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May 5, 2015

Chief Counsel
Federal Emergency Management Agency
8NE, 500 C Street SW.
Washington, DC 20472-3100

**RE: Revised Guidelines for Implementing Executive Order 11988, Floodplain Management, as amended by Executive Order 13690
Docket ID No. FEMA-2015-0006**

Honorable Chief Counsel:

The California State Association of Counties (CSAC) appreciates this opportunity to offer comments on the Revised Guidelines for Implementing Executive Order 11988, Floodplain Management dated January 28, 2015.

CSAC represents all 58 counties in California before the State Legislature, administrative agencies and the federal government. The following comments and recommendations are based upon the technical input provided by our member counties,

1. The intent of the Federal Flood Risk Management Standard (Standard) appears to be focused on new construction, post-disaster reconstruction, and major renovation. Please confirm that the FFRMS would only apply to these conditions, when federal funds or lands are involved.
2. Section 2(a)(1) of the Guidelines indicate each agency shall determine when a proposed Federal action will need to comply with the new Standard. The Federal Emergency Management Agency (FEMA) indicated at its March 25, 2015 Webinar that it would be the responsibility of the Federal agency and not the local agencies to determine which projects need to meet the new Standard's requirements. Clarification should be added to Section 2(a)(1) to explicitly indicate that local agencies are not responsible for ensuring that qualifying projects are meeting the requirements of this Standard. This proposed clarification can help to ensure that all Federal agencies interpreting these Guidelines will develop their policies and procedures to coincide with the Guidelines intent. Section 6 should also be revised to clarify that it will not be the local agencies responsibility to review and verify a new floodplain boundary and the methods by which they were determined.
3. Clarify that the standard should be applied only to federally funded actions, federal lands, or federally constructed projects. Incidental federal regulatory actions, such Clean Water Act Section 404/402/401 permitting activities for projects that do not use federal funds or are not located on federal property, should not be required to comply with the new federal flood standard. Specifically, page 14, line 458, reference to "permit" should be clarified to mean permits for activities on federal lands, not regulatory and environmental permits for activities on non-federal lands.

4. The implementation guideline should identify the opportunity for federal agencies to consider a grandfathering clause for planning level or feasibility studies such as Corps of Engineers' feasibility studies. On-going feasibility studies should be exempted from new standards through a grandfathering procedure.
5. The implementing guidelines should acknowledge the ability for regional agency offices, such as Corps of Engineers' Division or District offices, to have limited delegated authority to deviate from the new standards. Subsequently, federal agencies would have to develop agency specific procedures for the exercising the delegated authority.
6. Several definitions are vague and difficult to implement. Specifically, definitions of "Critical Action" and "Facility" on page 3 are overly broad.
7. The implementing guidelines should acknowledge that State and local procedures for public comment and engagement can be allowed to fulfill the new Standard's requirements for early public review.
8. Page 10 states that "(1) all agencies are covered; (2) all actions are covered." Will federally funded transportation improvements be required to comply with the new Standards? Specifically, will roadway preservation and improvements funded by the National Highway Performance Program or Surface Transportation Program be required to comply with the new Standards?
9. Page 27, lines 929-931 – This section acknowledges factors such as insignificant impacts or short duration impacts and allows for an altered or shortened decision-making process. This approach should be expanded and a de minimus category should be created for activities that are exempt from analysis.
10. Page 29, line 1009 – Does the "practicable" criteria allow consideration of economic feasibility?
11. Do the new Standards apply the National Flood Insurance Program? Please clarify in either case.
12. Sections 3(a) and 3(b) reference elevation requirements for residential and non-residential structures. Clarification should be added to these Sections to indicate that the requirements of this new Standard will not be applied to a structure in the floodplain merely because it has a Federally-backed mortgage, but it would apply if Federal funds are used to modify or mitigate a flood risk to the structure.
13. The draft Guidelines should be revised to ensure Federal actions do not reduce the current level of flood protection capacity provided by existing facilities. Proper maintenance of facilities is required for FEMA's Levee Certification Program and the Army Corps' Rehabilitation and Inspection Program. These Guidelines should

acknowledge and address conflicts between this Executive Order and the following listed actions.

- a. Designating critical habitat and imposing maintenance constraints in engineered flood protection facilities, such as not allowing vegetation removal.
- b. Preparing habitat recovery plans that place constraints on facility maintenance, change facility templates, or impose operational constraints on flood protection facilities.
- c. Imposing permit conditions that prohibit or constrain vegetation and sediment removal from facilities not designed to accommodate it.
- d. Developing regulatory policies that prolong the permitting processes or shorten the permit expiration dates for facility operation and maintenance.

14. The draft Guidelines should clearly indicate that the Federal agencies, in their efforts to meet the new standards, should have sufficient resources and means to maintain the new standard level of protection.

Thank you for your consideration of these comments and other comments offered by individual California counties. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Karen Keene". The signature is written in a cursive, flowing style.

Karen Keene
CSAC Deputy Director of Federal Affairs