Speaker 1: Ladies and gentlemen, welcome and thank you for joining today's Tribal Consultation draft, floodplain and wetlands rule. Before we begin, please ensure that you have opened the WebEx chat panels by using the associated icons located at the bottom right-hand side of your screen. Please note all audio connections are currently muted and this conference is being recorded. You are welcome to submit written questions throughout the webinar which will be addressed at the Q and A sessions of the webinar. To ask a question, click the raise hand icon on your WebEx screen, it's located above the chat panel on the right, to place yourself in the question queue. If you are connected via phone only, pressing pound two on your phone will get you into the question queue. If you require technical assistance, please send a chat to the event producer. With that, I will turn the webinar over to Moriel Tchaou, Acting Director, Office of the Environment. Sir, please go ahead.

Moriel Tchaou: Thank you. Thank you. And greetings to all, and welcome to this session. We are here today because we have developed a draft rule for your review and comment, and I think they were distributed along with the invitation to this consultation session. So the next opportunity to review and comment on the draft will be when we publish the proposed rule in the Federal Register, which we really hope to do in early 2022.

HUD is committed to improving climate resilience and environmental equity by developing an ambitious climate and environmental justice plan. So this rulemaking is one of our first steps towards achieving climate resilience in HUD-assisted projects. And we realize that Tribes face unique challenges when defining floodplains and wetlands that can make compliance. Because of that difficulty and challenge in defining floodplains and wetlands, it makes compliance with part 55 difficult. So HUD would like to ensure that this rule-making process result in a rule that works for Tribes and also on Tribal lands. So thank you very much for taking time to attend the session. We value your time and feedback as we prepare a proposed rule. Once again, thank you, and I will pass the floor to Liz.

Liz Zepeda: Great. Thank you, Moriel. So just to keep the introductions rolling, I'm Liz Zepeda. I'm the Policy Lead in the Environmental Planning division in the Office of Environment and Energy, and I'm joined by Zach Carter who's also a Senior Environmental Specialist in the Office of Environment and Energy. And we're also joined by Danielle Schopp, who is the Program Environmental Clearance Officer in the Office of Native American Programs. So she will be on standby to help us out with any questions. I am going to try to say everything that is important on the slides out loud, so that those of you on the phone don't miss anything. They will also be posted on CodeTalk along with a recording of this session and a transcript to go along with the Dear Tribal Leader Letter.

So diving into the rule and our background, there's a long history here. It's ultimately not that important to have all of the details, but we'll quickly recap the evolution. So this starts largely with Executive Order 13690, which was published in January 2015, and established a Federal Flood Risk Management Standard, or FFRMS, in a process for further soliciting and considering stakeholder input. So that executive order amends Executive Order 11988 from 1977, which is really the foundation of the Federal Flood Plain Management policy. With 13690 and the Federal Flood Risk Management Standards, we're modernizing our concept of the floodplains, replacing the 100-year floodplain with something called the FFRMS floodplain.

So back in 2015, an inter-agency work group developed guidelines on how federal agencies will implement this new standard, but it's not self-implementing. So neither the executive order nor those guidelines have any immediate impact on HUD or any of our grantees or stakeholders until we update our regulations to reflect this executive order. Back in 2016, we published a proposed rule that would implement FFRMS and Executive Order 13690 by updating our Floodplain Management and Wetlands Protection regulations in Part 55. But that role was never finalized and it never went into effect. And then, in 2017, Executive Order 13690 and our proposed rule were both withdrawn.

So that brings us up to this year, in May, a new executive order reinstated Executive Order 13690 and the Federal Flood Risk Management Standards. So we're kind of reset to where we were in 2015. We have the executive order, we have these guidelines, but there's no immediate impact on HUD grantees until we publish the final rule implementing FFRMs for our programs. So that's what we're doing here, consulting on a draft proposed rule to implement those standards. This is a long process. Rulemaking always takes a while. We hope to have a final rule in effect early in 2023.

The current administration has made the climate crisis and environmental justice a major priority for all federal agencies. Moriel said we're taking these issues very seriously and updating Part 55 to implement the Federal Flood Risk Management Standards. It's one of our top priorities at HUD to improve climate resilience and, by extension, environmental justice across HUD programs.

So this slide is a reminder of HUD's environmental regulations, or an overview of how our regulations work. We have two separate parts that implement the National Environmental Policy Act or NEPA. Those are parts 50 and 58. So Part 50 and Part 58 establish our procedural requirements to perform environmental reviews underneath us for HUD-assisted projects. Then we have some more specialized, more specific regulations in parts 51 and 55. Part 51 covers man-made hazards, making sure we have some special protections for residential properties when it comes to noise, explosive and flammable hazards, and airport clear zones. But our focus today is Part 55, our Floodplain Management and Wetlands Protection regulations.

This isn't central to our consultation today, but I did want to briefly talk about our 2018 Tribal consultation just to address any questions or lingering curiosity about what happened there. In 2018, we consulted on a different rulemaking that was related to our NEPA regulations in Part 50 and Part 58. We got some really great feedback on that draft proposed rule. We were able to incorporate several suggestions we got during Tribal consultation into that draft proposed rule, but, ultimately, we never got a formal proposed rule, and that rulemaking has also been withdrawn. So we aren't currently pursuing any updates to parts 50 and 58, but we do intend to revisit those in the coming months. So might have another round with those two.

So now, again, we're focusing on Part 55, which addresses Flood Plain Management and Wetlands Protection and implements executive orders 11988 and 11990. 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 have been mitigated to the extent possible. This is a general timeline. I recall our first consultation period ended in mid-July. The second comment period runs through October 18th, so that's when we'd like to receive any comments you have on this draft. And then we hope to have a proposed rule published in the Federal Register for broader public comment in early 2022, so that will be the next big round of comments.

There isn't anyone in our office to take your phone calls or your physical mail, so please send all comments, recommendations and questions electronically to our inbox at EnvironmentalPlanningDivision@hud.gov, that's all one word, Environmental Planning Division.

So finally getting into the rule a little bit, we have a few big picture goals that we're trying to implement as well as a number of smaller scale changes. We'd love to hear your feedback on these priorities, the larger scale, whether there's anything else we should be considering for the specifics, but our primary goals are to of course implement Executive Order 13690, which we'll do by redefining our floodplain of concern as the FFRMS floodplain. And I will get much more into that in the coming slides.

Second, we want to revise our floodway policies to replace our current strict prohibitions with some reasonable flexibilities where it's appropriate. Next, we want to update our instructions on the eight-step process to foster better analysis and improve overall climate resilience and safety. Fourth, we want to revise our wetlands protection policies to eliminate confusing, overly burdensome and unclear procedures, particularly when it comes to identifying protected wetlands. And then finally, we just want to reorganize Part 55 to establish a more logical order and clarify the compliance requirements.

So our next slide just shows the table of contents of our draft rule. I'm not going to go through all of this, but the idea is that we're taking largely the same process, the same ideas that we have in our current Part 55, and making them a little easier to follow, a little easier to find. I'm hoping to spend less time in the future, helping people dig out the sentence they're looking for in Part 55, which is currently a bit of a mess, and hopefully untangle it into something that will help you find what you're looking for a little more easily.

So towards that end, we've been working on clarifying the process, which is outlined in section 55.6 of the draft proposed rule. It's really the same process as before, we just hope it's going to be easier to rely on the regulation to guide you through that process. So we have a lot of new sections, notably section 55.6, which we think should be a good place to start to understand the process. Which, in a nutshell, is first determine whether the project is required to comply with Part 55 at all.

Second, determine whether a project occurs within the FFRMS floodplain and/or a protected wetland. If yes, look at our stricter prohibitions to determine whether the project is eligible for HUD assistance. In general, it will be, but there are some specific areas where we prohibit HUD assistance due to severe risk. Assuming the project is still eligible, then you will move on to determining whether the eight-step decision making process is required, whether the five-step decision-making process is sufficient, or whether the full decision-making process can be skipped.

And then finally, once you've gotten through all of those, you'll, if necessary, complete the five or eight-step process, which we hope will be a little clearer, to make sure that we're designing a project that is as resilient as possible and that has the least impact on floodplains and wetlands.

So the most important thing in this rule is going to be defining the FFRMS floodplain. This will be the floodplain that replaces the 100-year floodplain as our default area that we consider when we're evaluating flood risk in HUD projects. So right now, when you're looking at using HUD assistance to construct housing, for example, you're going to be looking at whether the site is in the 100-year floodplain, which is the area with at least a 1% chance of flooding any given year.

However, the 100-year floodplain that we refer to, that gets mapped by FEMA in most areas, but it's based entirely on past flooding and the conditions, basically, the day that map is published. So we say the day a map is published, it's already out of date because it's based entirely on present and past conditions.

What we want to do with FFRMS is to consider future flooding over the life of the project. So instead of building homes based on floods in the past, we want to build homes to withstand the amount of flooding we'd expect to see over the life of that structure. So taking climate change into account, taking increased development, anything about the area that might change and increase your flood risk, we want to be cognizant of that when we're planning our projects.

So under the 2015 inter-agency guidelines, federal agencies have three approaches to define the FFRMS floodplain that they can choose from. The first, the recommended approach, is the Climate-Informed Science Approach, or CISA. This defines the FFRMS floodplain using best available actionable data and methods that integrate current and future changes in flooding based on science. So we're going to show some maps in a bit that shows this a little bit, but basically we want to assess the level of risk you're willing to take on, see where we think the floodplain is going to be over the course of the life of a project, and make sure we're building to account for that level of risk based on the specifics of the site and the data available.

The next option is the Freeboard Value Approach, which defines the floodplain as those areas either two to three feet above the 100-year floodplain and its Base Flood Elevation. So it's either adding two feet or three feet to the Base Flood Elevation, depending on what the intended use of the project is.

And then finally, we've got the 500-year floodplain, or the area with a 0.2% chance of flooding in any given year and where that has been mapped by FEMA as another way we could define the FFRMS floodplain. In 2016, we chose to rely on the Freeboard Value Approach. We chose that approach because it could be applied using existing FEMA maps without special expertise. However, that might not be the case on Tribal lands where the 500-year floodplain might not be defined by FEMA, and might not be easily available based on existing maps.

In this draft, we're proposing a three-tiered approach to define the FFRMS floodplain. Where climate-informed science data is available, we would like to start from the assumption that we will use the Climate-Informed Science Approach where that's possible. Part of the reason we were able to do this, or we think that this is more achievable this year than it was in 2016, is that maps continue to evolve.

There are always better and better resources. There are much better resources than there were in 2016, for example, and there is a great deal of momentum in the federal government, we think, to get some new, better mapping resources that will make it easy to apply the Climate-Informed Science Approach. Now, where that data is not available but FEMA has mapped the 500-year floodplain, we would use that to define the FFRMS floodplain.

And then, finally, where neither of those are available, we would now use the Freeboard Value Approach to define the FFRMS floodplain, as a kind of last resort if the other options are not available. We would add two feet to the 100-year floodplain for most residential projects, and three feet for critical actions like hospitals, nursing homes, fire stations, anything where we need to be especially protective and make sure that either evacuation isn't necessary or there's always access to that resource during a flood event.

So this is one of the samples of CISA mapping resource that's out there. This is a mapper from the National Oceanic and Atmospheric Administration, which has mapped most of the coastline, and this makes CISA work a little bit easily. On the left we have basically the current coastline of Louisiana, and on the right we have the coastline of Louisiana with one foot of sea level rise. So if we were proposing a project in these areas, we might look at how much sea level rise is expected over the course of that project. If it's a 30 year mortgage, what amount of sea level rise are we expecting in 30 years? Is it one foot, two feet, three feet? And then as we tick up this bar on the left, we can see how the coastline might change as sea level rises.

So our next slide gets into the Freeboard Value Approach. Regardless of what approach we use, FFRMS is going to inevitably expand the floodplain both vertically by adding to the Base Flood Elevation and horizontally by enlarging the area of interest commensurate with the vertical increase. That's hard to describe in words. This slide has an illustration of how this works, which I've always found extremely helpful, but basically, as your elevation increases, the floodplain is also going to expand out horizontally. So, whereas the Base Flood Elevation or the 100-year floodplain might end here at this inner line, when we regulate the FFRMS floodplain, we're looking at this yellow triangle as well. So we would be doing the eight-step process or considering flood risk in this area, as well as this area. Now, hopefully you can see my cursor. I'm not positive.

So now, got a couple of slides on our proposed approach to wetlands. In this rule, we're hoping to clarify the steps to identify a protected wetlands. We're hoping to find a method that works in all states and territories, which we know the current method can be tricky. So in this draft of this rule, step one would be a screening step where we would look at both the National Wetlands Inventory Mapper that is managed by the U.S. Fish and Wildlife Service and also a visual observation of the site. Which does not need to be an onsite site inspection, but a look at site photographs or aerial views, something that can give us some hints about whether there might be a wetlands onsite.

Then, step two would be if HUD or the responsible entity is not able to make a conclusion based on the National Wetlands Inventory and a visual inspection, you would gather some more information to make a final decision. So you might use other mapping resources, biological information. You might work directly with the U.S. Fish and Wildlife Service or get a biologist's report delineating the wetland. So your final step is to take all that information you've gathered in steps one and two, or just step one, and make a final determination about whether there are any wetlands, as defined in our regulations, that have to be considered as you comply with Part 55.

We got some interest in wetlands in June and July, so we wanted to ask a few questions or give a special time to talk about wetlands. Since this can be a special challenge on Tribal lands. So if you have any tools or methods that you use now to identify wetlands, whether that is the National Wetlands Inventory, other Tribal, federal, or state maps, such as soil surveys, or the services of a wetlands biologist actually getting wetlands delineations, like to hear about that. And then we'd also like to know what are some best practices for wetlands identification or any workable solutions that we could encourage or facilitate for this rule. So I'm going to pause here and see if we have any questions or comments on that.

Speaker 1: I do not see any questions in queue right now, so those of you that are on the phone or dialed in on a regular audio, you can press pound two on your telephone keypad to enter the verbal question queue, or you can enter your question in the chat box, like normal. And I do see we have a question in queue, but just as a reminder to everyone, there's a little hand icon above the chat panel. Click on that to join the chat queue. And I do see we have a question in queue. Are you guys ready?

Liz Zepeda: Sure.

Speaker 4: Yes. It looks like we have one from Linda Nguyen, so if you could unmute her.

Speaker 1: Oh, there she is. Linda, you are unmuted, you may go ahead.

Linda Nguyen: Hi. I don't have any questions, but I do have comments in regards to the comments on the slide that's up on the screen right now. So I'm the Environmental Director for Red Cliff Band of Lake Superior Chippewa, and I do use the National Wetlands Inventory. However, it's still pretty broad. So then I actually just look at the state's wetland inventory, but again, that's still very broad because they don't do any sort of assessments within reservation boundaries. And that's where the environmental department, the Tribes Environmental Department comes in. So, we do some ground truthing and some field verification. I am Wetlands Delineated Certified by the Army Corps., so that's a useful in-house skill that we have here, fortunately. We also use the NRCS soil surveys, too, to help determine hydric soils and we'll, again, go out there to verify, but yeah. That's how we go about doing the wetlands portion here at Red Cliff.

Liz Zepeda: Great. Thank you so much. You've got a good, thorough system.

Speaker 4: Okay, and Liz, we also have a question in the chat. A couple. So I'll start with one that asked, "Will Executive Order 13690 replace Executive Order 11988 and Executive Order 11990 or just 11988?" And then I would add to that just to address the relationship between the Executive Order 13690 and the existing executive orders.

Liz Zepeda: Sure. So those who are not fond of memorizing all of these numbers, Executive Order 11988 is our main executive order that kind of established federal floodplain management policy in 1977. And what Executive Order 13690 does is amend that executive order. So it starts from really the same framework as 11988, it just layers on these new requirements.

In terms of Executive Order 11990, which establishes our wetlands protection policies, that is not impacted by Executive Order 13690. So it will stay as is. Really, we don't have to touch our wetlands policies to implement 13690 and the Federal Flood Risk Management Standards, we just know that there are some improvements that can be made, so we're bringing wetlands along for the ride.

Speaker 4: Okay. And we also have a comment in the chat, which is, "DHHL currently utilizes all three of these methods. The NWI is the initial screening tool because there are frequently identified areas that do not meet any of the wetland parameters."

Liz Zepeda: Thank you. And yes, that is the challenge of the National Wetlands Inventory. As I think Linda mentioned, there's no ground truthing there, so you get a lot of false positives.

Speaker 4: And those are the questions in the comments that we have so far.

Liz Zepeda: Okay.

Speaker 1: All right. I do not see any questions from the phone either.

Liz Zepeda: Well, I've just got this one more slide with some more discussion questions, and we'd love to hear back any feedback now, or if you want to think on it and send us an email, that's fantastic. Questions we've got here are what improvements would you suggest to the draft proposed rule? What is missing from the rule that HUD should address? What would you like to see HUD do better to better support your efforts, to develop resilient housing that is protected from flood risk? And what information would be helpful to you in applying Floodplain Management and Wetlands Protection requirements?

While I'm here, I'll mention the draft proposed rule itself should have been sent out to everyone. It's also available on HUDCLIPS, I believe, right now, where it will be posted along with this recording of this webinar and the transcript when all of that is ready. But the draft proposed rule can be perused starting now. You likely have not had an opportunity to look through that rule. We'd really appreciate, if you do have time, to read through that rule and think about what's missing, what could be improved. Really, how we can support you in improving flood resilience in your HUD-assisted projects and how we can help apply these standards and get quality safe housing that lasts as long as it's supposed to. For now, I will leave it open to see if we get any comments or questions for now.

Speaker 1: As a reminder, those who dialed in on the regular phone line, you can press pound two to enter the verbal question queue.

I do not see any questions at the moment in the queue.

Liz Zepeda: Okay. Well, I don't need to keep you all on the line. There isn't anything. I'm happy to stay on for a few minutes if anybody's working on writing something up, or if there's anything else you want to add, but I'll close out with just, once again, we really value your interest in this topic and your help with making the rule as good as we can possibly make it. Please continue sending us any comments, questions, suggestions, anything, by email at EnvironmentalPlanningDivision@hud.gov. Ideally by October 18th. And then hopefully you'll be hearing from us more early next year.

And I see that we had a question about the NOAA mapping tool. And I just Google that every time I need it, so let me see if I can find that. It is called the Sea Level Rise Viewer, and that link posted in the chat. But it is https://coast.noaa.gov/slr/

But I always find this by Googling "NOAA" and "sea level rise" and it's there. It's a very fun tool. I recommend it. I mean, kind of depressing, but yeah. Interesting. I take it we haven't gotten anything else?

Speaker 1: I do not see any additional questions in the queue. No, no additional questions in the queue at this time.

Liz Zepeda: All right. So I think we can close out unless any of my fellow presenters want to add anything.

Moriel Tchaou: Thank you. Thank you all. This is Moriel again, thank you all for coming to the session. We really value your input and feedback very much.

Speaker 4: Yeah, thank you very much.

Liz Zepeda: Thanks, everybody.

Speaker 1: That concludes our conference. Thank you for using event services. You may now disconnect.