



FEMA

March 30, 2012

The Honorable Rick Scott  
Governor of the State of Florida  
The Capitol  
400 S. Monroe Street  
Tallahassee, Florida 32399-0001

Dear Governor Scott:

It has come to our attention that the State of Florida's House Bill 503 is before you for consideration, and, if signed, will become Florida law effective July 1, 2012. As you consider this legislation, the Federal Emergency Management Agency (FEMA) would like you to be aware of our concern that certain provisions of the bill might impede the State's ability to enforce required components of the National Flood Insurance Program's (NFIP) floodplain management regulations and may jeopardize the State's voluntary participation in the NFIP. Specifically, under House Bill 503, a county or municipality *"may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any State or Federal agency unless the agency has issued a final agency action that denies the Federal or State permit before the county action on the local development permit."* FEMA's concern is with the portion of the provision in italics.

As explained further below, FEMA requires as a condition of participation in the NFIP that a community adopt floodplain management regulations that meet or exceed the minimum requirements of the NFIP. One of the provisions that communities must adopt is the requirement to review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required. We are concerned that House Bill 503 may be interpreted to preclude enforcement of that provision.

As you are aware, the NFIP is an important program in your State. There are 459 communities participating in the NFIP in Florida; and, there are 2,059,371 flood insurance policies in the State with just over \$471 billion in flood coverage.

### **Background on the National Flood Insurance Program (NFIP)**

FEMA is the Federal Agency responsible for administering the NFIP, as authorized by the National Flood Insurance Act, 42 U.S.C. § 4001 *et seq.* The NFIP is a voluntary program whereby the Federal Government makes affordable flood insurance available in exchange for community adoption of local floodplain management regulations consistent with Federal standards that are designed to minimize the risk of flood and ensures that new and substantially improved buildings are constructed to minimize flood risk. The locally-implemented land use and control measures must be legally enforceable and uniformly applied in a community. (See

42 U.S.C. §§ 4012 (c), 4022; 44 C.F.R. §§ 60.1, 60.2.) FEMA is prohibited from making flood insurance available in a community unless that community adopts floodplain management measures that meet or exceed the minimum program requirements codified at 44 C.F.R. § 60.3 with effective enforcement provisions that meet FEMA's minimum floodplain management regulations. (See 42 U.S.C §§ 4012 (c), 4022.)

### **FEMA's Concerns**

FEMA is concerned that House Bill 503 may be inconsistent with 44 C.F.R. § 60.3(a)(2), which requires communities to "review all proposed development to assure all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law ... ." This requirement ensures that coordination occurs between various levels of government on projects impacting floodplains and that all necessary permits are obtained prior to construction.

There are two ways that communities can comply with 44 C.F.R. § 60.3(a)(2).

- 1) Communities can issue the local permit on the condition that other required permits are obtained; or
- 2) Communities can hold the local permit until the applicant can show that the other agencies have issued their permits.

On March 23, 2012, David L. Miller, Associate Administrator, Federal Insurance and Mitigation Administration, and staff spoke with Bryan Koon, Director of the Florida Division of Emergency Management, and other Florida representatives. FEMA outlined its concern that under House Bill 503 communities may be compelled to issue floodplain development permits without conditioning them on obtaining other Federal or State permits as required by 44 C.F.R. § 60.3(a)(2). In response, the State suggested a path forward that would allow House Bill 503 to be interpreted and applied in a manner that would allow compliance with FEMA's floodplain management requirements.

We respect the position articulated by the Florida representatives and recognize that Florida fully expects that participating Florida communities will be able to comply with Florida law while implementing the minimum floodplain management requirements. Nonetheless, we believe that there may be ambiguity in House Bill 503 and remain concerned that if the legislation is implemented, Florida communities may be subject to challenge and may face legal impediments as they attempt to comply with the minimum NFIP requirements. Accordingly, we are requesting that Florida specifically address our concerns and take the appropriate measures to provide guidance to communities explaining the position articulated by Director Koon and take other steps to ensure that communities can fully implement 44 C.F.R. § 60.3(a)(2).

### **Implications if House Bill 503 is Construed to Preclude Implementation of FEMA's Minimum Floodplain Management Requirements**

If communities in Florida are unable to comply with the NFIP's minimum floodplain management requirements, the communities will be subject to suspension from the NFIP. (See 44 C.F.R. § 59.24(d).) There are significant consequences to a community that is suspended

from the NFIP. One consequence is that flood insurance may not be sold or renewed within the community. Another consequence is that federal agencies are prohibited by statute from making grants, loans, or guarantees for the acquisition or construction of structures located in a Special Flood Hazard Area. (See 42 U.S.C. § 4106.) This restriction applies to assistance from the Federal Housing Administration, Veterans Administration, and the Small Business Administration, among other Federal agencies. (See 42 U.S.C. § 4012a(b).) Also, many lending institutions may require private flood insurance for high-risk properties at significantly higher cost to the homeowner, assuming private insurance is even available in the area. Additionally, if a flood disaster occurs in a suspended community, many types of federal disaster assistance for the acquisition, construction, or repair of insurable structures within the SFHA, including federal assistance to individuals and households for housing and personal property, will not be available. (See 42 U.S.C. § 4106.)

The State is responsible for enacting legislation that enables communities and municipalities to adopt and uniformly enforce floodplain management regulations consistent with FEMA's minimum floodplain regulations. (See 44 C.F.R. § 60.25.) House Bill 503 may create a legal impediment to community compliance with the NFIP requirements, and may place Florida communities' continued participation in the NFIP in jeopardy. FEMA recognizes that the NFIP has proven to be a successful program that encourages communities to take steps to minimize the risk of losses from flooding and that enables individual homeowners and businesses to purchase affordable insurance to protect their properties from devastating flood loss. We want to ensure that Florida citizens continue to receive the benefits of the NFIP, and that the State of Florida does not inadvertently create legal impediments to participation.

Thank you for your consideration. If you should have any questions or need additional information or assistance regarding this issue, please do not hesitate to contact me or have one of your staff members contact Mr. Brad G. Loar, Director, Mitigation Division, at (770) 220-5416.

Sincerely,

A handwritten signature in blue ink that reads "P. May". The signature is stylized and cursive.

Major P. May  
Regional Administrator

cc: Bryan Koon  
Director, FL DEM  
Miles Anderson  
State Hazard Mitigation Officer, FL DEM  
Joy Deperault, State NFIP Coordinator, FL DEM