EXECUTIVE ORDER NO. 737

PROVIDING FOR CONTINUED STATE PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM

WHEREAS, since 1968, Congress has provided low-cost flood insurance through the National Flood Insurance Program, *see* 42 U.S.C. §§ 4001 *et seq.*;

WHEREAS this Program insures millions of properties annually, including, at last count, a monthly average of some 40,000 properties in Alabama;

WHEREAS the state government itself owns as many as 470 of these federally insured flood-zone properties in the State;

WHEREAS Congress makes this low-cost flood insurance available as a means of encouraging communities to adopt and enforce minimum floodplain management standards, *see id.* § 4012(c);

WHEREAS Congress has further incentivized adoption of these standards by making flood insurance coverage a prerequisite for the receipt of federal financial aid supporting development in high-risk flood areas, *see id.* § 4012a;

WHEREAS the State's continued participation in the National Flood Insurance Program will therefore help protect Alabama property owners against flood losses and ensure that Alabamians remain eligible for certain federal financial assistance;

WHEREAS federal law encourages States to designate a State Coordinating Agency to assist local communities with various flood plain management activities arising under the Program, *see* 44 C.F.R. § 60.25;

WHEREAS the State has also been advised that it must designate an agency as the State's Floodplain Administrative Agency to ensure compliance by state agencies that own property in flood zones;

WHEREAS the State has previously undertaken to make these designations, *see* Exec. Order No. 229 (Oct. 1, 1977), Exec. Order No. 250 (August 27, 1979),

but certain changes appear to be required to ensure Alabama's continued participation in the National Flood Insurance Program;

WHEREAS the Governor of Alabama may assign to state agencies powers and duties that are "not in conflict" with the Alabama Constitution or any "then existing statutes" when necessary to implement or participate in federal programs or otherwise promote the welfare of the people of Alabama, Ala. Code § 36-13-9;

NOW, THEREFORE, I, Kay Ivey, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby promulgate this executive order, effective immediately, to provide for the State of Alabama's continued participation in the National Flood Insurance Program:

1. **State Coordinating Agency.** The Alabama Department of Economic and Community Affairs (ADECA) shall serve as the State Coordinating Agency responsible for coordinating Program aspects of flood plain management in the State pursuant to 44 C.F.R. § 60.25.

    a. **State Floodplain Coordinator.** The Director of ADECA shall designate an employee to serve as the State Floodplain Coordinator.

    b. **Assistance to local communities.** ADECA shall provide assistance as necessary to local communities by performing the tasks set forth in 44 C.F.R. § 60.25, including: providing local governments and the general public with information on the coordination of local activities with Federal and State requirements for managing flood-prone areas; assisting in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum Program flood plain management criteria; and assuring coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies.

    c. **Assistance to state agencies.** ADECA shall provide assistance as necessary to the State Floodplain Administrative Agency and to

other state agencies in implementing and carrying out the requirements of the Program for state-owned properties in flood zones.

2. **Floodplain Administrative Agency.** The Alabama Department of Insurance shall serve as the Floodplain Administrative Agency to implement floodplain management criteria for state-owned properties located in the State's floodplains pursuant to 44 C.F.R. § 60.12.

   a. **State Floodplain Administrator.** The Commissioner of Insurance shall designate an employee to serve as the State Floodplain Administrator.

   b. **Assessment of existing state-owned properties.** Within thirty-six months, the Department shall assess all existing state-owned properties located within regulated floodplains to determine if they are flood prone and whether they have been constructed in compliance with the minimum floodplain management criteria set forth in 44 C.F.R. §§ 60.3, 60.4, and 60.5. The Department shall forward copies of these assessments both to ADECA and to the owner of the state-owned property.

   c. **Compliance with floodplain management criteria.** The Department shall develop, implement, and enforce a permitting process to ensure that state-owned properties comply with National Flood Insurance Program floodplain management criteria for flood-prone areas, *see* 44 C.F.R. § 60.3, for mudslide-prone areas, *see id.* § 60.4, and for flood-related erosion-prone areas, *see id.* § 60.5, all subject to federally provided definitions, *see id.* § 59.1, and rules for variances and exceptions, *see id.* § 60.6.

   d. **Issuance of regulations.** To the extent necessary to carry out this order and comply with the National Flood Insurance Program requirements, the Department may reissue the Floodplain Management Regulations for the State of Alabama (August 27, 1979) or issue a substantially similar document, consistent with the requirements of the Program. Before doing so, the Department should receive input from ADECA and interested state agencies.

3. **State Building Code.** The Alabama Department of Finance shall adopt rules to amend the State Building Code to the extent necessary to comply with the National Flood Insurance Program requirements and this order.

4. **State-agency cooperation.** State agencies shall cooperate with the Department of Insurance to achieve compliance with the requirements of the National Flood Insurance Program and this order.

5. **Implementation.** This order shall be implemented to the maximum extent possible consistent with applicable law and subject to the availability of appropriations. Nothing in this order shall be construed as impairing or otherwise affecting the authority granted by law to an executive department or agency, or the head thereof, including the Governor of the State of Alabama.

6. **No private right of action.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Alabama, its departments, agencies, or entities, or any of their officers, employees, or agents, or any other person.

7. **Effect on prior related orders.** All previously issued executive orders providing for the floodplain management of state-owned properties—including, specifically, Executive Order No. 229 (October 1, 1977) (formerly Exec. Order. No. 84 signed by Governor George Wallace) and Executive Order No. 250 (August 27, 1979) (formerly Exec. Order No. 11 signed by Governor Fob James)—are hereby rescinded.

DONE AND ORDERED this 13th day of October 2023.

KAY IVEY
Governor

ATTESTED

WES ALLEN
Secretary of State