

**Attorneys General of New York, California, Illinois,
Iowa, Maryland, and the District of Columbia**

October 18, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
1233 Longworth H.O.B.
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S House of Representatives
233 Cannon H.O.B.
Washington, DC 20515

Re: Enactment of an Updated Federal Flood Standard

Dear Majority Leader McConnell and Minority Leader Schumer; Speaker Ryan and
Minority Leader Pelosi:

In the wake of the devastation caused by Hurricanes Harvey, Irma, and Maria, and in consideration of the hard lessons learned from Hurricane Sandy, we are writing to urge you to act to reduce the public safety risks and costs of future floods on Americans. Specifically, we urge you to enact an updated federal flood standard that would direct federal agencies to require additional risk-reduction and resiliency measures – that take into account the latest scientific information on flood risks, management, and planning – for any federal project proposed in a flood prone area. Such a standard would continue to honor the federal government’s responsibility to assist communities to quickly and effectively recover and rebuild from disasters, while, at the same time, ensuring that it invests in infrastructure projects that are

properly resilient – and protective of public safety – against the risk of floods. An updated federal flood standard is essential to protecting critical infrastructure, taxpayer dollars, and the safety communities across our nation from projected future flooding conditions.

Lessons from Hurricane Sandy: Almost 5 years ago, Hurricane Sandy smashed into the east coast with an intensity and impact of such historical magnitude that it forced our nation to rethink how we prepare for floods. The immense storm caused 159 deaths, \$65 billion in damages and economic loss, left 8.5 million customers without power, and damaged or destroyed 650,000 homes, many of which had never flooded before. In its aftermath, the federal Hurricane Sandy Rebuilding Task Force was created to help guide the long-term recovery effort and promote more-resilient communities in the storm’s wake. After extensive study and consultation with state, local and tribal officials, the Task Force released its *Rebuilding Strategy* that recommended the federal government incorporate future risk assessment such as sea level rise into its rebuilding efforts. The Task Force also recommended that the federal government establish a uniform, nationwide minimum flood risk reduction standard for all federally-funded projects. *See Hurricane Sandy Rebuilding Strategy (2013).*

Guided by these recommendations, President Obama issued Executive Order 13690 to establish the Federal Flood Risk Management Standard (“FFRMS”), which enhanced the nation’s 1977 floodplain management guidelines to require that federal agencies “address current and future flood risk” so that “projects funded with taxpayer dollars last as long as intended.” The flood standard updated federal policy in three essential ways: it directed agencies to consider expanded flood hazard areas to account for current and future flood risks; it outlined three approaches by which agencies could establish the new flood hazard areas; and it encouraged federal agencies to use “natural systems, ecosystems, and nature-based approaches” when developing alternatives to federal actions such as flood protection projects. *See* 80 Fed Reg. 6425 (Feb. 5, 2015).

Federal implementation guidelines were published for public comment, and FEMA held eight public listening sessions across the country to solicit feedback. 80 Fed. Reg. 64008 (Oct. 22, 2015). Federal agencies subsequently initiated rulemakings to incorporate the Federal Flood Standard into their regulations and guidance documents. *See, e.g., Federal Emergency Management Agency (FEMA) [Docket ID: FEMA-2015-0006]; U.S. Army Corps of Engineers [Docket ID: COE-2016-0018]; Department of Housing and Urban Development (HUD) [Docket ID: HUD-2016-0124, RIN: 2501-AD62].* Although these and other agency actions to adopt the standard underwent the required public notice and comment procedures in 2016 and 2017, no final rules have been issued.

The Effect of Revoking the FFRMS: On August 15, 2017, President Trump issued Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure*, which revoked Executive Order 13690 and the FFRMS. The effect of this revocation is that agencies are no longer delineating expanded flood hazard areas to protect federal investments against the likelihood of more severe floods in the future. The revocation also means that federal agencies are no longer required to consider nature-based defenses, such as barrier islands or restored wetlands and marshes, and other natural systems into their flood management and resiliency planning.

Rather, federal agencies have reverted to implementing 40-year old floodplain management policy established under Executive Order 11988 (1977). For example, the U.S. Army Corps of Engineers now states that “no further development or any implementation of the draft Engineering Circular which had been prepared to implement EO13690 and that was shared for public comment in December 2016” would occur, and that instead the agency would revert to its Engineering Regulation 1165-2-26 (1984) on planning, design, and construction of taxpayer-funded Civil Works projects and other activities.¹

Implementing an Updated Federal Flood Standard is Common Sense: By enacting an updated, protective federal flood standard, other federal agencies would be permitted to use the same actionable, scientific information that the U.S. Military uses to evaluate and address foreseeable risks to federal investments. On September 18, 2017, the Senate passed the National Defense Authorization Act for Fiscal Year 2018 (H.R. 2810), which requires the Secretary of Defense to prepare a report on the vulnerabilities of military installations to sea level rise and climate change over the next 20 years. We ask that you enact an updated federal flood standard so that all federal agencies consider these same future risks in their federal investment decisions to protect civilians.

An updated federal flood standard should direct federal agencies to require additional risk-reduction and resiliency measures for any federal project proposed in a flood prone area. Federal agencies should also be directed to consider “natural systems, ecosystems, and nature-based approaches” when developing alternatives to federal actions such as flood protection projects, as they are often cost-effective. For instance the Army Corps has developed a suite of tools to identify likely future flood hazard areas due to changes in land use and land cover, sea level rise and higher-magnitude precipitation events. Enacting an updated federal flood standard would enable our nation’s civil engineers to utilize this critical information in federal infrastructure planning, thus ensuring our citizens and taxpayer dollars are protected. See www.corpsclimate.us.

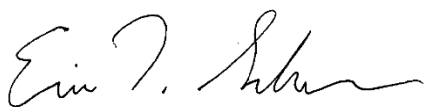
¹ See: <http://www.iwr.usace.army.mil/Missions/Flood-Risk-Management/Flood-Risk-Management-Program/About-the-Program/Policy-and-Guidance/Federal-Flood-Risk-Management-Standard/>

The devastating and costly impacts from Hurricanes Harvey, Irma and Maria – underscore the critical importance of ensuring that federally-funded projects can withstand severe flooding experienced now and in the future. Hurricane Harvey dumped over 60 inches of rain on some parts of Texas, killing 80, flooding hundreds of thousands of homes, and resulting in an estimated \$150 billion and \$180 billion in damages.² Hurricane Irma catastrophically impacted the U.S. Virgin Islands, reducing parts of the U.S. Territory to rubble before making landfall in Florida, where it killed 75, forced 6.5 million people to evacuate their homes, and caused an estimated \$70 billion economic loss.³ Still reeling from the effects of Hurricane Irma, Puerto Rico and the U.S. Virgin Islands were then catastrophically hit by Hurricane Maria, rendering 3.5 million people without power⁴ and tens of thousands homeless.⁵ The Defense Department has dispatched thousands of troops to conduct search and rescue operations and bring critical aid to the Territories’ residents.⁶

Congress has thus far appropriated \$15.2 billion in Hurricane relief funds. In considering non-emergency supplemental Hurricane relief and rebuilding funds for the areas hit by these recent storms, we urge you to require federal agencies to apply an updated federal flood standard to all federally-funded projects to ensure that federal investments can withstand both current and future projected floods. These agencies should also be encouraged to consider natural systems, ecosystem processes, and nature-based approaches to flood protection.

We strongly support full implementation of updated federal flood standard that protects critical infrastructure, taxpayer dollars, and the safety of communities across our nation from projected future flooding conditions. The lives of American citizens and the well-being of the American economy depend on it.

Sincerely,



ERIC T. SCHNEIDERMAN
Attorney General of New York



XAVIER BECERRA
Attorney General of California

² See <https://www.theguardian.com/us-news/2017/sep/01/hurricane-harvey-death-toll-rises-houston-residents-return>; <http://fortune.com/2017/09/03/hurricane-harvey-damages-cost/>

³ <https://www.nbcnews.com/storyline/hurricane-irma/why-irma-s-impact-economy-will-be-worse-harvey-s-n801696>

⁴ <https://www.nytimes.com/2017/09/21/us/hurricane-maria-puerto-rico.html>

⁵ <https://www.cnbc.com/2017/09/13/the-us-virgin-islands-devastated-by-hurricane-irma-are-in-serious-need-of-aid.html>

⁶ <https://www.stripes.com/news/military-conducting-multiple-operations-to-help-hurricane-maria-struck-puerto-rico-virgin-islands-1.489496#.WclcB7KGOFo>



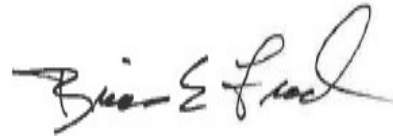
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