

Agenda of December 10, 2009

**TO: Board of Directors
Sacramento Area Flood Control Agency**

**FROM: Stein M. Buer, Executive Director
(916) 874-7606**

SUBJECT: EXECUTIVE DIRECTOR'S REPORT FOR DECEMBER 2009

1. Extended Deadline for Natomas Preferred Risk Flood Insurance Renewal

On November 17, 2008, prior to the Federal Emergency Management Agency (FEMA) re-mapping of the Natomas Basin to a high flood risk zone rating on December 8, 2008, Congresswoman Doris Matsui urged FEMA to provide homeowners in the Natomas basin with a one-year extension for renewal of Preferred Risk flood insurance policies (PRP's) (See Item 14, Agenda of December 11, 2008, Executive Director's Report). The intent was that any homeowner who renewed an existing PRP or purchased a new PRP in 2008 prior to the deadline would be able to renew that policy in 2009 for one additional year, beginning with the date of renewal. David Paulson, FEMA Administrator, granted Congresswoman Matsui's request.

However, there was a glitch. PRP's don't take effect for 30 days after the renewal application is filed by a homeowner. Those homeowners who waited until the last 30 days prior to the December 8 re-mapping deadline would not normally be eligible for the one-year renewal because their renewal date arrives after the December 8, 2009 renewal deadline. In order to correct this inadvertent outcome, Congresswoman Matsui requested, and FEMA granted, a 30-day extension of the renewal deadline, to January 5, 2010 (Attachments 1 and 2). It is important that homeowners who renewed during this 30-day window last year take advantage of this administrative grace period; any policy which lapses can only be renewed at the higher rate associated with the high flood risk rating now assigned to the Natomas basin.

2. Updating Federal Executive Order, E.O. 11988, Floodplain Management

Status and Proposed Actions

The Obama Administration is currently considering the issuance of an update to Executive Order (EO) 11988, Floodplain Management (May 24, 1977). While there has not been an official release of the new guidelines in draft format, a working draft, dated June 5, 2009 (Attachment 3), has been widely circulated and is eliciting interest and concern among reviewers because it would establish significantly more

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stringent constraints upon Federal agencies with regard to their activities affecting floodplains than the current Executive Order does.

The draft requires a more formal consideration of alternatives, including the no-action alternative and a more thorough public review and comment process. Perhaps the most significant proposed change would be that the draft order would prohibit Federal agencies from supporting "critical actions" in 500-year floodplains (i.e. 0.2 percent risk of flooding in any given year) unless there were no practicable alternatives outside of the proposed area of the action. The draft order defines "critical actions" as those for which "even a slight chance of flooding is too great", such as those involving hospitals, nursing homes, police and fire stations, data storage centers, utility facilities, and facilities involving hazardous materials. Since much of the Central Valley lies within the 500-year floodplain, this requirement could have far-reaching effects. In addition, when the 500-year criterion is viewed through the lens of the Corps' Risk and Uncertainty approach to hydrologic risk assessment, the effective threshold for this criterion could be pushed much higher than the 500-year level.

SAFCA staff is working with other local jurisdictions, including the City of Sacramento, County of Sacramento, City of West Sacramento and others to evaluate the proposed draft and coordinate on the preparation of recommendations for consideration by the Obama Administration. Staff anticipates briefing the SAFCA Board on this issue and seeking policy concurrence for proposed recommendations at the January 21, 2010 SAFCA Board Meeting.

Background

Executive Order 11988 directs Federal agencies to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. The purpose of this directive is "to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative."

Guidance for implementation of EO 11988 is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 CFR 6030; February 10, 1978) and in "A Unified National Program for Floodplain Management", prepared by the Federal Interagency Floodplain Management Taskforce.

In 1982, the Interagency Task Force on Floodplain Management published additional guidance on the implementation of EO 11988. Additional standards were developed to protect human safety, health and welfare. These standards apply to "critical actions," which are defined by the Water Resources Council Floodplain Management Guidelines as "any activity for which even a slight chance of flooding would be too great. The critical action floodplain is defined as the 500-year

floodplain."

To assist in determining whether a proposed action is a "critical action", the following questions must be answered. If any answer is in the affirmative, the proposed action is considered a "critical action" and therefore subject to a higher standard.

- If flooded, would the proposed action create an added dimension to the disaster, as could be the case for liquefied natural gas terminals and facilities producing and storing highly volatile, toxic or water-reactive materials?
- Given the flood warning lead-time available, would the occupants of buildings such as hospitals, schools and nursing homes be sufficiently mobile to avoid loss of life and injury?
- Would essential and irreplaceable records, utilities and/or emergency services be lost or become inoperative if flooded? (Interagency Task Force on Floodplain Management 1982)

The new draft executive order would incorporate these concepts.

3. Recent Real Property Acquisition Issues

SAFCA's right-of-way acquisition team makes every effort to acquire the property rights needed to implement its projects in a fair, open and accommodating manner, while moving the process forward at a pace sufficient to meet our public safety goals. The team recognizes that the right-of-way acquisition process can be very disruptive and traumatic for property owners and tenants, particularly when dwellings must be removed or businesses disrupted to make way for project facilities. In large part, the team has been able to acquire these rights through patient negotiations keyed to the individual needs of property owners.

Unfortunately, for a variety of reasons often connected directly or indirectly to property valuation and current market conditions, these negotiations occasionally fail and SAFCA is reluctantly forced to move forward with the formal eminent domain process in order to keep its projects on schedule. One such recent case is the acquisition of the Horangic property for the Natomas Levee Improvement Program, which went to trial before a settlement could be agreed upon.

Beginning with the March 20, 2008 meeting of the SAFCA Board, at which it considered and passed a Resolution of Necessity for acquisition of the Horangic property, representatives of the Horangic family have made presentations to the SAFCA Board and sent letters to the members of the Board and other elected officials, protesting the acquisition and alleging abusive, unfair and unethical treatment by SAFCA's representatives. The SAFCA team has sought to disregard the numerous allegations made by the Horangics and their representatives, as tactics of negotiation, preferring to focus on the facts which could lead to a successful resolution. However, I believe that it would be a disservice to the Agency, its consultants and the public interest to let all of these allegations of abuse go unanswered. Therefore, for the record, staff has responded to the public

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comments provided by William Chisum and Craig Horangic during the November 13, 2009 public meeting. The meeting transcript for this portion of the meeting, along with SAFCA staff responses, is attached for reference (Attachment 4).

On a positive note, SAFCA recently reached agreement with the Ms. Danese Heinrich on the acquisition of her property. At the November 16, 2009 meeting, the Board adopted Resolution No. 09-159 declaring the necessity to acquire this property for the Sacramento River East Levee Improvement Project component of the Natomas Levee Improvement Program. Ms. Heinrich's property is located between Powerline Road and San Juan Road. It is a rural residential parcel of approximately one acre with a single family home of approximately 2,182 square feet. Ms. Heinrich was presented with an offer of \$300,000 on September 3, 2009 supported by an appraisal from Ronald G. Garland of Garland & Associates. Ms. Heinrich obtained a separate appraisal from Richard H. Davis of R.H. Davis & Co. Ltd. which set the value at \$350,000. This appraisal was provided to SAFCA on or about October 26, 2009 and was reviewed by Cydney Bender of Bender Rosenthal Inc. She concluded that the "value conclusion of \$350,000, is considered reasonable and acceptable." Therefore, SAFCA will be entering into a Purchase and Sale Agreement with Ms. Heinrich for \$350,000 which I will execute pursuant to the delegated authority of Resolution No. 09-128.

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Attachment(s)