



May 4, 2015

Regulatory Affairs Division, Office of Chief Counsel
Federal Emergency Management Agency, 8NE
500 C Street SW
Washington, D.C. 20472-3100

RE: Docket ID FEMA-2015-0006; Proposed Revised Guidelines for Implementing Executive Order 11988, Floodplain Management, as Revised Through the Federal Flood Risk Management Standard

To Whom It May Concern:

Thank you very much for the opportunity to comment on the implementation of a Federal Flood Risk Management Standard (FFRMS). We applaud the Federal Emergency Management Agency's (FEMA) effort to implement a new standard that will help to reduce flood damage in the United States.

In Charlotte County, on Florida's southwest coast, we take flood risk reduction seriously. We are a Class 5 community in the Community Rating System of the National Flood Insurance Program; only eleven other communities throughout the country have a higher rating than ours. Furthermore, the state of Florida requires via the 2010 Florida Building Code, which references ASCE 24-05, a construction elevation that is generally only one-foot less than what the new FFRMS proposes.

However, we still have significant concerns with the FFRMS and its implementation. For example, we believe FEMA has drastically underestimated the number of actions that will trigger review by federal agencies under the new FFRMS. Section 404, NPDES, or other permit applications, loans or loan guarantees – whether to individuals, businesses, or public entities – other decision documents, and certainly other actions, could all be impacted by this new standard, not just actions which include federal funding of a project.

In Florida, nearly every private development needs a 404 permit, thereby triggering a review under the new FFRMS and extending an already lengthy process. Like it or not, growth and development is a large part of Florida's economy. Depending on what is required of the developer by either the Corps of Engineers or another federal agency claiming jurisdiction based on the 404 permit, the project will either become significantly more expensive, could require unreasonable mitigation (more so than what is already required under the Clean Water Act), or could simply become untenable, potentially leaving vast swaths of land worthless.

BOARD OF COUNTY COMMISSIONERS

18500 Murdock Circle, Suite 536 | Port Charlotte, FL 33948-1068
Phone: 941.743.1300 | Fax: 941.743.1310



Further, the degree of federal investment or the relationship that the federal action has to a project or program should be taken into consideration. De minimis federal funding or actions should not trigger floodplain considerations.

FEMA should restrict those actions which will trigger review under the FFRMS. It makes sense to ensure that wholly federally-funded projects, particularly after a major disaster, are constructed to levels of higher resilience. However, the new FFRMS goes well beyond that.

Further, the implementing guidelines do not provide for existing federal actions of any type to be grandfathered or for agency exceptions to the new FFRMS be provided. Documents describing the FFRMS also assert that the NFIP will not be affected. However, FEMA is not given an expressed exemption in its mapping program from using the new methodologies rather than a calculation of the 100-year floodplain. We recommend that the guidelines be revised to clarify this uncertainty about existing projects and programs.

Suggested Edit to FFRMS Implementing Guidelines

Amend Section 2 to add the following at the end of line 333: "Executive Order 13690, the FFRMS and implementing guidelines shall be applied to prospective Federal actions. Federal agencies are not required to reconsider previous and existing Federal actions already completed or underway, including studies, projects, programs, permits, loans, grants, or any other Federal action otherwise subject to the Executive Order and FFRMS."

We are also extremely concerned with the number of federal agencies – potentially as many as 55 – tasked with individually implementing the FFRMS. Most of those agencies have no knowledge of flooding, nor the maps necessary to determine when a particular area is impacted by the new FFRMS. To assume that the public can track the development of up to 55 Implementation Plans developed by each of the individual federal agencies is unrealistic.

The idea that different federal agencies – with widely different levels of expertise and various aggressive agendas – may have different interpretations of the new FFRMS will create significant confusion as to what land is impacted and what is not. The dynamic of land use decision-making will dramatically shift to federal agencies who will have independent authority to define areas impacted by the new FFRMS and their corresponding management requirements.

FEMA and its partners in the development of the new FFRMS, including the Mitigation Framework Leadership Group and the Water Resources Council, should simply implement a revised FFRMS for the entire federal government. The lack of consistency across varied federal agencies will be unworkable.

BOARD OF COUNTY COMMISSIONERS

18500 Murdock Circle, Suite 536 | Port Charlotte, FL 33948-1068
Phone: 941.743.1300 | Fax: 941.743.1310



Further, given the import of the new standard, we believe local governments, who are also charged with providing for public safety and services while ensuring the soundness of public investments, must be afforded an appeal process in the guidelines to accommodate any local investments we may make which still may need federal actions, and therefore trigger the FFRMS review.

Suggested Edit to FFRMS Implementing Guidelines

Amend Section 2(c) to add the following at the end of line 467: "Each agency shall establish an appeals process to afford State, Tribal, Local or Regional agencies the opportunity to seek review of a floodplain designation or federal agency action."

We are also concerned that states, local governments, and stakeholders have not been adequately consulted in the development of the new FFRMS that will have a significant impact on the public investments that non-federal interests are required to make in flood risk reduction and floodplain management. With only the opportunity to comment on implementing guidelines rather than the Standard itself, the state of Florida, Charlotte County, and other non-federal partners across the country have limited options to ensure the intergovernmental cooperation required to meet the challenges of floodplain management.

Suggested Edit to FFRMS Implementing Guidelines

Amend Section 1, page 10, line 317 by adding: "Federal agencies shall consult with State, Tribal, Regional, and Local governments to ensure coordination with all levels of government in adopting floodplain management policy and guidelines. Agency implementation guidelines shall recognize the appropriate role of each level of government and shall be commensurate with the degree of federal investment or action on the affected project or program in the floodplain."

Charlotte County and our partners throughout the State have invested untold billions in flood control projects. While federal agency procedures previously followed the standards and criteria of the National Flood Insurance Program (NFIP), which recognizes accredited flood control improvements and reduces building restrictions in protected floodplains, the new FFRMS and implementing guidelines could allow for restrictions to remain in place. In fact, federal agencies could impose additional restrictions on federal actions in a protected floodplain regardless of the level of flood protection provided.

This creates an inadvertent disincentive for local residents and businesses to raise revenues to pay for flood protection. Communities impose fees and property assessments to fund flood protection improvements in order to provide an adequate level of flood protection, avoid floodplain building restrictions, and enable future economic development. We strongly recommend that this issue be clarified in the implementing guidelines to ensure that federal agencies recognize project-protected floodplains and modify their restrictions accordingly.

BOARD OF COUNTY COMMISSIONERS

18500 Murdock Circle, Suite 536 | Port Charlotte, FL 33948-1068
Phone: 941.743.1300 | Fax: 941.743.1310



Charlotte County Government

"To exceed expectations in the delivery of public services."

www.CharlotteCountyFL.com

Given these challenges, we ask that FEMA slow the implementation of the FFRMS, consult more closely with local governments who will be significantly impacted, and release a revised FFRMS that will be implemented uniformly throughout the entire federal government.

Thank you for your consideration of our comments. We look forward to continuing to work with FEMA to ensure a more flood resistant community.

Sincerely,

A handwritten signature in blue ink that reads "William G. Truex".

William G. Truex, Chairman
Charlotte County Board of County Commissioners

BT/el

cc: The Honorable Senator Marco Rubio
The Honorable Senator Bill Nelson
The Honorable Congressman Tom Rooney
Charlotte County Board of County Commissioners
Charlotte County Administrator, Ray Sandrock
Deputy County Administrator, Kelly Shoemaker
Charlotte County Attorney, Janette Knowlton

BOARD OF COUNTY COMMISSIONERS

18500 Murdock Circle, Suite 536 | Port Charlotte, FL 33948-1068
Phone: 941.743.1300 | Fax: 941.743.1310