

Utah Natural Hazards Legal Workshop

September 20-21, 2012

Doubletree Hotel
110 West 600 South
Salt Lake City, Utah



Workshop Description

A special two day Utah Natural Hazards Legal Workshop will begin at 8:30 am MDT on September 20, 2012. This special workshop, sponsored by the State of Utah and the Natural Hazard Mitigation Association will bring together Utah experts and national engineering, planning, architectural and legal experts in a session designed to promote a safer more resilient future for communities. This event is designed for everyone involved in making community development decisions: Legal experts, community officials, developers, architects, engineers, government leaders, and floodplain managers are strongly encouraged to attend. This course teaches Natural Hazards and how they affect all aspects of community development, using both Utah and nationally recognized experts in the fields of law, planning, architecture & low impact design and engineering.

This workshop will:

- a) explain the ancient legal roots of the National Flood Insurance Program and “No Adverse Impact”, or “Safe Development”;
- b) demonstrate how floodplain management and other forms of regulation designed to prevent harm can be structured to avoid much, if not all, of the uncertainty surrounding the “Takings” issue;
- c) explain how property rights principles support floodplain and other natural hazard regulations;
- d) demonstrate that local floodplain management designed upon the “Safe Development” or “No Adverse Impact” concept is not anti-development but rather protects everyone’s property rights,
- e) examine legal risks for areas protected from flooding by dams and levees;
- f) demonstrate how to successfully negotiate towards a safer community future; and
- g) explore opportunities for floodplain managers to work more closely with developers, architects, engineers and all others involved in community development to build a safer future for Utah and the entire Nation.



Agenda

Thursday, September 20

- 8:30 – 9:00 AM **Coffee Served, Welcome and Self-Introductions**
John Crofts, CFM
Utah Dept. of Public Safety – Division of Emergency Management
- 9:00 – 10:00 AM **Introduction to the Legal Issues**
Edward A. Thomas, Esq.
Natural Hazard Mitigation Association
- 10:00 -11:00 AM **Future Uncertainty and Flood Mapping: What If Future Rainfall Patterns Change?**
Dr. Ahmad Salah
Stanley Consultants
- 11:00 – 11:15 AM **Break**
- 11:15 – 12:15 PM **“Design the watershed to protect and sustain community livelihood, resources and legacy”**
Donald Watson, FAIA, NCARB
Natural Hazard Mitigation Association
- 12:15 – 1:30 PM **Lunch – Keynote Speech**
Judy Soutiere, CFM
Utah Silver Jackets
- 1:30 – 4:45 PM **Property Rights and Floodplain Management**
A) The Safe Sustainable Development or No Adverse Impact (NAA) Principle Concept
B) Legal Roots of the Safe Sustainable Development/Do No Harm (No Adverse Impact) Principle
C) National Flood Insurance Program
D) Community Rating System
Edward A. Thomas Esq. and Erin Capps, B.S., JD
Natural Hazard Mitigation Association & H2O Partners



4:45 – 5:45 PM

The Great Shakeout

Bob Carey

Utah Earthquake Program Manager

6:00 – 7:30 PM

Reception



Friday, September 21

- 8:30 – 9:30 AM **Coffee Served, Morning Speaker – Integration with Local Planning Efforts: Linkages with Community Planning**
Barry Hokanson, AICP
Natural Hazard Mitigation Association
- 9:30 – 11:30 AM **Negotiations for Floodplain Management**
Edward A. Thomas, Esq. & David Mallory, PE, CFM
Urban Drainage and Flood Control District
- 11:30 – 11:45 AM **Break**
- 11:45 – 12:30 PM **Using the Tools Available**
Edward A. Thomas, Esq.
Natural Hazard Mitigation Association
- 12:30 – 1:45 PM **Lunch – Speaker**
“Imagine an equitable, prosperous and resilient future.”
Donald Watson, FAIA, NCARB
Natural Hazard Mitigation Association
- 2:00 – 3:30 PM **Exercise: Putting it all Together**
Edward A. Thomas, Esq. & Alessandra Jerolleman, MPA, CFM
Natural Hazard Mitigation Association
- 3:30 – 4:30 PM **Panel: Current and Future Trends in Hazard Mitigation**
A) PPD 8
David Mallory, PE, CFM
Urban Drainage and Flood Control District
B) THIRA
Alessandra Jerolleman, MPA, CFM
Natural Hazard Mitigation Association
C) Post-Disaster Tool Kit
Edward A. Thomas, Esq.
Natural Hazard Mitigation Association



D) Building Community Resilience through Peer Networks

Alessandra Jerolleman, MPA, CFM

Natural Hazard Mitigation Association

4:30 – 5:15 PM

Closing Discussion



Speaker Biographies

Erin Capps, B.S., JD

Erin Capps is a licensed attorney with expertise in the Stafford Act and integrating 44 CFR Sections 404 and 406. As Project Manager at H2O Partners Inc., Erin oversees the development of FEMA Hazard Mitigation Assistance (HMA) plans and grants as well as Public Assistance (PA) recovery efforts and helps develop and manage Community Development Block Grants (CDBG). Ms. Capps is involved in reviewing and researching legislation as it relates to natural disasters, including the Flood Insurance Reform Act (FIRA). She has worked closely with cities, counties, regional groups, non-profits, and state and federal agencies with planning and recovery efforts to help build resilient communities, and this broad experience in working with different stakeholder groups has helped shape her understanding of 44 CFR, how it is interpreted and how it can be used to leverage funding for various entities.

Ms. Capps holds a Juris Doctor from Baylor University School of Law and a Bachelor of Science degree in Advertising with a specialization in business from the University of Texas at Austin.

Bob Carey

- College: Westminster College 1976 BS Environmental Studies
Salt Lake City, UT BS Geology
- Currently, Operations Section Manager and Operations Chief, Utah Division of Emergency Management.
- Also, Earthquake Program Manager, Utah Division for Emergency Management, serving in that position for 20 years and in state service for over 22 years.
- Staff to the Utah Seismic Safety Commission
- Committee Member on the URM Ad-hoc Committee
- Committee Member on the Utah Committee for Urban Strong Motion Monitoring
- State Delegate to the Western States Seismic Council
- Committee Member on the Basin and Range Subcommittee
- Team Member of Multi-Agency Damage Evaluation Team for the Wells Earthquake
- Team Leader of Multi-Agency Evaluation Task Force for the 1994 Northridge Earthquake
- Team Member Utah Division of Comprehensive Emergency Management Response Team for the 1992 St. George Earthquake
- Member of the Structural Engineers Association of Utah Existing Buildings Committee
- Member of the Utah State Hazard Mitigation Team
- Member of the Utah Chapter of the Earthquake Engineering Research Institute



John Crofts, CFM

John Crofts has been with the Utah State Department of Public Safety Division of Homeland Security for nine years as a Planner, Utah FEMA Map Modernization Support Program Coordinator, and now the State Floodplain Manager.

As the Utah Floodplain Manager John is a technical resource for Utah communities and assists FEMA Region VIII in managing the Utah NFIP program. He plays an integral role in helping FEMA implement goals, objectives, directives, and NFIP compliance. John has worked several Utah disasters. He has been deployed to Florida for hurricane recovery efforts, and to Mississippi after Hurricane Katrina. He has received commendations from former Governor Herbert, and past Governor Huntsman for emergency management efforts and NFIP guidance to communities. The States of Florida and Mississippi also gave Crofts special recognition and commendation for disaster recovery assistance.

John is active in the Utah Floodplain and Stormwater Management Association (UFSMA), and is also an active member of the International Association of State Floodplain Managers (ASFPM), which now has over 14,000 members. Crofts recently finished her term as Treasurer for ASFPM. Crofts has presented multiple times at UFSMA and ASFPM on emergency management and floodplain issues. Crofts is committed to No Adverse Impact (NOI) and works continually to assist communities, residents, business, property owners and others to meet NFIP compliance. He assists many communities, property owners, attorneys, developers, insurance professionals, local, state, and other federal government agencies understand and comply with NFIP requirements.

John is a Certified Floodplain Manager (CFM), and holds a bachelor's degree from Brigham Young University. Crofts received a Masters of Business Administration. Crofts works to achieve cooperation, excellent communication, compliance, bridge differences to find solutions to NFIP related issues.



Barry Hokanson, AICP

Mr. Hokanson has more than 45 years of urban planning experience with agencies in California, Texas, Kansas, Iowa and Illinois, with responsibility for environmental and development regulations, building codes, transportation planning, strategic planning, community development, economic development, stormwater and floodplain management, decision support technology, facilities management systems, emergency response planning and post-disaster recovery planning in both urban and suburban areas. He has managed large staff groups in city and county governments, including extensive interaction with elected and appointed officials. Prior to work as a subcontractor in FEMA's long-term community recovery program for Louisiana, Texas and Tennessee (2005 to 2011), Mr. Hokanson held executive and consulting positions in regions such as Kansas City, Chicago and Dallas. He is active in professional organizations such as the American Planning Association and the Natural Hazard Mitigation Association. Mr. Hokanson is a frequent presenter on urban planning, disaster recovery and mitigation topics at conferences, seminars and university classes. He holds a master's degree in urban and regional planning from the University of Iowa.

Alessandra Jerolleman, MPA, CFM

Alessandra Jerolleman is the founder and Executive Director of the Natural Hazard Mitigation Association (NHMA). She is also a Program Specialist in the Gulf Coast with Save the Children USA, working on a resilience initiative around children's needs in emergencies. She currently serves as one of the Tri-Chairs for the National Hazard Mitigation Collaborative Alliance, sits on the board of the Greater New Orleans Disaster Recovery Partnership, and sits on the Executive Committee of the American Society of Public Administration's Section on Emergency and Crisis Management. She is the co-author of a textbook, "Natural Hazard Mitigation," which will be published by CRC Press in 2012. She is currently a doctoral candidate at the University of New Orleans. Ms. Jerolleman has acquired wide-ranging experience in the private, non-profit, and academic sectors.

Ms. Jerolleman's experience includes the following: hazard mitigation planning at the local, state and campus level; community education and outreach regarding mitigation measures and preparedness; development of collaborative networks and information sharing avenues among practitioners; and, delivery of training and education to various stakeholders. She is involved in various aspects of planning and policy at the national and local level, including participation in several workshops each year. Ms. Jerolleman speaks on many topics including: hazard mitigation and climate change; campus planning; threat, hazard and vulnerability assessments; hazard mitigation planning; protecting children in disasters; and, public/private partnerships.



David Mallory, PE, CFM

David Mallory is a graduate of Colorado State University and has over 30 years of floodplain management experience in the Denver Metropolitan Area. He currently serves as the Senior Project Engineer in the Floodplain Management Program of the Urban Drainage and Flood Control District.

David is active in several professional organizations and serves as the co-chair of the Floodplain Management Committee for NAFSMA and on the Board of Directors for NHMA.

David maintains a high level of interest in traditional floodplain management issues, such as floodplain mapping, as well as emerging sustainability topics related to floodplain preservation and protection of the natural and beneficial functions of stream and river systems.

Dr. Ahmad Salah

Dr. Salah has 17 years of professional experience. He has been working with Stanley Consultants in SLC for 7 years. He has a civil engineering PhD degree from Brigham Young University. He was a member of the software development team for the Watershed Modeling System. His specialty is application of GIS in water resources engineering

Judy Soutiere, CFM

Ms. Soutiere is currently the Flood Risk Manager and Silver Jackets Coordinator for the Sacramento District, U.S. Army Corps of Engineers. Ms. Soutiere is responsible for coordinating district activities with FEMA Region IX to ensure that accurate information is shared between the agencies and to support FEMA as they map flood hazards around Corps projects. Ms. Soutiere coordinates Silver Jacket teams in Nevada and Utah. She is currently working with South Pacific Division to get a team initiated in California. The Silver Jackets look to focus efforts on State priorities for flood risk management.

Ms. Soutiere worked for the Institute for Water Resources from 2009-2011. While working for the Institute she was part of the Corps National Flood Risk Management team. She worked closely with FEMA to help develop common messages between the Corps and FEMA on Flood Risk. Ms. Soutiere also coordinated the Flood Risk Management team's participation at various conferences to talk about flood risk management. Ms. Soutiere was also the project manager for the Intergovernmental Flood Risk Management Committee that consisted of FEMA, Corps, Association of State Flood Plain Managers, National Association of Flood and Stormwater Management Agencies and the Association of State Dam Safety Officials.



In August 2009, Ms Soutiere was awarded the 2008 Ronald J. Ruffennach Communicator of the Year for the U.S. Army Corps of Engineers. This award was for her work coordinating and communication flood risk information to the public in Natomas and for her coordination and relationship building with FEMA Region IX. Ms. Soutiere was the Flood Risk Program Manager, Planning Division, Sacramento District Corps of Engineers for 3.5 year. She was involved with the District support to the FEMA map modernization program and all the Corps of Engineers flood risk initiatives. Ms Soutiere was the Section Chief for the Water Resources Branch in Planning, which included all the planners and economists working on studies for water resource projects in Utah, parts of Nevada and the Central Valley of California and the Delta.

She has been with the Corps of Engineers since 1992. Ms. Soutiere also spent 6 years working for the Air Force at two installations. She has a bachelor's degree in Chemical Engineering and master's in Industrial and Management Engineering from Montana State University. Ms Soutiere is married and has two teenagers. Ms Soutiere is also a Certified Floodplain Manager.

Edward A. Thomas, Esq.

Ed Thomas is the President of the Natural Hazard Mitigation Association; and an elected member of the Council of the State and Local Government Section of the American Bar Association. He is also the Chair of the Hazards Sub-Committee of the Land Use Planning and Zoning Committee, of the ABA. In addition, Ed serves on the Advisory Committee of the Natural Hazards Center of the University of Colorado; and is an active member of both the American Planning Association and the American Geophysical Union.

He is a former board Member of the Association of State Floodplain Managers; and now serves as the Senior Liaison for that organization's on the No Adverse Impact Committee.

Ed retired from the Department of Homeland Security-Federal Emergency Management Agency after nearly thirty-five years of Public Service. During his time in government, he worked primarily in Disaster Mitigation, Preparedness and Response. He also was extensively involved in Community Development, during his nearly 10 years with the Department of Housing and Urban Development.

Ed worked on about two hundred disasters and emergencies, serving as the President's on scene representative, the Federal Coordinating Officer, dozens of times.

Ed is an Attorney, is a frequent lecturer on Emergency Management issues, especially the Constitutional and Legal Aspects of Floodplain Regulations. He has authored dozens of publications and articles on various Disaster related issues and regularly participates as a member of National Task Forces and other boards in developing National disaster-related and floodplain management policies.



Ed has received numerous national and international awards including the nation's highest award for Floodplain Management: The Goddard-White Award from the Association of State Floodplain Managers. In addition, he received the Gulf of Maine Visionary Award from the International Gulf of Maine Council, for his efforts in helping develop the NOAA StormSmart Coasts Program; and their first lifetime achievement award from the Georgia Association of Floodplain Management.

He manages a private practice of Law, Edward A. Thomas Esq., LLC and lives with his wife in the floodplain of beautiful Marina Bay in Quincy, Massachusetts.

Donald Watson, FAIA, NCARB

Donald Watson is an architect and author of professional publications in planning and architecture.

Now retired from a career in architectural education, he was Professor at Yale University and Dean of Architecture, Rensselaer Polytechnic Institute. He is 2002 recipient of the Collegiate Schools of Architecture Distinguished Professor Award.

Since the early 1970s, Watson has an advocate of solar and environmental design of buildings and cities. In 1984, he was lead designer of the Johnson Controls Office Building in Salt Lake, which received U.S. Dept of Energy innovation award as the most energy-efficient office building in North America and prototype of many energy conserving measures now part of standard construction practices.

He is recipient of the 2008 U.S. Green Building Council Leadership Award and an AIA Presidential Citation for his role as a founding member of the green building movement in the United States.

He is editor-in-chief of the Time-Saver Standards Series, a professional reference library for architects and planners, including the current editions on Architecture and on Urban Design. He is author most recently of Design for Flooding, co-authored with Michele Adams, P.E.

Now in his fiftieth year as a practicing architect, Watson maintains a consulting practice to public and private clients, both in the U.S. and abroad, focusing on design for resilience. He has been consultant on disaster mitigation planning for projects in over 30 countries, most recently in Saudi Arabia and in Haiti.

In his hometown of Trumbull, CT, he serves as a public member of the Conservation Commission and the Greater Bridgeport Regional Planning Council, both of which are addressing issues of water resources, flooding, disaster preparedness and coastal zone resilience.



References

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The Value of Green Infrastructure: Guide to Economic, Environmental and Social Benefits
Chicago IL: Center for Neighborhood Technology. 2010
www.americanrivers.org/library

CCAP (2011)

Kooshian, Chuck and Steve Winkelman
Growing Wealthier: Smart Growth, Climate Change and Prosperity
Washington, DC Center for Clean Air Policy (CCAP). 2011

EPA Green Infrastructure Library

EPA Municipal Handbook Series – Green Infrastructure
<http://cfpub.epa.gov/npeds/green> infrastructure

Lam, William M. C. (1986)

Sunlighting as Formgiver for Architecture
New York: Van Nostrand Reinhold

NFIP F-002

Myths and Facts about the NFIP – FEMA
NFIP Publication F-002
www.mmrs.fema.gov/rebuild/recover/nfip.shtm

Schwab, James, with Kenneth C. Topping, Charles D. Eadie, Robert E. Deyle, and Richard A. Smith. 1998.
Planning for Post-Disaster Recovery and Reconstruction. Planning Advisory Service Report No. 483/484.
Chicago: American Planning Association.

Schwab, James, Editor. 2010. *Hazard Mitigation: Integrating Best Practices into Planning*. Planning
Advisory Service Report No. 560. Chicago: American Planning Association.

Topping, Kenneth. 2011. "Strengthening Resilience Through Mitigation Planning. *Natural Hazards
Observer*, XXXVL [November 2011]: 1:18

Trout Unlimited (2012)

Williams, Jack E., Michael P. Dombeck, Christopher A. Wood
My Healthy Stream
Arlington, Virginia: Trout Unlimited and Aldo Leopold Foundation. 2012



Utah DNR (2011)

Castleton, Jessica J., Ashely H. Elliot, and Greg N. McDonald
Geologic Hazards of the Magna Quadrangle, Salt Lake County, Utah
Special Study 137 Utah Geological Survey
Salt Lake City: Utah Department of Natural Resources (DNR) 2011.

Watson, Donald and Michele Adams (2011)

Design for Flooding Architecture, Landscape, and Urban Design for Resilience to Climate Change
New York: John Wiley and Sons



Selected Hazard Mitigation & Floodplain Management Legal Publications

- A) Planning and Building Livable, Safe & Sustainable Communities: The Patchwork Quilt Approach**
Authors: Edward A Thomas Alessandra Jerolleman, Terri Turner, Darrin Punchard, and Sarah Bowen, Natural Hazard Mitigation Association, 2011.
Located at: http://stormsmart.org/uploads/patchwork-quilt/patchwork_quilt.pdf

A PowerPoint Presentation of the Patchwork Quilt Workshop as presented at the National Floodproofing Conference in New Orleans in November 2008 is located at:
http://www.floods.org/PDF/Patchwork_Quilt/Patchwork_Quilt_Floodproofing_Conference_10908.pdf

- B) Climate Change and Emergency Management: Adaptation Planning**, Authors: Edward A Thomas and Terri Turner, American Bar Association, Section of State and Local Government, State and Local Law and News, Vol. 34, No. 3, Spring 2011
Located at:
http://www.americanbar.org/content/dam/aba/publications/state_and_local_law_news/sl_34_3_tomas_turner.authcheckdam.pdf

A similar presentation on climate change and emergency management was delivered at the 2012 Hawai'i Water Law Conference. An expanded version was delivered at a national webinar sponsored by the Georgia Association of Floodplain Management and the Natural Hazard Mitigation Association. The webinar is available on line at: http://www.gafoods.org/nai_commitee1.html

- C) Preventing Human Caused Disasters.** Authors: Edward A Thomas and Sarah Bowen, In the *Natural Hazards Observer*, November 2009, Volume XXXIV, Number 2, International Journal Article, explaining the concept of Patchwork Quilt as well as advocating the idea of the advantage of Hazard Mitigation preventing disasters from taking place.
Located at: http://www.colorado.edu/hazards/o/archives/2009/nov_observerweb.pdf



D) Mitigating Misery: Land Use and Protection of Property Rights Before the Next Big Flood.

Authors: Edward A. Thomas Esq. and Sam Riley Medlock JD. *Vermont Journal of Environmental Law*, Vol. 9, 2008.

Law Review Article on the National Flood Insurance Program and the concept of No Adverse Impact Floodplain Management.

Located at: http://www.floods.org/PDF/Mitigation/ASFPM_Thomas&Medlock_FINAL.pdf

E) No Adverse Impact and The Courts: Protecting the Property Rights of All,

Authors: Dr. John Kusler Esq. and Edward A. Thomas Esq. ,Edition of November 2007

Located at: http://www.floods.org/PDF/ASFPM_NAI_Legal_Paper_1107.pdf

F) A Perfect Storm of Opportunities to Establish and Fund a Program to Reduce Misery and Protect Water Resources

Author: Edward A. Thomas Esq., in *Louisiana Coastal Law*, Vol. 89, April 2008.

Article for the Louisiana State University, Sea Grant Law and Policy Program, which discusses why we should develop a unified program to treat water as a precious resource.

Located at: http://www.lsu.edu/sglegal/pdfs/lcl_89.pdf

G) “Significant Nexus” and Clean Water Act Jurisdiction.

Authors: Jon Kusler Esq., PhD, Patrick Parenteau, Esq., and Edward A. Thomas Esq. Discussion paper for the Association of State Wetland Managers, March 2007.

Located at: http://www.aswm.org/pdf_lib/significant_nexus_paper_030507.pdf

H) A California Challenge Flooding in the Central Valley: A Report From An Independent Review Panel to the Department of Water Resources, State of California

Authors: Gerald Galloway, Edward A. Thomas, *et al.*

Located at: <http://www.water.ca.gov/news/newsreleases/2008/101507challenge.pdf>

I) Liability for Water Control Structure Failure Due to Flooding

Author: Edward A. Thomas, Association of State Floodplain Managers, 2006.

Located at: http://www.floods.org/PDF/NAI_Liability_Failure_Facilities_0906.pdf

J) Failed Dams and Levees: Examining Engineering Liability.

PowerPoint for a Web-Cast for American Council of Engineering Companies May 2007.

Located at: http://www.acec.org/advocacy/pdf/may07_thomas_presentation.pdf



K) Brochure Titled: Property Rights and Community Development: A Legal Framework for Managing Watershed Development, an ASFPM staff developed document based on materials developed by Wes Shaw and Edward A. Thomas Esq., and others for the Massachusetts Coastal Zone Management Agency's StormSmart Coasts Program.

Available at:

http://www.floods.org/NoAdverseImpact/NAI_Legal_Framework_Watershed_Development_2007.pdf

L) Massachusetts Coastal Zone Management Agency Storm Smart Coasts Materials, a series of brochures developed based on materials developed by Wes Shaw and Edward A. Thomas Esq., and many others:

1.) StormSmart Coasts Fact Sheet 1, Introduction to No Adverse Impact (NAI) Land Management in the Coastal Zone, available at:

http://www.mass.gov/czm/stormsmart/resources/stormsmart_nai.pdf

2.) StormSmart Coasts Fact Sheet 2, No Adverse Impact and the Legal Framework of Coastal Management, available at:

http://www.mass.gov/czm/stormsmart/resources/stormsmart_legal.pdf

3.) StormSmart Coasts Fact Sheet 3, A Cape Cod Community Prevents New Residences in Floodplains available at:

http://www.mass.gov/czm/stormsmart/resources/stormsmart_chatham.pdf

M) *Smart Growth in Dumb Places: Sustainability, Disaster, and the Future of the American City*, author: Lisa Grow Sun, Brigham Young University Law Review, 2011 B.Y.U.L. Rev. 2157(2011)

N) *Disaster Mythology and the Law*, author: Lisa Grow Sun, Cornell Law Review, 96 Cornell L. Rev. 1131(2011)



The following is reprinted, with permission from the August 2007 edition of the ASFPM publication News & Views

Oklahoma Teaches Us All A Few Tricks for Enforcing Substantial Damage

In the Arid West one of the more vexing problems Floodplain Managers face is the need to enforce flood program regulations in the midst of a drought, which can often be followed by abrupt and catastrophic rainfall. Oklahoma faced such a problem recently and has developed an interesting approach to local officials to encourage enforcement of required safe building regulations.

In early July, Oklahoma and Texas were absolutely hammered by floods. One of the worst hit areas was the City of Miami in Ottawa County, Oklahoma. Some seven hundred homes have been damaged in this small county, many of which suffered substantial damage with several being hit by over 88 inches of floodwater.

Unfortunately, several of these structures have flooded as many as 21 times over the past 50 years, and historically, local officials in the City of Miami and Ottawa County have allowed devastated flood victims to rebuild as soon as possible, disregarding all locally adopted National Flood Insurance requirements for safe and proper rebuilding of substantially damaged buildings.

This time, however, the new slate of officials in place had a different view about rebuilding after a flood, but they wanted to make sure that they were on solid ground to take strong action and break the cycle once and for all. The primary power was City Attorney Erik Johnson. He was very concerned about inverse condemnation and the taking issue if the city did not allow folks to rebuild and go back into their flooded homes. General Counsel for the Oklahoma Water Resources Board, Dean Couch, consulted with ASFPM legal experts and contacted Mr. Johnson early on in this process, explaining the role of the floodplain administrator and the justification for performing the substantial damage determinations.

The State NFIP Coordinator's Office sent OWRB employees Gavin Brady, State Coordinator, and long time floodplain manager, Ken Morris, to provide technical support and guidance to local officials. Brady and Morris immediately called FEMA Region 6 for support and help in obtaining trailers to house the disaster survivors while a safe rebuilding process takes place. Brady and Morris also appealed to ASFPM Headquarters in Madison to provide legal and technical support to bolster the State efforts to ensure proper and safe rebuilding. ASFPM asked Ed Thomas, an Attorney, and Floodplain Manager, currently employed by Michael Baker Inc., to help with some quick talking points for state officials to use.



Ed replied with the following suggestions:

A) Give people a simplified summary of the situation, explaining how the municipality will be at legal and Flood Program risk for failing to fully enforce their regulations unless proper and safe rebuilding is enforced.

B) Instead of helping folks, ignoring regulations and allowing them to rebuild in the same old flood-prone way would facilitate a time bomb of misery for the residents and multiple future generations.

C) Each and every municipality and individual who does not enforce regulations is putting themselves at individual and even personal risk for liability from future damages.

D) Failure to enforce floodplain regulations puts the entire community at risk for probation and/or suspension from the NFIP, thus endangering the entire recovery process.

E) A “Patchwork Quilt Approach” to funding would be an appropriate and beneficial way to rebuild this area safely and properly without undue hardship on the residents. (More information on the “Patchwork Quilt Approach” is available on the ASFPM web site at: http://www.floods.org/PDF/Post_Disaster_Reconstruction_Patchwork_Quilt_ET.pdf.)

Morris and Brady presented these materials to the City at a large Public Meeting, and the City was convinced to continue to enforce their existing floodplain regulations. Morris summed up this ongoing success story up by indicating that success was due to the leadership of local officials with the help of the OWRB. **“I also believe the Patchwork Quilt document and Ed's words were overwhelmingly convincing,” says Morris.**

