New York State Floodplain and Stormwater Managers Association
Post Office Box 1785, Schenectady, NY 12301-1785

TO: Federal Emergency Management Agency
FROM: New York State Floodplain and Stormwater Managers Association
SUBJECT: Request for Information on the National Flood Insurance Program
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The New York State Floodplain and Stormwater Managers Association (NYSFSMA) is a professional organization with over 600 public and private sector members from throughout New York State. The Association appreciates this opportunity to provide suggestions for improving the National Flood Insurance Program (NFIP) floodplain development standards.

FEMA is seeking new and even transformative reforms to the NFIP minimum floodplain management standards. (FEMA question 13)

Establish areas of highest flood risk and severely restrict development within these areas

Some parts of the floodplain are simply not safe! In these areas, buildings are at risk, people who use or occupy those buildings are at risk, and first responders who conduct flood rescues are at risk. The current NFIP standards focus on how to develop in the floodplain without adequately promoting flood safety and community resilience. Flood-related risks that are incompatible with safe development include deep flooding, high velocity flood water, tidal surge and wave action, riverine erosion, and coastal erosion. These highest flood risk areas must be identified and dedicated to open space uses that provide natural and beneficial floodplain functions.

New residential, commercial, and industrial development should be prohibited in the areas of highest flood risk. Small unoccupied structures can be allowed when necessary to support recreation, agriculture, or water-dependent uses. Infrastructure can be permitted only when an overwhelming public interest (such as transportation needs or utilities) necessitates encroaching into the area of highest flood risk.

Existing development within areas of highest flood risk should be prioritized for buyouts. Natural floodplain functions, including habitat for endangered and threatened species, should be protected and restored.

Areas of highest flood risk should initially be designated based on existing federal and local mapping data and later refined when flood hazard maps are updated. In riverine floodplains, this zone can include floodways, riparian corridors, channel migration zones, and other areas identified as unsafe during the 1% annual probability (base) flood. Future mapping should expand or refine this based on the depth and velocity of the base flood, erosion potential, or other safety criteria. In coastal floodplains this flood zone can encompass COBRA areas, V zones, coastal A zones, and erosion setback areas. High priority natural areas and habitat for endangered/threatened species can also be included. Participating communities could elect to designate the entire Special Flood Hazard Area (SFHA) as the area of highest flood risk.

Establish planning criteria for flood hazard areas

In order to improve flood safety, floodplain stewardship, and flood resilience, the NFIP should promote increased consideration of flood risks in local land use planning, land use regulations, and project approvals. Communities that participate in the NFIP should be required to address flood risks and floodplain functions in comprehensive plans and when enacting land use regulations. The potential for adverse impacts should be considered as part of the project review process for all local approvals in floodplain locations, including subdivisions, zoning, site

plan review, or other land use decisions. FEMA should facilitate this by working with the states to develop guidance and provide planning assistance. The costs for revising zoning and other land use regulations, developing planning resources, training local personnel, and other planning assistance that promotes improved flood safety and flood resilience should be funded through FEMA mitigation grants or other programs.

What additional considerations should FEMA incorporate into the NFIP minimum floodplain management standards to promote the protection and conservation of threatened and endangered species and their designated habitat? (FEMA question 6)

Responsibility for enforcing the Endangered Species Act (ESA) should not be delegated to local communities, who generally lack the expertise needed to do so effectively. FEMA guidance is needed for any ESA reviews or actions that community floodplain administrators are expected to conduct in relation to activities in the SFHA. A Memorandum of Understanding between FEMA and the US Fish & Wildlife Service should be considered.

The areas of highest flood risk (recommended for FEMA question 13 above) should include critical habitats for endangered and threatened species. Management standards within this zone should prevent most new development, protect natural and beneficial floodplain functions, protect existing habitat, and whenever possible restore natural functions and habitat.

Are there changes that should be considered to benefit threatened and endangered species while also improving resilience to flooding? (FEMA question 7)

Prioritized recommendations (with letters denoting suggestions provided by FEMA):

1. Restrict construction in areas of highest flood risk (recommended for FEMA question 13 above), which include riparian buffer zones (a), the regulatory floodway (c), other high-risk portions of the SFHA (f), and critical habitat.
2. Prohibit the removal of natural vegetation without mitigation.
3. Discourage the placement of fill in the floodplain (including the floodplain fringe) by requiring compensatory storage (b) or an analysis demonstrating that there will be no rise in the base flood level.
4. The recommended areas of highest flood risk eliminate the need for regulatory floodways; however, a no-rise analysis and certification should be required for development in any part of a riverine floodplain that has a significant potential for altering flood depths, including bridges, large structures, and fill without compensatory storage (c). This analysis is not warranted for many projects that restore natural floodplain functions, such as re-forestation or re-connection of undeveloped floodplains.

Should placement of fill material within the SFHA be prohibited? (FEMA question 17)

The use of fill in the floodplain is sometimes warranted (for example, to construct a flood-safe access route or for beach/dune sand replacement). However, placement of fill in the floodplain should be discouraged by requiring compensatory storage for fill that does not obstruct flow or a certified no-rise analysis. Discourage elevation of development on fill by increasing opportunities for wet floodproofing of unfinished buildings (such as those used for parking or storage) and discontinuing use of Letters of Map Revision Based on Fill (LOMR-F).

Should FEMA update flood elevation requirements for SFHAs by setting higher freeboard levels? (FEMA question 2)

NFIP standards should at a minimum be based on the Federal Flood Risk Management Standard. The required protection level should be determined from (1) the base flood elevation plus 2 feet for non-critical actions and 3 feet for critical actions, (2) the 0.2% annual probability flood, or (3) a climate informed science approach.

Is there a need for FEMA's NFIP minimum floodplain management standards to be extended by establishing specific requirements for areas immediately adjacent to the SFHA? (FEMA question 4)
NFIP standards should be consistent with the Federal Flood Risk Management Standard, which includes areas adjacent to the mapped special flood hazard area where the land surface is below the protection level. To support this, all maps should show the 0.2% probability flood hazard areas, as well as the area that would be inundated by the current base flood plus 2 feet and 3 feet of freeboard. Future conditions maps should be developed based on advice from the Technical Mapping Advisory Council.

The areas of highest flood risk (recommended for FEMA question 13 above) should include buffer areas for all streams and waterbodies, including those for which Special Flood Hazard Areas are not currently mapped.

Should FEMA base any NFIP minimum floodplain management standards on future risk? (FEMA question 12)
New structures and infrastructure should be resilient to future floods within the life span of the development. It is recommended that a climate informed science approach be used to determine the protection level whenever possible, particularly in areas subject to sea level rise. FEMA should work with other federal agencies to develop clear climate informed science guidance for coastlines and river systems throughout the nation and to provide that information within FIRM layers.

Should FEMA develop higher standards for structures and facilities performing critical actions? (FEMA question 3)
NFIP requirements for critical facilities and actions should be consistent with the Federal Flood Risk Management Standard. In addition, each existing and proposed critical facility, hazardous material storage site, and high-occupancy facility located within the regulated floodplain (including the expanded area determined from the higher protection level) should be required to develop a flood emergency plan, which is updated annually and filed with the local government. In addition to any other applicable emergency plan requirements, the emergency plan for a facility in the floodplain should specify the flood protection measures and the flood response procedures that are needed to maintain critical functions and promote safety.

Is Substantial Improvement/Substantial Damage (SI/SD) the best way to address risk for non-conforming buildings? (FEMA question 1)
We recognize that the objective of SI/SD requirements is to reduce the vulnerability of non-conforming construction. However, the cost of compliance is often quite high and is disproportionately borne by the owners of low-value buildings. Local communities are often unwilling to enforce requirements that force people out of their homes who cannot afford to make the improvements. A more equitable method of calculating SI/SD is needed (such as use of replacement cost value instead of market value or determinations based on NFIP insurance claims). Timely financial assistance is needed to support SI/SD compliance. This can include mitigation grants, ICC payments, subsidized loans (forgiven when warranted), and other programs that target mitigation of non-conforming structures—before or after an SI/SD determination is made. In areas of highest flood risk, including V zones and floodways (as proposed for FEMA question 13 above), in-place mitigation should be discouraged in favor of demolition or relocation in order to remove occupants from unsafe locations and restore open space functions. In order to promote compliant reconstruction and improvements, flood insurance premiums must again be tied closely to building compliance and to elevation relative to the base flood.

The vulnerability of non-conforming structures can also be reduced by requiring that any improvements, repairs, or new equipment for which the cost is less than a substantial improvement shall be elevated and/or floodproofed to the greatest extent practical. This would encourage increased use of flood damage resistant building materials and elevation of utilities and additions.

What steps should FEMA take to reduce the disproportionate financial impact that multiple loss properties have on the NFIP? (FEMA question 5)
The focus of existing mitigation grant programs (including HMGP, FMA, and BRIC) and the state revolving loan programs for mitigation (established by the STORM act) should be on those structures that cause the greatest drain on the NFIP. Should a policy holder refuse an offer of a mitigation grant, the structure should then be ineligible for federal flood insurance.

In addition, the Increased Cost of Compliance (ICC) payments for NFIP flood insurance policies should be expanded and strengthened. The possible payment amount should be increased to at least $60,000. Structures damaged by events other than floods (such as wind, earthquake, and fire) should be eligible for ICC. Repetitively damaged structures should be eligible for ICC even if they are not declared to be substantially damaged or are located outside of the SFHA.

How could FEMA better support local floodplain managers to effectively enforce the NFIP standards? (FEMA question 9)
The state of New York has 1,500 communities that participate in the National Flood Insurance Program (NFIP); approximately 75% of these local jurisdictions have less than 5,000 residents. So many community responsibilities are handled by part-time staff and volunteer boards. These small communities generally do not have the capacity to fully understand and implement NFIP floodplain development requirements. Assistance to local communities is best done through the state NFIP coordinating offices and the CAP-SSSE program. Additional technical assistance, training, or shared service arrangements by other entities should be eligible for funding through additional CAP-SSSE funds or from other sources, provided that those activities are coordinated with the state NFIP Coordinator.

Are there any NFIP minimum floodplain management standards that currently cause hardship, conflict, confusion, or create an economic or financial burden? (FEMA question 10)

- There needs to be a clear and understandable approach to elevation requirements in Zone A without BFE. FEMA should include advisory BFEs as part of every flood zone that lacks a detailed study (using base level engineering and LiDAR data). Additional freeboard could be required when using an advisory BFE.
- Various hardships and challenges are associated with floodways due to the cost and expertise required to conduct a no-rise analysis, modeling requirements for riverine detailed studies that lack floodways, and incompatibility with 2D mapping approaches. We recommend that regulatory floodways be replaced by areas of highest flood risk that are delineated based on safety criteria and within which development is severely restricted (as recommended for FEMA question 13 above). The requirement for a certified no-rise analysis would be based on the potential for a project to alter flood depths (as indicated in recommendation 4 for FEMA question 7) and would typically be required for larger projects that have significant potential to divert or displace floodwaters, such as bridges, large buildings, or elevated roadways.
- The NFIP use of the terms lowest floor, bottom floor, and first floor is extremely confusing.
- Confusion is caused by the inconsistent treatment of attached and detached garages, as well as the question of whether a garage attached to the main structure by a roof (but not a common wall) is attached or detached.
- Wet floodproofing should be allowed without a variance for most unfinished areas, including enclosures below the lowest elevated floor, attached garages, detached garages, accessory structures, storage sheds that are not accessory to a primary structure, etc.

Should there be a mandatory flood risk disclosure requirement? (FEMA question 11)
This is absolutely needed. States should be required to pass minimum flood disclosure laws as a condition of participation in the NFIP. Sellers and lessors should be required to disclose flood damage history; whether the property is in a designated floodplain; whether flood insurance is mandatory; and other relevant information, like the cost of flood insurance or past FEMA assistance. In addition, the NFIP claim history should be available to potential buyers and renters.

Are there technological advances that can help FEMA modify, streamline, or improve existing standards? (FEMA question 14)
The four-legged stool of floodplain regulations, flood insurance, mapping, and mitigation must work closely together. Currently flood insurance is out of step with mapping, mitigation, and floodplain regulations. While there is clearly much to be learned from modern insurance actuarial studies, this must relate to floodplain regulations in such a way that areas with greater risk have higher standards, and developers obtain a measurable benefit in flood insurance rates from meeting the higher standards.

Too much of our mapping inventory is dated. Even newer maps often contain old data that were merely re-delineated onto new topographic data. FEMA should complete the digital mapping inventory and update all older detailed studies, using guidance from the states for priorities.

Thank you for considering these suggestions for updating and improving the National Flood Insurance Program to promote improved safety and flood resilience.