



PATRICK TESTIN

STATE SENATOR

DATE: September 8, 2021

RE: **Testimony on Senate Bill 521**

TO: The Senate Committee on Housing, Commerce and Trade

FROM: Senator Patrick Testin

Thank you Chairman Jagler and committee members for hearing my testimony in support of Senate Bill 521 (SB 521). The need for this bill was brought to my attention by a constituent of mine, Mike Langlois, who you will hear from next. Mr. Langlois's family has owned and run a campground in the town of Plover since 1972. I will let Mr. Langlois and his lawyer explain their case fully, but the crux of their issue comes down to zoning in a floodplain, and what FEMA allows in a floodplain, and what the Department of Natural Resources allows.

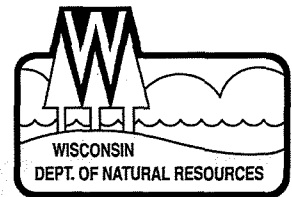
First, let's look at the federal definition of "structure" According to 44 CFR subsection 59.1, *Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance purposes, means:*

- (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;*
- (2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or*
- (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.*

Then, there is what the DNR defines as a "structure". Under NR 129.02 (16):

"Structure" means any public or private man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed.

That, to me, seems like wildly inconsistent definitions, and the federal guidelines seem a lot more reasonable. So, I was happy to draft SB 521, both to help out my constituents, but also to bring about more consistency in floodplain zoning. I hope you can join me in supporting SB 521.



Senate Committee on Housing, Commerce and Trade

2021 Senate Bill 521

Regulations of structures and accessory structures in floodplains

September 8, 2021

Good afternoon Chair Jagler and members of the Committee. My name is Mike Thompson, and I am the Waterways Bureau Director with the Wisconsin Department of Natural Resources. Thank you for the opportunity to provide testimony for informational purposes on Senate Bill 521 (SB 521).

SB 521 would result in broad and significant changes to our state floodplain management program. As currently drafted, this bill removes all state regulation of structures in the floodplain beyond those required by the federal government for the national flood insurance program standards, established by the Federal Emergency Management Agency (FEMA).

The scope of the federal program is to set minimum standards to reduce impacts to personal property due to flooding. But that program does not address human health and safety. FEMA encourages states and communities to establish higher standards, particularly related to human safety, as this is outside the scope of the federal program.

Since 1965, Wisconsin has had policies to protect human health and safety, and in return these laws have resulted in lower federal flood insurance rates for our residents. Our state policy is consistent with neighboring states in going beyond federal minimums to protect life, health, and safety. In Wisconsin, state statute and administrative code, under NR 116, establish a program whereby the state establishes minimum standards that are adopted as floodplain management ordinances managed by counties and municipalities.

The DNR strives to partner, problem solve, and provide support to property owners and communities to support development while also delivering on the department's public safety and floodplain management roles. For example, the DNR has recently been working with Portage County on creative solutions to adapt their county ordinance to allow certain accessory structures in campgrounds.

As drafted, this bill would allow more development in flood-prone areas in Wisconsin. Since 2016, Wisconsin has experienced five federally declared flooding disasters. The state incurred an estimated \$209 million dollar impact from flood-related damages in 2018. Having more development in the floodplain will increase the costs of flood-related damages to buildings, roads, and other infrastructure.

Municipalities and families throughout Wisconsin are already struggling with flood-related expenses. Last year, the DNR municipal flood control grant program only met 25% of the demand from communities in need. If enacted, this bill could increase this funding gap. Additionally, property owners within the floodplain should expect a financial impact as floodplain insurance rates will increase.

Families with property built to federal standards rather than state standards should anticipate their insurance rates to double from approximately \$1,500 to \$3,000 annually, based on FEMA sources.

The current state standards help define clearly what sorts of development are allowable in the floodplain. This bill would increase the complexity to construct in the floodplain. For structures that are approvable, there is also a federal flood development permit requirement pursuant to federal law. Federal standards require that Hydrologic and Hydraulic (H&H) studies be completed for structures in the floodplain to ensure they are built correctly to handle floodwaters, while not inadvertently increasing flooding up or down stream. H & H studies cost thousands of dollars to complete and may determine that a structure is not approvable based on the federal standards. The current state process helps avoid wasted expenses for H&H studies for projects that would not be approvable under federal standards. If additional H&H studies were needed, there would likely be significant frustration among developers and homeowners who invest in these studies and are still not being able to move forward with their project.

In summary, removing state standards would:

- Increase the risk for property damage and human health during flood events;
- Increase floodplain insurance rates for some homeowners;
- Exacerbate already strained funding sources available to help communities and homeowners with flood damage costs;
- Intensify development pressure in flood-prone areas around the state; and
- Increase developer confusion and the need for H&H studies and permitting.

Floodplain zoning protects human life, health, and property, and is particularly important given historic high-water levels throughout the Great Lakes and the general increase in the frequency and severity of flood events throughout Wisconsin. On behalf of the Waterways Bureau, I would like to thank you for your time today. My colleagues, Amanda Minks, DNR Public Trust and Zoning Section Chief, Brian Cunningham, DNR National Flood Insurance Program Coordinator, and I would be happy to answer any questions you may have.

Date: September 8, 2021
RE: Testimony on Senate Bill 521
TO: The Senate Committee on Housing, Commerce and Trade
From: Mike Langlois Co-Owner Ridgewood Campground, Inc.

My name is Mike Langlois and my wife Kathleen and I have owned and operated Ridgewood Campground for over 21 years located on the Wisconsin River in the Town of Plover.

I would like to thank the members of this committee for accepting my testimony on Senate Bill 521. This Bill corrects an overreach of authority resulting from the current DNR definition of structures in a floodplain.

We are here today because in 1972 one parcel of land, about 28 acres owned by my father and mother Art and Joan Langlois was approved for campground use. Part of this parcel is located in a 100-year floodplain and part of this parcel is not. Almost 50 years ago, on a parcel of land located in a floodplain that was zoned and approved for campground use, Ridgewood Campground was approved by the Town of Plover, Portage County, the DNR the Corp of Engineers and permits were granted to construct a manmade pond and a campground in the floodplain. The existing campground operates according to and in compliance with the Campground State Code ATCP 79 and is inspected annually by our State agent.

In about 2002 as a result of Mirant power company proposing to locate structures in our campground located in the floodplain, Portage County P&Z, DNR, Amy Corp representatives and others inspected the site with no mention that the campground, campsites, camping units or structures were in violation of any County ordinances or in violation of any DNR or Federal regulations.

In 2017, Ridgewood Campground was granted the permits by Portage County P&Z and the DNR to upgrade our road system and excavate the part of the parcel that is not in the floodplain in preparation for future development. Once that work was completed we applied for additional permits from the County to add approximately 127 campsites, a lined swimming pond and other structures to be located on this same parcel for campground use. The permits were denied with the explanation given that the existing campground was in violation of the Floodplain zoning ordinance and that before we could expand, the existing campground had to be brought up to code.

Over the last 4 years with our attorney Pat Arendt and with the unwavering support of the Town of Plover and the Portage County Planning & Zoning Committee, we have been attempting to change the proposed Floodplain ordinance under campgrounds. If adopted, as currently written without any formal enforcement agreement or grandfather clause in place, the Portage County Zoning Administrator, under the authority of the County Executive can make us gut our campground causing people in the camp to leave and not return. After being in business for almost 50 years the enforcement of the proposed Floodplain ordinance by the Zoning Administrator will destroy our current business model and existing revenue streams.

As we went through the process of trying to change the ordinance we were continually told by the Zoning Administrator that they were following a DNR model ordinance that could not be changed. We have come to realize that the problem is not Planning Zoning or the DNR, the problem is the DNR's definition of a structure.

Because the DNR definition of a structure in a floodplain is any man-made object placed upon the ground either permanently or temporarily, any Zoning Administrator in any County can use their own discretion at any time and leverage this definition of a structure and regulate anything from a camping unit, to a deck, to a tent, to a grill, to a fire pit, to a picnic table to a lawn chair, to a beach ball in a floodplain anywhere in the State. As a

result, we have no idea what we can put in our campground or not put in our campground. Zoning Administrators could not only stop approved campgrounds but could also stop individual property owners from putting anything on their land located in a floodplain unconditionally regulating and restricting the use of their property.

FEMA doesn't directly require regulation of structures without two walls and a roof. There is no reasonable justification for not passing this bill. This bill still gives Counties and the DNR authority over Floodplains through a Floodplain ordinance and will not prevent municipalities from getting flood insurance. Therefore, we are asking that Senate Bill 521 be approved establishing the DNR definitions, regulations and restrictions to be no more restrictive than the current FEMA requirements.

I am here today requesting you all vote yes to this bill and save not only our business but save the camping place on the Wisconsin River for the 116 families that currently occupy our campground.

I also request you all vote yes to pass this bill for all campground owners of existing campgrounds and other land owners who have land located in floodplains throughout the State.

And most importantly I request you all vote yes to pass this bill for our son, Senior Airman Zachary Langlois and graduate of Real-Estate and Land Economics from the University of Madison who will be the third generation owner of Ridgewood Campground.

Thank you for your time!

Date: September 8, 2021

RE: Testimony on Senate Bill 521

TO: The Senate Committee on Housing, Commerce and Trade

From: Kathleen Langlois, P.E. Co-Owner Ridgewood Campground, Inc.

My name is Kathleen Langlois and I'm a licensed professional Mechanical Engineer, and co-owner of Ridgewood Campground with my husband Michael Langlois. Our campground is in the Town of Plover and is located directly on the Wisconsin River. Prior to the onset of the COVID pandemic, I was nearing completion of my master's degree from Harvard University in their Sustainability and Environmental Management Graduate Program.

I'd like to thank the members of this committee for accepting my testimony on Senate Bill 521. This Bill corrects an overreach of authority resulting from the current DNR definition of structures in a floodplain. My husband and I were unaware that there was a floodplain ordinance that superseded State Campground Code 79 until we tried to expand our business out of the floodplain in 2017.

Everyone who stays in our campground is made well aware that we are located in a 100-year floodplain and my husband and I have over the years developed safety procedures for our campground and have developed a safety manual that has been approved by the Portage County Sheriff's Office - Emergency Management Division. Additionally, all our customers are highly encouraged to sign up for Portage County's Community Alerts which is an emergency and non-emergency community notification system. This alert system provides an extra measure of safety should a severe weather or life-threatening situation arise in our community. We have very visible and detailed signage in our clubhouse that is open 24/7 which instructs our people what to do in the event of a health emergency or a severe weather or a high water/ flood incident. Regularly and more so when there is the probability of flooding we monitor real-time river flow rates through The National Weather Service's Advanced Hydrologic Prediction Service and

through the National Oceanic and Atmospheric Administration's River Forecast Center. We additionally stay in continual contact with the Operations & Maintenance Management Team for Hydro Operations who are responsible for dam management along the section of river where our campground is located. All data is analyzed, compiled, and then relayed to our customers through an instantaneous group email notification system. We advise our people of the current river flow status, provide them with the Hydro Managers predicted river flows rates and with recommendations on any necessary steps to take that are based on the data we receive.

Some people believe that the DNR's definition of a structure in a floodplain cannot be changed because we as managers of a campground in a floodplain, and the people that camp in our campground who are well aware they camp in a floodplain, do not have the ability to protect ourselves from floodwaters and therefore we need the DNR and Planning and Zoning Departments to protect us and our assets.

Over the 22 years we have owned and operated the campground, my husband and I have evaluated the flowrates of the Wisconsin River below the Stevens Point dam determining how they directly affect our campground property and our customers and have compiled the river flow data.

In 2010, the Hydro Managers projected flow rates at about 71,000 cubic feet per second and at that time based on our limited experience with flooding we knew we were going to flood but we did not know how much water we were going to experience or what type of flow rates we could expect over the campground land. Therefore, without any evacuation notice given by local authorities, we gave all our customers the data we had and suggested they move their camping units out of the floodplain.

The owners of the camping units made their own decisions and all but about 10% of them moved their camping units out of the campground. We provided equipment, manpower and resources to assist all camping unit owners with removal of their property from the floodplain. None of the camping units which were left on sites experienced any substantial damage and only one unit

experienced very minor damage. None of the decks, transfer tanks or storage units floated down river. The flow across the land caused no significant damage to the property or roads during the flood stage or the following day when the waters receded.

During this 2010 flood, the flowrates maximized at 78,000 cubic feet per second and we created a hundred-year high-water benchmark on our property and suggested that owners of camping units elevate their units 16 to 24 inches above the bench mark.

In 2019, we experienced another “100-Year Flood” with flow rates approximating 72,000 cubic feet per second. Based on flood warnings and projections we received, we knew we were going to flood but we also knew from our experience that the risk to our people and the risk of any property damage was low. We contacted everyone in our campground and gave them the river flow data and projections we had and most of the owners of each camping unit made the decision not to move their camping unit out of the floodplain. Only one camping unit was moved out and none of the camping units which were left in the floodplain experienced any substantial damage with only two of them experiencing very minor damage.

What I would like you all to consider, which my husband and I are well aware of, is that if owners and operators of campgrounds located in floodplains, don't take every precaution to protect their customers and their customers property they will be out of business.

Additionally, every owner of every camping unit in our campground that has a transfer tank, wooden deck, barbecue grill, picnic table, patio furniture and many other beloved camping possessions does not want to lose their assets and will take every necessary precaution to ensure their personal property will not be damaged and will not float away down the river. They already know that weather is uncertain, and that precautions are necessary, and that we must remain alert.

I am not suggesting that we do not need appropriate safety procedures in place in our communities or that we don't need the official 72-hour evacuation notice given by our

Emergency Management Division when needed, but this has nothing to do with the definition of a structure that the DNR has developed and currently uses, which far exceeds FEMA's definition of a structure.

As an engineer I require data in my analysis and in my recommendations, and I am not aware of any data that proves that the FEMA definition of a structure in a floodplain used throughout the United States is not adequate to protect people's lives, their assets, and our infrastructure. And unless this data is produced, the FEMA definition for structures in a floodplain should be the overriding definition that the DNR, Counties and Municipalities adhere to.

Thank you for your time and for the opportunity to speak to you today.

DATE: September 8, 2021
RE: Testimony on Senate Bill 521
TO: The Senate Committee on Housing Commerce and Trade
FROM: Patrick Arendt

I am Patrick Arendt, a Town of Plover and Portage County Resident.

I would like to thank members of the committee for accepting my testimony on Senate Bill 521 (SB 521). This legislation deals with the regulation of Structures and Accessory Structures and Uses in a flood plain. Municipalities are required by Wis. Stat. §87.30 (1), to adopt reasonable and effective flood plain zoning ordinances. The Department of Natural Resources has promulgated regulations under NR 116 that define the scope of flood plain ordinances in Wisconsin and requires municipalities adopt ordinances that meet or exceed the standards set forth in NR 116. Further, eligibility under the Federal Flood Insurance Program requires Wisconsin and participating Wisconsin Counties to adopt ordinances that meet certain Federal Flood plain Management standards. 44 CFR 59.

I practice as an attorney with Noonan Arendt LLP and have worked with Ridgewood Campground for the past four years. Ridgewood Campground has attempted to get permits in order to enlarge its existing 50 year old campground. The permitting has been stymied because of unreasonable DNR rules related to campgrounds and structures in a flood plain

The scope of flood plain regulation adopted by the Department of Natural Resources regarding structures is overly broad. All “Structures”, and “Accessory Structures” and “Uses” for any manmade object in a flood plain are subject flood plain regulation and permitting.

The term “Structure” in a flood plain under the NR 116.03 means any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lakebed. The federal definition for structures subject to Flood Plain Management is limited to “walled or roofed buildings, including mobile homes and gas or liquid storage tanks.” 44 CFR 59.1 The difference in definitions imposes a substantial burden upon individual land owners, counties and the state.

The breadth of the claimed scope of authority by the DNR beyond the Federal requirements to regulate property in a flood plain is staggering. Every manmade object brought onto a flood plain is subject to DNR regulation and county flood plain permitting requirements. Federal regulation requires communities eligible for the sale of flood insurance to adequately enforce *ITS* flood plain management regulations or risk being suspended from the flood insurance program. 44 CFR 24

Any person who places or maintains any such structure, building, fill or development within any flood plain in violation of a zoning ordinance may be fined not more than \$50 for each offense. Each day during which such violation exists is a separate offense. Wis. Stat 87.30 (2)

The DNR's Model Flood Plain Ordinance does not allow for the placement of any accessory structures in a campground. The DNR does, through an internal department exception, allow counties to adopt a provision in their municipal flood plain zoning ordinance a 32 sq. ft. stoop to be used solely for ingress and egress into and out of a camping unit as an accessory structure and use. The 32 sq. ft size and use limit is not embedded in DNR regulation nor was it established after receiving public comment. The 32 sq. ft. limitation is ill considered and is not sufficient to meet ADA requirements.



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

8301 Excelsior Dr., Madison, Wisconsin 53717

Phone: 608-828-3000 | Fax: 608-828-6319 | asfpm@floods.org | www.floods.org

Executive Director
Chad M. Berginnis, CFM

Deputy Director Operations
Ingrid D. Wadsworth, CFM

Director Emeritus
Larry A. Larson, P.E., CFM

September 8, 2021

Honorable John Jagler, Chair
Wisconsin Senate Committee on Housing, Commerce and Trade

Honorable Dan Feyen, Majority Caucus Vice Chair
Wisconsin Senate Committee on Housing, Commerce and Trade

Honorable Melissa Agard, Minority Caucus Vice Chair
Wisconsin Senate Committee on Housing, Commerce and Trade

RE: ASFPM written testimony on Wisconsin SB 521

Dear Senators:

The Association of State Floodplain Managers (ASFPM) is aware of today's hearing on Wisconsin Senate Bill 521 and we ask that this letter be made part of the hearing record. ASFPM is a 20,000-member national non-profit organization dedicated to reducing flood losses and protecting the natural functions of floodplains. The ASFPM office is located on the west side of Madison in an area that experienced extreme flooding in August of 2018. We are concerned about HB 521 which essentially prevents the Department of Natural Resources from promulgating a rule or imposing any restrictions which are higher than the FEMA minimum development standards for floodplain areas. ASFPM would like to provide information for your consideration from our national perspective on the potential consequences of this proposed legislation.

The minimum development standards of the National Flood Insurance Program (NFIP) were developed nearly 50 years ago and have not been significantly changed since the mid-1970s. At the time, the rules and standards reflected what was known about flood hazard management, flood mapping, and sought to balance development needs of communities and flood risk. The NFIP requirements are the minimum and in 44 CFR 60.1(d), FEMA encourages higher standards, stating "Any floodplain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence." Wisconsin, along with several other Midwest states, developed their floodplain standards prior to FEMA, reflecting the type of flooding events typical in the region and included measures that were deemed to be necessary to protect communities and citizens from flood loss. Flooding conditions in the state. Some of these measures were more restrictive than the FEMA NFIP minimum standards which were finalized at a later date.

Dedicated to reducing flood risk and losses in the nation.

Chair

Carey Johnson
Assistant Director
KY Division of Water
502-782-6990
carey.johnson@ky.gov

Vice Chair

Shannon Riess, CFM
Floodplain Manager
FL Div. of Em. Mgmt.
850-815-4513
shannon.riess@em.myflorida.com

Treasurer

Glenn Heistand, P.E., CFM
Sen. Hydraulic Engr.
IL State Water Survey
217-244-8856
heistand@illinois.edu

Secretary

Stacey Ricks, CFM
State NFIP Coordinator
MS Emerg. Mgmt. Agency
601-933-6605
sricks@mema.ms.gov

Association of State Floodplain Managers, Inc.

Over time it has become evident that the current minimum NFIP standards no longer provide adequate flood risk protection for communities and citizens, therefore on January 5, 2021, ASFPM joined a petition requesting that FEMA undertake a rule making process to update their regulations and develop forward-looking minimum construction and land-use criteria for flood-prone areas to better address the increased flooding we see in the current century. FEMA responded to the petition on July 9, 2021, essentially agreeing with the need to update their rules and informing that they intend to start the rule making process in the near future. A copy of the petition is included with this package or can be viewed at <https://no.floods.org/asfpm-nrdc-petition>

Two NFIP minimum standards that FEMA has agreed to address are areas where Wisconsin already has higher minimum standards, Freeboard and Floodway Surcharge.

Freeboard – Wisconsin currently requires structures to be constructed to provide 2 feet of elevation over FEMA’s standard of the Base Flood Elevation (BFE). This standard helps protect property owners from flooding from unexpected conditions or future changing conditions as well as saving on flood insurance costs. Wisconsin’s current 2-foot freeboard standard is estimated to save property owners \$700 annually on flood insurance premiums or \$21,000 over the life of a 30-year mortgage. The cost of elevating a structure on 2 feet of fill is estimated to be \$4,470 with a 3.3-year payback in reduced flood insurance cost. The resale value may also be higher due to lower risk and flood insurance costs.

Wisconsin is only one of many states with higher elevation standards. In 2015, 44% of states had statewide freeboard standards ranging from 1 to 3 feet above BFE. An additional 596 communities also had higher freeboard standards. In all, approximately 62% of the U.S. population live in communities with higher freeboard standards.

Floodway Surcharge – The floodway is the most dangerous portion of the floodplain, where floodwaters can move at high velocities and are therefore more likely to cause loss of life and property damage. FEMA standards currently map floodways to allow for development to create up to a 1-foot increase (surcharge) over BFE in the floodway. In densely populated areas with existing development, even the allowable FEMA one-foot increase in depth of flooding could significantly add to flood damages and costs to upstream, downstream and adjacent properties. ASFPM research shows that as compared to a natural zero-surcharge floodway, encroachments that caused one foot of surcharge reduced the cross-sectional width available for the conveyance of floodwaters by 50% and increased the floodwater velocities on average by 33%. US Army Corps of Engineers flood depth damage curves based on reviews of damage associated with historic flood events, indicate that in the case of a single family structure with no basement and with the finished floor equal to the base flood elevation, a 1-foot surcharge would increase flood damages from 12% to 23.3% of the total value of the structure. Wisconsin floodplain management standards do not allow the floodway to be calculated with surcharge thereby assuring the future development does not increase damage to other properties or endanger people during flooding events. This Wisconsin standard protects the property rights of those who would be impacted by this increase in flood levels.

The changes proposed in SB 521 could also impact the rating of communities in the state that participate in the Community Rating System (CRS) program. This program voluntary program provides reductions in flood insurance premiums for residents of communities that participate in the program. To earn CRS credit, communities implement flood protection activities that can help save lives and property when a flood occurs with each 500 credits earned providing a 5% reduction in flood insurance premiums

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Association of State Floodplain Managers, Inc.

up to a maximum of 45%. Credits can be earned for certain statewide standards above the NFIP minimum. Eliminating the freeboard standard would reduce communities' credits by at least 225 points. That combined with the loss of other credits for reduction in statewide standards will likely drop many communities by at least one level with the accompanying loss of premium reduction. Strong floodplain management regulations will be needed to keep communities and property owners resilient and safe and provide a buffer from the increasingly extreme flooding events of recent decades. Over the last 5 years the state has experienced seven significant regional flooding events, 5 of which received a federal major disaster declaration. The 10 highest river stages on the Baraboo River, recorded at the Reedsburg gage, have all occurred since 2008. In 2015, NOAA released updated precipitation estimates for Wisconsin. The NOAA Atlas 14 estimates the 100-year, 24-hour storm, typically used in developing the FEMA floodplain maps increased by up to 40% over the previous estimates from TP 40, a 1961 document.

While Wisconsin's higher standards have provided a good level of protection against the increased severity of flooding in the state, there have been recent events that have put that to the test. Properties in two communities along the Kickapoo River, that had elevated structures 2 feet above the 100-year flood after past flooding events, were again flooded during a 2018 event. While unfortunate, the 2018 event was more severe than the design event and the structures experienced a lower level of flooding and damage than they would have if they were not elevated.

Sweeping changes to accommodate a few property owners will put many citizens of the state at risk and make the state less resilient to future flooding. Fifty years ago, Wisconsin was a national leader for higher floodplain management standards. In the ensuing years other states have realized that NFIP minimum standards were just that – minimum standards – that should be exceeded. The changes to Chapter 87.30, Wisconsin Statutes proposed in SB 521 would take the state in the wrong direction and increase the potential loss of life and significant damage from future flooding events. For these reasons ASFPM opposes the bill.

Thank you for your consideration. Please contact me should you have any questions: cberginnis@floods.org or at 608-828-6338, if I can be of further assistance.

Very respectfully,



Chad Berginnis
ASFPM Executive Director

Cc: Senator Roger Roth
Senator Melissa Agard
Senator LaTonya Johnson

Att: Petition Requesting That the Federal Emergency Management Agency Amend Its Regulations
Implementing the National Flood Insurance Program
FEMA response to the Petition for Rule Making



FEMA

July 9, 2021

Association of State Floodplain Managers, Inc.
8301 Excelsior Drive
Madison, WI 53717

Natural Resources Defense Council
40 West 20th Street, 11th Floor
New York, NY 10011

RE: FEMA Response to Rulemaking Petition Request

Dear Petitioners:

Thank you for your January 5, 2021, rulemaking petition requesting changes to sections of the National Flood Insurance Program's (NFIP) implementing regulations governing floodplain management minimum standards, risk management (flood risk mapping), and increased cost of compliance flood insurance coverage. We appreciate your interest in the FEMA's programs and regulations. Administrator Criswell asked that I provide the response to this petition for rulemaking on her behalf.

The National Flood Insurance Act (NFIA)¹ requires FEMA to develop criteria for land management and use in flood-prone areas, more commonly referred to as floodplain management, and to encourage use of the criteria by State and local governments. The petition asks FEMA to develop forward-looking minimum construction and land-use criteria for flood-prone areas to satisfy Congressional mandates for the flood insurance program. The NFIA requires that FEMA assess the need for revisions and updates to NFIP floodplain maps every five years and incorporate the Technical Mapping Advisory Council's (TMAC) future conditions risk assessment, as well as information from other agencies as appropriate, when updating such maps. The petition requests that FEMA update flood mapping requirements and incorporate future conditions pursuant to the NFIA. Finally, the rulemaking petition requests that FEMA double the current insurance coverage cap for the increased cost of compliance (ICC) from \$30,000 to \$60,000 with an option for additional coverage up to \$100,000 to adequately account for both the increased flood risk and cost of compliance with floodplain management regulations requiring building elevation in the aftermath of events causing substantial damage.

With respect to the floodplain management criteria, FEMA requires additional information from the public to ensure the agency has sufficient data to properly assess any proposed new standards. To

¹ 42 U.S.C. § 4001 *et seq.*

allow for full public participation in this information gathering, the agency may offer a variety of ways for all interested parties in the public to provide information, from public meetings to Requests for Information (RFI) to an Advance Notice of Proposed Rulemaking (ANPRM) depending on an analysis of the best way to gather the specific data needed in the current pandemic environment. FEMA will begin this effort by publishing a Request for Information (RFI) seeking public input on aspects of the current floodplain management criteria, including consideration of revising the floodplain management criteria as a conservation measure under the Endangered Species Act to avoid adverse effects to species and their habitat. FEMA will publish notice of the RFI and any future requests for comment in the *Federal Register*, on its website, and through stakeholder bulletins to encourage full public participation. This process will enable FEMA to consider the broadest possible options for revising the floodplain management criteria and to receive input equally from all interested parties.

FEMA is also exploring opportunities to leverage new methodologies and partnerships to provide flood information more efficiently, accurately, and consistently across the nation through the Future of Flood Risk Data (FFRD) initiative. The FFRD initiative encompasses shifting from binary to graduated risk analysis; ensuring a significant and appropriate role for the private sector and state, local, tribal, and territorial (SLTT) stakeholders; increasing access to flood risk data to improve resulting mitigation and insurance actions; and modernizing the management and delivery of flood risk data. FEMA is collaborating with several Federal agencies, including the Integrated Water Resources Sciences and Services (IWRSS), the National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (USACE), and the U.S. Geological Survey (USGS), as well as other stakeholders to ensure the FFRD initiative results in the delivery of consistent flood hazard and risk information leading to a reduction in complexity. FEMA recently tasked the TMAC to assess the recommendations from their 2015 Future Conditions Report² in light of the FFRD initiative.

FEMA has asked the TMAC to continue engaging with external stakeholders, including local officials/Floodplain Managers, State NFIP coordinators, Community Rating System (CRS) communities, emergency managers, and professional organizations. This engagement will help FEMA to better understand the potential applications of graduated flood hazard and risk data for a broad range of users, the methods to enhance the use of graduated flood hazard and risk data, and to note what changes (if any) the TMAC would recommend to FEMA's floodplain management strategies. As FEMA continues to collect more information and data in this area through the FFRD initiative, the agency will consider taking additional appropriate regulatory, policy, and programmatic actions utilizing the information gathering activities detailed above consistent with the agency's floodplain management actions.

Finally, FEMA is interested in pursuing changes to better support mitigation efforts by increasing the ICC coverage benefit amount and providing an optional ICC coverage. The agency is constrained, however, by the statutory limitations on ICC premiums³ and any increase in the ICC

² See TMAC Future Conditions Report Interim, October 2015 at http://www.fema.gov/sites/default/files/documents/fema_tmace_2015_future_conditions_report_interim.pdf

³ Current statutory provisions cap the amount FEMA may collect for ICC premiums at \$75 per policy. See 42 U.S.C. § 4011(b).

coverage limits (whether mandatory or optional) would require actuarial analysis to determine the ICC premium before initiating further action.

FEMA addresses each specific proposal as follows:

Specific Proposal #1 – Building Requirements for “Non-Critical Structures”

The petition asks FEMA to adopt higher freeboard standards to account for the uncertainty of future flood conditions. For non-critical structures in A-zones, the petition asks FEMA to adopt a higher freeboard standard, requiring at a minimum two feet of freeboard above the base flood elevation (BFE) for new construction and substantial damage or improvements to existing structures. For non-critical structures in V-zones, the petition seeks a higher freeboard standard of at least four feet above the non-sea level rise adjusted BFE for new construction and substantial damage repairs or improvements to existing structures. Alternatively, the petition asks FEMA to require communities with V-zones to adopt an estimate of the anticipated sea level rise that is at least as high as NOAA’s “intermediate-high” projection for 2100 to establish the BFE. This sea-level adjusted BFE would be reflected on community Flood Insurance Rate Maps (FIRMs) and non-critical structures would be required to be elevated to at least that BFE height.

To achieve these initiatives, the petition recommends amending 44 C.F.R. §§ 60.3(c)(2), 60.3(c)(3), and 60.3(e)(4) and (e)(4)(I) in addition to relevant portions of 44 C.F.R. § 65 as follows:

- Increase the elevation of all new construction and substantial improvements of all non-critical structures within Zones A1-30, AE, and AH from the current standard for residential structures of at or above the base flood level to two feet above the base flood level (44 C.F.R. § 60.3(c)(2));
- Require new construction and substantial repair/improvements of all non-critical structures within Zones A1-30, AE, and AH be designed so that below the elevation level (two feet above the base flood) the structure is watertight (44 C.F.R. § 60.3(c)(3));
- Increase the elevation of all new construction and substantial repair/improvements of all non-critical structures within Zones V1-30 and VE and also Zone V from the current standard for residential structures of at or above the base flood level to four feet above the base flood level (44 C.F.R. § 60.3(e)(4) and (e)(4)(i)),⁴ and
- Add freeboard to standards to elevation to the base flood level and as appropriate in other sections (44 C.F.R. § 65).

The petition argues these changes are necessary to comply with the statutory mandate of adopting building criteria that assist in reducing flood risk to the “maximum extent feasible.” 42 U.S.C. § 4102(c) requires FEMA to “[...]from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will [...] (3) assist in reducing damage caused by floods.” The petition focuses on the “maximum extent feasible” standard, reasoning that because several jurisdictions

⁴ The petition provides an alternative option for V zones to “adopt an estimate of the anticipated sea level rise that is at least as high as NOAA’s ‘intermediate-high’ projection for 2100 to establish the base flood elevation and require non-critical structures to be elevated to the height of that sea level rise adjusted base flood elevation.” The petition offers FEMA’s current CRS credit for this action as a policy.

have adopted these measures, the measures are feasible. The petition provides additional policy justifications for the request, arguing that higher freeboard is necessary to ensure public safety, minimize flood-related property damage, and reduce the financial exposure of the NFIP. The petition claims that NFIP elevation standards now lag behind widely adopted minimum flood safety industry standards. Consistent with this argument, FEMA has advocated for stronger standards at the State and community level and acknowledged that stronger standards than the current criteria are better at reducing flood risk pursuant to the Community Rating System (CRS) program that incentivizes communities to adopt higher standards through reduced flood insurance rates for enhanced State and local mitigation requirements.

FEMA's Response to the Specific Proposal #1

FEMA generally agrees with the petitioners that the existing NFIP building requirements should be revised. As explained above, the agency requires additional information beyond the scope of the data provided in the petition to fully assess any new standards to apply to specific conditions for building in the floodplain. FEMA would like to explore relevant standards specific to non-critical infrastructure, critical infrastructure, new construction, and substantial improvements and would solicit public input as part of that process. The RFI noted above will ask for specific input on these specific dimensions of the floodplain management criteria. The standards outlined in this petition will be assessed as part of this process along with any new standards identified through public input and other standards developed utilizing climate-informed science. FEMA seeks to use the best available, actionable hydrological and hydraulic data and methods that integrate current and future changes in flooding based on climate science; the use of freeboard value which may be reached by adding appropriate freeboard to the base flood elevation; standards based on the 500 year floodplain or 0.2 percent annual chance flood; and any other standards identified through public input.

Specific Proposal #2 – Building Requirements for “Critical Infrastructure”

The petition seeks to restrict the development of “critical infrastructure” in floodplains. Specifically, the petition requests that FEMA:

- Prohibit new critical infrastructure, where feasible, from the 0.2 percent annual chance floodplain;
- Require redeveloped, substantially improved, or new critical infrastructure (when location outside of the 0.2 percent annual chance floodplain is not feasible) to be elevated (flood-proofed) to the 0.2 percent chance flood elevation, plus freeboard to account for future conditions or the historical flood of record, whichever is greater; and
- Ensure access to and operability of the critical infrastructure during the 0.2 percent annual chance flood event, and where that is not feasible, require a viable continuity of operations plan (COOP).

The petition asks FEMA to revise 44 C.F.R. §§ 59.1 and 60.3 accordingly as follows:

- Define “critical action” to, at a minimum, mirror the definition in 44 C.F.R. § 9.4 and add new regulatory requirements for critical facilities as defined under this definition of

“critical action,” prohibiting new critical infrastructure from A, V, and X (0.2 percent) zones where feasible (44 C.F.R. §§ 59.1 and 60.3);

- Require substantially damaged/improved or new critical facilities where location outside of the 0.2 percent zone is not feasible, to be elevated (flood proofed) at a minimum to the 0.2 percent flood elevation plus freeboard to account for future conditions, or the historical flood of record, whichever is greater (44 C.F.R. § 60.3); and
- Ensure access to and operability of critical infrastructure during a 0.2 percent flood event, and where not feasible require a COOP.

The petition admits the NFIA does not provide a statutory requirement for FEMA to treat critical infrastructure differently but argues there are policy considerations for doing so. The Federal government has historically required higher flood protection for federally funded critical infrastructure pursuant to Executive Order (EO) 11988. FEMA has current regulations governing “critical actions” pursuant to EO 11988. Additionally, the petition cites to the higher standards for critical infrastructure that FEMA encourages for NFIP participating communities through CRS credits.

FEMA’s Response to the Specific Proposal #2

FEMA also generally agrees to consider the establishment of a definition for terms such as critical infrastructure, critical actions, or critical facilities in regulation. To further explore this concept, the agency will need to obtain public input on the terminology, definitions, and the appropriate land management and use criteria to apply to such entities. The RFI noted above will ask for additional public input on establishing these definitions. FEMA notes that where the petitioners seek planning and operational requirements other than building standards, such a request does not necessarily fall within the agency’s statutory mandate to develop comprehensive floodplain management criteria which the agency is required to encourage State and local governments to adopt. While FEMA should work to improve long-range floodplain management, the agency must work in close coordination and collaboration with State and local government agencies to encourage the adoption of both the criteria and the enforcement of such measures.

Specific Proposal #3 – Land Use Requirements Including a Zero Rise Regulatory Floodway Standard

The petition requests FEMA amend the current definition of a “regulatory floodway” and update regulatory language to require a zero-rise regulatory floodway with specific changes to 44 C.F.R. §§ 59.1 and 60.3. The petition states that the current regulatory floodway limits the increase in flood elevations caused by the incremental effects of human activity to one foot above the BFE and that standard is insufficient to meet the agency’s statutory mandate to reduce future flood damage and improve long-range land management. The NFIA, at 42 U.S.C. § 4102(c), requires FEMA to “[...]from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will [...] (3) assist in reducing damage caused by floods; and (4) otherwise improve the long-range land management and use of flood-prone areas.” As in other sections, the petition focuses on “maximum extent feasible” language, arguing that because several jurisdictions have adopted this requirement, the requirement is feasible. The petition further supports this request with two main policy

justifications. First, the regulatory floodway standard is meant to address the combined, incremental effects of human activity (cumulative impacts) in the floodplain by limiting the increase in flood elevations caused by cumulative impacts to one foot above the base flood elevation. Second, in practice, the regulatory floodplain standard is ineffective.

FEMA's Response to the Specific Proposal #3

FEMA also generally agrees with the petitioners regarding the cumulative impacts on the floodplain but recognizes that there may be unintended consequences to changing the regulatory definition as requested. Specifically, the benefits of adopting this standard may include lower flood risk and damage given the floodway would generally be wider. However, the agency is concerned with the practical implications of this change, including the level of resources communities may need to review no-rise analyses and enforcement of violations. FEMA's current regulations require the community to track the cumulative impacts in the floodplain to ensure that the increase in flood elevations caused by these impacts is not more than one foot above the base flood elevation.⁵ Consistent with our response to petitioner's proposals above, FEMA would need to solicit public input and obtain additional information and data before proceeding to propose any changes to the current regulations. The RFI noted above will ask for additional public input on incorporating cumulative impacts on the floodplain into the floodplain management criteria.

Specific Proposal #4 – Land Use Requirements for Subdivisions

The petition proposes adding new definitions and sections to the regulations to define and regulate land use in "major subdivisions." The petition first defines a "major subdivision" to include anything considered a major subdivision under state law. Once defined, the petition requests that FEMA place a range of restrictions on such areas, consolidating all of the existing use and development standards for "subdivision and large-scale developments" into a section for "major subdivisions" and adding the following requirements:

- All features that convey water on a tract of land in a major subdivision must have the Special Flood Hazard Area (SFHA), 500-year floodplain and floodway (where applicable) identified;
- New lots cannot be created entirely within the floodplain unless adequate natural ground exists above the flood protection level;
- All major subdivision proposals must evaluate any dam and level failure mapping and ensure that the development does not increase the dam's hazard classification;
- Reserve studies for all homeowners' associations that will be responsible for maintaining flood control or stormwater infrastructure must include the maintenance costs and also include costs associated if the infrastructure is damaged by floods;
- All final plats must identify appropriate flood hazards;
- Adequate ingress and egress must be ensured; and
- Critical facilities are prohibited where possible in major subdivisions.

Petitioners again cite to the feasibility argument made in other sections of the petition to bolster this request.

⁵ 44 C.F.R. § 60.3(c)(10).

FEMA's Response to the Specific Proposal #4

FEMA again generally agrees with the petitioners that subdivision requirements should be reassessed. The agency recognizes that subdivisions require specific standards for land management and use to address the unique type of development. As with the petitioner's other proposals, the agency requires additional public input, data, and information before proceeding to propose changes. The RFI noted above will ask for additional public input on incorporating subdivision requirements into the floodplain management criteria.

Specific Proposal #5 - Mapping

The petition seeks changes to 44 C.F.R. §§ 59.1 and 64.3 to incorporate specific requirements to the definition of "future-condition hydrology" and mandate that all flood insurance rate maps indicate future-condition flood hazards as an advisory layer. The petition also requests updates to 44 C.F.R. parts 64 and 65 to reflect the mandatory mapping requirements of the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) concerning flood control structures. The petition cites to 42 U.S.C. § 4101b(b)(3)(D) requiring FEMA to include future changes in sea levels, precipitation, and intensity of hurricane information from NOAA and USGS when updating maps and to 42 U.S.C. § 4101b(b)(3)(E) requiring FEMA to include other relevant information as recommended by the TMAC when updating maps. The petition also references specific flood control structure requirements from BW-12 that have not yet been implemented. The petitioners argue that the use of historical data alone is ineffective as it does not reflect how flood risks will change over time due to foreseeable factors such as rising sea level, heavier precipitation events, and population growth. These factors cause floods to increase in severity and frequency in many places, putting an increased number of Americans at risk.

FEMA's Response to the Specific Proposal #5

FEMA generally agrees that the use of historical data alone are incomplete and is exploring ways to leverage new methodologies and partnerships to provide flood information more efficiently, accurately, and consistently across the nation through the FFRD initiative. The four elements of the FFRD initiative are listed below with information on how the agency plans to further meet each element. While FFRD is intended to be a multi-year effort, it is difficult to associate specific timelines to the completion of each element as the agency continues to gather data and information and seeks public input on each element.

- Element 1: Shifting from binary to graduated risk analysis:

Graduated risk analysis may offer a more comprehensive risk understanding to improve land-use decisions, increase potential sales of flood insurance by increasing demand pool size, and identify and measure flood impacts to increase community/individual resilience. FEMA has led several projects that increased our knowledge on how best to conduct graduated risk analysis. FEMA is collaborating with other federal agencies to achieve the agency's goal of leveraging data and expertise more efficiently to deliver more comprehensive flood risk data with one federal voice. FEMA is leveraging the agency's current collaboration with IWRSS, NOAA, USACE, and USGS and formalizing our intentions through an updated memorandum of understanding.

- Element 2: Ensuring a significant and appropriate role for the private sector and State, local, Tribal, and territorial (SLTT) stakeholders

Element 2 focuses on defining the Federal role in flood risk analysis, as well as leveraging the pace, innovation, and reach of the private sector. Element 2 also calls for increasing the stewardship of flood risk management by states and communities. By more clearly defining the roles of various stakeholders, FEMA believes that a higher degree of efficiency can be realized.

FEMA tasked the TMAC in 2020 to obtain stakeholder input on the FFRD initiative, which sought input on the role of SLTTs. The TMAC delivered preliminary stakeholder feedback from a survey of over 700 stakeholders and follow-on webinars.⁶ The TMAC is currently conducting focus groups to obtain additional input for the FFRD initiative.

- Element 3: Increasing access to flood risk data to improve resulting mitigation and insurance actions

To increase data accessibility, FEMA needs to identify appropriate stakeholders and develop products that make flood risk data easier to find and understand. The goal of increased accessibility and understanding of the flood risk data is to change public behavior and drive mitigation action.

- Element 4: Modernizing the management and delivery of flood risk data

FEMA will modernize delivery of flood risk data by increasing transparency and operational efficiency, and by producing a more comprehensive suite of flood mapping products and services. FEMA also plans to incorporate business practices that meet government program management standards while ensuring a strategically aligned statutory and regulatory framework. For example, as FEMA explores FFRD, the agency is identifying ways to streamline the current mapping process and is developing an Automated Map Production Tool that will support streamlining the process.

Additionally, in 2021 FEMA tasked the TMAC to assess the recommendations from the TMAC's 2015 Future Conditions report to:

- Determine which of the recommendations still apply in light of FEMA's transition from a binary to graduated approach to flood hazard and flood risk identification; and
- Identify additional recommendations for addressing future conditions with the graduated approach to flood hazard and flood risk identification.⁷

The FFRD initiative will continue for at least the next five years and will involve many opportunities for input from key stakeholders. As FEMA collects more information and data in this area through the FFRD initiative, the agency will consider taking additional appropriate regulatory, policy, and programmatic actions as appropriate.

⁶ See [TMAC Public Meeting summary - October 29-30, 2020](#).

⁷ See [TMAC Public Meeting summary – January 19-20, 2021](#).

Specific Proposal #6 - Mitigation

The petition also seeks to update the Standard Flood Insurance Policy at 44 C.F.R. § 61, Appendix A to increase the increased cost of compliance (ICC) coverage cap from \$30,000 to \$60,000. The petition requests changes to allow for additional optional coverage above the \$60,000 ICC coverage cap with a maximum cap of \$100,000 and to expand the eligible activities covered to include buyout of cost-shares. The petitioners cite 42 U.S.C. § 4011(b), arguing the statute requires FEMA to provide policyholders the ability to purchase insurance to cover the cost of implementing measures consistent with the program's land use and control measures and claim that elevating flood-damaged structures generally cost three to five times the current \$30,000 ICC coverage cap. With the increased frequency and severity of flooding due to climate change, petitioners argue that more structures will be required to be brought into compliance with floodplain management regulations and thus the overall costs will only increase.

FEMA's Response to the Specific Proposal #6

FEMA generally agrees with the petitioners to further explore an increase in the ICC coverage benefit amount and the petitioner's additional recommendation of providing an optional ICC coverage to more closely align with the cost of compliance activities in some areas. The agency is constrained by the statutory limitation on the ICC premium amount which is capped at \$75 per policy. Any increase in the ICC coverage limits, whether as a mandatory purchase of the policy or as a voluntary purchase, would require actuarial analysis to determine the ICC premium charged to policyholders to support the increase.

Thank you again for your rulemaking petition request. We look forward to further engaging with you and the public as we continue to assess these issues.

Respectfully,



David I. Maurstad
Deputy Associate Administrator

September 8, 2021

To: Honorable Members of Wisconsin's Senate Committee on Housing, Commerce and Trade.

From: Mr. David C. Fowler, Wisconsin Association for Floodplain, Stormwater and Coastal Management (WAFSCM), Legislative Chairperson, September 8th, 2021.

Regarding: SENATE BILL 521: AN ACT to create 87.30 (1s) of the statutes; relating to: regulation of structures and accessory structures in floodplains.

Good afternoon Chairman Jagler and members of the Committee. Thank you for the opportunity to testify on Senate Bill 521, my name is David Fowler: I have over 30 years of experience with flooding issues both professionally and personally. I have been a Certified Floodplain Manager in the State of Wisconsin since 2002, and I am currently the legislative chairperson of the Wisconsin Association for Floodplain, Stormwater and Coastal Management (WAFSCM). It is in that capacity that I am providing written testimony on SB 521.

The Wisconsin Association for Floodplain, Stormwater, and Coastal Management (WAFSCM) is the state chapter for the National Association of State Floodplain Managers (ASFPM). The Wisconsin Chapter promotes sound approaches for managing Wisconsin's floodplain, stormwater, and coastal systems. The organization was formed in 2000 and currently has over 200 members from around the state representing both private and public organizations.

Wisconsin continues to suffer from severe weather resulting in flooding in all areas of the state. In fact, flooding is our most common natural disaster. In 2018 alone, Wisconsin saw record flooding in almost corner of the state. Flooding impacts are only going to increase, as our state faces the challenge of changing rainfall patterns that will bring larger storms with heavier downpours. The catastrophic floods that will continue to occur in the Midwest should be a cautionary tale for this State.

Wisconsin has long led the nation in sound floodplain management by requiring Floodplain and Floodway standards higher than those proposed by the federal government. The Federal Emergency Management Agency encourages State and Municipalities to enact higher standards to better protect public tax dollars and to reduce flood damages and loss of life during flood events. Wisconsin's current floodplain management program is a good one and prioritizes the public safety goal of removing

existing structures and preventing construction of new structures within the floodplain and not allowing structures within the floodway. This is sound flood management policy by eliminating the flood risk. This type of legislation will also put our state out of step with the direction of the county to reduce flood risk.

To allow structures and fill (currently not allowed due to higher WI State Standards) within the floodway may pose risks by increasing the potential of these structures being washed downstream due to their location in the moving water of the floodway. These structures when carried by the flood flow can cause increased flood heights by clogging bridges and culverts, damage private and public infrastructure and buildings, and cause increased risks to public health and safety. The addition of fill in quantities currently not allowed can also have impacts by raising the flood elevation by reducing the carrying capacity of the floodway. This increase in flood elevation can also increase flood damages and put the public at risk.

I strongly urge the Committee to consider the increased risk that lowering the floodplain and floodway standards to the federal minimum pose to the residents of Wisconsin.

Thank You for your consideration of this matter.

David C. Fowler CFM

WAFSCM Legislative Chairperson



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Senate Committee on Housing, Commerce and Trade
From: Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities
Date: September 8, 2021
RE: SB 521 – Regulation of Structures and Accessory Structures in Floodplains

Chairman Jagler, Vice Chair Feyen, and members of the Housing, Commerce and Trade Committee,

My name is Toni Herkert, and I am the new Government Affairs Director for the League of Wisconsin Municipalities, representing nearly 600 municipalities, both large and small. I appreciate the opportunity to testify before you today to outline the reasons we oppose SB 521.

Senate Bill 521 prohibits the Department of Natural Resources from promulgating a rule or imposing a restriction that results in an ordinance containing provisions for structures that are more restrictive than those imposed by FEMA. The bill also states that DNR may not adopt a rule that allows the department to deny an exception for structures or accessory structures for which FEMA has granted an exception.

The legislative purpose of floodplain zoning can be found in chapter 614, laws of 1965 which recognized that floodplain zoning is a necessary tool to protect human life, health and to minimize property damages and economic losses. Municipalities are required by s. 87.30 (1) Stats., to adopt reasonable and effective floodplain zoning ordinances to regulate all floodplains where serious flood damage may occur within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available. Wisconsin has had more resilient standards than FEMA from the inception of the program as did the majority of the Midwest states.

The DNR utilizes NR 116 to implement the statutory provision in ch. 87.30. Local ordinances governing floodplain zoning must include the minimum standards of ch. NR 116 and 44 CFR 59-72 if the community participates in the National Flood Insurance Program (NFIP) and have flood insurance available. Nationwide, over 22,300 communities participate in the NFIP. In Wisconsin, more than 563 counties, cities, and villages participate.

Communities that participate in the National Flood Insurance Program must ensure all new buildings constructed in the floodplain are elevated to or above the base flood elevation (BFE). The base flood is the flood that has a 1% chance of occurring or being exceeded in any given year generated by FEMA. Wisconsin standards utilize the regional flood elevation (RFE) which is representative of large floods that have occurred in the state. RFE is also based on a 1% annual frequency of flooding, but it is state specific.

Floodplains are mapped and include land that has been or may be covered by floodwater during the regional flood. Floodplain is the all-encompassing term including the floodway (normal channel or moving water) and the flood fringe (standing water during flood not moving water) areas.

All homeowners, business owners, and renters in communities that participate in the NFIP may purchase flood insurance through NFIP. If you are in a floodplain, it is in your best interest to purchase flood insurance. Just one inch of floodwater in a home can cause \$25,000 of damage. Premiums for flood insurance can be reduced by mitigating flood risk which will also protect your property against flood damage.

Wisconsin floodplain ordinances include the NFIP minimums along with higher state standards to ensure the health and safety of people living in or near the floodplain. These higher standards include:

- Prohibition of residential, commercial, or industrial structures in the floodway,
- Freeboarding - the lowest floor elevated two feet or more above the regional flood elevation (basements can be at RFE),
- Structures must have dryland access, and
- creation of flood storage districts.

The Community Rating System (CRS) is a part of the NFIP that rewards communities that implement programs that exceed FEMA minimum standards. As part of our service to the residents in our communities, League members voluntarily join CRS to benefit homeowners and businesses. The CRS is based on a point system, the more points accumulated the lower a community's rating and the greater reductions in premiums are achieved. Local ordinances that adopt NR 116 standards automatically can achieve points that allow their communities to receive significant reductions in flood insurance premiums. The current 2 ft freeboard standard yields a 64% saving over the premium for the same structure built to the FEMA minimum standard. In addition, the cost of elevation versus the benefits from a reduction in insurance premiums for a 2' freeboard standard has a 3.3-year payoff and results in \$37,000 of savings over a 30-year mortgage.

Property owners in 17 Wisconsin communities that participate in the CRS program receive premium discounts ranging from 5% to 25% as of April 2019. Those communities include the villages of Allouez, Elm Grove, Mazomanie, and Suamico; the cities of Eau Claire, Evansville, Fond du Lac, Green Bay, La Crosse, New Berlin, Reedsburg, Watertown, and Waupun and the counties of Adams, Kenosha, Ozaukee, and Winnebago.

If SB 521 is passed, all of these communities are at risk of losing their preferred status in the NFIP as participants in the Community Rating System. The result may be higher flood insurance premiums and a reduction in required floodproofing which will lead to increased damages and increased health and safety risks for those with development in the floodplain and first responders during active flood situations.

For these reasons the League opposes SB 521 and urges committee members to consider the concerns that we have outlined and vote against this bill if a committee vote is scheduled. Thank you for your consideration. I would be happy to answer any questions you may have.