

From: McHugh, Karen [<mailto:Karen.McHugh@sema.dps.mo.gov>]
Sent: Wednesday, December 18, 2019 10:00 AM
To: 'Bridget Lutman'
Cc: lynn.welch@sema.dps.gov; Rockfield, Darryl; Bryson Baker; Lynn Sprick; Irwin, Mike; Broxton, Ron
Subject: RE: Filling of Mermac Flood Plain

Ms. Lutman,

I hope that you received my earlier email. The State of Missouri participates in the National Flood Insurance Program, and Missouri E.O. 98-03 (attached) established floodplain management regulations for all Executive Branch agencies. In sum, Missouri E.O. 98-03, signed by Governor Carnahan in 1998, requires that state agencies get a State Emergency Management Agency (SEMA) Floodplain Development Permit for development, thereby helping ensure compliance with NFIP minimum requirements spelled out in the attachment. This permit is required prior to the start of construction and is based on the minimum criteria established in the Code of Federal Regulations (CFR) Title 44, Section 60.3. SEMA does not have any regulatory authority over Missouri NFIP communities regarding development in the Special Flood Hazard Areas.

The community's role in the NFIP is of paramount importance. Residents and property owners can purchase flood insurance only if the community carries out its responsibilities and remains in good standing with the NFIP. The community enacts and implements floodplain regulations required for participation in the NFIP. The community's measures must meet regulations set out by E.O. 98-03 (a SEMA permit will be the only local floodplain permit required for state agency development) as well as NFIP criteria. An NFIP-participating community commits itself to:

- Issuing or denying floodplain development /building permits;
- Inspecting development to assure compliance with local regulations (i.e. the Floodplain Management Ordinance);
- Maintaining records of floodplain development (Development is defined as any man-made change in the floodplain);
- Assisting FEMA in preparation and revision of flood maps;
- Assisting residents in obtaining information regarding flood hazards, map data, flood insurance and proper construction measures;
- Review all floodplain development applications to determine whether they represent a Substantial Improvement;
- Assess damaged buildings and make Substantial Damage determinations.

The primary requirement for community participation in the NFIP is the adoption and enforcement of floodplain management regulations that meet the minimum standards of the NFIP as set forth in Title 44 CFR, Section 60.3. These minimum standards vary depending on the type of flood risk data provided to the community by FEMA. The intent of these floodplain management regulations is to minimize the potential for flood damages to new construction

and to avoid aggravating existing flood hazard conditions that could increase potential flood damages to existing structures.

In areas designated as approximate Zone A (a/k/a unnumbered A zones), where Base Flood Elevations (BFEs) have not been provided by FEMA, communities must apply the provisions of Paragraph 60.3(b) of the NFIP regulations:

44CFR 60.3(b): When the Administrator (meaning the Federal Insurance Administrator) has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIS, but has neither produced water surface elevations data nor identifies a floodway or coastal high hazard area, the community shall: Obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the Community's Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) meet the standards...

In areas designated on a FIRM with base flood elevations along rivers or streams, but no mapped floodway, the community must evaluate all development to ensure that it will not increase flood stages by more than one foot.

44 CFR 60.3(c)(10): [Communities must] Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

There is a concern in riverine situations where a project may dam or divert flowing water onto other properties or increasing flood flows downstream. To prevent this, communities adopt floodways to designate those areas where flood flows are most sensitive to change brought by development. Communities must regulate development in these floodways to ensure that there are NO increases to upstream flood elevations.

44 CFR 59.1: **Regulatory floodway** means the channel of a river or other watercourse and adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

44 CFR 60.3(d)(3): In the **regulatory floodway**, communities must prohibit encroachments, including fill, new construction, substantial improvement and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard

engineering practices that the proposed encroachment would not result in any increase in flood levels with the community during the occurrence of the base flood discharge.

I have also attached Technical Bulletin 10-01 regarding fill:

- **Fill** is defined as material from any source (including the subject property) placed that raises the ground (natural grade) to or above the Base (1%-annual-chance) Flood Elevation (BFE).
- Earthen fill is sometimes placed in a Special Flood Hazard Area (SFHA) to reduce flood risk to the filled area.
- The placement of fill is considered development and will require a permit under applicable Federal, state and local laws, ordinances, and regulations.
- Fill is prohibited within the **floodway** unless it has been demonstrated that it will not result in any increase in flood levels.
- Some communities limit the use of fill in the **flood fringe** to protect storage capacity or require compensatory storage.

Until the laws change, and fill is prohibited in the SFHAs, all we can do is to work with our NFIP Participating communities to help them meet the requirements of their Floodplain Management Ordinances.

I hope that this has been helpful. Please reach out to your local Floodplain Administrator regarding this issue.

Sincerely,
Karen McHugh

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From: Bridget Lutman <bridget432@sbcglobal.net>
Sent: Wednesday, December 18, 2019 9:11 AM
To: McHugh, Karen <Karen.McHugh@sema.dps.mo.gov>
Cc: lynn.welch@sema.dps.gov; Rockfield, Darryl <Darryl.Rockfield@sema.dps.mo.gov>
Subject: Re: Filling of Mermac Flood Plain

Ms. McHugh, Attached is a copy of the fill map .The area in pink is where fill activity has been approved. The hatched area is flood plain (floodway fringe) and solid blue is floodway. I can't believe SEMA would approve 57,900 cubic yards of outside fill to placed on the flood plain. The filling of the flood plain is much worse than I first thought. I looks like they bringing much more the 57900 cubic yards of fill.

How can this be legal?

On Monday, December 16, 2019, 10:33:30 PM CST, Bridget Lutman <bridget432@sbcglobal.net> wrote:

Ms. McHugh,

Are you are aware Sunset Hills City Engineer/ Director of Public Works (Bryson Baker) has issued a permit (SP04-19) which allows Winter Brothers Material to bring in **57,900 cubic yards** of outside fill to be used on land located on a flood plain? Of the 34 acres that the Winters Brothers Materials owns, they are raising approximately 5 acres by an estimated 5 feet. This land is located at Gravios Rd and Winter Industrial in Sunset Hills MO 63127. It does not make sense to raise land in a flood plain and not expect it to impact other properties. It should also be noted, that other nearby properties in Sunset Hills not located in the flood plain are strictly required to use a cut and fill method for raising land. Why would a property located in a flood plain be subject to more lax rules and regulations?

Scott Kappelmann from MSD has approved a filling and grading plan. (19-msd-00158).

Chad LaMontagne from the US Corps of Engineers did not require Winter Brothers Material to take out a 404 or 401 permit. (MVS-209-243). I understand these permits are needed if a stream runs through the property. I have reached out Mr. LaMontagne to verify if any studies have been completed or are required. However, I am awaiting a response.

Numerous organizations have been involved in this project; yet no public hearing or notice was required. Is it normal procedure to have no meetings or hearings?

Did SEMA have knowledge of this project? If so, who approved the project? Were studies done and if so by what companies?

If this project continues it will impact properties which are not currently in the flood plain. This can only make the flooding situation in the Meramec River Valley worse. Millions of people are affected when flooding closes highway 30, highway 21, and Interstate 55.

Can this project be cancelled until it is verified it will not impact properties out of the flood plain? SEMA needs to inspect all the filling, grading and raising of land along the Meramec river. Frankly, our local government agencies do not have the citizens best interest in mind. There are numerous businesses and hundreds of homes at risk of flooding due to this project and terrible oversight by local authorities.

I am incensed by the gross negligence being committed by The City of Sunset Hills and other governmental agencies involved. Who can help us? While contacting other agencies I was advised to reach out directly to you.

Regards,

Bridget Lutman