



Memo

400 Commercial Street, Suite 404, Portland, Maine 04101, Tel (207) 772-2891, Fax (207) 772-3248

Byfield, Massachusetts Portsmouth, New Hampshire Hamilton, New Jersey East Providence, Rhode Island

www.ransomenv.com

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To: Municipal Clients related to FEMA floodmapping

From: Bob Gerber

Subject: Update on FEMA floodmapping in York and Cumberland Counties

Last Wednesday and Thursday FEMA held its CCO meetings for municipal officials in Cumberland and York Counties on the new Preliminary Floodmaps. Most of you probably sent one or more to these briefings. Some very interesting information came out at these meetings and in after-meeting discussions with FEMA.

- 1) It turns out that those of my clients that retained me to appeal the 2009 maps will have lower flood elevations than neighboring communities that I did not work for at that time. FEMA made a political decision to accept what I submitted at that time. I used a methodology to do that work that had been discussed with FEMA and its consultants at the time that involved a modification of the way wave setup was calculated. I felt that the standard way of using the DIM setup methodology overstated the wave setup so I proposed an approach that cut wave setup about in half. Wave setup is not an issue on the open coast because wave runup is much greater than wave setup and wave setup is subsumed in the runup calculation. However, in the estuaries behind the open coast where wave runup is minimal, wave setup is being carried on top of the surge elevation at a level equal to the open coast level. This was not the case in FEMA's own 2009 maps, but is the case with the new FEMA November 2013 Preliminary Maps. As an example, the flood elevations in the Scarborough Marsh area are as much as 6 feet higher in the 2013 maps west of Winnocks Neck than shown on the 2009 map because of the addition of wave setup and some intra-marsh wave generation. But if I calculate wave setup in Scarborough in an appeal of the 2013 maps in the same fashion that I calculated it for neighboring Cape Elizabeth in 2010, then I could lower the flood elevation in the Marsh by up to 3' due to both wave setup reduction and a reduction of depth in the marsh that keeps wave heights down.

After the regular Cumberland County CCO meeting ended, the Town Managers and planning staffs of Scarborough and Old Orchard and I had a thorough discussion of this issue with FEMA for over an hour. Their position was that my

appeals were made during a FEMA MAPMOD program and were accepted then, but the new maps are being done under RiskMAP (a national program) that requires strict adherence to FEMA's guidelines and specifications. In answer to intensive questions about the implications of this to new appeals—even in towns where I used the modified methods in 2010—FEMA said that new appeals should not use the modified methods. The Congressional delegation staff will be seeing what flexibility might exist in this posture, but as of this writing it doesn't look promising.

- 2) At the end of the Cumberland County CCO meeting FEMA hand-delivered to me a large and highly technical report that contained data essential to me to understand how FEMA developed some of its wind, wave, and surge elevation information that I saw in the calculations that they delivered with the November 4, 2013, Preliminary Maps. This information had been calculated prior to the delivery of the Work Maps we saw a year ago in southern Maine. I asked all my towns to send official letters to FEMA requesting this data last February and all but one did. FEMA provided nothing until we got some of their calculations with the November 4th maps. When I saw those maps and calculations I saw that FEMA was applying new wind and wave heights at the boundaries but there was no documentation of how these were derived.

I sent my first memo to the Congressional delegation on November 18th, asking them to ask FEMA for 8 pieces of information that I wanted to discuss with them in a conference call. FEMA told the staff that I would have to provide a more formal memo directed to them giving background on what I was asking for and why. I delivered this memo on December 9th. FEMA would not entertain this memo because I listed 8 items and FEMA said they would only talk about one of them with me so I was asked to revise the memo, eliminating the other 7. I did that and delivered the revised memo on Dec. 12th. Although we were initially assured that we would get a phone conversation, FEMA had a change of heart over the holidays and told the delegation that they would deliver the requested information and discuss it at the CCO meeting (which was done). Since the Municipal Appeal period is now expected to start “sometime in March”, there is not much time to challenge what I am seeing in this highly detailed and technical document¹. I have finished the calculations for most of the towns for which I am preparing appeals and this new information is going to require a recalculation—from the start—of almost all of those calculations. I will have to talk with each of you for whom I am preparing an appeal about the cost and schedule ramifications of this.

- 3) If you are in a town with sand beaches, pay attention to the GIS layers that define “Primary Frontal Dunes” (“PFD”). There are many more PFDs defined in the Nov. 2013 map than there were in the June 2009 maps. By the Code of Federal Regulations (CFR), VE zones on the ocean side of PFDs must be carried to the

¹ This detailed document covers modeling done on the mid-coast area, too.

low point on the inland side of the back side of the primary frontal dune. VE zones have insurance cost ramifications as well as regulatory restrictions on building. I noticed that these dune designations were applied in Old Orchard Beach where the “primary frontal dune” is not really obvious in many places due to the high density of development. FEMA told me that they obtained the “Dune maps” that are published by the Maine Geological Survey.

- 4) FEMA and the State presented a wide variety of information during the meetings and some of it did not agree with published guidance documents. This makes me very nervous because I have already processed three municipal appeals in Massachusetts and learned that if you don’t follow the appeal process to the letter of the regulations and guidance documents you will be shot down. Examples:
 - a. It was stated that individuals can file appeals directly with FEMA although they should “let the towns know” that they are doing it. I have been through 3 municipal appeal processes in Massachusetts in the past 6 months and the direction we were given was that individual appeals should first be submitted to the municipality for their review and approval. If the town does not want to submit an appeal on behalf of an individual, then the individual can appeal on his/her own. If the town is not submitting an appeal on its own behalf, then the individual appeals can be submitted as they come into the town and FEMA will correspond directly with the appellants, copying the town. But if the town is going to submit an appeal on its own behalf, it is supposed to consolidate all appeals and file them together and FEMA will then only correspond directly with the Town. In my Westborough, MA, appeal, I was given the attached appeal memo from FEMA Region VI, which is fairly detailed guidance on how things work.
 - b. It was stated that the Scientific Resolution Panel (SRP) process was binding on FEMA. It clearly states in the SRP literature published by FEMA that it is not binding on FEMA.
 - a) The community understands that the FEMA Administrator is not required to accept the recommendation of the SRP, and that upon the Administrator’s final determination that no further consideration will be given to the community’s appeals. The parties will maintain their right to appeal to the appropriate Federal District Court pursuant to 44 CFR Section 67.12 of the NFIP regulations.
 - c. It was stated that LOMRs have fees attached to them. Only LOMR-F and LOMR-Cs have review fees. A straight-forward Letter of Map Revision application does not have application or review fees.
- 5) The Dec. 2011 FEMA Guidance Document on Appeals that describes the SRP option states:

scientifically or technically incorrect. An SRP request is an option only after FEMA and a local community have been engaged in a collaborative consultation process for at least 60 days without a mutually-acceptable resolution of an appeal.

This gives the impression that there will be a “collaborative consultation process” with FEMA in resolving appeals. In the three appeals I have processed in Massachusetts there has been NO collaboration of any kind. The town sent in the appeal I prepared; FEMA, in one case, asked questions that had to be answered in

30 days; FEMA delivered a “resolution” letter and gave us 30 days to comment. I would qualify this “collaboration” language as a prime example of false advertising that should be either stricken from the Guidance Document or FEMA should start “collaborating” to resolve the appeals. Part of the reason that the Region does not try to negotiate an appeal is because FEMA Headquarters has final say on the appeals (they have weighed in on all of mine) and Region 1 feels it does not have the authority to negotiate.

Attachment: Region VI memo on the Appeal process



Appeals and Protests

Information for Community Officials

INTRODUCTION

The preliminary flood hazard maps being presented to your county represent the most up-to-date, accurate information ever developed for your area. These maps, once finalized, serve as the basis for your community's flood plain management and the primary tool in preventing loss of life and property due to flooding.

Community officials and property owners have an opportunity to review these preliminary maps—also known as the Digital Flood Insurance Rate Maps (DFIRMs)—during a formal review and comment period. It is during this “90-day Appeal Period” in which objections (appeals or protests) to information shown on the digital map or in the accompanying Flood Insurance Study (FIS)* report may be submitted to FEMA for consideration.

FEMA welcomes public input through the appeals and protests process. Additional proven scientific and technical information increases the accuracy of the maps and better reflects the community's flooding risks. The following information defines what constitutes an appeal or protest and explains the process by which a community or individual may take such action.

What is an Appeal?

Determining the base flood elevation (BFE) within a community is a major component of the mapping process. The BFE is the elevation of the flood having a one-percent-chance of being equaled or exceeded in any given year. This becomes the basis for the detailed floodplain boundaries, flood insurance risk zones, and regulatory floodway boundaries shown on the map panels. If an objection to the map involves the proposed base flood elevations, it is considered an **appeal**.

What is a Protest?

If an objection does not involve the proposed base flood elevations shown on the digital map panels and in the FIS report materials, it is considered a **protest**. Protests usually involve changes to items such as roads and road names, corporate limits, floodway limits, and floodplain boundary delineations.

Information regarding the roles and responsibilities of community officials and individual property owners in submitting, reviewing, and resolving appeals and protests is provided in the paragraphs below.

(Please see the document “Appeals and Protests: Required Support Data and Documentation” for detailed information on the technical information needed to support an appeal or protest.)

*The Flood Insurance Study report is the official report provided by the Federal Insurance Administration that includes flood profiles, the new maps, and the base flood elevations.

Activities Leading Up To Appeal Period

FEMA formally presents both paper and digital copies of the preliminary maps to community officials at a county or parish meeting—called a CCO meeting—and explains the map publication and adoption process in detail. FEMA encourages each community to then publicize and display the maps and, if requested, may assist at public meetings. A scheduled public meeting allows local residents to view the maps, ask questions and find out more information regarding their flooding risk.

The Appeals Period Process

After the formal meetings are held, FEMA will prepare the materials below.

- Listings of base flood elevations shown on the preliminary digital maps, which are posted on the FEMA Website at www.fema.gov/plan/prevent/fhm/bfe.
- A legal notice, called a Proposed Rule, which is published in the FEDERAL REGISTER;
- Public notices announcing the start of the appeal period and the posting of the base flood elevation listings, which are published twice in local newspapers with wide circulation
- In addition, FEMA mails letters notifying community officials of the new or modified base flood elevations shown on the digital maps. These letters are referred to as “proposed flood elevation determination letters.” FEMA encourages community officials to distribute this information to their residents and other key stakeholders.
- The 90-day appeal period begins on the date of the second publication of the public notice in the local newspaper.
- During the 90-day period, any individual property owner who wishes to file an objection to the base flood elevations or other information in preliminary map and preliminary FIS report should submit their appeal or protest along with the required scientific or technical data to the community official designated to manage this process. (See “Appeals and Protests: Required Support Data and Documentation”)
- The designated community officials review each appeal and protest to determine whether the information or data submitted is sufficient to forward to FEMA at the address shown below.
- When forwarding an appeal or protest and support data to FEMA for review, community officials should include a transmittal letter stating whether the community supports the objection.
- The community also may appeal or protest on its own behalf if no individual appeals or protests are submitted.
- FEMA recommends that community officials notify FEMA Region 6 of appeals or protests as soon as possible. All documentation must be collected and forwarded together to the address provided before the 90-day appeal period ends. This ensures no additional mapping actions will proceed without consideration of the objections.

- All appeals or protests should be forwarded to:

Federal Emergency Management Agency
Attn: Frank Pagano
800 North Loop 288
Denton, TX 76209-3698
Telephone: (940) 898-5178
Fax: (940) 898-5195

- If community officials, property owners, or other non-community appellants are unable to obtain and submit the appropriate support data within the 90-day appeal period, they may pursue a formal map revision after the map has become effective.

How Appeals and Protests Will Be Addressed

The procedures that are to be followed in handling appeals or protests are summarized below.

- Once FEMA Region 6 receives the formal objections, FEMA will send letters to community officials acknowledging receipt of the appeals or protests.
- FEMA also will send copies of the acknowledgment letters to the floodplain administrators and to all appellants unless the number of appellants is so great that to do so would not be practical. In such cases, the community will be responsible for informing appellants that FEMA Region 6 has received the appeals or protests.
- FEMA will review all appeals and protests and the support data submitted with them.
- If any questions or problems arise, FEMA will work with community officials or the non-community appellants to resolve them.
- If needed, FEMA will request any additional support data through a letter to community officials or non-community appellants. FEMA will allow approximately 30 days for submittal of the required data.
- Data submitted within the 30-day period will be considered in resolving the objections.
- If the data is not provided within the 30-day period, FEMA will resolve the appeals or protests using the data originally submitted.
- If appeals and/or protests are adequately supported, FEMA will revise the base flood elevations, floodplain boundaries, regulatory floodway boundaries, and any other information affected by the objections. If appropriate, FEMA will revise the affected map panels and/or FIS report materials.
- FEMA will send letters explaining the resolution of the appeals and/or protests to the community officials along with copies of the revised map panels and FIS report materials, if appropriate. The revised map panels and FIS report materials will be stamped as "Revised."

- The affected communities will be given a 30-day period to review and submit comments on the resolution.
- FEMA will inform the community or other interested parties by letter if appeals and/or protests are denied and provide an explanation for the denial.
- At the end of the 30-day review period, FEMA will review and address all comments on the appeal and/or protest resolutions. FEMA will contact community officials additional coordination is necessary.

At the end of this process, FEMA will continue processing the digital maps and FIS reports as discussed below.

How the Maps and Reports Become Final and Effective

- After the 90-day appeal period has ended and all objections have been addressed, FEMA will make the proposed base flood elevations final by publishing another legal notice, called a “Final Rule,” in the FEDERAL REGISTER and issuing Letters of Final Determination, or LFDs, to community officials.
- The LFD will inform community officials that the community is being given a period of time to enact new or modified floodplain management ordinances required for participation in the NFIP.
- During this six-month “adoption/compliance period,” FEMA prepares the digital maps and FIS reports in final form, and coordinates with the U.S. Government Printing Office to have them printed and distributed.
- At the end of the adoption/compliance period, the new digital maps and FIS reports will become effective.

How to Appeal the Final Determination Made by FEMA

Under the provisions of Section 67.12 of the NFIP regulations, an appellant who is aggrieved by the final determination by FEMA may, within 60 days of receipt of the LFD, appeal the final determination to the U.S. District Court for the district in which the community is located. While the appeal is being reviewed by the U.S. District Court, the final determination by FEMA will be effective, unless it is stayed by the Court for good cause shown.