

**BEFORE THE
NORTH CAROLINA REAL ESTATE COMMISSION**

NRDC, The North Carolina Justice Center,)	PETITION FOR RULEMAKING
MDC Inc., The North Carolina Disaster)	PURSUANT TO NCGS § 150B-20
Recovery and Resilience School, Robeson)	TO AMEND 21 NCAC 58A. 0114
County Church and Community Center,)	AND 21 NCAC 58A .0700
and NC Field)	
Petitioners)	

On behalf of Natural Resources Defense Council (“NRDC”), the North Carolina Justice Center, MDC Inc., the North Carolina Disaster Recovery and Resiliency School, Robeson County Church and Community Center, and NC Field (“Petitioners”), the undersigned file this Petition for Rulemaking (“Petition”) pursuant to and in accordance with the North Carolina Administrative Procedure Act, NCGS § 150B-20, and 21 NCAC 58A .0700. These provisions require any person wishing to adopt, amend, or repeal a rule of the North Carolina Real Estate Commission (“the Commission”) to submit a rulemaking petition addressed to the executive director of the Commission. The following sections of this Petition shall be organized by and provide the information that is required of rulemaking petitions set forth in 21 NCAC 58A .0701(b)(1)-(5).

I. PETITIONERS

Petitioner NRDC is an international, non-profit environmental and public health membership organization. NRDC advocates to reduce greenhouse gas emissions that cause climate change, increase the resilience of communities to the unavoidable impacts of climate change, and safeguard human health. NRDC has 9,762 members that live in North Carolina. NRDC’s members are at risk of harm because North Carolina’s Residential Property and Owners’ Association Disclosure Statement¹ fails to require adequate disclosure of a property’s flood history and flood risk. Without adequate disclosure, NRDC’s members are hindered in their ability to make an informed decision concerning the purchase of a property.

Petitioner North Carolina Justice Center is a progressive research and advocacy non-profit organization with the mission to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services, and fair treatment it needs to achieve economic security. Because flood risks and the consequences of flood events disproportionately harm lower income households, pushing for adequate flood disclosure falls within the North Carolina Justice Center’s mission.

For over 50 years, petitioner MDC, Inc. has worked to equip leaders, institutions, and communities with the necessary tools and strategies to advance equity—particularly racial and gender equity—and economic mobility. One of MDC’s projects, the North Carolina Inclusive

¹ 21 N.C.A.C. 58A .0114

Disaster Recovery Network (NCIDR), works with public, private, non-profit, and faith organizations to seek avenues for community voice and equitable access to resources in a disaster recovery system. Strong flood disclosure requirements further the goals of MDC's NCIDR project.

Petitioner North Carolina Disaster Recovery and Resiliency School is predicated on the belief that survivors impacted by disaster must sustain a seat at the decision-making table as equal partners in preparation, response, mitigation, and recovery. Participating in this petition serves this purpose.

Petitioner Robeson County Church and Community Center is a non-profit organization providing emergency assistance to the County's most vulnerable residents, as well as seeking long-term, sustainable solutions to address social determinants of health. Robeson County Church and Community Center meets residents where they are to provide access to food, housing resources, and supplies through their food pantry and resale store. Robeson County Church and Community Center is uniquely situated as a Petitioner, as their facilities and neighborhood were completely flooded by Hurricane Matthew in 2016. They have witnessed the devastation of the community first-hand with the flooding of the Lumber River in 2016 and 2018. Their current long-term plans for creating permanent, sustainable housing in the community are a direct response to the mass displacement and need seen after the floods. Such need would be significantly alleviated in the future with greater transparency requirements concerning flood disclosure and past receipt of financial assistance.

Petitioner NC Field, located in Kinston, North Carolina, has created a model for training farmworkers and farmworker youth to have a voice in the debates about issues that directly impact their lives and their families' livelihoods. Its mission is to work alongside marginalized communities to build capacity, achieve holistic systems, equitable access to resources, and ensure a strong inclusive rural North Carolina. The flooding that accompanied hurricanes Florence and Matthew were devastating for farmworkers, and NC Field has a direct interest in ensuring that there is more transparency in flood disclosure, as it would further their mission and benefit the community with which they work.

II. SUMMARY OF PROPOSED ACTION

Pursuant to North Carolina's Administrative Procedure Act² and the North Carolina Real Estate Commission's ("Commission") governing regulations,³ Petitioners hereby petition the Commission for the amendment of the Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement").⁴ Petitioners request the Commission initiate a rulemaking to amend the Disclosure Statement to require the disclosure of a property's flood history and flood risk as outlined in the following section.

² N.C. Gen. Stat. § 150B-20.

³ 21 N.C.A.C. 58A .0701.

⁴ 21 N.C.A.C. 58A .0114.

III. TEXT OF THE PROPOSED AMENDMENT TO A RULE

The current Disclosure Statement does not solicit adequate information related to a property's flood history and flood risk. A home that has flooded once is likely to flood again. Providing homebuyers with information about the potential flood risk that comes with a home will enable buyers to take appropriate steps to mitigate damages, including by purchasing flood insurance. The following proposed additions to the Disclosure Statement will equip buyers to make better-informed decisions, leading to more transparent real estate transactions.

30. Has any structure on the property ever flooded? If yes, provide the number of times.

31. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? If yes, provide the amount received.

32. Is there flood insurance on the property? If yes, provide the current premium amount.

33. Have you or any previous owners received assistance from FEMA, the U.S. Small Business Administration, or any other federal disaster flood assistance for flood damage to the property? For properties that have received federal disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain and maintain flood insurance can result in an individual being ineligible for future assistance.

34. Is there a FEMA elevation certificate for the property?

IV. STATEMENT OF THE REASONS FOR THE PROPOSED AMENDMENT TO A RULE

Disclosing flood risk information during real estate transactions equips homebuyers to make better-informed decisions, thus making real estate markets function more effectively.⁵ Any transaction where only one party is privy to information denied to the other is asymmetrical and inherently unfair. As currently written, North Carolina's Disclosure Statement—the only document governing seller disclosures—denies buyers access to crucial information about flood risk, leaving them with inadequate information about one of their most important financial decisions.

Flooding, North Carolina's most common natural hazard,⁶ poses an increasingly significant threat to life and property as climate change strengthens storms and raises sea level.⁷ Despite widespread flooding events in recent years from hurricanes and tropical storms, such as Matthew, Florence, and Dorian in 2016, 2018, and 2019 respectively, homebuyers in North

⁵ FEMA, *Flood Risk Disclosure: Model State Requirements for Disclosing Flood Risk During Real Estate Transactions*, 1 (July 11, 2022) available at https://www.fema.gov/sites/default/files/documents/fema_state-flood-risk-disclosure-best-practices_07142022.pdf

⁶ North Carolina Emergency Management, *Draft North Carolina Hazard Mitigation Plan 2023*, 3-18 (Sept. 2022) available at <https://www.ncdps.gov/media/11577/open>.

⁷ K.E. Kunkel, et. al., *North Carolina Climate Science Report*, 7 (Revised Sept. 2020) available at <https://ncics.org/programs/nccsr>

Carolina are not entitled to information about past flooding damage. This prevents new owners from protecting themselves against future extreme weather-related costs. The four proposed additions to the Disclosure Statement track what is already required in many other states,⁸ including other Southern states with similar flood risks. Adding the proposed disclosures would remedy a lack of transparency in current real estate transactions and empower homebuyers to make fully informed decisions.

This Commission is obligated to develop and require the use of the Disclosure Statement,⁹ and possesses the authority to amend it through rulemaking.¹⁰ It should accordingly amend the Disclosure Statement to require adequate disclosure of flood risk in residential real estate transactions.

a. Flooding in North Carolina will continue to worsen with climate change

North Carolina is subject to increasingly frequent flooding. Between 1996 and 2021, North Carolina experienced 4,382 flooding events, resulting in 72 deaths and \$1,663,464,754 in property and crop damage.¹¹ Every county in North Carolina is vulnerable to flooding as each has identified and mapped Special Flood Hazard Areas (SFHAs) floodplains with at least a 1-percent annual chance of floods that could cause damage to development lying within those floodplains.¹²

The number of properties subject to repeated flooding is growing in North Carolina. As of 2022, the state has documented 11,984 residential repetitive loss properties,¹³ with a net increase of 3,344 repetitive loss properties since 2017.¹⁴ Between 2012 and 2017, the state documented a net increase in repetitive loss properties of 1,787.¹⁵ Importantly, these numbers only represent properties covered by the National Flood Insurance Program. The number of residential properties that have been subjected to repeated flood damage is likely greater. Most of those properties are likely uninsured or may have coverage from private insurers, which would exclude them from being counted.

⁸ See, NRDC, *How States Stack Up on Flood Disclosure*, <https://www.nrdc.org/flood-disclosure-map>; FEMA, *supra* note 5 at 16 – 18 (detailing each state’s real estate disclosure law requirements concerning flooding).

⁹ N.C. Gen. Stat. § 47E-4(b).

¹⁰ *Id.*; *id.* at § 47E-10.

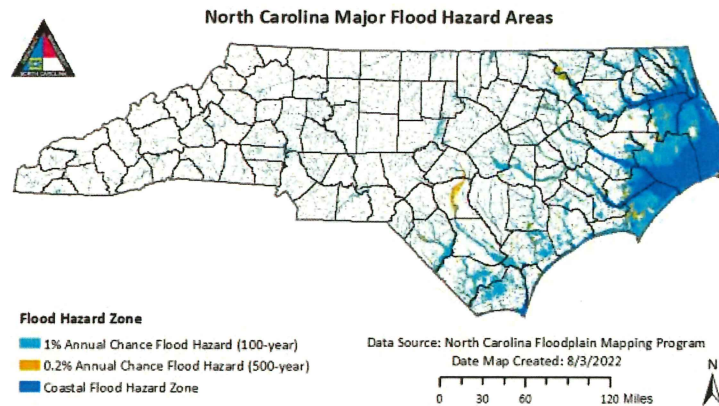
¹¹ North Carolina Emergency Management, *supra* note 6 at 3-14 - 3-16 (Damage amount is inflated to 2017 dollars).

¹² *Id.* at 3-9.

¹³ A repetitive loss property is “any insured structure with at least two paid flood insurance losses of more than \$1,000 each in any rolling 10-year period since 1978.”

¹⁴ North Carolina Emergency Management, *supra* note 6 at 3-230.

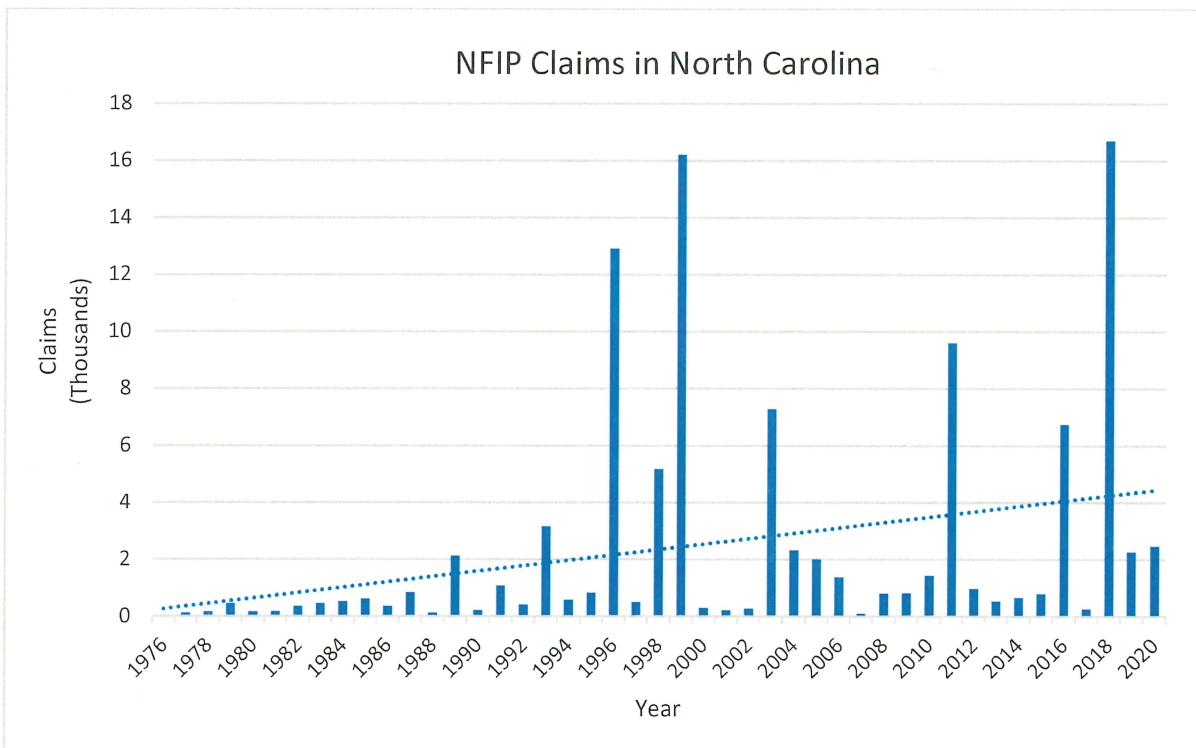
¹⁵ North Carolina Emergency Management, North Carolina Hazard Mitigation Plan 2018, 3-196 (Feb. 2018) *available at* <https://files.nc.gov/ncdps/documents/files/State%20of%20North%20Carolina%20Hazard%20Mitigation%20Plan%20Final%20As%20Adopted.pdf>



(Source: Draft North Carolina Hazard Mitigation Plan 2023, pg. 3-9)

Many North Carolina counties have experienced increased catastrophic flooding in recent years, with some experiencing multiple major flooding disasters. Since 1977, North Carolina has seen 29 major federal disasters declared for events that caused major flood damage in one or more counties.¹⁶

The number of claims filed with the National Flood Insurance Program has also grown over the past 40 years as the below table shows.



¹⁶ North Carolina Emergency Management, *supra* note 6 at 3-9

Current and future emissions of greenhouse gases, the primary driver of climate change,¹⁷ will continue to have a warming effect on the climate for the foreseeable future. This warming effect will lead to increases in temperature that will in turn lead to sea level rise and more extreme precipitation events. When layered onto the booming development and population growth in the state's floodplains, this combination of factors will exacerbate flood risks and associated flood-related damages across North Carolina.

North Carolina is highly susceptible to sea level rise.¹⁸ "Depending on the rate of greenhouse gas emissions, global average sea level is projected to increase by 1.3-2.4 feet (moderate emissions scenario) to 2.0-3.6 feet (higher emissions scenario) by 2100."¹⁹ Under either projected scenario, the state is likely to experience high tide flooding on a near daily basis by 2100.²⁰ In the coastal communities near Duck, Beaufort, and Wilmington, high-tide flooding is expected to occur as often as one out of every two days during the decade from 2050 to 2060 and daily after about 2080.²¹

Flooding amplified by sea level rise poses grave risks to North Carolina land and property, both coastal and inland, as low-gradient rivers, like the Tar River, see their head of tide migrate several miles inland because of sea level rise.²² The U.S. Environmental Protection Agency has determined North Carolina has the third highest land area that is vulnerable to sea level rise.²³

According to the state's own risk assessment for natural hazards,

It is virtually certain that sea level along the North Carolina coast will continue to rise due to expansion of ocean water from warming and melting of ice on land. Similarly, it is virtually certain that rising sea levels and increasing intensity of coastal storms will result in an increase in storm surge flooding in coastal North Carolina. Increase storm surge will, in time, lead to eroded shorelines. This loss of land and natural buffer will ultimately leave properties further at risk of flooding and storm damage.²⁴

Clearly, in coastal areas, sea level rise will contribute to increasing incidents of flooding and flood damages.

Climate change has also "detectably influenced" extreme precipitation events, an important driver of flooding.²⁵ Per the most recently available North Carolina Climate Science Report, there is a statistically significant upward trend in extreme precipitation events—days with more

¹⁷ Kunkel, *supra* note 7 at 26.

¹⁸ *Id.* at 168 (North Carolina has many square miles of coastal land within a few feet of sea level).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 176.

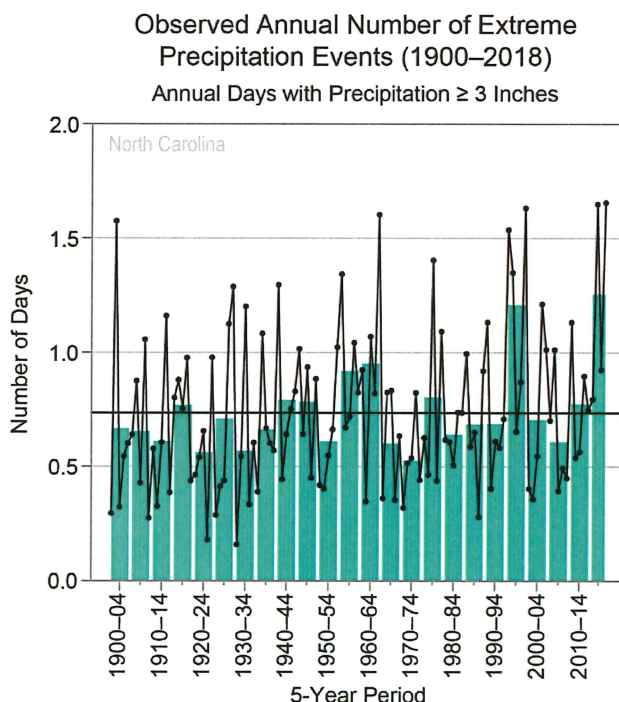
²² *Id.*

²³ North Carolina Emergency Management, *supra* note 6 3-17.

²⁴ *Id.* at 3-40.

²⁵ Sonia Senevirante et al., *Ch 3: Changes in Climate Extremes and their Impacts on the Natural Physical Environment* in IPCC Special Report on Managing Risks of Extreme Events and Disasters to Advance Climate Adaptation 109, 177

than 3 total inches of rainfall—with the highest number of extreme precipitation events occurring in the report’s final 4-year period (2015–2018).²⁶



(Source: North Carolina Climate Science Report)

Furthermore, most parts of North Carolina will see an increase in the number of days with 3 inches or more of precipitation for both midcentury time periods. Based on the virtual certainty that water vapor in the atmosphere will increase with global warming, the risk of extreme precipitation will also increase everywhere in the state.²⁷ In addition, tropical cyclones are expected to produce heavier precipitation, and the strongest storms are projected to become even more catastrophic in the future. Given the link between extreme precipitation and flooding, future increases in heavy rainfall will cause increased flooding across the state.²⁸

b. The proposed disclosures will provide North Carolina homebuyers with critical information regarding flood risk

As flooding becomes increasingly frequent and financially disruptive to North Carolinians, flood risk emerges as a key element of real estate transactions. Despite this mounting evidence, North Carolina’s Disclosure Statement requires only the barest of disclosures, preventing a buyer from knowing about a property’s actual risk and history of flooding. The four proposed additions to the Disclosure Statement would provide homebuyers with critical information currently unavailable to them. Further, North Carolina’s flood risk disclosures lag those of other similarly

²⁶ Kunkel, *supra* note 7 at 66.

²⁷ *Id.*

²⁸ *Id.* at 187

positioned states.²⁹ Adding the proposed questions to the Disclosure Statement would bring North Carolina in line with other Southern states that are feeling the impacts of increased flooding, including Texas, Louisiana, and Mississippi.

Question 29 in the current Disclosure Statement asks the following:

*Is the property subject to a flood hazard or is the property located in a federally designated flood hazard area?*³⁰

The only currently required flood-related disclosure in the Disclosure Statement lacks the requisite specificity to adequately inform potential homebuyers about flood risks and past incidents of flood damage. It presumes that a flood map provides an accurate snapshot of flood risks, which may not be a correct assumption given that FEMA flood maps can be outdated.³¹ Per FEMA's Community Status Book Report for North Carolina, 64 percent of North Carolina's flood maps are outdated.³²

However, even if a flood map is up-to-date, it does not tell a buyer a complete picture. Per FEMA, people outside of FEMA-mapped floodplains file more than 20 percent of NFIP claims and receive one-third of disaster assistance for flooding.³³ Further, FEMA flood maps do not capture so-called urban flooding events nor flooding caused by overburdened storm sewer systems during sudden localized rainstorms. As such, there are numerous situations in which a property could flood that are not reflected by FEMA flood maps. While flood maps can be a useful source of information, they should not be relied upon as the sole piece of information.

A critical indicator of whether a property will flood in the future is whether it has flooded in the past. The best way for a homebuyer to find out that information is through disclosure by the current property owner. Similarly, whether a past homeowner has filed for flood damage with an insurance provider would give a homebuyer important information about the potential for flooding and the severity of damage, which can only be provided by the current owner. Petitioners' proposed Questions 30 and 31 directly elicit this crucial information.

A potential buyer in North Carolina cannot currently ascertain whether the home carries existing insurance due to flooding risk because the current Disclosure Statement fails to elicit this information directly. Petitioners' proposed Question 32 addresses this gap by asking sellers to provide this crucial information, including the current premium amount.

Currently, there is no specific requirement in North Carolina to disclose information that would inform a buyer about whether a property is federally mandated to be covered by flood

²⁹ See, NRDC, *How States Stack Up on Flood Disclosure*, <https://www.nrdc.org/flood-disclosure-map>; see also FEMA, *supra* note 5 at 16 – 18.

³⁰ 21 NCAC 58A. 0114

³¹ DHS Office of the Inspector General, OIG-17-110, *FEMA Needs to Improve Management of Its Flood Mapping Programs* (Sept. 27, 2017) available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-110-Sep17.pdf>

³² *Id.* at 2.

³³ FEMA, National Flood Insurance Program Fact Sheet, https://www.fema.gov/sites/default/files/2020-07/fema_NFIP_National-Flood-Insurance-Program-Fact-Sheet_May-2016.pdf

insurance.³⁴ For properties that have received federal disaster assistance in the past, the requirement to obtain flood insurance passes down to all future owners.³⁵ For these properties, failure to obtain and maintain flood insurance, even if the future owner is unaware that it was required, can result in an individual being ineligible for federal assistance.³⁶ Petitioners' proposed Question 33 would address this shortcoming in the Disclosure Statement.

Another tool in predicting whether a property will flood in the future is a FEMA elevation certificate. This form, completed by a licensed surveyor or engineer, provides critical information about the flood risk of a property and is used by flood insurance providers under the National Flood Insurance Program to help determine the appropriate flood insurance rating for the property. Petitioners' proposed Question 34 would provide a buyer with this tool, which could be especially useful as a buyer may be able to use the elevation certificate from a previous owner for securing their flood insurance coverage.

According to FEMA, two-thirds of states have more explicit flood-related disclosure requirements than North Carolina.³⁷ Other states' disclosure forms, like the aforementioned Louisiana, Mississippi, and Texas, require disclosure of the following: the presence of an active insurance policy, the current cost of flood insurance premiums, previous flood events and/or flood-related property damage, any past flood insurance claims, including dates and amounts, any past disaster-related aid provided (federal, state, or local), including dates and amounts, and the presence of a flood elevation certificate (Exhibits 1-3). In comparison, North Carolina's Disclosure Statement falls short in informing buyers about flood risks.

Adding proposed Questions 30-34 to the Disclosure Statement would bring North Carolina closer to flood disclosure best practices in real estate transactions. These questions elicit information on past flooding history, claims with the National Flood Insurance Program, flood insurance, assistance from local and federal sources, and FEMA elevation certificates. A buyer cannot make an informed decision about purchasing a home without knowledge of flood risk. Knowledge of flood risk informs the price someone is willing to pay for a home, and the actions taken to reduce a home's flood risk and, by extension, adequately protect lives and property. Sellers of residential property in North Carolina are not currently required to disclose adequate information related to flooding risk to buyers, though this information is often only available to them and not in any other person's possession. Though a FEMA flood map can give a general sense of a property's flood risk, it does not tell a buyer if a specific home has flooded in the past. The current owner of a property should know when flooding occurred, what parts of a property or home were damaged, and what the cost and extent of repairs were, among other things. The proposed questions are therefore necessary to safeguard buyers during an asymmetrical process where sellers have access to crucial information without being required to disclose it.

³⁴ Stafford Act, 42 U.S.C. 5154 (a), Sec. 311 (a), available at https://www.fema.gov/sites/default/files/documents/fema_stafford_act_2021_vol1.pdf; NRDC, How States Stack Up on Flood Disclosure, <https://www.nrdc.org/flood-disclosure-map>, <https://www.nrdc.org/flood-disclosure-map>

³⁵ 4 NRDC, How States Stack Up on Flood Disclosure, <https://www.nrdc.org/flood-disclosure-map>

³⁶ *Id.*

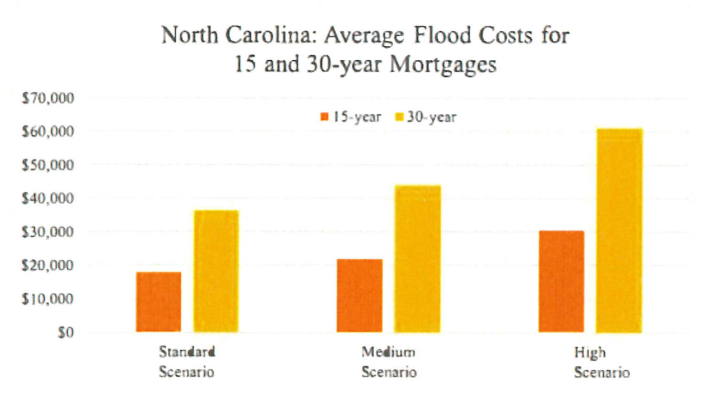
³⁷ FEMA, *supra* note 5 at 3.

c. The proposed amendments will empower homebuyers to mitigate the risks of a flood-prone home

Floods and storm-related costs can be financially devastating for North Carolinians. A recent NRDC-commissioned research study by Milliman, an independent actuarial consulting firm, found that a home buyer of a previously flooded home can incur tens of thousands of dollars in flood damage costs over the course of his or her mortgage.³⁸ Homes that have previously flooded are more likely to flood again, and the average damage associated with previously flooded homes is significantly higher than with homes that have not previously flooded.³⁹

The study found that over the life of a 15-year mortgage, the average buyer of a previously flooded home in North Carolina can expect to incur \$18,164 in additional flood damages.⁴⁰ Home buyers with 30-year mortgages incur \$36,328 in additional costs compared to owners of homes without a history of flooding.⁴¹

Climate change will only exacerbate flood damage costs. As shown below, these costs are significant: a homeowner with a 15-year mortgage faces increased costs of \$22,009 in the medium climate scenario and \$30,512 in the high climate scenario.⁴² The same homeowner with a 30-year mortgage faces \$44,018 in expected costs under the medium climate scenario and \$61,025 under the high climate scenario.⁴³



These proposed amendments to the Disclosure Statement will give all future home buyers in North Carolina adequate information to make a better-informed decision about one of their most important financial decisions.

³⁸ David D. Evans, Larry Baeder, *Estimating Undisclosed Flood Risk in Real Estate Transactions* (Aug. 2022), available at https://www.milliman.com/-/media/milliman/pdfs/2022-articles/7-29-22_nrhc-estimating-undisclosed-flood-risk.ashx

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

d. Strong, bi-partisan support for flood disclosure exists in North Carolina

North Carolina voters strongly support requiring property owners to disclose a home's flood history to prospective buyers. Per an NRDC-commissioned survey by the Global Strategy Group, more than 80 percent of surveyed North Carolinians support such a requirement (*see* Exhibit 4). This support was firmly bi-partisan; 86 percent of respondents identifying as Democrat and 80 percent of respondents identifying as Republican supported the disclosure of a home's flood history. Further, 82 percent of respondents identified with the statement "This policy is the right thing to do because it will allow . . . buyers to have full knowledge of the condition and history of property" versus 11 percent of respondents who identified with the statement that "This policy is wrong thing to do because it will add more burdensome regulations." North Carolinian voters overwhelmingly support flood disclosure, viewing it as benefiting home buyers, public safety, and coastal communities.

V. STATEMENT OF THE EFFECT ON EXISTING RULES OR ORDERS

The proposed rulemaking will amend the Disclosure Statement to adequately require the disclosure of a property's flood history and flood risk as outlined in the previous sections. The proposed amendment will not affect any other existing rules or forms.

VI. THE NAME AND ADDRESS OF PETITIONERS

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VII. REQUEST TO PRESENT THIS PETITION TO THE COMMITTEE

Petitioners request the opportunity to present this petition for rulemaking to the Commission.

Respectfully submitted this the 1st day of December 2022.

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