December 1, 2023

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

(Submitted electronically via website www.regulations.gov)

Re: Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard (Docket no: FEMA-2023-0026)

Dear Administrator Criswell:

We, the below organizations, are pleased to offer our support for the proposed rule: "Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard" ("the Proposed Rule"). Our organizations focus on several relevant policy areas, including flood risk, climate change impacts, environmental protection and conservation, and affordable and safe housing.

The Proposed Rule would update FEMA's floodplain management regulations to be consistent with the requirements of Executive Order 13690 and the Federal Flood Risk Management Standard ("FFRMS"). Climate impacts, such as sea level rise and extreme rain events, continue to intensify. Increases in the frequency and severity of flood events exacerbated by these climate impacts portend significant economic and social consequences nationwide. FEMA's swift adoption of the Proposed Rule will help address these consequences by better protecting communities and their residents from dangerous flooding.

Please find below our recommendations and justification for the proposed rule:

1. **Use the Climate-Informed Science Approach to define the FFRMS floodplain.**

We strongly support the proposed revisions to 44 CFR § 9.7 and the corresponding policy guidance, requiring the use of the Climate-Informed Science Approach ("CISA"), for determining whether a proposed action affects or is in a floodplain. CISA provides for a more complete picture of flood risk over the lifetime of a proposed federally funded project. Federally funded projects that fail to account for changing flood risk in their siting and design are an irresponsible use of American tax dollars and, potentially, place people in harm's way.

However, we recommend FEMA align its process for implementing the FFRMS with the proposed rule issued by the Department of Housing and Urban Development ("HUD") earlier this year. HUD's proposed rule requires non-critical actions, where CISA is not available, to use either the higher of FVA or the 0.2 percent annal chance flood elevation to define the FFRMS floodplain. In contrast, FEMA's proposed rule would apply the lower of the two approaches. We

encourage FEMA to align their proposed rule with HUD's proposal to one, achieve a more protective flood standard, and two, provide for uniformity amongst agencies, which could help reduce conflict and delays.

2. Prioritize avoidance of floodplains and wetlands.

A primary intent of Executive Orders 11988, 11990, and 13690, is avoidance of floodplain and wetlands development. Per the executive orders, the associated implementing guidance,[1] and FEMA regulations, FEMA must avoid direct or indirect support of floodplain and wetlands development whenever there is a practicable alternative.

To achieve such, FEMA must emphasize that avoidance of floodplains and wetlands is the primary objective of the 8-step process. Avoidance is the most effective risk reduction strategy. Where avoidance cannot be achieved, we support FEMA's requirement to use natural features and nature-based approaches where possible. However, FEMA does not provide direction on the measures to be used and the extent to which such actions must be employed. We recommend FEMA either in the final rule or in associated guidance clearly assert the criteria that would satisfy the use of natural features and nature-based approaches.

3. Implement a zero-rise standard.

Cumulative impacts, the incremental effects of human activity, can cause significant increases in flooding.[2] FEMA addresses cumulative impacts in 44 CFR § 9.11(d)(4) by requiring a "zero-rise" standard for federal actions in the regulatory floodway. However, currently, FEMA allows for a 1-foot rise in flood elevations for the cumulative effects of proposed development when a regulatory floodway has not been designated.[3] The current approach "perpetuates an upward trend of increased flood damages" because the standard:

- permits new development within the Special Flood Hazard Area that will increase flooding on existing development,
- avoids amending BFEs to avoid new development also being placed at risk, and
- allows encroachments that can be detrimental to the natural and beneficial functions of the floodplain.[4]

FEMA proposes to amend the current approach to state that the cumulative effects of proposed development "will not increase the water surface elevation of the 1 percent annual chance (base) flood more than the amount designated by the NFIP or the community, whichever is most restrictive." The NFIP standard permits a 1-foot rise, which as noted above can increase flood damages and damage the natural and beneficial functions of the floodplain. As such, FEMA should change the proposed language to not permit *any* increase in flood levels when a

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[1] *Guidelines for Implementing Executive Order 11988, Floodplain Management and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (October 8, 2015) *available at* https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf

[2] Alan R. Lulloff, *The Floodway Encroachment Standard: Minimizing Cumulative Adverse Impacts*, 1 (2013).

[3] 44 CFR § 9.11(d)(4).

[4] *See*, Lulloff, *supra* note 2, 13-14 (June 2013).

regulatory floodway has not been designated.

4. **Adhere to environmental justice principles and guidance.**

We recommend that FEMA revise the rule to ensure it explicitly addresses environmental justice concerns. FEMA's fact sheet: Executive Order 12898: Environmental Justice correctly identifies common projects that could have environmental justice concerns, most of which will need to adhere to FEMA's final FFRMS rule.[5] However, FEMA suggests that the proposed rule will not have adverse impacts on communities with environmental justice concerns.[6] On the ground experience[7] and scientific and policy analysis[8] find that federal policies such as the FFRMS have distributional impacts across sectors and communities, especially overburdened and underserved communities. A recent study on the inequitable patterns of flood risk finds that climate change and population growth (and its associated development) combined could cause a 26 percent increase in US flood risk by midcentury, hitting low-income and Black populations the hardest.[9] For example, the analysis finds that predominantly Black communities in the Deep South are projected to experience at least a 20 percent increase in flood risk over the next 30 years.[10]

FEMA should ensure that the final rule advances environmental justice. FEMA could do this by requiring the consideration of disproportionate and adverse effects on communities with environmental justice concerns.

Quickly Implement the Proposed Rule

We firmly believe that the Proposed Rule and associated guidance will help enhance flood resilience in the United States. Thank you for considering our support and we ask FEMA to move quickly to formally implement this much needed policy.

Sincerely,

Association of State Floodplain Managers
Environmental Defense Fund
National Association of Wetland Managers
National Wildlife Federation
Natural Resources Defense Council
Southern Environmental Law Center
The Nature Conservancy
Union of Concerned Scientists

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[5] Federal Emergency Management Agency, *Executive Order 12898: Environmental Justice Fact Sheet*, 1 (March 2022) *available at* https://www.fema.gov/sites/default/files/documents/fema_oehp-fact-sheet-environmental-justice.pdf

[6] See part VI Regulatory Analysis, section I Executive Order 12898 and 14096, at 67918.

[7] Ian Prasad Philbrick and Ashley Wu, *Population Growth is Making Hurricanes More Expensive*, New York Times (Dec. 2, 2022) *available at* https://www.nytimes.com/2022/12/02/briefing/why-hurricanes-cost-more.html

[8] USGCRP, 2023: *Fifth National Climate Assessment*. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. https://doi.org/10.7930/NCA5.2023

[9] Wing, O.E.J., Lehman, W., Bates, P.D. et al. *Inequitable patterns of US flood risk in the Anthropocene*, Nat. Clim. Chang. 12, 156–162 (2022). https://doi.org/10.1038/s41558-021-01265-6.

[10] *Id.* at 159.