

Appendix C

Excerpts from NFIP Guidance Questions & Answers

Question # -

- 4. New maps (preliminary or effective) show my home now to be located in a Special Flood Hazard Area (SFHA); how does this affect my property and me?**

When FEMA releases a preliminary Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for a community, caution must be exercised in using this data. For insurance purposes, preliminary FIRMs and FIS reports cannot be used to make official flood determinations. The currently effective FIRM is the only official document for this purpose.

However, for regulatory purposes, preliminary FIRMs and FIS reports may be used by the community. Local regulations usually allow for the use of the best available data, and in most instances, the data provided on the preliminary FIRMs is much better than the older data on the currently effective FIRMs. The use of preliminary maps as "best available data" is only allowable when the preliminary data are more conservative than the effective data; i.e. the elevations of the base (1-percent-annual-chance) flood are higher or the SFHA is more extensive. Please contact your community's floodplain administrator to determine whether preliminary data is being used by your community and whether it has any impact on construction or other use of your property.

If the currently effective FIRM shows your property outside the SFHA and the newer preliminary FIRM shows your property as being in the SFHA, you may also want to contact your community floodplain administrator to determine whether your community is planning to appeal the information shown on the preliminary FIRM. If your community is not planning to appeal and you believe the information shown on the preliminary FIRM is incorrect, you may also want to ask the floodplain administrator what you have to do to appeal the information shown on the preliminary FIRM yourself.

If the information shown on the preliminary FIRM will not be appealed, you may want to contact your insurance agent to determine your options for purchasing a flood insurance policy. The flood insurance premium rates for a property that is shown outside the SFHA on the effective FIRM are lower than the rates for a structure inside the SFHA.

If a new FIRM becomes effective for your community and your structure is now in an SFHA, and you have federally related financing for your property and have not already purchased a flood insurance policy, your lender is required by law to document the flood zone determination and require that you purchase flood insurance. A 30-day waiting period follows the purchase of a flood insurance policy before it goes into effect. There are exceptions to the 30-day waiting period for policies purchased in connection with the making, increasing, extending, or renewing a loan, or certain map changes. If you do not purchase the insurance within 45 days after being informed that flood insurance is required, the lender is required to force-place the insurance and charge you for the cost.

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To dispute the lender's determination that your property is located in a flood zone, you and your lender can jointly request a Letter of Determination Review (LODR) from FEMA. This request must be submitted within 45 days of the date your lender informs you that your property is in a SFHA, the area subject to inundation by the base (1-percent-annual-chance) flood.

If your structure was built before the effective date of your community's first FIRM (pre-FIRM), your structure's flood insurance policy will be rated using "subsidized" rates that are, for the most part, significantly less than actuarial rates that fully reflect their risk of flooding. If your structure was instead built after the first FIRM (post-FIRM), the policy will be rated based on a building's risk of flooding, or are considered actuarial. In those zones where Base Flood Elevations (BFEs) have been established, Post-FIRM Rates are determined based on the elevation of the lowest floor (including basement) of the building in relation to the BFE. In zones where BFEs have not been established, i.e., referred to as A zones or approximate zones, the rates may be based on an accepted locally determined BFE and can be comparable to zones with BFEs, or may be determined by the height of the building above its highest adjacent grade. Contact your local insurance agent for more information.

[Elevation Certificates](#) are required to rate most post-FIRM buildings. If an Elevation Certificate is prepared for your structure, you may want to consider, as an alternative to the LODR, submitting the Elevation Certificate, and all other required data, in support of an application (MT-EZ) for a [Letter of Map Amendment](#) (LOMA) or an application (MT-1) for a [Letter of Map Revision Based on Fill](#) (LOMR-F). LOMAs and LOMR-Fs are official determinations from FEMA of a structure's relationship to the SFHA.

If you do not have federally related financing, you are not required by Federal regulations to have flood insurance, although it is available to you if your community participates in the [National Flood Insurance Program](#). You should contact your insurance agent for more information because the purchase of flood insurance is a prudent means of protecting your financial interests.

Excerpted from: http://www.fema.gov/plan/prevent/fhm/fq_genhm.shtm#hm4

67. What is the role of the community in floodplain management?

When the community chooses to join the NFIP, it must adopt and enforce minimum floodplain management standards for participation. FEMA works closely with State and local officials to identify flood hazard areas and flood risks. The floodplain management requirements within the SFHA are designed to prevent new development from increasing the flood threat and to protect new and existing buildings from anticipated flood events.

When a community chooses to join the NFIP, it must require permits for all development in the SFHA and ensure that construction materials and methods used will minimize

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future flood damage. Permit files must contain documentation to substantiate how buildings were actually constructed. In return, the Federal Government makes flood insurance available for almost every building and its contents within the community.

Communities must ensure that their adopted floodplain management ordinance and enforcement procedures meet program requirements. Local regulations must be updated when additional data are provided by FEMA or when Federal or State standards are revised.

69. Do Federal requirements take precedence over State requirements?

The regulatory requirements set forth by FEMA are the minimum measures acceptable for NFIP participation. More stringent requirements adopted by the local community or State take precedence over the minimum regulatory requirements established for flood insurance availability.

70. What is meant by "floodplain management measures"?

"Floodplain management measures" refers to an overall community program of corrective and preventive measures for reducing future flood damage. These measures take a variety of forms and generally include zoning, subdivision, or building requirements, and special-purpose floodplain ordinances.

Excerpted from: <http://www.fema.gov/business/nfip/fldmanre.shtm#69>

Appendix A (continued)

Excerpts from 44 CFR Part 9

Flood Management and Protection of Wetlands

44 CFR § 9.11 Mitigation.

(a) *Purpose.* The purpose of this section is to expand upon the directives set out in § 9.6 of this part, and to set out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment at risk from the base flood, or, in the case of critical actions, from the 500-year flood;

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization Standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section, (except as provided in § 9.5 (c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§ 9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway, and no new construction in a coastal high hazard area, except for:

(i) A functionally dependent use; or

(ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use, or which facilitates an open space use, the following applies. There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the

structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave height). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash. The Regional Director shall be responsible for determining the base flood level, including the wave height, in all cases. Where there is a FIRM in effect, it shall be the basis of the Regional Director's determination. If the FIRM does not reflect wave heights, or if there is no FIRM in effect, the Regional Director is responsible for delineating the base flood level, including wave heights.

(3) *Elevation of structures.* (i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the base flood.

(ii) There shall be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 500-year flood.

(iii) If the subject structure is nonresidential, FEMA may, instead of elevating the structure to the 100-year or 500-year level, as appropriate, approve the design of the structure and its attendant utility and sanitary facilities so that below the flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iv) The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section do not apply to the extent that the Federal Insurance Administration has granted an exception under 44 CFR § 60.6(b) (formerly 24 CFR 1910.6(b)), or the community has granted a variance which the Regional Director determines is consistent with 44 CFR 60.6(a) (formerly 24 CFR 1910.6(a)). In a community which does not have a FIRM in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i), (ii), and (iii) of this section, after compliance with the standards of 44 CFR 60.6(a).

(4) There shall be no encroachments, including fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that

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would result in any increase in flood levels within the community during the occurrence of the base flood discharge. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d) (1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

(i) Such site is the only practicable alternative; and

(ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Director shall require as appropriate, disaster proofing of the building and/or elimination of such future losses by relocation of those building contents, materials and equipment outside or above the

base floodplain or the 500-year floodplain for critical actions.

(e) *In the implementation of the National Flood Insurance Program.* (1) The Federal Insurance Administration shall make identification of all coastal high hazard areas a priority;

(2) Beginning October 1, 1981, the Federal Insurance Administration of FEMA may only provide flood insurance for new construction or substantial improvements in a coastal high hazard area if:

(i) Wave heights have been designated for the site of the structure either by the Director of FEMA based upon data generated by FEMA or by another source, satisfactory to the Director; and

(ii) The structure is rated by FEMA FIA based on a system which reflects the capacity to withstand the effects of the 100-year frequency flood including, but not limited to, the following factors:

(A) Wave heights;

(B) The ability of the structure to withstand the force of waves.

(3)(i) FEMA shall accept and take fully into account information submitted by a property owner indicating that the rate for a particular structure is too high based on the ability of the structure to withstand the force of waves. In order to obtain a rate adjustment, a property owner must submit to FEMA specific information regarding the structure and its immediate environment. Such information must be certified by a registered professional architect or engineer who has demonstrable experience and competence in the fields of foundation, soils, and structural engineering. Such information should include:

(A) Elevation of the structure (bottom of lowest floor beam) in relation to the Base Flood Elevation including wave height;

(B) Distance of the structure from the shoreline;

(C) Dune protection and other environmental factors;

(D) Description of the building support system; and

(E) Other relevant building details. Adequate completion of the “V-Zone Risk Factor Rating Form” is sufficient for FEMA to determine whether a rate adjustment is appropriate. The

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form is available from and applications for rate adjustments should be submitted to: National Flood Insurance Program Attention: V-Zone Underwriting Specialist 9901-A George Palmer Highway Lanham, MD 20706 Pending a determination on a rate adjustment, insurance will be issued at the class rate. If the rate adjustment is granted, a refund of the appropriate portion of the premium will be made.

Unless a property owner is seeking an adjustment of the rate prescribed by FEMAFIA, this information need not be submitted.

(ii) FIA shall notify communities with coastal high hazard areas and federally related lenders in such communities, of the provisions of this paragraph.

Notice to the lenders may be accomplished by the Federal instrumentalities to which the lenders are related.

(4) In any case in which the Regional Director has been, pursuant to § 9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure.

(f) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

[45 FR 59526, Sept. 9, 1980, as amended at 46 FR 51752, Oct. 22, 1981; 48 FR 44543, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984; 49 FR 5584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

EFFECTIVE DATE NOTE: At 45 FR 79070, Nov. 28, 1980, § 9.11(e)(4) was temporarily suspended until further notice.

Source:

http://edocket.access.gpo.gov/cfr_2005/octqtr/pdf/44cfr9.11.pdf