

Ethan: Welcome and thank you for joining today's conference, The Tribal Consultation, Updating HUD's Floodplain Management, and Wetlands Protection Regulations. Before we begin, please ensure to open the chat panel by using the associated icon located at the bottom of your screen. If you require technical assistance, please send a chat to that producer. As a reminder, you can submit a question during any time onto these events or join the verbal queue. You can enter the chat by typing in your question in the chat box provided, selecting All Panels from the drop down menu in the chat panel, and send. Once again, please ensure you selected All Panelists before sending your question. To enter the verbal queue, you can do so by pressing #2 on your telephone keypad. You'll hear a notification when your line is un-muted. At that time, please state your name, question, and we'll get to ... excuse me. Please state your name, and question, and we'll get to your question. All audio lines have been muted until the Q and A portion of today's call. We'll give you instructions on how to ask a question at that time. As a reminder, this conference is being recorded and I'd like to turn the call over to Kevin Bush, Deputy Assistant Secretary for Grant Programs.

Kevin Bush: Thank you very much and good afternoon, everybody. I'm excited to be on the phone with you today. Unfortunately, we aren't able to be in person, but I'm glad we're still able to connect over this medium. In recognition of the special relationship between tribal governments and the federal government, HUD is committed to regular and meaningful consultation and collaboration with you all in policy decisions that may have tribal implications. And so we're meeting today to discuss the wetland protection regulations, in part, because one of the first actions taken by President Biden was to issue executive order 14008, which was called Tackling the Climate Crisis At Home and Abroad. And it lays out a broad vision of the role the federal government can play to address climate change while creating opportunities. In response to this executive order, we have already gotten to work here at HUD, developing an ambitious climate and environmental justice strategy, a priority of which will be to strengthen our regulations for floodplain management and protection of wetlands at a 24 CFR Part 55.

We view this as one of the most important first steps toward climate resilience in HUD assisted properties and for the people that live within them. We recognize that [inaudible 00:02:37] space unique challenges when defining floodplains and wetlands that can make compliance with Part 55 difficult. So we would like to ensure that this rulemaking process results in a rule that works for tribes and on tribal land. And we value your input at this very early stage, especially to identify aspects of the current rule that present for tribes, so that together we can identify some solutions.

This is just the first of several opportunities for consultation as we draft a proposed rule, and we plan to circulate the draft of the rule to tribal leaders for an additional 60-day comment period later this summer. We hope to publish a proposed rule in the federal register for broader public comment as well in early 2022. In addition to implementing the Federal Flood Risk Management Standards, which Liz will discuss in just a moment, we're also considering the broader revisions to Part 55 to improve clarity, modernized standards and implement HUD's climate resilience goals related to floodplain and wetland protection. And so with that, I will pass it over to my colleague, Liz Zepeda, who will talk a little bit more about what we are doing. I look forward to hearing and listening to you all at the end of the call. Thank you.

Liz Zepeda: Thanks, Kevin. If we could move to the next slide, I'll continue introductions. I'm Liz Zepeda. I'm the Senior Environmental Specialist in the office of Environment and Energy of the Environmental Planning Division at HUD, and also in my office, Zach Carter, another senior environmental specialist. We are taking the lead on this rule for our office. And apologies, if you can hear my cat. Our next slide, we have one more participant. Danielle Schopp is the Program Environmental Clearance Officer for HUD's Office of Native American Programs. I don't think she is on just yet, but she will be here by the time we get to your comments to discuss as well. That is our group, thank you.

Oh yes, Background slide would be great. So this rulemaking has a long history going back to Hurricane Sandy. It's ultimately not very important to have all those details, but we'll quickly run through the background to get oriented. So executive order 13690 established the Federal Flood Risk Management Standards or FFRMS in January of 2015. That executive order amends executive order 11988, which is the cornerstone of federal floodplain management policy, and expands that order to establish an area of concern beyond the 100-year floodplain. So instead of the traditional 100-year floodplain, we are looking at what we're calling the FFRMS floodplain. An inter-agency work group developed guidelines on how to implement the standards later that year, but there was no immediate impact on HUD grantees. None of this affects you all, any HUD grantee, until we update our regulations in Part 55 to implement these executive orders.

So in 2016, we published a proposed rule to implement FFRMS, by updating our floodplain and wetlands regulations in 24 CFR Part 55. You can still find that proposed rule online, but it was never finalized, and it never went into effect. Then in 2017, both executive order, 13690, and HUD's proposed rule were withdrawn. So we took a few years off from this process, but last month, a new executive order, re-instated 13690 and the Federal Flood Risk Management Standards. So at this point we are pretty much back right where we were in 2015. We have these guidelines and the executive order, neither of which have any impact on HUD grantees until we publish a final rule implementing it for HUD programs. So we're starting this consultation now, but the rulemaking process is very slow. We hope to have a final rule in effect in early 2023. Until then, we will be working through the drafting process with your input.

So the next slide is putting this into the context of the current administration, and apologies for being a little repetitive of Kevin. But this administration has made the climate crisis and environmental justice a major priority for federal agencies. And we're taking these very seriously at HUD. We have a larger climate action plan and EJ strategic plan that we are also in the process of developing. And you should be hearing a lot more from us about those things as we continue in the next few months. But updating Part 55 is one of our first top priorities to improve climate resilience across HUD programs.

So, our next slide, just as a quick reminder of how HUD's environmental regulations work, we have Parts 50 and 58, which established procedural requirements for HUD and responsible entities perform environmental reviews for HUD projects. These regulations implement National Environmental Policy Act or NEPA, and they're largely procedural. And Parts 51 and 55 are a little more substantive. Part 51 covers man-made hazards,

noise, explosive and flammable hazards, and airport clear zones. And Part 55, of course, floodplain management and wetlands protection.

Our next slide, for any of those who remember the consultation we did in 2018, we come consulted at that time on updating our NEPA implementing rules in Parts 50 and 58. So it's just a quick update for those who remember that, and are wondering whatever happened. At that time, we were consulting about our efforts to streamline HUD's environmental regulations. And we did an early public comment in, I think May, and then a draft review period in July, August. However, that also is a process that is on hold right now. We're not currently pursuing that rule, but we do intend to revisit Parts 50 and 58 in the future, hopefully near future. So, we have that on our files and hopefully we'll be referring to those.

So for today, we'll focus on Part 55, like I said. So next slide, Part 55 addresses floodplain management and wetlands protection, specifically implementing two executive orders from 1977, 11988 on floodplain management and 11990 on wetlands protection. For both of those, our rules require a decision-making process to ensure that HUD projects avoid negative impacts on floodplains and wetlands, unless there are no practicable alternatives, and all risks and impacts are mitigated to the extent possible.

Next slide has a very general timeline, but it's definitely subject to change. For now, we're asking for early comments by July 18th. Then, we plan to distribute a draft proposed rule for comment for a 60-day comment period later this summer. And then, we're looking at early 2022 to publish a proposed rule for broader public comments, which should also be a 60-day review period.

Our next slide covers how to comment. There's no one in our office to take calls or physical mail, so we're asking that all comments go by email for today. But I mean, anything you want to send us in writing, please send it by email to EnvironmentalPlanningDivision@hud.gov, all one word. And that's on your tribal leader letter as well, EnvironmentalPlanningDivision@hud.gov.

Our next slide shows some of our big picture goals. We intend to make a number of smaller scale changes as well. Here's where I'll remember to note, but I'm trying to repeat everything that's on the slides. I know those of you on the phone don't have these slides yet, and I apologize for that. They will be going up on Codetalk along with the recording, or a transcript of both. So all of this will be coming up later, but I don't think you're missing anything on the phone right now. I think I'm repeating myself early, but feel free to ask questions.

So our current goals we're looking at are of course, implementing the Federal Flood Risk Management Standards, so, updating our definition of the floodplain. Then, revising our procedures to identify wetlands, providing clear instructions on the 8-Step Process and reorganizing Part 55 for clarity. So we'd really like to hear your comments and recommendations both pertaining to any of these priorities, and expanding into anything else related to Part 55, or outside of Part 55 that you would like to bring to us.

So our next slide gets into the details, a little bit of FFRMS. The inter-agency guidelines from 2015 established a framework for how to implement the FFRMS, and how to define the FFRMS Floodplain, that new area of concern beyond just the 100-year floodplain. So under those guidelines, federal agencies have the option to choose from three different approaches to define the floodplain. The first is the climate-informed science approach, which defines the floodplain that you think best available actionable data and methods to integrate current feature changes in flooding based on science. The second is the freeboard value approach, which defines the floodplain as those areas, either two or three feet above base flood elevation of the 100-year floodplain. I'll explain what that means in a moment. And then third, the 500-year flood, plain, or 0.2% annual chance floodplain. So those are those areas with a .2% chance of flooding in any given year.

In 2016, we chose to rely on the freeboard value approach. The idea is that we would essentially take the 100-year floodplain based on the maps by FEMA and add two feet for most projects and three feet for critical actions. We chose the freeboard approach, because it can be applied using existing FEMA maps without any special expertise. But we know that might not be the case on tribal lands, where the 100-year floodplain may not be defined or easily available based on existing maps. So, even that approach has some challenges. And at this point, we're definitely considering changing from our 2016 approach. We could choose to follow any of these three or a combination of them.

The next slide illustrates the freeboard value approach. Regardless of what approach we choose, FFRMS will expand the floodplain both vertically, by adding to the base flood elevation, and horizontally, by enlarging the horizontal area of interest commensurate with the vertical increase. And if we could go to the next slide, it illustrates this. Yeah, there we go. So when you move your elevation up, it also moves over, so the whole flood gets bigger. So that was our approach in 2016. This illustration hopefully illustrates how that works. And another really critical component here is that instead of elevating new construction and substantial improvements to the base flood elevations, which is required by FEMA rules to be eligible for the National Flood Insurance Program, HUD would require all new construction and substantial improvement projects to elevate an additional two to three feet.

Okay the next slide is where we finally opened things up for discussion. As I said, we are considering adjusting our approach to rely on the climate-informed science approach, the 500-year floodplain, either in addition to or instead of the freeboard value approach. So we want a definition that will be effective and reliable on tribal lands, both in mapped and unmapped areas. So the slide, we have a few questions that we'd like your feedback both today or in written comments. So at this point, you can raise your hand by pressing #2, or you can enter comments or questions in the chat. I'll read out our questions and feel free to answer any or all.

So first, what methods do you use now to define the floodplain where FEMA maps are not available? Are there any best practices you would suggest to HUD and/or other tribes? Next, how can Part 55 improve the process for tribes? What approaches to FFRMS would work best on tribal lands? And what resources would help you identify

and define floodplains? We might be able to provide some additional resources as well, so any feedback on that would be great.

Ethan: Hi, Liz, we do have a question in the chat, if you'd like me to read that now.

Liz Zepeda: Sure. Yes, please. Thanks.

Ethan: It is, "What is your definition of substantial improvements?"

Liz Zepeda: We use FEMA's definition of substantial improvement. They define it in their ... The National Flood Insurance Program Regulations. And we use theirs for consistency, so that we're applying the same rules. We also define it in Part 55-1. It's kind of a complicated definition. It's any project for improvement of a structure to comply with existing. Wait, oh, sorry, sorry. I started in the wrong place, because it's a very complicated definition. All right, so substantial improvement is either any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, either before the improvement or repair started, or if the structure has been damaged, before the damage occurred. It can also mean any repair, reconstruction, modernization, or improvement of a structure that results in an increase of more than 20% in the number of dwelling units in a residential projects, or in the average peak number of customers and employees, likely to be site for a commercial or industrial project.

There are some very specific exceptions from this. Substantial improvement does not include projects that are solely carried out to comply with existing state or local health sanitary or safety codes. And it also does not apply to any alteration of a structure of listed on the National Register of Historic Places or on the State Inventory of Historic Places. So anything that is historic is not required to elevate under these rules and any structural repairs, reconstruction, or improvements that don't meet that definition would be considered minor improvements, and they are not required to elevate. Apologies, that was long. Do we have any other questions or comments at this point?

Ethan: This is Ethan. Just a heads up, there are no questions in the verbal queue at this time.

Liz Zepeda: All right thank you. So we can certainly loop back to this, but I'll move on to our next slide and those questions. We've got very similar questions about defining wetlands. Again, we'd welcome your questions or comments either now or by email. We'd like to know more about what tools or methods you use now to define wetlands, whether that's the National Wetlands Inventory, other tribal, federal, or state maps, such as soil surveys, and whether you use the services of a wetlands biologist. We also would love to know about any wetlands identification, best practices, or workable solutions that we could encourage or facilitate under Part 55.

I'll give a couple of minutes to respond. I think if we go to the next slide, we can ... It has a reminder of how to comment, which might be helpful at this point. So, if you could advance the slide? At this point, we'll open it up. Anything you'd like to discuss, ask, say, related to floodplains, or wetlands, or Part 55, it's all out there. Please feel free to enter

a comment through the chat or by pressing #2 to raise your hand by the conference line, and you'll be un-muted.

Ethan: At this time, I still see no hands raised in the verbal queue. Okay, we do have another question in the chat or a comment, which I'll read Liz, if you'd like me to?

Liz Zepeda: Yup, thank you.

Ethan: Okay, it says, "We have been utilizing the NWI, the National Wetlands Inventory. However, because the NWI is not ground truth, it has identified areas that are not exactly wetlands. That has resulted in having to use a biologist, and then work with the Corps to get a JD, an expensive and lengthy process to basically say that the NWI was not valid."

Liz Zepeda: Yes, thank you. That is something that we are sympathetic to, and we're really trying to figure out how we can resolve that and prevent people from having to spend money on a biologist just to overcome an inaccuracy on the National Wetlands Inventory, which certainly happens. Unfortunately, there's no easy answers on that, but if anyone does have any best practices or suggestions, we would really, really value those, and we'd be interested in that. But it's definitely something that is on our radar, and we're trying to find solutions.

Ethan: This is Ethan. Once again, I'd just like the update you. We still have no hands raised in the verbal queue.

Liz Zepeda: I am giving time. If people are typing up anything in the chat. So, we'll sit for a bit, in case you're working on anything. And again, if you are on the line, and you'd like to ask a question or make a comment, please press #2 to get un-muted. (silence)

I'll just remind you all that we would really value any written comments. I know I don't want to put you on the spot, so please send any comments, recommendations, or questions to EnvironmentalPlanningDivision@hud.gov, and we'll be keeping an eye on that. We really, really appreciate your interest in this, and any help you can offer us on making this rule work as well as possible. There are some definite challenges that we're trying to work through, and we'd really appreciate your feedback. As I said, we will be talking more later in the summer, when there's a draft to respond to. Maybe we can leave this open for a few more minutes in case anything comes through, but otherwise I can let y'all go.

Ethan: At this time, there are still no hands raised in the verbal queue. And we'll leave everything open for just a couple moments to see if any questions do come through. Presenters, when you're ready to close, just give me that verbal queue, and I'll close this out for today.

Liz Zepeda: Thank you. (silence) All right, I'd say we've gone more than five minutes without a question. So, we will wrap this up. Again, please send us anything in writing to our inbox

at EnvironmentalPlanningDivision@hud.gov. And we will talk more soon, as we get a draft prepared. Thank you, everybody.

Ethan: Alrighty, that concludes our conference. Thank you for using AT&T Event Conferencing Enhanced. You may now disconnect.