

NEWSLETTER

Spring 2021



Know your Dam Risk

Massachusetts Dam Safety

Written by Linda Hutchins, PG, CFM

Flood events in October 2005 and May 2006 exposed the status of Massachusetts' aging dam vulnerability to the world. Thousands of residents were evacuated in October 2005 when the 173-year-old Whittenton Pond Dam got worldwide press for fear it would collapse and flood downtown Taunton center with a 12-foot wave of water. The "Mother's Day" floods of May 2006 hit northeast Massachusetts threatening dams in the Merrimack River valley, causing evacuations and rooftop rescues.

New England has the highest density of dams in the US, a legacy of the region's long history of mill dams (Graf, 1999 Dam Nation). The state has more than 3,000 dams, but the National Inventory of Dams (nid.usace.army.mil) lists 1,327 "jurisdictional" dams in Massachusetts. Although some of these are used for public water supply reservoirs, many of our legacy dams no longer serve their original industrial purposes and they don't offer flood protection; in fact, they can represent a flood hazard to downstream communities if they fail. Non-jurisdictional dams have less of an impact if they breach catastrophically, but still have the same liability for dam owners.

Dam Safety Regulations

Dam owner responsibilities are covered in 302 CMR 10.00. The Dam Safety regulations include registration and inspection requirements, and an obligation to comply with inspection results. In addition, permits are required to construct, repair, alter, breach, or remove dams.

Massachusetts dams are classified by size (Small, Intermediate, Large) based on the amount of water stored in their upstream impoundment. Dams that store less than 15 acre-feet of water and dams that are less than six feet high are non-jurisdictional.

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Massachusetts Association for Floodplain Management (MASSFM)

We educate, promote, & inform on practices related to floodplain management.

We welcome and encourage readers to send us notices of training and other events, articles or other contributions to share with others in our community.

Please visit our website at www.massFM.org for additional articles and resources, and to sign up to receive future editions via email.

Contact: massfloodplain@gmail.com

Federal Housing Administration

New Private Flood Rule Offers Hope and Raises Concern

Written by Joe Rossi, ANFI, CFM

In late 2020, the Department of Housing and Urban Development (HUD) released its proposed rule to accept private flood insurance for Federal Housing Administration (FHA) insured loans. Currently, FHA is one of the few lending programs that does not accept private flood insurance on properties in high risk flood zones. FHA currently only accepts flood insurance through the National Flood Insurance Program (NFIP). Lenders, real estate agents, insurers, first-time homebuyers and others who use FHA for a mortgage have been waiting for FHA to begin to accept private flood policies. While the announcement of the FHA proposed rule made headlines and brought hope to many, the proposed rule as written is also causing concerns. Among the concerns are issues around the “compliance aid” and whether an FHA lender “may” or “must” accept a private flood insurance policy. Industry has responded to HUD in a strong way. The way that HUD responds in its final rule later this year will impact the effectiveness of the FHA private flood acceptance rule.

By way of background, Federal Regulatory Lending Agencies (excluding FHA) implemented new federal flood regulations in July 2019. These regulations provided the framework for lending institutions to accept private flood insurance policies for loans. This change in regulation has been effective in providing lenders a path to accept private flood insurance policies. While challenges remain, both the lending and insurance industry have worked streamline the process. A key part of the 2019 regulation is the inclusion of a “compliance aid”, which is a specific statement that, if in the policy, allows a lender to accept the private flood insurance policy without further review. Specifically, the compliance aid statement is as follows: “This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation”. This statement has been adopted by many insurance carriers. Unfortunately, in the proposed FHA rule, HUD includes its own version of a “compliance aid” which is “This policy meets the definition of private flood insurance contained in paragraph (e) of this section for FHA-insured mortgage”. While HUD’s goal may have been to also streamline the FHA lending process, the variation in compliance aids creates challenges and issues. First, this difference in compliance aids would require lenders to adopt separate and specific processes for FHA loans which could cause lending delays. Second, this will delay the industry’s ability to accept private flood insurance policies for FHA-insured loans because it will take time for insurance companies to add the FHA compliance aid language to its policy forms. There is also no guarantee that insurance companies will adopt this second compliance aid statement or that lenders will be willing to accept it. HUD is adding a layer of complexity and introducing unnecessary delays.

Another important aspect that is not addressed in the FHA proposed rule is the ability for lenders to accept a private flood policy even if the policy does not meet the definition of private flood insurance. This is referred to in the federal flood regulations as “discretionary review”. While this “discretionary review” is important, some small and medium size lenders are choosing to not accept a private flood insurance policy if it doesn’t meet the strict definition of private flood insurance. This means that currently some private policies that provide sufficient protection are being rejected. While not ideal, HUD may exacerbate this issue. This is due to the question HUD asks, “whether FHA regulations should state that a Mortgagee **may** accept a qualifying private flood insurance policy in lieu of an NFIP policy or that a Mortgagee **must** accept a qualifying private flood insurance policy in lieu of an NFIP policy”. If HUD decides to adopt “may accept” in its final regulation, FHA lenders would essentially be able to reject private flood insurance policies for all FHA loans. These two issues have raised concerns for many in industry. *Continued on page 6.*

Local Floodplain Codes in MA

Written by Joy Duperault, CFM

When I came to serve as the Commonwealth's State Floodplain Manager in early 2016 I wondered about the local floodplain bylaws and ordinances in MA—why they were a bit different than those of municipalities in my previous state. I asked a few questions at the time, but no one seemed very concerned so I went about my new job, paying attention to the oh-so-many things we do in our program.

A few years ago several new staff arrived at FEMA's Region I office, and they too noted the variations between the MA local codes and other states. So in early 2019 our office began to collaborate with the Region, as well as with the Cape Cod CRS Coordinator (the famous Shannon Hulst on your massFM board) to update the old 2012 state model floodplain bylaw. (Or ordinance for those of you in cities.)

After about 18 months, voila! The new FEMA-approved 2020 State Model Floodplain Bylaw was posted on our website, along with training material and an FAQ developed after three statewide trainings in October 2020. Here's that page: <https://www.mass.gov/guides/floodplain-management#-2020-massachusetts-model-floodplain-bylaw->

For communities that receive updated FEMA maps, they know they have to adopt the updated map reference in their local code BEFORE the new maps become effective. FEMA tries to arrange for those effective dates to take place after the towns' annual spring meetings so that communities can adopt in time without scheduling an extra meeting.

When FEMA or the state conducts a monitoring visit with a community (these days this is usually a virtual meeting), the bylaw is reviewed and is required to be updated if necessary at the very next possible opportunity—in most cases, the next town or city council meeting.

But what about the rest of the communities? The goal is to have these communities also adopt the updated bylaw at their next opportunity, hopefully in 2022 or 2023. One of the challenges with this goal is that there are 341 NFIP communities in MA, and only 2 state floodplain managers reviewing all of their bylaws. This level of work amounts to more than full time for both employees over the next year.

So our message is “yes—please take time to compare your current bylaw (or ordinance) with the 2020 state model as soon as you can,” but no worry if that's not before 2022 (unless your community is one of the two examples above—getting new maps or having a visit.)

I wanted to take this opportunity to clarify this issue, which has been at the forefront for many of you since last October. If you have any questions or concerns, please don't hesitate to contact either myself (joy.duperault@mass.gov) or Eric Carlson (eric.carlson@mass.gov) We're most happy to help!

Joy is the Massachusetts State Floodplain Manager



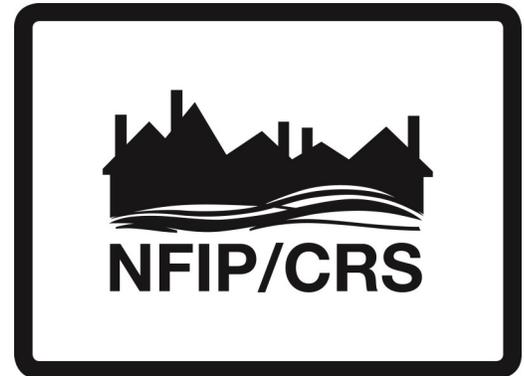
Community Rating System Corner

A Handy Place to Stay Current on CRS Matters

Written by Shannon Hulst, CFM, Floodplain Specialist and CRS Coordinator, Barnstable County and Woods Hole Sea Grant

Activity 350: Flood Protection Information

This is one of my favorite activities for communities to take on. In my work as a regional coordinator helping several communities, I try to be conscious of what Community Rating System (CRS) activities are worth their time. A community should never take on an activity solely for CRS credit, but there are a few things that are a relatively light lift and a good idea for a community to do anyway. Activity 350 is among those. A community can order several publications from FEMA (the list can be found on page 350-3 of the [CRS Coordinator Manual](#)) and place them in their library and catalog. They can also put other important documents, like a Hazard Mitigation Plan, the Flood Insurance Rate Maps, or the community's floodplain bylaw/ordinance in the library system for easy public access. Many of these documents get updated only once every several years, so they do not have to be replaced frequently.



The final component of Activity 350 is related to information available on a community website. This is an activity where a regional entity, such as a Regional Planning Agency or nonprofit, can help several communities out. Every municipality needs its own landing page, but they can then create links to other sources for the creditable information. On the Cape, I've added a lot of the important flood information to the [Cape Cod Cooperative Extension website](#) and the communities include a link to that site from their flood information landing pages. This enables all of these towns to get credit for one website, while ensuring the information is still local and accurate. Even if you do not have a regional agency that can provide this, however, you can still put this content on your own municipal website. Having information available to the public is critical to the overall flood resiliency of your community.

For more details on documentation required to earn credit in Activity 350, take a look at the CRS Coordinator's Manual and [CRSresources.org](#).

Shannon is the CRS & Floodplain Coordinator for Barnstable County through the Cape Cod Cooperative Extension & Woods Hole Sea Grant.

Events of Interest Coming Up:

Registration is open for the [ASFPM 45th Annual National Conference](#). The conference will be held virtually on May 10-14, 2021.

Eighth International Conference on Flood Management ([ICFM 8](#)) at The University of Iowa, Iowa City, Iowa, August 9-11, 2021

Dam Safety Regulations

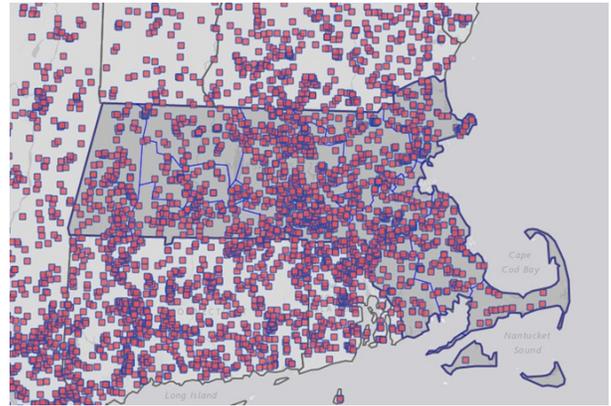
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Dam Hazard Potential classifications (Low-, Significant-, and High-Hazard) are based on the potential for loss of human life or property damage (including development in the area downstream of the dam) in the event of dam failure.

Inspections by Professional Engineers are required:

- every 10 years for low-hazard potential dams
- every 5 years for significant hazard potential dams
- every 2 years for high-hazard potential dams

Emergency Action Plans are required for significant- and high-hazard dams. These include a dam failure map of downstream areas that would be affected in the event of a dam breach and may require evacuation if imminent hazards develop. These plans should be updated annually and shared with local emergency managers.



Dam Removal

Some owners have opted to remove their dams to eliminate their liability or to avoid inspection and maintenance requirements. Environmental groups advocate for dam removal to restore ecological function, natural river flow and fish passage. American Rivers' Dam Removal database credits [6 dam removals](#) in Massachusetts during 2020. The Massachusetts Division of Ecological Restoration (DER) partners with willing dam owners for removals. This agency, part of the state's Department of Fish & Game:

- Ranks dams for removal priority based on ecological restoration value (see [DER's Restoration Potential Model Tool | Mass.gov.](#))
- Between 2009 and 2019 removed 50 dams to re-connect 300 river miles and restored 2,400 acres of wetlands

Massachusetts National Dam Inventory Snapshot

Total Dams: 1,327

Average Age: 95 Years

High-Hazard Dams: 328

Significant-Hazard Dams: 642

Low-Hazard Dams: 357

Publicly Owned Dams: 1,179

Privately Owned Dams: 515

Local-Government Owned Dams: 571

Community stakeholders may have many perspectives on dams. Some value the dam's function as a monument to the community's history. Others value the aesthetics and recreational use of the impoundment formed by the dam. Still others would prefer a free-flowing river. DER recommends discussions with local stakeholders before embarking on dam removal.

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FHA

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While these concerns are serious, there remains hope. Various trade associations submitted a joint letter urging HUD to make changes in order to simplify compliance, facilitate the ability for lenders to accept private flood insurance policies, and provide FHA borrowers with more choice. It is expected that HUD's response in the form of a final rule will be published sometime later in 2021. When published, industry hopes that those applying for FHA loans—including those first-time homebuyers--may finally be able to compare policies, prices, and coverages both from the NFIP as well as the private flood insurance market.

Joe is the Chair of the MA Coastal Coalition.

Dam Safety Regulations

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Dam modifications for flood risk reduction are eligible for FEMA's BRIC (Building Resilient Infrastructure and Communities) grant program. BRIC grants are awarded on an annual cycle through the Massachusetts Emergency Management Agency.

Municipal Floodplain Administrators can:

- Be aware of the dams in your community and their status
- Include dam-break threats in local Hazard Mitigation Plans
- Ensure dam safety standards are maintained in your community
- Consider removal of municipality-owned dams for public safety and to enhance floodplain and river connectivity

Linda is an Environmental Protection Specialist and Floodplain Specialist at FEMA Region I

Seeking Volunteers!

massFM encourages participation by its members in the various committees that keep us moving forward. We currently have space on our committees listed below. *Click [here](#) if you are interested in sitting on a massFM committee in 2021.*

- Membership Committee
- Sponsorship Committee
- Newsletter Committee
- Website Committee
- Events Committee
- Annual Conference Committee
- Communications Committee



Join massFM!

It's time to [sign up](#) to become a member, or to renew your membership, for 2021!

Your continued support is crucial to keeping our momentum growing so that we can serve floodplain management throughout Massachusetts and the region. massFM memberships renew annually on January 1st. We hope you will [join or renew](#)!



As a massFM member, you will receive a significant discount for all trainings and for the registration fees of the annual conference. Members also have voting rights and are eligible to serve on massFM [committees](#).

Please consider supporting massFM by being a member in 2021 at our online membership page here: massfm.org/join.

We would like to extend a Thank You to our Sponsors listed below!



Our mission at massFM is to create a forum for the exchange of local knowledge about floodplain management, to share that knowledge with the public, to inform municipal and statewide policies and procedures, and to improve the Commonwealth's ability to mitigate flood hazards now and in the future. massFM strives to be inclusive across multiple disciplines, regardless of means. We welcome you to join us.

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