[Question 10]

How should conflicts among NFIP, HUD, state laws, building codes, and environmental regulations be resolved to minimize legal risk?

Resolving Conflicting Regulations. Conflicts among regulations should be resolved through coordinated compliance—not by treating NFIP minimums as a ceiling or assuming one local rule silently overrides another. The manager should pay attention to the requirements triggered by federal assistance and to clear local implementation.

1. **Identify every applicable requirement and the authority behind it.** NFIP construction standards are a minimum baseline, but they do not address all flood risks. Local governments should integrate flood-risk controls across zoning, subdivision, building-code, site-planning, natural-resource, and stormwater rules, subject to the limits of authority delegated by state law. [See e.g., https://no.floods.org/NAI-Legal, I.D., Limitations of Minimum NFIP Standards; I.E., The NAI Approach; II.E.2.b., Local Land Use Regulations—Planning.]

2. **Apply the stricter lawful, risk-reducing requirement where standards can be met together.** Support higher local floodplain standards when they advance local objectives of flood safety and reduced damage. The courts have favored flood-elevation requirements over otherwise conflicting setbacks and height rules because flood rules protect health, safety, welfare, and public and private resources. [See e.g., https://no.floods.org/NAI-Legal, I.E., The NAI Approach; II.E.2.d., Rebuilding Limitations and Amortization of Non-conforming Uses—Conflicting Zoning Requirements.]

3. **Resolve true local conflicts expressly and prospectively.** Adopt or amend the floodplain ordinance to state which provisions control when it conflicts with zoning, reconstruction, or building requirements. Land development code or ordinance language making floodplain requirements supersede conflicting local regulations is recommended; clear text reduces uncertainty for applicants, officials, and courts. Conversely, ambiguous local rules invite litigation, because courts begin with and enforce the plain language of the ordinance. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.d., Rebuilding Limitations and Amortization of Non-conforming Uses.]

4. **Do not use variances as an informal conflict-resolution device.** Follow state and local appeal procedures, provide a designated body to resolve differing interpretations, and grant floodplain variances only for good cause and exceptional hardship. A variance that falls below flood-elevation requirements should be unusual, not a routine

accommodation for conflicts with other development rules. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.c., Special Use / Exception Permit or Conditional Use.]

5. **For HUD- or otherwise federally assisted actions,** complete the applicable federal floodplain/environmental process in addition to NFIP and state/local compliance. Executive Order 11988 ("E.O. 11988") applies to federally undertaken, financed, or assisted construction and calls for early public review, alternatives analysis, impact identification, minimization of harm, preservation of floodplain values, documented findings, and implementation consistent with minimization plans and flood-insurance requirements. [See e.g., https://no.floods.org/NAI-Legal, V.B.2.a., Executive Order 11988; V.B.2.b., Floodplain Management Guidelines for Implementing E.O. 11988.] Where wetlands are implicated, E.O. 11990's avoidance-and-minimization direction also applies; projects should not proceed in wetlands, absent no practicable alternative and harm-minimizing measures. [See e.g., https://no.floods.org/NAI-Legal, V.B.2.d., Relationship between E.O. 11988 and 11990.]

6. **Document the decision.** Record the applicable standards, state-law authority, alternatives considered, reasons for any priority determination, environmental findings, permit conditions, and interdepartmental review. This is especially important because approving development that harms other property can expose the permitting authority to negligence claims. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.e., Liability for Problems Due to Permitting.]

Summary.

- Comply with all applicable federal, state, environmental, and local requirements;
- use the more protective lawful standard when they are compatible; and,
- for genuine local-rule conflicts,
    - resolve them through explicit ordinance language,
    - coordinated review, and
    - a documented decision—not ad hoc permitting.

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