[Question 4]

What legal authority can communities use to regulate development based on future conditions like anticipated build-out, sea-level rise, climate change, post-fire flooding, and aging infrastructure?

Legal Authority. Communities may regulate for anticipated future conditions under their state-delegated police power to protect public health, safety, and welfare. That authority is broad enough to support prospective flood risk and land use controls, provided the regulation serves the public generally, uses reasonably necessary means, and is not unduly oppressive. Local authority ultimately depends on each state's delegation of power, especially whether the community operates under Home Rule or the more restrictive Dillon's Rule. [See e.g., https://no.floods.org/NAI-Legal, II.E.1., State Police Powers; II.E.2., Local Governments; II.E.2.a., Dillon's Rule vs. Home Rule.]

Approaches to Future Conditions.

- **Adopt standards exceeding minimum NFIP requirements.** Communities may expand regulated flood-prone areas beyond FEMA map boundaries; require higher protection levels such as freeboard; limit uses or density; and regulate through floodplain, subdivision, zoning, building-code, site-planning, road, drainage, and natural-resource rules. These tools can account for anticipated build-out, watershed development, storm intensity, sea-level rise, and inadequacies in aging drainage or flood-protection infrastructure. [See e.g., https://no.floods.org/NAI-Legal, I.E, The NAI Approach; I.D., Limitations of Minimum NFIP Standards.]

- **Use future-conditions mapping.** A community may adopt maps of anticipated hazard areas, e.g., areas with projected future risks from watershed development, stronger storms, and higher seas—even before they are incorporated into FEMA's FIRM. The community may then use them either to require a higher level of protection or as advisory information promoting more resilient development. [See e.g., https://no.floods.org/NAI-Legal, I.E.9, Climate Adaptation.]

- **Plan first, then regulate consistently.** Comprehensive planning is the forward-looking foundation for zoning and related controls. Including climate change and sea-level rise in the comprehensive plan establishes an action framework, documents the community's objective when regulations affect property rights, gives notice, and allows public participation. A current plan also helps demonstrate that zoning decisions conform to

articulated community objectives. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.b., Local Land Use Regulations.]

- **Apply zoning, subdivision, special-use, and conditional-permit authority.** Planning and zoning regulate the use, scale, location, and conditions of development. Special or conditional permits allow communities to approve otherwise permissible uses only when stated criteria and conditions are satisfied; variance processes should be tightly coordinated with floodplain regulations and reserved for genuine, exceptional hardship. Conditions should be based on the project's identified impacts and applied under clear local standards. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.b., Local Land Use Regulations; II.E.2.c., Special Use / Exception Permit or Conditional Use.]

- **Preserve hazardous areas and natural protective functions.** Conservation zoning can restrict new development in floodplains, riparian buffers, wetlands, erosion zones, and other sensitive areas while directing growth to safer locations. Similarly, setbacks, erosion-hazard mapping, and riparian-buffer requirements can address changing river systems and anticipated erosion. [See e.g., https://no.floods.org/NAI-Legal, I.E.7., Greener Floodplain; I.E.2., More Effective Programs and Projects.]

- **Require compliant rebuilding after damage.** Communities may require nonconforming structures that are substantially damaged—where repair or reconstruction exceeds 50% of pre-damage value—to rebuild in compliance with current floodplain and zoning requirements. This is particularly relevant after fire or other disasters. Future-hazard and rebuilding authorities provide the relevant legal framework for post-fire hydrology. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.d., Rebuilding Limitations and Amortization of Non-conforming Uses.]

- **Design and maintain infrastructure for foreseeable future risk.** Rising climate risks make future flooding more foreseeable. For new or rebuilt drainage infrastructure, the guide advises designing for reasonable projections of increased rainfall intensity and sea-level rise; aging sewers and drainage systems that are not properly maintained may create negligence exposure. [See e.g., https://no.floods.org/NAI-Legal, III.A.1.c., Causation and Foreseeability.]

The principal legal limits are equally important. Communities should build a clear evidentiary record linking each measure to public safety and future risk; draft precise standards; apply them consistently; and avoid arbitrary action. Permit exactions or dedications must have an essential connection and rough proportionality to the development's projected impacts.[^9] These safeguards help distinguish lawful prospective regulation from an unconstitutional taking or an unsupported permit condition. [See e.g., https://no.floods.org/NAI-Legal, II.E.1., State Police Powers; IV.B.4., Exactions.]

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