

NON-CIRCULATING



FLOODPLAIN MANAGEMENT

newsletter

March 30, 1984

This issue marks the completion of one full year of the Texas Floodplain Management Newsletter. We have endeavored to keep you up to date on changes in the National Flood Insurance Program, (NFIP), make you aware of the most significant legal aspects of the program, and keep you informed of the various Floodplain Management activities being conducted around the state. This past year has seen many changes and still more are anticipated. We in the FIAP and TDWR will do our best to keep you informed. If there is some particular feature of the NFIP you would like to see clarified or discussed in the Newsletter, please let us know. Our telephone numbers are listed on the last page.

PUBLIC AWARENESS

The next few months will be the prime season for wide-spread flooding throughout Texas. Now is the time to start preparing your residents for the spring and summer thunderstorms and hurricanes. Newspapers, radio and television can all be used to get your message across. We have some excellent brochures that include simple effective steps to take before, during and after any flooding situation to reduce damages. Publicize your community floodplain management efforts and the National Flood Insurance Program. Your community leaders have taken the first step if they enrolled the community in the program. The next step, buying flood insurance, is up to the property owners, but they won't do it if they don't know that flood insurance is available and where to get it. Your public awareness program will do that.

LEGAL SEMINAR

The legal aspects of Floodplain Management and the National Flood Insurance Program (NFIP) were the subjects of a seminar held in Austin 7-9 February, 1984. Over 50 participants attended including Floodplain Administrators and staff attorneys from Texas cities and counties in the Regular phase of the NFIP. This was the third seminar we have conducted on the subject and all communities in the Regular phase have now been given an opportunity to attend. Communities in the Emergency phase will be invited to the next seminar later this year. As in the previous seminars, the session on liability of individuals, builders, developers, and governmental units generated the most interest and discussion. We have been fortunate to obtain the services of Dr. Jon Kusler as our primary speaker at the seminars. Dr. Kusler is a practicing lawyer who has specialized in Floodplains and Wetlands law for many years, and is a recognized expert in the field. Some interesting Texas cases were included in the program and several Texas attorneys in attendance helped focus the discussions for maximum benefit.

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COURT HOLDS DEVELOPER AND COMMUNITY LIABLE FOR FLOOD

Most of you have read about the two cases in Louisiana where FEMA is seeking to recover \$120 million paid out in flood insurance claims due to "negligence" and "breach of contract" in administering the Floodplain Management Program. In separate actions the developers and the community were also sued by various homeowners in the same locales. The following is an update of those actions.

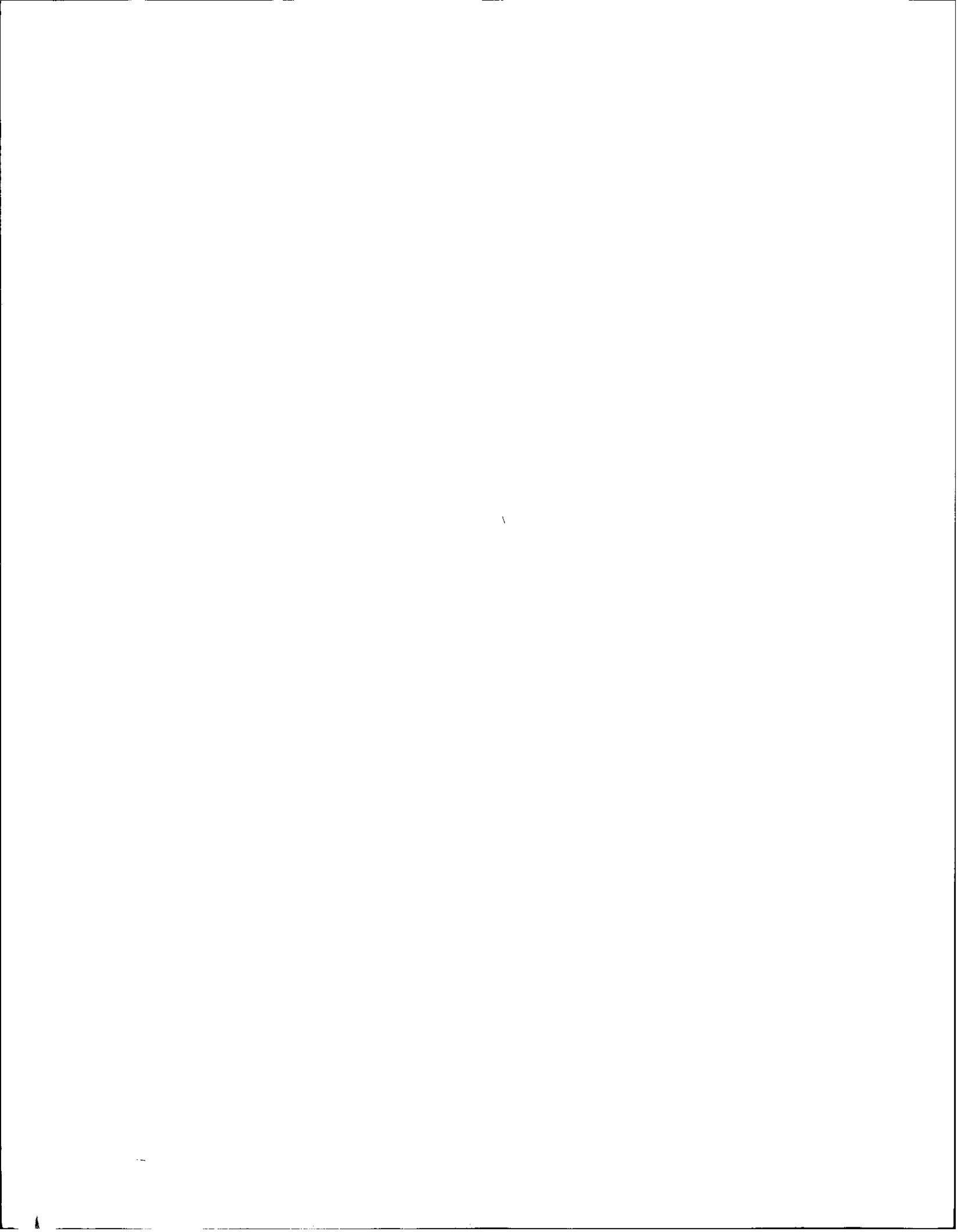
In an opinion with far-reaching implications, the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, has ruled in favor of various homeowners who claimed that flood damage to their homes and properties was caused by the negligence of their developer and the community in which they lived. They alleged that the Parish of Jefferson was negligent by the acceptance of streets in a flood-prone area and by allowing the construction of their homes to take place in a flood-prone area, particularly knowing that the sub-surface soil conditions were not conducive to adequate drainage.

The Plaintiffs also alleged negligence against their developer, by suggesting that he failed to properly design and create adequate drainage for the area in which their homes were located and failed to warn homeowners of the dangerous condition in spite of the fact that the developer had knowledge that the elevations of the homes and soil conditions were inadequate to prevent severe flooding in the area.

The Court recognized that in spite of excessive rainfalls, other causative factors, such as poor design, negligence in allowing development to take place at elevations too low, and an improper reliance on the community's permitting processes, in part led to the damage suffered by the Plaintiffs, and, therefore, for their part, the Defendants could be held liable.

This case is particularly significant insofar as the Parish being held liable is one of two named Defendants in United States v. Parish of Jefferson. That \$120 million lawsuit alleges that the Defendants' negligence and breach of contract caused flood damages in those parishes, for which FEMA was required to pay flood claims. The Federal government's subrogation suit in the Parish of Jefferson and St. Bernard, Louisiana, constitutes the government's first and largest attempt to recover millions of dollars worth of flood claims paid to insured where it feels the community has largely ignored its common law duties to maintain drainage and uphold its responsibilities under the floodplain management regulations of the NFIP.

The above article was extracted from the Association of State Floodplain Managers, Inc., News and Views, December 1983.



NEW DEDUCTIBLES AVAILABLE 1 APRIL

The following information is included in all flood insurance renewal notices being sent out after February 1, 1984. The optional deductibles can substantially lower insurance premiums, but property owners who have insurance as a condition of their mortgage should check with their mortgagor before making any changes in their coverage. Also, the deductible has to be paid by the insured when flood damage occurs and this can hurt.

National Flood Insurance Offers Optional Deductibles

Beginning April 1984, flood insurance policies are available to you with some newly authorized options. You have a choice to retain the standard deductible and current premium schedule, or to select one of the optional larger deductibles with a reduced premium level.

If you want more information or want to select one of the options listed below, call your flood insurance agent or broker. Be sure to let your mortgage holder know about any changes you plan to make.

Effective April 1, 1984, the following standard deductible options are available for all policies:

Category I — 1 to 4 Family Building and Contents Policies

Building/Contents	Discount
\$ 500/\$ 500	Standard
\$1,000/\$1,000	10%
\$2,000/\$1,000	15%
\$3,000/\$1,000	20%
\$4,000/\$2,000	30%
\$5,000/\$2,000	35%

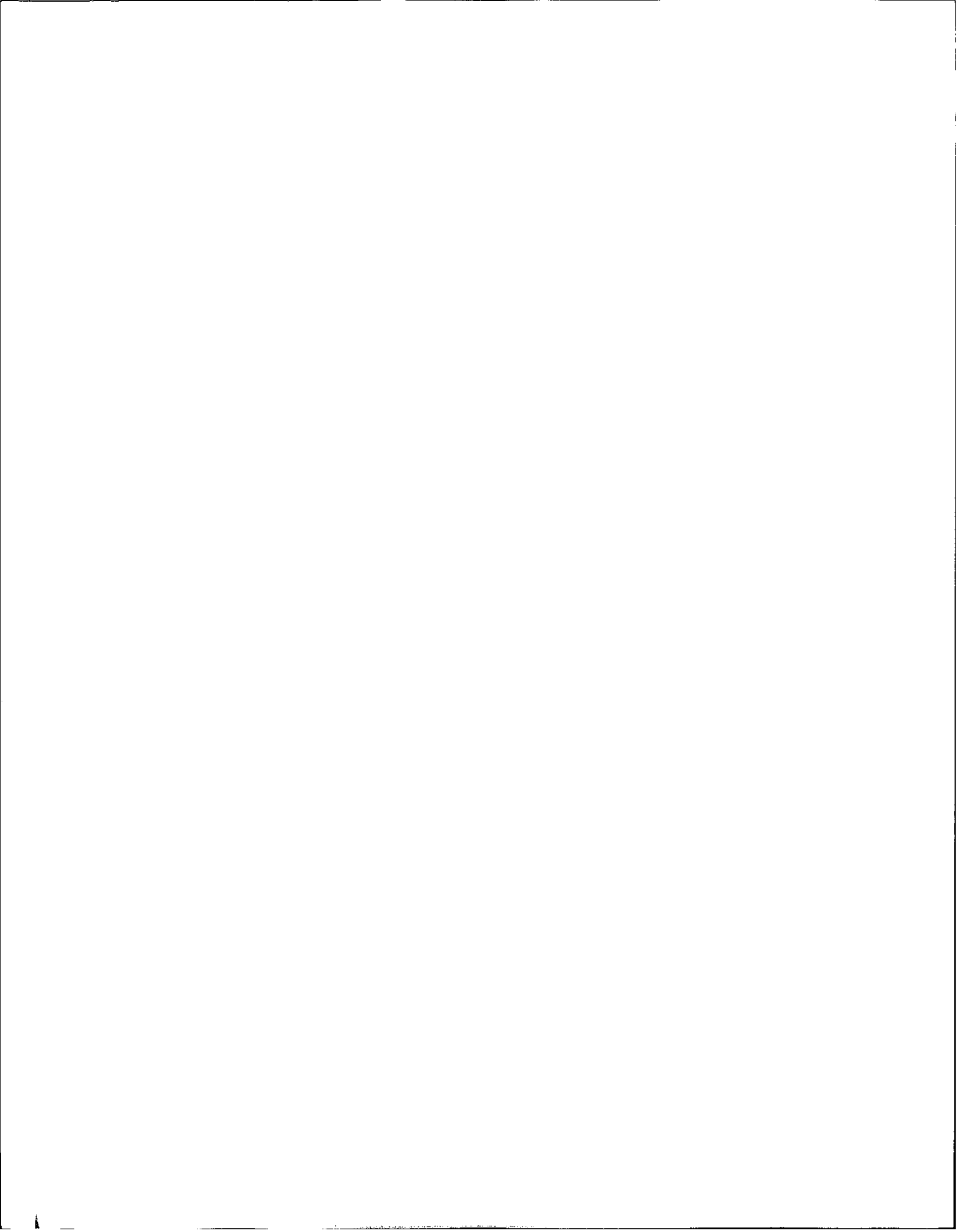
Category II — 1 to 4 Family Building Only or Contents Only Policies

Building	Discount	Contents*	Discount
\$ 500	Standard	\$ 500	Standard
\$1,000	10%	\$1,000	10%
\$2,000	15%	\$2,000	15%
\$3,000	20%	\$3,000	20%
\$4,000	30%	\$4,000	35%
\$5,000	35%	\$5,000	40%

*Also applies to residential contents in other residential buildings or in multi-unit condominium buildings.

Category III — Other Residential and Non-Residential Policies

Building and Contents	Amount	Building Only	Contents Only
\$ 500/ 500 Standard	\$ 500	Standard	Standard
\$1,000/1,000	5%	5%	5%
\$2,000/2,000	10%	10%	10%
\$3,000/3,000	15%	15%	15%
\$4,000/4,000	20%	20%	20%
\$5,000/5,000	25%	25%	25%



HOW DO YOU HANDLE NON-COMPLIANCE

Let us start at the beginning. Your city Ordinance or county Court Order spells out your Floodplain Management Program requirements. Does it include a penalty clause? Voluntary compliance is great and you will get it 99 percent of the time. But, sooner or later, you are going to be tested and if you do not have the clout in your Ordinance/Court Order to get the offender's attention, you are in a tough spot. FEMA is not going to accept an after-the-fact variance and even if the offending property owner does not want, or need, flood insurance, your whole program could be in jeopardy with FEMA if you do not enforce the floodplain management regulations. Your community regulations should include a penalty clause with a specified fine and making each day of non-compliance a separate offense. Having said all that, you as the Floodplain Administrator have knowledge of your community floodplain and know the damage that can result from a flood. The property owner probably does not and that is the basis for your obligation to carry out proper floodplain management actions. Looking after people can at times be a painful experience, but, it does not diminish the obligation, not even in the tranquility of a dry floodplain.

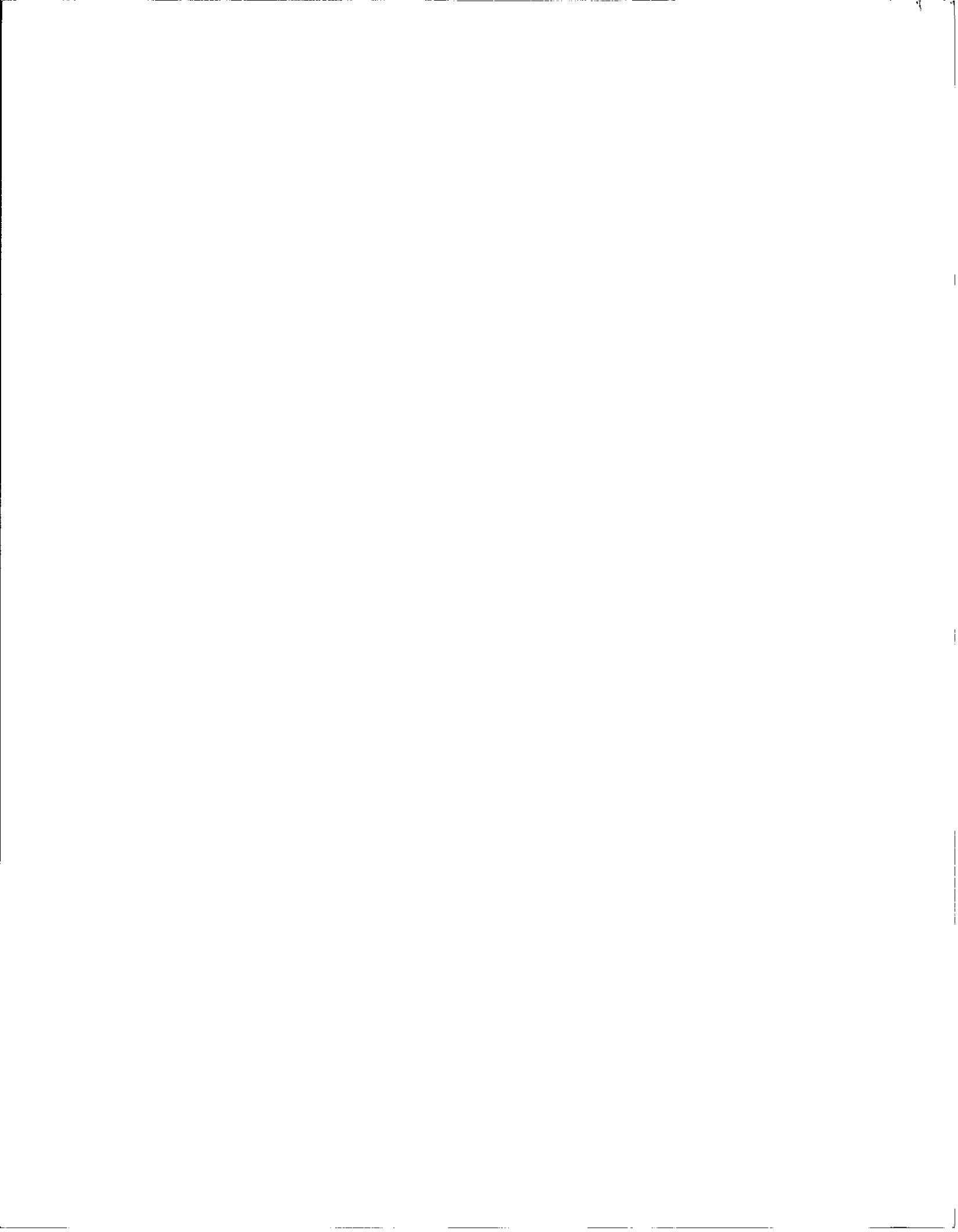
N F I P COMMUNITY STATUS

According to Everett Rowland of Texas Dept of Water Resources, Texas currently has 780 out of 1,236 communities participating in the National Flood Insurance Program. This compares with 771 in the program a year ago. Although it is estimated that 90% of the Texas floodplain population now has access to flood insurance, there remain four hundred fifty-six (456) communities in the state which have a flood hazard area but are not in the program. If yours is a non-participating community, please call Texas Dept of Water Resources for assistance in qualifying for participation in the NFIP, (512) 475-2171

THE WEAKEST LINK

A recent glitch in the permitting process in one city in Texas reminds us that Murphy's Law is alive and well. If anything can go wrong, it will. This city handles so many building permit requests that the Floodplain Administrator cannot physically review them all and reviews only those that another reviewer has determined to be in the floodplain. You guessed it. The critical step in this whole process then fell to clerks with only minimal training in reading the floodplain maps and they missed a call. By the time it was discovered at the mortgage company level, several houses had been built and one had been sold. Big mess! The lesson is clear, be sure your personnel involved in the permitting process are trained to handle the critical steps. All marginal situations should be reviewed by the Floodplain Administrator.

For counties, whose real authority to require construction permits only includes the 100 year floodplain, this could be even more sticky. Unless you require, at least, an application for all building permits then grant exemptions to those structures you determine will not be in the 100 year floodplain, you could be faced with a similar situation.



PROGRAM EVALUATION

How prepared are you for a CAPE, today? CAPE is the FEMA acronym for Community Assistance and Program Evaluation visit. The objective is to assure FEMA that your community is managing the floodplain as it agreed to do when it entered the National Flood Insurance Program and to help you solve any problems. There is increased emphasis on CAPEs in Texas this year, in fact, increased emphasis throughout FEMA Region VI.

When FEMA representatives call on your community, will you be ready? The following is a check list of things you can do to help you and your community have a good floodplain management program and be prepared for a CAPE:

1. Make sure that locally adopted floodplain management regulations are, at a minimum, consistent with FEMA criteria established under Section 60.3
2. Make sure that local regulations are enforced.
3. Are you reviewing all development permits to determine if a flood hazard exists?
4. Are new residential structures being elevated to or above the 100-year base flood elevation?
5. Are new non-residential structures being elevated or floodproofed up to or above the 100-year base flood elevation?
6. Are you keeping records of
 - a. Elevations of lowest first floor (including basements)?
 - b. Elevations of floodproofed buildings?
 - c. Other permits issued for filling, dredging or other changes to the 100-year plain?
7. Can you produce these records if asked to do so?
8. Does the community inspect development to verify "as built" elevations?
9. Does the community perform periodic inspections to determine if structures have been altered or substantially improved?
10. Has the community prevented any encroachments in the floodway?

Remember, the three keys to a good program and a good CAPE are documentation, documentation, documentation.

ANNEXATION OF TERRITORY

If your community has changed its boundaries and has not advised FEMA or TDWR, please do so as soon as possible, so that appropriate adjustments can be made in your floodplain maps

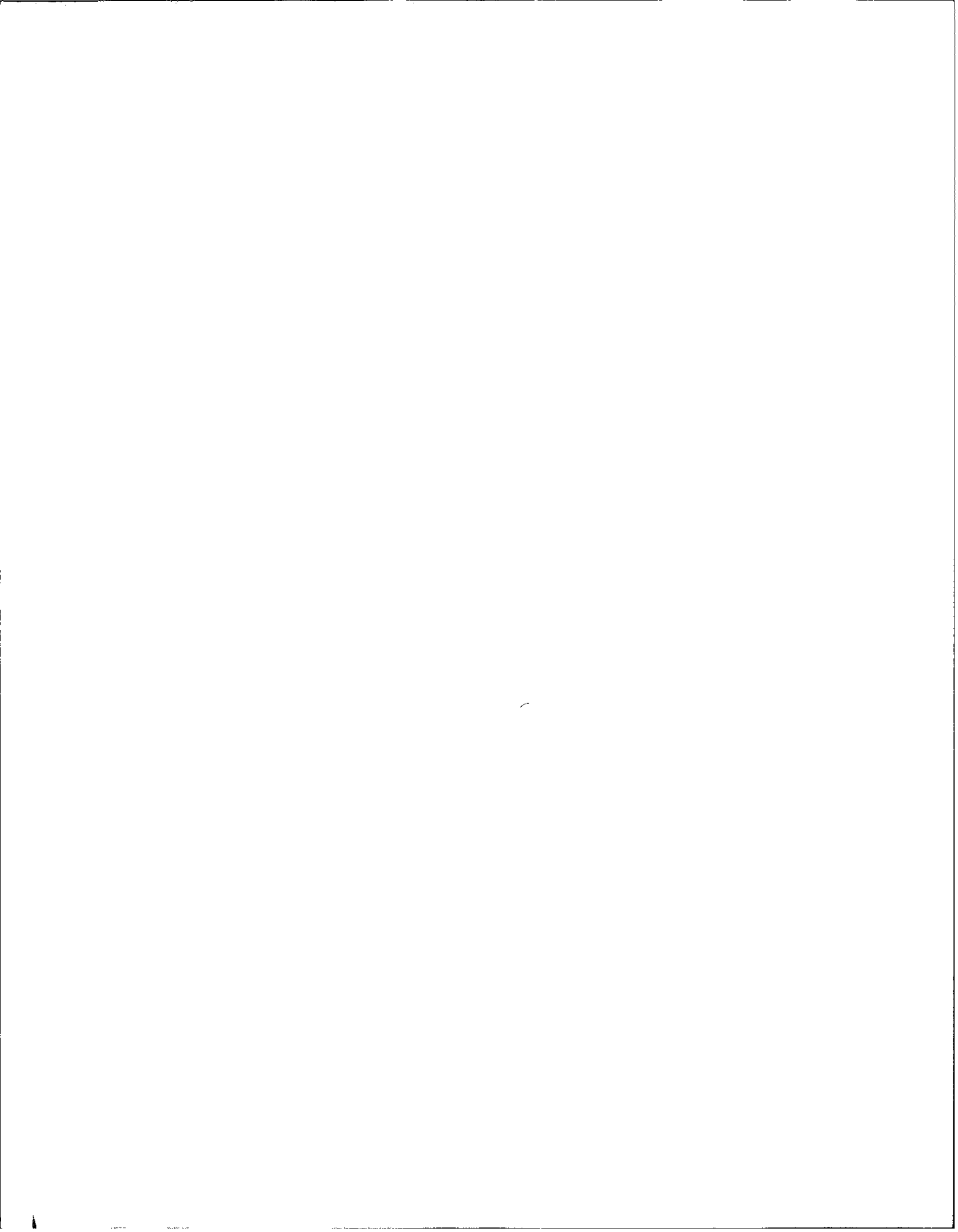
PAST EVENTS

FIAP/Texas Dept of Water Resources coordinated activities last quarter.

January 2	Published State of Texas Floodplain Management Newsletter - Austin
January 11	Presented FIAP and NFIP to Emergency Management Workshop - Austin
January 18	Regional Floodplain Administrators Meeting - Killeen
January 25	Floodplain Management Workshop for Tarrant County, Fort Worth and 3 cities - Fort Worth
February 3	Participated in Flood Insurance Sales Seminar - Houston
February 7-9	Floodplain Administrators Floodplain Management Legal Seminar - Austin
February 15	Tour of Texas Parks and Wildlife, Triton Flood Warning System - Pedernales Falls State Park
February 21-23	Participated in Annual State Emergency Management Conference - Austin
March 15	Floodplain Management Workshop Hearne, Robertson County, Bremond, Calvert and Franklin - Hearne
March 28	Presented FIAP and NFIP to Emergency Management Workshop - Austin
March 28	Regional Floodplain Administrators Meeting - Commerce

Texas Department of Water Resources Activities

January 9	Community Assistance Visit for possible entry in Program - Hale County
January 10	Attended Houston/Galveston Flood Control Forum - Houston
February 27	Floodplain Management presentation to Highland Lakes Realtors
February 28	Community Assistance Visit - Marble Falls
March 5	Participated in joint visit, TDWR Floodplain Hydrology Course - Austin
March 5-8	Participated in Flood Hazard Mitigation Course - San Francisco, California
March 6	Participated in Public Meeting - Bailey's Prairie
March 7	Community Assistance Visit - Brazoria County
March 18	Community Assistance Visit - Fayette County
March 30	Floodplain Management presentation to Fayette County Commissioners Court
January 1-March 31	Handled 300 requests for Floodplain Maps - Austin



COMING EVENTS

FIAP/Texas Dept of Water Resources for the April, May, and June quarter have been scheduled as follows

April 9	Wilson County Luncheon Presentation
April 9	Wilson County Mini Workshop at the Public Library in the City of Floresville, (2:00 p.m. to 4:00 p.m.)
April 10	Bay City/Matagorda County Workshop in District Courtroom # 1, Bay City (1:00 to 4:00 p.m.)
April 19	Region 5 Floodplain Management Meeting - City of Wichita Falls at the Regional Education Center
May 9	Manvel, Alvin, Pearland Workshop in the Community Center at Pearland. (6:00 p.m. to 9:00 p.m.)
May 16	Region 4 Floodplain Management Meeting - City of Midland in the City/County EOC
June 5	Region 3 Floodplain Management Meeting - City of Harlingen at the Community Center.
June 11-15	Meeting of Association of State Floodplain Managers - Portland, Maine
June 11-15	Hurricane Exercise - Texas upper Coast
June 27	City of Sherman/Grayson County Workshop in the Municipal Building (6:00 p.m. to 9:00 p.m.)

FLOODPLAIN CONSTRUCTION PERMIT RECORDS

These records, as you probably know, should be maintained for "public inspection" according to NFIP General Provisions Part 59 22(a)(g) (iii) The reference paragraph does not explain how to set up the file on such records but a couple of procedures have been discussed around the state One way and probably the best way for an active, voluminous file is to set the floodplain permits and records in a separate file. In this case a cross reference may be necessary in order to relate floodplain to regular files. A second way may be to maintain a single file for all permits and color the tabs on floodplain folders a different color for easy reference. A third system may be a single log identifying floodplain records so that, from the log, they may be easily extracted from the files. There are many more file set ups which will work satisfactorily. The three briefly described here are the most popular for quick and ready reference in answering questions by the owner, insurance companies, real estate people, developers, etc , and FEMA.



FLOOD INSURANCE SALES WORKSHOP

The NFIP Insurance Sales Workshops have been scheduled for Texas in May and July. Floodplain Administrators are encouraged to pass this information to insurance companies in their jurisdiction. Although Floodplain Administrators do not sell insurance, the computation of insurance premiums, based on house or business type in relation to the BFE, can be valuable information to have in processing building permits for structures proposed for the floodplain. The schedule is as follows.

Houston	Holiday Inn 1300 NASA Rd.	Thursday April 26, 1984
Dallas	Holiday Inn 4070 N Central Expwy	Tuesday May 1, 1984
Wichita Falls	Holiday Inn 8th & Scott	Wednesday May 2, 1984
Abilene	Holiday Inn I-20 & Hwy. 351	Thursday May 3, 1984
Fort Worth	Holiday Inn-Midtown I-30 exit Univ. Dr. So	Friday May 4, 1984
Victoria	Holiday Inn 2705 E. Houston Hwy	Tuesday May 8, 1984
Corpus Christi	Holiday Inn-Padre Island N Windward Dr.	Wednesday May 9, 1984
San Antonio	Holiday Inn-NW 10 I-10 at Vance Jackson	Thursday May 10, 1984
Austin	Ramada Inn 9220 N IH-35 at Rundburg	Friday May 11, 1984
Harlingen	Holiday Inn Jct US 83 & 77 Expwy	Tuesday May 15, 1984
Beaumont	Holiday Inn I-10 at 2095 N 11th St	Thursday May 17, 1984
Houston	Holiday Inn-North I-45 & 1960 exit Richey Rd.	Tuesday May 22, 1984
Houston	Holiday Inn-NASA 1300 NASA Blvd.	Wednesday May 23, 1984
Houston	Holiday Inn-I-59 So. exit West Bellfort Ave.	Thursday May 24, 1984
Houston	Holiday Inn I-10 W exist Gessner Rd	Friday May 25, 1984
Amarillo	Holiday Inn 1911 I-40 at Ross	Thursday July 26, 1984
Lubbock	Holiday Inn-Casa Grande Loop 289, exit Avenue H	Friday July 27, 1984

For further information on any of these events, please contact Keith Krause toll-free at 1-800-792-1123

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