

Wai Halana

Hawaii Flood News

A New Year - A New Look

With a new year upon us, our quarterly newsletter has taken on a fresh new upbeat look with an island flare. Our readership has dramatically increased over the past couple of years and our audience is not limited to just flood-plain managers. The contents of our publication is intended to increase public awareness about the National Flood Insurance Program (NFIP) and has become a valuable resource for many professional disciplines and property owners. With such a diverse target audience, I felt that our previous title, "Hawaii Flood Management News" was no longer applicable. After much thought on a new name that would be relevant to our mission and unique to our local culture, I decided on "Wai Halana". In Hawaiian the word "Wai" means "water" while "Halana" has a meaning of "overflow". Together, "Wai Halana" means "Flood".



In addition to our newsletter makeover. We are proud to announce the debut of our NFIP website. Packed full of useful information, website visitors from all backgrounds will find a little something of interest. Local community information, regulations, upcoming training events, and much more are now just a click away. Be sure to bookmark our website (URL: www.hidlnr.org/eng/nfip/NfipHome.aspx) for future reference and quick access to current and back issues of Wai Halana.

On the horizon for 2007, is our GIS flood hazard mapping tool. This internet based mapping application is currently being developed. Soon, the days of overlaying parcel maps and Flood Insurance Rate Maps will be a tedious exercise of the past. Current Letter of Map Changes (i.e. LOMRs, LOMAs, etc..) will also be integrated into this tool.

Our talented web developer Ms. Marilyn Gambone, the newest addition to our DLNR Ohana, has diligently worked on ensuring that our website satisfies Section 508 of the Rehabilitation Act of 1973 for electronic access. We hope you enjoy our new look and welcome any comments you may have to offer.



Hau'oli Makahiki Hou,
(Happy New Year)

Carol Tyau-Beam, P.E., CFM

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The current and selected past issues are also available at:

www.hidlNr.org/eng/nfip/NfipHome.aspx

We welcome your comments and suggestions, as well as, newsworthy articles. Your submissions may be sent to the Department of Land and Natural Resources, Engineering Division, P.O. Box 373, Honolulu, Hawaii 96809. If you'd like to receive Wai Halana via email or wish to be removed from our mailing list, contact Elaine Keb at (808) 587-0227.

Upcoming Events

Insurance Agents

National Flood Insurance Basics

Oahu - February 27 and 28, 2007

Maui - March 1, 2007

For registration form and info, visit:

www.hidlNr.org/eng/nfip/NfipHome.aspx

Or call, Hawaii Independent Insurance Agents Association at 531-3125

BIA Home and Remodeling Show

January 25-28, 2007

Blaisdell Center - Exhibition Hall

"Stop by the DLNR booth (#725) and become FloodSmart"

For show info visit:

www.bia-hawaii.com/

Hawaii Association of Land Surveyors Annual Surveying Conference.

February 1 -2, 2007

Prince Kuhio Hotel, Waikiki

For more info, email:

hals_us@yahoo.com

31st Annual Association of State Flood Plain Managers Conference

June 3 - 8, 2007

Norfolk, Virginia

For conference info

visit: www.floods.org



Common Legal Questions

About Floodplain Regulations in the Courts

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

Can landowners be required to carry out floodplain delineations on impacts of proposed activities on flood elevations or provide various types of floodplain assessment data?

Yes. Courts have held that regulatory agencies can shift a considerable portion of the assessment burden to landowners and that the amount of information required from a landowner may vary depending upon the issues and severity of impact posed by a specific

permit. And, agencies can charge reasonable fees for permitting. But the burdens must be reasonable and courts may consider the costs of such data gathering to be relevant to the overall reasonableness of regulations and whether a taking has occurred.

May states and local governments regulate some floodplains and not others?

Yes. Typically states and local governments only regulate mapped floodplains.



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.

States Implement NFIP Training Requirements

All too often after a damaging flood occurs, flood victims insist that their insurance agent misinformed them about their flood risk or the availability of flood insurance. Relatively few insurance agents receive training about the hazard of flooding and the availability of flood coverage. Consequently, many are ill-prepared to advise their customers about how to protect themselves against flood losses.

Congressional Mandate

One of the provisions in Title II of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA), signed by the President in 2004, addresses the need for NFIP training for insurance professionals. Section 207 charged FEMA, in cooperation with the insurance industry and State insurance regulators, with establishing minimum training and education requirements for all insurance agents who sell flood insurance policies. Congress mandated that FEMA publish these requirements in the Federal Register and inform insurance companies and agents of the requirements.

Input received from various stakeholders emphasized the value of working through State Insurance Departments to avoid establishing conflicting or burdensome training requirements on agents. State Insurance Departments have authority over agent licensing and continuing education (CE) requirements for license renewal. Therefore, FEMA is encouraging States to make flood insurance training a part of their licensing and CE requirements for agents.

Implementation

In September 2005, FEMA published a notice regarding training and education requirements in the Federal Register, and subsequently communicated with State Insurance Commissioners via several letters and webcasts/teleconferences. In the months that followed, numerous State Insurance Departments have responded by implementing various regulations that establish flood insurance training requirements for insurance agents in their State.

As FEMA learns of State actions related to flood insurance training requirements for agents, they are shared via the FEMA website (www.fema.gov/business/nfip/state_actions.shtm). For example, as of June 1, 2006, Delaware, Kentucky, Maryland, Massachusetts, and Washington now require agents who sell flood insurance to complete a flood insurance training course. CE credits are earned by agents who complete this training. North

Carolina, Pennsylvania, and Texas each promote flood insurance training and provide CE credits.

Support for States

FEMA supports

States in implementing their flood insurance training programs and will provide:

- ♦ Expertise for the development of a program that would give agents a basic understanding of the NFIP.
- ♦ Access to NFIP training sessions and modules, including online.
- ♦ NFIP materials and other technical assistance needed to address unique requirements.

As new NFIP policies and procedures or enhancements develop that should be reflected in State-approved training, FEMA will provide these to State Insurance Departments.

Incentives for Trained Agents An insurance agent who understands how the NFIP works and can answer consumer questions accurately, before the policy is purchased as well as when a loss is sustained, is a valuable Program partner. FEMA offers incentives to encourage agents to pursue the flood insurance training that will enable them to serve in this role. The NFIP's Agent Co-Op Program provides agents, WYO (Write Your Own) companies, and insurance associations with tools to produce local and regional advertising that supports the national FloodSmart campaign. Agents who participate in this program are reimbursed a portion of their advertising budget when they use the program's pre-approved ad templates. An additional 25 percent in Co-Op funds is offered to agents who have completed a State-approved flood insurance training course within the past 12 months (see www.FloodSmart.com for details).

Agents who enroll in the NFIP Agent Leads Referral Program receive free leads generated through FloodSmart marketing efforts. In development is a plan to give agents who have completed flood insurance training a special designation or priority in the distribution of leads.



As of December 11, 2006, the State of Hawaii has implemented a Flood Insurance Training requirement (Insurance Commissioner Memorandum 2006-04A)

Beat the July 1, 2007 deadline to complete the training requirement by registering for one of the NFIP courses being offered. For course info and registration visit: www.hidlnr.org/eng/nfip/NfipHome.aspx or call Hawaii Independent Insurance Agents Association at (808) 531-3125.

Source: Watermark

Does that Coastal Home Comply with the NFIP Regs?

Carol Tyau-Beam, Hawaii DLNR

What makes a real estate investment attractive? Most buyers know exactly what they are looking for in a home. A well maintained house, awesome view, located in a good school district, profitable rental history, public transportation nearby, historically high resale values are among the top of their wish list. However, one important criteria a prospective buyer looks at during their brief Sunday afternoon open house visit is the structures potential for expansion.

However, buyers and even existing property owners may not be aware that some regulations may prohibit such improvements. The National Flood Insurance Program (NFIP) has explicit rules about development within a Special Flood Hazard Area (SFHA). Many coastal properties in Hawaii are within a flood zone identified as VE. With this designation comes strict rules that must be adhered to when development takes place in coastal high hazard areas. Some key points of Section 60.3(e) of Title 44 of the Code of Federal Regulations* are:

- ◆ All new and substantially improved structures shall be elevated such that the bottom of the lowest structural member of the lowest floor is at or above the Base Flood Elevation;
- ◆ Ensure that the pile or column foundation and structure is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components;
- ◆ Provide that all new construction is located landward of the reach of mean high tide;
- ◆ The space below the lowest floor must be either free of obstruction or constructed with non-supporting breakaway walls;
- ◆ The enclosed space (below the lowest floor) shall be used solely for parking of vehicles, building access, or storage;
- ◆ Prohibit the use of fill for structural support of buildings;
- ◆ Prohibit man-made alteration of sand dunes and mangrove stands.

* (To read the complete copy of the regulations, visit: http://www.access.gpo.gov/nara/cfr/waisidx_02/44cfr60_02.html)



Anini Beach, Kauai

Image Source: Carol Tyau-Beam

These coastal regulations are intended to protect life and property from the destructive forces of Mother Nature.

For prospective buyers, it's important to do your homework! Know what the limitations of the property are with respect to your expectations. Don't be afraid to call your local community officials to discuss your proposed plans, preferably before you make any financial commitment.

For existing coastal homeowners, it's sometimes tempting to want to add that fourth bedroom or large family room to the unused space below your elevated structure. Before proceeding with your project, talk with your local building official about your renovation plans.

There are consequences to constructing non-compliant structures within a SFHA. Section 1316 of the National Flood Insurance Act of 1968, allows States to declare a structure in violation of a law, regulation or an ordinance. The result is that flood insurance will no longer be available to that property. The only way insurance will be restored, is if the violation is corrected and the 1316 Declaration is rescinded. This makes owning or selling a Section 1316 structure difficult, as lenders are mandated to require flood insurance on a collateral structure located in a SFHA for any Federally-backed loan.

The consequences could not only affect individual property owners, but the entire community as well. If FEMA suspends a non-compliant community from the NFIP program, no flood insurance would be allowed to be sold in that community and Federal Disaster assistance would not be available.

A real life example of how non-compliance, and in this particular case not on the part of the County, can affect an entire community.

Continued on Page 5

Insurance Rate Changes effective May 1, 2007

Source: ASFPM

FEMA recently came out with a bulletin defining what the rate changes will be starting May 1, 2007. Overall, the rates are planned to increase by 6%. This consists of premium increases of 7.0% for subsidized policies and 5.4% for actuarially rated policies. The increase for actuarially rated policies is the result of holding the premium for Preferred Risk Policyholders

unchanged while increasing the Standard X-Zone policies and actuarially rated SFHA policies an average of 7.4%. You will also note that V-zone rates have gone up by essentially 10%, in response to the Heinz Center's Erosion Study.



To see the complete rate increase summary, visit:

www.hidlnr.org/eng/nfip/NfipHome.aspx



Source: ASFPM

Clarification of Photograph Requirement for Elevation Certificates

FEMA recently came out with a bulletin clarifying the requirements for photographs for elevation certificates starting January 1, 2007. The following information is from FEMA:

The purpose of this memo is to provide additional clarification to the photograph requirements described in the October 2006 Flood Insurance Manual revisions. A previous Underwriting Bulletin on the subject was issued September 20, 2006.

1. For new business (*policies*) effective on or after January 1, 2007, all photographs must be taken within 90 days of the Elevation Certificate (EC) certification date. If the EC certification date is older than 90 days, the insured or agent must provide photographs taken within 90 days of the submission date.

2. A building in the course of construction, without the as-built elevations, can obtain a policy based on proposed elevations, even though photographs are not submitted. However, prior to the policy being renewed, a revised EC with as-built elevations must be provided along with photographs.

3. Use of the photograph form is not a requirement for photograph submissions as long as the date the photographs were taken is provided and attested.

4. An EC that is not submitted with photographs is considered an invalid EC unless the building is in the course of construction. Each WYO Company may use its current business practice in handling ECs without photographs, whether this is using tentative or provisional rates, or rejecting the application.



"Does that Coastal Home Comply with NFIP Regs?" Continued from Page 4



Image source: <http://factfinder.census.gov/>

Monroe County, Florida is a coastal community participating in the NFIP. Also, referred to as the "Southernmost County in the United States", Monroe is situated in the Florida Keys and is made up of 822 islands, although only about 30 of them are actually inhabited.

As a popular travel destination, many homeowners were in violation of the NFIP regulations when they enclosed the lower floors of their elevated structures and used the space as vacation rentals.

The Community's Code Enforcement Program could not handle the large number of structures that had ille-

gal ground floor enclosures. This problem prompted Monroe County to request the Federal Insurance Administration to institute an inspection program before renewal of the NFIP Standard Flood Insurance Policy. The program requires



Key West Florida

Image source: www.keywestrentalhome.com

flood insured property owners to obtain an inspection of their property as a condition of renewing their policy. If the property owner does not obtain an inspection, then their policy will not be renewed and will be identified as an ineligible property for the sale of flood insurance. This may trigger a lender to recall a loan, if flood insurance cannot be placed on the property. If the building does not pass an inspection and all efforts to remedy the situation have been exhausted, then the community could request a Section 1316 from FEMA.



Flood Insurance Rate Maps *Updates*

Are you currently doing work in the Counties listed here? 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 effective FIRM.

Hawaii County

FIRM Panel 0713D

Effective date of revision: January 11, 2007

FEMA Case No. : 06-09-B685P

Flooding Source: Keopu Drainageway Overflow

Description of Revision:

Incorporate channelization along the revised reaches of Keopu Drainageway Overflow and the Keopu Drainageway Overflow Tributary from approximately 200 feet downstream of Alii Drive to just downstream of Queen Kaahumanu Highway and from the confluence with the Keopu Drainageway Overflow to approximately 100 feet downstream of the Queen Kaahumanu Highway.

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

Hawaii Dam Safety Workshops

Denise Manuel, Hawaii DLNR

The Department of Land and Natural Resources with co-sponsor the American Society of Civil Engineers hosted "Hawaii Dam Safety Training" seminars across the islands from October 25 through December 6, 2006. The four, 3-day seminars were held in each County to allow the local dam owners and operators the opportunity to attend. Additionally, engineers, planners, and even attorneys turned out with interest.

The dam safety training was presented by Chris Vee-saert of the Department of the Interior, Bureau of Reclamation, with the Emergency Management Sessions presented by Patrick Wanker and Jeffrey Daniels.

The first two days consisted of sessions on dam basics, failure modes, lessons from dam incidents and how to conduct dam safety inspections. The third day reviewed components of an Emergency Action Plan and how to develop, review, update and even exercise those plans.

The workshops were attended by over 170 people statewide and was a valuable tool to help the owners and operators learn about the many hazards a dam can pose and how to safeguard the public from those hazards. As dams play an important role in the environment the training helped to bring awareness for safety and maintenance of these facilities. Comments noted that "it was a very good workshop to bring dam safety issues to various groups of people to the same level of understanding."



Hawaii Dams Re-inspected after October Earthquake

Denise Manuel, Hawaii DLNR

All dams checked! After the shaking and rattling subsided, the Dam Safety Program contacted all dam owners across the state to check their dams for cracking or other problems - and then within days sent out the inspection forces again.

Earthquake damage to a dam may not be evident immediately, as deep cracks may not surface for days to weeks, and as aftershocks continued, further settlement and cracking can occur. The Hawaii Dam Safety Guidelines: Seismic Analysis and Post Earthquake Inspections (Circular C-131) can be found at : <http://www.hawaii.gov/dlnr/eng/ds/guides/SEISMIC-GUIDELINES.pdf> and include the post-inspection checklist used for the team inspections.

Teams from the University of Hawaii, the Department of the Interior: Bureau of Reclamation and the U.S. Army

Corps of Engineers and private engineering companies were dispatched over the next four weeks to check all regulated dams across the state.

Teams started inspections on the Big Island, closest to the epicenter and moved up the chain to Maui, Oahu and Kauai. While a few reservoirs did have some damage, lowering water levels and other immediate actions were taken to ensure that any downstream communities were not in danger. The inspection reports are still in the process of being finalized and disseminated to the owners.

The State is continuing to follow up with all dam owners on remediation at their facilities and for development of Emergency Action Plans to continue to prepare for Hawaii's seasonal variations.



Get Familiar with our Flood Control / Dam Safety Section



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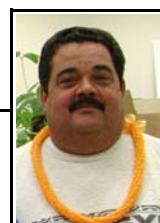
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Spotlight features informative publications which are available to the public free of charge.

Population Trends Along the Coastal United States: 1980-2008



The narrow coastal fringe that makes up 17 percent of the nation's contiguous land area is home to more than half of its population. Although population increase and coastal development produce numerous economic benefits, they also may result in the loss of critical habitat, green space, and biodiversity. The risk of flood damage along the United States' coastlines is high.

This report, produced by the National Oceanic and Atmospheric Administration's (NOAA's) National Ocean Service presents an overview of coastal

population trends from 1980 to 2003 and projected change in coastal population by 2008. It is designed to provide coastal resource managers and stakeholders with information to enhance coastal management decision making.

This publication can be found on-line at:

www.oceanservice.noaa.gov/programs/mb/pdfs/coastal_pop_trends_complete.pdf

For a hardcopy, send your request to:

Kristen.Crossett@noaa.gov

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.



Make Hawaii a Great
Place to Live !

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"Recently, my refrigerator/freezer's ice machine malfunctioned due to a design flaw.... so my appliance repair man tells me. The result ... water damage to my newly renovated kitchen. Most of the damage was to my laminate floor, although I did have water damage to the kitchen cabinets. Luckily the cabinets were made of solid wood construction, so they should dry out nicely. However, why I chose to install laminate flooring in a kitchen is a mystery ... and besides the point now.

Anyway, the water got under the flooring and moisture barrier, which caused damage to the laminate flooring. Mold, also started to grow. And that's never good.

Although I wasn't planning on filing any insurance claims for this loss, I was curious to see what kind of insurance would cover this type of damage.

After talking with my homeowners insurance agent, I found out that pipe burst (water or sewer) would be covered under my homeowner's policy. However, I was

cautioned that if I filed too many claims in a certain amount of time, that it might affect the renewal of my policy. I was also not aware that even if my claim was denied, it would go on my record and could potentially affect my renewal as well. This could be a big problem if I could not secure another homeowner's policy with another company, seeing that it's not uncommon for insurance companies to place a temporary moratorium on writing new policies.

As for the National Flood Insurance Program (NFIP), sewer and water main breaks could qualify for reimbursement, provided that it has affected at least two properties or two acres. In my case (and I suspect most with similar type of damage), it did (would) not affect two properties.

Contrary to homeowners insurance, the NFIP has no such moratorium on policy renewals if you have made multiple claims. However, once the policy holder makes repeated claims, they will be considered a "repetitive loss" property and FEMA will begin tracking subsequent claims. The penalty for repetitive loss property owners who refuse FEMA mitigation assistance will be decided in Congress in Spring 2007 as part of the National Flood Insurance Reform and Modernization Act of 2006.

