



FEMA

FEB 08 2010

The Honorable Kevin Johnson
Mayor, City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

Dear Mayor Johnson:

As administrator of the National Flood Insurance Program (NFIP), the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) works in partnership with community officials to ensure sound building practices in floodplains nationwide. The issuance of building permits for construction in identified floodplains is of significant importance in NFIP participating communities. In this regard, FEMA received correspondence from the Sacramento City Attorney's office regarding the Natomas development permits issued to K. Hovnanian Homes. We have completed an extensive review of the information provided and consulted with City officials regarding information requests and data clarification. Additionally, we conducted site visits to better understand the environment and characteristics of the area.

The City's November 3, 2009 letter concluded that what occurred in this case was new permission to go forward with single family homes to be built on lots different than those indicated on the approved permits, and that:

...new permission-whether by permit "transfer" or otherwise-should not be obtained after the effective date of the AE Zone to build a different home product on different lots, absent compliance with elevation requirements and construction with proper materials.

This interpretation of building permit transference in the November 3, 2009 letter aligns with National Flood Insurance Program requirements for new construction and substantial improvement. Title 44 of the Code of Federal Regulations (CFR) §60.3(a)(1) states that a community shall: ***Require permits for all proposed construction or other development in the community, including the placement of mobile homes, so that it may determine whether such construction or other development is proposed within flood-prone areas.*** A flood zone determination must be performed for all development to be located within a Special Flood Hazard Area (SFHA) using the effective Flood Insurance Rate Map (FIRM). Elevation and design requirements are based upon a specific site, and the intrinsic characteristics of each site do not allow a transfer without a new zone determination. Our understanding is that a new zone determination did not occur for 35 K. Hovnanian Homes' properties in the City of Sacramento.

We have completed a review of the Natomas area building data provided on October 20, 2009. The records indicate that the dates of the original 35 permits issued to K. Hovnanian Homes range from December 12, 2006, to December 5, 2008. These permits were then re-issued to 35 new locations within the Natomas area from April 22, 2009 to May 18, 2009. On and during these dates, the FIRM in effect for Sacramento was dated December 8, 2008, and the applicable

flood zones on the effective map were to be used as the basis for floodplain management and flood insurance rating, as required by the City's Floodplain Ordinance and FEMA's NFIP regulations.

Of the 35 building permits issued from April 22 to May 18, 2009, all sites have either finished construction or are under construction. Based on these permit dates, these structures do not meet the City's Floodplain Management requirements in Title 15, Chapter 15.104 Floodplain Management Regulations, under Provisions for flood hazard reduction.

The City's December 15, 2009 letter proposes that all 35 permitted dwelling units be completed, allowed to be occupied and insured under the Zone X rating. That option is not acceptable as it is neither consistent with NFIP regulations for new floodplain construction which are addressed above, nor is it permissible under flood insurance policy rating rules. Flood insurance risk ratings are determined by the start of construction as defined in Title 44CFR §59.1 "*Start of construction means the date the building permit was issued, provided the actual start of construction... was within 180 days of the permit date.*" The issuance of a flood insurance policy for these properties today or in the future, would obviously violate the 180-day regulation. The NFIP Flood Insurance Manual instructs insurance agents under Part IV (N) of the Application Section to use this definition for rating purposes in order to determine a flood insurance premium.

Accordingly, the flood insurance rating rules require that the structures built between April 22 and May 18, 2009 must be rated using the December 8, 2008 effective FIRM. These houses, when fully constructed, represent a significant exposure to flood damages, personal loss and potential emergency/disaster costs to your City. To comply with the City's adopted Floodplain Ordinance and Federal regulations, these structures must be brought into full compliance.

To that end, the City must develop and adopt a corrective action plan that will address the construction violations and will maintain the City's good standing in the NFIP and the Community Rating System (CRS) Program. The corrective action plan must provide specific remediation methods for all violations to ensure that each violation is fully corrected or mitigated, to the maximum extent possible by law. The plan's remedial elements may include but are not limited to:

- Elevation of the lowest floor to the appropriate Base Flood Elevation on the effective FIRM;
- Placement of "holds" on further issuance of Certificates of Occupancy; or
- Placement of "stop-work" orders on the non-completed structures.

Please provide your corrective action plan to our regional office by April 8, 2010, allowing you and your staff 60 days to develop the plan. To aid in this process, our regional staff will be available to provide technical assistance and guidance in the formulation of the plan.

Historically, the City of Sacramento has earned an impressive Class 5 rating in FEMA's CRS Program, which is a testament to its commitment to comprehensive floodplain management. As a result, 15,000 of the City's NFIP policy holders benefit from up to a 25% annual reduction in flood insurance premiums totaling approximately \$1,387,743 in flood insurance discounts. While we share your desire to maintain your status in the CRS Program and understand how important this financial benefit is to your citizens, it is important to recognize that FEMA requires that

every participating CRS community nationwide be fully compliant with NFIP regulations. To maintain the integrity and viability of the CRS Program, participating communities are expected to move expeditiously to remedy violations to the maximum extent possible. We stand ready to support the City of Sacramento in its expeditious efforts to address these existing violations.

NFIP participating communities are required to enforce floodplain management regulations that meet minimum NFIP criteria. Failure to develop a corrective action plan that remediates the known violations, will result in a finding that the City's floodplain management program is not compliant with NFIP criteria; and, therefore, the City is ineligible for the CRS Program. This ineligibility will result in a retrograde and the subsequent loss of all premium discounts on flood insurance policies. NFIP regulations at 44CFR §59.24 provide that a community which fails to adequately enforce floodplain management regulations meeting the minimum requirements set forth in 44CFR §60.3, shall be subject to probation and possible suspension. If the City of Sacramento is placed on probation, a premium surcharge of \$50 would be imposed on each flood insurance policy written or renewed in your City. Should the City of Sacramento be suspended from participation in the NFIP for failure to enforce their Floodplain Management Ordinance, federal flood insurance would not be available for more than 51,000 NFIP policy holders. Of potentially greater consequence, under existing regulations, certain types of federal disaster assistance could not be provided following a Presidentially-declared flood event. For example, no disaster assistance funds for repair or replacement of damaged homes in the mapped SFHA could be authorized. Additionally, permanent repair and restoration of publically owned facilities, such as damaged schools, could be prohibited.

We very much appreciate the swiftness and transparency of the City's notification of the Natomas building permit issue to our office on October 14, 2009. This action was consistent with our past partnership with the City of Sacramento staff and the community's commitment to floodplain management. In light of the City's past practices and experiences in implementing the NFIP, we pledge to work together with you in partnership to appropriately address these current violations and to maintain your good standing in the NFIP and its Community Rating System.

If you have any questions or need additional information regarding this matter, please contact me directly at 510-627-7100, or members of your staff may contact Cynthia McKenzie, Senior NFIP Specialist and lead for City/County of Sacramento, at 510-627-7190 or Cynthia.McKenzie@dhs.gov.

Sincerely,


Nancy Ward
Regional Administrator

cc: Ray Kerridge, City Manager
Eileen M. Teichert, City Attorney