

567—75.8(335,414,455B) Review and approval of variances from local regulations. A variance from an approved local flood plain regulation shall not be effective until it has been reviewed and approved by the department in accordance with the following procedures.

75.8(1) *Duty of local government to notify department of each variance request.* After receipt of each request for variance from a local flood plain regulation approved by the department, the local government shall notify the department of the variance request on a form obtained from the department. The notice must be received by the department at least 15 days before any hearing which the local government schedules on the variance request.

75.8(2) *Written comment from the department.* After receipt of notice of a variance request, the department shall mail or deliver a written comment on the variance request. The comment shall be issued within 15 days after receipt of the notice or in time for consideration at any hearing held after expiration of the 15-day period. The comment shall be either a statement of objection or “no objection” as follows:

a. Objection to variance request. The department may issue an objection to the variance request. The objection may be based upon an explanation of the minimum statewide criteria which the variance request does not satisfy and the reasons why applicable criteria should not be waived. The objection may be based on a statement that the applicant for the variance has provided insufficient information for the department to determine whether the requested variance would violate applicable minimum statewide criteria. An objection based on a statement of insufficiency of information shall identify the information needed to determine whether the request would violate applicable criteria.

b. No objection to variance requests. The comment issued by the department may state that the department has no objection to the variance request. The comment shall briefly explain why granting of the requested variance would not violate the purposes of minimum statewide criteria. A statement of “no objection” shall constitute approval to grant the requested variance.

75.8(3) *Basis for variance.* A variance from an applicable requirement should only be granted if the applicant can show that denial of the variance would cause unnecessary hardship and that granting of the variance would not be contrary to the public interest or the underlying purposes of the requirement in question.

75.8(4) *Review or appeal of local ruling on variance request.* The appropriate forum and procedures for review or appeal of the decision of a local government on a request for variance from a regulation approved by the department depend on the relationship between the local decision and the comment submitted by the department as follows.

a. When local government grants variance after objection by department. If the local government grants a variance request after issuance of an objection by the department, the local government shall give written notice of the local action and the supporting reasons to the department. The variance shall not be effective until approved by the commission. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

b. When local government denies variance after objection by department. If the local government denies a variance request on the basis of an objection by the department, the applicant may file a notice of appeal with the department within 20 days following the local action. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

c. When local government grants or denies a variance request after a “no objection” comment by the department. When a local government grants or denies a variance request after receiving a “no objection” comment from the department any appeal normally should be taken in the manner provided for appeal of other local actions. An appeal should be filed with the department only if the purpose of the appeal is to challenge the basis of the “no objection” comment.

d. Duty of local government to notify department of appeal. The local government shall promptly notify the department of the filing of any petition for judicial review of local action on a variance request so the department may determine whether participation in the judicial review would be in the interest of the state.