

**Floodplain Management Association
Rancho Mirage
September 9, 2015**

*Executive Order Update – Flood Risk Management
Standard – Why, What, & How*

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Context

- General or Special Counsel for nearly \$2 billion in locally-sponsored flood risk reduction projects.
- Represent non-Federal sponsors on USACE Civil Works Projects
- General Counsel for the California Central Valley Flood Control Association.
- Special Counsel to cities and landowners on FEMA appeals or remapping actions.
- Clients in WA, OR, and CA.
- Additional work on water supply projects, including those with Bureau of Reclamation

EO 11988, EO 13690, & FFRMS

–Prologue

- In 1977, then President Carter issued E.O. 11988, setting forth additional considerations regarding floodplains:
 - 100 year floodplains, as determined by what are now FEMA's NFIP maps.
 - The language was significantly oriented toward preserving natural floodplains.
 - Language did require evaluation of actions including Federal funding and permitting.
- Wide variety in implementation
- FIFMTF considered amending E.O. 11988

EO 13690, EO 13690, & FFRMS

- In January of 2015, President Obama issued E.O. 13690.
 - "As part of a national policy on resilience and risk reduction consistent with my Climate Action Plan, the National Security Council staff coordinated an interagency effort to create a new flood risk reduction standard **for federally funded projects.**"
 - But, this E.O amended E.O. 11988 to impose a higher standard than the 100-year standard, called the Federal Flood Risk Management Standard.
 - This created confusion and internal inconsistency.

EO 13690, EO 13690, & FFRMS

- "Base flood level" was replaced by "elevation of the floodplain as defined in Section 6(c) of this Order" which is:
 - "Climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science."
 - 100-year plus 2 feet (or 3 feet for critical actions).
 - 500-year mapping.
 - Method from future update to FFRMS.
- But "any action" or "Federal funding?"

E.O. 13690, 11988, & FFRMS

- Mitigation Framework Management Group (MitFLG) issued draft guidelines.
- Many local concerns exist:
 - Procedural concerns (comment period, comments before people understand impact, etc).
 - Application to Federal agencies, or more???
 - Continuing application of E.O. 11988?
 - What is the definition of an "action" triggering FFRMS?
 - Opposition to "indirect support of floodplain management"
 - Application to Federally funded projects
 - Potential for "Hydra" approach on implementation

E.O. 13690, 11988, & FFRMS

– During workshops, Federal Agencies have said:

- The FFRMS is designed solely to influence Federal investments.
- Many communities have adopted stricter floodplain management ordinances; this simply catches up the Federal Government.
- The FFRMS is not intended to direct that FEMA do anything different in mapping under NFIP.
- The FFRMS is not intended to influence the actions of local government.

FEMA Presentation at NAFSMA

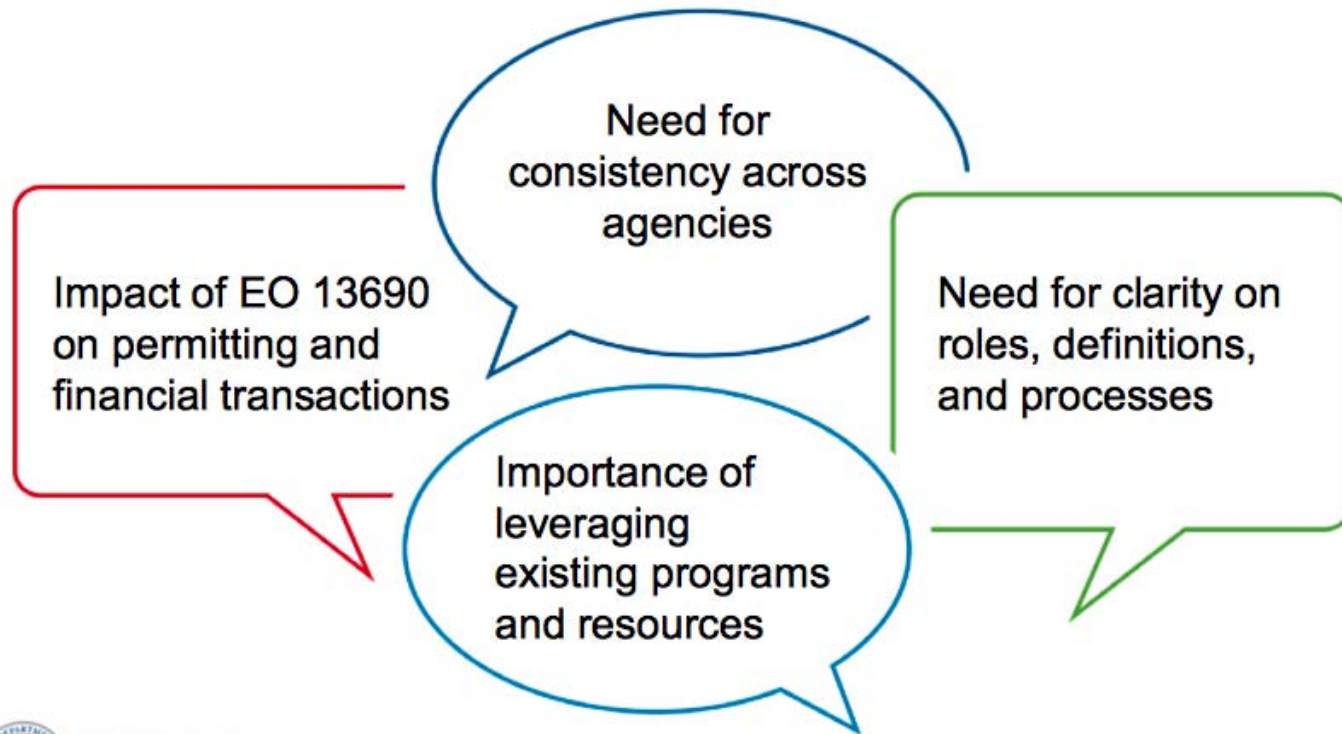
Applying the Standard

- ▶ Federal agencies will continue to implement Executive Order 11988, but replace the 100-year base flood elevation with the elevation component and corresponding horizontal floodplain of the Federal Flood Risk Management Standard for projects that use Federal funding for new construction, substantial improvement, or to address substantial damage to a structure or facility.



FEMA Presentation at NAFSMA

We Listened, and This Is What We Heard



FEMA Presentation at NAFSMA

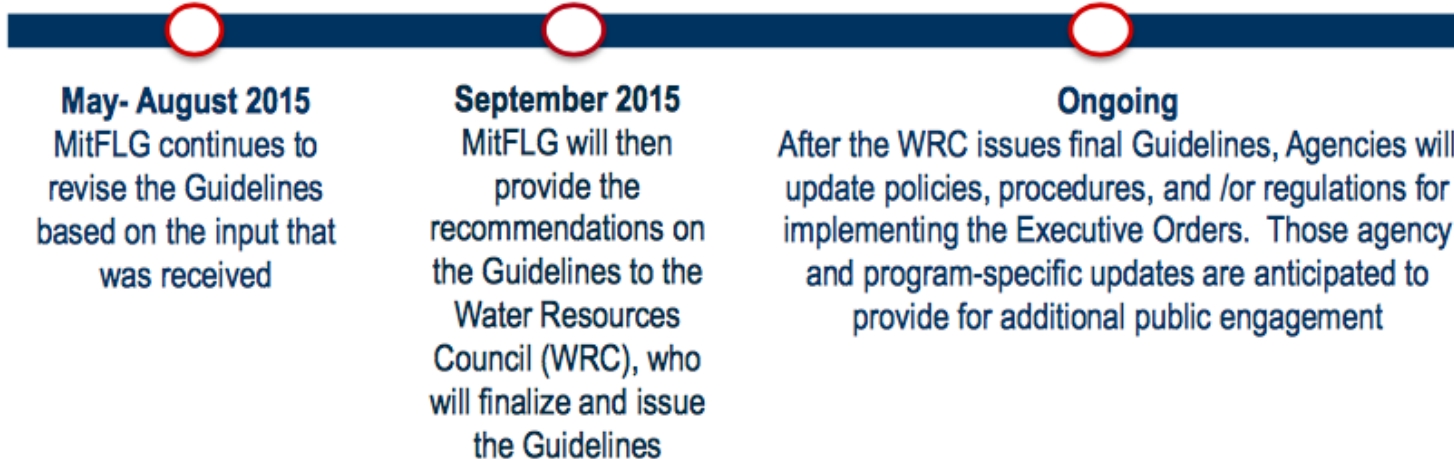
Clarifications We're Making

- ▶ The comments and input are currently being reviewed, discussed, and addressed by a MitFLG working group. These comments spanned many topics. Some of the major topics included:
 - Scope and applicability of E.O. 11988 and the FFRMS and the associated implications for implementation
 - The concept of best available data and information, especially as it relates to the climate-informed science approach and mapping information available to determine the floodplain
 - Questions about the impact of E.O. 13690 on the National Flood Insurance Program (NFIP) and other Federal Emergency Management Agency (FEMA) programs
 - Concerns about consistency in implementation across federal agencies
 - Requests for clarification or additional information on critical actions and nature-based approaches
 - Suggestions and questions about the development of agency-specific guidelines and implementation plans
 - Questions and suggestions about how other levels of government should be involved in the process and, in particular, how state, local, tribal, or territorial standards will be addressed
 - Clarification on how E.O. 13690 applies to leveed areas

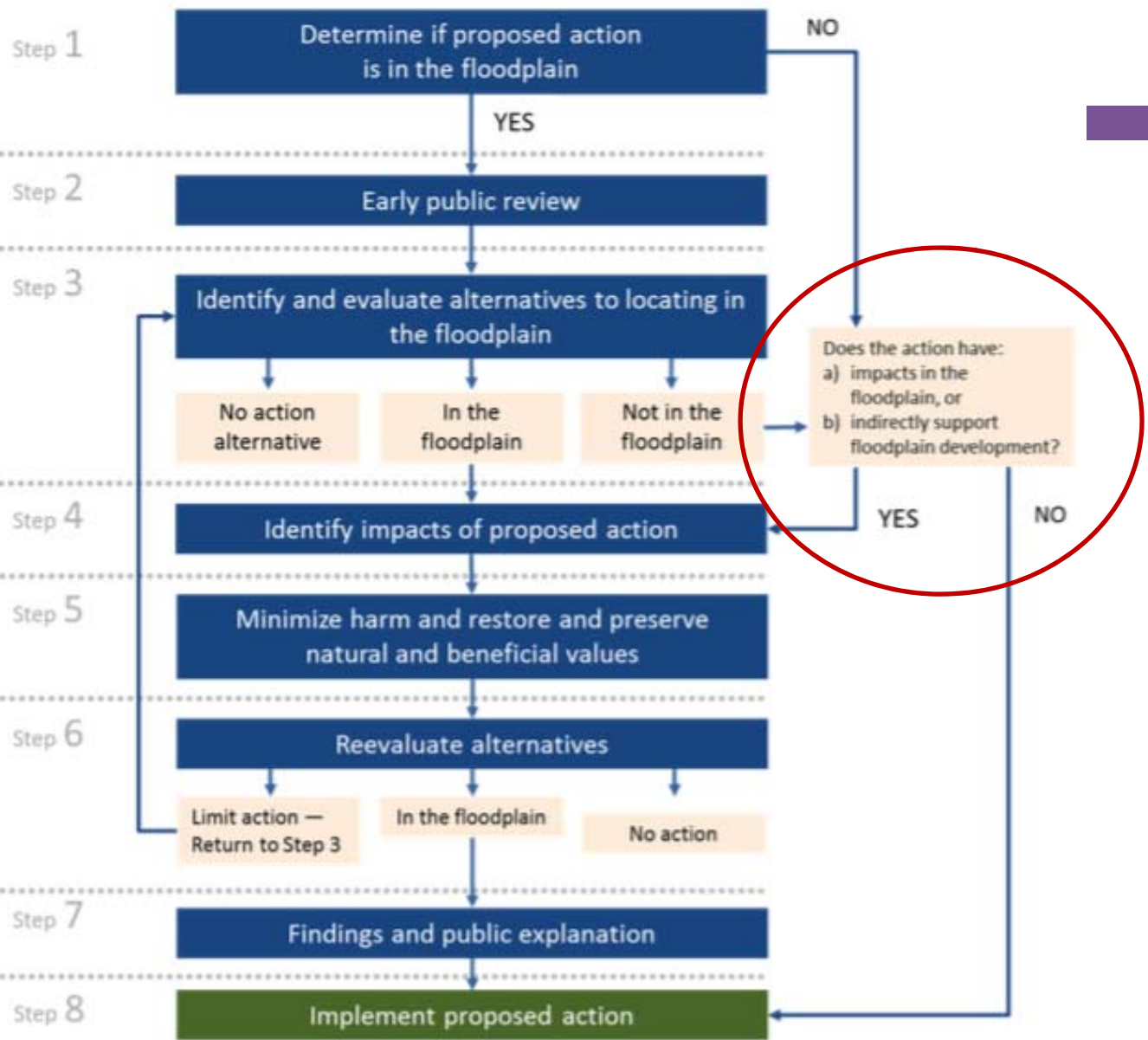


FEMA Presentation at NAFSMA

What's Next?



But....



E.O. 13690, 11988, & FFRMS

– Potential remaining issues:

- "Any Federal action" versus NEPA standard.
- Application to facilities (as opposed to structures):
Elevation? Equivalent? Etc
 - How does one elevate a levee?
- What is a "critical action?"
- How will Federally funding be defined?
- Consistency across the Federal family of agencies
- What "base flood elevation" should be used before addressing climate change?
- Will this mean new life for E.O. 11988?

DOWNEY BRAND

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