

Pennsylvania Natural Hazards Legal Workshop for Mitigators

August 5 - 6, 2014, Pennsylvania Emergency Management Agency, Harrisburg, Pennsylvania

Tuesday, August 5

12:00 – 12:15 PM **Welcome and Self-Introductions –**

Tell us about yourself and what you want from this workshop

12:15 – 1:00 PM **Introduction to the Legal Issues**

Edward A. Thomas, Esq.

This module will set the stage for a highly interactive workshop which will integrate engineering, planning, policy, and legal research into a fundamental message: Mitigation is a better choice for State and local government and design professionals than litigation. The Workshop recommends a safe development approach to a unified “Whole Community” Hazard Mitigation – Floodplain Management-Water Quality/Resources-Design and construction approach. This workshop is specifically designed to fit into the FEMA RISK MAP vision of using the NFIP as the basis of future planning and Hazard Mitigation.

1:00 -2:00 PM **Future Uncertainty and Flood Mapping: What If Future Rainfall Patterns Change?**

Michele Adams, PE

- A. Linkages with floodplains, wetlands and water quality issues
- B. Low Impact Development
- C. Introduction to ASCE 24

This hour will review Pennsylvania hydrology, rainfall patterns, and flood conditions. We will also discuss the relationship between land use and the role of wetlands, floodplains, and riparian buffers in improving resiliency during extreme events, as well as improving water quality as required by changing permit requirements for Pennsylvania municipalities. We will also discuss the benefits of Low Impact Development for both resiliency in extreme events and improved water quality. Finally, we will briefly overview the recommendations of ASCE 24.

2:00 – 2:15 PM **Break**

2:15 – 3:00 PM **Design for Hazard Mitigation**

Barry Hokanson, AICP and Link Walther, FAICP

- A. Regional watershed management and its components: what works
- B. How watershed design of cities and communities can improve local livelihood, resources and resilience
- C. Introduction to Pennsylvania long term recovery planning documents and procedures.

The nation’s systems of streams and valleys are important determinants of wise development strategies. Patterns of land use reflect nature to a degree, and yet in building our human settlements we have failed to avoid hazardous areas, thus our mistakes have led to repetitive damages and disasters. Weather events are forecast to become more extreme. Planning on a watershed basis makes sense. This module is about methods to achieve greater resilience going forward.

3:00 – 4:15 PM **Property Rights and Floodplain Management**

Ed Thomas

- 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

For years communities, developers, and public employees have been unclear about the point at which land use regulations so restricts the rights of a landowner, that a compensable taking of property has occurred under the Fifth the Fifth Amendment to the United States Constitution. These cases are usually referred to as “Taking Issue” Cases.

This module will demonstrate that:

- a) there are the truly ancient legal roots of the National Flood Insurance Program and the “safe development” concepts of hazard mitigation & climate adaptation;
- b) the standards of the Flood Insurance Program, including higher lever Community Rating System provisions avoid much, if not all, the uncertainty surrounding the US Supreme Court’s Taking Issue Cases;
- c) the “Whole Community” involved in development decisions should be bold in regulating hazardous locations but at the same time, to be fair and sensitive property rights

4:15-5:00 PM

National Flood Insurance Program Update

Link Walther, Barry Hokanson, Ed Thomas

- A. Present and Likely Future
- B. Biggert Waters Act of 2012
- C. Flood Insurance Homeowners Affordability Act of 2014

This module will take a look at the past, present and even future of the local requirement of the National Flood Insurance Program. What does it mean to floodplain managers, planners, developers, homeowners?

5:00 – 6:15 PM

Optional Breakout Sessions

- A. **Legal Aspects** - Discussion Leader – *Edward A. Thomas Esq.*
Possible topics include discussion of the “Taking Issue;” the potential for litigation due to forensic sciences, along the lines of the Farmers Insurance litigation; variances and the law; etc.
- B. **Engineering Low Impact Development links to Water Quality & Natural Hazards including floods.** Discussion Leader – *Michele Adams, PE*
Possible discussion topics could include a more in depth look at Low Impact Development, MS4 permit requirements, and land use planning.
- C. **Community Planning and Hazard Mitigation.**
Discussion Leaders – *Lincoln Walther FAICP; Barry Hokanson, AICP*
Possible topics could include a more in-depth discussion of the Pennsylvania Long Term Recovery Planning approach, if desired by the audience.

Wednesday, August 6

8:00 – 9:00 AM Integration with Local Planning Efforts: Linkages with Community Planning

Link Walther and Barry Hokanson

Planning for floodplains and larger hazard mitigation goals can be done most effectively if there is a strong link to other plans in the community for such features as roads, commercial developments, neighborhoods, industrial areas and reservations for open space and parks. During periods of redevelopment, especially after a disaster, there are both opportunities and catalysts to fix old problems by doing things differently. This module will emphasize that integration of hazard mitigation with comprehensive planning is a national objective that can be implemented only at the community level. Examples will be discussed.

9:00 – 10:00 AM Sites and Buildings

Michele Adams and Barry Hokanson

- A. Water Quality-Floodplain-wetlands and Low Impact Development: Next Steps for Pennsylvania Communities and Integrated Water Planning
- B. Flood/drought/fire risk mitigation at the local community, project site, and building scale
- C. Site and building design that improves life quality, performance and productivity; compliance with ASCE 24.
- D. How design for resilience can define the desired future.

This session will build upon the Wednesday 1-2 Pm session by providing a more in-depth discussion of planning for both flooding and upcoming required water quality improvements in Pennsylvania. Specifically, we will review the current “model stormwater ordinance” and MS4 program requirements, and their correlation with and benefits for hazard planning. We will also review recommended design practices at the site and building scale, including further discussion of ASCE 24 recommendations at the site and building scale. Wildfire risks and mitigation techniques will also be discussed.

10:00 – 11:15 AM The Koontz Case and “Whole Community” Safe and resilient negotiations for best practices in Wetlands, Water Quality, Site Planning and Hazard Mitigation Management

Ed Thomas

There has been tremendous press coverage of a US Supreme Court case last year, Koontz vs. St. John’s Water Management District. Some claim that the case will have a “devastating” effect on good planning. The Koontz case directly involves development and mitigation, we suggest that the case strongly supports a “Whole Community” approach to planning, design, and most especially negotiations.

11:15 – 11:45 AM Closing Discussion & Survey of Participants