



February 8, 2023

The Honorable Sam Graves, Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Rick Larsen, Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable David Rouzer, Chairman
Subcommittee on Water Resources and Envir.
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Grace Napolitano, Ranking Member
Subcommittee on Water Resources and Envir.
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Graves, Ranking Member Larsen, Chairman Rouzer and Ranking Member Napolitano:

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) provide a single voice for the apartment industry including the developers, owners and operators of multifamily rental housing. We are committed to providing affordable and attainable housing nationwide, yet the nation faces a significant housing affordability challenge that is exacerbated by an insufficient housing supply. Therefore, we appreciate the Committee gathering for a hearing entitled “Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule” and encourage you to support efforts to ensure that federal water requirements do not undermine the ability to develop and build America’s much-needed housing.

One-third of all Americans rent their housing, and our industry plays a critical role in meeting the nation’s housing needs by providing apartment homes for nearly 39 million residents and contributing \$3.4 trillion annually to the economy. However, undue regulatory barriers hinder our ability to produce necessary housing and the recently released U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Army Corps) final rule revising the definition of WOTUS under the Clean Water Act (CWA) poses potentially significant harm to the real estate sector. While the apartment industry strongly supports protecting our nation’s water resources, expanding the scope of the CWA would result in undue federal regulatory requirements for housing providers. These additional hurdles would create delays, add costs and ultimately dampen critically needed housing construction and development.

Critical Housing Shortages and Regulatory Barriers

It is essential that we build housing at all price points to address the nation’s critical housing challenges and ensure economic stability for American households. According to recent research commissioned by NMHC and NAA, **the U.S. is facing a pressing need to build 4.3 million new apartment homes by 2035.**¹ This includes an existing shortage of 600,000 apartment homes stemming from underbuilding due in large part to the 2008 financial crisis. Further, underproduction of housing has translated to higher housing costs – resulting in a consequential loss of affordable housing units (those

¹ Hoyt Advisory Services, “Estimating the Total U.S. Demand for Rental Housing by 2035.” (2022), <https://www.weareapartments.org/>.

with rents less than \$1,000 per month), with a decline of 4.7 million units from 2015 to 2020.

In fact, the total share of cost-burdened apartment households (those paying more than 30% of their income on housing) has increased steadily over several decades and reached 57.6% in 2021.² During this same period, the total share of *severely* cost-burdened apartment households (those paying more than half their income on housing) increased from 20.9% in 1985 to 31.0%.³

Meanwhile, it is becoming increasingly difficult to build housing that is affordable to a wide range of income levels. Rental housing providers stand ready to help meet current and future demand, but cannot do it alone. Unnecessary, duplicative or unduly burdensome laws, policies and regulations at all levels of government prevent us from delivering the housing our country so desperately needs. High regulatory costs, in particular, create a barrier to affordable housing supply. Recent research published by NMHC and the National Association of Home Builders found that **regulation imposed by all levels of government accounts for 40.6 percent of multifamily development costs.**⁴

Impacts of WOTUS Rule

For years, we have asked for clarity on the application of CWA requirements. Instead, numerous lawsuits, failed congressional reform efforts and inconsistent rulemakings have created uncertainty and confusion for property owners. We are therefore deeply disappointed that this latest WOTUS Rule does not resolve the tension apartment firms face over the scope of federal jurisdiction under the CWA. Without such clarity, property owners are deterred from undertaking critically needed housing construction and development projects.

This federal overreach will greatly expand the universe of properties, including many with only a tenuous relationship to a body of water, required to seek very expensive federal permits to develop or redevelop housing. This additional requirement will create uncertainty and delay in permitting, add potentially significant costs and create additional legal risks that will exacerbate the nation's housing affordability crisis. Further, expanded, federal water regulations are an expensive, but unnecessary overlay, given that states and localities have their own water protection rules. Simply determining whether a property needs a federal permit is an expensive endeavor.

Moreover, the release of this rule now ignores the forthcoming Supreme Court decision in *Sackett v. EPA*, which directly relates to this issue. Implementation of the new rule prior to the release of the Court's opinion will require businesses to spend significant time and resources in compliance efforts that may prove inconsistent with the Supreme Court's decision.

Conclusion

Federal policy efforts should focus on incentivizing and breaking down existing barriers to housing development rather than add new regulatory burdens. Improving housing affordability and availability are key national priorities. We must recognize that additional, inconsistent and potentially duplicative regulation has a chilling effect on the market, drives up the cost of housing and disrupts needed investment at a time of significant affordability and supply challenges. We are committed to

² NMHC tabulations of 1985 American Housing Survey microdata, U.S. Census Bureau; 2021 American Housing Survey, U.S. Census Bureau.

³ *Id.*

⁴ National Multifamily Housing Council and National Association of Home Builders Regulation: 40.6 Percent of the Cost of Multifamily Development, <https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf>.

working with policymakers on protections for our water resources that support the creation of more housing, preserve affordability and ensure that every American has a safe, quality place to call home.

Sincerely,



Cindy V. Chetti
Senior Vice President, Government Affairs
National Multifamily Housing Council



Gregory S. Brown
Senior Vice President, Government Affairs
National Apartment Association

C.C. Members of Subcommittee on Water Resources and Environment, House Committee on
Transportation and Infrastructure