April 2015

Regulatory Affairs Division

Office of Chief Counsel

Federal Emergency Management Agency

8NE

500 C Street SW

Washington, DC 20472-3100

**Attention: Docket ID FEMA-2015-0006**

Dear Mr. Wright and Members of the Mitigation Framework Leadership Group (MitFLG),

I write to express my deep concerns regarding the scope and impact that Executive Order 13690, the new Federal Flood Risk Management Standard (FFRMS), and the *Draft Revised Guidelines for Implementing Executive Order 11988 Floodplain Management* will have on the residential construction industry. I am equally troubled by the process by which the FFRMS and the new expanded definition of floodplain was developed and adopted, and the regulatory uncertainty that will ensue if federal agencies are allowed to adopt different floodplain definitions for their programs, projects, and permits.

I am a member of the Collier Building Industry Association in Naples, Florida]. Oftentimes, building and land development in the floodplain requires obtaining permits, elevating structures, or using more resilient construction techniques. It is because of these additional mandates, legal obligations, and liabilities that the definition and geographic extent of the floodplain matters to our home building industry and our local economy.

**E.O. 13690 and the FFRMS Inappropriately Expand the Definition of Floodplain.**

On Jan. 30, President Obama signed Executive Order (E.O.) 13690 to update the existing Executive Order on Floodplain Management (E.O. 11988) and create a new Federal Flood Risk Management Standard (FFRMS) for all federally approved or funded projects. In doing so, the President also redefined the geographic reach of floodplains across the country from that area subject to a 1%-or-greater chance of flooding in any given year (i.e., the 100-year floodplain), to something much broader. Pursuant to E.O. 13690 and the FFRMS, federal agencies must now define the floodplain using one of the following methods:

* *Climate-Informed Science* – using the best available, actionable hydrologic and hydraulic data and methods that integrate current and future flooding based on climate science;
* *Freeboard Value* – adding an additional 2 or 3 feet of freeboard to the base flood elevation of the 100-year floodplain; or
* *500-Year Floodplain* – using the area subject to the 0.2% annual flood chance.

Unfortunately, the public has not been provided any scientific data or technical documentation to discern how these new floodplain definitions were developed or to determine whether the standard provides an effective basis for improving the Nation’s preparedness and resilience against flooding. Likewise, there are no cost/benefit data available, no maps, and no indication provided as to how one might discern whether any particular piece of property falls within the boundaries of one of these definitions.

The Administrative Procedure Act requires reasoned and participatory decision making; it requires careful consideration, deliberation, scientific justification, and public involvement. The Administration is strongly urged to repeal E.O. 13690 and leave it to Congress to define floodplain.

**The Application of the FFRMS Must be Limited**

Althoughthe President’s Climate Action Plan directives, the Hurricane Sandy Rebuilding Strategy recommendations, and even the policy of the United States described in Section 1 of E.O. 13690 cite the need for a new federal flood risk reduction standard for *federally funded projects*, the FFRMS and E.O. 11988 do not heed this limit. Instead, they apply to all *federal actions*, defined as:

(1) acquiring, managing, and disposing of Federal lands, and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Clearly, *federal actions* include far more activities than simply projects that require or use federal funding. **If it is the federal government’s intent to apply the FFRMS strictly to federally funded projects, this intent has been undermined by forcing the application of the FFRMS through E.O. 11988. As a result, many products and programs upon which the home building industry relies will become unnecessarily burdened by new and unwarranted requirements.** With this additional red tape, home builders and developers will face increased project delays and costs when working in areas anywhere near the Nation’s coasts.

To align with the federal government’s intent to create a new federal flood risk reduction standard for federally funded projects, the Draft Implementation Guidelines must explicitly state that the FFRMS and the expanded floodplain definitions apply only to investments for federal structures and facilities and not to federal permits, federally-backed loans, or private investments.

**Different Definitions of “Floodplain” Will Cause Confusion**

**For nearly 40 years, the federal agencies have defined the floodplain as the area subject to a 1%-or-greater chance of flooding in any given year. Now, with only the President’s signature, the definition has not only significantly expanded, but agencies can choose among different “floodplain” definitions.** While the Mitigation Framework Leadership Group (MitFLG) suggests this flexibility will allow federal agencies to select an approach that best aligns with their missions, authorities, and programs, in reality, it will only generate regulatory uncertainty and inconsistency.

**Home builders and developers rely on permitting programs and regulations that are consistent, timely, and predictable. When one agency defines the floodplain according to “climate-informed science,” another uses the “freeboard” approach, and yet a third adopts the 500-year floodplain, permit, loan, and grant applicants are left wondering where the requirements of E.O. 11988 apply and where they do not. Additionally, there are no maps for regulators or the regulated community to review that show the extent of the floodplain according to the climate-informed science and freeboard approaches. And, in many locations, the 500-year floodplain is not mapped.**

For these reasons, the Administration should stop all efforts to implement the FFRMS and E.O. 11988 as amended until the FFRMS is explicitly limited to federally funded projects; a cost-benefit analysis of the FFRMS is conducted; the technical, scientific, and economic data supporting the FFRMS are released for public comment; a peer-reviewed scientific assessment of how climate change could impact flood risk at local levels is completed; and maps depicting the new “floodplain” definitions are made available.

Sincerely,

Member Name and Company Name