

U.S. Department of Homeland Security
1111 Broadway, Suite 1200
Oakland, CA 94607-4052



FEMA

June 6, 2016

The Honorable Barry Chang
Mayor, City of Cupertino
Cupertino City Hall
10300 Torre Avenue
Cupertino, CA 95014

Dear Mayor Chang:

Thank you for the courtesy extended by City staff during the Community Assistance Visit (CAV) on July 14, 2015. The purpose of the meeting was to provide your staff with the most current information on the National Flood Insurance Program (NFIP), give them an opportunity to discuss concerns they might have had, and assess the City's enforcement of the local floodplain management ordinance that was adopted to meet requirements of the NFIP.

FEMA's evaluation of Cupertino's floodplain management program and administrative practices and procedures indicates some potential deficiencies. Please provide the following three items, outlined in the attached CAV report by August 5, 2016:

- An updated floodplain ordinance that addresses the deficient items identified on the attached CAV Report
- Updated Substantial Improvement procedures documentation
- Additional documentation as identified in the Field Inspection section of the CAV report. This documentation should demonstrate that the structures in question are compliant with the NFIP regulations.

Currently, there are 144 flood insurance policies in effect totaling \$43,959,500 in coverage. Since joining the NFIP, there have been 10 paid losses totaling \$812,170. There has been 1 reported substantial damage claim since the city joined the program. There have been 6 total repetitive losses on 3 structures with losses amounting to \$695,052.

If you have any questions concerning this letter, or any aspect of the NFIP, please contact me by telephone at (510) 627-7057 or by email at mark.delorey@fema.dhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Delorey".

Mark Delorey
Community Compliance
National Flood Insurance Program
DHS/FEMA Region IX

Enclosure:
Community Assistance Visit Report

cc: Mr. Timm Borden, Director of Public Works, City of Cupertino (emailed)
Mr. Chad Mosley, Senior Civil Engineer, City of Cupertino (emailed)

FEDERAL EMERGENCY MANAGEMENT AGENCY COMMUNITY ASSISTANCE VISIT REPORT

SECTION I

| | | | |
|--|-----------------------|---|--|
| 1. NAME OF COMMUNITY Cupertino | 2. STATE CA | 3. COMMUNITY ID NUMBER 060339 | 4. COUNTY Santa Clara |
| 5. VISIT CONDUCTED BY Mark Delorev | | 6. AGENCY FEMA | 7. DATE OF VISIT July 14, 2015 |

SECTION II

| | |
|---|---|
| 8. NAME OF LOCAL OFFICIAL Chad Mosley, Floodplain Administrator | 9. TELEPHONE NUMBER (408)777-7604 |
| 10. ADDRESS OF LOCAL OFFICIAL 10300 Torre Ave. Cupertino CA 95014 | |

SECTION III – FINDINGS

PART A

| QUESTIONS – Select appropriate response | RESPONSE | | |
|---|-------------------------|-------|------|
| | Serious | Minor | None |
| 1. Are there problems with the community's floodplain management regulations? | | X | |
| 2. Are there problems with the community's administrative/enforcement procedures? | | X | |
| 3. Are there engineering or other problems with the maps or Flood Insurance Study? | | | X |
| 4. Are there any other problems in the community's floodplain management program? | | | X |
| 5. Are there problems with the Biennial Report data? | ___ YES <u> X </u> NO | | |
| 6. Are there any programmatic issues or problems identified? | ___ YES <u> X </u> NO | | |
| 7. Are there any potential violations of the community's floodplain management regulations? <u> X </u> A potential violation or violations has/have been identified. ___ No violations have been identified. <u> X </u> Actions are being taken on the part of the community to remedy the violation(s) identified during the CAV. | | | |

SECTION III – FINDINGS (Continued) - PART B**LIST OF ATTENDEES**

Chad Mosley – City of Cupertino, Senior Civil Engineer
Mark Delorey – FEMA, Natural Hazards Program Specialist

NARRATIVE

The National Flood Insurance Program (NFIP) is based on an agreement between the federal government and participating communities that have been identified as flood prone. The Federal Emergency Management Agency (FEMA), through the Federal Insurance Administration, makes flood insurance available to the residents of a participating community, provided the community adopts and enforces adequate floodplain management regulations that meet the minimum NFIP requirements.

A Community Assistance Visit (CAV) is a scheduled visit to a NFIP community to maintain periodic contact, evaluate the effectiveness of local floodplain management practices, and offer assistance, if needed.

This report describes the findings of the July 14, 2015, CAV for the city of Cupertino. Based on the documentation provided during the CAV meeting and the follow-up emails from the city of Cupertino, additional documentation is required before FEMA can determine that the city complies with the NFIP requirements as specified in Title 44, Code of Federal Regulations.

BACKGROUND

The city of Cupertino first entered the National Flood Insurance Program (NFIP) on July 8, 1975 through the Emergency Program, then on May 1, 1980 through the Regular Program when the city's initial Flood Insurance Rate Maps (FIRMS) were issued. Currently, there are 144 flood insurance policies in effect totaling \$43,959,500 in coverage. Since joining the NFIP, there have been 10 paid losses totaling \$812,170. There has been 1 reported substantial damage claim since the city joined the program. There have been 6 total repetitive losses on 3 structures located inside and outside of the Special Flood Hazard Areas (SFHAs) with losses amounting to \$695,052.

FLOODPLAIN MANAGEMENT REGULATIONS

The city's floodplain management ordinance regulations are contained in Chapter 16.52 (Ordinance number 1412) which was adopted on October 12, 1987. As part of the July 14, 2015 compliance meeting, the city of Cupertino's Floodplain Management ordinance was thoroughly reviewed for compliance with minimum standards of the NFIP.

June 6, 2016

After the CAV meeting, FEMA staff reviewed the ordinance and determined that there is a need for an update to meet the minimum NFIP requirements pursuant to the Title 44, Code of Federal Regulations, Sections 59, 60.3-60.6, and 65.3 (CFR).

To assist the community in updating its floodplain management regulations, FEMA provided an electronic copy of the current California Model Floodplain Management Ordinance, to the community for reference.

The following sections should be revised or added to the Floodplain Management Ordinance:

1. Add the Citation of Statutory Authorization; for recommended wording see Section 1.1 of the California Model Floodplain Management Ordinance.
2. Add the following definitions to section 16.52.010 of the city's ordinance (for recommended wording see Section 2.0 of the California Model Floodplain Management Ordinance):
 - a. Existing Manufactured Home Park or Subdivision
 - b. Expansion to an Existing Manufactured Home Park or Subdivision
 - c. Historic Structure
 - d. New Manufactured Home Park or Subdivision
 - e. Recreational Vehicle
 - f. Start of Construction
 - g. Substantial Damage
3. Revising the following definitions in section 16.52.010:
 - a. Add Zones AE, AH, and A99 to the SFHA definition.
 - b. Revise the Substantial Improvement definition to match the recommended wording; see Section 2.0 of the California Model Floodplain Management Ordinance.
4. Revise section 16.52.011 of the city's ordinance to (a) include a reference to all subsequent revisions and amendments to the flood maps and Flood Insurance study and (b) revise the date of the Flood Insurance Study from November 1979 to May 1, 1980. See section 3.2 of the California Model Floodplain Management Ordinance for recommended wording.
5. Add requirement to submit new technical data within 6 months to the city's ordinance. See Section 4.2.D.2 of the California Model Floodplain Management Ordinance.
6. Update Section 16.52.035 of the city's ordinance to match the Variance criteria shown in Section 6.0 of the California Model Floodplain Management Ordinance.

7. Add requirement for base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres. See Section 5.3.A of the California Model Floodplain Management Ordinance for recommended wording.
8. Add one foot of freeboard to the Zone AO requirements in section 16.52.054 of the city's ordinance. If the city requires one foot of freeboard for construction in other zones (e.g. Zone AE) it should also require the same freeboard in Zone AO.
9. Add the following wording (as shown in Section 5.1.C.3.a.4 of the California Model Floodplain Management Ordinance) to section 16.52.042 of the city's ordinance:
 - a. *Building with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or*
10. Add manufactured homes and recreational vehicles requirements to the city's ordinance. See Sections 5.4.B and 5.5 of the California Model Floodplain Management Ordinance for recommended wording.

ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

The Public Works Director is designated as the Floodplain Administrator pursuant to City's Prevention of Floods Ordinance, Section 16.52.021.

Public Works reviews all new residential and commercial developments to confirm the flood zone. If the proposed structure is determine to be in the special flood hazard zone the city requires per the city's ordinance that the low floor be 1 foot above the Base Flood Elevation. For remodels and additions the building official will check substantial improvement. If the cost of substantial improvement meets or exceeds the 50% of the market value the structure will need to be in compliance with the minimum NFIP regulations.

For proposed projects located in the Special Flood Hazard Area the city will require hydraulic modeling (e.g. HEC-RAS). The Santa Clara Valley Water District provides the city with the flows for each flooding source.

Elevation Certificates are required for all new construction, additions, and substantial improvements in the Special Flood Hazard Area. Elevation Certificates are required at (1) pre construction; (2) during construction (after the foundation pour); and (3) at finished construction.

Development in the floodway and variances are highly discouraged.

Code enforcement is mostly complaint driven. In some occasions violations are identified during new permits when an older renovation is discovered. The enforcement actions include; (1) an administrative fine process; and (2) legal action.

OTHER PROBLEMS WITH THE COMMUNITY'S PROGRAM

The city provided a document titled 'Additions Located In Flood Hazard Areas', dated September 1, 2015 which documents the methodology for substantial improvement calculations. Based on FEMA's review of the document please address to the following questions/comments:

1. Revise the title of the document to '*Alterations and Additions Located in the Special Flood Hazard Areas*';
2. Revise the date of the initial Flood Insurance Rate Map from December 31, 1974 to 'May 1, 1980' within the definitions for Post-FIRM Building and Pre-FIRM Building.
3. Please provide justification (source) for the square footage costs for the (1) Market Value for existing structures; (2) Alteration of existing structures; and (3) Construction Valuation of Addition. Attached is a sample document from another city's Substantial Improvement procedures.

PROGRAMMATIC ISSUES OR PROBLEMS IDENTIFIED

There are none.

FLOOD MITIGATION PROJECTS, ISSUES OR CONCERNS

City Flood Mitigation projects were not discussed in detail.

FIELD REVIEW

A field inspection of the SFHAs of city of Cupertino produced several questions about development.

880 E Estates Drive – Residential construction near SFHA. Based on the effective FIRM and the Public Works Plan Check Comments sheet the structure is in Zone X. **No further action required.**

10181 Phar Lap Drive – Residential structure in SFHA. Elevation Certificate provided during meeting demonstrates that the structure and addition are in compliance; Low Floor and the Lowest Adjacent Grade are at or above the BFE. **No further action required.**

10336 Vicksburg Drive – Residential structure near SFHA. Based on the effective FIRM the structure is in Zone X. **No further action required.**

10518 East Estates Drive - Residential structure near SFHA. Based on the effective FIRM the structure is in Zone X. **No further action required.**

10530 Creston Drive - Residential structure in SFHA. **Please provide FEMA with documentation showing that this structure is compliant.**

10779 Brookwell Drive - Residential structure near SFHA. Based on the effective FIRM the structure is in Zone X. **No further action required.**

22157 Clear Creek Court - Residential structure in SFHA. **Please provide FEMA with documentation showing that this structure is compliant.**

ENGINEERING FLOOD MAPS AND STUDY

Zone D was briefly discussed as an issue when it comes to purchasing flood insurance. FEMA to add a request for restudy to remove Zone D from the city of Cupertino.

COMMUNITY ACTION NEEDED

The community must submit to FEMA, within sixty (60) days of the date of this report, the following:

1. A copy of a draft ordinance that amends the city's current floodplain management regulations, as identified in the Floodplain Regulations section of this report.
2. Provide additional documentation as identified in the Other Problems with the Community's Program section of this report.
3. Provide additional documentation as identified in the Field Inspection section of this report.