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June 15, 2007

John A. Sharets-Sullivan  
Chief, Records Management and Privacy  
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Information Technology Services Division  
Federal Emergency Management Agency  
500 C Street, SW., Room 609  
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Subject: Response to Notice and Request for Comments in the Federal Register/Vol. 72, No. 76/Friday, April 20, 2007/Notices, Department of Homeland Security, Federal Emergency Management Agency, Form 81-92 and Form 81-92A (MT-EZ Form).

Dear Mr. Sharets-Sullivan:

The Association of State Floodplain Managers is a national, non-profit, professional membership organization whose 11,000+ members are floodplain managers from all across the U.S. and beyond. The national association and our 26 State Chapters are composed of the professionals who do the job "on the ground" to make flood loss reduction a reality at the state and local levels. The ASFPM Floodplain Regulations Committee has solicited input from its members regarding the above referenced request for comments. We wish to thank you for the opportunity to assist in enhancing the quality, utility, and clarity of the information collected by use of the forms that are the subject of the request.

The comments from the Floodplain Regulations Committee are as follows:

### MT-EZ FORM COMMENTS

#### Instructions

1. Correct the page numbering in the instructions. The first page is unnumbered. The second page is numbered Page 1 and the subsequent pages are also off by a count of one. The page number references in these comments are based on the page numbers printed on the MT-EZ Form and Instructions, as downloaded through FEMA's web site.

First Page, unnumbered

2. Under the Use of Application Forms Fill is defined as material placed to raise the ground to or above the BFE. As worded, this suggests that the intent of placing earthen material makes a difference in whether it is considered fill. For instance if someone was placing material solely for the purpose of

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disposing of unwanted earthen material, but was not intending to raise the grade above the BFE it could be interpreted as not being fill based on the definition. Fill should be defined as material placed **that raises** the ground to or above the BFE.

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3. Zone AO instructions differ between Page 1 and Page 5. Page 1 says to add flooding depth to the highest surrounding ground elevation. Page 5 says to add flooding depth to the lowest grade on the property. Refer to comment # 9 below for more discussion.
4. Zone AO special considerations indicate that the elevation of the lowest floor of the structure as well as the lowest adjacent grade will be used for the basis of determination of the request. However 44CFR70.4 suggests that for requests involving a structure that only the lowest adjacent grade will be used for the basis of the determination.
5. The General Instructions – Section A indicate that a Registered Professional Engineer may complete Section A. In some states only Registered Professional Surveyors are legally permitted to prepare metes and bounds descriptions of real property. If the request is for a portion of a legally recorded parcel of land described by a metes and bounds description the instructions should clarify that the engineer or surveyor must be authorized by law to certify the information requested.
6. Basis of Determination - The definition of fill is anything placed after the date of the first NFIP map identifying SFHA for the property. Given the early program practice of discarding the previous map when the new one was issued, almost no one is able to determine this if the effective map panel is the product of a physical map revision. If a requester does not know the date of the first NFIP map identifying the property as SFHA, the date of the first NFIP map for the community should be used as the fill placement cut-off date. Instruction should be given on where to locate this date on the NFIP maps.

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7. The General Instructions – Section B indicate that a Licensed Land Surveyor or Registered Professional Engineer must complete Section B. In some states only Registered Professional Surveyors are legally permitted to certify elevation data. The instructions should clarify that the engineer or surveyor must be authorized by law to certify the information requested.

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8. The guidance under Riverine Flooding Systems incorrectly uses the word “extrapolate.” The correct word should be “interpolate.” FEMA guidance in the publication FEMA 265, Managing Floodplain Development in Approximate Zone A Areas permits the use of data extrapolation for the purposes of floodplain management only.
9. The guidance for Shallow/Sheet Flooding says, for Zone AO areas, to add the average flooding depth to the lowest grade on the property. Since AO Zones generally

represent areas of sheet flooding on sloping terrain, it does not make sense to choose the lowest point on the property since the actual depth of flooding is considered to be the same at the highest point on the property. Since the water surface elevation varies across the property, using a single BFE determination based on the lowest grade on the lot for the LOMA evaluation will underestimate the risk of flooding for the site. Please note that the elevation requirements in 44CFR60.3(C)(8) require the use of the highest adjacent grade plus the depth number on the FIRM to ensure that new construction is reasonably safe from flooding.

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10. Lowest Lot Elevation (LLE) - Wording should be added to emphasize that the LLE reported should be for the area being requested for removal, which is not always the lowest elevation on the property when a metes and bounds removal is being requested. The LLE reported should be the lowest elevation of the area being requested to be removed.
11. Under the Certification heading it should be stated that not all states authorize architects **and engineers** to certify elevation information. Consult the state board of registration for more information.

#### General discussion

12. The language used repeatedly throughout the instructions and on the form discussing "removal" of land or structures from the SFHA is misleading. The inference is often that the act of amending the FIRM is somehow physically changing the flood hazard to the property. A LOMA does not do anything to the property and as such, the active voice should not be used to indicate that FEMA is "removing" the property from the SFHA. Consider instead using language that "removes the SFHA designation from the property." Most individuals not intimately familiar with the NFIP do not understand how flood risk is identified and based on the maps believe that the risk is black and white. Based on the inherent uncertainty in the determination of flood risk, the use of language that is so absolute (a property is in or out of the floodplain) does not convey either the uncertainty or the variability in the risk.
13. The discussion of what constitutes fill is confusing for most individuals that are not intimately familiar with the standards of the NFIP. Consider adding language to the instructions clarifying that LOMAs may only be issued for land or structures on land that: a) would not be inundated by the base flood; and b) were at or above the base flood elevation (BFE) prior to the effective date of the first NFIP map showing the area in the SFHA.
14. FEMA's practice of issuing Letters of Map Amendment to structures under construction or recently constructed, which may constitute lowest floor violations of the local community's regulations, should stop. When potentially non-compliant development in the SFHA is brought to FEMA's attention, the most appropriate action would be to initiate a dialogue with the participating community regarding remedying the violation. In some cases communities' enforcement efforts are hindered by the property owner

receiving a LOMA from FEMA removing the non-compliant structure from the SFHA, confusing the code enforcement process.

15. The basis for determination of the removal of a structure or parcel is a comparison of BFE with lowest grade. FEMA's acceptance of lowest grade determinations which ignore basement excavations is unclear. In other words, if a property owner excavates material and creates a hole below BFE for the purpose of building a basement, then that should be considered LAG, and such a parcel should not be removed.

**MT-EZ Form, DHS – FEMA Form 81-92**

16. Refer to the General discussion above regarding the references to "removing the property from the SFHA." Consider changing the references to instead "remove the SFHA designation" from the property.

**Section B, Item to be Removed from the SFHA**

17. Add the language "or portion thereof" to the phrase "Undeveloped legally recorded parcel of land"

18. Delete the word "Undeveloped" from the phrase "Undeveloped legally recorded parcel of land." 44CFR70 does not prohibit the removal of a developed parcel of land if the land is above the BFE and has not been elevated to above the BFE by placement of fill.

**Section B, 4**

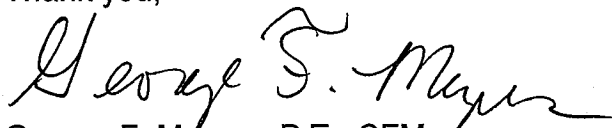
19. The third bullet should be revised to read "Indicate the name of the datum." Many times the FEMA Map Assistance Center receives applications with an elevation number or benchmark name instead of the name of the datum.

**Section B, 5**

20. Second bullet – indicate that the elevation of the lowest grade on the property is only required if the request is to remove a piece of land.

Please contact George Meyers at (614) 265-6635 or [george.meyers@dnr.state.oh.us](mailto:george.meyers@dnr.state.oh.us) if there are any questions regarding these comments.

Thank you,



George F. Meyers, P.E., CFM

Co-chairs, ASFPM Floodplain Regulations Committee

Michael S. Powell, CFM

- cc: Larry Larson, ASFPM Executive Director  
George Riedel, ASFPM Deputy Executive Director  
Al Goodman, ASFPM Chair  
Greg Main, ASFPM Vice Chair & Committee Coordinator  
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