

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 15, 2012

Division: Growth Management

Bulk Item: Yes No

Department: Building Department

Staff Contact Person/Phone #: Jerry Smith, Acting
Building Official 305 453-8729

AGENDA ITEM WORDING: Update on FEMA Pilot extension letter dated December 29, 2011, and Monroe County staff response letter dated January 25, 2012.

ITEM BACKGROUND: This is staff's latest interaction with FEMA in regards to complying with their concerns on Monroe County's diligence in completing the requirements of Title 44 USCFR §59.30. Staff has previously updated the BOCC on January 18, 2012. Please see attachments.

PREVIOUS RELEVANT BOCC ACTION:
January 18, 2012 - BOCC Discussion.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Direct staff to continue communication with FEMA.

TOTAL COST: N/A **INDIRECT COST:** _____ **BUDGETED:** Yes No

DIFFERENTIAL OF LOCAL PREFERENCE: _____

COST TO COUNTY: _____ **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DOCUMENTATION: Included Not Required

DISPOSITION: _____

AGENDA ITEM # _____

County of Monroe

Growth Management Division

Building Department
2798 Overseas Highway
Suite #300
Marathon, FL 33050
Voice: (305) 289-2501
FAX: (305) 289-2515



Board of County Commissioners
Mayor David Rice, Dist 4
Mayor Pro Tem Kim Wigington, Dist. 1
George Neugent, Dist 2
Heather Carruthers, Dist 3
Sylvia Murphy, Dist 5

We strive to be caring, professional and fair

1/25/12

FEMA US Dept. of Homeland Security
Region IV
3003 Chamblee Tucker Rd.
Atlanta, GA 30341

RE: December 29, 2011 letter requesting Monroe County extend Pilot Program

Dear Mr. Loar:

We are in receipt of your letter referenced above and attached herein. While we know you have made a finding that Monroe County has not made significant progress towards completion of the program, as discussed on the phone, we have continuously conducted all of the activities under the Pilot Program. We continue to do so at this time.

Monroe County has inspected and continues to inspect ALL below base flood elevation enclosures requested by property owners, upon their submission of the Flood Inspection Permit Application. Inspections have not been deferred, cancelled, or refused in the 10 years the program has been in effect. Monroe County performs inspections when a policy owner submits an application for the inspection. Property owners are directed to do this by their insurance carriers, after Monroe County notifies the carriers (via the FEMA database) that an inspection is required.

As of this date, Monroe County has performed 2689 initial inspections. Of that number, 2393 are in compliance. There are an additional 579 that are either waiting for the initial inspection OR are in the process of being made compliant, either through Code Enforcement, or within the one-year grace period allowed by the Final Rule, or under a 1316 declaration. There are approximately 2714 properties remaining that were submitted to carriers for an inspection but have not obtained a permit for the inspection. This

outstanding number of properties (2714) is puzzling to the County because Monroe County completed the required submission of all properties through the NFIP database in November 2010. As of this date (14 months later), all the notices for inspections SHOULD have been sent from the Carriers (WYO) companies to the policyholders at least 6 months prior to the renewal date of each policy. Failure to submit an inspection report to the WYO Company is supposed to render the policy un-renewable. If all the uninspected properties that were submitted from 2002 thru 2010 were non-renewed for no inspection, then the program would be complete, yet it seems there are over 2700 such policies still in force.

In essence, it is not the County that can remedy this situation, as we have no authority over the Carriers (WYO). We have put together several examples of random checks of addresses and policies below. It appears there is an issue with the oversight of the program from the NFIP Bureau and Statistical Agent and WYO levels. Several years ago, Monroe County Floodplain Administrator notified your office about this problem, but it appears there has been no resolve. Examples of this issue are:

-
- Policy # 0131426399 was submitted to the B&SA for an inspection by Monroe County on 4/9/08 yet there is a current policy in force for the same property, policy #1150271540.
 - Policy # 051688080F was submitted for an inspection by Monroe County on 9/6/05. The insurance company failed to send a notice to the insured until 2/7/08 requiring the inspection. Policy stayed in forced and the owners didn't obtain an inspection until 9/29/10.
 - Policy #7700067415 was submitted by Monroe County 4/1/05 for an inspection, yet there is a policy in force right now #7700067415, and no inspection has been performed.
 - Policy # 7700228649 was submitted by Monroe County on 4/8/04. No inspection has been performed but there is an active policy in force #8702746577
 - Policy # 9902665508 was submitted by Monroe County on 2/3/10 yet there is a current policy in force #1150656038, expiring 1/14/12, almost 2 years after the submission by Monroe County.
 - Policy 7700251006 submitted by Monroe County on 5/3/07 yet there was a policy in force up to 10/29/2011 without any inspection.

These are just a few examples; however, obviously, there are over 2700 properties that have not requested an inspection and correspondingly FEMA shouldn't be issuing a renewal to their flood insurance.

Another issue that may be contributing to this problem, is issuance of "Good Faith Letters". Monroe County has issued 4 good faith letters since the program started in March of 2002. However, through the years, county staff have noticed that the website indicates that Good Faith Letters are being issued on a regular basis. We were under the impression that only the Community could issue a Good Faith Letter, if the Community was unable to perform the inspection in the prescribed time frame. A few examples:

- Policy # 0152519701 was submitted by the County for an inspection in 2002. Two separate policies on the website show a good faith letter was accepted (not issued by Monroe County) on two separate occasions for the same property under policy 7700502279 in 2003 and again under policy # 9902757989 in 2006.
- ~~Another example of an improperly issued Good Faith Letter is the address 56 Mutiny Place in Key Largo. This property was submitted for the inspection by Monroe County on 8/8/02. No inspection was performed but the website shows a good faith letter issued (not by us) on 6/26/03 under policy 01710009703 and a second Good Faith Letter issued (not by us) on 7/8/05 under policy 8702343372. This policy # doesn't expire until 3/30/2012 yet was submitted to the B & SA almost 10 years ago. How is this the County's fault if the insurers continue to bind coverage?~~

In the Federal Register, page 39734, it clearly states that failure to submit an inspection report means policy owners CANNOT reapply for coverage under the NFIP until they obtain and submit an inspection report.

A third problem, though not as severe, but applicable, is the fact that properties that HAVE obtained the inspection and have been found compliant are being notified again that they need to submit a flood inspection report. On page 39738 of the Federal Register it states that "we expect that the notice that an inspection is required will be sent to the policyholder generally **once** during the timeframe established for implementing the inspection procedure." In other words, once found complaint, unless the COMMUNITY requests another notice be sent to an insured, that property should be removed from the list of parcels requiring notice for an inspection. It just muddies the waters if compliant properties are getting notified for an inspection after compliance has been achieved. Recently, our Director of Monroe County Growth Management Division emailed Prasad about this issue and received a response back indicating he expected inspections to be

done upon renewal. It is not our understanding that the pilot program requires re-inspection. I have attached this email so you can review it.

Since Monroe County submitted the last properties 14 months ago, ALL properties should have received their notice OR been non-renewed. The County does not know how many of the 2714 properties still have policies in force, but we believe it to be several hundred at least. The examples above show that the system has flaws that have nothing to do with Monroe County.

As stated previously, we have completed all of the activities under the pilot program and we continue to inspect properties as they are requested of us.

We respectfully request that FEMA address these non-performance issues with either the remaining policy owners or on the insurance companies who are required to notify policy holders of the required inspections.

Finally, as discussed by phone, we would have no County actions we can propose to remedy this issue, since we have performed our obligations under the Pilot Program. Please advise us on whether we still need to provide a report on how to remedy this situation.

I wanted to let you know I am retiring as of 1/27/12 and Jerry Smith, Assistant Building Official will become Acting Building Official as of 1/30/12. Please copy him on all correspondence from this point forward. Jerry's phone number is: 305 453-8729.

Sincerely,



Joe Paskalik, Building Official
Floodplain Administrator

CC:

Mayor Rice

County Commissioners

Roman Gastesi, County Administrator

Christine Hurley, Growth Management Division Director

Jerry Smith, Assistant Building Official

Mary Wingate, Floodplain Coordinator

Brian Corcoran, Floodplain Coordinator

Wingate-Mary

From: Hurley-Christine
Sent: Tuesday, January 24, 2012 2:52 PM
To: Wingate-Mary; Smith-Jerry; Paskalik-Joe; Corcoran-Brian
Subject: FW: MONROE COUNTY Question about Pilot Program

Print this email for attachment to the letter. Christine

OK - MW

From: Inmula, Prasad [<mailto:Prasad.Inmula@fema.dhs.gov>]
Sent: Friday, December 16, 2011 12:25 PM
To: Hurley-Christine; 'Inmula, Prasad'
Cc: Loar, Brad; Wilson, Susan
Subject: RE: MONROE COUNTY Question about Pilot Program

Good afternoon, Christine,

My apologies for the delay in responding to your e-mail (below) due to the more pressing ESA- and Florida Building Code-related issues. Yes, the Pilot Inspection Procedure requires apply for both new and renewed flood insurance policies to require an inspection before a subsequent policy renewal. I have copied the provision from 44 CFR, § 59.30 here for your information.

“(5) SFIP endorsement. In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61, Appendices A(4), (5), and (6)].”

Please let us know if you need anything further. Thanks very much and have a wonderful weekend!

Best regards,

Prasad

Prasad Inmula, Ph.D., PE, CFM
DHS | FEMA | Region IV
Atlanta, Georgia
(770) 220-8841

From: Hurley-Christine [<mailto:Hurley-Christine@MonroeCounty-FL.Gov>]
Sent: Wednesday, November 30, 2011 6:09 PM
To: 'Inmula, Prasad'
Cc: Wingate-Mary; Paskalik-Joe; Corcoran-Brian; Granger-Lisa; Shillinger-Bob
Subject: FW: MONROE COUNTY Question about Pilot Program

Prasad: Thank you for your letter (attached). I have cut and pasted a portion of the letter below. I just want to make sure I understand something. This portion indicates “insurers will continue to send a notice to the flood insurance policyholder that an inspection report may be required for new or renewed flood insurance policies. When you say “new” flood insurance policies, do you mean insurers are sending letters to new policy seekers? I know we have sent all of our letters to flood insurers from the FEMA data base.

Despite passage of Florida House Bill 407, according to Title 44 of the Code of Federal Regulations, Section 59.30 (44 CFR §59.30), insurers will continue to send a notice to the flood insurance policyholder that an inspection report may be required for new or renewed flood insurance policies. By participating in the NFIP and the pilot inspection program, Monroe

Thank you,

Christine Hurley, AICP
Monroe County
Growth Management Division Director
(305) 289-2517



FEMA

December 29, 2011

CERTIFIED MAIL/RETURN RECEIPT REQUESTED
7004 0750 0000 2766 7883

RECEIVED JAN 11 2012

*Bocet
Mayor Rice*

The Honorable David Rice, Mayor
Monroe County
Board of Commissioners
530 Whitehead Street
Key West, Florida 33040

Dear Mayor Rice:

Following consultation with Monroe County by the Federal Emergency Management Agency (FEMA) Region IV Office in Atlanta, Georgia, we have decided to extend the Pilot Inspection Procedure for Monroe County Unincorporated Areas. Based on discussions with your staff, we understand that the County has not made significant progress identifying and remedying unlawful enclosures and it requires an extension of the Pilot Inspection Procedure to complete the requirements of Title 44 of the United States Code of Federal Regulations §59.30.

We expect Monroe County to accomplish the following by the new termination date of **June 28, 2013**:

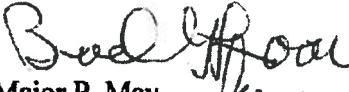
- Continue to identify potential floodplain management enclosure violations; inspect the potential violations; and remedy the violations to the maximum extent possible.
- Submit a detailed compliance plan no later than March 1, 2012, to the Regional Office, outlining how the County will complete the Inspection Procedure by June 28, 2013.
- Submit quarterly progress reports to the Regional Office.

It is imperative that the County complete the Inspection procedure for all potential enclosure violations by the new termination date. Failure to demonstrate substantial progress in the coming months will place the County in jeopardy of being deemed non-compliant with minimum National Flood Insurance Program floodplain management standards. We will contact you within the next two weeks to discuss specific requirements for the detailed compliance plan and the quarterly progress reports.

We recommend that Monroe County publish a notice of this extension in a prominent local newspaper or on the County's website notifying your residents of this new date. If you have questions about the inspection procedure, please do not hesitate to contact Susan W. Wilson, Branch

Chief, Floodplain Management and Insurance Branch, Mitigation Division by telephone at (770) 220-5414, or by email at Susan.Wilson@fema.dhs.gov. The Regional Office may also be contacted by mail. Please send any inquiries to Ms. Wilson at FEMA Region IV, Floodplain Management and Insurance Branch, Mitigation Division, 3003 Chamblee Tucker Road, Atlanta, Georgia 30341.

Sincerely,


Major P. May
Regional Administrator

cc: BOCC
CAD
CAY
GMD