students in Biosystems, Civil, or Environmental Engineering, or a related Natural Resources Planning program with a specialization related to the mission and goals of the MSFA. The recipients of this year’s scholarships are Ms. Rebecca Sowder and Ms. Abby Johnson.

Ms. Sowder is currently a Masters of Landscape Architecture Candidate at the University of Michigan and has a Bachelor of Science in Environmental Science with a minor in Biology from the University of North Carolina at Chapel Hill. As she develops her landscape design career, she is interested in

designing features and functions that promote innovative stormwater management strategies and wetland protection.

Ms. Johnson is a two-time winner of this scholarship. She was awarded one last year and is continuing her efforts in completing a Bachelor of Science degree program in biosystems engineering with an ecosystems focus at Michigan State University. She is planning to continue her educational training through the pursuit of a Masters degree in biosystems engineering involving the engineering and designing of wetlands to treat agricultural tile effluent.

Federal Flood Insurance Now Available in 15 Communities Newly Enrolled into the NFIP

The communities listed below have joined over 20,000 communities nationwide and 800 communities in Michigan that are allowed to purchase federally backed flood insurance by the National Flood Insurance Program (NFIP):

<u>Name</u>	<u>County</u>	<u>Enrollment Date</u>
Village of Ortonville	Oakland County	August 7, 2007
Baroda Township	Berrien County	August 31, 2007
Orion Township	Oakland County	August 29, 2007
Penn Township	Cass County	September 5, 2007
Oregon Township	Lapeer County	September 19, 2007
Southfield Township	Oakland County	September 27, 2007
Village of Burlington	Calhoun County	October 4, 2007
Imlay Township	Lapeer County	November 8, 2007
Metamora Township	Lapeer County	November 8, 2007
North Branch Township	Lapeer County	November 8, 2007
City of Walled Lake	Oakland County	November 8, 2007
City of Wixom	Oakland County	November 8, 2007
Attica Township	Lapeer County	January 14, 2008
Marion Township	Livingston County	February 29, 2008
Osceola Township	Houghton County	March 6, 2008

All of these communities except for Marion Township have enrolled in the Regular Phase of the program, and their citizens will be able to purchase flood insurance up to the building limits of \$250,000 for single family dwellings and \$100,000 for contents coverage. Renters can also protect their belongings by purchasing contents coverage. For commercial properties, the building and contents coverage limits are both \$500,000.

Marion Township enrolled into the Emergency Phase of the NFIP, because the preliminary FEMA flood hazard maps will not be considered effective until September 17, 2008. Their citizens now have the opportunity to obtain flood insurance protection for single-family dwelling building coverage of up to \$35,000 and contents coverage of up to \$10,000. Renters can also protect their belongings by purchasing contents coverage. For commercial properties, the building and contents coverage limits are both \$100,000. Higher limits of coverage will be available after the initial Emergency Phase, once the communities are transferred to the Regular Phase (when FEMA Flood Insurance Rate Maps become effective).

Lenders must require borrowers whose properties are located in a designated flood hazard area to purchase flood insurance as a condition of receiving a federally backed mortgage loan in accordance with the Federal Disaster Protection Act of 1973. The NFIP is implemented through the Federal Emergency Management Agency. There are over 4 million flood insurance policies in more than 20,000 participating communities nationwide.

NFIP Premium Refunds

The public often has questions about getting flood insurance premium refunds from the National Flood Insurance Program (NFIP). The NFIP does provide for flood insurance premium refunds under certain conditions. Premium refunds are authorized under the conditions given in 44 Code of Federal Regulations (CFR), Section 62.5. The following NFIP established policies and guidance further detail the conditions in which refunds are eligible and are processed. It is suggested that if you have questions regarding refunds that you first contact your insurance agent to discuss.

Policy Issuance 4-95: NFIP Premium Refund Rules

September 12, 1995

Background: Due to the seasonal nature of flooding, the conditions for which the NFIP permits premium refunds are very restrictive. This prevents the purchase of a short-term policy to provide coverage during the period in which the insured property at risk has the greatest chance of loss.

The Mitigation Division has been evaluating the NFIP's premium refund procedures for cancellations and endorsements to determine the feasibility of expanding the valid reasons and/or the time the refund covers. During this period, Mitigation Division has had a special appeal process under which exceptions were allowed as to the reason for refunds and the period of time covered by the refund.

Based on the Mitigation Division's evaluation of this experience, this Policy Issuance clarifies the misrating refund rule and sets forth the situations where NFIP multiple year refunds are authorized. The refund changes made by this Policy Issuance are effective November 1, 1995, and on that date the special appeal process is ended.

Policy Statement:

1. **Misratings.** As stated on page END 1 of the Flood Insurance Manual, an endorsement may be issued and premium returned as a result of a zone revision. This is to clarify that this includes a base flood elevation revision as well. It also

includes an error in the building description (number of floors, whether basement or not, etc.).

Not included in this refund procedure is the failure to:

- Use the map grandfather rule;
- Use Post-FIRM rating for a Pre-FIRM structure;
- Use the V-zone risk factor rating form; or
- Make a timely revision of alternative rates (rates used for Pre-FIRM rated risks where the zone is unknown).

2. **Prior Year Refunds.** Premium refunds are permitted for the current and one prior year for all valid reasons, including the misrating clarification listed above.

There are two exceptions under which refunds are allowed for more than the current and one prior year. These two exceptions are:

- **Risk Not Eligible for Coverage (Reason 6 in the Cancellation/Nullification Section of the Flood Insurance Manual).** A return of premium shall be made back to the inception of the policy, subject to the 6-year statute of limitations.
- **Duplicate NFIP Policies (Reason 4 in the Cancellation/Nullification Section of the Flood Insurance Manual).** A refund of premium shall be made for the policy not being kept in effect back to the date duplicate coverage began, subject to the six-year statute of limitations.

The insured must have maintained continuous NFIP coverage to be eligible for any prior year premium refund. All existing refund rules concerning the federal policy fee, expense constant, and producer commission remain in effect.

The current NFIP insurer (WYO Company or Direct Business) will be responsible for returning the premium for the current and one prior policy year, provided that it was the insurer for that period. If another NFIP insurer was the insurer for the prior policy year, it will be responsible for returning the premium for that year. The NFIP Bureau and Statistical Agent (the Bureau) will refund the premiums for the additional prior years beyond the current and one prior policy year, except the NFIP insurer will refund up to three years of a current three-year policy if a refund is allowed for that period under the above prior year refund rules.

The Bureau will receive from the NFIP insurer or the agent all documentation necessary to make a refund for more than two years. At a minimum, this documentation will consist of the following:

- A cancellation request for each year and the premium refund calculation for each year;
- The declarations pages or renewal bills for each policy term and evidence of premium payments;
- Upon request, photographs to verify ineligible risks.

The NFIP insurer or the agent will forward the requests for refunds for more than two years directly to the Bureau at the following address:

NFIP Bureau and Statistical Agent
7700 Hubble Drive
Lanham, Maryland 20706

Requests for refunds for more than two years not authorized by this Policy Issuance will be returned to the sender by the Bureau.

(Last Modified: Wednesday, 24-May-2006)

Policy Issuance 4-98: NFIP Premium Refund Rules

Background: Policy Issuance 4-95, dated September 12, 1995, clarified the misrating refund rule and set forth the situations when the NFIP multiple year refunds are authorized. Included in Policy Issuance 4-95 was a provision that a return of premium is allowed back to the inception of the policy subject to the six-year statute of limitations, where the NFIP policy was issued and it is later discovered that the risk is not eligible for coverage. Also, Policy Issuance 4-95 required that refunds beyond the current and one prior year be processed

by the NFIP Bureau and Statistical Agent (the Bureau).

Policy Statement: The Mitigation Division has recently reconsidered this six-year limitation and has decided it is appropriate to allow the return of premium back to the inception date of the policy in such cases so long as the insured can provide documentation of the premium paid. The statute of limitations is hereby waived for those cases where the NFIP policy was issued and it is later discovered that the risk is not eligible for coverage under the NFIP rules.

Also, Mitigation Division has reconsidered the requirement that refunds for more than two years be processed by the Bureau, and has decided that requests for refunds for more than two years may be processed by the writing company or may be sent to the Bureau following the processing procedure outlined in Policy Issuance 4-95. WYO companies who choose to process refunds more than two prior years must submit the appropriate policy transactions required under the Transaction Record Reporting and Processing Plan on all applicable policy terms.

(Last Modified: Wednesday, 24-May-2006)

Retroactive Refunds

The NFIP has made an adjustment to its premium refund policy as of October 1, 2004. In cases of misrating—such as an incorrect building description, lowest floor elevation, community number, flood zone, or Base Flood Elevation (BFE)—premium refunds will now be allowed going back to six years, as long as the property owner can provide proof of the misrating.

A couple of limitations apply. Corrections to the flood zone and BFE can only be made using the current FIRM. If there is a lapse in coverage, there is no extension of the number of years the premium refund is allowed. When a property is rated using Standard B, C, or X Zone rates but is found to be eligible for a PRP, the writing company will be allowed to endorse or cancel/rewrite the policy to a PRP, as long as the policy being endorsed or cancelled/rewritten has no open claim or closed paid claim.

The agent's commission or WYO company expense allowance that previously had been paid will be affected by a refund. The WYO company's expense allowance will be debited for the current and prior term based on the percentage in effect when the refund was processed. If the policy was written through the NFIP Servicing Agent, the agent's commission for the current and prior terms will be debited.

Refund Underwriting Procedures

For current and one prior year refunds, the current NFIP insurer (either the WYO company or NFIP Servicing Agent) will be responsible for returning the premium for the current year and one prior year, provided it was the insurer for the period. If another insurer was the insurer for the prior year, the NFIP Bureau and Statistical Agent will be responsible for returning the premium for that year.

For refunds of three to six years, the current NFIP insurer is responsible for submitting to the NFIP Bureau the required documentation necessary to make a refund for more than two years (or for more than one year, if that is the only term that it has written). At a minimum, this documentation consists of: (1) the company's statistical records or declarations pages for each policy term and evidence of premium payments obtained from the insured, if these documents are not available from the company's records; (2) an endorsement document for each year and the premium refund calculation for each year that it had the policy; and (3) a copy of the most recent FIRM marked to show the exact location and flood zone of the building; a LOMA; a LOMR; a FEMA Out-as-Shown Determination; a letter containing the same information and signed by a local community official; an Elevation Certificate signed by a surveyor, engineer, architect, or local community official; or a flood zone determination certification that guarantees the accuracy of the information.

Policy Issuance 3-96: NFIP Premium Refund Rules for Zone and Base Flood Elevation Revisions

Background: Policy Issuance 4-95, issued on September 12, 1995, clarified the misrating refund rule and set forth the situations where NFIP multiple year refunds are authorized. Misratings were stated

to include the effect of two kinds of map changes: zone revisions and Base Flood Elevation revisions. Reference was made to the refund rule in the Flood Insurance Manual stating that for zone revisions, "rating may be revised only for the current policy year." Then the Policy Issuance permitted for all valid refund reasons, including the misrating reason, premium refunds for the current and one prior year, with two exceptions for longer periods. The Flood Insurance Manual effective April 30, 1996, provides refund rules for a "ZONE REVISION" on page END 1 and for a "RATING ERROR" on page END 2. The ZONE REVISION rule states that the rating "may be revised for the current and one prior policy year." The RATING ERROR rule states that it includes a zone revision and a Base Flood Elevation revision and provides that "Rating errors will be corrected for the current and one prior policy year only..."

Policy Statement: This is to clarify that refunds based on zone revisions and Base Flood Elevation revisions are permitted for a prior year only where the endorsement requesting the refund is filed in a policy year after the policy year in which the map change became effective. Where the endorsement requesting the refund is filed in the policy year in which the map change becomes effective, the refund is for that policy year only. The refund for the policy year in which the map change becomes effective is for the remainder of the policy year, beginning on the date of the map change.

Examples:

Policy renewed January 1, 1996; map change effective May 1, 1996; endorsement filed June 1, 1996. The refund for the premium reduction would be for the period May 1, 1996, to January 1, 1997.

Policy renewed January 1, 1996; map change effective May 1, 1996; policy renewed January 1, 1997; endorsement filed June 1, 1997. The refund for the premium reduction would be for the period May 1, 1996, to January 1, 1998.

Policy renewed January 1, 1996; map change effective May 1, 1996; policy renewed January 1, 1997, and January 1, 1998; endorsement filed June 1, 1998.

The refund for the premium reduction would be for the two policy years January 1, 1997-1998, and January 1, 1998-1999.

(Last Modified: Thursday, 25-May-2006)

Grandfathering Offers Savings

(From March 2007 FEMA Fact Sheet)

The NFIP's grandfathering provision is applicable only in communities enrolled into the Regular phase of the program. It offers savings for structures that were built before a flood map was issued for the community, or that were built in compliance with the flood map in effect at the time of construction. The simplest way to grandfather is to purchase a flood insurance policy before the new map takes effect and maintain coverage without a lapse.

If a structure was built in compliance with the requirements in place at the time of construction, the zone and Base Flood Elevation (BFE)* that was in effect can be used for rating purposes, if either is affected due to a map change. Sometimes using the new zone can provide a better rate than using the older one, so property owner should always ask their agent to look at both options.

How It Works:

If a policy is obtained before a new map becomes effective, policyholders can retain the rate associated with the previous map's flood zone and BFE, as long as continuous coverage has been maintained. For structures built after a FIRM was issued, insurance costs will be based on the zone designation and BFE for the map in effect at the time the structure was built (unless the new map offers a lower rate). However, policyholders must submit supporting documentation to their insurer that shows the structure was built to conform to standards on the earlier map. Continuous coverage is not required in this case. If a structure was built before the community's first FIRM was issued and the policy was not purchased prior to the effective date of a new map, policyholders can still save, but policy costs will be defined by pre-FIRM rates associated with their zone designation on the new map.

Information is available:

Property owners should be fully aware of their flood risk and the current status of flood maps in their community. They can contact their local floodplain management officials to learn the status of local flood maps or can obtain a copy of the current map at www.msc.fema.gov

DEQ and DLEG Program Responsibilities for Manufactured Housing Communities

By Larry Lehman, Chief Building Division
from the 2007 Summer Edition of the BCC Bulletin
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The State of Michigan's role in oversight of manufactured housing communities (MHCs) involves two principal departments in state government: Department of Environmental Quality (DEQ) and Department of Labor and Economic Growth (DLEG). Over the last several months, both departments have held meetings and discussions between themselves and the industry to discuss concerns and to fully coordinate inspection processes. Based on a review of both agencies' laws and rules, the previous notification regarding the inspection of MHC's is being replaced. Listed below are the responsibilities of both departments, as well as coordination points between the two departments with special emphasis upon water and sewer systems within MHC's.

(A) Water supply system:

DEQ will maintain oversight, including complaint resolution, for water supply systems in certain MHCs as set forth under the Safe Drinking Water Act. More specifically, DEQ will maintain oversight and responsibility for all MHCs with community water systems (i.e. private well systems) estimated at approximately 400 MHCs, including the water supply distribution system piping in the MHC. DEQ will retain indirect involvement of MHCs whose water systems are owned by a municipality through its oversight of the municipal water supply. However, DLEG is responsible, including complaint resolution, for MHC-owned water supply piping systems that are connected to municipal water systems. New MHCs or MHC additions will apply to DLEG for permits for those water supply lines which are owned by the MHC and connected to municipal systems. Such water supply systems will be required to comply with DEQ standards/requirements for installation of the water supply lines.

DEQ agrees to notify DLEG of chronic drinking water problems occurring within the 400 MHCs

having community water systems, and also when they become aware of a problem involving a municipal water supply related to licensure.

(B) Sewage Collection and Disposal System:

DEQ will maintain oversight of MHCs which have proprietary sewage treatment plants, including the sewage discharge. However, DLEG is responsible for all sewer lines connected to this type of system. New MHCs or MHC additions will apply to DLEG for permits for sewer lines and will be required to comply with DEQ standards/requirements for installation of the sewer lines. The MHC resident is responsible for the sewer line connection between the unit and the MHC sewer line.

DEQ does not have responsibility for sewage collection systems connected to municipal sewer lines. The local municipality is responsible for problems occurring between the connection of municipal sewer line and the MHC line. DLEG is responsible for sewer lines within the MHCs connected to municipal sewer systems. New MHCs or MHC additions will apply to DLEG for permits for sewer lines in this area and will be required to comply with the DEQ standards/requirements for installation of sewer lines.

DEQ will maintain responsibility for certain below grade septic systems. DEQ will maintain oversight, including issuance of permits, for below grade sewage systems discharging over 10,000 gallons. Local health departments are responsible for approval of permits for MHC septic systems under 10,000 gallons. DLEG is responsible for sewer lines within the MHCs for all systems. The MHC resident is responsible for the sewer line connected between the unit and the MHC sewer line.

(C) DLEG will maintain its responsibilities under the Governor's Executive Order for:

Drainage
Garbage and Rubbish Storage and Disposal
Insect and Rodent Control
General Operation and Maintenance and Safety
Certificate of Compliance

(D) DLEG is responsible for Coordination of Plan Approvals. For new MHC construction, DLEG will continue to coordinate with other state and/or local governmental entities for approvals prior to issuance of construction permits.

(E) DLEG is responsible for Conducting Annual Inspections of MHCs for items outlined in (C) above.

(F) DLEG will grant certificates of compliance based upon its Annual Inspections and Coordination/Notification with DEQ regarding outstanding issues or concerns regarding water and waste water problems within MHCs under DEQ jurisdiction.

Questions regarding this article may directed to the Building Division at (517) 241-9317.

Making the CRS Application Process Easier

By Scott Cofoid, ISO/CRS Specialist for Michigan

Every community official who has not yet joined DHS-FEMA's Community Rating System (CRS) has always wondered how time consuming it would be to figure out what floodplain management activities they currently do and if those activities get credit under the CRS Program. If they can establish what creditable programs they have, they then get confused on how to accurately calculate their credit points and determine what documentation is needed.

Well, if you are a conscientious floodplain management official and you believe you know the National Flood Insurance Program (NFIP) and you believe your community's efforts should be recognized nationally, it's time to stop all that worrying and understand how easy the application process really is. There are basically four steps to the new, streamlined CRS Application process:

Request a Community Assistance Visit (CAV) from your local MDEQ office. This visit is done to verify your community's compliance with the NFIP and to help you understand what you should be doing. Once you are found to be in compliance with MDEQ, you will need to:

Contact FEMA Region V (312) 408-5334 and get their approval. I have a copy of a form letter you can use to request FEMA's review of your community. Once you have shown compliance with all NFIP standards, you then need to:

Call your local ISO/CRS Specialist and review your activities. In the past, the CRS Application form required you to fill out the various activities you get credit for and calculate your points. You needed to show at least 500 points in order to join. We have recently eased this requirement, and all you need to do now is call me, and we will discuss what you do over the phone. ***Because of state laws in Michigan, we know that each community will automatically get at least 750 pts.*** Once I develop a quick understanding of your floodplain programs, we will then:

Schedule a date with your ISO/CRS Specialist for verification of your credits. I will come to your offices and look through all the appropriate documentation, review your ordinances, check your maps, conduct some field verifications, and generally verify as many credits as we can. After this visit by me, I will give you some time to pull together everything we talked about for final submittal. Once all documentation is received, a point total will be calculated, and you will be accepted into the CRS and given your official classification.

The time and preparation it takes to join the CRS is a one-time event. Yes, you will need to devote some time explaining your programs and show documentation; however, once you are in, the recordkeeping and program maintenance normally take care of themselves now that you have it created. Most communities will tell you that the time you need to devote to CRS-specific record maintenance from this point on is minimal. Also, this is a voluntary program, so you can choose which activities may be too time-consuming for you and choose not to do them until you are ready to.

To reach me for further information, please contact me at: Scott Cofoid, CFM, 1126 Schuyler St., Peru, IL 61354, (815) 220-1002 or e-mail scofoid@iso.com.

Administration and Enforcement of the State Construction Code Act and Construction Codes – Whose Responsibility?

By Scott Fisher, Director
Office of Local Government & Consumer Services (OLGCS)
from the 2007 Summer Edition of the BCC Bulletin
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In the past few months, the OLGCS has been repeatedly asked several questions relating to code enforcement that have not been asked as frequently in a number of years. Therefore, it was felt that providing all of you with the answers to those questions may be beneficial.

1. The first question has come to us in different forms from inspectors, elected officials, and attorneys. It relates to local enforcement responsibility, the designation of an enforcing agency, and whether or not a local unit of government has any responsibility once an enforcing agency is appointed.

A governmental subdivision elects to assume the responsibility for the administration and enforcement of the Act and codes as prescribed by Section 8 of the Stille-DeRossett-Hale Single State Construction Code Act. Section 2(t) defines a governmental subdivision as a county, city, village, or township that has assumed responsibility for the administration and enforcement of the Act and codes.

Pursuant to Section 8b (2), the legislative body of a governmental subdivision responsible for the administration and enforcement of the Act and codes shall designate an enforcing agency that shall discharge the responsibilities of the governmental subdivision. Section 2(r) defines an enforcing agency as an agency in a governmental unit principally responsible for the

administration and enforcement of applicable construction regulations.

Although the enforcing agency is the agency in the governmental subdivision that administers and enforces construction regulations for the unit of government, the governmental subdivision (county, city, village, or township) is the entity that is ultimately responsible for the administration and enforcement of the Act and codes.

2. Is it necessary for governmental subdivisions that have been granted administrative and enforcement authority to rescind their ordinances, or give their authority to another governmental subdivision if they choose to enter into an agreement with each other to jointly administer and enforce the Act and codes?

A governmental subdivision that has been granted the authority to administer and enforce the Act and codes does not need to alter the ordinances they have on file with this office to enter into an agreement with another governmental subdivision. Governmental subdivisions can jointly administer and enforce the Act and codes, as long as each of them has been granted the authority pursuant to the Act.

Governmental subdivisions that have been granted the authority to administer and enforce the Act and codes cannot relinquish that authority to any other entity except as prescribed by the Act.

3. The question as to whether or not checks, money orders, or other bank drafts for permit fees can be made payable directly to an inspector has been asked by several inspectors and elected officials.

Proponents for allowing payment directly to an inspector argue that he/she is the appointed enforcing agency.

Section 22 (1) of the Act states in part: " The legislative body of a governmental subdivision shall establish reasonable fees to be charged by the governmental subdivision for acts and services performed by the enforcing agency or construction board of appeals....the enforcing agency shall collect the fees established under this subsection."

It is the Bureau's position that the enforcing agency (inspector) can collect the fees on behalf of the governmental subdivision. However, the governmental subdivision is ultimately responsible for establishing the fees, collecting the fees, and recording the receipt of the fees. Once recorded, the governmental subdivision is also responsible for the proper disbursement of money generated by the fees. Therefore, all monies collected in any form for permit or plan review fees are the funds of the governmental subdivision, and all checks or bank drafts should be made payable to the unit of government.

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4. Can monies generated by construction permits and plan reviews be used for any purposes other than to support the building department?

In these economic times, the question about the use of permit fees is one that has been asked the most in recent months. Section 22 (1) of the Act states in part, "...the legislative

body of a governmental subdivision shall only use the fees generated under this section for the operation of the enforcing agency or the construction board of appeals, or both, and shall not use the fees for any other purpose."

If a question relating to a specific line item or cost allocation arises in your community, you may consider contacting the Local Audit and Finance Division of the Michigan Department of Treasury at (517) 373-3227.

If you have any questions we may be able to assist you with, please do not hesitate to contact our office at (517) 241-9347.

Find out how communities and individual homeowners around the country prevent or reduce the impact from disasters with FEMA's Mitigation Best Practices Portfolio [<http://www.fema.gov/mitigation-best-practices-portfolio>]. With the Best Practices Portfolio, you can search for examples of activities, projects, and potential funding sources that communities and individuals have implemented to protect both people and property. You can also subscribe to Best Practices e-mail updates [http://service.govdelivery.com/service/subscribe.html?code=USDHSFEMA_116] for news of new mitigation best practices as they are added to the portfolio.

Have a recent disaster-prevention success story of your own? You can also submit [<http://www.fema.gov/mitigation-best-practices-portfolio>] your Best Practice idea to the portfolio and help spread the word of how important, effective, and life-saving mitigation can be.

Best Practices e-mail updates [http://service.govdelivery.com/service/subscribe.html?code=USDHSFEMA_116]

Flood Insurance Requirement Explained

Often, citizens across the state of Michigan and the nation receive notice that they need to have flood insurance to cover their structure used as collateral for a federally backed mortgage. Citizens may question, if not outright completely object, to the requirement to obtain flood insurance. The following is FEMA's explanation in response to such a typical citizen objection.

The National Flood Insurance Program (NFIP) was created by Congress in 1968 to identify flood-prone areas within communities, to encourage the use of sound floodplain management, and to make flood insurance coverage available to provide an alternative to an over-reliance on disaster aid. Participation in the NFIP is a voluntary partnership between local communities and FEMA.

Communities participating in the NFIP are responsible for the adoption and enforcement of floodplain development regulations to ensure the wise and appropriate use of high risk flood areas identified as Special Flood Hazard Areas (SFHAs). In return for a community proactively joining the NFIP, the government makes federal underwritten flood insurance available on all structures in that community. FEMA is the agency responsible for administering the NFIP and does not determine if flood insurance is required.

FEMA identifies the SFHAs for communities by publishing Flood Insurance Rate Maps (FIRMs). The SFHAs identified on the FIRM represent areas that are below the computed Base Flood Elevation (BFE) – or areas below the elevation of the known flood risk. FEMA utilizes the best available information to compute the BFE and delineate the flood hazard zones.

There may be cases in which an individual discovers or obtains more accurate surveys, or additional detailed data becomes available after a FIRM has become effective. In those cases, FEMA accepts new or revised data through the Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) process.

A LOMA is used when site-specific elevation information proves an area is naturally higher than the BFE for the location. This is the most common

avenue for an individual property owner to pursue. A LOMR is used when physical changes have occurred in the SFHA or when new engineering computations and/or data result in a new BFE. This method is typically pursued by a developer or a community.

If homeowners have elevation data or revised engineering that reflects inaccuracies in the current effective FIRM, they are encouraged to submit the data along with the proper LOMA or LOMR application forms so FEMA can take appropriate steps to ensure the current FIRM accurately reflects the flood risk for their property.

Please note that until the FIRM is revised through the LOMA or LOMR process, lenders are required to use the data presented on the current effective FIRM for flood insurance purchase requirements. Applications for a LOMA or LOMR are available online in the Flood Hazard Mapping section of the FEMA website (<http://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>) or by calling FEMA's map assistance center at 1-877-FEMA-MAP.

The LOMA process is how a neighbor's structure can be determined to be "out" of the SFHA. Communities perform cursory elevation surveys upon request and determine that the low ground elevation is below the BFE of XXX feet above mean sea level (National Geodetic Vertical Datum, 1929). If this data is accurate and reflects the lowest adjacent grade of the foundation, a structure is verified as within the SFHA, and flood insurance is required.

FEMA understands the concern of identifying areas as flood risk areas, but the agency's responsibility is to identify flood risk according to our floodplain guidelines and specifications. The foremost concern of the NFIP is for the health and safety of the citizens of the nation.

Questions may be directed to the FEMA Mitigation Division at your regional FEMA office covering the state in which the real estate is located.

Condominium Associations and Flood Insurance

(Information from the FEMA Website)

Associations

Boards of Directors of condominium associations typically are responsible under their bylaws for maintaining all forms of property insurance. Such coverage is necessary to protect the common property of the association against all hazards to which that property is exposed for the insurable value (replacement cost) of those common building elements. Boards would be well advised to include their attorneys, as well as their agents, in coverage considerations, because insurance requirements are driven by bylaws and can be affected by state regulations. Furthermore, the individual members of the boards of directors of associations can be personally liable for insurance errors or omissions, including those relating to flood insurance. It would be prudent to determine whether the Directors and Officers (D&O) policies provide for such coverage.

The insuring responsibility would typically include providing adequate flood insurance protection for all common property located in high flood risk areas called the Special Flood Hazard Areas (SFHAs). There are several methods of insuring condominiums under the National Flood Insurance Program (NFIP). Each method has its own eligibility requirements for each condominium type. FEMA publication F-029 (4/06) is available to provide NFIP insurance information and guidance for condominiums. The following web address has more information available: <https://www.fema.gov/media-library/assets/documents/1580>

Condominium associations can purchase master policies covering the common elements in their buildings. Coverage can be purchased for the residential building, including all units, and its commonly owned contents under the Residential Condominium Building Association Policy (RCBAP).

The RCBAP expands the eligibility requirements to include all types of residential condominium buildings owned by the association, including:

- Garden apartment-type construction
- Townhouses
- Rowhouses
- Single-family detached buildings owned by the association
- Fee-paid timeshare buildings

Unit Owners

A condominium is that form of ownership of real property in which each unit owner has an undivided interest in common elements. Therefore, unit owners in apartment-style condo buildings have a financial interest in the condominium building, as well as in the building elements within their unit. Individuals can buy additional individual unit and contents coverage, and they may be able to insure against potential assessments they would get from the association for uncovered damage.

Obviously, a unit owner can't insure the entire building, but can encourage the condominium association to purchase adequate flood insurance protection for the entire building. Flood insurance protection for eligible residential buildings and building elements within individual units is most cost efficiently managed by the condominium association under the Residential Condominium Building Association Policy (RCBAP).

Condominium unit types include detached single-family dwellings, townhouses, rowhouses, or units within a high-rise or low-rise apartment-type building, which are considered to be single-family residences by the National Flood Insurance Program (NFIP). Townhouses or rowhouses individually titled and single family structures would be insured under the Dwelling Policy in the name of the building owner.

Unit owners, who may be individuals or associations, have unique coverage needs that merit particular care. Owners should obtain information about the bylaws and building coverages already provided by the association, because such coverage would be primary, while the unit owner's

coverage of building elements is excess. The assistance of their agent is needed to coordinate the appropriate coverage combinations. The two types of NFIP policies that address the insurable needs of condominium residential unit owners are the RCBAP and the Dwelling Policy.

A Common Claim – “Flooding Never Happens Here”

(from the NOAA Weather Service Website)

The story:

“Tom was trying to get home. He drives on the road near the stream every day. We knew it had been raining a lot, but it had been so dry, we were actually happy about the rain. Tom saw some water on the road but thought it wasn't deep. And, after all, he was in a truck, high up off the ground. But then his truck started to float, and before he knew it, his truck was washed downstream with him in it. Fortunately, his truck got stuck on a rock or something, and someone saw him and threw him a line. Tom got out okay. But we really learned from this, not to drive in floods.” Testimony of Marilyn and Tom (last name withheld), interviewed by the American Red Cross after Tropical Storm Allison struck Texas in late June 2001.

The problem:

Tom was fortunate. He was rescued and lived to tell his tale. But others did not fare as well. A man in Pennsylvania, who refused to abandon his home during an evacuation, later was swept away as he attempted to leave in his automobile.

A man in Arlington, Texas, trying to prove to his friend the water he was crossing was safe enough to drive through, lost his life as he left his vehicle and attempted to wade to the other side. These tragic events happen too often. Ironically, many drivers rescued from flood waters reported they were in a hurry to reach the safety of their home as a reason for attempting to cross a flooded road. Automobile commercials advertising the ability to drive through water lead to a false sense of security at best and tragic consequences at worst.

The Centers for Disease Control (CDC) report that over one half of all flood-related drownings occur when a vehicle is driven into hazardous flood water. The next highest percentage of flood-related deaths is due to walking into or near flood waters.

The reason:

Where does the idea that “my heavy vehicle will keep me safe” come from? Perhaps from the false trust in the weight of the vehicle you drive. Many believe their 3,000 pound or more vehicle will remain in contact with the road surface... that it is too heavy to float. Think about that for a moment. Aircraft carriers weighing 97,000 tons float. Vehicles (and ships) float because of buoyancy. In fact, most cars can be swept away in 18 to 24 inches of moving water. Trucks and SUVs do not fare much better with an additional 6 to 12 inches of clearance. Actually, in moving water, all that needs to happen is for the vehicle to become buoyant enough for the force of the moving water to push it sideways. Once swept downstream, the vehicle will often roll to one side or perhaps flip over entirely. The driver then only has a few seconds to escape the vehicle.

The solution:

The solution is simple. Turn around, don't drown. Stay out of flooded roadways. The water may be much deeper than it appears, as the roadbed may be washed out. Also, respect the "road closed" barrier that may be posted to warn you of danger. This solution applies to anyone attempting to walk or wade through flowing water. As little as six inches of rapidly moving water can sweep you off your feet. Consider carefully where you camp and/or park your vehicle along a stream or wash, especially during threatening conditions. Be especially cautious at night when it is harder to recognize flood dangers. Finally, know when you are at risk! Keep abreast of the latest weather watches and warnings from the National Weather Service with the NOAA Weather Radio All Hazards or through your favorite news source.

The Manual on Uniform Traffic Control Devices (MUTCD) and Standard Highway Signs (SHS) books contain provisions for incident warning signs, including size of the legend, colors, and shape. State and local highway agencies should warn motorists of temporary flooding conditions by using such signs. For further information, both the MUTCD and SHS can be found at: <http://mutcd.fhwa.dot.gov>

In addition to NWS watches and warnings, road condition information during adverse weather is widely available from State Departments of Transportation. This information can be found on websites or by phone. Go to <http://www.fhwa.dot.gov/trafficinfo/index.htm> to get to this information online. Or, call 511 to get travel condition information. The 511 service is being deployed across the country to enable travelers to make better choices – choices of time, mode of transportation, or route.



Frequently Asked Questions

(from the NOAA Weather Service Website)

Why is Turn Around Don't Drown™ so important?

TADD is a NOAA National Weather Service campaign to warn people of the hazards of walking or driving a vehicle through flood waters. Each year, more deaths occur due to flooding than from any other severe weather related hazard. The main reason is, people underestimate the force and power of water. More than half of all flood related deaths result from vehicles being swept downstream. Of these, many are preventable.

What can I do to avoid getting caught in this situation?

Follow these safety rules:

- Monitor the NOAA Weather Radio All Hazards, or your favorite news source for vital weather related information.
- If flooding occurs, get to higher ground. Get out of areas subject to flooding. This includes dips, low spots, canyons, washes, etc.
- Avoid areas already flooded, especially if the water is flowing fast. Do not attempt to cross flowing streams. Turn Around Don't Drown™.
- Road beds may be washed out under flood waters. NEVER drive through flooded roadways. Turn Around Don't Drown™.
- Do not camp or park your vehicle along streams and washes, particularly during threatening conditions.
- Be especially cautious at night when it is harder to recognize flood dangers.

Here are a couple of excellent informative websites for favorites when you have concerns about local weather and other hazard conditions:

<http://www.noaa.gov>

or

<http://www.nws.noaa.gov>

[NOAA's National Weather Service](#) continuously monitors conditions that lead to flooding and issues forecasts, watches, and warnings when necessary. [Weather.gov](#) and [NOAA Weather Radio All Hazards](#) are some of your best sources of such critical flood alert information.

Resource Links

Subject	Website Address
Association of State Floodplain Managers	http://www.floods.org
FEMA Map Adoption Model Documents.	http://michigan.gov/deq/0,1607,7-135-3313_3684_3725-122959--,00.html
FEMA's Elevation Certificate	http://www.fema.gov/media-library/assets/documents/160
FEMA's Letter of Map Change Info. (LOMA's, LOMR's etc.)	http://www.fema.gov/letter-map-changes
FEMA's National Flood Insurance Program	http://www.fema.gov/business/nfip/
FEMA's NFIP Community Status Book Site	http://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book
Map Service Center Info.	https://msc.fema.gov/portal
MDEQ Water Management	http://michigan.gov/deq/0,1607,7-135-3313_3684---,00.html
Michigan Association of County Drain Commissioners	http://www.macdc.net/
Michigan Bureau of Construction Codes	http://www.michigan.gov/lara/0,4601,7-154-10575---,00.html
Michigan Stormwater-Floodplain Association	http://mi.floods.org
NFIP Watermark Newsletters	http://www.fema.gov/watermark
NOAA's National Weather Service	http://www.weather.gov/
Online Request for Floodplain Elevation Determinations	http://www.michigan.gov/deq/0,4561,7-135-3313_3684_3725-343719--,00.html
The Michigan Committee for Severe Weather Awareness	http://mcswa.org/default.aspx
US Army Corps of Engineers	http://www.usace.army.mil/

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<p>Editor: Les Thomas Articles are by the Editor unless noted otherwise.</p> <p>For questions, comments, or information, contact:</p> <p>Les Thomas MDEQ LWMD P.O. Box 30456 Lansing, MI 48909-7956 Telephone: 517-335-3448 Fax: 517-373-6917 e-mail: thomasl@michigan.gov</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>MDEQ Office of Personnel Services P.O. Box 30473 Lansing, MI 48909</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 Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.</p> <p>Total Number of Copies Printed: 2,800 Cost Per Copy: \$.56 Total Cost: \$1,560.00</p> <p>EQC2760</p>
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Flood News for Michigan Floodplain Managers

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