



FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA)

APPEAL DECISION

FEMA Flood Insurance Appeal Decision #C10

SUMMARY

The policyholder appealed the flood insurance carrier's (hereinafter "insurer") denial of a claim under the Standard Flood Insurance Policy (SFIP)¹ for damages to his property arising on October 2018.

Policyholder files this appeal under 44 C.F.R § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholder's claim.²

After reviewing the issues, evidence, and relevant authorities, FEMA directs the insurer to take additional action on this ICC claim.

BACKGROUND

COVERAGE

The policyholder insures property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$200,000 of building property coverage and \$80,000 of personal property coverage.

EVENT AND CLAIM FACTS

Hurricane Michael produced torrential rain, storm surge, and widespread flood damage in the state of Florida.³

The policyholder reported the flood loss to the insurer, and the insurer assigned an adjuster to investigate the loss. The adjuster inspected the damage on October 2018. The insured property is a non-elevated, two-floor dwelling in flood hazard zone X.⁴ The adjuster identified a general and temporary condition of flood existed and noted a 144-inch exterior water height and a 144-inch interior water height.⁵ The

¹ See 44 C.F.R. § 61.13 (2018); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter "SFIP"].

² The policyholder's appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance, Policyholder Services Division, Appeals Branch [hereinafter "Appeal File"].

³ See FEMA Bulletin w-18027 (Oct. 18, 2018) (setting Oct. 9 to Oct. 13, 2018 as event dates of loss).

⁴ For more information about flood zones, please see <https://www.fema.gov/flood-zones>.

⁵ See Appeal File, Adjuster's Final Report (Dec. 2018).

adjuster documented damages to the entire building, as it was destroyed to the slab. The damages included framing, exterior finishes, roof, floors, walls, doors, windows, plumbing, electric, and more.

The insurer retained an engineer to determine if the foundation was repairable. The insurer's engineer inspected the property on November 2018, and found the foundation sustained damage as a result of hydrodynamic forces in combination with flood-borne debris impact.⁶ Additionally, he found the structural damage to the foundation from hydraulic forces was limited to the exterior perimeter. A recommendation for repair of the foundation was provided. As a result, the insurer issued undisputed damages of \$141,998.42 for building property and \$63,213.86 for personal property.

The policyholder subsequently filed a request for benefits under SFIP Coverage D – Increased Cost of Compliance (ICC). As the building was destroyed in the flood event, the policyholder received a substantial damage letter from the local authorities dated December 2018. The letter requires the policyholder to bring the building into compliance with the flood-damage-resistant provisions of the city and with either the preliminary flood insurance rate map or the advisory base flood elevations. The policyholder submitted their request with an elevation certificate dated August 2019, indicating the 16.50 foot height the new home would be elevated to, a demolition permit for the remains of the structure dated August 2019, a debris removal estimate dated August 2019, and a copy of their tax statement for property for their ongoing Increased Cost of Compliance (ICC) request.

The insurer received the policyholder's request and issued a denial letter dated October 2019. The insurer stated its reason for denying the policyholder's request was because ICC benefits are not eligible for a building located within flood hazard zone X.

The policyholder appealed the denial to FEMA in an email dated November 2019. The appeal included an email dated October 2019 from their land surveyor which included a copy of the City of Mexico Beach code ordinance adopted and effective immediately upon adoption as of May 2019, and a letter from the city code compliance dated October 2019.

ISSUES

The policyholder is appealing the denial of coverage for their ICC claim, which is in an X flood hazard zone.

RULES

The SFIP provides ICC eligibility for elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA, which the state or local government has adopted and is enforcing. This also includes compliance activities in an X zone where the community has derived, at least in part, elevation requirements from FEMA and is enforcing elevation or floodproofing requirements.⁷

⁶ See Appeal File, Insurer's Engineering Report (Nov. 2018).

⁷ See SFIP (III)(D)(3)(b)(2).

ANALYSIS

The policyholder appeals the insurer denial of ICC benefits for their property located within flood zone X.

The SFIP states that ICC eligibility for a substantially damaged building located within a flood zone X depends on the state or local community adopting and enforcing a preliminary flood insurance rate map or advisory base flood elevation (“ABFE”) for such flood-damaged structures. If no preliminary flood map or ABFE has been adopted, the state or local community must adopt and enforce elevation and floodproofing requirements that have been derived at least in part from FEMA.

The insurer received the policyholder’s request for ICC benefits and issued its denial because the insured building is located within flood zone X, which is not considered a special flood hazard zone. In general, buildings located within flood zone X are not subject to a community’s substantial damage ordinance unless certain specific actions are taken, as described under the Rules section of this decision.

In review of this appeal, FEMA has learned the local community has adopted a preliminary flood map with elevation requirements applicable to new and substantially damaged or improved buildings located in flood zone X.⁸ Based on the adoption of these new rules, it appears a new proposed building at the described location, which remains flood zone X, would need to meet a minimum required elevation of 16.5 feet.

FEMA directs the insurer to contact the local community official and confirm the adoption of the preliminary flood map or other rules that are applicable to the policyholder’s efforts to construct a new building at the described location, including the minimum required elevation. If the insurer is provided the proper documents that support the policyholder’s eligibility for ICC benefits for their proposed new building, the insurer will process the policyholder’s request, provide all other eligibility and processing requirements are fulfilled.

CONCLUSION

Based on the review of the documents provided, FEMA directs the insurer to contact the local community official and confirm the community’s adoption of the preliminary flood insurance rate map, or other applicable rules that apply to the policyholder’s proposed new building, including the minimum required elevation for the new proposed building. If the proper documents are obtain in support ICC eligibility, the insurer will process the policyholder’s request accordingly.

FEMA requests the policyholder continue to cooperate with the insurer and its representative, and to provide them with any information they need to resolve this matter. If the insurer is unable to obtain the proper documents that support the policyholder’s request, the policyholder must obtain and provide the insurer with the documentation that supports the request for ICC benefits.

⁸ See Ordinance 719 (section 2,1612.4.2), adopted by City of Mexico Beach on May 28, 2019.