[Question 9]

Can communities be held responsible if they repeatedly allow code-compliant rebuilding in floodplains if it increases actual long-term risk?

Liability. Potentially. Code compliance is important evidence, but it is not an absolute shield where a community repeatedly permits rebuilding that foreseeably increases flood risk or harms others. Minimum NFIP standards permit development in flood-prone areas and provide only limited protection. Communities relying solely on those standards may face legal challenges if they inadequately protect residents and property from known hazards; minimum standards may not stop, and may only minimally reduce, long-term flood losses. "Code-compliant" rebuilding can still leave a community exposed if the applicable code is inadequate for known present or future conditions. [See e.g., https://no.floods.org/NAI-Legal, I.D., Limitations of Minimum NFIP Standards.]

Potential liability depends on the governing jurisdiction and facts. A community may face negligence or takings claims when its permits contribute to additional flooding or damage. Some jurisdictions hold local governments responsible for development approvals that cause flooding of existing property, while others are less willing to impose liability. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.e., Liability for Problems Due to Permitting.] Negligence requires proof of duty, breach, causation, and actual damages; foreseeability of harm and the practicality of precautions are central considerations. [See e.g., https://no.floods.org/NAI-Legal, III.A., Negligence, and § III.A.1., Elements of Negligence.]

Repeated approvals. Repeated approvals can strengthen foreseeability and causation arguments, especially where the community has evidence that rebuilding or associated development worsens flood levels, velocities, erosion, runoff, or other measurable risks. Foreseeable harm need not be intended, and an authorized government action can remain a proximate cause when it starts a foreseeable and predictable chain leading to loss. [See e.g., https://no.floods.org/NAI-Legal, IV.B., Fifth Amendment (discussing foreseeability in takings law).] Improved flood and climate modeling also makes it harder to characterize foreseeable risks as unforeseeable "Acts of God." [See e.g., https://no.floods.org/NAI-Legal, III.A.1.e., Force Majeure or 'Act of God.']

Compliance. Compliance matters. Many jurisdictions do not impose negligence liability merely because a government reviewed a compliant permit and a private party's work later failed; permit review should not make the government the guarantor of private engineering. Following the permitting process will not usually defeat a takings claim, and that liability may arise from

inadequate permit review or approval when resulting development causes increased flooding. [See e.g., https://no.floods.org/NAI-Legal, II.E.2.e., Liability for Problems Due to Permitting.]

Summary. A community cannot assume that repeated, code-compliant rebuilding eliminates responsibility. Where actual long-term risk is known or measurable, the prudent legal-risk approach is to:

- reassess whether minimum standards remain adequate,
- document the risk analysis, and
- adopt *and* enforce higher, evidence-based floodplain standards designed to prevent increased impacts on people and property.

[See e.g., https://no.floods.org/NAI-Legal, I.E., The NAI Approach; I.E.5., Reduced Liability.]

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