



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

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Sept. 25, 2017

The Honorable Brock Long, Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20472

RE: Substantial Damage Determinations, Public Assistance and EMAC

Dear Administrator Long:

First, congratulations on your appointment as FEMA administrator. The Association of State Floodplain Managers has been a long-standing FEMA partner since the founding of our organization in 1977, supporting effective public policies and programs that reduce flood losses and recognizes and protects natural floodplain functions. Our 17,000 members and 36 chapters are dedicated to this mission and are the boots on the ground local and state officials, as well as the scientists, engineers, planners and others who work on flooding issues every day and implement the land use requirements of the National Flood Insurance Program (NFIP). I was looking forward to meeting you at one of the strategic planning sessions last week that was canceled – certainly understandable! I am sure we will be able to meet sometime soon.

The main reason I am writing today is to ask your intervention to overturn a nearly 20-year-old FEMA policy that was based on erroneous assumptions and conclusions. This policy is a huge hurdle to a faster and more resilient recovery for those in Harvey, Irma and Maria – flood events of national significance. It has to do with FEMA's interpretation of what is considered a Category B Emergency Protective Measure under the Public Assistance program in the most current Public Assistance Program and Policy Guide 2.0. **Essentially ASFPM is arguing that substantial damage determinations under a community's floodplain management/building code, and floodplain management/building permit processing and associated building inspections meet the definition of an emergency protective measure as defined in the PAPPG and should be consider reimbursable expenses under Category B.**

The genesis of the policy statements in the 2017 PAPPG can be traced back to an older FEMA policy RR9523.2. It was the 1998 version of RR9523.2 that first declared substantial damage inspections and post-disaster code enforcement activities as ineligible for reimbursement under Category B of PA (prior to 1998 they were eligible).

Dedicated to reducing flood risk and losses in the nation.

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Because these types of activities are interpreted as not eligible for reimbursement, today, states and communities will not use EMAC for post-disaster determinations of damage and permitting to rebuild after flooding as they will have to bear the entire costs themselves. This in turn leads to the inspections and substantial damage determinations being done much later in the process after folks have already begun repairing/rebuilding – often without the required permits. And it leads to a largely untenable political situation locally, which is to confront disaster survivors who have already repaired and insist that they must now raise their homes or demolish them. Or, for those survivors who follow local permitting procedures, the inability to do these timely inspections and issue permits for rebuilding means they are likely living in unhealthy and unsafe conditions for weeks if not months due to the lack of capacity of local permitting offices.

Given the billions of dollars we will spend recovering from Irma and Harvey, it is almost unfathomable that we cannot figure out how to better utilize EMAC for this health/safety purpose. The reality is that rebuilding starts within days of the water receding and people are going to make repairs, permits or not. In communities with hundreds of thousands of substantial damage determinations to make and permits to issue, it is an impossible task with existing staff and resources. Even in large cities like Houston, where it has been reported that over 100,000 structures have been impacted, the building/permitting department will not have the capacity to process these in a timely manner. And as we have seen time and time again, we will likely see homes rebuilt not in compliance with codes. And this problem gets much worse in smaller communities with even less capability than Houston. Delays in this permitting process results in immediate threats of significant additional future damage, as does rebuilding in non-compliance with local codes. Both are issues FEMA will have to ultimately deal with whether it be in future disaster costs/assistance or as a compliance issue under the NFIP.

Problem #1: 1998 rationale for policy is based on a fundamental misunderstanding of post-disaster rebuilding processes

One must go back to the 1998 policy to understand the rationale for the prohibition of building inspections (including substantial damage determinations) and post-disaster building permit processing. That policy, referencing to Section 403(a)(3) of the Stafford Act disallows such inspections and permitting activities as " *...not meet[ing] this intent of the Act and are classified more appropriately as related to construction and repair, rather than to safety.*" It justifies this conclusion with the following argument:

Normally, increased code enforcement activity as a result of a disaster is not considered essential to meeting the immediate threats to life and property. In fact, code enforcement reflects the normal rebuilding process, rather than the immediate response efforts designated under section 403. Building permit fees (usually based upon a percentage of construction cost) are used to cover the costs associated with the processing of a permit, reviewing of drawings, details and specifications, performing periodic and final site inspections for codes compliance, and permit closure. By establishing an appropriate permit fee, a local building department could provide a means for hiring additional staff to handle an increased rebuilding workload.

This argument couldn't be more misguided. First, this "code enforcement activity," which includes these inspections, is essential to meeting the immediate threats to life and property. By law, property owners cannot begin to make repairs until they get building permits. If they are in a regulatory flood zone and have been flooded, this building permit cannot be issued until a substantial damage determination is conducted. If the community does not have the capacity to do this in a timely way, then the property owner's health is certainly at risk (mold, mildew, damaged utilities, etc), and their property cannot be secured if it needs immediate repairs to prevent entry, further damage, etc. Floodplain managers have encountered many survivors of floods who "wait it out" in their moldy damaged home because they are not willing to tear out walls and do other activities that need a building permit because they can't get one!

Second, the notion that code enforcement reflects the normal rebuilding process and that, in turn, generates permit fees, which, in turn, means more money to hire staff to get this job done, has zero basis in reality! Certainly this is true during a normal permitting process, but we are talking about the aftermath of a federal disaster where nothing is normal and the sheer scope of rebuilding immediately far exceeds the capacity of any single building department. Further, elected officials most often reduce or eliminate permit fees as a way to lessen the impact on flood survivors. There is most definitely a period of time in the aftermath of a flood disaster that building inspection and permit processing needs are extraordinary and exceeds the capacity of the community and state.

I am attaching the original 1998 policy and a letter ASFPM sent to former FEMA Administrator Mike Brown in rebuttal from 2004.

Problem #2: Definition of "immediate threat" in the PAPPG

Page 44 of the PAPPG has an illogical explanation of immediate threat for flood incidents. It indicates an immediate threat is a threat from a five-year flood only as something that can be reasonably be expected to occur within five years of the declared incident. That is a gross misrepresentation of the threat of flooding, and is a misperception that floodplain managers hear often. The reality is that anywhere identified as a 100-year or 1% chance floodplain is at high risk of flooding (just one of many examples where this is stated is North Carolina's flood mapping program's webpage explanation of FEMA flood zones:

<http://fris.nc.gov/fris/metadata/FloodZonesAE.htm>).

And remember, the mapped 1% chance floodplain is only as good as our years of record in streamgaging and is not yet based on any future conditions. In just the past three years alone, Houston has experienced three 500-year flood events. ASFPM argues that what FEMA defines as an area is in immediate threat of flooding in policy is considered as a high risk of flooding on FEMA's FIRMs – in other words, in the mapped high risk or 1% chance floodplain. And this is also supported by FEMA's own policies related to temporary housing where such units are generally discouraged in the 1% chance floodplain and if they are located in such an area, they must be elevated to the 100-year flood elevation. The terms "immediate threat" and "high risk" is a distinction without a difference.

September 25, 2017

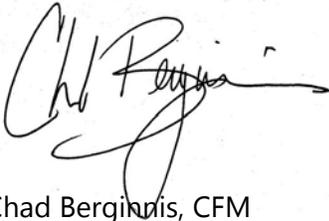
And even still, the mapped FEMA floodplain is not enough. The poster child of this problem is Houston where nearly 60% of historical flood claims are outside of the mapped 1% chance floodplain. Why? Because the chronic flooding is caused by urban stormwater – a type of flooding that FEMA does not map. Often, when a community is aware of a flood risk that FEMA hasn't or will not map, they will regulate development in it. **Therefore, ASFPM recommends that for flood disasters, "immediate threat" be defined as either the FEMA mapped 1% chance floodplain and any other flood-risk areas that a community regulates for the purposes of flood loss reduction.**

In conclusion, our nation's floodplain managers are willing and able to assist and be deployed to ensure these initial rebuilding steps are done properly and the foundation of future resiliency. They represent unused capacity in the system – they are knowledgeable about floodplain management and building codes, they understand the regulatory standards of the NFIP, know how to do substantial damage determinations, and how to properly issue floodplain management permits for rebuilding. However, we cannot do this when the EMAC system is unworkable because of the unavailability of any form of reimbursement of these essential actions post disaster. Since every subsequent step of doing hazard mitigation is based on these initial inspections, the policy in existence today undermines any effort that FEMA, the state and even community, undertakes to be more resilient.

We just need your help to make this a reality.

Please do not hesitate to contact me if I can answer any questions.

Respectfully,



Chad Berginnis, CFM
Executive Director

CC: Eric Heiberger, FEMA
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