MILL CREEK
RESIDENTIAL

December 15, 2016

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10276
Washington, D.C. 20410-0500

Attention: Docket ID No. HUD-2016-0124-0001

Dear Sir or Madam,

As a developer, I write to express my deep concerns regarding the U.S. Department of Housing and Urban Development (HUD) proposed rule entitled "Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard" ("the Proposal") that was published in the *Federal Register* on October 28, 2016.

Mill Creek Residential develops, builds, acquires and operates high-quality apartment communities in desirable locations coast-to-coast. While we are a national company, we immerse ourselves in our chosen markets – living and working in the communities where we operate. We combine our deep understanding of each market with 30+ years of expertise and a fresh innovative approach to the apartment industry. to build relationships and places in which people thrive – creating real and enduring value for our residents, investors and associates.

Since our start in 2011, we have developed more than 20,000 apartment homes across 90+ communities and acquired more than 2,500 apartment homes in some of the nation's best apartment markets. In 2016, we expect to deliver an additional 5,000+ homes to our growing portfolio. We're proud of our people, the places we quite literally build, and the relationships we have with stakeholders across the country.

Due in part to federal, state, and local regulations related to construction, loan approval, and occupancy within floodplains, I pay particularly close attention to the floodplain area when considering whether or not to purchase property, develop lots, build homes, or remodel existing homes. Oftentimes, building and land development in the floodplain requires obtaining additional permits, elevating structures, or using more resilient construction techniques. It is because of these additional mandates, legal obligations, and liabilities that the definition and geographic extent of the floodplain matters to the housing industry.

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I am especially concerned that HUD's proposal expands floodplain management requirements and fundamentally threatens access to FHA mortgage insurance programs for single family home buyers and multifamily builders. If implemented, the Proposal will severely disrupt the housing market and harm affordability for countless families living in areas designated under the expanded floodplain definition.

In response to President Obama's Executive Order 13690 and the Federal Flood Risk Management Standard (FFRMS), HUD has proposed a rule to expand its floodplain management oversight. According to the Proposal, single family homes using FHA mortgage insurance would have to be elevated an additional two feet when they are built or substantially improved within the 100-year floodplain. Multifamily builders would face the added burden of the new two foot elevation requirement when using FHA mortgage insurance for new construction or substantial rehabilitation projects both within the 100-year floodplain and in a horizontally expanded FFRMS floodplain area for which maps do not exist. HUD's new flood risk measures would also apply additional elevation and flood-proofing requirements to projects that use federal grants, such as the HOME Investment Partnerships and Community Development Block Grant programs.

The Proposal will increase construction costs and project delays for single family homes targeted for purchase using FHA programs intended to serve low- to moderate-income buyers. The additional elevation and flood-proofing requirements for multifamily properties using FHA mortgage insurance programs could make many projects infeasible, due to increased construction costs and the inability to offset these costs through higher rents. In either case, the draft rule would prevent delivery of much-needed housing during an affordable housing crisis.

I am also concerned that the Proposal is inconsistent with FEMA regulations under the National Flood Insurance Program and creates unnecessary and expansive flood mitigation requirements beyond those established by FEMA, the agency with the expertise, funding and statutory directive to administer flood insurance and floodplain mapping programs. Additionally, the Proposal lacks a grandfathering provision for projects in the pipeline and will generate surprise expenses and delays for single family and multifamily projects already underway.

As yet another example of the Proposal's flaws, it exceeds the intent of E.O. 13690 by failing to limit expanded floodplain requirements only to "federally funded projects." Indeed, both the Order itself and the Final Implementing Guidelines provide HUD flexibility to exempt its mortgage insurance programs from the FFRMS as they do not constitute "federally funded projects." HUD does not originate loans through these programs. Rather, it insures those loans through the FHA. As such, projects insured by these programs are not required to meet the mandates of the FFRMS.

Regrettably, HUD's Proposal is fundamentally flawed in that it would apply the expanded floodplain requirements to both FHA single family and multifamily mortgage insurance programs. This is unwise, unnecessary, and disregards the intent of the Order and the directive of the Guidelines. I strongly encourage HUD to exercise the flexibility it is afforded to ensure the rule does not make construction or substantial rehabilitation of single family and multifamily housing cost prohibitive.

Home buyers and renters along with single family and multifamily builders rely on HUD mortgage insurance programs and grants to ensure access to safe and affordable housing nationwide. Regulatory changes that threaten the availability of such assistance, as the Proposal sets forth, have the potential to significantly impact builders' and developers' projects while at the same time jeopardize affordable housing opportunities for countless families.

For these reasons, HUD should withdraw the Proposal. If the rule is reproposed, HUD should only do so after 1) adequately engaging affected stakeholders, 2) limiting the FFRMS to "federally funded projects" while simultaneously excluding single family and multifamily FHA mortgage insurance programs, 3) providing nationwide maps of the expanded floodplain area, and 4) including a grandfathering provision that would set an effective date of one year after publication of a final rule for new federally funded projects.

Sincerely,

C. N. B

CHARLES N. BAY | EXECUTIVE MANAGING DIRECTOR
NATIONAL PRACTICE LEADER, CONSTRUCTION AND DEVELOPMENT