



September 8, 2026

Hon. Scott Turner
Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Public Comments in Response to Rescission of Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard [Docket No. FR-6527-P-01]

Dear Secretary Turner:

The Natural Resources Defense Council (NRDC) writes to provide comment on the Department of Housing and Urban Development's (HUD) notice of proposed rulemaking announcing its intent to rescind its regulations governing floodplain management and wetlands protection requirements (the "Proposed Rule").¹ If adopted, the Proposed Rule would rescind HUD's April 23, 2024 final rule titled "Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard"² (the "2024 Final Rule").

NRDC is opposed to the Proposed Rule for multiple reasons. First, sound economic and social policy dictate that HUD maintain the agency's floodplain and wetland environmental requirements as climate change is increasing the risk of flooding. Second, HUD's Proposed Rule is arbitrary and capricious because the agency has not provided a reasoned explanation for abandoning the 2024 Final Rule's risk-based, climate-informed floodplain and wetlands protections. Third, the Proposed Rule runs afoul of statutory duties in HUD-administered programs. Lastly, HUD erred by failing to give proper consideration to the environmental impacts of the Proposed Rule, in violation of the agency's obligations under the National Environmental Policy Act (NEPA).³

¹ "Rescission of Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard," 91 Fed. Reg. 42,685 (July 10, 2026)

² 89 Fed. Reg. 30,850 (April 23, 2024).

³ 42 U.S.C. §§ 4321 *et seq.*

NRDC is an international, non-profit environmental and public health membership organization with more than three million members and online activists. NRDC advocates to reduce greenhouse gas emissions that cause climate change, increase the resilience of communities to the unavoidable impacts of climate change, safeguard human health, and ensure safe drinking water for all. NRDC's members are at risk of harm because HUD's Proposed Rule, if finalized, would increase the risk of flooding to HUD-funded infrastructure, like affordable housing.

NRDC urges HUD to carefully consider these comments, withdraw the Proposed Rule, and to carry out its duty to maintain and protect floodplains and wetlands by continuing to implement the 2024 Final Rule. Alternatively, NRDC requests that HUD (1) perform a full NEPA analysis to examine the nationwide environmental impacts of reducing the size of the regulated floodplain, including preparation of an Environmental Impact Statement for public review and comment; and, (2) conduct a new regulatory impact analysis that accounts for the benefits of 2024 rule, uses a proper baseline, and considers a range of alternatives.

I. HUD's 2024 floodplain and wetlands rules are crucial for minimizing flood damage.

The primary intent of HUD's floodplain management and wetlands protections, as set forth in 24 C.F.R. Part 55, is to minimize development that impinges on the natural functions of floodplains and wetlands. Flooding is the most common and costly natural hazard in the United States. Increases in the frequency and severity of flood events due to climate change portend significant economic and social consequences. More extreme rainfall and rising seas that result from climate change are exacerbating flood risks across the nation. Per the Fifth National Climate Assessment ("NCA5"), climate change is "increasing the frequency of water-related disasters in the US."⁴

Over the last 70 years, heavy precipitation events have increased across the contiguous United States.⁵ Human-caused climate change has increased the frequency and severity of the heaviest precipitation events. The Northeast (60 percent increase) and the Midwest (45 percent increase) have witnessed the largest increases in the number of extreme precipitation days.⁶ These changes have contributed to more frequent river and stream flooding in these regions. Changes in precipitation amount and duration due to climate change have combined with increasing development in risky areas to increase overall economic damage from floods.⁷ The upward trajectory of flooding impacts will likely continue with changing rainfall patterns and intensity.

⁴ Payton, E.A., A.O. Pinson, T. Asefa, L.E. Condon, L.-A.L. Dupigny-Giroux, B.L. Harding, J. Kiang, D.H. Lee, S.A. McAfee, J.M. Pflug, I. Rangwala, H.J. Tanana, and D.B. Wright, 2023: Ch. 4. Water. In: Fifth National Climate Assessment. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. <https://doi.org/10.7930/NCA5.2023.CH4>

⁵ Marvel, K., W. Su, R. Delgado, S. Aarons, A. Chatterjee, M.E. Garcia, Z. Hausfather, K. Hayhoe, D.A. Hence, E.B. Jewett, A. Robel, D. Singh, A. Tripathi, and R.S. Vose, 2023: Ch. 2. Climate trends. In: Fifth National Climate Assessment. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA.

⁶ *Id.*

⁷ *Id.*

Sea level rise will escalate the severity of coastal flooding. According to NCA5, annual frequencies of both minor and moderate coastal flooding increased by a factor of 2–3 along most Atlantic and Gulf coastlines between 1990 and 2020.⁸ “By 2050 under the Intermediate sea level scenario, minor, moderate, and major coastal flood frequencies will all increase by a factor of about 5–10 in many regions relative to 2020 in the absence of adaptation.”⁹ Accounting for sea level rise impacts, including greater storm surge, is crucial for designing to reduce future flood risk.

Concerning wetlands, they store a vast amount of carbon, curb the growing risk of floods, recharge groundwater, and improve water quality. The ecosystem services provided by wetlands have been valued globally at more than \$47 trillion annually.¹⁰ Wetlands also provide disproportionate support to the world’s plants and animals, with up to 40 percent of all species—including amphibians, birds, mammals, and reptiles—living or breeding in wetlands.¹¹ The United States is no exception, with its amount of wetland cover closely correlating with species richness.¹² Even though wetlands cover only about 5 percent of the land in the coterminous United States, they support nearly half of all species federally listed as threatened or endangered, harbor more than 30 percent of plant species, and provide essential habitat for up to half of all North American bird species.¹³ But wetlands in the United States remain highly vulnerable to loss, with wetlands in the continental U.S. covering less than half the acreage that they covered in the 1700s.¹⁴

To provide greater detail about the way different kinds of wetlands may benefit people, NRDC and Point Blue Conservation Science developed a report which surveyed the scientific literature and synthesized the benefits of our nation’s wetlands.¹⁵ With NRDC support, Point Blue Conservation Science reviewed 160 studies on various wetland benefits in North America and found significant evidence for many overlapping benefits. Conserving and restoring these valuable habitats thus offers important opportunities to address multiple crises at once. In general, wetlands of all types excel at removing carbon dioxide from the atmosphere; they also improve water quality and soil health and support a vast array of species including pollinators, amphibians, birds, and mammals of all sizes. Investments to maintain and restore wetlands yield substantial economic benefits and increase our resiliency to climate change by decreasing downstream flooding during heavy rains, reducing sea surges, and increasing water residence and available aquatic habitat in times of drought.

⁸ *Id.*

⁹ *Id.*

¹⁰ N. C. Davidson et al., *Worth of Wetlands: Revised Global Monetary Values of Coastal and Inland Wetland Ecosystem Services*, *Marine and Freshwater Research* 70, no. 8 (March 2019): 1189–94, <https://doi.org/10.1071/MF18391>.

¹¹ Erin Conlisk et al., *Evidence for the Multiple Benefits of Wetland Conservation in North America: Carbon, Biodiversity and Beyond*, Point Blue, December 2022, 32, <https://www.nrdc.org/sites/default/files/evidence-multiple-benefits-wetlands-conservation-report-202301.pdf>.

¹² *Id.*

¹³ U.S. Fish & Wildlife Service, *American Wetlands Month: Essential Habitats*, accessed January 27, 2023, <https://www.fws.gov/wetlands-month/essentialhabitats>.

¹⁴ Thomas E. Dahl., *Wetlands Losses in the United States 1780’s to 1980’s*, U.S. Department of the Interior and U.S. Fish and Wildlife Service, 1990, <https://www.fws.gov/wetlands/documents/Wetlands-Losses-in-the-United-States-1780s-to-1980s.pdf>.

¹⁵ *See*, Conlisk et al., *supra* note 11.

Given these many benefits, the importance of protecting remaining wetlands cannot be overstated. When wetlands are disturbed, the soil immediately begins to release its rich carbon stores, exacerbating climate impacts and reducing or eliminating other wetland benefits.¹⁶ Wetlands that have already been disturbed or degraded are remarkably quick to recover many of their attributes when restored. Some benefits, such as flood protection, water quality improvements, and colonization by diverse fish and wildlife, may begin to accrue immediately. Net greenhouse gas sequestration benefits may take longer to accrue and will differ across wetland types.¹⁷

As such, HUD should seek to prevent harm to floodplains and wetlands to the greatest extent it has the authority to accomplish. Doing so is critical for preventing flooding and lessening the harm that floods cause, a risk which is only increasing due to climate change. Under these circumstances, HUD's proposal to rescind the 2024 Final Rule—and fall back to less protective standards—is simply inexplicable. HUD should abandon the Proposed Rule.

II. HUD has not engaged in the reasoned decisionmaking the APA requires.

Under the Administrative Procedure Act's (APA) arbitrary and capricious standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choices made."¹⁸ An agency's notice "must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based."¹⁹ It must give enough context to "technical matters to determine whether the agency has exercised 'reasoned discretion.'"²⁰ "It cannot 'offer an explanation for its decision that runs counter to the evidence before the agency.'"²¹ Put simply, agencies must engage in reasoned decisionmaking when issuing regulations.

HUD's proposal is arbitrary and capricious because the agency has not provided a reasoned explanation for abandoning the 2024 Final Rule's risk-based, climate-informed floodplain and wetlands protections. HUD fails to grapple with the foreseeable consequences of rescission, relies on an incomplete accounting of costs and benefits, and ignores obvious alternatives short of wholesale repeal. HUD has thus failed to meet its APA obligations and should withdraw the proposal.

¹⁶ *Id.* at 15

¹⁷ *Id.* at 59.

¹⁸ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962))

¹⁹ *Home Box Office, Inc. v. Fed. Comm'n's Comm'n*, 567 F.2d 9, 35 (D.C. Cir. 1977).

²⁰ *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 402 (D.C. Cir. 1973).

²¹ *State Farm*, 463 U.S. at 42.

(a) *HUD Failed to Consider Important Aspects of the Problem*

HUD failed to consider important aspects of the problem. An agency decision that fails to consider an important factor relevant to its action, such as the policy effects of its decision or vital aspects of the problem in the issue before it, is arbitrary and capricious.²²

The 2024 Final Rule was adopted to address foreseeable flood risk, cumulative losses to floodplain and wetland functions, and the growing mismatch between historic flood maps and current and future climate conditions. HUD's Proposed Rule would reverse that approach, but it does not meaningfully grapple with the consequences of doing so.

For instance, HUD does not acknowledge the greater flood risks to low-income residents and affordable housing that would result from implementing the Proposed Rule. In contrast, in the 2024 Final Rule, HUD directly addressed the connection between flood risk and affordable housing. HUD stated "that affordable housing is increasingly at risk from both extreme weather events and sea level rise, with coastal communities especially at risk. Recent peer-reviewed analysis and mapping by independent research organization Climate Central projects that the number of affordable housing units at risk from flooding in coastal areas will triple by 2050...."²³

In addition, HUD's 2024 Regulatory Impact Analysis emphasizes the growing flood risks facing affordable housing.²⁴ HUD acknowledged that low-income and underserved communities bear disproportionate flood costs and face greater barriers to recovery than better-resourced households. After floods, housing shortages and rent increases fall hardest on renters and lower-income households and can cause lasting displacement. Socially vulnerable populations are already overrepresented in high-risk flood areas: households in these areas tend to be poorer, more likely to be Black or Hispanic, more cost-burdened, and less likely to have health insurance.

HUD further explained that the covered programs primarily serve low- and moderate-income households and credit-constrained homebuyers. FHA-insured single-family loans therefore serve borrowers of color and first-time buyers at higher rates than the broader mortgage market. Although HUD does not collect demographic data for most Part 55-affected programs, most affected projects are designed to benefit low- and moderate-income communities. HUD acknowledged that added costs may, in some cases, have exclusionary effects by reducing the number of affordable units or projects developed. It also emphasized that resilience measures provide benefits to affordable-housing residents that far exceed their costs, citing the Multi-Hazard Mitigation Council's 2019 findings.

²² *State Farm*, 463 U.S. at 43; *see also*, *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1124 (9th Cir. 2012).

²³ Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard, 89 Fed. Reg. 30850, 30852 (April 23, 2024).

²⁴ Dep't. of Housing and Urban Development, *Regulatory Impact Analysis for the Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard*, Docket No. FR-6272-F-02 (April 2024).

In the 2024 Regulatory Impact Analysis, HUD’s recognized that climate-driven flooding poses a serious threat to the already limited affordable-housing supply, and more resilient construction helps preserve that supply over time rather than merely increasing upfront construction costs. HUD found that building to standard to which the Proposed Rule would revert is insufficient protection for these assets because floods higher than the base flood are occurring with increasing frequency.

However, HUD’s Proposed Rule ignores that low-income residents and affordable housing face increasing flood risk and would be more exposed under a less protective standard. HUD fails to account for the flooding-related costs that low-income residents and affordable housing would bear. Instead, HUD selectively relies on portions of the 2024 Regulatory Impact Analysis to justify repealing the more protective standard while disregarding the central concern that the 2024 Final Rule was designed to address: reducing flood risk to affordable housing.

(b) *HUD Cost-Benefit Analysis is Unreasonable*

The Proposed Rule fails to account for the long-term costs of increased flood exposure and other forgone benefits of repealing the 2024 Final Rule. When repealing a rule, an agency cannot selectively choose among the various costs and benefits identified in the original rule, nor can it tip the scales by under- or overvaluing key effects.²⁵ Instead, an agency must consider all important costs and benefits of repeal,²⁶ including the forgone benefits of repealing the initial rule.²⁷

Courts have made clear that reasoned decision-making requires an even-handed consideration of both costs and benefits.²⁸ Whether it is reasonable to bear a particular cost may well depend on the resulting benefits.²⁹ For example, in *Air Alliance Houston v. EPA*, the U.S. Court of Appeals for the D.C. Circuit found that EPA was arbitrary in finding that delaying a Clean Air Act rule designed to prevent disasters at chemical facilities would cause no harm, while at the same time touting the benefits of avoiding the substantial compliance and implementation efforts the rule would otherwise have required.³⁰

²⁵ *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1998 (9th Cir. 2008).

²⁶ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

²⁷ *Pub. Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003) (holding that a rule “that does not explain why the costs saved were worth the benefits sacrificed” is arbitrary and capricious).

²⁸ Dena Adler, Bridget Pals & Kate Welty, *Flawed Foundations: Identifying Errors in Regulatory Analysis for Deregulatory Actions*, Inst. for Pol’y Integrity, N.Y.U. Sch. of L. (Dec. 2025), [https://policyintegrity.org/\[path-to-report\]](https://policyintegrity.org/[path-to-report]);

²⁹ *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 225–26 (2009); see also *Pub. Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003) (holding that a rule “that does not explain why the costs saved were worth the benefits sacrificed” is arbitrary and capricious); see also *Ctr. for Biological Diversity*, 538 F.3d at 1198 (noting that it is impermissible to “put a thumb on the scale” by under- or overvaluing key effects); *Bus. Roundtable v. Sec. & Exch. Comm’n*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (chastising agency for “inconsistently and opportunistically fram[ing] the costs and benefits of the rule [and] fail[ing] adequately to quantify the certain costs or to explain why those costs could not be quantified”).

³⁰ *Air All. Hou. v. EPA*, 906 F.3d 1049, 1067-68 (D.C. Cir. 2018); see also, Dena Adler, Bridget Pals & Kate Welty, *Flawed Foundations: Identifying Errors in Regulatory Analysis for Deregulatory Actions*, Inst. for Pol’y Integrity, N.Y.U. Sch. of L. (Dec. 2025), [https://policyintegrity.org/\[path-to-report\]](https://policyintegrity.org/[path-to-report]);

Here, HUD’s failure to consider the costs of foregoing the protections provided by the 2024 Final Rule is indistinguishable from EPA’s failure to take account of the costs of delaying the Chemical Disaster Rule at issue in *Air Alliance Houston*. HUD treats the proposed rescission as producing cost savings by reducing administrative burdens and construction-related compliance costs, but fails to account for the corresponding costs of increased flood exposure. Those omitted costs include greater risk of damage to HUD-assisted housing and infrastructure, increased repair and rebuilding costs, displacement of residents, loss of habitability, interruption of housing assistance, increased risks to FHA-insured and HUD-supported assets, and the loss of flood-storage, water-quality, habitat, and resilience benefits provided by wetlands and floodplains. HUD also fails to account for the forgone benefits of the 2024 Final Rule, including avoided flood damages, reduced taxpayer exposure, and improved long-term resilience of federally assisted housing.

HUD’s one-sided analysis is arbitrary. Whether the 2024 Final Rule’s compliance costs are justified depends on the benefits those costs secure. HUD cannot rationally rely on avoided compliance costs while declining to evaluate the harms that those compliance measures were designed to prevent. By monetizing or emphasizing the costs of compliance while discounting or omitting the costs of repeal, HUD artificially tips the scale in favor of rescission—a hallmark of arbitrary and capricious agency action.

(c) *HUD Failed to Consider Reasonable Alternatives*

An agency’s reasoned analysis must consider the alternatives that are “within the ambit of the existing policy” short of full repeal.³¹ While agencies are not compelled to explore “every alternative device and thought conceivable by the mind of man,”³² an agency must consider “significant and viable alternatives.”³³ Courts have held that an agency’s failure to “consider significant alternatives to the course it ultimately chooses” is a telltale sign that its decision-making process cannot “be regarded as rational.”³⁴ The D.C. Circuit has found agency actions to be arbitrary and capricious when the agency “failed to consider an obvious and less drastic alternative”³⁵ to repeal. Here, HUD failed to consider reasonable alternatives to rescission.

HUD identifies concerns about implementation burden and development costs, but it does not explain why those concerns require repealing the 2024 Final Rule rather than adopting narrower adjustments. Obvious alternatives were available. HUD could have phased in compliance deadlines, provided additional technical assistance, adopted targeted hardship waivers, retained the climate-informed floodplain methodology while adjusting documentation requirements, or created limited flexibility for specific project types where the agency could demonstrate that resilience benefits would not be materially reduced. HUD does not meaningfully analyze any of these alternatives. Its failure to consider less drastic options is especially unreasonable because the 2024 Final Rule was

³¹ *State Farm*, 463 U.S. at 31.

³² *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Defense Council, Inc.*, 435 U.S. 519, 551 (1978).

³³ *10 Ring Precision, Inc. v. Jones*, 722 F.3d 711, 724 (5th Cir. 2013); *see also State Farm*, 463 U.S. at 51.

³⁴ *Allied Local & Reg’l MFr. Caucus v. Env’t Prot. Agency*, 215 F.3d 61, 80 (D.C. Cir. 2000).

³⁵ *Yakima Valley Cablevision, Inc. v. Fed. Comm’n’s Comm’s*, 794 F.2d 737, 746 n. 36 (D.C. Cir. 1986)

designed to protect federally assisted housing, residents, taxpayers, and floodplain and wetland functions from foreseeable harm.

For the above reasons, HUD has not engaged in the reasoned decisionmaking the APA requires. HUD should withdraw the proposed rule and commit to implementation of the 2024 Final Rule. But insofar as HUD may opt to go back to the drawing board and try again it must, at a minimum, conduct a new analysis that uses the 2024 Final Rule as the baseline, accounts for the costs of increased flood and wetlands risk, evaluates the forgone benefits of the existing rule, and considers reasonable alternatives short of rescission.

III. HUD's proposed rule violates statutory obligations.

HUD's core duties in floodplain management and wetlands protection, set forth in 24 C.F.R. Part 55, are to proactively identify floodplains and wetlands, limit assistance in these areas unless justified, follow a structured decision-making process, notify relevant parties, require flood insurance, and document compliance, all to reduce flood and wetland-related risks in HUD-assisted projects. These actions are necessary to ensure that HUD-assisted housing is resilient to current and future flood risks, and they help to reduce expected housing costs over time due to avoided damages, as well as broader socio-economic costs like displacement. The importance of these duties cannot be understated at a time when, due to climate change, flooding is becoming more frequent in the United States. The standards HUD adopted in the 2024 Final Rule fulfilled HUD's duties and were intended to address increased flood risk associated with climate impacts like sea level rise and increased rainfall.

HUD's proposed rescission of key aspects of the 2024 Final Rule would abdicate these crucial duties. First and foremost, HUD's proposal to ignore climate-informed science in making floodplain determinations will make new affordable housing less resilient and more vulnerable to flooding. HUD's proposed replacement methodology would decrease the footprint of floodplains, allowing construction in locations with higher risk of flooding. And HUD compounds this overarching methodological error with its proposal to rescind the 2024 Final Rule's common sense elevation requirements for substantial improvement of existing HUD-assisted properties. Combined, these actions will unnecessarily put new buildings, facilities and people's homes in locations with higher risk of flooding, while leaving existing at-risk buildings and residents in harm's way. These shortsighted proposals are antithetical to Part 55's core purposes of increasing resilience and sustaining the beneficial functions of floodplains while, at the same time, they impose disproportionate harm on overburdened low-income communities and cost taxpayers more.

HUD's attempted justifications for the proposed rescissions do not hold water. HUD's reliance on unspecified public input "convey[ing] serious concerns" with the 2024 Final Rule³⁶ does not meet HUD's minimum duty to inform the public of its reasoning to allow for public comment under 5

³⁶ 91 Fed. Reg. 42686.

U.S.C. § 553(b)(3),³⁷ much less meet its duty provide a reasoned explanation for the agency’s change in position.³⁸ Nor do HUD’s distorted assertions about cost savings add up, as explained in Section (II)(b), *supra*. Indeed, HUD acknowledges that it simply relied on past information and did not bother to conduct a new cost analysis “for the purposes of this proposed rule.”³⁹

HUD’s slapdash proposal, if adopted, would also run afoul of other statutory duties in HUD-administered programs, including:

- **Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301, 5304:** For the Community Development Block Grant (CDBG) and related community-development programs, weakening flood standards conflicts with statutory goals of developing viable urban communities, decent housing, suitable living environments, and expanded economic opportunities, especially for low- and moderate-income people. 42 U.S.C. § 5301 explains that “[t]he primary objective of” the CDBG program is “providing decent housing and a suitable living environment,” including by eliminating “conditions which are detrimental to health, safety, and public welfare,” and facilitating “a more rational utilization of land and other natural resources.”⁴⁰ Similarly, § 5304 requires HUD to confirm that grant recipients’ proposals will “benefit low- and moderate-income families or aid in the prevention of slums or blight,” and otherwise address “existing conditions” that “pose a serious and immediate threat to the health or welfare of the community.”⁴¹ By placing HUD-funded housing in low-lying areas without considering climate-informed science, and by reducing key elevation standards for substantial improvements to existing facilities, HUD is abdicating its statutory duty under the Housing and Community Development Act in favor of marginal, short-term cost reductions for construction companies and developers. This abdication sacrifices the safety of low- and moderate-income individuals and forfeits long-term cost savings associated with climate-resilient housing.
- **United States Housing Act of 1937, 42 U.S.C. § 1437 et seq.:** For public housing, vouchers, project-based assistance, and related assisted-housing programs, a weakened flood standard is inconsistent with HUD’s statutory responsibilities with respect to housing assistance. This is especially relevant where flood exposure threatens habitability, resident safety, displacement, or long-term viability of federally assisted housing. 42 U.S.C. § 1437

³⁷ An agency fails to meet its obligations under the APA when, as here, it does not provide an explanation of the reasoning that has led to the proposed rule and deprives interested parties of a meaningful opportunity to comment on the proposal. *See, e.g., Owner–Operator Indep. Drivers v. FMCSA*, 494 F.3d 188, 199 (D.C. Cir. 2007).

³⁸ *See, Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agency must provide “a reasoned explanation” for a change in position.). Moreover, insofar as HUD relies on selected comments in opposition to a past rulemaking, it must not only inform the public of the content of those comments, it must also identify and explain why it is discounting the numerous competing comments *from the same 2024 rulemaking* that supported the rule. Here, HUD’s cherry picking of unidentified comments in opposition to the 2024 Final Rule falls far short of its minimum obligation to provide adequate notice. *See, e.g., MCI Telecomm’ns Corp. v. Fed. Commc’ns Comm’n*, 57 F.3d 1136, 1142 (D.C. Cir. 1995) (“[A]n agency may not turn the provision of notice into a bureaucratic game of hide and seek.”)

³⁹ 91 Fed. Reg. 42686, n. 5.

⁴⁰ 42 U.S.C. § 5301(c).

⁴¹ 42 U.S.C. § 5304(b)(3).

directs HUD “to assist States” with “remedy[ing] the unsafe housing conditions,” to “act where there is a serious need that private citizens or groups cannot or are not addressing responsibly,” and to “promote the goal of providing decent and affordable housing for all citizens.”⁴² This proposal fails to meet those critically important goals and instead will reinforce unsafe housing conditions by failing to ensure that new housing stock can safely handle foreseeable flooding. It will also allow significant alterations to existing housing stock to be made without accounting for increased flooding severity. It thus fails to correct shortfalls in the private housing market, which on its own is unable to provide safe, affordable housing that lies outside the floodplain. In turn, this proposal will channel low- and moderate-income households into unsafe housing that will exacerbate the challenges they already face. For example, HUD’s elimination of elevation requirements, which aims to funnel money toward garden units⁴³ fails to consider that garden units are uniquely vulnerable to the short- and long-term hazards associated with flooding due to their positioning below ground level. Nor does HUD factor in the costs that arise from flooding in these vulnerable locations.⁴⁴

- **National Housing Act, 12 U.S.C. § 1701 et seq.:** Finally, HUD’s proposal is inconsistent with its obligations under the National Housing Act, particularly its programs for FHA mortgage insurance and multifamily insurance programs. Weakening the FFRMS will irrationally increase foreseeable collateral, default, insurance-fund, and resident-safety risks—and will thus make these programs more expensive and less effective. 12 U.S.C. § 1708 imposes a fiduciary duty on HUD “to ensure that the Mutual Mortgage Insurance Fund remains financially sound,” while also “minimiz[ing] the default risk to the Fund and homeowners,” and “meet[ing] the housing needs of the borrowers that the single-family mortgage insurance program under this subchapter is designed to serve.”⁴⁵ This proposed action runs directly contrary to HUD’s fiduciary duty and renders the operational goals of the PFHA mortgage insurance program harder to achieve. By reducing the vertical and horizontal floodplain, HUD increases its foreseeable financial exposure and thus reduces the fund’s financial security. To account for this increased exposure, HUD would need to raise premiums, but doing so would run against those operational goals defined in the statute. Similarly, HUD’s multifamily insurance program authorized under 12 U.S.C. § 1751l will become more expensive, and thus less effective, than it would with the existing FFRMS. HUD must explain how it will account for foreseeable distortions in its insurance programs as a result of the proposed weakened FFRMS, and identify how it will administer those programs while also balancing its fiduciary responsibilities and its statutory obligation to provide affordable insurance options.

⁴² 42 U.S.C. § 1437(a).

⁴³ See 91 Fed. Reg. 42687.

⁴⁴ See, <https://www.nytimes.com/2019/04/11/us/houston-flooding.html>

⁴⁵ 12 U.S.C. § 1708(a)(3), (7).

IV. HUD failed to meet its NEPA obligations.

HUD failed to meet its obligations under NEPA and should withdraw the proposal to correct that failure. HUD acknowledges that environmental review is required for all HUD-assisted projects to ensure projects comply with NEPA and related environmental laws and to assess whether sites may have adverse environmental or health effects on end users. Nevertheless, HUD declined to undertake a NEPA analysis examining the nationwide environmental impacts that will flow from this proposed rule for three reasons. First, HUD reasons that “[b]ecause this proposed rule would generally restore HUD’s part 55 and part 200 regulations to the longstanding regulatory requirements in effect prior to the 2024 final rule, these offices find that the proposed rule will not have a significant impact on the human environment.” Second, HUD asserts that “[a]ny physical activities subject to part 55 would continue to undergo individual environmental review at the time they are considered, and their potential impacts would be addressed at the appropriate time.”⁴⁶ Third, HUD notes that, regardless of the undisputed changes this proposed rule will cause to the horizontal and vertical dimensions of the floodplain, “the proposed rule revisions would still provide protection from flooding” in a way that satisfies certain executive orders.⁴⁷

Here, as an initial matter, HUD’s assertion that a NEPA analysis is not required when the agency merely repeals a rule to restore the pre-rule status quo has no basis in law.⁴⁸ An agency violates NEPA when it fails to use the proper baseline for assessing impacts.⁴⁹ Here, HUD was required to analyze impacts using the 2024 final rule as the baseline, not the conditions that existed prior to adoption of that rule. HUD’s Finding of No Significant Impact (FONSI)—based on HUD’s erroneous baseline—is therefore invalid and should be withdrawn.⁵⁰

Second, because of the nature of the proposal here – including a change to the methodology for determining the size and scope of floodplains - a programmatic NEPA analysis is required. Review on a project-by-project basis will not be sufficient to analyze the impacts of this threshold interpretation that will infect each project. NEPA requires review of “‘programmatic’ decisions that prescribe future actions, even though project-specific NEPA review will occur before a particular project is undertaken.”⁵¹ This includes an EIS for nationally applicable rulemakings that will impact

⁴⁶ HUD FONSI at 3.

⁴⁷ See HUD FONSI at 3

⁴⁸ See e.g., *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 459 F. Supp. 2d 874, 897-898 (N.D. Cal. 2006); *California v. Bernhardt*, 472 F. Supp. 3d 573, 622-24 (N.D. Cal. 2020).

⁴⁹ *Marin Audubon Society v. Federal Aviation Administration* 121 F.4th 902, 915-16 (D.C. Cir. 2024).

⁵⁰ The baseline for measuring the impact of a change or rescission of a final rule is the requirements of the rule itself, not the world as it would have been had the rule never been promulgated. See *Consarc Corp. v. OFAC*, 71 F.3d 909, 913 (D.C. Cir. 1995) (“The legal definition of *status quo ante* [is] ... the last uncontested status which preceded the pending controversy.” (quotations marks omitted)).

⁵¹ *California Wilderness Coalition v. U.S. Dept. of Energy*, 631 F.3d 1072, 1101 (9th Cir. 2011); *California v. Bernhardt*, 472 F. Supp. 3d at 623 (“NEPA requires an agency to acknowledge collective harm by considering the ‘incremental impact’ of a new regulation ‘when added to other past, present, and reasonably foreseeable future actions’”).

the human environment, even where the agency does not yet know where the rules will be implemented, and expects to conduct site-specific analysis.⁵²

Thus, an agency must prepare a programmatic EIS any time doing so “would be sufficiently forward-looking to contribute to the decisionmaker’s basic planning of the overall program,” and where otherwise skipping a programmatic EIS would amount to “‘segmenting’ the overall program by unreasonably constricting the scope of environmental evaluation to individual projects.”⁵³ For example, a federal rule that forbid construction of roads in designated wilderness areas required a programmatic EIS, even though each specific road would require individualized evaluation, because it effected a “fundamental programmatic change.”⁵⁴ Or, where the Army undertook an overhaul to “modernize and streamline its forces,” it prepared a programmatic EIS on nationwide environmental impacts that served as a baseline for future, site-specific EIS at individual bases.⁵⁵

Failing to undertake a programmatic EIS under such circumstances will unacceptably “segment” the agency’s action by artificially dividing the proposed rule from site-specific projects, despite the fact that the latter “action could not occur but for the occurrence of the” rulemaking.⁵⁶ “Impermissible segmentation involves a ‘major federal action’ where a small part of that action has been ‘segmented’ in order to escape application of the NEPA process.”⁵⁷ “The hallmark of improper segmentation is the existence of two proposed actions where the proposed component action has little or no independent utility.”

Beyond that, NEPA attaches to this proposal because HUD’s FFRMS rollback will widen the range of projects eligible for approval, and that widening will have real-world environmental impacts that must be analyzed. For example, a smaller floodplain will allow the agency to fund projects that otherwise would be ineligible due to flooding risks identified through climate-informed science. It thus raises the risk, on a nationally uniform basis, posed by flooding to projects within HUD’s portfolio. The average HUD project will be more flood-prone, have higher rates of health hazards, and be sited within sensitive, low-lying ecosystems.⁵⁸ That shift can be examined at a national level because it contains a uniform characteristic—risk directly triggered by a shrunk floodplain baseline. It therefore must be examined for its cumulative impacts on HUD’s national stock.⁵⁹

⁵² See e.g., *California v. Bernhardt*, 472 F. Supp. 3d at 622-24.

⁵³ *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883 (D.C. Cir. 1981).

⁵⁴ *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 459 F. Supp. 2d 874 (N.D. Cal. 2006).

⁵⁵ See *Tio’ulaokalani Coalition v. Rumsfeld*, 464 F. 3d 1083 (9th Cir. 2006).

⁵⁶ *Citizens’ Committee to Save Our Canyons v. U.S. Forest Service*, 297 F.3d 1012, 1029 (10th Cir. 2002).

⁵⁷ *Hirt v. Richardson*, 127 F. Supp. 2d 833, 842 (W.D. Mich. 1999).

⁵⁸ As explained, the proposal will significantly increase the likelihood of water inundation into HUD’s housing infrastructure. This flooding will bear short- and long-term consequences for inhabitants, who will have their immediate safety threatened by rising waters and their long-term health compromised by increased incidents of mold, mildew, pests, and other hazards. And, the proposal will facilitate an increase in construction in low-lying areas that would otherwise be protected by an expanded horizontal floodplain footprint.

⁵⁹ See *California Wilderness Coalition*, 631 F.3d at 1106 (holding an agency’s argument that “NEPA review will take place in subsequent requests for specific sitings, and there are no significant impacts from the Designation—are not persuasive as a matter of law”).

Relatedly, the proposed rule would have no independent utility, but for the fact it will facilitate future, site-specific projects. HUD currently foresees that relationship. Its own RIA cites cost-savings that will be achieved by approving projects within this lower standard of protection. These cost-savings assumptions reflect HUD's understanding of a simple reality: projects that would not be eligible for funding under the existing FFRMS, will be funded as a direct result of this proposal. Thus, HUD acknowledges that the aperture for project approval has widened and cannot ignore the environmental impacts that will flow from that "fundamental programmatic change."

For similar reasons, a programmatic EIS would have significant prospective benefits to the agency's planning process. It will allow HUD to fully account for likely impacts on HUD's housing portfolio, including potential for housing stock to become temporarily unavailable due to water inundation or habitability issues, and potential distortions to HUD's FHA mortgage insurance and multifamily insurance programs. In contrast, ignoring those entirely foreseeable consequences at this time, and instead undertaking piecemeal, site-specific EIS would fail to capture the broader nationwide shift that will occur because of this rule change, and the strain it could have on HUD, program beneficiaries, and ecosystems.

Of course, to the extent further granular detail will be needed to estimate project-specific harms, HUD can tier its analysis. "Two distinct tiers of environmental review may be applicable to some 'major Federal actions.' Site-specific EISs constitute a second tier in the discussion and analysis of impacts on the environment."⁶⁰ So, to the extent individual project-specifics cannot be known at this time, HUD can tier its analysis by examining the expected increase in water inundation events that will occur as a result of this approach. In doing so, it can also reasonably model the likely long-term health impacts associated with those inundation events. And, HUD can likely project the impacts construction in low-lying areas will have on ecosystems. Long term, HUD can import modeling assumptions used for broad, programmatic changes into localized assessments, and supplement those assumptions with real-world, site-specific information. But the agency cannot wholesale abandon a NEPA analysis at this rulemaking stage, where programmatic impacts are entirely foreseeable and inevitable.

Finally, HUD's assertion that the Proposed Rule will still fulfill certain executive orders to prevent flooding in publicly financed housing does nothing to abate the shortcomings identified above. Indeed, HUD's tacit acknowledgement that the proposed rule will be less protective than the 2024 final rule lays bare the flaw here: HUD must analyze the impacts from the proposal's decreased level of protection compared to the 2024 Final Rule, not the cited executive orders. NEPA imposes an independent obligation for the agency to undertake a meaningful analysis of environmental impacts, particularly where the agency is departing from a more-protective approach established by the 2024 rule. That protective approach—which also satisfies the executive orders cited in support of the agency's FONSI but at a higher level—prevented harms that will now almost certainly be realized because of the agency's proposal. The departure requires analysis under NEPA, and HUD's

⁶⁰ *Nat'l Wildlife Fed'n v. Appalachian Regional Comm'n.* 677 F.2d 883 (D.C. Cir. 1981).

assertions regarding the proposal's fulfillment of the cited executive orders, even accepted at face value, do nothing to vitiate that obligation.

V. Conclusion

For the foregoing reasons, HUD should withdraw the Proposed Rule and retain the 2024 Final Rule's risk-based, climate-informed protections for floodplains and wetlands. The Proposed Rule is not supported by a reasoned explanation, fails to account for the substantial benefits associated with the 2024 Final Rule, and disregards the increasing flood risks that make these protections more—not less—necessary. HUD cannot abandon the 2024 Final Rule's protections without explaining why the factual and policy circumstances that supported those protections have changed and why the agency now believes their rescission is consistent with its statutory obligations. Absent such an explanation, the proposed rescission is arbitrary and capricious.

The proposed rescission also cannot be squared with HUD's independent statutory duties. HUD has not adequately considered the significant environmental consequences of its proposed action, including the nationwide consequences of reducing the scope of federally regulated floodplain protections. These deficiencies are not merely procedural. They prevent HUD from meaningfully evaluating the consequences of its proposal and from demonstrating that its decision reflects the reasoned consideration that the law requires.

Accordingly, NRDC urges HUD to withdraw the Proposed Rule and preserve the 2024 Final Rule in its entirety. If HUD nevertheless intends to proceed, it must first cure these fundamental deficiencies by (1) conducting a comprehensive NEPA analysis of the proposed rescission's nationwide environmental impacts, including preparation of an Environmental Impact Statement for public review and comment; and (2) conducting a new regulatory impact analysis that accurately accounts for the benefits of the 2024 Final Rule, employs a legally and analytically appropriate baseline, and evaluates a meaningful range of alternatives. HUD should not proceed with a rule that abandons critical floodplain and wetland protections without the reasoned analysis, statutory justification, and environmental review required by law.

Sincerely,

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