

CITY OF YUBA CITY
STAFF REPORT

Date: September 15, 2009
To: Honorable Mayor & Members of the City Council
From: Community Development Department
Presentation By: Aaron M. Busch, Community Development Director

Summary

Subject: Draft Flood Control Strategy for New Development.

Recommendation: A. Direct staff to develop a hold-harmless agreement as a condition of building/developing in Yuba City.
B. Direct staff to develop an outreach plan to citizens and the development community to address the impacts of FEMA remapping.

Fiscal Impact: There is no fiscal impact associated with the Conceptual Strategy as this is an informational item only at this time.

Background:

The topic of levees, flood control, and flood mapping is among the highest concerns and priorities for the City of Yuba City. Multiple efforts by the City are currently underway to address these important issues with the primary focus being upon the repair of the existing levees. Another item of concern related to this subject that was identified by the City Council at their March 2009 Goal Setting Workshop was the creation of a strategy dealing with new development projects and the forthcoming flood maps. At the Goal Setting Workshop, both the Public Works and Community Development Departments were tasked with providing planning and engineering solutions to mapping new development.

Yuba City is included as part of the on-going Federal Emergency Management Agency (FEMA) flood mapping process currently underway. The FEMA maps for Yuba City will be completed within the next eighteen months, at which time the majority of the community will be located within a designated flood hazard zone. The City must be prepared in advance of the FEMA mapping by putting measures in place for current and future development projects. This report presents strategies that the City could undertake as a means for addressing the impending flood mapping and how that will potentially impact future development projects.

Prior to a discussion about a potential strategy, a status report of the current flood control efforts and mapping timelines is appropriate. Provided below is a summary of the current flood mapping efforts.

Map Modernization Tentative Schedule Summary

The Federal Emergency Management Agency is currently remapping the remaining regions of Sutter County, including Yuba City. The tentative schedule for the completion of the map modernization process in northern Sutter County is as follows:

January 2010: Preliminary Digital Flood Insurance Rate Maps (DFIRMS) will be sent to the Chief executives of Sutter County and each of the incorporated jurisdictions in Sutter County.

February 2010: Community Coordination meeting for Local officials will be to discuss the DFIRMS and the remaining steps in the mapping process. Following the meeting Base Flood Elevations will be published and begin the official 90 day appeal period.

May 2010: Appeal period ends. All communities, individual property owners, or community members will no longer be eligible to appeal or protest the preliminary maps. Further revision requests can be made after the maps become legally effective.

June 2010: FEMA may request additional data to support appeals submitted with a 30 day deadline.

July 2010: Resolved appeals and revisions to maps will be distributed and begin a 30 day review period.

August 2010: The Letter of Final Determination on the new DFIRMS issued by FEMA to the CEOs of all Sutter County jurisdictions resolving comments on the preliminary maps and setting the date, six months from this letter, that the new DFIRMS will become legally effective for permitting and insurance purposes.

February 2011: New countywide DFIRMS become legally effective for Sutter County jurisdictions. This is considered the date that the City must comply with all applicable FEMA regulations because the City would be officially "mapped" in a floodplain and therefore subject to FEMA standards for building in a flood hazard zone.

Another important component associated with the formation of a flood control strategy for new development, is the recent legislation that has been passed which affects how local agencies handle the subject of flood control. Four new legislative actions have been passed recently which enact new flood control requirements for local agencies. Among other things, this new legislation requires local agencies to amend their General Plans to include provisions for 200 year flood control by the year 2025. A more immediate need which comes from AB 70 is the need for local agencies to address the liability issue associated with property damage from a flood. Specifically, AB 70 states that unless the City is held harmless by future developers, the City could be held liable for property damage associated with a future flood event.

Discussion:

As previously noted, the purpose for this report is to present a conceptual strategy for providing alternative building and subdivision development options related to flood control. The intent of this strategy is to clarify the City's position about the implementation of flood control requirements on new development projects and remove any doubt from the development community about what can be done if and when the City is eventually mapped into a floodplain area.

A key component of this strategy will be to meet with the development community and share with them the proposed elements of the plan. The more important elements that will be shared with the

development community are noted below:

- The City does not plan to enforce any FEMA standards until such time as the City is officially mapped.
- Any new development project that receives City approval (e.g. entitlement, building permit) will be required to sign a hold harmless agreement form prior to being issued a building permit from the City. A sample copy of a hold harmless agreement from Sacramento County is included as Attachment 1.
- Once the new FEMA maps are in effect, all new development and building permits will have to comply with provisions of FEMA and local Flood Protection Ordinance. To ensure compliance with this requirement when effective, large projects, such as the Lincoln East Specific Plan will include provisions for future compliance. Furthermore, it is expected that all new development entitlements will include conditions of approval addressing this requirement (as well as the likely requirement for a hold harmless agreement).
- Those projects that have pulled a building permit, installed the foundation for the structure and have received their first inspection on the foundation are exempt from complying with future FEMA requirements.
- Alternative construction methods for both residential and non-residential projects are available for new development to occur once City is mapped into a floodplain. These are in addition to raising the pad of the structure above the base flood elevation.

City staff from the Community Development and Public Works Departments intends to meet with local and regional developer groups (including architects, engineers, and builders) to inform these groups of the City's conceptual position on this subject. It should be noted that this outreach effort is not intended to address insurance and levee repairs which are being handled through separate efforts. Following staff's outreach efforts, staff will bring a finalized strategy (with input from the development community) back to the City Council for formal review and consideration.

Fiscal Impact:

None.

Recommendation:


- A. Direct staff to develop a hold-harmless agreement as a condition of building/developing in Yuba City.
- B. Direct staff to develop an outreach plan to citizens and the development community to address the impacts of FEMA remapping.

Prepared By:



Aaron M. Busch
Community Development Director


Submitted By:




Steven R. Jepsen
City Manager

Reviewed By:

Finance
City Attorney
George Musallam, Public Works Director





Attachments

1. Sample Hold Harmless Agreement

**HOLD HARMLESS AGREEMENT REGARDING
THE RISK OF FLOODING TO REAL PROPERTY**

(New Construction or Substantial Improvements In Zone A, AO, AH, A1-30,
AE, A99, AR, AR/A1-30, AR/AE, AR/AO OR AR/AH and in Natomas Area)

RECITALS

- A. The undersigned have filed for a building permit to construct a new structure or to substantially improve an existing structure (the "New Construction") located at _____, APN _____ (the "Property"). The New Construction is described in the plans titled _____, on file in the _____, and incorporated herein by this reference. The New Construction *[check one]* _____ is _____ is not located in the Natomas Area.
- B. The New Construction may be subject to flooding hazards either (1) due to its location in a 100-year floodplain, as described in a Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA), or (2) due to its location in the Natomas Area that FEMA intends to designate as a 100-year floodplain in a revised FIRM for such area.
- C. Despite the potential for flood-related property damage, and with full knowledge of the potential for flood-related property damage, the undersigned intend to construct the New Construction.
- D. If the New Construction is located in a 100-year floodplain designated on a FIRM, Section 15.108.040 of the Sacramento City Code requires the undersigned to execute this Agreement acknowledging and assuming the risk that the New Construction may be subject to flood-related property damage.
- E. Ordinance No. 2008-034, adopted by the Sacramento City Council and effective on June 10, 2008, requires that this Agreement also be executed for New Construction in the Natomas Area that FEMA intends to designate as a 100-year floodplain in a revised FIRM effective in December, 2008. Specifically, FEMA has indicated that the revised FIRM will show the Natomas Area to be in an AE Zone with a base flood elevation of 33 feet (datum NGVD29). If the New Construction is located in the Natomas Area, the undersigned understand and acknowledge that the City of Sacramento recommends elevation of the New Construction above the base flood elevation that will be shown on such revised FIRM, to reduce the risk of flood-related property damage, even though this will not be legally required until the revised FIRM becomes effective.

AGREEMENT

In consideration of the issuance of a building permit for the New Construction, the undersigned agree as follows:

1. Recitals Incorporated. The foregoing Recitals are incorporated by this reference as if fully set forth at this place.

2. Flood-Related Property Damage. For purposes of this Agreement, the term "flood-related property damage" shall mean any damage to real or personal property of any kind, including but not limited to vehicles, due to flooding resulting from water flowing in or from the channels or tributaries of the Sacramento River, American River, Dry Creek, Arcade Creek, Morrison Creek or Natomas East Main Drainage Canal levee systems.

3. Natomas Area. For purposes of this Agreement, the term "Natomas Area" shall mean the area within the Sacramento City limits bounded on the south by the north levee of the American River, on the west by the east levee of the Sacramento River, on the north by the south levee of the Natomas Cross Canal and on the east by the west levee of Steelhead Creek (Natomas East Main Drainage Canal).

4. Acknowledgment and Assumption of Risk. The undersigned understand and acknowledge and expressly assume the risk that the New Construction may be subject to flood-related property damage, and the undersigned hereby elect to voluntarily proceed with the New Construction with full knowledge that this may be hazardous to the undersigned, the New Construction and the Property. The undersigned voluntarily assume full responsibility for any risk of flood-related property damage arising from the undersigned proceeding with the New Construction.

5. Waiver of Property Damage Claims. The undersigned unconditionally waive any and all flood-related property damage claims asserting liability on the part of the City, or its officers, agents or employees premised on the issuance of a permit for the New Construction, whether or not the issuance of this permit is due to the negligence of the City or its officers, agents or employees.

6. Notice. In the event the undersigned convey the Property or New Construction to a third party, or grant a possessory interest in the New Construction to a third party, the undersigned expressly agree to include the following provisions in the purchase agreement or lease (with the blanks filled in with the applicable references):

[Transferee/Lessee] expressly acknowledges and assumes the risk that the property located at _____, APN _____, may be subject to flooding due to its location in a 100-year floodplain.

[Transferee/Lessee] unconditionally waives any and all flood-related property damage claims asserting liability on the part of the City of Sacramento or its officers, agents or employees premised on the issuance of a permit for construction of the New Construction, whether or not the issuance of this permit is due to the negligence of the City or its officers, agents or employees. As used herein, the term "flood-related property damage" means any damage to real or personal property of any kind, including but not limited to vehicles, due to flooding resulting from water flowing in or from the channels or tributaries of the Sacramento River, American River, Dry Creek, Arcade Creek, Morrison Creek or Natomas East Main Drainage Canal levee systems. As used herein, the term "New Construction" means the "New Construction" identified in the "Hold Harmless Agreement

Regarding the Risk of Flooding to Real Property" dated _____ and recorded at _____ in the Office of the Sacramento County Recorder.

Notwithstanding the foregoing, the above notice shall not be required if, as a result of future flood control improvements and subsequent remapping by FEMA to remove the Property that includes the New Construction from the 100-year floodplain, the Property no longer is located in a 100-year floodplain designated on a FIRM at the time the Property or New Construction is conveyed (this does not apply to the Natomas Area until after December 2008).

7. Hold Harmless. The undersigned agree to defend, hold harmless and indemnify the City and its officers, employees and agents from and against any and all flood-related property damage claims premised on the issuance of a building permit for the New Construction.

The undersigned intend that the City be indemnified to the fullest extent permitted by law and, specifically, that any negligence on the part of the City shall not bar indemnity, unless such negligence is found to have been the sole cause of the damage.

The term "claims," as used in this Agreement, includes all direct or class actions or subrogation or inverse condemnation lawsuits brought by any person, entity or governmental agency in connection with the City's issuance of a building permit for the New Construction.

Notwithstanding the foregoing, the above obligation to defend, hold harmless and indemnify the City, its officers, employees and agents from and against any and all flood-related property damage claims premised on the issuance of a building permit for the New Construction shall not apply to any flood-related property damage that occurs when the Property no longer is located in a 100-year floodplain designated on a FIRM, as a result of future flood control improvements and subsequent remapping by FEMA to remove the Property that includes the New Construction from the 100-year floodplain (this does not apply to the Natomas Area until after December 2008).

8. Release From Indemnification. The undersigned shall be released from any obligation to indemnify the City as set forth in Section 7, above, if, at such time as the City seeks to enforce the provisions of Section 7, the undersigned demonstrate that they have conveyed all of the undersigned's interests in the New Construction to a third party and have fully complied with the provisions of Section 6, above.

9. Severability. The undersigned expressly intend that if any provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect

10. Attorney's Fees. The undersigned agree that if any legal action is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the nonprevailing party.

11. Insurance. The undersigned acknowledge that the City highly recommends obtaining flood insurance for the New Construction and the Property.

12. Succession; Recording. The undersigned expressly agree and intend that the obligations contained herein are covenants that benefit and run with the Property and the New Construction, in accordance with Section 1468 of the Civil Code, and the burden thereof shall be binding upon their respective constituents, heirs, assignees and successors in interest. The City may record this Agreement in the Office of the Sacramento County Recorder.

13. Prior Agreement. This Agreement shall supersede and replace the "Hold Harmless Agreement Regarding the Risk of Flooding to Real Property" dated _____ and recorded at _____ in the Office of the Sacramento County Recorder.

Dated: _____

SIGNATURE

Title of Signatory (if Signing for an Entity)

Name of Entity (if applicable)

Print Name

Address

SIGNATURE

Title of Signatory (if Signing for an Entity)

Name of Entity (if applicable)

Print Name

Address

Attach Notary Acknowledgment(s)