Challenging a Flood Insurance Study - Appeals of Proposed Base Flood Elevations

Jennifer N Anticknap, CFM
Gary L. Guhl, P.E.

Maryland Association of Floodplain and Stormwater Managers
Thursday, October 21, 2010
## OFFICE OF THE MAYOR

909 South Main Street
Phone: 
Fax: 

October 19, 2009

Mr. William R. Blanton Jr., Chief
Engineering Management Branch
Mitigation Directorate
Federal Emergency Management Agency
500 C Street, SW
Washington, D.C. 20472

Dear Mr. Blanton:

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### 62050 Federal Register/Vol. 75, No. 194/Thursday, October 7, 2010/Proposed Rules

<table>
<thead>
<tr>
<th>Flooding source(s)</th>
<th>Location of referenced elevation</th>
<th>* Elevation in feet (NGVD) + Elevation in feet (NAVD) + Depth in feet above ground + Elevation in meters (MSL)</th>
<th>Communities affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mud Creek</td>
<td>At the intersection of Northwest 2nd Street and Northwest 142nd Avenue. Approximately 0.5 mile upstream of the confluence with the Des Moines River. Approximately 1.25 miles upstream of the confluence with the Des Moines River.</td>
<td>None +965 +780 +780</td>
<td>City of Runnells.</td>
</tr>
<tr>
<td>North River</td>
<td>At the intersection of Southeast 72nd Avenue and Southwest 60th Street. At the intersection of Southeast Avon Drive and southwest Goodhue Drive.</td>
<td>+780 +781 +780</td>
<td>Unincorporated Areas of Polk County.</td>
</tr>
<tr>
<td>Raccoon River</td>
<td>Approximately 250 feet upstream of the 1-36 crossing. Approximately 1.6 mile upstream of the 1-35 crossing</td>
<td>+828 +839 +839</td>
<td>Unincorporated Areas of Polk County.</td>
</tr>
</tbody>
</table>

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
\^ Mean Sea Level, rounded to the nearest 0.1 meter.
* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Ray E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

### ADDRESSES

City of Allaman
Maps are available for inspection at 14000 Northeast 6th Street, Allaman, IA 50007.

City of Polk City
Maps are available for inspection at 112 3rd Street, Polk City, IA 50226.

City of Runnells
Maps are available for inspection at 110 Brown Street, Runnells, IA 50237.

Unincorporated Areas of Polk County
Maps are available for inspection at 111 Court Avenue, Des Moines, IA 50209.
Today’s Objectives

- NFIP regulations
  - Initiation
  - Time Frame
  - Requirements
  - Appeal versus Protest
  - Community’s Role
  - FEMA’s Response

- Levee Considerations
  - *FEMA Procedure Memorandum No. 52*

- Appeal Resolution
  - Alternatives
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- **NFIP Regulations**
- 44CFR Part 67 – Establishes the Appeals Procedure
  - Proposed Base Flood Elevations Must be Published (Paragraph 67.4)
  - Must be Filed in Writing (Paragraph 67.5)
  - Must be Based on Scientific or Technical Information (Paragraph 67.6)
  - Must be submitted by Community Chief Executive Officer (CEO) (Paragraph 67.7)
  - Appeals Procedure (Paragraph 67.8)
  - Individual Appeals Reviewed on Their own Merit (Paragraph 67.9)
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- **Window of Opportunity**
  - **Community Given 30-Days to Review**
    - BFEs Published Twice in Local Newspaper
    - Also available at:
      - Federal Register - “Proposed Rule”
      - FEMA’s website – “Base Flood Elevation (BFE) Notices for Preliminary Flood Insurance Studies and Letters of Map Revision (LOMR)”
  - **90-Day Appeal Period Begins with Second Publication**
  - **Appeal Resolution within 90-Days from Receiving the Complete Appeals Data Package**

FEMA  [https://www.floodmaps.fema.gov/fhm/Scripts/bfe_main.asp](https://www.floodmaps.fema.gov/fhm/Scripts/bfe_main.asp)
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Federal Register Publication of Proposed Notice
CEO Receives 101/155 Letter
Proposed BFE Published in Prominent Local Newspaper

- Preliminary FIS/FIRM – New or Revised BFEs
- 2nd Publication of BFEs Appeal Period Begins
- 30-Days
- End 90-Day Appeal Period – FEMA Evaluates Data
- 90-Days

pbsj.com
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- Appeal Resolution - FEMA Responds to Community CEO
- Community Review and Comment - FEMA Reviews Comments
- FEMA Issues LFD / FFED

30-Days
7-Days
PBSJ.com
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- Appeals
  - Challenge New or Revised BFEs
  - Based on Data that Show BFEs to be Incorrect
    - Scientifically
    - Technically
  - Scientifically Incorrect
    - Inappropriate or Incorrect Methodology
  - Technically Incorrect
    - Incorrectly Applied Methodology
    - Insufficient or Poor-Quality Data
    - Mathematical or Measurements Errors
    - Physical Changes
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- What is Meant by Incorrect?
  - Not Absolute
  - Applicants Must Provide Alternative Analysis
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- **Protests**
  - DOES NOT Challenge Proposed BFES
  - DOES Challenge the Information or Data Presented in the FIS and FIRM
- **Typically Consist Off:**
  - More Detailed Topographic Data
    - Improved Floodplain Boundary Delineations
  - Omissions
  - Base Map Errors:
    - Street Names
    - Corporate Boundaries
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- The Community’s Role
  - Communities and Individuals May Appeal Proposed or Revised BFEs
  - Individuals Should Submit Data Directly to the Community
  - The Community Reviews and Consolidates the Appeals Received
  - The Community Prepares a Written Opinion on the Justification of the Appeals Received
  - The Community Submits the Opinion and Appeals Data to FEMA for Review
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- FEMA’s Response
- Appeal Resolution
  - Reviews and Evaluates Submitted Data
  - Acknowledges the Submittal in Writing
    - 175A
    - 175P
  - May Request Additional Data
  - Recommends a Resolution
  - May Issue Revised Preliminary (If Changes are Significant)
  - Prepares and Distributes Resolution Letter
  - Addresses Comments and Prepares the LFD Letter
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- **Protest Resolution**
  - Changes Incorporated (Usually at the Time the FIS and FIRM are Printed)
  - Unless the Changes are Significant
    - Revised Preliminary is Not Distributed
    - No Additional Community Review and Comment
    - Resolution Explained in LFD letter
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- **Levee Considerations**
  - To appeal the effects of levees/levee systems or similar structures/systems
    - Submit data and documentation to show freeboard, structural stability, and operation and maintenance requirements of Section 65.10 have been met
  - To appeal the effects of a flood protection system involving Federal funds that is under construction
    - Submit data and documentation to show requirements for “adequate progress” in accordance with Section 61.12 have been met

- **Expired Provisionally Accredited Levee/Levee Systems**
  - FEMA Procedure Memorandum No. 52 set forth a 90-day period to comment on floodplain delineations only
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- Lost Cause(?)
  - Effective BFES Can Be Revised at Any Time
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Resources:

- Study – Status and Description Explanations
  http://www.fema.gov/fhm/st_study.shtm

- Part 67: Appeals from Proposed Flood Elevation Determinations
  http://www.access.gpo.gov/nara/cfr/waisidx_09/44cfr67_09.html

  http://www.fema.gov/library/viewRecord.do?id=4053

- Maryland Department of Environment – DFIRM Outreach Program website
  http://mesgis.com/dfirm/info/communities.html