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TESTIMONY

Association of State Floodplain Managers, Inc.

before the
House Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings and Emergency Management

“U.S. Mayors Speak Out: Addressing Disasters in Cities”

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The Association of State Floodplain Managers (ASFPM) thanks this Subcommittee – Chairman Norton, Ranking Member Diaz-Balart and members of the subcommittee – for the careful attention you are paying to the recommendations of our Nation’s mayors concerning response to and recovery from disasters affecting cities and communities. We believe this shows your recognition of the central role of local governments in dealing with the disasters that inevitably affect many communities every year. Disasters are local, and the leadership and responsibility for response and recovery must be at the local level. The role of the federal government and State governments is to support those efforts when disasters are so large that they overwhelm local resources.

We also thank you for your leadership in acting on needed revisions in the Stafford Act by reporting out H.R. 3377 last year. We appreciate the opportunity to discuss the Conference of Mayors’ report and to offer some additional recommendations for Stafford Act amendments (following comments on the report) and welcome the opportunity to answer your questions.

ASFPM and its 29 Chapters represent over 14,000 state and local officials and other professionals who are engaged in all aspects of managing and mitigating flood risk, to address the loss of life and property from natural hazards. These aspects include land management, hazard mitigation, mapping, engineering, planning, building codes and permits, community development, hydrology, forecasting, emergency response, water resources and insurance. Most of our members work with the Nation’s 21,000 flood prone communities struggling to reduce their losses from all flood related hazards. While we are, naturally focused on flood disasters, we note that floods are the Nation’s most frequently occurring and costly disasters. In addition to promotion of wise floodplain management and disaster mitigation policies and practices, many of our members are directly engaged in both the response and recovery phases following disasters. Furthermore, if mitigation is not considered in the response and recovery phases, our communities lose the opportunity to become resilient and sustainable. For more information about the Association, please visit <http://www.floods.org>.

GENERAL COMMENTS ON THE CONFERENCE OF MAYORS' REPORT

This is a useful document, reflecting the direct experiences of mayors and local officials who have dealt with disasters. It includes many recommendations within our field of expertise that we agree with and support. However, there are a number of recommendations that we have concerns with and some that we do not support. In this testimony, ASFPM is commenting only on the recommendations that relate to the areas of expertise of our members.

The role of local government is central to planning for and managing disaster response, recovery, and mitigation. Local officials are the first responders, guide the response and recovery, provide facilities and capabilities to bring about effective response and recovery and have the authorities to make the many decisions that are necessary in the aftermath of a disaster. The report effectively makes that clear and also points to the need for improved streamlining and coordination with state and federal governments. We agree with both of these observations, but would raise the caution flag with respect to some of the recommendations for removal of limitations and compliance with regulations. In being responsive to local needs, local governments often reflect the desire to return to normal as soon as possible. Unfortunately, this often means “returning to normal in the same manner as before” with little regard to improving community and individual resiliency from hazards. Anything thought of as slowing down this process is seen as an impediment. While there are steps that can be taken to remove or adjust statutory or administrative impediments to rapid response and integration of hazard mitigation into recovery activities, it would be unwise to bypass what appear to some to be inconvenient limitations and restrictions in the interest of rapid return to “normal” conditions when those conditions actually contributed to the damage and would simply set the community up for a repeat of the same consequences in the future.

While we note the recommendation that a definition of catastrophic disaster be developed and that a different set of mechanisms be established to govern response and recovery in those catastrophic situations, we are concerned with what appears to be a call for easier access to funds with fewer restrictions under those circumstances. In particular, we are concerned with the recommendation to bypass state governments. Every level of government has a role and responsibility in disaster situations. Furthermore, even if a definition of a catastrophic disaster is

developed, the processes and procedures should not differ from any disaster response and recovery. Creating differences would simply slow the process since everyone involved would have to learn and implement two different processes.

While we agree that streamlining relationships is important, it is also important to recognize the key coordinating role of state governments. If FEMA had to coordinate more than 25,000 separate local governments – ranging from the largest cities to towns with fewer than 1,000 citizens – it would be a daunting, complex, expensive, and potentially more time-consuming effort. A more effective approach, which should be piloted in selected states, would be to implement the current Stafford Act authority to delegate administration of the Hazard Mitigation Grant Program to qualifying States. This provision of the Stafford Act, passed ten years ago as part of the Disaster Mitigation Act of 2000, has still not been implemented. A similar authority for State assumption of the Public Assistance and Individual Assistance programs may be appropriate. [See below for ASFPM Recommendation C.]

ASFPM firmly believes that local and state governments which take steps to lessen their own risks should be recognized for their efforts to take responsibility for their risks by such means as improved cost shares. Ironically, many of our disaster assistance programs and systems actually discourage local officials and citizens from pro-actively taking steps to reduce their risk by providing more assistance to those who have done less to protect themselves. To bypass restrictions and intergovernmental coordination and to provide for easier access to federal funds in one community can discourage another community from doing the right thing and assuming responsibility for risk. This is not fair to the Nation's taxpayers.

ASFPM agrees with the many observations in the report about ways to better integrate initial disaster response with genuine, sustainable recovery. There is a need for the federal government to better coordinate its available assistance across agencies and to maintain a longer post-disaster presence that is better proportioned between initial response and longer-term recovery. Also, there is a need for states to develop systems to expedite service and funding.

SPECIFIC COMMENTS ON THE REPORT OF THE CONFERENCE OF MAYORS

The following comments are organized to follow the format of the Conference of Mayor's report. (ASFPM's additional recommendations follow these comments.) Our most extensive specific comments deal with the section of the report on Hazard Mitigation. We are pleased to note the strong recognition of the mayors of the importance of utilizing mitigation assistance early and often in the course of response and recovery.

CATASTROPHIC DISASTERS

- **First Bullet:** ASFPM believes it is too broad to waive all requirements and compliance simply because an event is catastrophic. Doing so could lead to rebuilding that does not adequately account for prevalent hazards and would not promote the resilience achieved by decisions to rebuild in less hazard-prone areas.
- **Second Bullet:** Sec. 403 pertains to "essential assistance." Rather than a blanket elimination of the non-federal cost share, ASFPM believes it reasonable to provide for an adjustment of the cost-share based on circumstances.
- **Sixth Bullet:** ASFPM does not agree with a blanket waiver of the non-federal share. Current authority allows the minimum 25% non-federal share for Public Assistance to be adjusted under certain circumstances, and there have been disasters where the non-federal share has been reduced to 10% or even to zero. ASFPM strongly urges Congress to authorize a parallel adjustment to the cost-share formula for Section 404 Hazard Mitigation Grant Program so that if it is adjusted for Public Assistance, it is automatically adjusted for HMGP. As more States and communities work to implement seamless mitigation of public facilities during post-disaster repairs, having the two programs aligned in this manner will greatly reduce the complexities and foster more post-disaster mitigation. [See below for ASFPM Recommendation D.]
- **Seventh Bullet:** ASFPM recommends that, rather than provide Federal funding for administrative functions related to HMGP (presumably to identify specific projects, determine technical feasibility, develop benefit-cost analyses and other documentation, and prepare grant applications), FEMA should accept the documented costs of those activities as pre-application

costs that are eligible under the grant and, importantly, those costs should not be included in the cost of the project that is used in the benefit-cost analysis. However, ASFPM does recognize that there are often needs for technical assistance in developing these applications. Both states and FEMA should ensure that all necessary technical assistance is provided in a timely manner. FEMA should ensure that appropriate staff and resources are available at JFOs and after the JFOs close.

- Ninth Bullet: ASFPM is concerned about the suggestion that private and for-profit utilities be eligible for disaster assistance. While we realize that the infrastructure of for-profit utility companies is exposed to catastrophic events, we are cautious about the use of Federal disaster relief dollars to support for-profit entities. It is conceivable that some for-profit companies could reduce their routine maintenance work with the expectation that should a catastrophic event occur, Federal funds would be available for cleanup and recovery. Planning and designing for natural hazards should be a part of every business model.

HAZARD MITIGATION

- First Bullet: As noted above, ASFPM does not agree that HMGP funds should be 100% federal funds, although we endorse adjusting the non-federal cost-share for HMGP when the cost-share is adjusted for Public Assistance. Mitigation must not be viewed only as a Federal responsibility. Citizens and local governments have long made land use decisions that put people and property at risk, and thus must share in the cost of living at risk. The best solutions are those that are embraced by communities and that, ideally, satisfy more than one community objective. [See below for ASFPM Recommendation D.]
- Second Bullet: ASFPM does not agree with a statutory change to the way HMGP funds are allocated. The impact of disasters on each community varies, even in events that are catastrophic for one or more communities there are others nearby in which the impact is less severe. The current approach allocates the funding to the State, and States are required to establish mechanisms to determine priorities. Allocation directly to communities in proportion to damage would result in many communities that have identified viable projects but that sustained little damage, having no opportunity to seek funding, while communities with significant damage but no viable pre-planned initiatives, would have access to funds. Currently, States may elect to allocate funding by formula. For example, Florida has a three-

tiered allocation system that gives each county (and the municipalities in the county) first priority to use HMGP funds generated by Federal expenditures in the county. This system would be much less effective in States that do not experience frequent, large events.

- Third Bullet: ASFPM endorses facilitating access to HMGP funds, but believes changing the timing of fund availability is not the most significant impediment – it is the logjam in the development projects and FEMA’s review of applications. As more communities have developed hazard mitigation plans in advance of disasters, they have more awareness of eligible projects. However, they often need support to develop those early plans to the point that they can be submitted as applications for funding. ASFPM believes that each State should be provided a minimum amount of technical assistance funding to support development of applications. In addition, we believe that FEMA must acknowledge that many States are capable of reviewing applications and should not be expending staff time and dollars replicating State reviews. [See below for ASFPM Recommendation B.]
- Fourth Bullet: ASFPM sees some value in further discussion of pre-certifying certain mitigation activities, but care would have to be taken to ensure that those activities are feasible and cost-effective. One obvious activity that could be pre-qualified is acquisition of substantially-damaged homes to remove them from the highest risk flood hazard areas and return the land to permanent open space.
- Fifth Bullet: Mandating that a certain percentage of the grantee (State) administrative costs be flowed down to communities does not recognize the variety of State programs and would likely significantly and adversely affect many State mitigation programs. Under HMGP, subapplicants (communities and eligible non-profit organizations) can include certain administrative and management costs as a project cost, which are then included in the benefit-cost analysis. ASFPM endorses excluding administrative and management costs from the B:C ratio. ASFPM also recommends that costs to comply with Federal environmental requirements be covered by Federal funds, but excluded from the B:C ratio. [See below for ASFPM Recommendation E.]
- Sixth Bullet: Most states already administer commercial and residential building codes that are based on nationally-recognized model codes. Additional mitigation funding should encourage new actions that reduce vulnerability to hazards, such as more stringent

requirements than those found in the model codes and standards, and not reward what is the status quo for most states.

- Seventh Bullet: We do not fully understand the intent of this recommendation. It appears to recommend approving projects that appear eligible but that may ultimately not be approved. We do not see how that would foster more effective mitigation.
- Eighth Bullet: Most of the costs of the listed activities are HMGP-eligible costs, but only if a project is selected for funding. As described in the Third Bullet above, ASFPM believes that each State should be provided a minimum amount of funding to support development of applications and those funds should not be contingent upon ultimate approval of the projects that the State worked on.
- Ninth Bullet: The Stafford Act does not require multi-jurisdictional plans, although regulations provide for such plans and many States encourage them. Every community may develop its own mitigation plan (unless constrained by State requirements). Thus, a town may have a mitigation plan and be eligible for HMGP funding even if the county in which it is located has decided not to develop a mitigation plan.
- Tenth Bullet: The Stafford Act does not have an explicit list of activities that are eligible for HMGP funds, and ASFPM does not endorse development of such a list. To be eligible for HMGP, the Stafford Act only requires that an activity reduce future damage, be feasible, be cost-effective, and meet applicable regulatory requirements, including environmental regulations. Thus, the current authority does not preclude the activity referred to as “demolish-rebuild.” Only by policy is this activity deemed by FEMA to be ineligible. ASFPM supports demolish-rebuild with some cautions – we do not believe that this approach should be allowed in riverine floodways and coastal high hazard areas.
- Eleventh Bullet: We do not fully understand the intent of this recommendation.
- Twelfth Bullet: It has been many years since FEMA developed the list of grant-funded activities that are “categorically excluded” and do not require detailed environmental review. ASFPM recommends that FEMA report on activities that are not on the list and expand the list to include those that environmental reviews have indicated do not need that level of scrutiny.

- Thirteenth Bullet: ASFPM endorses FEMA’s recent efforts to improve the application submittal and approval process, but believes there is much more that can be done. FEMA must improve consistency between Regional Offices and, in particular, must continue to improve the time it takes to review applications. As we have noted above, FEMA must rely more on State reviews, especially reviews of project types that have become routine (e.g., buyouts and elevations).
- Fourteenth Bullet: This recommendation appears to pertain to the Public Assistance program, under which funds are provided only to repair the damaged portion of a facility. We agree that when mitigation is considered under Public Assistance, for example retrofitting a public facility, the facility as a whole should be considered, not just the damaged elements.
- Fifteenth Bullet: We do not fully understand this recommendation. The Stafford Act already requires that reconstruction and repairs conform to applicable codes and standards.

INDIVIDUAL AND HOUSEHOLD ASSISTANCE

- Recommendation regarding the National Disaster Housing Plan (bottom of page 4): In the rush to recover, all too often property is repaired to its pre-damage condition which means it remains vulnerable to future events. While ASFPM appreciates the importance of emergency funding for repair of permanent structures, we must keep in mind that damaged buildings that are located in mapped special flood hazard areas must be evaluated to determine whether the damage constitutes substantial damage as defined by the NFIP and the model building codes. Regardless of the cause of damage, buildings in floodplains must be brought into compliance with the current rules if they sustain substantial damage (determined if the cost to repair to the pre-damage conditions equals or exceeds the pre-damage market value of the building).

INSURANCE

- Fourth Bullet: ASFPM cautions that many local floodplain management officials already have to deal with situations where people who received both Individual Assistance and flood insurance claim payments quickly begin repairs without obtaining permits. The intent of the recommendation to waive proof of insurance requirement appears to be to speed up delivery of IA funds. We also question how expensive and complicated it would be to manage a reimbursement process. And we are concerned that people would drop their insurance

(specifically flood insurance). Too many people still do not understand that Individual Assistance does not pay to repair flood-damaged homes, and they could misinterpret the proposal as more than what it appears to be.

OTHER DISASTER GRANTS

- First Bullet: ASFPM does not support the recommendation to create a CDBG-like approach for HMGP. Not only would it circumvent State priorities and procedures established for HMGP as noted above, FEMA does not have the resources to deal directly with a large number of communities. While some States may not yet have efficient mitigation support capabilities, we do not believe the solution is to change the entire approach and bypass states. In addition, we believe that most of the problems that result in lengthy approval periods are related to FEMA's duplicating State reviews and having insufficient resources. Building stronger State programs will be more efficient and effective.
- Third Bullet: ASFPM has long endorsed eligibility for building inspectors and building officials who often must deal with a huge increase in workload that far exceeds their capacity to respond. [See below for ASFPM Recommendation A.]
- Fifth Bullet: ASFPM agrees that removal of slabs and foundations should be an eligible expense under Public Assistance when such funds are used to remove substantially damaged homes. It is more cost-effective to have all demolition done when the contractor is on-site. In addition, old foundations rarely have residual value because they typically do not meet current building code requirements.
- Tenth Bullet: ASFPM is concerned that emergency preparations and response activities are being equated with mitigation actions. FEMA currently has four mitigation programs where funds can be accessed to undertake mitigation measures before a disaster event occurs. Mitigation actions permanently reduce risk and thus activities such as precautionary evacuations and emergency reinforcement or repair of levees should not be eligible for mitigation grant programs. Some of these activities for levees should not be eligible for mitigation funds as they are not mitigation (long term actions) rather these are actions for which the community is responsible as a condition of having chosen structural flood control measures as their mitigation option.

FEMA ADMINISTRATION

ASFPM concurs with the suggestion that FEMA personnel (permanent and disaster staff) and contractors should be focused on the mission. While compliance with the rules is important, of course, all too often we hear that FEMA's handling of mitigation seems to focus on finding what's wrong with proposals and saying "no," rather than facilitating improvements to proposals and providing support to States and communities who are committed to reducing damage.

- **Third Bullet:** It appears the intent of this recommendation is to require FEMA to accept, without review, the plans, designs and engineered performed by "certified local professional staff." ASFPM supports the idea that certain documents should be signed and sealed by registered professional engineers and architects (and often State laws and codes require certification of certain types of work). However, we recommend that each such sealed document be accompanied with a statement that clearly identifies what the professional is certifying. Also, ASFPM does not believe that the Stafford Act should be amended to simply take such certifications as final evidence without some level of review by states or FEMA.

ASFPM RECOMMENDATIONS FOR STAFFORD ACT AMENDMENTS

A. Authorize Public Assistance for Local Costs of Damage Inspection and Permitting

FEMA/DHS has consistently denied reimbursement of costs associated with private property damage inspections and permitting, despite the Congressional finding in the Stafford Act that "because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary."

Because FEMA's denials have cited limitations in Sec. 403 and Sec. 502(b), the Stafford Act should be revised to explicitly provide for reimbursement of costs incurred by communities to perform damage inspections, administration of codes and ordinances, and permitting of repairs and reconstructions when the damage to public and private property exceeds the capacity of the local agency responsible for those functions. This is especially critical in catastrophic disasters.

B. Modify Existing Authority in the Pre-Disaster Mitigation Program to Provide Annual Funding for State Technical Assistance

To foster development and maintenance of State Mitigation Program capacity to provide technical assistance to eligible subgrantees, the current authority that provides a minimum annual allocation to states should be changed. Rather than allocate a minimum amount for mitigation projects, the funds should be allowed to be used to support states to develop the ability to provide assistance on an on-going basis, not tied to specific projects. State technical assistance will improve identification of mitigation opportunities in both pre-disaster and post-disaster periods, will result in improved mitigation plans and grant applications, and will help significantly shorten the delivery of Sec. 404 hazard mitigation grant funds (see Recommendation C).

C. Implement Existing Authority to Delegate HMGP to Qualified States and Continue to Improve Efficiency of Post-Disaster Delivery of Mitigation Funds

FEMA has not initiated action to implement Sec. 404(c) Program Administration by States (42 U.S.C. 5170c) which was authorized ten years ago. States with approved “enhanced” hazard mitigation plans prepared pursuant to Sec 322 are poised to assume the additional responsibilities and authority. Delegation to one or more of the more active states will yield significant benefits, including faster processing of grant applications and awards and obligation of the program funds. Many of the communities that have very active mitigation programs are in these same states.

Now that many of the Nation’s high risk communities have pre-disaster mitigation plans (and a growing number also are pre-designing projects), they need to have faster access to post-disaster mitigation funding (HMGP). It is common for decisions on applications to be made more than 12 months after a declaration, which leaves communities and property owners in an uncertain environment. Sometimes owners cannot wait that long and must invest their own funds and insurance proceeds in homes that are scheduled for floodplain buyouts. Most states perform a significant amount of review and forward eligible applications with recommendations for funding. FEMA should not take several more months to perform much of the same work. Congress should urge that FEMA continue to improve delivery of post-disaster mitigation programs and urge that FEMA strive to approve grant applications within 90 days of receipt.

D. Provide Authority to Increase Federal Contribution for Hazard Mitigation

There are circumstances when the magnitude of a major disaster is so significant that the federal contribution under Public Assistance for repair and recover can be increased to 90 percent. It is appropriate that the same flexibility be authorized for the Hazard Mitigation Grant Program.

When the cost-share for Public Assistance is changed, the same change should apply to HMGP.

E. Costs Mandated by Compliance with Federal Requirements

Some mitigation projects trigger compliance with certain federal requirements that are not related to damage reduction, such as environmental remediation, Uniform Relocation Act compliance, and others. FEMA requires that those costs be included in the cost of the project, with the end result that many otherwise feasible and cost-effective projects are not funded. The Stafford Act should be amended to clarify that such costs are eligible to be covered by the Hazard Mitigation Grant Program and the Pre-Disaster Mitigation grant program, but that such costs shall not be used to determine cost-effectiveness.

F. Independent Evaluation of State and Local Hazard Mitigation Planning Efforts

In the past ten years, more than 15,000 jurisdictions have taken part in developing and implementing local hazard mitigation plans. A provision of the Disaster Mitigation Act of 2000, mitigation planning is an effective way to systematically foster the incorporation of mitigation into many elements of a community. Currently, most local mitigation plans are being updated for the first time, and most state plans are being updated for the third or fourth time. ASFPM believes an independent evaluation of the Nation's mitigation planning efforts is necessary to better inform future program and statutory changes that may be necessary.

The ASFPM represents the federal government's state and local partners in the continuing quest to reduce flood damages and disasters. Thank you for the opportunity to provide the wisdom and expertise of our members on these important issues. For more information, please contact Larry Larson, ASFPM Executive Director (608) 274-0123 (larry@floods.org).