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Rules Docket Clerk
Office of the General Counsel
Federal Emergency Management Agency
500 C Street, SW., room 840
Washington, DC 20472

November 9, 2000

Re: 44 CFR Part 65 RIN 3067-AD13 National Flood Insurance Program (NFIP); Letter of Map Revision Based on Fill Requests

I am writing on behalf of the **Association of State Floodplain Managers (ASFPM)** in response to the referenced proposed rule regarding Letters of Map Revision based on Fill (LOMR-F). The comments listed below were provided by States and other floodplain managers who assisted the ASFPM Mapping and Engineering Standards Committee and Flood Mitigation Committee in preparing these comments.

General Comments

We understand the issues which preclude the continued practice of comparing proposed or existing buildings with Base Flood Elevation data in determining whether or not to issue a LOMR-F. The proposed rule appears to place more emphasis on a local determination that the land or structure is "reasonably safe from flooding" (as defined). Our comment: **While this may have the effect of empowering State and local flood mitigation efforts in some areas, it may allow unwise development in areas which do not have strong local programs.**

Our other general comment is: **FEMA should stop issuing LOMR's Based on Fill**

The LOMR review and issuance process is very demanding on FEMA's resources when the demand is being driven largely by constituents who simply wish to avoid the mandatory flood insurance purchase requirements. We recommend a different approach, which would leave floodplain boundaries unchanged when floodplain lands are filled, but would waive, by letter, the flood insurance purchase requirements. This would have the dual benefits of reducing the resource-intensive process of issuing revised maps while retaining the Special Flood Hazard Area designation for filled land and thus maintaining floodplain ordinance jurisdiction.

Specific Comments

1. The notice refers to both "engineered fill" and "fill." Are the terms intended to be used interchangeably?

2. For consistency, in every place the "lowest floor" is referenced, it should be accompanied by ", including basement," For example, in proposed 65.5(a)(4)(i).

3. Existing regulations at 65.5(a)(6) set forth specifics with respect to compaction, slopes, and erosion protection. The new proposal eliminates those specifics, and replaces them with reference to "best engineering practices" determined to demonstrate that land to be removed from the SFHA is "reasonable safe from flooding" (new 65.5(a)(4)(ii)) On the one hand this allows fill to be designed and constructed to specifications that are appropriate for local soils conditions and the nature of the building to be constructed. On the other, it places the burden on the local official and the certifying design professional to determine appropriate specifications to meet the performance expectation in the new text at 65.5(a)(4(ii).

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4. Under the introductory subtitle "Need for Proposed Rule," a number of items are listed as factors that may influence the risk of structures built on or in filled areas (final paragraph). A significant factor that is not included is duration of flooding. Duration is important because whether the fill becomes saturated is a function of soil conditions that influence the movement of water into the soil (grain size, compaction, volume) and how long water is anticipated to remain in contact with the fill. Slumping of saturated soils may also be influenced by how quickly floodwaters recede.

5. Proposed text for 65.5(c) requires certification: Proposed text references that a registered professional must certify "the items required in paragraphs (a)(3) and (b) of this section." Rather than cite (a)(3), should the reference be to paragraph (a)(4)(i) and (ii)?

6. A registered land surveyor is not qualified to certify that fill meets the "engineered fill' performance criteria required in 65.4(a)(4)(ii). This may be an appropriate place to reference "registered design professional' because some states register professionals other than engineers (such as soils scientists, soils engineers, and others) who are specifically trained and licensed to design earthen fills and to provide such certifications.

7. Proposed text for 65.5(a)(4)(i) clearly requires that "Residential structures built in the SFHA have their lowest floor elevated to or above the base flood." Does this perpetuate the confusion as whether a building on fill is "in the SFHA" ? Also, by qualifying this statement with "residential," the implication is that non-residential buildings may be built with basements into the fill, with the implication that such basements would have to be floodproofed.

8. If the fill is unimproved and proposed to be removed by LOMR-F, is it FEMA's expectation that the certification required in 65.5(b) will cover future construction on/into the fill? Otherwise, if an unimproved fill is removed by LOMR-F, how will the floodproofing requirements for a non-residential basement, as implied by 65.5(a)(4)(i), be imposed?

9. The verb tense of 65.4(a)(4)(i) is confusing, especially given the definition of "reasonably safe from flooding." It should be clear that if a building that has already been built on/in the fill for which a LOMR-F is submitted, or if a fill is unimproved when the LOMR-F is requested, then any existing or future buildings must be certified as "reasonably safe from flooding."

We hope that you find these comments helpful and thank you for the opportunity to provide input on this very important policy issue.

Sincerely,

Lisa S. Holland

Lisa Holland
ASFPM Chair

Cc: ASFPM Board of Directors