National Flood Insurance Program: Reauthorization?

Andrea P. Clark, Downey Brand LLP
January 2018
Goal: reduce federal expenditures for flood losses through insurance

FEMA maps flood-prone communities – Special Flood Hazard Zones

Community participation in program
- Adoption of ordinance
- Regulation of activity in the floodplain through permit
- Mandatory flood insurance for property in SFHZ with federally-backed mortgage
THE COST OF FLOOD INSURANCE IS A DROP IN THE BUCKET COMPARED TO THE COST OF FLOOD DAMAGE

$700/ YEAR AVERAGE FLOOD INSURANCE POLICY

$43,000 AVERAGE FLOOD INSURANCE CLAIM

FEMA

4/14/17
NFIP

- Was not designed to be actuarially sound - pre-FIRM rates and grandfathering
- $24 billion debt after Katrina and Sandy
- Balancing books versus increased rates (Biggert-Waters)
- Fall 2017 $16 billion forgiven
Program Lapse

- FEMA can pay out claims
- No new or renewed policies
- NAR: 40,000 closings/month
Current Status

- December – two short-term reauthorizations
- Program expires January 19, 2018 (tomorrow)
- H.R. 2874 passed by House; no action by Senate
- Politics
Popular Issues

- **Severe Repetitive Loss Properties**
  - At least 4 NFIP claim payments over $5,000 OR two claim payments with cumulative amount exceeding market value
  - 1% of insured properties; 25-30% of flood claims
  - Existing programs – grants for mitigation (acquisition, relocation, conversion to open space, elevation, dry flood-proofing)
  - Existing program – insurance premiums increase when policy holder refuses offer of mitigation
  - H.R. 2874 – increasing premiums, community plans, denial of coverage if mitigation measures not implemented (for "extreme" SRL properties)

- **Private Insurance Market**
  - More options (less expensive?) for consumers; more owners covered
  - H.R. 2874 – allows private policies to satisfy insurance requirements
California On its Own?

- CA is a "donor" state – subsidizing the NFIP
- CVFPP recommends a study of state insurance program
- State could use premiums to fund flood system repairs/improvements

Questions
- Who is required to pay? Enforcement?
- Role of private insurers?
- Does it decrease state liability under *Paterno*?
Looming on the Horizon - Endangered Species Act

- Ensure that federal agencies protect and conserve endangered/threatened species
- Section 7 – consultation; if jeopardy, a biological opinion with reasonable and prudent alternatives (RPAs)
- NFIP – is it an action subject to ESA?
- Oregon and Washington – RPAs with drastic impacts on work in floodplains
- CA Delta case
Andrea Clark, Partner
Downey Brand LLP
aclark@downeybrand.com
(916) 520-5424