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State of Connecticut
Dept. of Environmental Protection
Bureau of Water Management
Inland Water Resources Division
Flood Management Program
79 Elm Street, 3rd floor
Hartford, CT 06106-5127
(860) 424-3706
<http://dep.state.ct.us>

Editor: Diane S. Ifkovic
State NFIP Coordinator
diane.ifkovic@po.state.ct.us

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Taxation of Hazard Mitigation Funds

The Association of State Floodplain Managers (ASFPM), the Federal Emergency Management Agency (FEMA), and Congress are working toward remedying a recent Internal Revenue Service (IRS) ruling that requires property owners to include hazard mitigation grant funds received as part of their federal gross taxable income.

On June 28, 2004, the Office of the Chief Counsel, Internal Revenue Service, Department of the Treasury, concluded that payments made under the three FEMA hazard mitigation programs – the Hazard Mitigation Grant Program (HMGP), the Flood Mitigation Assistance (FMA) Program, and the Pre-Disaster Mitigation (PDM) Program are includable as gross income under Section 61 of the IRS Code. The Internal Revenue Service concluded that these FEMA hazard mitigation funds provide a tangible benefit to property owners. Within the State of Connecticut, these mitigation grant funds would also be subject to state income taxation as gross income.

This means that if a property owner participates in a FEMA hazard mitigation project that directly affects their property, such as a home elevation, relocation, or retrofitting, then the owner must include in their gross taxable income for the year that cash portion of the grant received as reimbursement for the mitigation, or that was paid by the

local government to the contractor that performed the work.

States and municipalities who act as subgrantees for such mitigation projects must file information returns with the Internal Revenue Service each year for payments made to property owners or contractors if they exceed \$600.

This Internal Revenue Service ruling has ominous implications for mitigation. Since the information about the ruling has been made public, ASFPM has become aware of numerous situations where individuals, businesses, and communities have declined to participate in mitigation activities as a direct result of the ruling. Floodplain managers in the field know that even mentioning to property owners that they may have to claim mitigation grants as taxable income is enough to discourage them from even considering mitigation opportunities.

On January 24, 2005, U.S. Congressional Representative Mark Foley (R-FL) introduced legislation to provide that hazard mitigation funds not be taxable. H.R. 5206 would amend the IRS Code to exclude FEMA hazard mitigation assistance from gross income and shall apply to taxable years ending on or after December 31, 2004.

H.R. 5206 can be viewed on-line:
<http://thomas.loc.gov/cgi-bin/query/z?c108:H.R.5206.IH/>

Hazard Mitigation Planning in Connecticut

The disaster experiences of the 1990s demanded that Federal, State, Tribal and local emergency managers reassess their approach to disaster response and recovery. Based on the lessons learned, it became apparent that a change was needed from a disaster-response-driven system to one based on hazard mitigation planning.

Hazard mitigation is defined as any sustained action taken to reduce or eliminate long-term risk to life and property from a hazard event. The primary purpose of hazard mitigation planning is to systematically identify policies, actions, and tools that can be used to implement those actions.

The Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106-390, provided an opportunity for States, Tribes, and local governments to take a new and revitalized approach to mitigation planning. DMA 2000 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act by repealing the previous mitigation planning provisions (Section 409) and replacing them with a new set of requirements (Section 322). The new section emphasizes the need for State, Tribal and local entities to closely coordinate mitigation planning and implementation efforts.

Section 322 continued the requirement for a State mitigation plan as a condition of federal disaster assistance, adding incentives for increased coordination and integration of mitigation activities at the State level through the establishment of requirements for two different levels of State plans: "Standard" and "Enhanced". States that demonstrate an increased commitment to comprehensive mitigation planning and

implementation through the development of an Enhanced State Plan can increase the amount of funding available through the post-disaster Hazard Mitigation Grant Program (HMGP).

DMA 2000 mandated that States and local jurisdictions must have a FEMA-approved mitigation plan by November 1, 2004 in order to be eligible to receive post-disaster Hazard Mitigation Program (HMGP) grants and Pre-Disaster Mitigation (PDM) program project grant funds.

During 2004, the State of Connecticut Department of Environmental Protection, in cooperation with several other state and federal agencies, produced a Standard State Hazard Mitigation Plan. It was approved by FEMA on October 22, 2004.

The State plan contains a history of natural disasters in Connecticut and the future risk and vulnerability to such disasters. The plan also evaluates state programs and policies in relation to natural disasters, provides a status of hazard mitigation implementation measures since 1994, and proposes hazard mitigation implementation measures for 2004-2007. With an approved Standard plan, Connecticut is eligible to apply for HMGP funds in the event of a presidentially-declared disaster. This would provide municipalities with public assistance funds to restore damaged infrastructure.

For municipalities, currently only the Town of East Haven has a FEMA-approved hazard mitigation plan. Many regional planning organizations (RPOs) are involved in producing regional hazard mitigation plans. In 2002, four RPOs received funding through the

FEMA PDM grant to produce regional hazard mitigation plans. These RPOs are: Connecticut River Estuary Regional Planning Agency (CRERPA), Northeastern Connecticut Council of Governments (NECCOG), Southeastern Connecticut Council of Governments (SECCOG), and South Western Regional Planning Agency (SWRPA). SWRPA is very close to having FEMA approve its plan. The remaining RPOs should complete their plans by the summer of 2005.

In 2003, four additional RPOs received PDM planning funds to produce regional hazard mitigation plans. These RPOs are: Central Connecticut Regional Planning Agency (CCRPA), Council of Governments of the Central Naugatuck Valley (COGCNV), Greater Bridgeport Regional Planning Agency (GBRPA), and Windham Region Council of Governments (WINCOG).

In 2005, four RPOs and one municipality have applied for PDM planning funds. They are: Capitol Region Council of Governments (CRCOG), Midstate Regional Planning Agency (MRPA), Northwestern Connecticut Council of Governments (NWCCOG), and the City of New Haven. COGCNV has also applied to include four more towns in their planning efforts that began with three towns in 2003.

Once a community has a FEMA-approved hazard mitigation plan, the municipality is then eligible to apply for PDM project funds for mitigation activities outlined in the plan. Such activities may include public education, elevating structures, purchasing floodplain property, culvert upgrades, storm shutters for wind mitigation, and dry hydrants in forest fire areas.

NEFSMA Annual Meeting held in Portsmouth, NH

The New England Floodplain and Stormwater Managers Association (NEFSMA) held its 13th annual meeting in Portsmouth, New Hampshire on October 29, 2004. Featured speakers included FEMA Region I Mitigation Branch Chief Kevin Merli, New Hampshire Dam Safety specialist Grace Levergood, University of New Hampshire professor Dr. Robert Roseen, Massachusetts Coastal Zone Management scientist Daniel Sampson, and Connecticut state legislator Steven Fontana. For more information on NEFSMA, go to www.nefsma.org.

NFIP Claims Presentation

FEMA's Bureau and Statistical Agent will hold a NFIP Claims Presentation on **Monday, April 25, 2005** at the Holiday Inn Randolph, 1374 North Main Street, Randolph, Massachusetts. This is the sole New England session. It will cover a variety of information regarding the 2004 hurricane season including emphasis on critical coverage issues essential to correctly adjusting claims. The presentation is geared to claims adjusters and any other interested individuals. **Pre-registration deadline is Monday, April 11, 2005.** Register by downloading the registration form from: http://www.fema.gov/pdf/nfip/claims_regform.pdf. Please note this is Workshop 17 on the form. For directions only, (781) 961-1000.

Free Stormwater Magazine

A relatively new resource for stormwater professionals is available through Forester Communications, Inc. *Stormwater: The Journal for Surface Water Quality Professionals*, is a four-year old magazine issued bimonthly. Forester Communications produces *StormCon*, an annual national conference dealing with many aspects of stormwater management. The firm also publishes magazines such as *Erosion Control, Grading and Excavation Contractor*, and *MSW Management*.

Complimentary subscriptions to *Stormwater* are available via Forester's website at: <http://www.stormh2o.com/sw.html> The website also provides a number of useful resources for stormwater professionals. These include list serve discussions, an online events calendar, an on-line image library, a glossary of stormwater-related terms, and a services search function. Currently, all of the magazine's articles are readable online.

The January/February 2005 issue features an article on weather monitoring systems, "Predicting the Storm," that includes references to technologies developed by Watershed Concepts (a national firm with a new Boston office) and research at the University of Vermont. Another article, "Keeping the Balance," details the challenges of stormwater management in areas protected for drinking water supply and other uses, featuring a case study from Lake Massabesic in Auburn, New Hampshire.

CFM Exam Given

The Association of Floodplain Managers (ASFPM) Certified Floodplain Manager (CFM) Exam was given on January 28, 2005 to Phil Moreschi of Fuss & O'Neill Consulting Engineers located in Manchester, Connecticut. Mr. Moreschi passed the CFM exam – congratulations! ASFPM established this certification program in order to recognize the professional development of local, state, federal and private-sector floodplain managers. More information can be found at the ASFPM website, www.floods.org. If you wish to take the CFM exam, contact Diane Ifkovic, (860) 424-3537, at the CTDEP.

2004 Hurricane Expenditures

In November 2004, FEMA reported that a record \$4.27 billion in federal disaster funds have been expended to aid people and communities victimized by one of the most intense and damaging Atlantic hurricane seasons in recent times. FEMA attributed the expenditures to 27 major disasters declared by President Bush in response to hurricane-related damage in 15 states, Puerto Rico, and the U.S. Virgin Islands. Of the total funding, FEMA reported that \$2.25 billion was provided in aid for affected individuals and families. The outlay included \$1.29 billion in housing assistance, \$918 million for other needs assistance (such as medical expenses and personal property losses), \$30.98 million in unemployment benefits, and \$5.23 million for crisis counseling. \$286 million have been committed to state and local governments for the restoration of damaged facilities.

Floodplain Focus: No Adverse Impact

The Association of State Floodplain Managers (ASFPM) introduced the concept of No Adverse Impact (NAI) floodplain management in 2000 to address the problem of ever increasing flood damages in the United States. From the early 1900s to the year 2000, flood damages in the U.S. have increased six fold, approaching \$6 billion annually. This occurred despite billions of dollars for structural flood control and other non-structural measures. We continue to intensify development within watersheds and floodplains, and do it in a manner where flood-prone or marginally protected structures are suddenly prone to damages because of the actions of others in and around the floodplain.

Current national floodplain management standards allow for floodwater to be diverted, channel and over bank conveyance areas reduced, and changes to flow velocities with little or no regard as to how these changes impact others in the floodplain and watershed. The net result is that through our actions we are intensifying damage potentials in the nation's floodplains. Following a large disaster, Congress passes supplemental disaster funding. Offsetting cuts in domestic programs must be made to compensate for these disaster funds. Each needless incremental increase in flood damage represents a lost opportunity for the support of essential domestic programs. Current floodplain management approaches are only sustainable at the expense of other important programs. At its broadest level, NAI floodplain management is about local government taking steps to reduce the drain on national resources, as well as local and state resources.

In essence, NAI floodplain management is where the action of one property owner does not adversely impact the rights of other property owners, as measured by increased flood peaks, flood stage, flood velocity, erosion and sedimentation. Communities planning approaches to flood loss principles into the broader environment, social concerns, programs and policies. Most that the federal approaches are realizing these very approaches damage within their community. opportunity to promote through community-based



in the nation with comprehensive reduction have incorporated NAI community fabric of economics, planning and development management local governments have simply assumed an acceptable standard, perhaps not could induce additional flooding and Instead, NAI offers communities an responsible floodplain development decision making.

While the NAI approach will result in reduced damages for the 100-year flood event, its true strength is that it virtually ensures that future development actions which impact the floodplain must be part of a locally adopted plan. This removes the mentality that floodplain management is something imposed by FEMA, and promotes local accountability for developing and implementing a comprehensive strategy and plan for the floodplain. The principles of the NAI floodplain need to be applied throughout the entire watershed. In too many localities, upstream development in the watershed has induced new and additional damage within the floodplains. Communities need to be encouraged to account for or mitigate that flood damage locally or regionally. This can be done by promoting the use of retention and detention technologies to mitigate increased runoff from urban areas, or by planning for future conditions flooding within the community and region while mitigating for induced damages. The NAI approach is a different way of viewing flood policy. It moves away from a development standards approach while firmly placing local governments in a responsible position to manage floodplain risks. In reality, the NAI strategy is a collection of initiatives, some of which may be generic and meaningful to all communities and others that are best when tailored to fit the local situation. These strategies can be both structural and non-structural, and be implemented by either regulatory or programmatic means.

Some NAI activities that a municipality can implement include, but are not limited to: regulations that mandate sufficient detention storage to allow a post-development 100-year release rate of 0.1 cubic feet per second per acre of development; compensatory storage equal to at least 1.5 times the volume of floodplain displaced; wetland mitigation ratios of 1.5:1 for regulatory wetlands and a minimum of 3:1 for critical wetlands; zero increases in floodplain elevations for all development; initiation of numerous capital improvement projects for stormwater runoff; and a stream maintenance program that encourages volunteer participation in cleanup.

For more information on NAI, visit the ASFPM website: www.floods.org.

UPCOMING CONFERENCES & WORKSHOPS

April 19-21, 2005: The 16th Global Warming International Conference, New York, New York. Sponsor: Global Warming International Center. Contact: James A. Roberts, GWXVI International Program Committee, P.O. Box 5275, Woodridge, IL 60517. Email: jroberts@globalwarming.net. Internet: <http://www.globalwarming.net>.

May 8-11, 2005: Solutions to Coastal Disasters 2005, Charleston, South Carolina. Sponsor: American Society of Civil Engineers (ASCE). Contact: ASCE, 1801 Alexander Bell Drive, Reston, VA 20191. Phone: (703) 295-6300. Email: conferences@asce.org. Internet: <http://www.asce.org/conferences/cd05/>.

May 22-25, 2005: The Watershed Program at 50: Reflections on the Past and Forecasts for the Future, Ninth National Watershed Conference, Fort Mitchell, Kentucky. Sponsor: National Watershed Coalition. Contact: Dan Siebert at (405) 627-0670 or nwchdqtrs@sbcglobal.net. Internet: <http://www.watershedcoalition.org>.

May 31 – June 3, 2005: National Flood Insurance Program National Flood Conference, Marco Island, Florida. Contact: Catherine King at (301) 918-1439, Fax (301) 918-1498.

June 12-17, 2005: 29th Annual Conference of the Association of State Floodplain Managers, Madison, Wisconsin. Contact: ASFPM Executive Office, 2809 Fish Hatchery Road, Suite 204, Madison, WI 53713-3120. Phone: (608) 274-0123, Fax: (608) 274-0696, Email: asfpm@floods.org, internet: <http://www.floods.org>.

UPCOMING EMERGENCY MANAGEMENT INSTITUTE COURSES

The Emergency Management Institute (EMI) is located at the Federal Emergency Management Agency (FEMA) National Emergency Training Center (NETC) in Emmitsburg, Maryland. EMI serves as the national center for emergency management training of federal, state, and local government officials. Tuition, housing, and all books and materials are provided at no cost. Participants are responsible for the cost of a meal pass (\$90). The following is a list of upcoming EMI courses through September 2005. To apply, call Diane Ifkovic, CT DEP, (860) 424-3537. For more information on the courses listed, visit the EMI website:

<http://training.fema.gov/emiweb/>

- E125 **Citizen Corps: Energizing Your Community to Action** – June 13-16, August 1-4.
- E172 **Advanced HAZUS MH for Flood** – September 26-29.
- E179 **Application of HAZUS MH for Disaster Operations** – May 23-26.
- E190 **Introduction to ArcGIS for HAZUS MH Users** – June 13-16.
- E194 **Advanced Floodplain Management Concepts** – August 29-September 1.
- E202 **Debris Management** – September 5-8.
- E210 **Recovery from Disaster: The Local Government Role** – September 19-23.
- E234 **Digital Hazards Data** – July 25-28, August 22-25.
- E264 **Hydrologic Engineering Center River Analysis System** – May 23-27.
- E273 **Managing Floodplain Development Through NFIP** – April 18-21, June 27-30.
- E276 **Benefit Cost Analysis: Entry Level Training** – July 25-27.
- E278 **NFIP/Community Rating System (CRS)** – July 11-15, September 12-15.
- E279 **Retrofitting Floodprone Residential Buildings** – August 22-26.
- E296 **HAZUS MH/DMA2000 Risk Assessment** – August 8-11.
- E313 **Basic HAZUS Multi-Hazards (MH)** – June 20-23.
- E317 **Comprehensive Data Management for HAZUS MH** – September 12-15.
- E331 **Multi-Building Design Summer Institute (MBDSI): Wind Design** – July 18-21.
- E335 **Multi-Building Design Summer Institute (MBDSI): Dam Safety Design** – July 18-21.
- E360 **Mitigation Grants** – August 8-19.
- E362 **Multi-Hazard Emergency Planning for Schools** – June 20-23, August 1-4.
- E407 **Homeland Security Planning for Local Governments** – August 1-4.
- E415 **Community Emergency Response Team (CERT) Seminar** – September 6-8.