



The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C St., SW
Washington, DC 20472

Date: January 27, 2022

RE: Comments in response to the Request for Information on the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and their Habitats; Docket ID: FEMA-2021-0024

For 15 years the Waterfront Alliance has served as the New York-New Jersey region's advocate for coastal resilience, waterfront access, and the working waterfront, and has enlisted more than 1,100 Alliance partners along the way. We spearhead the Rise to Resilience campaign and coalition which includes more than 100 organizations representing leaders in business, labor, environmental justice, volunteer organizations, scientists, environmental advocates, and design professionals collectively calling on our federal, state, and local governments to make building climate resilience an urgent priority. Waterfront Alliance thanks FEMA for the opportunity to comment on National Flood Insurance Program standards. The following are responses to several specific questions laid out in the FEMA public comment guidelines:

(5) Buildings with a history of multiple floods are not only cost-ineffective for FEMA and the NFIP, but also perpetuate the cycle of paying billions of dollars to rebuild homes in areas that will almost certainly flood again. This does nothing to mitigate risk and vulnerability for millions of residents and businesses in, and beyond, the floodplain. Managed retreat has proven to be an effective measure for reducing flood risk for homes that have experienced repeated flooding events. The Lincoln Institute of Land Policy found that "managed retreat is the strategy that most effectively eliminates risk" from flooding.¹ FEMA, being the lead Federal agency for these property acquisitions, should address the shortcomings and limitations that residents who engage in managed retreat and buyouts face.

While there are three different hazard mitigation grants that support FEMA buyouts - Hazard Mitigation Grant Program (HMPG), Flood Mitigation Assistance (FMA), and Pre-Disaster Mitigation (PDM) - an overwhelming majority (roughly 90%) of buyouts are accounted for under the HMPG. This creates an issue in timing of buyouts because HMPG funding is only made available when the President declares a State of Emergency.² This procedure leads to one of the primary equity

¹ Freudenberg, B.R., Calvin, E., Tolkoﬀ, L., and Brawley, D. (2016). Buy-in for Buyouts: The Case for Managed Retreat from Flood Zones (Lincoln Institute of Land Policy).

² Weber, A., Moore, R., & Weber, A. (2019). Going Under: Long Wait Times for Post-Flood Buyouts Leave Homeowners Underwater. (NRDC).



challenges that homeowners face when it comes to a FEMA buyout, which is the time from disaster declaration to and project closeout. An NRDC study on 30 years of FEMA buyout data found the median time frame, from the date of a flood disaster until a buyout project is officially completed, is 5.2 years.³ The current process for planning, funding, and implementing buyouts is so complex and time-consuming that many residents choose to simply rebuild after a flood disaster, rather than enter the long and uncertain process for FEMA buyouts. Lower income households cannot afford to wait years for their home to be bought out, especially without accepting NFIP claims to repair existing damages to their property, compared to more affluent applicants.

While HMGP and PDM are not grants provided under NFIP, FMA is. The recently passed Infrastructure Investment and Jobs Act allocates \$3.5 billion in FMA grants over the next 5 years, or \$700 million per year in FY 2022-2026⁴, which provides a great starting point for FEMA to strengthen managed retreat.

FMA-funded grants have been used for buyouts, but not to the extent that is necessary. In 2020, FEMA approved 91 of the 1,227 applications under BRIC and FMA grants, and 21 of those were for buyouts (totaling \$75.2 million). The aim of FMA grants is to reduce or eliminate claims under the NFIP with focus on mitigating “Severe Repetitive Loss” and “Repetitive Loss” properties.⁵ In 2020, FMA grants were used to pay for \$347 million in flood control measures and elevation.⁶

We recommend that FEMA utilize the new funding from the Infrastructure Investment and Jobs Act to close the gap between flood control measures/elevation and buyouts. Likewise, the Increased Cost of Compliance (ICC) is another tool that can be utilized for more streamlined buyouts, with priority going to community or neighborhood buyouts. Currently, ICC coverage provides an additional \$30,000 to NFIP policyholders to bring damaged homes into compliance with present building codes after a flood. Most of the time, this money is used for elevating structures.

Moreover, recent studies have found that buyouts tend to disproportionately occur in white communities compared to communities of color.⁷ For buyouts to truly reduce the financial burden on NFIP claims, FEMA’s benefit-cost analysis (BCA) must be updated or changed. The current BCA may find fewer “benefits” in low-income households due to their lower property values. Currently, FEMA does not publish data on rejected buyout applications, so it’s difficult to know the extent to which this is occurring.

We recommend that FEMA analyze the reasons for long timelines in the buyout process, as well as study how to make this process more equitable and timelier. Further, buyouts should be

³ Ibid.

⁴ <https://www.fema.gov/press-release/20211115/infrastructure-deal-provides-fema-billions-community-mitigation-investments>

⁵ <https://www.fema.gov/grants/mitigation/floods/fy2020-subapplication-status>

⁶ Ibid.

⁷ Robert Benincasa (2019). Search the Thousands of Disaster Buyouts FEMA Didn’t Want You to See. (NPR).



available *before* a federally declared disaster. We encourage FEMA to pre-approve buyouts as a benefit of NFIP coverage for people with a history of multiple floods. These homeowners could voluntarily commit to accepting a buyout if their property experiences substantial damages in a future flood disaster.

Homeowners are often unaware that buyouts are an option for them after a federally declared disaster. In many cases, it's not until months later, when the NFIP has already paid a flood insurance damage claim or rebuilding efforts are underway, that homeowners are aware of a buyout option. Once the NFIP claim is paid the homeowner can no longer engage in a buyout application, leaving them vulnerable to future flooding events.

We encourage FEMA to better communicate the buyout program to homeowners before, during, and after disaster events. We recommend that FEMA work with coastal and riparian municipalities that are either at high-risk (in SFHAs, 100-year floodplains, 500-year floodplains, etc.), or have experienced repeated flooding events, to engage members of the community and advertise the option of a buyout. Creating more awareness for managed retreat would decrease homeowners' dependence on NFIP claims for post-disaster recovery measures.

The current process for disaster assistance can leave home- and building-owners worried about future disasters, leaving them to move forward with the timeliest option which is often NFIP claims. Managed retreat serves as an effective option for reducing risk for repeated flooding. We encourage FEMA to improve the buyout process to reduce the cost burden on NFIP claims.

(11) Flood disclosure is a critical first step for home- and business-owners to understand how they might be impacted by climate change and flooding. States and local governments should require flood disclosure, including minimum flood risk requirements for sellers and lessors, as a condition of participating in the NFIP.

Robust flood disclosure laws require sellers and lessors to inform prospective buyers or lessees of any flood risk and damages they are aware of. The most effective way to establish flood disclosure is through legislation. There have been examples of flood disclosure passing through commissions and regulation that are proven to be less effective. An example of strong flood disclosure legislation can be seen in Texas, following the devastating impacts from Hurricane Harvey. The Texas legislature requires sellers and lessors 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. The flood disclosure legislation in Texas serves as a model for the nation.

There are currently 29 states with flood disclosure policies; however, many are inadequate. The shortcomings in many states' policies comes from a lack of holistic and comprehensive disclosure measures (i.e., no requirements for disclosing flood damage history or whether flood insurance is mandatory). Additionally, there are 21 states with no flood disclosure policies, including some states at highest risk from flooding, like New York, New Jersey, and Florida. Given the severity of flood risk across the nation, and so many states without a disclosure law, we call for a Federal



Flood Disclosure bill. As a foundational component of risk awareness, every homeowner and renter should be aware of their property's flood history.

An affirmative obligation on the part of the seller or lessor of residential and commercial properties, based upon any actual knowledge, is a consideration for FEMA to account for in NFIP claims and protection. The conditions of such disclosure must be holistic and comprehensive, meaning they should include disclosure of:

- i. prior physical damage caused by flood to any building located on the property;
- ii. a prior insurance claim for loss covered under the national flood insurance program or private flood insurance with respect to the property, and the amount of damage;
- iii. any previous notification regarding the designation of the property as a repetitive-loss structure or a severe repetitive-loss structure, (as defined in 42 USC 4104c); and
- iv. any obligation under Federal law to obtain and maintain flood insurance running with the property, such as any obligation because of a previous form of disaster assistance received by any owner of the property under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);
- v. whether the property is located in a federally designated floodplain.

Further, the writing must be delivered by or on behalf of the seller of the property to the purchaser before the purchaser becomes obligated under any contract for purchase property. By incorporating flood disclosure policies, states and local municipalities are ensuring that residents are, at the very least, aware of their flood risk. This is a foundational piece in protecting vulnerable communities from flooding. Recent storms have demonstrated the ability to bring flood risks to homeowners and business owners who live beyond the FEMA floodplain. Disclosure would extend awareness to those regions where buyers and renters might not expect regular flooding. Similarly, government-backed mortgage companies like Fannie Mae and Freddie Mac should also require the disclosure of flood history and damages when providing mortgage loans.

To that end, there are currently issues with FEMA's information sharing and transparency in providing flood history to prospective home buyers and renters. In most cases, flood history is not provided by FEMA until after the home is purchased or NFIP is bought into. While states should require buyers and lessors to provide actual knowledge on flood damage and other aforementioned factors, FEMA should, too, make it simpler for prospective buyers and renters to access flood history.

Given the extensive data that FEMA has on flood history, that many times extends beyond current homeowners, we recommend that the agency develop tools to share flood history records. The primary objective of flood disclosure is to allow for the most informed decisions on property purchase or rental. There is certainly a role that FEMA can play to enable that goal. Ultimately, we recommend that FEMA strengthen their NFIP considerations to include flood disclosure. In doing so, residents and businesses can make informed decisions regarding their flood risk.



(18) Hazard mitigation and community planning have proven to minimize the impacts of flood disasters. When states and local municipalities work to assess their risks to climate change, they can better deploy resources and capital to the highest risk areas. Community resilience is becoming exceedingly important as flooding occurs at more frequent and intense rates across the nation. There have been large-scale infrastructure proposals (i.e., storm surge barriers, sea walls, elevated roads, etc.) for some coastal regions with high risks of flooding. Unfortunately, the reality is that there is not enough funding for these solutions to be deployed across the entire country. FEMA, understanding this fact, should encourage city and state governments to conduct vulnerability assessments, hazard mitigation planning, and coastal zone planning through grant programs and cost-sharing incentives. In doing so FEMA will be spending money in upfront, proactive resiliency for communities across the country, which will save money on post-disaster recovery efforts over time.

For many coastal and riverine communities, technical assistance and capacity are lacking to complete thorough hazard mitigation plans. We encourage FEMA to support these in these planning processes by leveraging scientific and technical expertise. An example of this includes developing more robust maps, with hyper-local flood data and projections. FEMA can work with Federal, State, and local governments to collaborate and share information on climate change projections so that hazard mitigation plans are based on the most up-to-date science (ex: NOAA, EPA, USACE, State and local environmental protection divisions, academic partners, etc.).

There is certainly an environmental justice component to this work, too. Low-income, communities of color, and rural communities tend to have less access to funding structures compared to affluent and urban regions of the country – even where flooding risks are greater or equal. By collaborating with these vulnerable, and often neglected, communities, FEMA can empower citizens to be aware of their climate risks and develop reasonable, achievable recommendations and solutions for their communities. Community engagement is an integral component of environmental justice. FEMA is well positioned to provide assistance to millions of Americans in pre-disaster planning. This work has already begun with FEMA’s Building Resilient Infrastructure and Communities (BRIC) program, but it should be extended to funding structures within the NFIP.

In terms of best practices for planning decision-making and the development and implementation of floodplain management standards, New Jersey’s recently passed Municipal Land Use Law serves as an example.⁸ This law expands on the existing element of a land use plan, within the municipal master plan, to assess likely impacts associated with climate change-related risks and devise strategies to address them. The law also requires that municipalities include a climate change-related hazard vulnerability assessment in future master plans. These vulnerability assessments will analyze current and future threats associated with climate change (increased temperatures, drought, flooding, hurricanes, and sea-level rise), a build-out analysis of all future development in the municipality along with any threats and vulnerabilities associated with this development, and strategies to reduce the risks of climate change-related natural

⁸ <https://nj.gov/governor/news/news/562021/docs/bills/S2607.pdf>



hazards. Another example of a best practice is the New York City Waterfront Revitalization Program (WRP).⁹ WRP establishes policies for waterfront planning, preservation, and development projects to ensure consistency over the long term. The goal of the program is to maximize benefits from economic development, environmental conservation, and public use of the waterfront, while minimizing potential conflicts.¹⁰ A WRP review is required for projects that are in New York City's coastal zone boundary. We encourage FEMA to refer to these strategies, as well as other state's programs, when considering integrating mitigation planning. Vehicles to collaborate with various states exist, and FEMA should work to align with them, to the extent possible.

Thank you for considering our comments and suggestions for improving the NFIP to promote resilience, safety, and awareness. If you have any questions regarding these comments, please reach out to Tyler Taba at ttaba@waterfrontalliance.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cortney", written in a cursive style.

Cortney Koenig Worrall
President and CEO, Waterfront Alliance

⁹ <https://www1.nyc.gov/site/planning/planning-level/waterfront/wrp/wrp.page>