

American Rivers • Anthropocene Alliance
National Wildlife Federation • Natural Resources Defense Council
The Nature Conservancy • Southern Environmental Law Center
Union of Concerned Scientists

30 April 2024

Administrator Deanne Criswell
Federal Emergency Management Agency
Office of the Administrator
500 C Street, SW
Washington, DC 20472

Electronic copy sent via email to FEMA-IGA@fema.dhs.gov

Dear Administrator Criswell,

Our organizations are writing to urge the Federal Emergency Management Agency (FEMA) to incorporate into regulations several recommendations that were discussed in the Technical Mapping Advisory Council's (TMAC) draft *2023 Annual Report*. These include expanding the floodplain for purposes of requiring the purchase of flood insurance coverage, expanding the floodplain for purposes of where FEMA's minimum floodplain development standards apply, and banning the destructive practice of fill and build.

FEMA's flood maps have often under-represented the extent of areas that are at elevated risk of flooding. Moreover, flood maps have been based solely on historical data and have not portrayed what flood risks will be in the future, due to changes in development patterns and the effects of climate change on precipitation patterns and rising sea levels.

As a result of these shortcomings, fewer people purchase flood insurance, and state and local governments continue to allow unwise development in areas that are at risk today and will be at much greater risk in the future.

FEMA's flood maps significantly influence where and how development occurs. Homes and businesses built inside the currently mapped 100-year floodplain, and on its fringes, are often

heavily damaged in flood events (sometimes repeatedly) despite being constructed in full accordance with FEMA’s minimum floodplain development standards.¹ Those standards have not been updated in over 40 years, but the agency is working on this.

In April 2023, FEMA requested that TMAC make recommendations on how the agency could address shortcomings of the current flood mapping methodology to better accomplish the goals of the National Flood Insurance Program as established in 42 U.S.C. 4001. TMAC responded with recommendations to redefine and distinguish the floodplain for purposes of the mandatory purchase of flood insurance coverage as well as define a broader floodplain where FEMA’s minimum floodplain development standards would apply. Finally, TMAC recommended that FEMA consider prohibiting the practice of fill and build (i.e. allowing fill to be placed in the floodplain to elevate a property – and sometimes entire subdivisions -- and structures built on top of that fill) for all future residential and commercial developments, with additional restrictions placed on the use of fill for public infrastructure and facilities. We urge FEMA to prohibit the practice of fill and build and not simply “consider” banning it, as suggested by TMAC.

Our organizations urge FEMA to incorporate these recommendations into the agency’s regulations, mapping methodologies, and practices as soon as possible.

Redefining the “Special Flood Hazard Area” (SFHA) for purposes of who is legally required to purchase flood insurance under 44 CFR Part 59.

TMAC has recommended that the SFHA be determined using the 95th percentile confidence limit for the 1-percent-annual-chance flood. Currently, FEMA flood maps represent the 1-percent-annual-chance flood at a 50th percentile confidence, meaning there’s a 50% chance that flooding could occur beyond the so-called 100-year floodplain. Consequently, property owners, banks, developers, realtors, community planners, engineers, and others have all assumed that homes, businesses, infrastructure, and other features of the built environment are less vulnerable to flooding than is actually the case. This is borne out in the fact that NFIP policy holders outside of the SFHA, “file more than 25 percent of NFIP claims and receive one-third of disaster assistance for flooding.”² This is further illustrated by the fact that almost 20 percent of

¹ See 44 CFR Part 60.

² FEMA, “Fact Sheet: Myths and Facts About Flood Insurance,” <https://www.fema.gov/press-release/20230425/fact-sheet-myths-and-facts-about-flood-insurance>, accessed October 2023.

Severe Repetitive Loss Properties lie outside of the SFHA, as currently delineated.³ When so many of the nation’s most flood-prone properties fall outside the areas mapped as having a high risk of flooding, there is certainly a problem (and likely several problems).

By defining the SFHA with a higher level of confidence, FEMA will identify a larger area that is at risk of flooding, more property owners will be told about the potential for flood damages, and more properties will be required to purchase flood insurance coverage.

We appreciate that this change will be significant. As TMAC pointed out, the new 95th percentile SFHA will typically be more than 3 feet higher in elevation than the current 50th percentile SFHA and will encompass a larger area and a larger number of properties as a result.⁴ This will obviously require more people to purchase flood insurance. While we support a larger number of people purchasing flood insurance, which is to their long-term benefit, we also recognize that this may place a financial burden on many and places an even greater importance on establishing an affordability program for NFIP policy holders.

Creating an NFIP affordability program is not within FEMA’s present authority and Congress must act to create such a program. FEMA and the Biden administration have sought this through various avenues and our organizations have also urged Congress to grant FEMA the authority to reduce flood insurance premiums based on household income and a policy-holder’s ability to pay for coverage. We will continue to press for those needed changes.

Defining a new designation of “Flood-Prone Area” for purposes of where FEMA’s minimum floodplain development standards apply.

TMAC recommends that FEMA’s floodplain development standards apply inside a newly defined “Flood-Prone Area” that shall be designated using the 95th percentile confidence 1-percent-annual-chance flood, plus the effects of future land use, plus an accounting for how future climate impacts will influence the potential for flooding, such as shifting precipitation patterns and sea level rise. Using this newly designated “Flood-Prone Area” will expand the area where FEMA’s minimum floodplain development standards apply and require future development to be built to a higher margin of safety, consistent with the goals of the NFIP.

³ Natural Resources Defense Council, “Losing Ground: Flood Data Visualization Tool,” <https://www.nrdc.org/resources/losing-ground-flood-visualization-tool>, accessed October 2023.

⁴ Technical Mapping Advisory Council, *2023 Annual Report (Draft)*, P. 23.

Finally, TMAC recommends that the 0.2-percent-annual-chance flood also be defined using the same parameters as the Flood-Prone Area by using the 95th percentile confidence limit, future development, and future climate conditions, which our organizations also support.⁵

TMAC's recommended delineation of "Flood-Prone Areas", when combined with FEMA's ongoing efforts to overhaul the minimum floodplain development standards, would be a major advance towards achieving the NFIP's goal of, "providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses."⁶

Prohibiting the practice of fill and build for residential and commercial properties.

FEMA should prohibit the practice of fill and build for residential and commercial properties as a method of elevation or floodproofing as part of its minimum floodplain management standards. Further, we urge FEMA to not allow fill and build to justify removal of properties from the SFHA within FEMA's floodplain mapping program.

TMAC's recommendation is for FEMA to consider prohibiting fill and build for residential and commercial structures and prohibiting fill as a floodproofing technique. We urge FEMA to prohibit fill and build as both an elevation and floodproofing technique.

It is all too common for developers to place earthen fill in an area to elevate a structure above the base flood elevation and then request that it be removed from the SFHA – a practice often referred to as fill and build. This practice is bad enough when applied to individual parcels of land and can create even bigger issues when it is allowed for entire new developments and subdivisions. TMAC noted that FEMA, "receives and processes over 3,600 requests for issuance of Letters of Map Revision Based on fill (LOMR-Fs) and Conditional LOMR-Fs."⁷ TMAC cites many negative consequences of fill and build⁸:

- Reduces the carrying capacity of the floodplain, increasing flood risk over time;
- Allows construction of homes that are just barely over the base flood elevation, leaving no margin of error;

⁵ Technical Mapping Advisory Council, *2023 Annual Report (Draft)*, P. 30.

⁶ 42 U.S.C. Section 4001(c).

⁷ Technical Mapping Advisory Council, *2023 Annual Report (Draft)*, P. 31.

⁸ Id.

- Once homes are constructed on fill, they are no longer required to purchase flood insurance, even though the flood risk is only marginally less than surrounding areas;
- Homes constructed on fill often are allowed to build basements, which are much more likely to flood and pose a safety risk to those who live in below grade units or rooms; and
- Severely impacts floodplain ecosystems that are critical habitat for endangered species.⁹

The Anthropocene Alliance, a coalition of more than 300 member communities affected by flooding and other environmental hazards in 42 U.S. states and territories, has long called for a ban on fill and build, because of the negative consequences inflicted on their members' communities by this practice.¹⁰

TMAC also recommended that additional notification requirements be placed on other uses of fill, ensuring that the public is informed about the negative consequences for future flooding and environmental impacts.¹¹ While we agree that additional notification would be advisable, we want to emphasize that this particular recommendation would be wholly insufficient by itself. If there are negative consequences of fill and build, such as higher risks of flooding or environmental degradation, then no permits should be issued.

TMAC's recommendation was based in part on the limitation that,

“as long as the impacts are equal to or less than the minimum allowed (1 foot at a national level, less than 1 foot in areas where states or locals have adopted higher standards), there are no notification requirements. This situation amounts to a risk transfer to uninformed landowners and environmental stewardship organizations.”¹²

Notification or not, communities and states simply should not be authorized to issue permits that will allow flood risks to increase and cause environmental degradation, particularly if there are no requirements to mitigate these negative consequences.

⁹ Request for Information on the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats, 86 FR 56713, 56716 (Oct. 12, 2021).

¹⁰ Anthropocene Alliance, “Call to Mitigate Flooding by Banning ‘Fill and Build’ Picks Up Steam”, <https://anthropocenealliance.org/newsletter-mitigate-flooding-ban-fill-and-build/>, accessed October 2023.

¹¹ Technical Mapping Advisory Council, *2023 Annual Report (Draft)*, P. 35.

¹² *Id.*

Conclusion

Our organizations appreciate the work of TMAC and the opportunity to provide these comments to FEMA. We commend FEMA for seeking TMAC's input and recommendations on these important questions. We urge FEMA to amend its regulations (to include relevant language in 44 CFR Parts 59, 60, and 65) to expand the regulatory floodplain (per TMAC's proposed Flood Prone Area), expand the mandatory purchase floodplain (per TMAC's proposed Special Flood Hazard Area), and to prohibit the practice of fill and build as both a floodproofing and elevation technique. In addition, we urge FEMA to update any relevant mapping methodologies, guidance documents, and agency practices as soon as possible.

Sincerely,

Jessie Ritter, Associate Vice President, Water and Coasts
National Wildlife Federation
ritterj@nwf.org

Rob Moore, Director, Flooding Solutions Team
Natural Resources Defense Council
rmoore@nrdc.org

Sierra Weaver, Senior Attorney and Coast & Wetlands Program Leader
Southern Environmental Law Center
sweaver@selcnc.org

Shana Udvardy, Senior Climate Resilience Policy Analyst
Union of Concerned Scientists
sudvardy@ucsusa.org

Harriet Festing, Executive Director
Anthropocene Alliance
harriet@anthropocenealliance.org

Cameron Adams, Policy Advisor, Climate Adaptation and Marine Policy
The Nature Conservancy
cameron.adams@tnc.org

Kelsey Cruickshank, Policy Director
American Rivers
kcruickshank@americanrivers.org

Cc: Victoria Salinas, Deputy Administrator for Resilience
victoria.salinas@fema.dhs.gov

David Maurstad, Associate Administrator for Resilience
david.maurstad@fema.dhs.gov

Jeffrey Jackson, Assistant Administrator, Insurance
jeffrey.jackson@fema.dhs.gov

Derrick Hiebert, Assistant Administrator, Mitigation
Derrick.Hiebert@fema.dhs.gov

Eric Letvin, Deputy Assistant Administrator, Mitigation
eric.letvin@fema.dhs.gov

Samantha Medlock, Assistant Administrator, Office of Resilience Strategy
samantha.medlock@fema.dhs.gov

Crystal Bergemann, Director, Climate Resilience, CEQ
crystal.a.bergemann@ceq.eop.gov

Technical Mapping Advisory Council
FEMA-TMAC@fema.dhs.gov