



Linda Lingle,
Governor

Hawaii Flood Management News

Department of Land and Natural Resources
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If you'd like to receive this newsletter via email, please send your email address to Carol.L.Tyau@hawaii.gov or if you wish to be removed from our mailing list please contact Elaine Keb at (808) 587-0227.

Hawaii's Wet Season

October marks the beginning of the Hawaii's "Wet Season". According the National Weather Service (NWS), the month of November has historically been the wettest month of the year for island residents. Some notable events were the Big Island Flood (November 1-2, 2000) which brought approximately 37 inches of rain in 24 hours and the Election Day storm that drenched Oahu in November of 1996, with approximately 15 inches on the west side of the island.

If you haven't already done so as part of your Hurricane preparedness, now is the time to start preparing for the possibility of wet weather. As you are well aware, rainy season brings the threat of water damage to homes and businesses. The following are some simple things you can do to protect yourselves and your property:

1. Check for caulk cracks around windows and doors. Reseal them as necessary to prevent water from seeping inside.
2. Check trees in your yard and remove any dead branches, which could fall during heavy rain and cause damage.
3. Remove leaves, branches and debris from gutters and drains.
4. Plug sewer traps with check valves - special valves that direct water in one direction only - thereby preventing it from backing up into your home.
5. Lower the water level in your swimming pool, so it is less likely to overflow during heavy rain.
6. Turn off automated sprinkler systems when rain is expected.
7. Have a flashlight, fresh batteries, a first aid kit, and prescription medication on hand, in case you get stranded in your home.
8. Keep important documents - including insurance policies, birth certificates and passports - in an easily accessible waterproof box.
9. Know how to turn your electricity off in the event your house gets flooded. Make sure not to turn it back on until everything has dried out. Avoid using electrical appliances while standing on wet carpets or floors. Stay out of flooded rooms if the electricity is still on.
10. If water damage occurs, get help right away. It only takes a few hours for bacteria growth to start.
11. Keep your car and other vehicles fueled and in good repair.
12. Know safe routes from home, work and school to high ground, in the event of flooding.
13. Review your family plan to be sure family members know how to contact one another in the event of an emergency.
14. Consider purchasing flood insurance for your home, as most homeowners' policies don't cover flood damage.

Flood Insurance Rate Maps



Are you currently doing work in Hawaii County or the City and County of Honolulu? If so, please take note that FEMA has approved the following Letter of Map Revision (LOMR) for changes to the flood hazard information shown on the current FIRM.

Hawaii County

FIRM Panel 0880C

Effective date of revision: December 21, 2006

FEMA Case No. : 06-09-B247P

Flooding Source: Alenaio Stream

Description of Revision: Incorporate effects of the extension of Mohouli Street, the construction of various size culverts and fill.

On-line reader can view LOMC [here](#)

City and County of Honolulu

FIRM Panel 0105G

Effective date of revision: July 31, 2006

FEMA Case No. : 06-09-BC28P

Flooding Source: Pacific Ocean

Description of Revision: Correct Flood zone labeling from AE to VE.

On-line reader can view LOMC [here](#)

2nd Annual

Hawaii Floodplain Management Conference



On August 16 - 17, 2006, the Department of Land and Natural Resources and FEMA Region IX, co-hosted the 2nd Annual Hawaii Floodplain Manager's Conference at

Fort Shafter in Honolulu. The 2 day conference brought together approximately two dozen Federal, State, and local community officials to discuss important issues relating to the National Flood Insurance Program, floodplain development and mitigation efforts and ideas.

Special thanks to U.S. Army Corps of Engineers, State Civil Defense, and the University of Hawaii, Ocean Engineering Department for help in making this event a success.



Everything You Thought You Knew About Flood Determination But Were Afraid to Ask

By Mark Hamlin

(Now retired from a 15-year expert role in the flood zone determination business)

When I tell people that I own a company that provides flood determinations over the web, it's not exactly a zippy conversation starter unless they want to complain. Then we're both in for a long and lively chat.

Consumers often see the requirement for flood insurance as a cost with little benefit. Loan officers see it as an obstacle to closing a loan, not to mention its potential to sour the relationship with their customer borrower. The requirement can even kill a deal. While homeowners readily accept the need for fire insurance, they often resist the need for flood insurance.

So, why have this process? Well, of course, there's the number one reason: it's the law, so all banks have to do it. It's not like a borrower can go down the street to another lender who won't require it. Yet, the National Flood Insurance Program (NFIP) provides significant social benefit.

Let's review the program benefits. First and foremost, FEMA's designation of a parcel as being in a Special Flood Hazard Area (SFHA) puts homeowners, civil officers, and those involved in local government on alert. It says, "Be prepared, the potential for flooding is once in 100 years** or greater." Second, the program requires communities to engage in floodplain management. This results in flood control projects, improved planning, and special building regulations for structures in flood zones (such as raised foundations or special grading). It also gives consumers in flood hazard areas the ability to insure themselves against the risk through the NFIP. Flooding is an excluded peril on nearly all homeowner's policies.

As you can tell, I've given this speech a lot, often to people who believe they understand what we do. I say "believe," because there are myriad myths about flood determination and what it means to lenders and their customers. Here are a few of the more popular ones:

Myth 1: Flood determinations are cut and dry; it's just a matter of getting the FEMA maps.

Fact: No so. The data's not always together in a readily available form. You can't just read a FEMA map and assume that it will have all the answers. The truth is that about five percent of all properties require difficult and time-consuming work to make a determination. To get a complete flood determination, we combine FEMA's maps with our own Geographic Information System (GIS, or computerized mapping), advanced address standardizations, advanced geocoding, and our own proprietary community and township maps.

Sometimes, the widespread belief in this myth can disrupt our relationships with lenders we serve. Recently, we were working with a large regional bank that objected to the fact that some determinations were returned to them in a partial status (partially in a flood zone). Our contact couldn't understand why we could not simply say "in" or "out". The problem, in this not-atypical scenario, was that parts of the lots were in a SFHA and other parts of the properties were not in a SFHA. To determine the proper designation, we needed to know the location of the structure on the lots, relative to the SFHA. Once the lender understood the problem, they readily understood and accepted

the need for more information. Thus this meeting culminated in several ideas and actions that improved service and smoothed the process. This brings us to Myth Number 2.

Myth 2: The only determinant that matters is whether or not the parcel is designated as being in a SFHA.

Fact: Actually, a lot depends on the location of the house on the property. The requirement for flood insurance is based upon the structure, not necessarily the parcel. If any part of the structure is in a SFHA, the lender must require the insurance. Additionally, the lender can require the insurance any time they think there is a flood risk, whether or not the structure is in an SFHA.

Myth 3: Changes in flood hazard status are automatically added to the FEMA flood maps.

Fact: Not true. When a LOMA (Letter of Map Amendment) or a LOMR (Letter of Map Revision) removes an individual structure from a flood zone**, or a whole area of a map, the only people who are issued copies are the current property owner, the local community, and FEMA. The maps are not reissued, nor is the data organized and available in a systematic manner. The most typical result is that a borrower has to show his or her LOMA or LOMR to the bank, who in turn provides the information to the flood company, who then revises the property's flood status.

Myth 4: All FEMA flood maps are complete.

Fact: The challenge to those of us in the flood determination industry is that they aren't. The maps often omit streets and street names, addresses, or parcel information. Often, they do not have information in the form of street maps and tax maps from sources other than FEMA. Good flood determination vendors use such information to enrich their databases.

Myth 5: Once the flood determination is made, it stays with the property for the life of loan.

Fact: Not true. FEMA can change the designation of a specific property or area. We in the industry take it as our responsibility to provide notices to lenders when the property's SFHA status changes. Then, it becomes the responsibility of the lender to notify their borrowers who are affected by zone changes. Lenders in these circumstances face two challenges: 1) to handle the notification in a cost-efficient manner, and 2) to deal with the fallout from some customers, who might retort, "Last week I wasn't in a flood zone and now I am?" At that point, no one's happy. The lender of course, has no choice but to let the property owner know and to require flood insurance. Moreover, if the consumer does not voluntarily purchase an insurance policy, the lender must force-place the flood insurance within 45 days of the time when they became aware of the change.

Flood determinations are not just a matter of law. They are a way to put everyone on alert of a potential, but insurable, risk. Additionally, flood disaster risk is reduced by this active floodplain management program. Once lenders can explain this to borrowers, it makes the process far more pleasant for all involved.

** This article was re-printed in its entirety as written by Mark Hamlin. However, some items of this article should be clarified. Relating to the "100 year" event, this is an event that has a 1% chance of happening in any given year, not once in every 100 years. Also, the term "flood zone" should not be used in place of "Special Flood Hazard Areas" (areas requiring flood insurance).

Common Legal Questions *About Floodplain Regulations in the Courts*

The following is the second of several installments of the "Common Legal Questions about Floodplain Regulations in the Courts". The material presented in this article was reproduced from a Association of Floodplain Managers' document prepared by Jon A. Kusler, Esq.

What have been the most common challenges to regulations in the last 15 years?

The most common challenges to regulations have been claims that regulators permitted construction that later caused harm. There are dozens of cases that allege damage caused by development that caused problems. On the other hand, there are very few cases that allege unconstitutional over-regulation of property. Those few include: 1) challenges to floodway regulations and floodway restrictions; 2) coastal dune and high hazard area restrictions, and buffer and setback requirements; and 3) variances and regulations for nonconforming uses. Generally speaking, courts have broadly upheld these hazard prevention restrictions against claims that they take private property without payment of just compensation, have been adopted to serve invalid goals, are unreasonable (lack adequate nexus to goals or discriminate.)

May local governments regulate floodplains without express statutory authority to do so?

Yes. Courts have upheld local floodplain zoning regulations adopted as part of broader zoning. Courts have also, in some cases, upheld local floodplain ordinances adopted pursuant to "home rule" powers. But this is rarely an issue since states have broadly authorized local governments to adopt floodplain regulations.

Are floodplain and floodway maps invalid if they contain some inaccuracies?

No. Courts have upheld maps with some inaccuracies, particularly if there are regulatory procedures available for refining map information on a case-by-case basis.

Acknowledgements

This summary was prepared for the Association of State Floodplain Managers (ASFPM) by Jon Kusler, Esq., Associate Director of the Association of State Wetland Managers. Preparation involved a review of the legal literature on floodplain regulations as well as the last 15 years of federal and state case law concerning floodplain regulations. Detailed reviews of cases from period 1960-1990 were prepared by Kusler in an earlier document.

Edwards A. Thomas, Esq. Provided extensive review of this document. Funding was provided by The McKnight Foundation and the ASFPM Foundation. Opinions expressed in the document are those of the authors and do not necessarily reflect the view of the sponsoring organizations.

The reader is advised not to rely upon this booklet to resolve specific legal questions. Advice of legal counsel or program officials in the state or community in question should be obtained.

The Association of State Floodplain Managers (ASFPM) has established a national program for professional certification of floodplain managers. The program recognizes continuing education and professional development that enhance the knowledge and performance of local, state, federal, and private-sector floodplain managers.

The role of the nation's floodplain managers is expanding due to increases in disaster losses, the emphasis being placed upon mitigation to alleviate the cycle of damage-rebuild-damage, and a recognized need for professionals to adequately address these issues. Floodplain managers come from a variety of curricula and backgrounds; there is no college-level degree program for floodplain management. This certification program will lay the foundation for ensuring that highly qualified individuals are available to meet the challenge of breaking the damage cycle and stopping its negative drain on the nation's human, financial, and natural resources.

On August 17, 2006, five new Certified Floodplain Managers (CFM) have been added to Hawaii's list of CFMs.

Congratulations !!!

Mr. Mario Antonio
County of Kauai,
Department of Public Works

Mr. Ty Dempsey
Lyon Associates, Inc.

Mr. Travis Hyllon
Oceanit Laboratories, Inc.

Mr. Edwin Matsuda
State of Hawaii,
Department of Land and Natural Resources

Mr. Jay Stone
Oceanit Laboratories, Inc.

For more information about ASFPM and Hawaii's own CFMs, visit:

www.floods.org

Construction in Coastal Floodplains?

The Possible Reverberations from a Massachusetts Court Ruling

In a decision that could resonate in coastal communities around the country, the Massachusetts Supreme Judicial Court has affirmed the authority of a local government to bar residential construction in a flood-prone area, and ruled that the community does not have to compensate the owner for being unable to build a home on the seaside property.

Winning Gove v. Zoning Board of Appeals of the Town of Chatham was "a very big deal," says Kevin McDonald, the town's director of community development. "I don't want to be the boy calling wolf, but if it had gone the other way, a lot of properties in flood zones would now be buildable. There would have been ramifications for a lot of other communities like us."

According to Massachusetts' highest court, there is a "reasonable relationship" between the Town of Chatham's zoning bylaw restricting development in a coastal floodplain and the legitimate state interests of effective response to natural disasters, the protection of rescue workers and residents, and the preservation of neighboring property. The court also found that the plaintiff "failed to prove that the challenged regulation left her property 'economically idle.'"

While the decision is binding only on Massachusetts courts, it could have a persuasive effect on other jurisdictions.

Bill Riley, the attorney representing the plaintiffs in the case, acknowledges, "Perhaps, in the wakes of Katrina and Wilma, what may have the most resonance and carry this case beyond its local origins was the [court's] concentration on the safety of service personnel, firemen, policemen, and first responders. Using that as justification makes it very difficult to argue against."

If communities are interested in developing similar ordinances, "now may be the perfect time on the heels of Hurricanes Katrina and Rita," says Bruce Gilmore, attorney for the Town of Chatham in the case. "There is an awareness today of what can happen. Destruction like that [in Louisiana and Mississippi] is not the figment of the imagination of some mad scientist espousing global warming. We're seeing on the evening news that there are some darn good reasons to prohibit development in ecologically fragile areas."

Zoning Ordinance

Chatham's zoning bylaw restricts development in the coastal floodplain designated by the Federal Emergency Management Agency (FEMA). "What it says," explains McDonald, "is that you can't build any new houses" in the town's Coastal Conservancy Districts.

Under the provision, existing structures can be improved and a special permit can be obtained for other uses, including the construction of piers, boathouses and boat shelters, and other structures for marinas and boat-yards.

The town intended the overlay regulations to preserve groundwater supplies, protect fish and shellfish, protect the public's health and safety, safeguard people and property from flooding, and preserve the community's natural areas.

Construction in Coastal Floodplains... continued from Page 5

The court characterizes the lot that Roberta Gove inherited in 1975 as a "marginal parcel of land" that remained undeveloped for many years because of the risk of coastal flooding. Lot 93 in the Little Beach section of Chatham is now exposed to open ocean waves because of a breach in a barrier beach just opposite the site and is exposed to both accelerated "normal" erosion and storm-related erosion.

Another View

"I always felt there was an arbitrary quality" to the conservation districts, says Riley. He calls the FEMA-designated flood zones "an educated guess."

While lot 93 has flooded, he says it has never flooded to the highest elevation in FEMA's A-zone designation of the property, and the lot has never been subject to wave action nor been inaccessible to emergency personnel.

"Nobody really knows what the real floodplain elevation is," argues Riley. "If you built a single family residence [on the lot] in accordance with FEMA regulations, the likelihood of harm to the structure would be nil or very small."

The Challenge

Before Chatham established its conservancy districts in 1985, Gove put lot 93 on the market but had no offers. In the late 90s, the market for coastal property soared. In 1998, Donald and Ann Grenier contracted with Gove to purchase lot 93 for \$192,000, contingent on their obtaining permits for a home and a septic system.

The Town of Chatham denied the building permit. Gove argued that the town should either approve the permit or compensate her for the loss of value in her land. When the town denied her appeal, suit was filed in Massachusetts Superior Court.

Riley says he based the suit's arguments on the previous U.S. Supreme Court decision in *Lucas v. South Carolina*. Under this case, the court said if the value of property is diminished 100 percent by a government regulation, then you have a "taking" that must be compensated.

"We figured we would seek a permit to build, and if we didn't get it, we had a shot at getting paid," he says.

Court Action

The Massachusetts Superior Court ruled in favor of the town. According to the judge, lot 93 was in a floodplain and potential flooding would have a severe impact on the surrounding area. This decision was affirmed by the state Appeals Court. The case was then appealed to the Massachusetts Supreme Judicial Court, which on July 26, 2005, upheld the two previous decisions.

The Supreme Judicial Court also rejected Gove's argument that the construction ban represented a governmental taking of her property.

The court based its ruling on the recent U.S. Supreme Court decision of *Lingle v. Chevron U.S.A.*, which says that under the Fifth Amendment of the U.S. Constitution, a zoning ordinance is valid unless it bears no reasonable relation to the state's legitimate purpose.

"Even I can't say there's not a rational connection between the goals of the by-law and the goals the town is trying to achieve," says Riley.

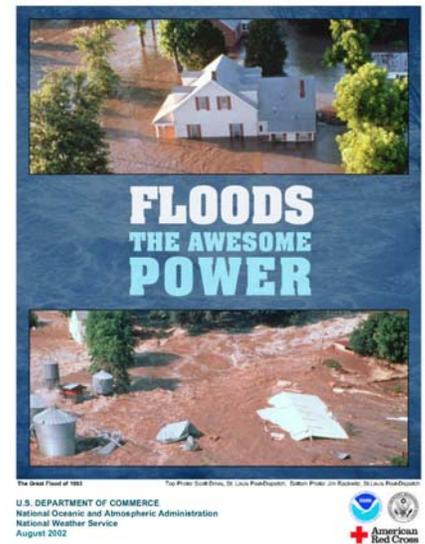
The court also found that Gove failed to prove that the challenged regulation left her property "economically idle" because the town allows special permit



Spotlight

Spotlight, features informative publications which are available to the public free of charge. This quarter's selection is:

Floods The Awesome Power



"This preparedness guide explains flood-related hazards and suggests life-saving actions you can take. With this information you can recognize a flood potential, develop a plan, and be ready when threatening weather approaches. Remember ... your safety is up to **YOU!**"

This publication can be found on-line at:

http://www.nws.noaa.gov/om/brochures/Floodsbrochure_9_04_low.pdf

NOTE: We offer this publication information for reference only. We do not endorse any product or company. Please note website links may have changed since the publication of this newsletter.



Department of Land and Natural Resources
Engineering Division
P.O. BOX 373
HONOLULU, HAWAII 96809

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ting for alternative income-producing uses, such as for a marina or boat storage facility.

"This relates to the argument of investment-based expectation," explains Town Attorney Bruce Gilmore. "As long as a community provides for other economically viable uses—even if they may not be as economically advantageous as a single family home—the courts, at least in Massachusetts, will not find a regulatory taking."

Overall Context

"I don't know that I agree with the court's decision, but I feel like we gave it a good run and I'm at peace with it," says Riley. "I believe it severely limits the use and value of the property, but in the overall context, I can't say it's an outrageous restriction."

Gilmore says, "The lesson to be taken away from this case is that you've got to give property owners some alternative uses. If you don't do that, you will in fact have a taking."

"I think," says McDonald, "it's important that the courts accepted the idea that the threat to other property and public safety and personnel are legitimate governmental concerns."

He adds, "This case was a big deal. Other coastal communities understand how big a deal it would have been if we had lost."

To view the Massachusetts Supreme Judicial Court 's ruling on *Gove v. Zoning Board of Appeals of Chatham* , go to <http://www.sociallaw.com/slip.htm?cid=15382>. To view the overlay regulations of Chatham 's Coastal Conservancy Districts, point your browser to http://www.town.chatham.ma.us/Public_Documents/ChathamMA_CommDev/S00699837.-1/ZBylaw8%2030%2005.pdf. -- not working--www.town.chatham.ma.us/Public_Documents/ChathamMA_CommDev/zoningbylaw.pdf--> For more information on the overlay regulations, contact Kevin McDonald at (508) 945-5160, or kmcdonald@town.chatham.ma.us. For more information on the legal case, contact Bruce Gilmore at (508) 362-8833, or capecodlawyer@verizon.net. You may also contact Bill Riley at (508) 945-5400, or william.f.riley@verizon.net.

