

Memorandum RE: Legal and Procedural Issues

**Appeal of the
Revised Digital Flood Insurance Rate Map
(rDFIRM)**

and

Revised Flood Insurance Study (rFIS)

Dated July 1, 2010

For Skagit County, Washington

By the Cities of:

Burlington and Mt. Vernon

**Scott G. Thomas, Esq.
Burlington City Attorney**

**Kevin Rogerson, Esq.
Mount Vernon City Attorney**

I. INTRODUCTION AND OVERVIEW

Appellants acknowledge that, under existing FEMA regulations, the basis for the Appellant's administrative appeal of FEMA's revised Digital Flood Insurance Rate Map (rDFIRM) and revised Flood Insurance Study (rFIS) will be decided under the standards of whether the appeal contents prevails under either 'scientific correctness' standard or 'technical correctness' standard as defined in 44 CFR. § 59.1, and that FEMA may not review legal or procedural issues raised. *See* 44 C.F.R. § 67.6. Appellants have raised and addressed all technical and scientific arguments elsewhere in this appeal. However, Appellants raise here errors of law pursuant to 42 U.S.C. § 4104 and 5 U.S.C. § 706 and other applicable provisions of law granting jurisdiction for judicial review of all relevant questions of law and that multiple, relevant errors of law by FEMA have been made.

FEMA has made the following errors of law and as such FEMA's rDFIRM and rFIS dated July 1, 2010 must be held unlawful and set aside.

II. FEMA HAS FAILED TO COMPLY WITH NEPA.

A. Applicable Law.

The National Environmental Policy Act ("NEPA" or "the Act"), 42 U.S.C. § 4321 et seq., was enacted to:

[d]eclare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

42 U.S.C. § 4321.

NEPA emphasizes the importance of comprehensive environmental analysis to ensure

that federal agencies carefully examine the environmental consequences of their actions before taking such actions. The Act also ensures that the public is made aware of the environmental effects of agency decisions, and is allowed to participate in the process of preparing environmental reviews. To that end, the Act requires governmental agencies to prepare and circulate for comment an Environmental Impact Statement (“EIS”) before undertaking “legislation and other major federal actions *significantly* affecting the quality of the human environment” (italics supplied.) 42 U.S.C. § 4332(C).

According to the NEPA Regulations adopted by the President’s Council on Environmental Quality (CEQ), 40 CFR 1500-1508, the term “*significantly*” is based on the twin criteria of context and intensity. 40 CFR 1508.27. “Context” means the affected environment in which a proposed action would occur; it can be local, regional, national, or all three, depending upon the circumstances. 40 C.F.R. § 1508.27; *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008). “Intensity” means the degree to which the proposed action would involve one or more of the following 10 factors:

- Adverse effects associated with “beneficial projects”;
- effects on public health or safety;
- unique characteristics of the geographic area (e.g., historic resources, park lands, prime farmland, wetlands, wild and scenic rivers, ecologically critical areas);
- degree of controversy;
- degree of highly uncertain effects or unique or unknown risks;
- precedent-setting effects;
- cumulative effects;

- adverse effects on scientific, cultural, or historical resources;
- adverse effects on endangered or threatened species or designated critical habitat

(pursuant to the Endangered Species Act); and

- violations of federal, state, or local environmental law.

40 C.F.R. § 1508.27; *Ctr. for Biological Diversity* at 1220. Depending on the action taken, NEPA may require additional, or different actions. For example, an agency may prepare an environmental assessment (“EA”) to decide whether the environmental impact of a proposed action warrants the preparation of an EIS. 40 C.F.R. § 1508.9 (a). An EA must provide sufficient evidence and analysis to determine whether an EIS, or a finding of no significant impact (“FONSI”), should be prepared. 40 C.F.R. § 1508.13. If an agency decides not to prepare an EIS, it must provide a convincing statement why a project’s impacts are insignificant. *Native Village of Point Hope v. Salazar*, 378 Fed. Appx. 747 (9th Cir. 2010). If substantial questions are raised about whether a project may have a significant effect on the environment, an EIS must be prepared. 40 C.F.R. §§ 1501.4, 1508.9. Under NEPA, major federal actions include actions that will have a significant impact on the environment, including those that will result in: an “extensive change in land use,” 44 C.F.R. § 10.8 (b)(2)(i), a “land use change which is incompatible with the existing or planned use of the surrounding area, 44 C.F.R. § 10.8(b)(2)(ii), many people being affected, 44 C.F.R. § 10.8 (b) (2) (iii), and an impact that is likely to be controversial, 44 C.F.R. § 10.8(b)(2)(iv).

B. FEMA is not entitled to the benefit of categorical exclusion excusing compliance.

In the interest of efficiency, the regulations promulgated by the Council on Environmental Quality create an exception, called a “categorical exclusion,” to the requirement

that agencies prepare and include an EIS prior to taking a proposed action. 40 C.F.R. § 1508.4. A categorical exclusion is available when a category of actions “do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations, 40 C.F.R. § 1507.3, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.” *Id.*

Even where an action is categorically excluded from NEPA compliance requirements, an environmental assessment must be prepared in extraordinary circumstances, meaning, among others, those where actions involve a “high level of public controversy,” 44 C.F.R. § 10.8(d)(3)(ii), or the “[p]resence of ... cultural, historical, or other protected resources,” within an area affected by the federal action. 44 C.F.R. § 10.8(d)(3)(v). For each proposal that is determined to be categorically excluded, FEMA must prepare and maintain an administrative record. 44 C.F.R. § 10.5(a)(4).

It is not open to question that FEMA’s decision to establish new BFEs and modified BFEs and flood re-mappings in Skagit County will cause significant and reasonably foreseeable direct, indirect, and cumulative environmental and related economic impacts on the environment including causing a change within new flood zones or revised flood zones of land uses which will be incompatible with existing or planned uses resulting in an extensive change in land use incompatible with the existing or planned use of the surrounding area, will affect thousands of people, be highly controversial, and affect property listed on the National Register of Historic Places, including, but not necessarily limited to, the Baker River Bridge over the Baker River in Concrete, Washington; the Bethsaida Swedish Evangelical Lutheran Church Parsonage in

LaConner, Washington; the Burlington Carnegie Library in Burlington, WA; the Lincoln Theater and Commercial Block in Mount Vernon, Washington; the Skagit County Superior Courthouse in Mount Vernon, Washington, and the President's Hotel in Mount Vernon, Washington and others. See, <http://nrhp.focus.nps.gov/natreghome.do> (last viewed 3-29-11). Clearly, NEPA is applicable to FEMA's actions and the categorical exclusions from the requirements of NEPA are not applicable.

FEMA relies on an EIS prepared in 1976 – over 35 years ago – to meet its NEPA obligations. See, Declaration of Margaret Fleek, ¶ 4. FEMA has thus violated NEPA and the Administrative Procedure Act (“APA”) by one or more of the following: failing to prepare an EA; failing to prepare an EIS; and apparently deciding that its actions are categorically excluded from the requirements of the NEPA. FEMA has stated that, based on its own interpretation of the applicable regulations, compliance with the foregoing provisions of NEPA is not a requirement applicable to it. *See id.* This action by FEMA is arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion, and otherwise not in compliance with legal requirements, including those imposed by the NEPA and APA.

II. FEMA HAS ENGAGED IN IMPERMISSIBLE RULE MAKING

Congress has created a regulatory process that requires agencies to learn from experience and input of the public, and to maintain a flexible and open-minded attitude toward their own rules. *Chocolate Manufacturers Association v. Block*, 755 F.2d 1098, 1103 (4th Cir. 1985). Agencies may not circumvent the rulemaking requirements of the Administrative Procedures Act. *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S., 764, 764-66 (1969); *Anaheim, et al. v FERC*, 723 F.2d 656, 659 (9th Cir. 1984). A change in law may not be made by informal letter-writing.

Christensen v. Harris County, 529 U.S. 576, 587-88, (2000). Under the APA, the term "rule" means,

the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency"

5 U.S.C. § 551(4). FEMA has created multiple, informal new rules regarding its decision-making process and administrative appeal process which are set forth below. All these new requirements or rules circumvent the rulemaking requirement process required under the APA, and are thus contrary to law. As a result, Appellants have been prejudiced by FEMA's actions.

A. FEMA's Refusal to Voluntarily Disclose Flood Insurance Study Information Absent a Freedom of Information Act (FOIA) Request.

FEMA has denied multiple requests by the Appellants that FEMA voluntarily grant access to, and inspection of, its ongoing flood insurance study or copies of records related to the study in a timely fashion. *See*, Declaration of Kevin Rogerson. Instead, FEMA has stated that local communities must undertake an additional, time consuming and lengthy process by making a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The requirement that local communities must submit requests under the Freedom of Information Act prior to having any access to needed information to provide comment to the FIS is both a new rule, and contrary to federal statute FEMA regulations. Moreover, this new rule leads to a futile result; even though the Appellants have submitted requests for information pursuant to FOIA, FEMA still has not produced any records necessary for the Appellants to properly perfect their appeal. *See*, Declaration of Scott G. Thomas, ¶¶ 1-4.

Appellants are political subdivisions of the State of Washington, which have authority to adopt and enforce flood plain management regulations for the areas within their jurisdiction respectively. The mayors of each political subdivision serve as the Chief Executive Officer charged with the authority to implement and administer laws, ordinances and regulations. As such, FEMA's regulations recognize that Appellant's are the "local community," and the Office of Mayor as the community official in which FEMA has a duty to consult. *See* 44 CFR § 59.1; 42 U.S.C. § 4107. Section 206 of the Flood Disaster Protection Act of 1973 states in pertinent part that:

In carrying out his [FEMA Director's] responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.]...the Director shall establish procedures **assuring adequate consultation with the appropriate elected officials of general purpose local governments...** Such consultation shall include, but not be limited to, **fully** informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Director concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Director shall encourage local officials **to disseminate information concerning such study** widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency **during the course of the study.** (emphasis added.)

42 U.S.C. § 4107. To comply with this federal mandate, FEMA must disseminate the information in its possession concerning the study to local officials so that they, in turn, may disseminate this widely within the community which may then provide informed input. FEMA's regulations provide a framework FEMA must follow in order to with this federal mandate.

At the time initial consideration is given to studying a community in order to establish whether and where flood-prone areas exist, the NFIP requires FEMA to establish a community case file. 44 CFR § 66.3(a). The file must include copies of all correspondence with community

officials and documentation of FEMA actions such as setting base flood elevations, suspensions or reinstatements of a community in the NFIP. *Id.* At the time FEMA awards a contract to conduct a flood elevation study, the NFIP requires a portion of the community file to be designated a “flood elevation study consultation docket.” 44 CFR § 66.3(b). The docket must include copies of: (1) all correspondence between the Federal Insurance Administrator and the community concerning the study, reports of any meetings among the Agency representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Federal Insurance Administrator's final determination. *Id.* The docket must also include all legal notices or publications required prior to FEMA’s proposed flood elevation determination. 44 CFR § 67.3.

FEMA cannot delay or fail to disclose information while it waits to make its decisions, but has an affirmative duty to apprise local communities of its progress in a meaningful manner so that the local communities in turn can provide input to FEMA prior to a study’s completion. Delay and failure to disclose information and prevention of local opportunity for input before decisions or prospective findings have been reached (i.e. what data FEMA shall use, what model FEMA shall employ) prevents meaningful local input among the community and runs contrary to FEMA’s obligations:

The Administrator or his delegate shall: (1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation). (2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, **along with the data and methods employed in reaching such conclusions.** (emphasis added)

44 C.F.R. § 66.1.

It is clear FEMA must allow local input to occur during the course of the study. This element of federal statute is restated in 44 C.F.R. § 66.1 (c)(1): “**During the course of the study**, local communities must be allowed to submit pertinent data.” (emphasis added.). 44 C.F.R. § 66.1 (c)(1) Not only do FEMA regulations require FEMA to encourage local community input during the course of the study, the Federal Insurance Administrator or the Administrator’s delegate has an affirmative duty to encourage participation in which the Administrator or his or her delegate must “[s]pecifically request the local community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).” *Id.*

FEMA has consistently refused to voluntarily release any of its information despite repeated request by the Appellants including requests for information from FEMA pertaining to any ongoing study or studies, previous studies and for portions of the community file and the flood elevation study consultation docket. In fact, FEMA responded by failing to acknowledge that such file or docket was in existence, and that the City make a formal request through the Freedom of Information Act. *See*, Declaration of Kevin Rogerson, ¶¶ 3-5.

It is now known that the FEMA study was ongoing, that the U. S. Army Corps of Engineers (COE) was engaged to conduct a flood insurance study that formed the basis for FEMA’s FIS, and did complete that study, that the COE study was being reviewed and evaluated by FEMA officials, and that initial mapping was prepared and going forward *prior* to disclosure of much of the pertinent information to the local community. Simply put, FEMA not only failed

to provide or volunteer to local officials this information during the process in order that they can distribute it to the local community, but affirmatively refused to do so requiring Appellants to submit FOIA requests. Being forced to this measure, such multiple FOIA requests were made under objection by Appellants, have taken months to comply and requests to expedite by the local community have been denied. *See Declaration of Kevin Rogerson*, ¶¶ 4, 5, 8, and 11.

Appellants have been prejudiced by FEMA's newly constructed rule requiring an affirmative request for studies through FOIA before local officials will be apprised of the progress of surveys and data and methods employed. Such decision has engineered the result of FEMA arbitrarily choosing to wait until it had already prepared initial maps and had completed its own internal review before any consultation or release of data rendering. The end result of this new rule was that any subsequent consultation was made meaningless and pretextual. Delay and failure to disclose information prevents local opportunity for input in a timely manner - before decisions or prospective findings have been reached.

B. FEMA has changed rules mid-stream, thus prejudicing the cities and property owners within their jurisdictions.

On March 14, 2011, FEMA published in the Federal Register a proposed rule, correcting information that had previously been published by FEMA relating to the Skagit River. *See, Declaration of Scott Thomas*, ¶ 5, and Exhibit "C"; 76 FR 13572. According to FEMA, the material that had previously been published at 75 FR 75945 "contained inaccurate information as to the location of referenced elevation, effective and modified elevation I feet, and/or communities affected. . ." 76 FR at 13573. In addition, the previously published materials contained "erroneous map repository addresses. . ." *Id.*

The first step in any due process inquiry is to determine if the complainant has a property

interest that is entitled to protection under the 14th Amendment Due Process Clause. *Moody Hill Farms v. United States Department of Interior*, 205 F.3d 554, 561 (2d Cir. 2000). Both Appellants own property within the 100 year regulated floodplain that will be impacted by FEMA's actions. See, Declaration of Kevin Rogerson, ¶ 16, and Declaration of Scott Thomas, ¶ 6.

As the Supreme Court has observed, in enacting § 556(d) of the Administrative Procedure Act, "Congress was primarily concerned with the elimination of agency decision-making premised on evidence which was of poor quality -irrelevant, immaterial, unreliable, and nonprobative-- and of insufficient quantity." *Steadman v. SEC*, 450 U.S. 91, (1981). And yet, FEMA is attempting to do just that with its rulemaking. The revised rule may not be implemented until 30 days after its date of publication. 5 U.S.C. § 553 (d). Indeed, the comment period for the proposed rule runs until June 13, 2011. 76 FR at 13572. However, the rule will substantively take effect at the end of the period when the BFE's must be appealed. To be clear, those who will be substantively impacted by the imposition of new BFE's have less than 17 calendar days to review, and challenge, those BFE's: the time between the initial publication of the new data, on March 14, 2011, and the date that the 90 day appeal period expires, on or about March 31, 2011. Such procedures are fundamentally unfair, and thus a violation of procedural due process. At a minimum, Appellants are entitled to adequate notice. *Board of Regents v. Roth*, 408 U.S. 564 (1972.)

Moreover, FEMA has created a "Scientific Resolution Panel which appellants may utilize "to review and resolve conflicting data related to proposed BFE's" beginning November 1, 2010 the genesis of which was by letter from its Administrator dated July 23, 2010. See Declaration

of Kevin Rogerson, ¶ 13. While it is presently unclear how these Scientific Resolution Panels will work in practice, to the extent that the standard of review employed by these panels is different from the “technically correct”¹ and “scientifically correct”² standard set out in 44 C.F.R. 59.1, then such review standards would also constitute improper rulemaking.

C. *FEMA’s Creation of a “Technical Data Notebook” which Forms Both the Scientific and Technical Basis of FEMA’s proposed BFE’s that are Subject to Appeal, and which was Neither Identified nor Disclosed to Local Communities.*

As a part of the newly created appeal process of the SRP, FEMA has identified that “Once the Panel members are selected, FEMA will provide the Panel with the necessary scientific and technical information to make a recommendation.” *See Declaration of Kevin Rogerson*, ¶ 15 and Exhibit “10” - October 29, 2010 Memo to Doug Bellamo, Director Risk Analysis Division of FEMA from Sandra K. Knight, Deputy Administrator Federal Insurance and Mitigation Administration of FEMA.

The information to be provided by FEMA to the SRP, in which the SRP panel in turn will rely on making its decision, shall be in the form of sections from a document known as the “Technical and Scientific Data Notebook” (TSDN) which will have been used to determine proposed flood elevations relevant to the appeal or protest” *Id.*³ See also SRP Rule 3.4 which provides “Panel members shall receive from FEMA specific sections of the Technical and Scientific Data Notebook (TSDN) used to determine proposed flood elevations relevant to the appeal or protest.”

¹ “Technically incorrect. The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.” 44 C.F.R. 59.1

² “Scientifically incorrect.” The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

³ See also SRP Rule 3.4 Review of Data Packages. “Panel members shall receive from FEMA specific sections of the Technical and Scientific Data Notebook (TSDN) used to determine proposed flood elevations relevant to the appeal or protest”

Again, nowhere in FEMA's rules is such a notebook identified. Even more troubling and as argued previously, FEMA has consistently denied local communities access to the community file or consultation docket where all pertinent studies and reports involving a new flood insurance study. Rather, FEMA has required the local community to undergo a FOIA request to obtain such information. In the instant case, the Appellants have sought through FOIA requests copies of the TSDN as clearly such a document is directly relevant to a local community's ability to determine whether an appeal of the FIS is needed. FEMA has rejected Mount Vernon's request to expedite such information even though is a local community under FEMA definition and had only 90 days to review the completed FIS and decide whether or not to file an administrative appeal. *See Declaration of Kevin Rogerson, ¶11 and Exhibit "6" - Denial of Expedited Review Letter Dated February 15, 2011.* As a result Mount received on March 21, 2010, ten days prior to the administrative appeal period ending, a response from FEMA stating it ***has not located such a document*** after conducting a 'comprehensive search' of files within FEMA that would be responsive to such a request. *See Declaration of Kevin Rogerson, ¶ 12 and Exhibit "7" FEMA letter dated March 18, 2010.*

By this course of conduct, FEMA has created a new document through impermissible rule making which FEMA identifies as ***critical*** to any administrative appeal as the TSDN or portions of it forms the sole basis of FEMA's information that will be given to the SRP for review. On the other hand, after Appellants specifically request the document, the Agency indicates it ***does not have nor can produce the TSDN***. FEMA's actions have prejudiced Appellants. FEMA's refusal to provide Appellants with the record, which FEMA then identifies as that to be used to justify FEMA's FIS, limits Appellants' ability to prepare its appeal..

FEMA's actions not only violate the ADA as an impermissible rule, but violates Appellant's due process rights.

The rule-making provisions of that Act, which FEMA would avoid, were designed to assure fairness and mature consideration of rules of general application. See H. R. Rep. No. 1980, 79th Cong., 2d Sess., 21-26 (1946); S. Rep. No. 752, 79th Cong., 1st Sess., 13-16 (1945). They may not be avoided by the process of making rules mid-stream. Moreover, there is no lawful procedure in place for FEMA to replace the statutory scheme with a rule-making procedure of its own invention. Apart from the fact that the device fashioned by FEMA does not comply with statutory command, it obviously falls short of the substance of the requirements of the Administrative Procedure Act. See, *NLRB v. Wyman*, 394 U.S. 759 (1969).

III. FEMA Has Failed to Adequately Consult with Appellants.

FEMA is required to consult with Appellants *before* issuing the rDFIRM. 42 U.S.C. § 4107; 44 C.F.R. § 66.1(b) and 66.5. Regulations require that "when base flood elevations are to be determined or modified" (44 C.F.R. §66.1 (b)) FEMA shall "[c]arry out the responsibilities for consultation and coordination as set forth in [44 C.F.R.] § 66.5 of this part." 44 C.F.R. § 66.1 (c) (3). FEMA must consult with the local communities in a substantive manner not only during the initial meeting but also regarding the progress and discuss prospective findings of the study in order to allow for local input and dissemination to community members. See 44 C.F.R. § 66.1 and 44 C.F.R. § 66.5. FEMA has an affirmative duty to specifically request that the local community submit pertinent data "particularly if such data will necessitate a modification of a base flood elevation." *Id.* During the study FEMA must also notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods

employed in reaching such conclusions. 44 CFR § 66.1 (c) (2). Using this preliminary data, FEMA must then encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator. 44 C.F.R. § 66.1 (c) (3); 44 C.F.R. § 66.5 (b).

As stated previously in the memorandum, FEMA has not only failed to encourage the dissemination of surveys, studies, and investigation but in fact have obstructed that process by: i) refusing the local communities access to the community consultation file and flood docket, ii) failure to adequately maintain a community consultation docket or file, iii) creating new rules by requiring that interested parties such as the Appellants submit FOIA requests for such information, iv) failure to release in a timely manner documents, and iv) failure to identify or affirmatively disclose new documents such as the TSDN which FEMA has indicated shall be used in the decision making process.

FEMA had an affirmative obligation under statute and regulation to consult with the Appellants in a meaningful manner. The failure by FEMA to discharge its legal duty to consult has been highly prejudicial to the cities affected thereby, and the residents who have been negatively impacted by the FIS and FIRMs. By failing to consult, FEMA did not obtain information that would otherwise have been provided to it by the communities and residents which would have resulted in an accurate and defensible rFIS and rDFIRMs. FEMA has violated 5 U.S.C. § 706(2)(D) by not observing the procedure required by law, in that FEMA failed to meet the consultation requirements of 42 U.S.C. § 4107; 44 C.F.R. § 66.1(b) and 66.5, thereby resulting in a denial of plaintiffs' due process rights. FEMA's failure to comply with this requirements is ground for judicial appeal and its action should be reversed and action consistent

with FEMA rules ordered pursuant to 5 U.S.C. § 706(1).

IV. Arbitrary and Capricious Action.

FEMA's rDFIRM and rFIS includes recognition of levees protecting the cities of Burlington and Mount Vernon as no longer protective against a 100-year flood, while not affording that same treatment to the road grades and railroad grades without justification or explanation. Such decision is arbitrary and capricious in accordance with law, unsupported by substantial evidence, an abuse of discretion, and in excess of or contrary to FEMA's statutory jurisdiction under 5 U.S.C. § 706.

FEMA's modeling includes the assumption to ignore the effect of currently existing levees and other flood control structures absent accreditation (that do not meet the requirements of 44 C.F.R. Section 65.10). Such levees have been treated in the rFIS as providing no protection against a 1-percent-annual chance flood event and FEMA has assumed without justification in the rFIS that water will inundate the area behind a non-accredited levee during a 1-percent annual flood utilizing such "without levee" analysis.

The level of protection that levees provide can vary greatly based on the physical characteristics of the levee, topography, and the amount, height, and duration of flood waters. FEMA's decision to not only to examine existing, on the ground, levees, height and structural characteristics and incorporate this into the rFIS to determine if and when overtopping and breach would occur to estimate of flood hazards but to ignore those levees within it methodology is arbitrary and capricious, not in accordance with law, unsupported by substantial evidence, an abuse of discretion, and in excess of or contrary to FEMA's statutory jurisdiction under 5 U.S.C. § 706. Appellants are encouraged by FEMA's promise and conduct to the local communities

that it shall seek to utilize new methodologies that examine existing levees.

V. Violation of Due Process Rights

The fundamental requisites of due process are "the opportunity to be heard," *Grannis v. Ordean*, 234 U.S. 385 (1914), and "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950). Thus, "at a minimum" the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." *Mullane* at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 55 (1965).

Appellants are 'communities' as defined under 44 C.F.R. § 59.1 and have standing to bring this appeal. In addition, Appellants own and control property subject to the rDFIRM and rFIS, and have property rights 'aversely affected or aggrieved' as property owners due to the burden of having their properties erroneously included in a flood zone and have standing to bring such appeal as property owners. 44 C.F.R. § 67.5; 44 U.S.C. § 4104(b); *See* Declaration of Kevin Rogerson, ¶ 16 and Declaration of Scott Thomas, ¶ 6.

As stated previously, FEMA has failed to adequately consult with the Appellants which failures have separately and cumulatively resulted in Appellants being denied a meaningful opportunity to be heard. Such failures include FEMA's failure to disclose information in a timely fashion or at all, provide information, or allow input prior to critical decisions being reached by FEMA involving the rFIS and rDFIRM.

VII. Appellants Requests that FEMA Utilize Different Methodologies As Promised by FEMA Prior to A Final Determination As Required under FEMA Regulations Providing Adequate Consultation.

Appellants are aware and encouraged that the Director has reportedly represented to local communities and issued a directive that a new flood study methodology(ies) shall be incorporated prior to final determination by FEMA of FIS to assess existing levees and flood control structures. *See For Example Letter of Craig Fugate to Senator Cochran; and FEMA material published March 11, 2011.*

Appellants rely on FEMA's current conduct and representations that it will address the arbitrary decision raised above which currently ignores existing. Given the fact the FEMA has represented that it will examine existing levees prior and utilize such methodologies **prior** to issuing a final determination Appellants have **not** included in its technical appeal to date more precise ways to model flood risk behind levees that are not currently accredited to provide protection against a 1-percent-annual-chance flood (100-year flood). As the rFIS continues to investigate ways in which it seeks to more accurately produce its rFIS in those areas behind levees with less than 1-percent-annual-chance flood protection Appellant's reserve all rights to raise objections or new issues once ripe in the event FEMA fails to adequately consult with the local communities, violates applicable regulations or federal statute, adopts rules in violation of the APA or otherwise.

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VIII. Conclusion.

For the foregoing reasons, FEMA has made errors of law, and as such FEMA's rDFIRM and rFIS dated July 1, 2010 must be held unlawful and set aside.

DATED this 29th day of March, 2011

CITY OF BURLINGTON



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CITY OF MOUNT VERNON



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**IN RE: Appeal of the Revised Digital
Flood Insurance Rate Map (rDFIRM)
and Revised Flood Insurance Study
(rFIS) by the Cities of Burlington
and Mt. Vernon, Washington**

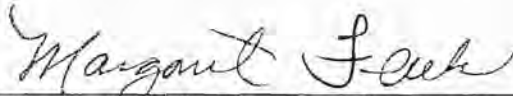
**DECLARATION OF MARGARET
FLEEK**

I, MARGARET FLEEK, do hereby declare the following:

1. That I am employed by the City of Burlington as the Planning Director. I have been employed by the City for a period over twenty (20) years and do hereby make this Declaration in that capacity.
2. That my duties as Planning Director for the City of Burlington include managing the City's planning process, which includes planning for flood risk.
3. That on May 3, 2007, I sent an email message to Mark Eberlein, who I know to be the Regional Environmental Officer for Region 10 of the Federal Emergency Management Agency ("FEMA.") In that email message, I inquired of Mr. Eberlein if FEMA had recently performed any work under the National Environmental Policy Act ("NEPA") pursuant to FEMA's release of revised flood insurance rate maps that showed base flood elevations within Burlington to be increased, or raised, over six feet.
4. Mr. Eberlein responded on June 7, 2007, and informed me that he had consulted with FEMA's headquarters, and that FEMA's position was that an Environmental Impact Statement performed by FEMA in 1976 was adequate.
5. A copy of the email message is attached hereto and identified as Exhibit "A."

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 30th day of March, 2011, at Burlington, Washington.

A handwritten signature in cursive script that reads "Margaret Fleek".

Margaret Fleek, Planning Director
City of Burlington

EXHIBIT "A"

Margaret Fleek

From: Carey, Mark [mark.carey1@dhs.gov]
Sent: Monday, June 11, 2007 2:06 PM
To: Fleek, Margaret
Cc: Eberlein, Mark
Subject: RE: More Procedural Questions

Margaret,

You've stated the City is "working diligently to prepare a Draft Environmental Impact Statement". Since the preliminary Flood Insurance Rate Maps (FIRMs) have yet to be produced I was wondering what your SEPA "action" was? Also, pursuant to WAC 197-11 FEMA was not invited to the scoping session or receive the Determination of Significance (DS) with the attached action. While I'm sure this was an oversight, we would be happy to participate in the City's DEIS scoping process if it's not too late. Thanks for your help.

Mark

From: Fleek, Margaret [mailto:mfleek@ci.burlington.wa.us]
Sent: Thursday, June 07, 2007 8:27 AM
To: Eberlein, Mark
Cc: Ike, Ryan; Carey, Mark; Thomas, Scott; Martin, Chal; Aarstad, Jon
Subject: RE: More Procedural Questions

Hello Mark,

Thank you very much for getting back to me. I am hopeful that we will get the time we need to complete review under the State Environmental Policy Act; it would be pretty embarrassing to be forced to violate state law to meet federal requirements! Although I do not agree with your position, looking at the wildly different results that are coming out of what is purportedly the same framework, I will pass this information on to others.

We are working diligently to prepare a Draft Environmental Impact Statement, and are having a very difficult time, because of the need to get more questions answered in order to adequately frame the alternative section of the document. We must deliver an adequate document to the decision-makers, one that provides a clear overview of how the local components fit regionally, and that adequately describes what is best for the City and local area in light of the fragmented approach that is being taken by FEMA and others.

Again, thanks for the response.

Margaret Fleek

From: Eberlein, Mark [mailto:mark.eberlein@dhs.gov]
Sent: Thursday, June 07, 2007 7:56 AM
To: Fleek, Margaret
Cc: Ike, Ryan; Carey, Mark
Subject: RE: More Procedural Questions

Margaret, I apologize for the time it took me to get back to you. Below is an explanation I received from our HQ:

Our Environmental Impact Statement from 1976 addressed the NFIP regulations including designation of regulatory floodway. It also explains why we selected the various standards (100-year floodplain and 1 foot rise in regulatory floodway).

What a new model would bring is a more accurate depiction of the risk information based on the standards that have already been evaluated for environmental impacts on a programmatic level.

The revised BFE depicts the flood hazard. In other words it translates what is already out there; much like mapping the contours of a mountain in a topographic map. Also we believe mapping is non-discretionary under the law and does not provide room for addressing environmental consequences. Thus, the NEPA process would not inform or add anything to the mapping process or to the determination of the appropriate BFE.

Other components of the NFIP have been subject to NEPA like the selection of the "1 percent chance of flood for any given year" as the standard and the regulations that establish the minimum criteria. These were subject to the 1976 EIS and no further NEPA review is required because there have not been any substantial changes to the regs and there have not been any significant new circumstances or information relevant to the environmental concerns addressed in the EIS.

As for the time frame you mention at the end of your email, I cannot address that as it would not be considered a NEPA issue due to my explanation stated above. I would defer that answer back to Ryan.

Mark

-----Original Message-----

From: Fleek, Margaret [mailto:mfleek@ci.burlington.wa.us]
Sent: Tuesday, May 15, 2007 7:56 AM
To: Eberlein, Mark
Cc: Ike, Ryan
Subject: RE: More Procedural Questions

Thank you so much! I really appreciate your assistance.

Margaret

-----Original Message-----

From: Eberlein, Mark [mailto:mark.eberlein@dhs.gov]
Sent: Monday, May 14, 2007 6:22 PM
To: Fleek, Margaret
Cc: Ike, Ryan
Subject: RE: More Procedural Questions

Margaret, just wanted you to know that I am not ignoring your email, but am consulting with our HQ because I do not have access to some information here at the Region which will help me address your question. I hope to have an answer by Thursday.

Mark

-----Original Message-----

From: Fleek, Margaret [mailto:mfleek@ci.burlington.wa.us]
Sent: Thursday, May 03, 2007 2:42 PM
To: Eberlein, Mark
Subject: More Procedural Questions

Hello Mark Eberlein,

Hoping not to become a pain here, but we are starting the scoping process under the State Environmental Policy Act to address a number of flood-related topics, and I have actually mailed one to you.

The question I asked the last time was whether you had to do any work under NEPA for raising the Base Flood Elevations about 6 feet here, and you stated that the NEPA review in 1985 covered adoption of the maps "as amended" and therefore no further review would ever be required. This is quite a difference from some other agencies, where further NEPA review is required for even the smallest changes, and I would like to get some written verification that this is indeed the case.

The one area where it would appear that NEPA review is required is the proposal to establish a regulatory floodway through the Skagit River delta; in 1985, they opted for overbank flow paths because it was too complicated to do a floodway.

The fact that the Corps bought a new computer model and therefore, we are all in deep water, but no review of the environmental impact is necessary, seems just plain wrong. The environmental impacts are very significant for this entire region and should be a matter of an open public disclosure process, not just a technical appeal on the numbers and methods.

We are not in that position at all here, because there is a very significant adverse environmental impact that cannot be mitigated that results from the new BFE's as presently shown on the Corps maps (not yet out in FIRM format). We will not be in a position to fully assess the effects until the maps are available, and then we will definitely need MORE TIME to do the work to meet local and state laws. How do we ask for MORE TIME???? Surely the federal rules provide for accommodation of local and state laws???

Thank you!

Margaret

Margaret Fleek, Planning Director
City of Burlington
901 E. Fairhaven Avenue
Burlington, WA 98233
360-755-9717 phone
360-755-9309 fax
mfleek@ci.burlington.wa.us

**FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE
ADMINISTRATOR IN RE APPEAL OF FEMA FLOOD INSURANCE STUDY FOR
SKAGIT COUNTY**

**IN RE: Appeal of the Revised Digital
Flood Insurance Rate Map (rDFIRM)
and Revised Flood Insurance Study
(rFIS) by the Cities of Burlington
and Mt. Vernon, Washington**

**DECLARATION OF KEVIN
ROGERSON**

This declaration is made for the purpose of providing evidence in support of the City's administrative appeal regarding the above noted matter.

I, Kevin Rogerson, do hereby declare the following:

1. I am over the age of eighteen (18) and the matters stated in this declaration are based on my personal knowledge.
2. That I am the City Attorney for the City of Mount Vernon, Washington, Community Number 53015 in this matter.
3. That I made requests to Ryan Ike, FEMA's appointed community consultation officer, via e-mail on April 6, 2007 and other FEMA officials (e.g. Mary Flynn Chief Counsel for FEMA in an e-mail on April 10, 2007) for access and to review FEMA's community file established pursuant to Title 44 Chapter 66 (Consultation with Local Officials) section 3 studying the Skagit River System which includes but is

not limited to the flood elevation study docket required to be established for the community at the time FEMA awarded the contract for the current elevation study.

4. That as a result I was denied my request to access both community file and study docket, was told that there is no physical location to review such records as they were located both in Region X and Washington D.C. and that I was required to request all records under the Freedom of Information Act (FOIA) procedures.
5. That the City of Mount Vernon raised objections to this denial on several occasions including during its request for records under FOIA in which multiple requests were made and also after some records were disclosed that the disclosures were incomplete.
6. Attached as Exhibit 1 is a true and accurate copy of an e-mail sent to Ryan Ike seeking access to FEMA's community file and study docket.
7. Attached as Exhibit 2 is a true and accurate copy of an e-mail sent to Mary Flynn, Chief Counsel for FEMA, raising objections of FEMA's failure to disclose information.
8. Attached as Exhibit 3 is a true and accurate copy of a letter dated August 13, 2007, raising objections over the procedure and inadequacies of the records release to my client.
9. Attached as Exhibit 4 is a true and accurate copy of a letter sent to Carl Cook, Director of Mitigation Division of Region X, dated July 11, 2006 objecting to FEMA's failure to disclose information and decision to not allow local input.
10. Attached as Exhibit 5 is a true and accurate copy of a letter sent to Carl Cook, Director of Mitigation Division Region X, dated August 17, 2006 objecting to FEMA's failure to disclose information and decision to not allow input until after initial mapping has occurred and limiting local input
11. Attached as Exhibit 6 is a true and accurate copy of FEMA's response dated February 15, 2011 to City of Mount Vernon FOIA request denying expedition of that request.
12. Attached as Exhibit 7 is a true and accurate copy of FEMA's response dated March 18, 2011 to City of Mount Vernon FOIA request denying the existence of a Technical Scientific Data Notebook.
13. Attached as Exhibit 8 is a true and accurate copy of FEMA's July 23, 2010 documents setting forth parameters for a new Scientific Resolution Panel.

14. Attached as Exhibit 9 is a true and accurate excerpt of rule 2.4c of the SRP Rules and Procedures dated November 3, 2010.
15. Attached as Exhibit 10 is a true and accurate excerpt of rule 2.4c of the Guidance Memorandum dated October 29, 2010 authored by Sandra K. Night.
16. City of Mount Vernon owns and controls multiple properties within the City of Mount Vernon. Property ownership of the City of Mount Vernon includes properties that currently will be located within the 100 year regulated floodplain identified by FEMA's new flood insurance study. Adoption of the new rFIRMS will result in increased base flood elevations in areas where City of Mount Vernon property is located.

The below-signed does certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct at the time it was written.

DATED this _____ day of March, 2011.

Kevin Rogerson,
City Attorney
City of Mount Vernon

EXHIBIT 1

From: Rogerson, Kevin
Sent: Friday, April 06, 2007 10:08 AM
To: 'Ryan.ike@dhs.gov'
Subject: RE: request for access to community file and flood elevation consultation sub docket-Skagit River System
Mr. Ike,

Sharon Loper (Region X FOIA officer) has directed that I contact you regarding the following request.

I would respectfully request access and inspection during regular business hours to FEMA's community file established pursuant to Title 44 Chapter 66 (Consultation with Local Officials) section 3 studying the Skagit River System which includes but is not limited to the flood elevation study docket required to be established for the community at the time FEMA awarded the contract for the current elevation study.

I would like to review the materials located within the file next week if possible. I am willing to coordinate a time with you next week to review those materials. Thank you for your assistance.

Kevin Rogerson

**KEVIN ROGERSON
CITY ATTORNEY
CITY OF MOUNT VERNON
PO BOX 809
910 CLEVELAND AVENUE
MOUNT VERNON, WA 98273-0809
PHONE: 360-336-6203
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EXHIBIT 2

From: Flynn, Mary [mary.t.flynn@dhs.gov]

Sent: Tuesday, April 10, 2007 4:19 PM

To: Rogerson, Kevin

Subject: RE: RE City's request for access to FEMA's community file and flood elevation sub docket and raised procedural errors

Thanks so much Kevin. I will digest this information and circle back to you.

Mary Theresa Flynn

U.S. Department of Homeland Security/FEMA

Office of the Chief Counsel

500 C Street SW

Washington, DC 20472

202-646-3340

From: Rogerson, Kevin [mailto:kevinr@ci.mount-vernon.wa.us]

Sent: Tuesday, April 10, 2007 7:17 PM

To: Flynn, Mary T

Subject: RE City's request for access to FEMA's community file and flood elevation sub docket and raised procedural errors

Mary,

It was a pleasure to speak with you today. Attached is a summary I have created regarding the CFR's applicable that lead up to a FEMA initial determination and through the administrative appeal process. Moreover, I have attached the correspondence I have readily available in my files between FEMA and the City to date which include the City's repeated objections and questions over process or lack thereof. Also, I have attached an e-mail recently sent to Ryan Ike last week seeking access to your community file which has not been responded to as yet. The request was to access the files this week. However, it appears that I will only have Friday available to me now due to my schedule filing up.

Feel free to call me if you have any questions or concerns regarding the City's letters.

Generally speaking, the City and many members of the SRIP, which consist of those local jurisdictions along the Skagit River (Cities, Towns, Diking Districts, and the County), are of the opinion that the process to date is broken, has not been followed, information has not been forthcoming out of FEMA, that FEMA has engaged in making decisions with its contracting federal agency the Corps without adequately or even informing the local jurisdictions of the progress of the study, the decisions being arrived at, outcomes, or the data being used or relied on. Most noteworthy is the concern of the lack of a *substantive* response (we have been told by our hydrologists that the one response we received by FEMA's consulting agency to review our concerns, a report by Will Thomas, was cursory and in essence non responsive to the issues presented) to the very real concerns over the Corps science, the data it has relied on. Essentially FEMA appears to date to not be forthcoming during the consultation process.

In light of the fact that the preliminary determination has not been made, it is the City's desire that FEMA can still repair the process if it allows local jurisdictions back into the process by re-engaging in *substantive predecision* discussions regarding the issues formerly raised. I will be drafting a letter indicating this request anew on the basis that the Cities and other jurisdictions: 1) have further technical information suggesting the Corps science is incorrect; 2) possess second opinions critiquing the Corps science; 3) have sought and are in the process of drafting even further opinions from further well recognized experts in hydrologic and hydrology; 4) are acquiring even further technical information involving the Corps hydrology; and 5) have not been adequately informed, consulted, or received access to FEMA's information to allow the local jurisdictions to disseminate it onward and request citizens

comment. The duty to consult local jurisdictions is a substantive one and it is our desire that FEMA should treat it so before they make any decision subject to appeal.

Again, thank you for your phone call and I look forward to working with your in the future.

Kevin

KEVIN ROGERSON
CITY ATTORNEY
CITY OF MOUNT VERNON
PO BOX 809
910 CLEVELAND AVENUE
MOUNT VERNON, WA 98273-0809
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EXHIBIT 3

City of

**Mount
Vernon**

Office of the City Attorney

910 Cleveland Avenue
Post Office Box 809
Mount Vernon, WA 98273

Phone (360) 336-6203
Facsimile (360) 336-6267
E-Mail mvattorney@ci.mount-vernon.wa.us
www.ci.mount-vernon.wa.us

August 13, 2007

Ryan Ike
Senior Floodplain Management Specialist
U.S. Department of Homeland Security Region X
FEMA
130 228th Street, SW
Bothell, WA 98021-9796

Re: July 10, 2007 e-mail to Mayor Norris relating to City's request for FEMA records

To Ryan Ike:

This letter is intended to respond to your e-mail of July 10, 2007 (attached) addressed to the Honorable Mayor Bud Norris.

Mayor Norris has expressed concern regarding the issue of whether FEMA has disclosed those records relating to the ongoing flood study of the Skagit River to produce a new base flood elevation. As a response, in your e-mail you have indicated that "FEMA Region 1- has sent a copy of all records related to the requested information within its control on both November 17, 2006 and April 7, 2007."

The City appreciates your timely response to Mayor Norris' inquiry. However, your response does not adequately, nor sufficiently, address previous and ongoing concerns raised by the City. As will be explained in more detail below, FEMA continues to fail to disclose and deny access of the *complete* community file of FEMA's study and previous studies of the Skagit River and the *complete* flood docket it is required to maintain, and affirmatively disclose, pursuant to the rules promulgated within the Code of Federal Regulations. Rather, the City has received to date, as a result of a Freedom of Information Act (FOIA) request, approximately 200 pages of documents consisting mostly of correspondence to FEMA by local jurisdictions and some power point presentations.

FEMA must volunteer and disseminate information concerning the study in a timely manner and on an ongoing basis. Requiring Mount Vernon local officials to submit a Freedom of Information Act (FOIA) request for such information is improper and unduly burdensome. FEMA should be voluntarily producing this information on a regular basis without the City having to file ongoing FOIA requests.

Section 206 of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4107] states in pertinent part that FEMA's Director must encourage local officials to disseminate information concerning FEMA's flood study widely within the community so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the Agency during the course of the study. To comply with this federal mandate, FEMA must volunteer information in its possession, concerning the study, to local officials early, and often, so that they, in turn, may disseminate this information widely within the community in order to enable community members to provide informed input well before a decision is initially made by FEMA.

Rather than freely disseminating, providing access to, and volunteering such information, FEMA has taken the position that local communities with which it has a duty to consult must request such records by formally submitting a FOIA request and then await an official response. Your e-mail fails to account for the City's objection raised in its previous correspondence regarding your refusal on May 25, 2006 to voluntarily disseminate any of your information. Moreover, further requests for access and review of FEMA's Skagit River Community File have gone unanswered and, as a result, access has been denied.¹

In order to comply with its responsibility to disseminate information concerning the study, the City, while reserving its legal objections to the process used by FEMA, submitted a FOIA request to FEMA on October 26, 2006 for copies of: 1) FEMA's Skagit River Community Case File, 2) the flood elevation study consultation docket (a part of the case file) for the ongoing study which allegedly began with an initial consultation meeting on January 4, 2001; and 3) copies and access to any and all records relating to FEMA's ongoing flood investigation study and re-mapping of the Skagit Valley flood prone areas, regardless of whether such records are currently contained within, either the community case file, or the docket.

Pursuant to the request, the City received on April 7, 2007 approximately two hundred pages of documents consisting mostly of correspondence to FEMA by local jurisdictions in the Skagit River Area and several power point presentations.² Considering the scope of the request, i.e. the complete community file which FEMA must establish and maintain at the time *initial* consideration is given to studying that community and all related documents, it is clear FEMA has not released all documents within its community file. FEMA's response amounts to, at best, partial performance. It appears likely, in light of the substance of those records released to date, that FEMA has not substantially performed its obligations under its own regulations, nor disclosed a majority of those records that the City of Mount Vernon requested over nine months ago, and which, presumably, are in the Agency's possession, regardless of their exact location. One major deficiency in FEMA's response is its failure and/or refusal to disclose those records that relate to the recently completed Army Corps of Engineer study and those records related to previous studies conducted in the 1980's that will be described below.

¹ To date, FEMA has failed to respond to an e-mail request from the City Attorney to Ryan Ike sent April 6, 2006 requesting access and inspection of the community file.

² You have represented a release of those records occurred on November 17, 2006; however, the City has been unable to locate such records nor has been offered any showing this in fact occurred.

In light of FEMA's ongoing obligation to volunteer and affirmatively disclose information to allow local community leaders to disseminate such information within the community, FEMA's response to date has not complied with either the applicable federal statutes or its own regulations. As a result, the City is still unable to disseminate information concerning FEMA's flood study widely within the community.

FEMA's response to Mount Vernon's request for records on October 26, 2007 is incomplete, has been marginally satisfied by the disclosure of information that has little bearing on the study, and the City has reason to believe that FEMA has records in its possession related to the study that it has not disclosed.

As part of Mount Vernon's October 26, 2007 request, Mount Vernon requested copies of the Skagit River Community Case File required to be maintained pursuant to 44 C.F.R. 66.3. Per its regulations, FEMA was required to establish the community file at the time initial consideration was given to studying the Skagit River area in order to establish whether or not it contains flood-prone areas. Thereafter, FEMA is required to maintain that file on a current, updated basis, including maintenance in the file of copies of all correspondence with officials in the community thereafter. 44 C.F.R. 66.3.

Whenever FEMA awards a contract for a new flood elevation study of a flood prone area, a portion of the community file must be designated as a flood elevation study consultation docket established for the community. The docket must include copies of: (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Agency's representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons; (2) relevant publications; (3) a copy of the completed flood elevation study; and (4) a copy of the Administrator's final determination. 44 C.F.R. 66.3 (b). Thus, as a part of this file, FEMA was required to establish a new flood elevation study consultation docket which should have been established in the case of the Skagit River study at or about the time FEMA held its alleged initial consultation meeting on January 4, 2001.

FEMA was required to establish and begin maintenance of a community file for the Skagit River Valley when it first began to consider whether or not floodplain management standards would be required in the area. To the best of my knowledge, this began in the early 1980's, or approximately twenty years ago. It is widely acknowledged that FEMA completed at least one previous study of the area and, as a result, local jurisdictions have adopted floodplain management regulations within their municipal and county codes.³ FEMA, by its own admission within its November 17, 2007 letter and response, has acknowledged that its response to date is incomplete. FEMA has indicated in previous correspondence that the Army Corps of Engineers has completed its study of the river and that FEMA possesses draft maps and the Corps modeling on which those maps rely since June 2006.⁴ Moreover, agreement

³ Mount Vernon adopted their floodplain regulations in 1984 or 23 years ago as a result of the previous study.

⁴ Letter from Carl Cook to Kelly Moldstad dated July 5, 2006 indicates that FEMA received on June 28, 2006 from ACOE draft work maps covering the lower Skagit River Floodplain from Sedro-Woolley down to the Puget Sound as well as a copy of a hydrological model from the ACOE used to produce those maps. Neither has been disclosed to the City.

HSFE 10-04-X-022 with the Army Corps indicates that the Corps was to start the hydrologic and hydraulic modeling of the river on March 26, 2004, and was slated to complete the work on September 20, 2005, which was to include a final report with profiles, tables and work maps.

To date, approximately 200 pages of records have been disclosed by FEMA. None of these records include, or relate to, records of previous studies of the river, or the correspondence, publications, or the Administrator's final determination regarding previous studies. In fact, the records produced to date go back no further than the year 2000. Moreover, I have failed to identify within the records disclosed the draft maps or Army Corps hydrologic model that FEMA allegedly received from the Corps in June of 2006. More importantly, no report or study in draft form or otherwise conducted by the Seattle District Corps of Engineers, with work slated to be completed on September 20, 2005, has ever been disclosed.

It is imperative that local communities receive studies and documents that reflect the ongoing progress of these studies from FEMA in a timely manner in order to allow community leaders to disseminate that information widely within the community so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency *during the course of the study*. See 42 U.S.C. § 4107. FEMA must volunteer information in its possession concerning the study to local officials early, and often, so that they, in turn, may disseminate this widely within the community to provide a reasonable opportunity for informed input and community response well before a decision is initially made by FEMA triggering the 90 day appeal period. The purpose for requiring such ongoing disclosure is clear: to provide the local community with the opportunity to submit informed and responsive comments and relevant information regarding flood related issues while the FEMA study is ongoing and before an initial decision, in order to avoid the need for unnecessary appeals and the associated expenditure of valuable resources. Such a process also increases the likelihood that FEMA's decision will be both technically and scientifically correct. To date, the City has yet to be given such information, either voluntarily or upon request.

The City raises the following new objections to FEMA's Procedures:

Mount Vernon objects to FEMA's failure to inform its local officials regarding further federal studies involving the Skagit River and requests that FEMA delay producing maps until all studies have been completed, reviewed, disseminated and a reasonable opportunity for input by the local community is provided.

As part of its ongoing duty to consult, FEMA must notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with the data and methods employed in reaching such conclusions so that local officials may carry out their responsibilities to disseminate surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community. 44 C.F.R. 66.1 (c).

The City has reason to believe that FEMA is aware that the United States Geological Survey is conducting an ongoing study related to data sets involving historical flooding along the Skagit River due to the fact the you have indicated knowledge of such a study during a meeting with

Skagit County Officials on July 3, 2007. Moreover, the City has in its possession a letter from USGS to Skagit County indicating that USGS officials "... are currently working on a report that bears directly on the magnitude of the historic floods on the Skagit River near Concrete." *See attached letter.* However, the City has not been formally informed of such a study, its scope, a time table for completion of the study, nor has the City been provided with any progress reports to date by any FEMA official.

The City respectfully requests that FEMA provide the City with this information as is required by FEMA's regulations and the applicable federal statute. Based on USGS representations, the study will involve additional relevant evidence regarding base flood elevations along the Skagit River. The City again renews its previous and repeated requests that FEMA reject any maps, or drafts of maps, that revise the current base flood elevations as premature until all studies are completed, reviewed by local officials and disseminated to the community so that community members in turn may provide meaningful input.

FEMA's refusal to review input by the local community on the basis that such input is 'anecdotal' evidence is impermissibly vague, arbitrary and contrary to FEMA's own regulations.

FEMA has represented to the local community that it will not consider, and will actively discourage the submission to FEMA of 'anecdotal' evidence in connection with its preliminary base flood elevation determination. The term 'anecdotal' is neither mentioned, nor defined within the promulgated FEMA regulations that set forth the process for determining flood elevations.

FEMA's Flood Insurance Administrator has not yet made a flood elevation determination. 44 C.F.R. 66 sets forth what data FEMA allows and will weigh before making its initial flood elevation determination. Specifically, the Administrator must request that the community submit *pertinent data* concerning flood hazards, flooding experience, plans to avoid potential hazards, estimates of historical and prospective economic impacts on the community, *and such other appropriate data.* 44 C.F.R. 66.1 (c) (1). In addition, FEMA must allow for interested persons to have an opportunity to bring all *relevant* data to the attention of the Administrator. 44 C.F.R. 66.1 (c)(1).

FEMA's rejection of 'anecdotal' evidence clearly is not consistent with any legal standard set forth within FEMA's regulations. For example, rejection and failure to weigh pertinent data offered by a citizen concerning that citizen's own flooding experience on the grounds that the evidence is "anecdotal," while otherwise pertinent, clearly runs contrary to 44 C.F.R. 66.1 (c) which specifically allows for submission of data relating to pertinent flooding experiences.

Should an appeal follow an initial decision by the Flood Insurance Administrator, preclusion of evidence on the basis that evidence is "anecdotal" is not consistent with FEMA's regulations. 44 C.F.R. 67 sets forth the manner and content of an appeal of the initial decision. Again, 'anecdotal evidence' is not a term included within those regulations. The basis for an appeal is "the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect." 44 CFR 67.6 (a). This includes allowing an appellant to provide FEMA with evidence that tends to support the fact that FEMA is relying on inferior

data or that tends to support the fact that FEMA is employing incorrect assumptions. *See* 44 C.F.R. 67.6 (b). All relevant evidence that applies to any fact that is of consequence to the determination of such factual issues must be allowed.

Most importantly, because no definition or test promulgated and published within the Code of Federal Regulations exists to determine whether or not evidence is 'anecdotal,' FEMA's use of such a standard is impermissibly vague, arbitrary and undermines the ability of an aggrieved party to seek adequate review should such party seek review of a FEMA official's decision to reject offered evidence on 'anecdotal' grounds. Thus, any rejection of evidence on the basis it is 'anecdotal' violates both substantive and procedural due process rights of those entities and citizens whose property rights may be adversely affected by FEMA's decision. The City respectfully requests that FEMA follow those rules regarding the admissibility of evidence promulgated and formally adopted into the Code of Federal Regulations when conducting its flood study.

FEMA's study and base flood elevation decision should be delayed until FEMA can include in its decision the identification of a floodway.

FEMA has indicated that it would not include in its preliminary decision the identification of a floodway. Under the original task letter to the Corps for the Skagit River Revised Flood Insurance Study, task D(5)(b) required the Corps under its scope of work to identify and map the floodway or develop a "floodway like tool."

The City is unaware of the alleged scientific rationale for FEMA's decision that identification of the floodway may not be appropriate at this time, while FEMA goes forward with the creation of draft flood maps. As you know, without guidance from FEMA, Mount Vernon will be required to attempt to estimate the floodway on its own, and initiate the appropriate building restrictions. This results in an unfunded mandate thrust upon local jurisdictions. The City requests that FEMA delay its preliminary decision so that it may identify floodways based on the best available science rather than transfer this task and the associated financial burden to the local communities or the property owners within the potential floodway. Piece meal of this sort results in uncertainty and leaves property owners within the potential floodway and local jurisdictions who must adopt and enforce floodplain regulations in limbo.

In summary, as part of its duty to consult, the City of Mount Vernon hereby requests that FEMA (i) consult with the technical experts retained by the local jurisdictions of affected communities, (ii) correct the data in question, affirmatively disclose all records related to the study and previous studies in its possession, regardless of where FEMA has retained them, (iii) employ the most scientifically accurate model, (iv) work collaboratively with the local community by allowing reasonable time to disseminate information on which FEMA intends to rely so that the community may provide informed responses, and (v) ensure completion of all relevant studies before it makes any formal decision that will be subject to appeal.

The City renews its objections raised in its previous correspondence. Based on the foregoing, the City again respectfully requests that FEMA reject any maps or drafts of maps that revise the current base flood elevations as premature. To maintain the integrity of the FEMA process, the City believes it is only reasonable for FEMA to work with the affected communities to get the

best scientific estimates in place. Concerns over the analytical process, the data being used, and the model continue to be raised by members of the local community. The numerous petitions submitted to you by the Burlington Chamber of Commerce should be sufficient evidence of those ongoing concerns. Getting the hydrology right the first time is fundamental to maintaining the scientific integrity of the process.

Attached to this letter is a new FOIA request for those documents that have been created and are included within the community file, or are related to the study since the City's previous request.

If you have any questions of me, please do not hesitate to let me know. We appreciate your prompt attention to these issues.

Very truly yours,



Kevin Rogerson
Mount Vernon City Attorney
Re: July 10, 2007 E-mail by Ryan Ike

cc: Mount Vernon City Council ✓
Mayor Bud Norris ✓
The Office of Senator Maria Cantwell ✓
The Office of Congressman Rick Larsen ✓
The Office of Senator Patty Murray ✓
Charles L. Steele, Department of Ecology, Bellevue ✓
Skagit County Council of Governments ✓
Mr. Mark Carey, Director Mitigation Division, FEMA Region X ✓
David I. Maurstad; Director of Mitigation and Federal Insurance Administrator ✓

From: Ike, Ryan [ryan.ike@dhs.gov]
Sent: Tuesday, July 10, 2007 8:58 AM
To: MVMayor
Cc: Carey, Mark; Rogerson, Kevin
Subject: Mount Vernon FOIA Request

Attachments: Certified_Mail_Receipt.pdf; FOIA_11-17-06.pdf

Mayor Norris,

I checked into your concern that FEMA had not yet provided a response to the City's Freedom of Information Act (FOIA) request. FEMA initially responded to the City Attorney on November 17, 2006, pursuant to the October 26, 2006, FOIA request submitted by Mr. Kevin Rogerson. Mr. Rogerson contacted FEMA in early April 2007 indicating he had never received the requested information. The mailing address was confirmed and an additional copy of the November 17, 2006, letter and the requested records were re-sent on April 7, 2007, by certified mail. A copy of the certified mail receipt is attached that indicates the letter was received on April 10, 2007, by Marcus E. Moore. FEMA Region 10 has sent a copy of all records related to the requested information within its control on both November 17, 2006 and April 7, 2007.

I hope this clears up any outstanding concerns related to this issue.

Regards,

Ryan Ike, CFM
Senior Floodplain Management Specialist
DHS – FEMA Region X
(425) 487-4767

COPY



United States Department of the Interior

U.S. GEOLOGICAL SURVEY

USGS Washington Water Science Center
934 Broadway, Suite 300
Tacoma, Washington 98402
(253) 552-1600 • FAX (253) 552-1581
<http://wa.water.usgs.gov>

June 27, 2007



cc: 3 C's
Public Works

Skagit County Board of Commissioners
1800 Continental Place, Suite 100
Mount Vernon, Washington 98273

Re: Skagit River Hydrology Independent Technical Review—Final Report

Dear Commissioners:

Your letter dated May 21, 2007, requested a response to several questions and comments that were generated from recommendations made in the Final Report by Northwest Hydraulics Consultants on Skagit River Hydrology. The letter requested a response by June 30, 2007. We are currently working on a report that bears directly on the magnitude of the historic floods on the Skagit River near Concrete. We need to acquire colleague reviews and Director's approval before we can comment on the specifics of the report. The report has been written and is now in colleague review. Unfortunately, we will not have approval by June 30, 2007, and we request an extension of your deadline for a response to July 20, 2007. With the approval of the report, we can comment at length to the findings of the study and more thoroughly and accurately comment on the issues brought up in your letter.

Thank you for your consideration.

Sincerely yours,

Cynthia Barton
Center Director

Distribution

Commissioner Kenneth A. Dahlstedt

Commissioner Sharon D. Dillon

✓ Commissioner Don Munks

City of **Mount**
vern
ernon

910 Cleveland Avenue
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Mount Vernon, WA 98273

Office of the City Attorney

Phone (360) 336-6203
Facsimile (360) 336-6267
E-Mail mvattorney@ci.mount-vernon.wa.us
www.ci.mount-vernon.wa.us

Sent via facsimile (202) 646-4536 and US Mail ✓
August 13, 2007

Jeff Ovall
FOI/PA Specialist, Room 840
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

Dear Mr. Ovall,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. subsection 552, I am hereby requesting, on behalf of the City of Mount Vernon, Washington ("City") access to, and copies of, FEMA's Skagit County Community Case File required to be maintained pursuant to 44 C.F.R. 66.3 (copy attached), including the required flood elevation study consultation docket for the new flood elevation study ("the study") which allegedly commenced with the initial consultation meeting on January 4, 2001.

The information within the docket must include "copies of (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Agency representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Administrator's final determination." 44 C.F.R. 66.3 (b). Moreover, the City requests copies of, and access to, any and all records relating to FEMA's ongoing flood investigation study ("Study") and re-mapping of the Skagit River Valley flood prone areas, regardless whether they are currently contained within either the community case file or the docket referenced above. This request renews the City's request made on October 26, 2006 and is meant to supplement the earlier request to include those records FEMA has collected, or which have come into its possession since receipt of my original request. These records include, but are not necessarily limited to:

1. All records relating to the January 4, 2001 meeting between FEMA and local officials pertaining to the Study, as identified by Carl L. Cook in his letter of September 29, 2006, including but not necessarily limited to, attendance sheets, minutes, notices of such a meeting, notes, handouts and presentations.

2. All records of communications, studies, findings, notices, and meetings between FEMA officials, Army Corps of Engineers officials, USGS officials, or outside consultants relating to the Study.
3. All records of communications between FEMA officials, Skagit County officials, and all other local officials relating to the Study.
4. All records of communications among FEMA staff relating to the Study.
5. All records relating to expenditures, costs, and the FEMA budget for the Study.

Under the FOIA definition of "records", records would include any information maintained by FEMA in any format including, but not limited to, e-mails, phone logs, memoranda, voice recordings, notes, calendars, and directives. 5 U.S.C. § 552 (f)(2).

It is the City's position that FEMA has an affirmative, ongoing duty to produce all records within the flood elevation study consultation docket and community case file once a new flood elevation study begins and that this request should not be necessary under applicable federal statutes and FEMA regulations.¹

Nevertheless, FEMA Region X has refused to disclose any findings or completed studies in its possession involving the ongoing Study, nor has it allowed the City access to the community file or flood elevation study consultation docket, absent a request pursuant to the authority of the Freedom of Information Act. The City expressly renews its objections to this process and this request does not serve as waiver of such objections.

The City requests expedited processing of this request on the grounds that these records relate to an imminent action by FEMA involving the publication of revised base flood elevations ("BFE's") for the Skagit River Valley. The due process rights of the City of Mount Vernon and its citizens will be impaired by the failure to process this request immediately.

The U.S. Court of Appeals for the D.C. Circuit has recognized that some FOIA requests necessarily involve a far greater degree of urgency than others, and that when a requester can show "exceptional need or urgency," his request should be processed out of turn. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976), *citing* 5 U.S.C. § 552(a)(6)(C). Further cases have clarified this holding, and confirmed that a prompt response under FOIA to an information request may be required for the preservation of a substantial right.

¹ The City maintains that requiring the City to undergo a formal and time consuming FOIA request and FEMA's failure to affirmatively disclose the flood elevation consultation docket does not comply with FEMA's duty that the Director shall encourage local officials to disseminate information concerning such study widely within the community and that the Administrator or delegate must "Notify local officials of the progress of surveys, studies, and investigations, and of prospective finding, **along with the data and methods employed in reaching such conclusion.**" *See* 42 U.S.C. § 4107; 44 C.F.R. 66.1(c) (3) *emphasis added.*

FEMA is in the process of drafting and mapping proposed based flood elevations that would, if adopted and upheld, encumber the property rights of landowners whose properties lie in the flood prone areas identified in those maps, including property owned by the City of Mount Vernon along the Skagit River within current 100 year flood plains. Moreover, the U.S. Congress has declared that this information must be disclosed in a timely manner so that local officials, in turn, may disseminate information widely within the community in order that further input may be received before FEMA makes an initial determination. *See U.S.C. § 4107.* Currently, FEMA has refused to disclose this information, despite substantial progress toward the publication of a set of initial maps.

The City requests a fee waiver on the grounds that release of the requested information is clearly in the public interest, is required by FEMA's regulations, and is necessary for the City to participate in the consultation process required under FEMA regulations.

To qualify for a fee waiver, a requester must demonstrate that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester.

In the instant matter, the information requested is necessary to fulfill the local jurisdictions' mandate set forth in 44 C.F.R. 66.5 (b) to distribute relevant information to members of the community so that they may in turn bring relevant data to the attention of FEMA.

Should FEMA determine there are any fees for searching for, or copying the records, please supply the records without informing me of the cost, assuming the fees do not exceed \$500.00, up to which amount I agree to pay.

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of the appeal procedures available under the law.

If you have any questions about handling this request, you may telephone me at 360-336-6203 (office phone). Thank you for your prompt assistance in this matter.

Sincerely,



Kevin Rogerson
City Attorney
City of Mount Vernon

EXHIBIT 4

City of



Office of the City Attorney

910 Cleveland Avenue
Post Office Box 809
Mount Vernon, WA 98273

Phone (360) 336-6203
FAX (360) 336-6267
E-Mail: mvaltorney@ci.mount-vernon.wa.us
www.ci.mount-vernon.wa.us

July 11, 2006

Carl L. Cook, Jr.,
Director Mitigation Division
U.S. Department of Homeland Security Region X
FEMA
130 228th Street, SW
Bothell, WA 98021-9796

Re: May 25, 2006 FEMA letter to Skagit County Council of Governments (SCOG)

To Carl L. Cook:

The City of Mount Vernon received your letter (copy attached) to the Skagit County Council of Governments or "SCOG" (which Mount Vernon Mayor Bud Norris is a board member) regarding FEMA's ongoing Skagit River Flood Insurance Study. The City is a directly affected political subdivision that has the authority to adopt and enforce flood plain management regulations for areas within its jurisdiction. As such, the City respectfully requests to be specifically included to any notification by FEMA regarding the ongoing studies for flood elevation determination zones.

In your letter you have indicated both status of the progress you have made and a process that will be pursued by FEMA to reach a proposed flood elevation determination. You have indicated that "...we are nearing completion of the initial work maps covering the floodplain extending along the Skagit River from Sedro Woolley downstream to the bay." Moreover, you state the next step is "The work being accomplished by the United States Army Corps of Engineers ("ACOE"), will be received by FEMA and will follow our standard protocol which requires a FEMA review before the study is endorsed by this agency." In your last paragraph, you have indicated that the local community officials will not be allowed to review the ACOE data nor will you consult with local officials until such time FEMA has completed its 'internal review' with the ACOE data and presented its model with its resulting proposed floodplain determinations:

....Several interested parties have requested that the release of the data be delayed while others have asked for an early release of the study results. FEMA intends to make the model and its results available to interested parties once our internal review is complete. At that time, members of my staff will arrange to meet with local officials and this council [SCOG] to discuss the next steps and receive feedback.

The City objects to the process you have stated in your letter on the following grounds: this process violates FEMA's duty to adequately consult with local community officials under section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107), this process does not comply with FEMA's own regulatory procedures set forth within 44 C.F.R. 66, and this process violates both procedural and substantive due process to the extent it fails to provide local communities an opportunity and notice to be involved with meetings and discussions with the ACOE and FEMA officials before FEMA introduces its 'model.' Simply put, the process you have described presents a roadmap for FEMA to engage in ex parte communications with ACOE without any local community involvement. This guarantees prejudice on the part of FEMA which you have stated in your letter will occur in the form of an 'endorsement' and presentation of a 'model and its results' before local communities will be allowed to participate and be provided an opportunity to present appropriate data, studies, investigations, and review or critically analyze the ACOE or other data submitted which FEMA is currently reviewing.

Procedures must be established and followed that assure adequate consultation with the appropriate elected officials of general purpose local governments. 42 U.S.C. 4107. Such consultation must include "fully informing local officials **at the commencement of any flood elevation study** or investigation undertaken by any agency on behalf of the Director [Director of FEMA] concerning the nature and purpose of the study, the areas involved, principles to be applied, and the use to be made of the data obtained." *Id. emphasis added.* This is necessary so that local officials can disseminate the information concerning the study widely within the community so that interested parties "will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency **during the course of the study.**" *Id. emphasis added.*

44 C.F.R. 66 et. seq. sets forth those procedures established by the Director that shall apply when flood elevations are to be determined or modified. 44 C.F.R. 66.1 (b). Before the commencement of an initial Flood Insurance Study or any intended modification to a community's final flood elevation determinations, "the CCO ["Consultation Coordination Officer"] or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local officials shall be informed of (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study." 44 C.F.R. 66.5 (e)(f). The purpose behind such initial meeting is clear - to outline to local officials the manner in which FEMA shall begin to conduct its flood insurance study in order to assure local officials will be provided ample opportunity to participate.

From your letter, it is clear that investigations have already begun, are ongoing, and that a study conducted by the ACOE is near completion. However, during several informal meetings that have occurred to date with City and FEMA officials it has been expressed

to city officials at that point the investigation by FEMA had not been formally commenced. The City continues to be unaware when FEMA formally begun its study or communicated this to local officials. To date, the City is unaware of any meeting in which the six criteria described above occurred or was disclosed to any officials in the local community. Moreover, the City was unaware of the manner in which the study shall be undertaken until the issuance of FEMA's May 25 letter - clearly after the study was begun by FEMA. The City continues to be unaware of the general principles to be applied and the intended use of the data FEMA currently has obtained. **More fundamentally, your letter indicates that local communities neither will be able to review the data in FEMA's possession at this point nor will we be able to participate in FEMA's review of that data by either questioning that information or providing additional information.**

During the course of the study, local communities must be allowed to submit pertinent data. 44 C.F.R. 66.1 (c)(1). Not only do the regulations allow for local community input during the course of the study, the Federal Insurance Administrator or his delegate has an affirmative duty to encourage participation in which they must "Specifically request the local community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation)." *Id.* This ability for local jurisdictions to provide pertinent data throughout the process before decisions are reached is repeated throughout FEMA regulations. 44 C.F.R. 66.1 (c) (3) (The Administrator or his or her delegate has an affirmative duty to "Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator."); 44 C.F.R. 66.5 (c) ("Submission of information from the community concerning the study shall be encouraged."). The City is unaware that any such request to submit pertinent data under 44 C.F.R. 66.1 (c) (1) by FEMA was given before the study began or at any time. Nevertheless, the City and County have repeatedly given notice to FEMA and the ACOE that they have compiled pertinent data which includes hydrological models, historical data, and a forensic investigation of previous historical data used by ACOE. To date the City is unaware, nor has it been communicated by FEMA, whether this data is being used either in part, in whole, or has been summarily discarded by FEMA. In fact, the May 25, 2006 letter clearly indicates that FEMA will not accept any submission of data from local communities until ACOE's study has been completed, that the ACOE study has been received by FEMA, and FEMA then conducts and 'internal review' of the study. To prevent or delay local participation until after FEMA has reviewed the ACOE study and reached conclusions based on this information alone not only ignores these requirements but amounts to a process where FEMA officials have reached prejudgment of the issues before local officials may participate.


FEMA regulations further require that if the Administrator [Federal Insurance Administrator] delegates another employee of the Federal Emergency Management Agency or other designed federal employee the responsibilities for consultation and coordination with local officials (a "Consultation Coordination Officer" of "CCO"), "The Administrator shall advise the community and the state coordinating agency, in writing,

of this appointment.” 44 C.F.R. 66.4. Before a proposed investigation into modifying FEMA flood elevation determination zones, the CCO has specific and defined responsibilities that must be carried out. See 44 C.F.R. 66.5. To the best of my knowledge, no such appointment has occurred nor has the City been placed on notice who, in lieu of the Administrator, is acting with the authority of the Consultation Coordination Officer for the study. Clearly, the purpose of having a specific contact person appointed, in writing, at the beginning of the process delegated with the authority by the Administrator is to avoid miscommunication, mixed messages and confusion with local officials. While you have appeared to take responsibility to inform in writing to local officials some of FEMA’s process and status to date, two different FEMA officials appeared before the SCOG on May 17, 2006 Ryan Ike and Mark Carey to present additional information and speak about process. While the presentation is not objectionable in itself, the City is simply neither aware of what roles each FEMA official has nor who we are to contact as the FEMA official responsible with coordination and consulting.

Based on the aforementioned regulations and events that have occurred, the City has grave concerns that the process FEMA is required to pursue is largely being ignored. This, in turn, places local communities such as the City at risk that FEMA will reach a proposed determination of flood elevations based on a flawed process that omits local community input when it matters. Thus, the City requests that FEMA follow its own process by: 1) Appointing a CCO if FEMA wishes to contact local officials in lieu of working with the Federal Insurance Administrator and advising the community in writing of the appointment, 2) The CCO or Administrator meeting with officials of the community in order to inform these officials of the date when the study will commence, the nature and purpose of the study, areas involved, the manner in which the study shall be undertaken, the general principles to be applied, and the intended use of the data obtained. Should any of the six preceding items are or will be changed after this initial meeting, that FEMA inform the City in writing, 3) Allowing the City and any other local jurisdiction to submit pertinent data during the course of the ongoing study, 4) Specifically requesting the local community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation) how this data should be submitted and to whom, and 5) Allowing the local jurisdictions the ability to review the data in FEMA’s possession and the ability to participate in FEMA’s review of that data before any mapping is presented so that information may be questioned and/or additional information may be provided by the local communities.

If you have any questions of me, please do not hesitate to let me know.

Very truly yours,


Kevin Rogerson
Mount Vernon City Attorney

Re: May 25, 2006 FEMA letter to Skagit County Council of Governments

cc: Mount Vernon City Council
The Office of Senator Maria Cantwell
The Office of Senator Patty Murray
The Office of Congressmen Rick Larsen
Charles L. Steele, Department of Ecology, Bellevue
Mike McCormick, Seattle District, USACE
Skagit County Council of Governments



FEMA

May 25, 2006

Kelley Moldstad, Executive Director
Skagit County Council of Governments
204 W. Montgomery
Mount Vernon, Washington 98273

Dear Mr. Moldstad:

The purpose of this letter is to provide a status update of the ongoing Skagit River Flood Insurance Study (FIS) being conducted by the Department of Homeland Security's Federal Emergency Management Agency (FEMA). I am informing the Council of Governments of our progress because it is an established forum that contains all of the affected community partners.

At this time, we are nearing completion of the initial work maps covering the floodplain extending along the Skagit River from Sedro Woolley downstream to the bay. The work, being accomplished by the United States Army Corps of Engineers, will be received by FEMA and will follow our standard protocol which requires a FEMA review before the study is endorsed by this agency.

I do not wish to see information that may change released prematurely, nor do I wish to cause unnecessary delays. Several interested parties have requested that the release of the data be delayed while others have asked for an early release of the study results. FEMA intends to make the model and its results available to interested parties once our internal technical review is complete. At that time, members of my staff will arrange to meet with local officials and this council to discuss the next steps and receive feedback.

Comments or questions regarding this letter should be directed to Ryan Ike at the address above, or by calling (425) 487-4767.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl L. Cook, Jr.", written over a white background.

Carl L. Cook, Jr., Director
Mitigation Division

cc: The Office of Senator Patty Murray
The Office of Senator Maria Cantwell
The Office of Congressman Rick Larsen
Charles L. Steele, Department of Ecology, Bellevue

RI:gb

EXHIBIT 5

City of **Mount**
Vernon

910 Cleveland Avenue
Post Office Box 809
Mount Vernon, WA 98273

extra copy w/ all attachments
Office of the City Attorney

Phone (360) 336-6203
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E-Mail mvattorney@ci.mount-vernon.wa.us
www.ci.mount-vernon.wa.us

August 17, 2006

Carl L. Cook, Jr.,
Director Mitigation Division
U.S. Department of Homeland Security Region X
FEMA
130 228th Street, SW
Bothell, WA 98021-9796

Re: July 5, 2006 FEMA letter to Skagit County Council of Governments

To Carl L. Cook:

The City of Mount Vernon received your letter dated July 5, 2006 (copy attached). In your recent letter, you have stated the purpose is to provide an "update of the ongoing Skagit River Flood Insurance Study (FIS)." Within that letter, you state that "FEMA is required to consult with local officials during the initial scoping phase of a new flood insurance study" and that FEMA has reached a stage of the study in which the US Army Corps of Engineers (COE) has provided FEMA with "a copy of the first set of draft work maps covering the lower Skagit River floodplain from Sedro Woolley, downstream to the Puget Sound, as well as, a copy of the hydraulic model used to produce the maps." Furthermore, the model is at FEMA's National Service Provider for technical review and "Pending the outcome of the internal FEMA technical review, we intend to task COE with producing the next set of maps covering the upper Skagit River floodplain, from Sedro Woolley to Concrete, as soon as possible."

At this time you have now offered to meet with the community to discuss the issue of "the technical aspects of the initial work maps." Referring to this meeting as an Intermediate Consultation and Coordination Officer's meeting (ICCO), the scope of this meeting is for the purpose of reviewing the maps for "cartographic accuracy, evaluation of initial base flood elevations, discussing map impacts, on current and future floodplain permitting, and collection of technical feedback, to be included in the file prior to release, as 'Preliminary Flood Insurance Rate Maps.'"

The City renews our objections raised in our July 11, 2006 letter. In conjunction with your previous letter on May 25, 2006 that denied input from local jurisdictions, your letter indicates local input will be allowed (in the form of the ICCO meeting) after FEMA has prepared the

“initial work maps.” Emphasis added. Moreover, you have requested that local input be limited to those issues you have identified above. The City raises the following objections:

FEMA’s duty to adequately consult with local community officials begins, before the insurance study commences, not “during the initial scoping phase of a new flood insurance study.”

To suggest that FEMA regulations set forth under Title 44 Part 66 of the U.S. Code of Federal Regulations, or the duty established under 42 U.S.C. § 4107, requires FEMA to consult with local officials “during the initial scoping phase of a new flood insurance study” is inaccurate. Section 206 of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4107] states in pertinent part that:

In carrying out his responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.] which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Director shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, **fully informing local officials at the commencement** of any flood elevation study or investigation undertaken by any agency on behalf of the Director concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained.

42 U.S.C. § 4107 emphasis added.

Pursuant to the federal mandate, procedures were created to assure that adequate consultation is accomplished. Those are found within the Code of Federal Regulations 44 C.F.R. 66 et. seq. *See 44 C.F.R. 66.1.* In order to comply with this federal mandate those regulations must be followed.

Those regulations comply with the statute because they require early and full consultation with local officials before an insurance study commences. Contact must be made with community officials and with the state coordinating agency, at the time when an investigation is proposed. *See 44 C.F.R. 66.5 (a).* During this contact, FEMA must encourage local dissemination of the intent and nature of the investigation so that interested parties will have an opportunity to bring relevant data to the attention of the community and the Administrator [Flood Insurance Administrator]. *44 C.F.R. 66.5 (b).* At this time, submission of information from the community concerning the study must be encouraged and appropriate officials of the community must be fully informed of their responsibilities placed on them by the Program, the administrative procedures followed by FEMA, the community’s role in establishing elevations,

and the responsibilities of community if it participates or continues to participate in the Program. 44 C.F.R. 66.5 (c) (d). Moreover, **before the commencement of an initial flood insurance study** FEMA has a duty to meet with officials of the community to inform them of: (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained.” 44 C.F.R. 66.5 (e) *emphasis added*. The purpose behind such initial meeting is clear - to outline to local officials the manner in which FEMA shall begin to conduct its flood insurance study in order to assure local officials will be provided ample opportunity to participate.

Nowhere, in either federal law or FEMA regulations, is there mentioned these responsibilities may be delayed and local officials formally consulted beginning at an “initial scoping phase” of the study. Nowhere is there any mention of an “initial scoping phase” milestone triggering a duty to consult within 44 C.F.R. 66. In fact, FEMA regulations fail to define exactly what an “initial scoping phase” is, thus leaving this milestone subject to interpretation of local FEMA officials.

As your letter indicates in its first sentence, the Skagit River Flood Insurance Study is already “ongoing.” You have indicated your initial study contracted to the COE has been completed, a COE hydrological model is developed, data has been compiled, the model has been used, and first drafts of maps covering the lower Skagit River floodplain from Sedro Woolley, downstream to the Puget Sound, are done and are going through an “internal technical review” by FEMA. The City and the County has informed FEMA it has pertinent information authored by licensed engineers and hydrologists it wishes to provide. Furthermore, the City made known its desire to review that information being used by the COE and their model in order to provide informed input into the process before FEMA moves forward with mapping. To date, you have denied this request. See *FEMA letter May 25, 2006 letter, copy attached*.

As stated previously, during informal meetings that have occurred between the City, FEMA officials and the COE it has been expressed to city officials, including myself, that FEMA had not formally commenced its investigation and that its procedures would be followed. Thus, the City reasonably relied that FEMA would follow its regulations and federal authority by formally commencing the study by following the Code of Federal Regulations, including, but not limited to, holding a formal meeting under 44 C.F.R. 66.5 (e), announcing the date when the study shall begin, advising local officials of their responsibilities, encouraging the submission of information from the community (the City has informed FEMA on several occasions that local jurisdictions have prepared data they wish to submit to FEMA that may be contrary to data used by the COE), and requesting submission of data from the community.

From all appearances, these procedures have not been followed. Local input during the creation of these initial maps has been marginal, and the maps are objectionable on this basis alone. Significant and fundamental questions regarding the process FEMA is following remain unanswered.¹

¹ Did the meeting required under 44 C.F.R. 66.5 (e) take place before your study began as required? If so, who attended? When were notices sent? To who were notices sent? What was discussed during that meeting? When did FEMA formally begin its insurance study? When did FEMA officials encourage local dissemination of the

FEMA has continued to fail to appropriately identify a Consultation Coordination Officer in which local jurisdictions can rely on to engage in during the process.

Before a proposed investigation into modifying FEMA flood elevation determination zones, the Administrator (Federal Insurance Administrator) has specific and defined responsibilities that must be carried out. *For example see 44 C.F.R. 66.5.* Should the Administrator wish to delegate those responsibilities to another known as a "Consultation Coordination Officer or "CCO", the Administrator must advise the community and the state coordinating agency, in writing, of this appointment. *44 C.F.R. 66.4.* As stated previously in the City's July 11, 2006 letter, the purpose of having a specific contact person appointed, in writing, at the beginning of the process delegated with the authority, by the Administrator, is to avoid miscommunication, mixed messages and confusion with local officials.

As stated in the City's letter, to the best of my knowledge, no such appointment has occurred. While you are the author of all the recent correspondence, you indicated Mr. Ilke shall be the contact person to arrange consultation and coordination. Moreover, Mr. Ilke has taken on a greater role with local communities than simply administrative duties, as shown in his role during the May 17, 2006 presentation before SCOG.

Quite recently, the City received your letter dated August 14, 2006 (copy attached) by FEMA, in which you indicate in the last paragraph, you are the designated Consultation Coordination Officer for Region X and you have delegated, in Washington, those responsibilities to Ryan Ike of your staff. While I am pleased the City has been given notice of the responsible official for consultation, I must point out that this still fails to comply with FEMA's responsibility set forth in 44 C.F.R. 66:

When a CCO is appointed by the Administrator, the responsibilities for consultation and coordination as set forth in Sec. 66.5 shall be carried out by the CCO. **The Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.**

44 C.F.R. 66.4 emphasis added.

The City has not received, to my knowledge, such written communication from the Flood Insurance Administrator. 44 C.F.R. 66.4 makes it clear that such agent authority may only be

intent and nature of the investigation so that interested parties will have an opportunity to bring relevant data to the attention of the community? When did FEMA officials fully inform the appropriate officials of the community of their responsibilities placed on them by the Program? When did FEMA officials inform local communities of the administrative procedures followed by FEMA, the community's role in establishing elevations, and the responsibilities of community? Under what authority have you denied dissemination of the hydrological model in FEMA's possession and COE data used to create these initial maps? Under what authority have you allowed FEMA to under go its internal review (an evaluation of the hydrological model and COE study results) without advising local officials or allowing for local participation including input? How are these positions consistent with your duty to consult with local officials under 42 U.S.C. § 4107 and 44 C.F.R. 66 et. seq. Until the City has an answer to these questions, the City maintains its objections to the process FEMA is committed to pursuing.

granted when the Administrator, from which that authority stems, informs communities, in writing, of such a delegation.

FEMA's restricting local input to "technical aspects" from only affected communities' engineering and planning staff after the COE study has been completed and reviewed by FEMA officials fails to provide a meaningful opportunity for local input and fails to adequately consult with appropriate elected officials of general purpose governments as required by 42 U.S.C. 4107 and Part 66 of the Code of Federal Regulations.

Section 206 of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4107] states in pertinent part that:

The Director shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study.

42 U.S.C. § 4107.

This federal mandate has several elements that FEMA must follow: 1) that FEMA provide local officials the ability to disseminate flood information concerning the study widely within the community, 2) that interested persons, after receiving this information, are provided an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of FEMA, and 3) that this can occur during the course of the study. I will address each element in order.

FEMA must release its information to local officials so they can disseminate it to the community before providing an opportunity for input. To comply with this federal mandate, FEMA must disseminate the information, in its possession concerning the study, to local officials so that they, in turn, may disseminate this widely within the community, which may then provide informed input.

At this time, FEMA has refused to voluntarily release any of its information as shown in its May 25, 2006 letter. Moreover, on March 6, 2006, the City previously requested information from FEMA pertaining to any ongoing study or studies, previous studies and sought disclosure of portions of the community file (see 44 CFR 66.3) and the flood elevation study consultation docket. FEMA responded by failing to acknowledge that such file or docket was in existence and that the City must make a formal request through the Freedom of Information Act.²

² In an attempt to be provided this information, the City Attorney had previously requested disclosure of FEMA the community file required to be established under 44 C.F.R. 66.3 and the flood elevation consultation docket (a part of the community file) also required to be established under 44 C.F.R. 66.3. The City Attorney had been told by Ryan Ilke that a Freedom of Information Act (FOIA) request would be required and that in addition, the community file and flood elevation consultation docket were not recognized files either created or maintained in the regional office and may be perhaps in several places including the Seattle and Washington D.C. office. The City maintains that requiring the City to undergo a formal and time consuming FOIA request and FEMA's failure to properly maintain a community file or flood elevation consultation docket does not comply with FEMA's affirmative duty that the

It is now known, the FEMA study has been ongoing, the COE, which FEMA has contracted with, has completed its study, that the COE study is being reviewed and evaluated by FEMA officials, and that initial mapping is being prepared. To date, FEMA has not only failed to affirmatively provide or volunteer to local officials this information during the process in order that they can distribute it to the local community, but FEMA has denied local jurisdictions requests for this information, in your May 25, 2006 letter, until maps have been prepared. This delay, and failure to disclose information, results in preventing local input before decisions, or prospective findings, have been reached (i.e. what data FEMA shall use, what model FEMA shall employ). This, in turn, prevents local jurisdictions the ability to have meaningful input. This runs contrary to FEMA's obligations:

The Administrator or his delegate shall: (1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation). (2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, **along with the data and methods employed in reaching such conclusions**

44 C.F.R. 66.1 emphasis added.

FEMA must allow all "interested persons" an opportunity to bring all relevant facts and technical data to the attention of FEMA. You have requested that the presentation during the meeting be limited to the affected community's engineering and planning staff during the presentation of the initial work maps. While this meeting may be the first of many meetings and interested persons may be invited later on, these initial maps are the first of a series of maps using data and models, yet undisclosed, to either local officials or the general local populace.

Because all interested persons must be afforded an opportunity to provide input to all relevant facts, after dissemination of FEMA study information occurs, I would request that this meeting be available for all interested persons and that FEMA disclose all prospective findings, models, and data relied upon. In addition, any relevant facts an interested person may have can be brought to the attention of FEMA. Moreover, it is imperative that the meeting involve all affected local communities and their elected officials.

FEMA must allow local input to occur during the course of the study. This element of federal statute is restated in 44 C.F.R. 66.1 (c)(1): "**During the course of the study**, local communities must be allowed to submit pertinent data." 44 C.F.R. 66.1 (c)(1) emphasis added. Not only must FEMA require local community input during the course of the study, the FEMA has an affirmative duty to encourage such participation and must "specifically request the local

Director shall encourage local officials to disseminate information concerning such study widely within the community and that the Administrator must notify local officials of the progress of surveys, studies, and investigations, and of prospective finding, **along with the data and methods employed in reaching such conclusion.** See 42 U.S.C. § 4107; 44 C.F.R. 66.5(c) (3) *emphasis added.*

community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation)." *Id.*

FEMA, in its May 25, 2006 letter, requested no local input during the COE study and local officials must await until the COE study has been completed. Congress made clear its intent that consultation must occur during the COE investigation, not after:

...consultation shall include, but not be limited to, **fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Director** concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, **and the use to be made of the data obtained.**" 42 U.S.C. § 4107 emphasis added.

Clearly, to comply with the statute, FEMA was required to inform and consult with local officials at the commencement and throughout the COE study, including fully informing local officials of the use to be made of the data obtained. An interpretation that this duty of consultation with local official begins only after FEMA has reviewed a completed COE study is improper.

The City is unaware a request to submit pertinent data under 44 C.F.R. 66.1 (c) (1) by FEMA has occurred at any time. Nevertheless, the City and County have repeatedly given notice to FEMA and the COE that they have compiled pertinent data including hydrological models, historical data, and a forensic investigation of historical data previously used by COE. To date, the City is unaware, nor has it been communicated by FEMA, whether this data is being used either in part, in whole, or has been summarily discarded. The May 25, 2006 letter clearly indicates that FEMA will not accept any submission of data from local communities until COE's study has been completed, received by FEMA, and an 'internal review' of the study is completed.

Conclusion

The City respectfully requests that FEMA formally reject the current COE maps and model at this time. This is necessitated, based on FEMA's failure to provide meaningful input, or consultation, with local officials, its failure to allow information to be reviewed by local officials, and its failure to accept pertinent data before the initial production of the maps based on a completed COE study and FEMA's review. Moreover, the City requests that FEMA start again the investigation process, according to law and its own regulations, beginning with an initial meeting with local jurisdictions, required under 44 C.F.R. 66.5 (e), disclosure of all the data related to its study in FEMA's possession, so that local jurisdiction may disseminate this information among the community, followed by a request for local input allowing for that input and discussion to occur regarding hydrological modeling and use of data and to be deliberated and discussed openly before any initial maps are created.

If you have any questions of me, please do not hesitate to let me know.

Very truly yours,



Kevin Rogerson

Mount Vernon City Attorney

Re: May 25, 2006 FEMA letter to Skagit County Council of Governments

cc: Mount Vernon City Council
Mayor Bud Norris
The Office of Senator Maria Cantwell
The Office of Congressman Rick Larsen
The Office of Senator Patty Murray
Charles L. Steele, Department of Ecology, Bellevue
Skagit County Council of Governments
Federal Insurance Administrator



FEMA

July 5, 2006

Kelley Moldstad, Executive Director
Skagit County Council of Governments
204 W. Montgomery
Mount Vernon, Washington 98273

Dear Mr. Moldstad:

The purpose of this letter is to provide an update of the ongoing Skagit River Flood Insurance Study (FIS) being conducted by the Department of Homeland Security's Federal Emergency Management Agency (FEMA). Pursuant to Part 66 of the Code of Federal Regulations, FEMA is required to consult with local officials during the initial scoping phase of a new flood insurance study. As a matter of regional policy, we also conduct meetings periodically throughout the study to solicit community comments and address local concerns over the draft maps portrayal of the flood risk.

On June 28, 2006, the US Army Corps of Engineers (COE) provided FEMA with a copy of the first set of draft work maps covering the lower Skagit River floodplain from Sedro Woolley downstream to the Puget Sound as well as a copy of the hydraulic model used to produce the maps. The model is currently at FEMA's National Service Provider for technical review. These maps are the first of a series of maps that will eventually include the flood-prone areas along the Skagit River from Concrete to the Sound as well as portions of the Sauk and Cascade Rivers. Please note that the current work maps do not yet include a depiction of the floodway. Pending the outcome of the internal FEMA technical review, we intend to task the COE with producing the next set of maps covering the upper Skagit River floodplain from Sedro Woolley to Concrete as soon as possible.

At this time, we are prepared to meet with your community to discuss the technical aspects of the initial work maps. This meeting, referred to as an Intermediate Consultation and Coordination Officers' meeting (ICCO), is traditionally held with FEMA, the study contractor (COE), and the affected community's engineering and planning staff for the purposes of reviewing the maps for cartographic accuracy, evaluation of initial base flood elevations, discussing map impacts on current and future floodplain permitting, and collection of technical feedback to be included in the file prior to release as "Preliminary Flood Insurance Rate Maps." ICCO meetings are also an excellent way to establish a consultation process by which subsequent map releases will occur in your community.

Please contact Ryan Ike of my staff to arrange a consultation and coordination meeting in your area. He can be reached at the above address, or by calling (425) 487-4767.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl L. Cook, Jr.", written over a horizontal line.

Carl L. Cook, Jr., Director
Mitigation Division

cc: US Congressional Delegation
Department of Ecology



FEMA

May 25, 2006

Kelley Moldstad, Executive Director
Skagit County Council of Governments
204 W. Montgomery
Mount Vernon, Washington 98273

Dear Mr. Moldstad:

The purpose of this letter is to provide a status update of the ongoing Skagit River Flood Insurance Study (FIS) being conducted by the Department of Homeland Security's Federal Emergency Management Agency (FEMA). I am informing the Council of Governments of our progress because it is an established forum that contains all of the affected community partners.

At this time, we are nearing completion of the initial work maps covering the floodplain extending along the Skagit River from Sedro Woolley downstream to the bay. The work, being accomplished by the United States Army Corps of Engineers, will be received by FEMA and will follow our standard protocol which requires a FEMA review before the study is endorsed by this agency.

I do not wish to see information that may change released prematurely, nor do I wish to cause unnecessary delays. Several interested parties have requested that the release of the data be delayed while others have asked for an early release of the study results. FEMA intends to make the model and its results available to interested parties once our internal technical review is complete. At that time, members of my staff will arrange to meet with local officials and this council to discuss the next steps and receive feedback.

Comments or questions regarding this letter should be directed to Ryan Ike at the address above, or by calling (425) 487-4767.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl L. Cook, Jr.", written over a white background.

Carl L. Cook, Jr., Director
Mitigation Division

cc: The Office of Senator Patty Murray
The Office of Senator Maria Cantwell
The Office of Congressman Rick Larsen
Charles L. Steele, Department of Ecology, Bellevue

RI:gb

U.S. Department of Homeland Security
Region X
130 228th Street, SW
Bothell, WA 98021-9796



FEMA

August 14, 2006

Certified Mail
Return Receipt Requested

Honorable Bud Norris
Mayor of Mount Vernon
PO Box 809
Mount Vernon, Washington 98273

Dear Mayor Norris:

On July 5, 2006, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) provided a copy of a status update letter to the Skagit County Council of Governments (SCOG). Initially, the SCOG appeared to be an efficient conduit for FEMA to disseminate information broadly to community stakeholders in Skagit County. However, some local officials have recently requested direct coordination. From this point forward, FEMA will correspond individually with each community in all matters associated with the ongoing Skagit River Flood Insurance Study.

On June 28, 2006,, the US Army Corps of Engineers (COE) provided FEMA with a copy of the first set of *draft* work maps covering the lower Skagit River floodplain from Sedro Woolley downstream to the Puget Sound as well as a copy of the hydraulic model used to produce the maps. The model is currently at FEMA's National Service Provider for technical review. These maps are the first of a series of maps that will eventually include the flood-prone areas along the Skagit River from Concrete to the Sound as well as portions of the Sauk and Cascade Rivers. Please note that the current work maps do not yet include a depiction of the floodway. Pending the outcome of the internal FEMA technical review, we intend to task the COE with producing the next set of maps covering the upper Skagit River floodplain from Sedro Woolley to Concrete as soon as possible.

Pursuant to Part 66 of the Code of Federal Regulations (CFR), FEMA is required to consult with local officials during the initial scoping phase of a new flood insurance study. *As a matter of regional policy*, we periodically conduct additional meetings throughout the study phase to solicit community comments and address local concerns over the *draft* map portrayal of the flood risk. This should not be confused with Part 67 of the CFR pertaining to the official 90-day appeal period. Pursuant to Part 67, FEMA shall publish study results in the Federal Register, notify

EXHIBIT 6



FEMA

FEB 15 2011

Mr. Kevin Rogerson
City Attorney
City of Mount Vernon
910 Cleveland Avenue
P.O. Box 809
Mount Vernon, Washington 98273

FEB 23 2011

Re: **FEMA 11-254**

Dear Mr. Rogerson:

This acknowledges receipt of your January 19, 2011 Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) seeking the FEMA Technical and Scientific Notebook used to determine proposed flood elevations for the Skagit River in Skagit County, Washington. Your request was received in this office on January 27, 2011.

Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. We will make every effort to comply with your request in a timely manner; however, there are currently 821 open requests ahead of yours. Nevertheless, please be assured that one of the processors in our office will respond to your request as expeditiously as possible.

You requested expedited processing of your request. Under the DHS FOIA regulation, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual", 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information", 6 C.F.R. § 5.5(d)(1)(ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify under either category. You failed to demonstrate an imminent threat to the life or safety of an individual. Further, although your letter includes a description of an "urgency to inform the public", you fail to demonstrate that the City of Mount Vernon is "primarily engaged in disseminating information". Finally, your letter does not include your certified statement that the proffered basis for your request for expedited treatment is true and correct, as required by 6 C.F.R. § 5.5(d)(3).

Mr. Kevin Rogerson
FEMA 11-254

2

If you deem the decision to deny expedited treatment of your request an adverse determination, you may exercise your appeal rights. Should you wish to do so, you must send your appeal and a copy of this letter within 60 days of receipt of this letter to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Copies of the DHS regulations are available at: www.dhs.gov/foia. Your envelope and letter should be marked "Freedom of Information Act Appeal".

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that you have not presented a convincing argument that the City of Mount Vernon is entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requestor, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your January 19, 2011 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient. The justification stated in your letter fails to address any of the aforementioned criteria. The section of the Code of Federal Regulations cited in your letter states that "local dissemination of the intent and nature of the investigation shall be encouraged" The citation of this regulation alone is insufficient to demonstrate that the fee waiver requirements are met. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Mr. Kevin Rogerson
FEMA 11-254

3

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. You stated in your request that you are willing to pay assessable fees up to \$500. You will be contacted before any additional fees are accrued.

You have the right to appeal the determination to deny your fee waiver request. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter** to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal".

Your request has been assigned reference number **FEMA 11-254**. Please refer to this identifier in any future correspondence. You may contact this office at 202-646-3323 or electronically at FEMA-FOIA@dhs.gov.

Sincerely,



Dr. Anthony M. Bennett
Disclosure Branch Chief
Records Management Division
Mission Support Bureau



FEMA

Mr. Kevin Rogerson
City Attorney
City of Mount Vernon
910 Cleveland Avenue
P.O. Box 809
Mount Vernon, Washington 98273

MAR 18 2011

MAR 21 2011

Re: **FEMA 11-254**

Dear Mr. Rogerson:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), dated January 19, 2010, and received by this office on January 27, 2011. You are seeking "FEMA's Technical and Scientific Data ("TSDN") Notebook used to determine proposed flood elevations for the Skagit River in Skagit County, Washington[.]"

We conducted a comprehensive search of files within the Office of Mitigation and FEMA Region X for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Office of Mitigation or Region X that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please call (202) 646-3323 or electronically at FEMA-FOIA@dhs.gov and refer to **FEMA 11-254**.

Sincerely,

Dr. Anthony M. Bennett
Disclosure Branch Chief
Records Management Division
Mission Support Bureau

EXHIBIT 7



FEMA

Mr. Kevin Rogerson
City Attorney
City of Mount Vernon
910 Cleveland Avenue
P.O. Box 809
Mount Vernon, Washington 98273

MAR 18 2011

MAR 28 2011

Re: **FEMA 11-254**

Dear Mr. Rogerson:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), dated January 19, 2010, and received by this office on January 27, 2011. You are seeking "FEMA's Technical and Scientific Data ("TSDN") Notebook used to determine proposed flood elevations for the Skagit River in Skagit County, Washington[.]"

We conducted a comprehensive search of files within the Office of Mitigation and FEMA Region X for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Office of Mitigation or Region X that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please call (202) 646-3323 or electronically at FEMA-FOIA@dhs.gov and refer to **FEMA 11-254**.

Sincerely,

Dr. Anthony M. Bennett
Disclosure Branch Chief
Records Management Division
Mission Support Bureau

EXHIBIT 8

Parameters for the Flood Mapping Scientific Resolution Panel



FEMA

The Administrator of Federal Emergency Management Agency (FEMA) is making available an independent scientific body (hereafter referred to as the Scientific Resolution Panel) that can be convened when deemed necessary by FEMA or a joint agreement of FEMA and a community appellant. The Scientific Review Panel will review and resolve conflicting data related to proposed Base Flood Elevations (BFEs) as provided for in the National Flood Insurance Act, as amended by (42 USC 4104(e); 44 CFR Part 67.8).

National Flood Insurance Program (NFIP) participating communities are strongly urged to collaborate with FEMA throughout the study of their flood hazards, providing available data, models, and other scientific information that would enhance the final Flood Insurance Rate Map and avoid appeals. When such appeals are necessary, community consultation is the preferred method of resolution. Such consultation allows for collaborative evaluation and discussion of the conflicting data between FEMA and the appellant and usually facilitates a mutually acceptable resolution. On occasions when community consultation cannot produce a mutually acceptable resolution, the Panel will be made available. The Panel will be made up of experts on hydrology, hydraulics, and other pertinent sciences, as they apply to the development of Base Flood Elevations (BFEs) for FEMA flood studies.

Basis of Appeal:

- A community must submit an appeal to FEMA during the regulatory 90 day appeal period.
- The regulations require appeal submissions to include technical or scientific data. The appeal documentation must include alternative BFEs which, through the use of "alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect" (44 CFR Part 67).

Utilization of the Panel:

- After at least 60 days of community consultation on a submitted appeal have elapsed, the appellant community can elect to bring their appeal to the Panel. A community, whether working on its own behalf or that of interested parties, must serve as the official appellant.
- The appellant community must elect to bring their appeal to the Panel no later than 120 days after the submission of the appeal to FEMA.
- In instances where a good faith consultation between FEMA and the appellant exceeds the 120-day aforementioned deadline and does not result in a final resolution, FEMA may choose to submit the appeal to the Panel for resolution.
- FEMA will make initial determinations whether the submission includes sufficient information to qualify as a valid appeal pursuant to 44 CFR Part 67 or is simply a statement of protest.

Panel Sponsor

The Panel will be under the operational direction of a Panel Sponsor. The Panel Sponsor will be an organization selected by FEMA and will be:

- Independent from FEMA and other influences such that findings of Panels will be deemed neutral and independent from FEMA or associated influence.
- Capable of receiving reimbursement of costs from FEMA.
- Not subject to the Federal Advisory Committee Act.

The Panel Sponsor will be responsible for:

- Selecting and maintaining a cadre of scientific experts in surface water hydrology, hydraulics, coastal engineering, and other engineering and scientific fields that relate to the creation of Flood Hazard Maps and Flood Insurance Studies throughout the United States.
- Identifying a list of potential panel members from the cadre of experts based on the technical challenges of the specific appeal.
- Employing for panel operations an individual familiar with the principles of the NFIP statute and regulations.

Panel Composition

- A panel of up to 5 members will be chosen from the Panel Sponsor's pre-qualified list.
- The appellant chooses a simple majority, and FEMA chooses the remaining panelists.
- The Panel may include representatives from Federal agencies not involved in the mapping study in question and other impartial experts. The Sponsor must ensure panelists have no personal or professional interest in the appeal and do not reside in the State from which the appeal has been filed.
- FEMA employees cannot serve on the Panel.

Role of the Panel

- Following deliberations, the Panel shall render a written decision that rejects or supports an appeal as filed.
- The Panel will make a determination based on knowledge or information submitted by the appellant, indicating whether the BFEs proposed by FEMA are scientifically or technically incorrect.
- A report containing the Panel's rationale and decision will be made available to the public.
- The Panel must expeditiously make its determination about the appeal and present its public report no later than 150 days after the appeal is brought to the Panel.

Decisions of the Panel

- The Panel's determination will become the recommendation to the Administrator for appeal resolution; the Panel's determination will not be subject to further staff review within FEMA.
- Subject to final review and approval by the Administrator, FEMA will incorporate Panel findings and determinations into revised preliminary Flood Insurance Rate Maps and Flood Insurance Studies, as applicable per Regulation.
- When changes in the FIRMs are required, FEMA will make a revised Preliminary FIRM available to the community for review prior to issuing the Letter of Final Determination.
- The appellant will be encouraged to accept the determination of the Panel. If the appellant is not satisfied, the appellant may appeal to the appropriate United States District Court, pursuant to 44 CFR 67.12.

Implementation

- This process will be available to all community appellants beginning on November 1, 2010.
- In instances where an appeal is currently in the consultation phase, but which has not had a Final Determination issued, that community appellant will have until January 15, 2011, to request their appeal be brought to the Panel for disposition. FEMA will have the authority to offer the Panel resolution process to other existing appellants as it determines.

EXHIBIT 9

- Have the community CEO or authorized representative complete and submit to FEMA during the stipulated timeframe an **SRP Request Form (Appendix B)** which includes the community's specific contentions of the incorrect scientific and technical information used by FEMA in developing the proposed flood elevations among other information.

1.4 Request

An SRP shall be convened at the request of FEMA or a community upon submission of an **SRP Request Form**. The SRP Request Form shall include, among other information:

- The community's specific contentions of the incorrect scientific and technical data used by FEMA in developing the proposed flood elevations;
- IF requested by a community, a commitment from the community that they will sign a release of all liability of the Panelists for their participation on the SRP and the Institute for administering the SRP process.

PART II – ORGANIZATION

2.1 Agreement of Parties

The Parties agree to these rules and procedures, and any amendments in effect, at the time the administrative requirements for a request for an SRP have been met and an independent Scientific Resolution Panel has been convened to hear and decide on a community's challenge of FEMA's proposed flood elevations.

2.2 Establishment of Authority

2.2a The Institute, pursuant to a contract with FEMA, as Panel Sponsor shall establish and maintain a cadre of scientific experts (hereinafter referred to as "SRP cadre members" or "Panelists") from which shall be convened an independent scientific body (referred to as an "SRP" or "Panel"); to make the SRP available to FEMA and communities pursuant to the Act; and to administer SRP operations. The purpose of these rules is to set forth the understanding, terms and conditions by which Panelist shall serve on the SRP cadre of experts and, if selected, serve on an individual Panel, and by which FEMA and the community submit their conflicting data to an SRP for resolution.

2.2b The Institute may terminate a Panel at any time for convenience or cause.

2.3 Amendments

Amendments to these rules shall require approval of FEMA and the Institute President. Amendments to these rules approved by FEMA and the Institute President shall become effective on a date to be determined by staff but no later than a request to convene a new SRP.

2.4 Scope and Limit of Responsibility

2.4a The Panel, once appointed, shall convene to review the conflicting data submitted by FEMA and the community, hear oral presentations from FEMA and the community if deemed necessary and establish a majority decision on the appropriate data. The Panel shall then render a written recommendation, with supporting rationale, as to whether FEMA's proposed flood elevations are

scientifically or technically incorrect, as provided for in the National Flood Act, as amended by (42 USC 4104(e)) (the Act), the Federal Emergency Management regulations (44 CFR Part 67) (the regulations) and in accordance with these rules. The Panel's decision shall constitute a recommendation to the FEMA Administrator, who shall render a final determination.

2.4b Based on the scientific and technical information used by FEMA to generate the flood maps and the data submitted by the community, the Panel shall:

- First, review FEMA data for sound engineering practice and principles, limited to the contested data.
- Second, review community data and determine if
 - it satisfies NFIP mapping standards, and
 - it is superior to FEMA data.
- Establish its decision based on these reviews and recommend either the acceptance or denial of the community submitted data for inclusion in a revised flood map in part or in whole.

2.4c Based on its review of the scientific and technical information submitted by the community and FEMA, the Panel will make one of the following decisions on a point by point basis:

- FEMA's data does not satisfy NFIP mapping standards defined in FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners* (NFIP standards) and must be revisited.
- Community's data satisfies NFIP standards and wholly corrects or negates FEMA's data.
- Portions of the Community's data satisfy NFIP standards and correct or negate FEMA's data.
- Community's data does not satisfy NFIP standards, thus FEMA's data is not corrected, contradicted, or negated.
- Community's data satisfies NFIP standards and is correct, but does *not* negate FEMA's data.

2.5 Initiation of SRP

2.5a When FEMA determines to make the SRP process available for a specific challenge, and the community agrees, FEMA shall notify the Institute to convene a Panel by submitting an ***SRP Request Form***, executed by the community, containing the name of the community, nature of the challenge, the scientific and technical data needed to develop a list of potential Panelists, the names and address of the community CEO or authorized representative, appropriate sections of the Technical and Scientific Data Notebook (TSDN) related to the conflicting flood elevations and a summary of the issue.

2.5b FEMA may choose to exercise the SRP process without community endorsement for other scientific needs as deemed appropriate by the FEMA Administrator or Federal Insurance and Mitigation Administrator in consultation with the Office of Chief Counsel.

2.5c The Institute shall confirm receipt of an SRP request to FEMA and the community within 2 business days of receipt of an ***SRP Request Form***.

2.6 Administrative Review of SRP Request

The Institute may initiate an administrative review of the SRP Request, by telephone, with FEMA and the community to address such issues as Panel member selection, review the nature of the challenge and the technical and scientific data submitted, expertise needed on the Panel or any other administrative matters.

EXHIBIT 10

OCT 29 2010



FEMA

MEMORANDUM FOR: Doug Bellomo, Director
Risk Analysis Division

FROM: Sandra K. Knight, PhD, PE, Deputy Administrator
Federal Insurance and Mitigation Administration

SUBJECT: Implementing the Scientific Resolution Panel Process

EFFECTIVE DATE: Effective November 1, 2010 for all ongoing and future studies for which a Letter of Final Determination (LFD) has not been issued

Executive Summary:

FEMA is committed to the use of the best available data for the determination of flood elevations for Flood Insurance Rate Maps (FIRMs). To advance this, FEMA is providing resources to make available to communities and to FEMA a Scientific Resolution Panel (SRP) process comprised of independent and neutral experts to make recommendations for the resolution of appeals or protests brought to FEMA during the process of determining flood elevations for a community.

This memorandum describes the responsibilities of FEMA, including its Regions and mapping partners, and individual communities in the utilization of the SRP process. The use of an SRP is anticipated in appeal and protest situations where the more common and highly encouraged community consultation process does not provide a mutually acceptable resolution to both FEMA and the community.

For the purpose of this memorandum, the term "community" shall include the political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction and tribal entities as defined in the National Flood Insurance Program (NFIP) regulations cited in the Code of Federal Regulations (CFR) at Title 44, Chapter I, Section 59.1 (44 CFR Section 59.1).

An "appeal" or "regulatory appeal" shall be the submittal of knowledge or information, satisfying the data requirements set forth in 44 CFR Section 67.6, that indicates the elevations proposed by FEMA are scientifically or technically incorrect. A "protest" shall include the submission of technical or scientific data that tend to negate or contradict the information upon which the proposed flood elevations or floodplain delineations are based, but does not satisfy the data requirements of 44 CFR Section 67.6.

As of November 1, 2010 the SRP process will be made available for all future studies and ongoing studies that have not yet had their 90-day regulatory appeal period.

Communities that have already submitted conflicting scientific or technical data during the appeal period for ongoing studies *and* have not had a Letter of Final Determination (LFD) issued as of November 1, 2010, will have until January 15, 2011 to request access to the process.

FEMA may choose to exercise the SRP process for other scientific needs as deemed appropriate by the FEMA Administrator or Federal Insurance and Mitigation Administrator in coordination with the Office of Chief Counsel.

Background:

NFIP regulations outline three alternative procedures for the resolution of appeals of proposed flood elevations. Specifically, "The [FEMA] Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice" (44 CFR Section 67.8).

Historically, and with few exceptions, FEMA has utilized community consultation to resolve appeals or protests to proposed flood elevations. However, appeals and protests have often become drawn-out and contentious, with increased expenditures of FEMA and community resources. In an effort to limit the occurrence and mitigate the impact of such appeals and protests, the SRP process has been established to achieve the following benefits to both FEMA and the community:

- Offer a process deemed neutral by independent parties: demonstrating that FEMA is not both judge and jury for its products;
- Confirm FEMA's commitment to using the best science, regardless of its source, for the purpose of accurately depicting flood hazards on flood maps;
- Provide efficient resolution of contentious appeals and protests:

FEMA and its mapping partners should ensure that regulatory appeals are categorized appropriately and that both regulatory appeals and protests meet the appropriate requirements for SRP eligibility. SRPs will be directed to keep their deliberations tightly focused on scientific and technical issues and the correctness of FEMA data.

Appeals and Protests Management:

The use of an SRP is not intended to be the first step in the resolution of conflicting technical or scientific data. FEMA remains committed to the concept of community consultation for resolution in a less structured, cooperative format, which typically leads to agreement on the appropriate data. On occasions when community consultation cannot produce a mutually acceptable resolution and other qualifying conditions are met, an SRP will be made available. FEMA will move an SRP request forward based on eligibility as defined below.

To be considered eligible for the SRP process an appeal or protest must:

- Be received during the 90-day regulatory appeal period;
- Include knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect and/or demonstrate that the application of the community's technical and scientific data result in more correct estimates of flood elevations;
- Include certifications of the supporting data by a registered professional engineer or licensed land surveyor;
- Not have been wholly accepted to be incorporated by FEMA into a revised preliminary flood map;
- Have been subject to a minimum of 60 days of good-faith consultation between FEMA and the community;
- Have the community CEO or authorized representative complete and submit to FEMA during the stipulated timeframe an **SRP Request Form** (Appendix B) which includes the community's specific contentions of the incorrect scientific and technical information used by FEMA in developing the proposed flood elevations among other information.

The appeal or protest shall be submitted by the CEO or authorized community representative. The CEO or authorized representative will consolidate all unresolved appeals and protests by private persons that are endorsed by the community and submit them on their behalf. Only appeals and protests endorsed by the community will be eligible for the SRP. The community will also forward to FEMA copies of appeals and protests not endorsed by the community and certify that no further appeals or protests will be brought to FEMA.

The SRP Process:

The objective of the SRP process is to assist FEMA and communities in efficiently, impartially, and fairly resolving appeals and protests to proposed flood elevations. To

meet this objective, it is imperative that all parties follow guidelines, timeframes and procedures throughout the SRP process.

Please refer to the SRP Process Chart in Appendix A.

The statutory 90-day appeal period starts with the 2nd publication of the proposed flood elevations in a local newspaper. (Chart Item A)

If within the 90-day appeal period no challenge to the proposed flood elevations is received (Chart Item B) then FEMA issues the Letter of Final Determination (LFD) initiating a 6-month community adoption period.

If within the 90-day appeal period the community submits to FEMA data and documentation to challenge the proposed flood elevations (Chart Item B), FEMA will acknowledge the challenge and initiate the community consultation process (Chart Item D) with the community.

Upon review of the submitted data and documentation, FEMA will determine and announce as to whether the challenge does in fact include technical or scientific data that tend to negate or contradict the information upon which the proposed flood elevations are based. If it does, FEMA will accept the challenge as a legitimate appeal or protest (Chart Item E). FEMA and the community will proceed with the community consultation process with the recognition that an SRP may be an option after 60 days of consultation. (Chart Item H)

If the appeal or protest does not consist of the required technical or scientific data then the efforts for resolution will be delegated to further community consultation and a final determination will be made by FEMA. (Chart Item G)

After a minimum of 60 days and no more than 120 days of community consultation the community may request the implementation of an SRP by completing and submitting an SRP Request Form (or agree to a request from FEMA to do so). (Chart Item I) If the appeal or protest is eligible for an SRP, then FEMA forwards the Request to the SRP Sponsor to initiate the SRP process (Chart Items J and M).

If the community or FEMA decide not to exercise an SRP, community consultation continues and FEMA issues a resolution letter. (Chart Item K)

If the SRP process has not been used prior to the issuance of a resolution letter (Chart Item K) the community will have 30 days from the date of issuance to request an SRP. (Chart Item L) If the appeal or protest is eligible for an SRP, then FEMA forwards the request to the Panel Sponsor to initiate the SRP process. (Chart Item M) If the scientific or technical data are not eligible, FEMA will proceed with a Letter of Final Determination.

The SRP Sponsor:

The SRP process will be under the operational direction of the National Institute of Building Sciences (NIBS), an organization independent of and contracted by FEMA to act as the SRP Sponsor. NIBS will manage the procedures and processes related to the SRPs.

NIBS will be responsible for selecting and maintaining the cadre of independent scientific experts (Panelists) in the following areas as they relate to the creation of Flood Hazard Maps and Flood Insurance Studies throughout the United States:

- Surface water hydrology
- Open-channel flow hydraulics
- Coastal storm generation
- Coastal storm engineering and hydraulics
- Coastal geotechnical engineering
- Geotechnical engineering (structural)
- Floodplain management
- Levee and flood control structure design
- Other technical sciences as deemed necessary

Panelists may be representatives from Federal agencies, academia and private industry, but FEMA and DHS employees cannot serve on a Panel.

NIBS' responsibilities also include conducting outreach to experts, defining the selection criteria, and identifying potential cadre members. Based on the technical challenges of each appeal and protest, NIBS will develop a short list of qualified, available cadre members and provide it to the community and FEMA to select Panel members.

To support a neutral and fair process, NIBS will be independent from influences such that an SRP's finding will be deemed unbiased. NIBS will provide Panel members participating in individual SRPs with honorariums regardless of the Panel's decision and NIBS will be reimbursed costs. The community will not be financially responsible for the SRP costs.

Individual SRPs:

A Panel will be comprised of an odd number of panelists, typically five, and will be convened for each appeal or protest brought to the SRP process. The community will select the simple majority and FEMA will select the remaining Panel members from the shortlist of cadre members based on the technical challenges of the appeal or protest. Potential short-listed Panel members must have been approved by NIBS and have no personal or professional interest in the appeal or protest and may not reside in the State from which it has been filed. All proposed Panelists will sign disclosure agreements and confirm availability prior to being short-listed.

Panel members will receive from FEMA the data used to generate the challenged flood elevations and the contesting data submitted by the community during the 90-day appeal period. The Panel will first review the FEMA data that was contested for sound engineering practices and principles and compliance with NFIP standards. Then the Panel will review the community data on a point-by-point basis to determine which elements satisfy NFIP mapping standards and negate the FEMA data.

The Panel will present its written report to the community and FEMA within 150 days of being convened, and it will serve as the recommendation to the FEMA Administrator when making the final determination.

FEMA Roles and Responsibilities:

After reviewing the scientific or technical data submitted by the community, FEMA will determine whether the submission includes sufficient data to qualify as a regulatory appeal or whether it is a protest. FEMA will carry out its responsibilities and commit an effort to provide 60 days of good-faith community consultation. If after 60 days of consultation a mutually-acceptable resolution is not reached, the community and/or FEMA may request the SRP process.

When an SRP is deemed necessary by the community and FEMA, FEMA will forward the SRP Request to NIBS to initiate the SRP process.

FEMA will participate with the community in the selection of the Panel members from the short-list developed by NIBS based on the information included in the SRP Request Form.

Once the Panel members are selected, FEMA will provide the Panel with the necessary scientific and technical information to make a recommendation. The information will include specific sections of the Technical and Scientific Data Notebook (TSDN) used to determine proposed flood elevations relevant to the appeal or protest, the contesting data submitted by the community during the 90-day appeal period, and a summary of the issue.

FEMA and the community will receive a written report from the SRP that includes the Panel's recommendation to incorporate or deny the community's data in whole or in part. The FEMA Administrator will review the Panel's recommendation and make a final determination within a reasonable time. FEMA will issue a Resolution Letter, and when changes in the FIRMs are required, FEMA will issue a revised Preliminary FIRM and make it available to the community for review within a 30-day comment period. Following the issuance of a Resolution Letter or revised Preliminary FIRMs, FEMA will issue the Letter of Final Determination.

The Community and its Responsibilities:

The community will submit an appeal or protest during the 90-day appeal period and make a good faith effort during the community consultation process to come to a mutually-accepted resolution with FEMA.

If a resolution is not reached, the community has two opportunities to request that an SRP review its eligible appeal or protest (Appendix C):

- a) Between day 60 and day 120 of the community consultation process
- b) Within 30 days of a Resolution Letter being issued by FEMA if an SRP was not previously used

To initiate the SRP process, the community must first complete and submit the SRP Request Form (Appendix B) to FEMA which includes:

- A clear indication as to whether the submittal is a protest or appeal. For an appeal, the community must specify whether the scientific or technical data satisfies the data requirements of 44 CFR Section 67.6 (b)(1), (2), or (3);
- A release of all liability by the community of the panelists for their participation on the SRP and of the SRP Sponsor for their administration of the SRP process;
- Acknowledgement by the community that the decision of the SRP will become the recommendation to the Administrator for final determination without further objection by the community. Communities who submitted regulatory appeals maintain their right to proceed to U.S. District Court.

The community will receive applications of short-listed cadre members to select the majority of the Panel members. Since short-listed Panel members are reviewed for neutrality and availability, neither the community nor FEMA can recommend Panel members that are not included on the short-list provided by NIBS.

If the community feels it is necessary to make an oral presentation in support of its appeal or protest, it must include a justification on the SRP Request Form. Panels may request clarifications or oral presentations on submitted data made by the community and FEMA when deemed necessary.

Once a determination is made and a resolution letter is issued, the community will not be able to request an SRP again or re-file the appeal or protest of the proposed flood elevations. If the community is not satisfied with the findings of the SRP or the final determination of the Administrator for a regulatory appeal, it may appeal to the appropriate United States District Court as provided in 44 CFR Section 67.12.

The Panel's Recommendation

The Panel will first review the contested FEMA data for sound engineering practices and principles and compliance with the NFIP mapping standards defined in FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners*. The Panel will then review the community data on a point-by-point basis to determine which elements satisfy NFIP mapping standards and negate the FEMA data. Based on the scientific and technical information submitted by the community and FEMA, the Panel will make a decision that:

- (a) FEMA data does not satisfy NFIP standards and must be revisited.
- (b) Community's data satisfies NFIP standards and wholly corrects or negates FEMA's data.
- (c) Portions of the community data satisfy NFIP standards and correct or negate FEMA's data.
- (d) Community's data does not satisfy NFIP standards, thus FEMA's data is not corrected, contradicted, or negated.
- (e) Community's data does satisfy NFIP standards and is correct, but does *not* negate FEMA's data.

The Panel must present its decision in a written report made available to FEMA and the community no later than 150 days after being convened. The report should include the identification of Panel members, a description of the appeal or protest, a list of data submitted by the community and FEMA, a summary of Panel procedures, the recommendation to either deny or accept the community's data in whole or in part, any other recommendations to FEMA, and its rationale for its findings.

The Panel's report will be made public. The Panel's report and the Administrator's final determination will be added to the Community's **Flood Elevation Determination Docket (FEDD)**. The FEDD shall contain the information as stated in CFR 44 Part 67.3 to show that FEMA has provided due process to communities impacted by new or updated flood hazard information.

cc: See Distribution List

Distribution List (electronic distribution only):

Office of the Federal Insurance and Mitigation Administrator

Risk Analysis Division

Risk Reduction Division

Risk Insurance Division

Page 9

Regional Mitigation Division Offices

Office of Legislative Affairs

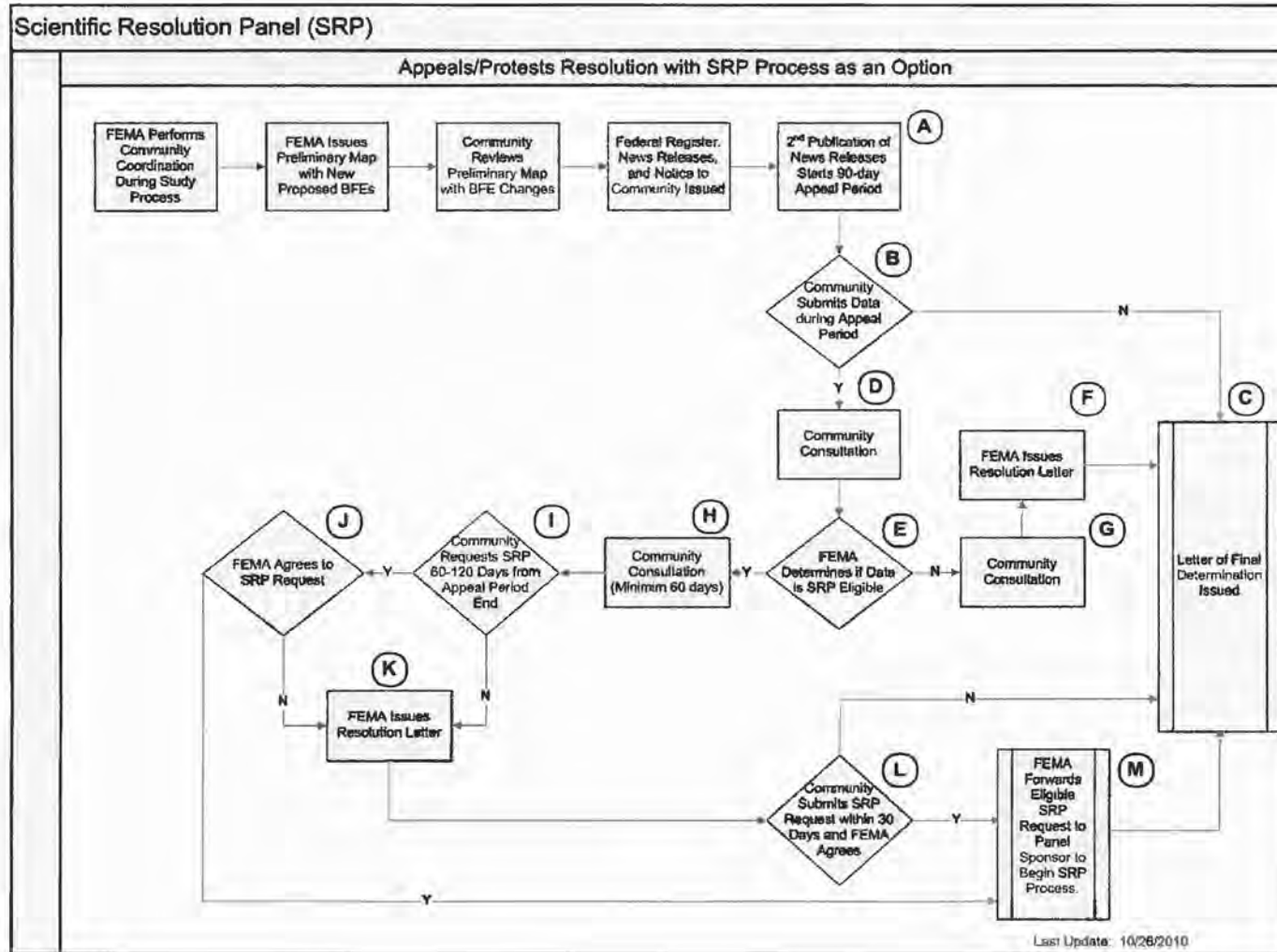
Office of Chief Counsel

Cooperating Technical Partners

Program Management Contractor

Production and Technical Services Contractors

APPENDIX A – SRP Process Chart





FEMA

APPENDIX B

Scientific Resolution Panel Request Form

This form is to be completed by the community's CEO or the authorized representative of the community for which the appeal or protest is being filed. The CEO will consolidate all unresolved appeals and protests by private persons and submit them on their behalf. The CEO will also forward to FEMA copies of appeals and protests not endorsed by the community and certify that no further appeals or protests will be brought to FEMA for the community.

Date: _____

Name of Community: _____

County and State of Community: _____

Name of Community CEO or authorized representative:

Mailing Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number (Work): _____

Phone Number (Cell): _____

Email Address: _____

Does the data submitted constitute an appeal (as defined below) _____ or a protest _____ ?

If it is an appeal, pursuant to 44 CFR Section 67.6 (b) does the submitted data satisfy the data requirements and demonstrate that FEMA's proposed base flood elevations are:

____ (1) technically incorrect due to a mathematical or measurement error or changed physical conditions?

____ (2) technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods?

____ (3) scientifically incorrect?

If an oral presentation to the SRP is necessary to support this appeal or protest, please justify here.

Community Commitment and Certification

The community certifies that:

1. The data provided for SRP review was entirely submitted to FEMA during the 90-day appeal period?
Y____ N____
2. No additional data may be submitted for this or any other appeal or protest for SRP consideration?
Y____ N____
3. There may be no submission of any other appeals and protests not consolidated with this submission?
Y____ N____

Location of Contested Flood Elevations

4. *Identify the specific river reaches or coastal transects challenged by the data.*

5. *Please identify areas of expertise the community believes are pertinent for representation on the SRP.*

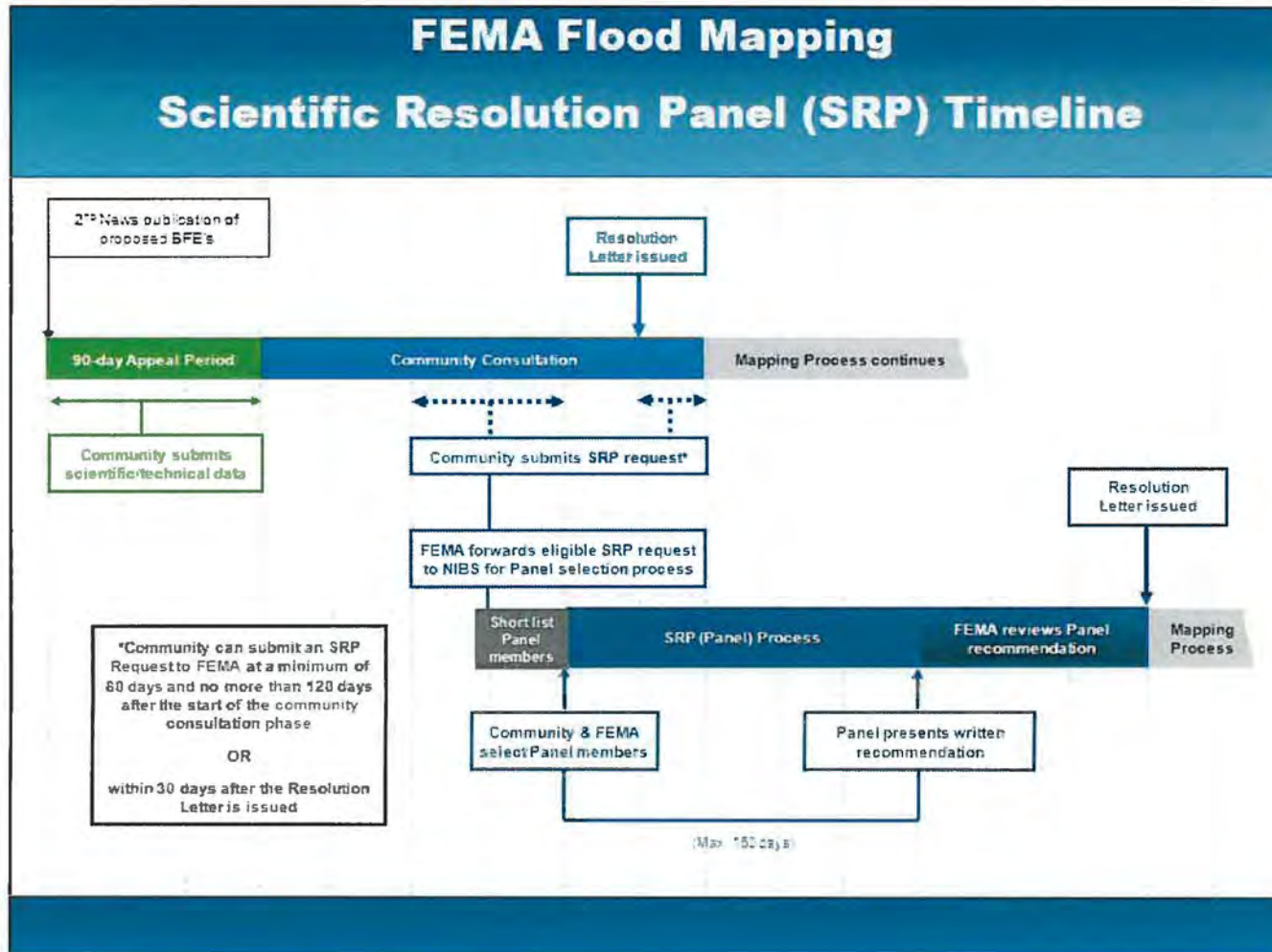
6. **Description of Information to be Submitted by the Community Indicating that the Elevations Proposed by FEMA are Scientifically or Technically Incorrect**
Please include on a separate page labeled "Attachment A: Summary of Appeal or Protest Information" a summary of the specific technical issues, errors in FEMA's data, or different technical processes submitted to contest the flood elevations proposed by FEMA.

7. **Acceptance by Community of Terms and Conditions for the Initiation of an SRP**
To initiate the SRP process, the community's CEO or authorized representative must accept the following terms and conditions on behalf of the community and individuals whose appeals or protests are consolidated with this submission.

- 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 or protests. For a regulatory appeal, the parties will maintain their right to appeal to the appropriate Federal District Court.
- b) The community has read the FEMA prepared Guidance Memorandum and agrees to work with the National Institute of Building Sciences (NIBS) in the timely completion of the SRP review, including timely selection of panel members and participation in additional review procedures if requested.
- c) The community agrees that no contact will be made with the Panel members except as expressly requested by NIBS before, during or after the SRP review is undertaken.
- d) The community agrees that they have read and signed the "Community Submittal Agreement."

Signature of Community CEO or Authorized Representative

APPENDIX C - Scientific Resolution Panel (SRP) Timeline



**IN RE: Appeal of the Revised Digital
Flood Insurance Rate Map (rDFIRM)
and Revised Flood Insurance Study
(rFIS) by the Cities of Burlington
and Mt. Vernon, Washington**

**DECLARATION OF SCOTT
THOMAS**

I, SCOTT G. THOMAS, do hereby declare the following:


1. That I am employed by the City of Burlington as the City Attorney. I do hereby make this Declaration in that capacity.
2. That on January 5, 2011, I submitted a request to FEMA under the Freedom of Information Act, 5 U.S.C. § 552, seeking information necessary to prepare and perfect the City of Burlington's appeal of FEMA's flood map determinations. Among other documents, I requested access and a copy of FEMA's Technical and Scientific Data Notebook used to determine flood elevations for the Skagit River; that notebook is explicitly described in rule 3.4 of the FEMA Scientific Resolution Panel Rules, which would eventually govern any appeal that the City of Burlington may file of FEMA's proposed flood elevations. I explained in my request that the City was requesting the information in order to preserve a substantial right of the City, and its residents. I asked that my FOIA request be expedited. A copy of my letter is attached, and identified as Exhibit "A."
3. That on January 11, 2011, I received an initial response from Dr. Anthony Bennett, FEMA's Disclosure Branch Chief. Dr. Bennett advised me that FEMA's goal was to respond within 20 business days of receipt, and that FEMA would invoke a 10-day extension to the 20-day response time, pursuant to 5 U.S.C. § 552(a)(6)(B).

Because FEMA received the request on January 6, 2011, FEMA's anticipated response date would have been February 18, 2011. A copy of Dr. Bennett's letter is attached, and identified as Exhibit "B."

4. I still have not received a response to my FOIA request.
5. On March 14, 2011, FEMA published in the Federal Register a proposed rule correcting a previously published proposed rule. Attached hereto and identified as Exhibit "C" is a copy of the publication that occurred in the Federal Register on that date relevant to the Skagit River system.
6. The City of Burlington owns numerous parcels of real property within the area of special flood hazard within the City of Burlington (i.e., within the area presently mapped as being susceptible to a 1% chance flood). Amongst these parcels is just one example – the Burlington City Hall. Attached hereto and identified as Exhibit "D" is a copy of the Skagit County Assessor's record that identifies the City as the owner of this parcel.

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 29th day of March, 2011.



Scott G. Thomas, City Attorney
City of Burlington
WSB # 23079

EXHIBIT "A"



January 5, 2011

FEMA FOIA Office
Records Management/Disclosure Branch
1800 S. Bell St., Fourth Floor, Mail Stop 3005
Arlington, VA 22202

Greetings:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. subsection 552, the City of Burlington, Washington requests access and copies of FEMA's Technical and Scientific Data Notebook ("TSDN") used to determine proposed flood elevations for the Skagit River in Skagit County, Washington; the Technical and Scientific Notebook is further described in Rule 3.4 of the FEMA Scientific Resolution panel Rules and procedures, which may be found at: <http://floodsrp.org/program/rules.php> (last viewed 1-4-11, site managed by the National Institute of Building Sciences for the National Flood Insurance program of the Federal Emergency Management Agency.)

The City requests expedited process as these records relate to an imminent action by FEMA in making a flood elevation determination, and the City of Burlington's intent to invoke FEMA's Scientific Resolution Panel, all of which involve due process rights that would be impaired by the failure to process immediately.

The U.S. Court of Appeals for the D.C. Circuit has recognized that some FOIA requests necessarily involve a far greater degree of urgency than others and that when a requester can show "exceptional need or urgency", that request should be processed out of turn. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976), *citing* 5 U.S.C. § 552(a)(6)(C). Further cases have clarified this urgency as the FOIA is needed for the preservation of a substantial right. FEMA is in the process of adopting proposed based flood elevations that would, if adopted and upheld, encumber property rights of landowners that lie in the flood prone areas identified in those maps including property owned by the City of Burlington. Moreover, the U.S. Congress

has declared that this information must be disclosed in a timely manner so that local officials, in turn, may disseminate information widely within the community in order that further input may be received before FEMA makes a final determination. *See U.S.C. § 4107.*

The City requests a fee waiver because this information, as identified by the U.S. Congress, is clearly within the public interest and the information is necessary to contribute with the community consultation process required under FEMA regulations.

To qualify for a fee waiver, a requester must demonstrate that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. In the instant matter, the information requested is necessary to fulfill the local jurisdictions mandate set forth in 44 C.F.R. 66.5 to distribute among members of the community so that they may in turn bring relevant data to FEMA.

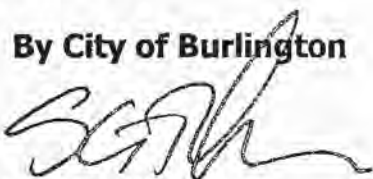
Should FEMA determine there are any fees for searching for or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$500.00 which I agree to pay.

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

If you have any questions about handling this request, you may telephone me at 360-755-9473.

Sincerely,

By City of Burlington

A handwritten signature in black ink, appearing to read 'SGT', written over a horizontal line.

Scott G. Thomas
City Attorney

SGT/sa

EXHIBIT "B"



U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472



FEMA

Scott G. Thomas
City Attorney
City of Burlington, Washington
833 South Spruce Street
Burlington, Washington 98233

JAN 11 2011

Re: **FEMA 11-190**

Dear Mr. Thomas:

This acknowledges receipt of your January 5, 2011, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), for FEMA's Technical and Scientific Data Notebook. Your request was received in this office on January 6, 2011.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although FEMA's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks documents that will necessitate a thorough and wide-ranging search, DHS/FEMA will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 865 open requests ahead of yours.

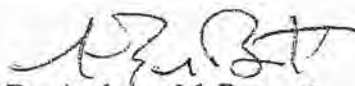
Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to commercial requestors; i.e., you will be charged 10-cents per page for duplication and for search and review time at the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher and reviewer. You stated in your request that you are willing to pay assessable fees up to \$500.00. You will be contacted before any additional fees are accrued.

We have queried the appropriate component of FEMA for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Scott G. Thomas
FEMA 11-190

Your request has been assigned reference number **11-190**. Please refer to this identifier in any future correspondence. You may contact this office at 202-646-3323 or electronically at FEMA-FOIA@dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. M. Bennett', written in a cursive style.

Dr. Anthony M. Bennett
Disclosure Branch Chief
Records Management Division
Mission Support Bureau

EXHIBIT "C"

Correction

In the proposed rule published at 74 FR 46074, in the September 8, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Troup

County, Georgia, and Incorporated Areas" addressed the flooding source Shoal Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for that flooding

source. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding Source(s)	Location of Referenced Elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Troup County, Georgia, and Incorporated Areas				
Shoal Creek	Approximately 2,800 feet downstream of Hammett Road.	None	+650	City of LaGrange
	Approximately 1,500 feet upstream of Hammett Road	None	+669	

* 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of LaGrange

Maps are available for inspection at City Hall, 200 Ridley Avenue, LaGrange, Georgia 30240.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-5834 Filed 3-11-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-B-1168]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On December 7, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in

lieu of the information published at 75 FR 75945. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Skagit County, Washington and Incorporated Areas. Specifically, it addresses the following flooding sources: Left Bank Overflow Main Stem Skagit River, Left Bank Overflow Main Stem Skagit River/South Fork Skagit River, Left Bank Overflow North Fork Skagit River, Main Stem Skagit River, North Fork Skagit River, Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River, Padilla Bay, Right Bank Overflow Main Stem Skagit River, Right Bank Overflow Main Stem Skagit River/North Fork Skagit River, Right Bank Overflow North Fork Skagit River, Right Bank Overflow South Fork Skagit River, Samish Bay, Samish Bay/Padilla Bay, Simlik Bay, Skagit Bay, Skagit Bay/Swinomish Channel, Skagit River, Skagit River Delta Overbank Flowpath 1, Skagit River Delta Overbank Flowpath 2, Skagit River Delta Overbank Flowpath 3, South Fork Skagit River, and Swinomish Channel.

DATES: Comments are to be submitted on or before June 13, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1168, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064 or (e-mail) luis.rodriguez1@dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064 or (e-mail) rodriguez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 75 FR 75945, in the December 7, 2010, issue of the **Federal Register**, FEMA published a table under the authority of

44 CFR 67.4. The table, entitled "Skagit County, Washington, and Incorporated Areas" addressed the following flooding sources: Left Bank Overflow Main Stem Skagit River, Left Bank Overflow Main Stem Skagit River/South Fork Skagit River, Left Bank Overflow North Fork Skagit River, Main Stem Skagit River, North Fork Skagit River, Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River, Padilla Bay, Right Bank Overflow Main Stem Skagit River, Right Bank Overflow Main Stem Skagit River/North Fork Skagit River, Right Bank Overflow North Fork Skagit River, Right Bank Overflow South Fork Skagit River, Samish Bay, Samish Bay/Padilla Bay, Simlik Bay, Skagit Bay, Skagit Bay/Swinomish Channel, Skagit River, Skagit River Delta Overbank Flowpath

1, Skagit River Delta Overbank Flowpath 2, Skagit River Delta Overbank Flowpath 3, South Fork Skagit River, and Swinomish Channel. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for these flooding sources. It also contained erroneous map repository addresses for the City of Burlington, the City of Sedro-Woolley, the Swinomish Indian Tribal Community, and the Town of Lyman. There were also some table formatting and alignment errors. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Skagit County, Washington, and Incorporated Areas				
Left Bank Overflow Main Stem Skagit River.	Approximately 1,400 feet north of the intersection of Hickox Road and I-5.	#2	+23	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 300 feet west of the intersection of Anderson Road and Old Highway 99.	#2	+24	
Left Bank Overflow Main Stem Skagit River.	Approximately 0.43 mile east of the intersection of Dike Road and Britt Road.	+19	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 1,500 feet west of the intersection of Riverview Lane and Dike Road.	+19	+27	
Left Bank Overflow Main Stem Skagit River.	Just northwest of the intersection of Britt Road and Dike Road.	#3	+26	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 250 feet north of Dike Road and approximately 1,000 feet west of Riverview Lane.	#3	+28	
Left Bank Overflow Main Stem Skagit River.	Approximately 900 feet north of Blackburn Road between 2nd Street and 3rd Street.	#1	+25	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of Freeway Drive and Cameron Way.	#1	+39	
Left Bank Overflow Main Stem Skagit River.	Just north of Stewart Road between Riverside Drive and the Burlington Northern Railroad.	#3	+41	City of Mount Vernon.
	Just northwest of the intersection of Hoag Road and the Burlington Northern Railroad.	#3	+42	
Left Bank Overflow Main Stem Skagit River.	Approximately 1.4 miles west of the intersection of I-5 and State Route 538, at levee.	+34	+40	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of the Burlington Northern Railroad and State Route 538.	+34	+40	
Left Bank Overflow Main Stem Skagit River.	Just north of the intersection of Hickox Road and Dike Road.	None	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 640 feet west of the intersection of Riverview Lane and Dike Road.	None	+27	
Left Bank Overflow Main Stem Skagit River.	At the intersection of I-5 and Anderson Road	None	+24	City of Mount Vernon.
	At the intersection of I-5 and Section Street	None	+28	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Just north of Fir Island Road, at the intersection with the Burlington Northern Railroad.	#3	+20	City of Mount Vernon, Unincorporated Areas of Skagit County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 500 feet south of Hickox Road between the levee and the Burlington Northern Railroad.	#3	+23	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Approximately 0.75 mile south of the intersection of Milltown Road and Pioneer Highway.	+13	+16	Unincorporated Areas of Skagit County.
Left Bank Overflow North Fork Skagit River.	At the intersection of State Route 534 and I-5	+13	+20	Unincorporated Areas of Skagit County.
	Just east of the levee, approximately 350 feet north-east of the intersection of Moore Road and Polson Road.	#1	+16	
Main Stem Skagit River	Just east of the levee, approximately 450 feet north of Moore Road.	#1	+18	City of Burlington, City of Mount Vernon, City of Sedro-Woolley, Town of La Conner, Unincorporated Areas of Skagit County.
	At the confluence with the North Fork Skagit River and South Fork Skagit River.	+27	+30	
North Fork Skagit River	Just downstream of the Burlington Northern Railroad	+49	+52	Unincorporated Areas of Skagit County.
	At the confluence with Skagit Bay	+14	+16	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River.	At the confluence with the Main Stem Skagit River and South Fork Skagit River.	+27	+30	Unincorporated Areas of Skagit County.
	At the confluence with Skagit Bay	+12	+14	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River.	At the intersection of Moore Road and Dry Slough Road.	+13	+18	Unincorporated Areas of Skagit County.
	Approximately 200 feet north of Moore Road between the North Fork Skagit River and Dry Slough Road.	#3	+18	
Padilla Bay	Approximately 880 feet southwest of the confluence with North Fork Skagit River and the South Fork Skagit River.	#3	+21	Swinomish Indian Tribal Community.
	Approximately 1,000 feet northwest of the intersection of Highway 20 and Padilla Heights Road.	None	+13	
Right Bank Overflow Main Stem Skagit River.	Approximately 100 feet north of the crossing at State Route 20 and the Swinomish Channel.	None	+13	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 0.36 mile west of the intersection of Penn Road and Calhoun Road.	#3	+21	
Right Bank Overflow Main Stem Skagit River.	Approximately 400 feet south of the levee between Moores Garden Road and Baker Street.	#3	+30	Unincorporated Areas of Skagit County.
	Approximately 300 feet west of the intersection of Dunbar Avenue and Avon Allen Road.	#3	+24	
Right Bank Overflow Main Stem Skagit River.	Approximately 500 feet east of Avon Allen Road between Bennett Road and State Route 536.	#3	+31	Unincorporated Areas of Skagit County.
	Approximately 400 feet northeast of the intersection of Bennett Road and State Route 536.	#3	+25	
Right Bank Overflow Main Stem Skagit River.	Approximately 500 feet southeast of the intersection of Bennett Road and Silver Lane.	#3	+34	Unincorporated Areas of Skagit County.
	Approximately 400 feet east of the intersection of Pulver Road and McCorquedale Road.	#3	+32	
Right Bank Overflow Main Stem Skagit River/North Fork Skagit River.	Approximately 400 feet east of Pulver Road between Whitemarsh Road and McCorquedale Road.	#3	+34	Unincorporated Areas of Skagit County.
	At Kamb Road approximately 0.47 mile south of Calhoun Road.	#3	+19	
Right Bank Overflow North Fork Skagit River.	Approximately 0.38 mile southeast of the intersection of Calhoun Road and Kamb Road.	#3	+20	Unincorporated Areas of Skagit County.
	Just south of Kamb Road approximately 0.66 mile east of Beaver Marsh Road.	#3	+19	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Right Bank Overflow South Fork Skagit River.	Approximately 1,600 feet east of the intersection of Beaver Marsh Road and Marsh Road.	#3	+19	Unincorporated Areas of Skagit County.
	Between Moore Road and Polson Road	#1	+17	
	Approximately 870 feet south of Moore Road, at levee.	#1	+18	
Samish Bay	At the intersection of Chuckanut Drive and South Blanchard Drive.	+12	+13	Unincorporated Areas of Skagit County.
Samish Bay/Padilla Bay	At the intersection of Bayview-Edison Road and Samish Island Road.	+12	+13	Unincorporated Areas of Skagit County.
Simlik Bay	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	Swinomish Indian Tribal Community.
Skagit Bay	Approximately 100 feet southwest of the intersection of Reservation Road and Simlik Bay Road.	None	+12	Unincorporated Areas of Skagit County.
	Approximately 0.36 mile northwest of the intersection of Pioneer Highway and Milltown Road.	+15	+14	
Skagit Bay	At the confluence of Ishois Slough and Tom Moore Slough.	+17	+14	Swinomish Indian Tribal Community.
	Approximately 200 feet northwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+12	
Skagit Bay	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	Swinomish Indian Tribal Community.
	Approximately 400 feet northwest of Pull and Be Damned Point Road.	None	+14	
Skagit Bay/Swinomish Channel.	Approximately 200 feet southwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+14	Swinomish Indian Tribal Community.
	Approximately 600 feet southwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+12	
Skagit River	Approximately 400 feet west of Pull and Be Damned Point Road.	None	+12	City of Sedro-Woolley, Town of Concrete, Town of Hamilton, Town of Lyman, Unincorporated Areas of Skagit County.
	Just upstream of the Burlington Northern Railroad	+49	+52	
Skagit River Delta Overbank Flowpath 1.	Approximately 1.0 mile upstream of the confluence with the Baker River.	+197	+198	City of Burlington, Unincorporated Areas of Skagit County.
	Just upstream of Pulver Road	+27	+32	
Skagit River Delta Overbank Flowpath 2.	Approximately 1,170 feet southeast of the intersection of Lafayette Road and Peter Anderson Road.	+45	+46	Unincorporated Areas of Skagit County.
	At the confluence with Samish Bay	+12	+13	
Skagit River Delta Overbank Flowpath 3.	Just downstream of Pulver Road	+27	+32	Town of La Conner, Unincorporated Areas of Skagit County.
	At the confluence with the Swinomish Channel	+12	+15	
South Fork Skagit River	Just downstream of Pulver Road	+27	+32	Unincorporated Areas of Skagit County.
	At the confluence with Ishois Slough and Tim Moore Slough.	+17	+14	
Swinomish Channel	At the confluence with the Main Stem Skagit River and the North Fork Skagit River.	+27	+30	Swinomish Indian Tribal Community.
	Just north of Highway 20	None	+11	
	Approximately 600 feet northwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+11	

* 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.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Burlington

Maps are available for inspection at City Hall, 833 South Spruce Street, Burlington, WA 98233.

City of Mount Vernon

Maps are available for inspection at City Hall, 910 Cleveland Avenue, Mount Vernon, WA 98273.

City of Sedro-Woolley

Maps are available for inspection at the Planning and Building Department, City Hall, 325 Metcalf Street, Sedro-Woolley, WA 98284.

Swinomish Indian Tribal Community

Maps are available for inspection at 11404 Moorage Way, La Conner, WA 98257.

Town of Concrete

Maps are available for inspection at the Town Hall, 45672 Main Street, Concrete, WA 98237.

Town of Hamilton

Maps are available for inspection at the Town Hall, 584 Maple Street, Hamilton, WA 98255.

Town of La Conner

Maps are available for inspection at the Town Hall, 204 Douglas Street, La Conner, WA 98257.

Town of Lyman

Maps are available for inspection at the Town Hall, 8405 South Main Street, Lyman, WA 98263.

Unincorporated Areas of Skagit County

Maps are available for inspection at the Skagit County Department of Planning and Developmental Services, 1800 Continental Place, Mount Vernon, WA 98273.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-5828 Filed 3-11-11; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286; FCC 11-34]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission seeks comment on extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations. Extending the freeze would allow the Commission to provide stability for, and

avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Comments are due on or before March 28, 2011. Reply comments are due on or before April 4, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No. 80-286, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *E-mail:* ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Ball, Attorney Advisor, at 202-418-1577, Pricing Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 80-286, FCC 11-34, released on March 1, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Background

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The NPRM proposes extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2011, until June 30, 2012. Extending the freeze will allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive separations reform.

EXHIBIT "D"

Skagit County Assessor Parcel Details

Parcel Number	XrefID	Quarter	Section	Township	Range
P72740	4089-008-012-0005	02	05	34	04

Owner Information	Site Address(es)	Location Map
CITY OF BURLINGTON 833 S SPRUCE ST BURLINGTON, WA 98233	833 S SPRUCE ST BURLINGTON, WA 98233	Locate this Parcel on iMap Assessor's Parcel Map: PDF DWF

2010 Values for 2011 Taxes	Exemption	Sale Information	2011 Property Tax Summary
Building Market Value \$4,264,800.00		Deed Type WARRANTY DEED	2011 Taxable Value \$0.00
Land Market Value +\$659,000.00		Sale Date 8/29/2001	General Taxes \$0.00
Total Market Value \$4,923,800.00		Sale Price \$1,287,500.00	Special Assessments/Fees +\$8,822.22
Assessed Value \$4,923,800.00		View Sales History	Total Taxes \$8,822.22
Taxable Value \$0.00			View Tax Statement
View Value History			

Legal Description [Definitions](#)

KNUTZEN'S TO BURLINGTON, DK 12: ALSO KNOWN AS LOT 1 OF BURLINGTON SHORT PLAT NO. 2-84, UNDER AUDITOR'S FILE NO. 8501310020 DESCRIBED AS FOLLOWS: THAT PORTION OF BLOCK 4 OF "SUPPLEMENTAL PLAT OF KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 7, RECORDS OF SKAGIT COUNTY, WASHINGTON, AND OF BLOCK 8, "KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 80, RECORDS OF SKAGIT COUNTY, WASHINGTON; TOGETHER WITH THOSE PORTIONS OF VACATED STREETS ADJOINING, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF THE SOUTH LINE OF LOT 12, BLOCK 8 OF "KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 80, RECORDS OF SKAGIT COUNTY, WASHINGTON, WHICH IS 20 FEET WEST OF THE WEST LINE OF SPRUCE STREET AS DEDICATED IN SAID PLAT; THENCE NORTH 88 DEGREES 29'07" WEST ALONG THE NORTH LINE OF CEDAR STREET OF SAID PLAT, A DISTANCE OF 265.19 FEET; THENCE NORTH 1 DEGREE 07'52" EAST, A DISTANCE OF 375.11 FEET; THENCE SOUTH 88 DEGREES 24'46" EAST, A DISTANCE OF 265.19 FEET TO A POINT 20 FEET WEST OF THE WEST LINE OF SAID SPRUCE STREET; THENCE SOUTH PARALLEL TO SAID WEST LINE SOUTH 1 DEGREE 07'52" WEST, A DISTANCE OF 374.78 FEET TO THE POINT OF BEGINNING. EXCEPT THAT PORTION OF SAID LOT 1, CONVEYED TO THE CITY OF BURLINGTON, AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 1; THENCE SOUTH 1 DEGREE 06'54" WEST ALONG THE EASTERLY LINE OF LOT 1, A DISTANCE OF 374.78 FEET TO THE SOUTHEASTERLY CORNER THEREOF; THENCE NORTH 88 DEGREES 29'07" WEST ALONG THE SOUTHERLY LINE OF SAID LOT 1, A DISTANCE OF 19.18 FEET; THENCE NORTHEASTERLY ALONG A 28.00 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 33 DEGREES 17'40" WEST, THROUGH A CENTRAL ANGLE OF 55 DEGREES 35'26", AN ARC LENGTH OF 27.17 FEET; THENCE NORTH 1 DEGREE 06'54" EAST, A DISTANCE OF 297.04 FEET; THENCE NORTHWESTERLY ALONG A 233.00 FOOT RADIUS TANGENT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 14 DEGREES 10'43", AN ARC LENGTH OF 55.18 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 1; THENCE SOUTH 88 DEGREES 24'46" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 13.79 FEET TO THE POINT OF BEGINNING. DK 12: ALSO KNOWN AS LOT 1 OF BURLINGTON SHORT PLAT NO. 2-84, UNDER AUDITOR'S FILE NO. 8501310020 DESCRIBED AS FOLLOWS: THAT PORTION OF BLOCK 4 OF "SUPPLEMENTAL PLAT OF KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 7, RECORDS OF SKAGIT COUNTY, WASHINGTON, AND OF BLOCK 8, "KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 80, RECORDS OF SKAGIT COUNTY, WASHINGTON; TOGETHER WITH THOSE PORTIONS OF VACATED STREETS ADJOINING, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF THE SOUTH LINE OF LOT 12, BLOCK 8 OF "KNUTZEN'S ADDITION TO THE TOWN OF BURLINGTON", AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 80, RECORDS OF SKAGIT COUNTY, WASHINGTON, WHICH IS 20 FEET WEST OF THE WEST LINE OF SPRUCE STREET AS DEDICATED IN SAID PLAT; THENCE NORTH 88 DEGREES 29'07" WEST ALONG THE NORTH LINE OF CEDAR STREET OF SAID PLAT, A DISTANCE OF 265.19 FEET; THENCE NORTH 1 DEGREE 07'52" EAST, A

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Land Use	(670) GOVERNMENTAL SERVICES	WAC 458-53-030
Neighborhood	(602EXMPT) EXEMPT GENERAL OFFICE	
Utilities		Septic Information
Levy Code	0905	
City District	Burlington	
School District	SD100	
Fire District		
Year Built	2007	
Acres	0	
Living Area	24641.00 sq ft	
Bedrooms		
Appliances		
Exemptions	City Owned	

