TO: Federal Emergency Management Agency (FEMA)  
FROM: Association of State Floodplain Managers No Adverse Impact Committee  
SUBJECT: Docket ID FEMA-2021-0024  
Request for Information on the National Flood Insurance Program  
DATE: January 18, 2022

On behalf of the No Adverse Impact (NAI) Committee of the Association of State Floodplain Managers, we are pleased that FEMA is considering significant changes to the floodplain management standards for the National Flood Insurance Program (NFIP). The existing standards were developed as part of a flood insurance program and thus focus on reducing the potential for flood damage to “development.” However, we propose that the time has come for transformative changes that will also embrace comprehensive flood safety, community-wide flood resilience, protection of natural features for flood mitigation and habitat, improved fiscal stability for the NFIP, and protection of tax-payer funds.

The No Adverse Impact (NAI) approach to floodplain management builds on the principle that the actions of one property owner should not be allowed to adversely affect the rights of other property owners. This is achieved by first identifying potential adverse impacts and then either avoiding those impacts or mitigating them. The current NFIP floodplain development standards do not achieve this and contribute to increased flood risk in our nation’s communities. We thus propose incorporation of NAI principles to improve stewardship of floodplain areas. This constitutes a legally sound approach to promote improved safety, reduced flood damage, and habitat protection. Please consider the following suggestions under Docket ID FEMA-2021-0024:

**Designate “areas of highest flood risk” and restrict new development in these areas**

Guiding development away from unsafe locations protects the safety of people who might otherwise occupy those sites and the first responders who may be called on to assist during a flood event. It also allows space for dynamic systems to function without damage to the built environment. Designating areas of highest flood risk and restricting new development in these areas is an effective strategy for promoting improved safety, protecting valuable habitat, and reducing both public and private expenditures.

Some communities implement No Adverse Impact principles by identifying the areas of highest flood risk and then implementing policies that prevent or restrict development in those areas.
Areas with significant safety concerns have been delineated by several communities based on flood depth/velocity criteria or mapping of erosion hazard areas. Other communities use floodways shown on Flood Insurance Rate Maps (FIRMs) as a proxy for the areas of highest flood risk. Some communities simply require structure setbacks from identified waterbodies. The Coastal Barrier Resources Act (COBRA) is a program that strives to minimize development in sensitive coastal areas. These examples have demonstrated improved safety, reduced flood damage, and taxpayer savings achieved by delineating high hazard and sensitive areas, enforcing development restrictions, and limiting taxpayer expenditures in areas of highest flood risk. In addition, the preservation of natural floodplain features mitigates the severity of flooding in other areas while promoting the natural and beneficial functions of floodplains in their undeveloped states.

We recommend the NFIP regulations include criteria for a new zone called “areas of highest flood risk.” These criteria will identify floodplain areas that cannot be safely occupied without significant risk to health, safety, or public welfare. NFIP-participating communities will be required to implement these criteria. Initial designation of these highest flood risk areas could use existing information, such as mapped floodways, COBRA areas, V zones, areas designated by the Limit of Moderate Wave Action (LiMWA), river corridors, channel migration zones, environmentally sensitive areas, and other available data. In some locations, it may be appropriate to designate the entire 1% annual probability floodplain as areas of highest flood risk. Future mapping could further refine this zone in both coastal and inland areas using safety-based criteria (such as a depth/velocity function in riverine floodplains), future conditions, and an analysis of floodplain functions. Communities should be encouraged to include additional areas that exceed minimum federal standards for designating areas of highest flood risk.

The NFIP must regulate against encroachment in these areas of highest flood risk while promoting re-establishment of the natural and beneficial functions of floodplains, wetlands, and their associated ecosystems. Amendments to the NFIP for “areas of highest flood risk” must include:

- Prohibition of new residential, commercial, and industrial development and occupied structures.
- Designation of open space that provides beneficial floodplain functions (such as storing and slowing high flows or attenuating waves) and habitat (particularly for endangered and threatened species) as the preferred land use.
- Permitting of infrastructure only when it is demonstrated that overwhelming public interest necessitates crossing or encroaching into areas of highest flood risk.
- Allowing small unoccupied structures only when necessary to support recreation, agriculture, or water-dependent uses.
- Standards for pre-existing development that address potential inundation, high velocity flood water, waves, and erosion.
• Emergency management plans assuring timely evacuation from existing development as well as future uses.
• Exclusion from NFIP insurance eligibility new structures built after a specified date and any property for which an offer of a full cost buyout has been refused.

Standards are needed to guide local review of proposed development within the area of highest flood risk so that new development is only permitted when the applicant has demonstrated an overwhelming public interest that necessitates such development. This review should include safety considerations, the impact on natural floodplain functions, and the potential for a negative impact on flooding depth, velocity, or erosion potential for other properties. These review criteria should supplement and be incorporated into 44 Code of Federal Regulations § 60.22 Planning considerations for flood-prone areas, particularly paragraph (a):

“(a) The flood plain management regulations adopted by a community for flood-prone areas should:

1. Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;
2. Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.”

Federal expenditures in the areas of highest flood risk should prioritize restoration of natural floodplain functions and habitat. Existing development should be targeted for buyouts. Mitigation grant programs could waive the benefit-cost criteria for acquisition and relocation proposals in light of the inability to adequately quantify the significant public safety benefits. This would enable removal of buildings before they incur substantial damage or sustain repetitive losses. Federal funds should not be used for major repairs or in-place mitigation of existing structures.

Establish No Adverse Impact planning criteria for flood hazard areas
Existing federal regulations require that, “A community shall assure that its comprehensive plan is consistent with the floodplain management objectives of this part” (44 CFR § 60.2(h)). However, the planning considerations for flood-prone areas in 44 CFR § 60.22 are not widely utilized. In order to fully implement this requirement, FEMA should work with the states to develop guidance and provide planning assistance so that all local land use plans are consistent with flood safety and flood resilience objectives.

Federal regulations also specify that “…all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land use and management” (44 CFR § 60.1(c)). Although
participating communities have adopted local laws that require permits for floodplain development projects, flood-related hazards are not consistently considered during the project review process for subdivision, site plan, or other local approvals in floodplain locations. All such approvals should only be granted after careful consideration of flood safety and the ability to evacuate during a flood. The project review and approval process should also be required to include an evaluation of the potential for adverse impacts on the subject property, on neighboring properties, on floodplain functions, or cumulatively on the watershed. Guidance should be developed so that planners and others without expertise in flood processes can evaluate potential safety concerns and adverse impacts of development proposals, including changes to flood depth, erosion, sedimentation, wildlife habitat, threatened or endangered species, wetlands, etc. The community should be enabled to request additional information or analysis with supporting documentation to facilitate this determination. If an adverse impact is identified, it must be avoided or mitigated as condition for local approval.

Establish No Adverse Impact performance standards for all floodplain development
FEMA should amend NFIP development standards to severely restrict new development within the 1% annual probability floodplain in order to enhance safety, protect natural functions, and prevent flood damage. The following No Adverse Impact provisions should be required for all floodplain development:

- Require freeboard or flood protection levels higher than the base flood to account for higher flood levels due to future conditions, extreme events, and debris obstructions.
- Prohibit the use of fill in the floodplain without compensatory storage, since fill reduces flood storage capacity and increases downstream flooding and erosion. Discontinue use of Letters of Map Revision Based on Fill (LOMR-F).
- Require a no-rise analysis and certification for specified kinds of development in riverine floodplains. This encroachment analysis should be required for man-made development activities with a significant potential for altering flood depths, such as bridges, large structures, fill without compensatory storage, and encroachments in “areas of highest flood risk.” Publish standards for this no-rise analysis to ensure that it is done properly.
- Establish design standards for infrastructure, fences, and other non-building development to maintain flood conveyance and prevent damage.
- Prohibit buildings and other vulnerable development in areas with identified erosion hazards, such as a 100-year erosion setback for coastal areas, or require setbacks from streambanks, riverbanks, and shorelines if erosion hazard areas have not been delineated.
- Prohibit the removal of natural vegetation without mitigation due to the impact on stream/shore processes, erosion protection, water quality, air quality, groundwater recharge, and carbon sequestration.
- Require that a flood emergency plan be developed, updated annually, and filed with the local government for each existing and proposed critical facility, hazardous material
storage site, and high-occupancy facility. Emergency plans should specify the flood protection measures and flood response procedures needed to maintain critical functions and promote safety.

Existing NFIP development regulations allow creation of extensive flood risk, resulting in lost lives and billions of tax dollars. The existing focus on “how to build” in the floodplain has failed our nation. Future floodplain management policies should do more to protect public safety within our nation’s floodplains, the natural capital of floodplains, and public funds.

Thank you for considering these suggestions.