




FEMA

November 17, 2010

MEMORANDUM FOR: Regional Mitigation Division Directors
Regions I-X



FROM: Doug Bellomo
Director, Risk Analysis Division, Federal Insurance and
Mitigation Administration

SUBJECT: Procedure Memorandum No. 58
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.

This Procedure Memorandum initiates the opportunity and use of the Scientific Resolution Panel process for appeals and protests where the community consultation process does not provide a mutually acceptable resolution for FEMA and the community.

Please find attached a Guidance Memorandum "Implementing the Scientific Resolution Panel Process" from Dr. Knight, Deputy Administrator of Federal Insurance and Mitigation Administration to me. The memorandum provides guidance in the use of Scientific Resolution Panels. The documents transmitted herewith may and should be freely shared with all persons and entities associated with the Flood Insurance Rate Map process and be implemented immediately.

Communities that submitted conflicting scientific or technical data during the regulatory 90-day appeal period *and* have not had an LFD issued, will have until January 15, 2011 to request access to the Scientific Resolution Panel process. This includes communities that have had a resolution letter issued as well as those currently in community consultation.

Eligible communities must be notified that they have the option of the Scientific Resolution Panel by December 10, 2010. Please find also attached a Notification Letter template to send to those communities informing them of the January 15, 2011 deadline date.

We will be updating templates to include language about the Scientific Resolution Panels for the mapping process to fully implement the Scientific Resolution Panel process. The templates which will be updated are:

- Proposed BFE Notification
- BFEs on the Web Notice
- Federal Register Proposed Rule
- Appeal/Protest Acknowledge Letter
- Appeal/Protest Resolution Letter

These templates will be used at the appropriate time in the study process and replace the existing templates once finalized.



FEMA

<<DATE>>

Name
Community Name
Address
City, State Zip

Dear ____:

This notification is in regards to [your letter/a letter/letters] dated **(Date of Incoming Letter)**, from [Mr./Ms.] **(Complete Name, Title, and Agency/Company Affiliation of Appellant If Other Than CEO)** regarding the Preliminary copies of the [revised] Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM) for **(Full Community Name)**. [Your community/Mr./Ms. **(Surname of Appellant)**] submitted technical data in support of an [appeal/protest] of **(Note the flooding sources appealed or summarize the area of protest –e.g.- floodway or floodplain delineation for Bound Brook.)**

[For appeals]: Your request was acknowledged as an appeal in accordance with the provisions of Title 44, Chapter I, Part 67, Code of Federal Regulations (44 CFR Section 67). Your request is considered an appeal because you presented information that satisfied the data requirements defined in 44 CFR Section 67.6 and was submitted during the 90-day appeal period. **[For a protest]:** Your request was acknowledged as a protest to the Preliminary FIS and FIRM. Only submittals that satisfy the requirements of Title 44, Chapter I, Part 67, Code of Federal Regulations are considered appeals. Since your submittal did not meet this criteria, it is considered a protest.

As of November 1, 2010, the Federal Emergency Management Agency (FEMA) is reinforcing its commitment to using the best available and most reliable data for the purpose of accurately depicting flood hazards on flood maps by introducing a newly added resource called the Scientific Resolution Panel (SRP). SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. The SRP process is not intended to be the first step in the resolution of appeals and protests. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days from the expiration of the 90-day regulatory appeal period without a mutually acceptable resolution. The enclosed SRP Fact Sheet contains additional information on the SRP process.

[You/Community Name/Mr./Ms. (Surname of Appellant)] and FEMA have been in consultation with FEMA to resolve the (appeal/protest), and a resolution has not yet been reached.] OR [On (insert date) FEMA issued a resolution letter for your (appeal/protest).] Because your community submitted an [appeal/protest] and has not been issued a Letter of Final Determination (LFD), your community will have until January 15, 2011, to request an SRP be convened to review your [appeal/protest], if you should so choose.

To be eligible for an SRP, an **[appeal/protest]** must include supporting information or data to substantiate that the flood elevations proposed by FEMA are scientifically or technically incorrect and/or technical or scientific data that tend to negate or contradict the information upon which the proposed flood elevations or floodplain delineations are based.

To request an SRP, please complete the enclosed SRP Request Form and submit it to your regional FEMA Project Engineer **by January 15, 2011**. If you do not request an SRP by January 15, 2011, FEMA will move forward with the mapping process.

For more information about the SRP please review the enclosed documents. You may also find useful information and resources at www.floodSRP.org.

If you have any questions regarding this matter, please contact **(FEMA Project Engineer)** by telephone at **(FEMA Project Engineer Telephone Number)** and **(FEMA Project Engineer Email)** or the project manager for FEMA's mapping contractor, **(PM name)** at **(PM telephone number)**.

Sincerely,

[Name]
Mitigation Division Director
FEMA, Region [xx]

Attachment: SRP Request Form
SRP Fact Sheet

cc: **(Community Floodplain Administrator)**
(Appellant's Name, If Other Than CEO)
State NFIP Coordinator
Regional Director
[Congressional Representatives as appropriate]

bcc: Mapping Partner
Regional Support Center
FEDD File

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 1, 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

Regional Mitigation Division Offices

Office of Legislative Affairs

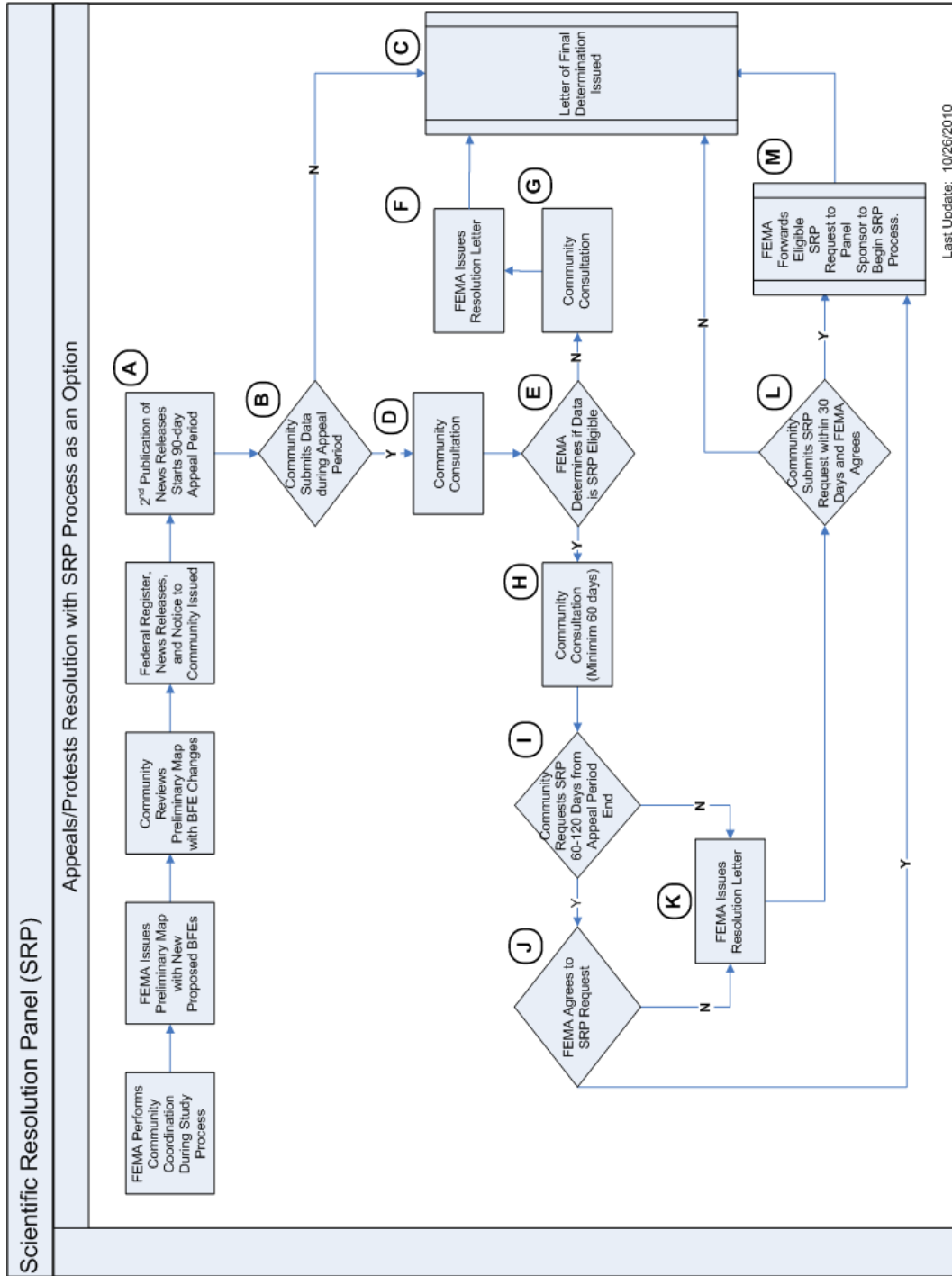
Office of Chief Counsel

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

