

8 September 1997

Re: NEPA Technical Inquiry 0002 - Floodplain Construction

Dear NEPA Call-In User:

This letter is in response to your October 24, 1996 inquiry regarding GSA's site selection for a Federal Courthouse. You stated the a city in California has offered a cleared site free of charge for the construction of a new Federal courthouse. The site is in the Central Business Area (CBA) and lies within the 500 year floodplain. GSA has expressed interest in the site provided it can be transferred without cost to the Federal Government and be delivered free of all environmental concerns. You further stated the Federal Emergency Management Agency (FEMA) has issued a conditional Letter of Map Revision (LOMAR), which is an official amendment to the currently effective flood zone map and which changes the flood zone boundaries. FEMA has advised Lobo they will revise their maps to remove the site from the 500 year floodplain providing:

1. The site elevation is raised with 6" of fill;
2. The filled site is graded in a specified manner proposed by Lobo; and
3. Actions one and two above are confirmed by a U.S. Army Corps of Engineers survey.

Lobo has decided to dedicate municipal funds to fill and regrade the site as outlined by FEMA. Prior to taking this action, the city has asked GSA to confirm their acceptance of the site for construction of a new Federal courthouse. GSA wants to know the following prior to making a commitment:

1. Is there anything to prevent GSA from entering into this agreement? and
2. What applicable laws, regulations, and executive orders pertain to Government acquisition of this site?

Executive Order 11988, "Floodplain Management" (enclosed), seeks to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. Section 2, Paragraph (a)2 includes the following requirements:

1. If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, (or 500 year floodplain for critical actions), the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the agency head finds the only practicable alternative consistent with the law and with the policy set forth

requires siting in a floodplain, the agency shall, prior to taking action:

a. design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order; and

b. prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

FEMA's guidance document, "Further Advice on Executive Order 11988, Floodplain Management" (Chapter II, page 3), states practicable alternatives can include carrying out the proposed action outside of the floodplain, accomplishing the same objective using other means, or taking no action at all. There can be alternative sites within the floodplain that need to be evaluated if there are no practicable sites outside the floodplain. Finally, the floodplain location itself must be shown to be practicable before the action can be taken, and the need to select a floodplain location must be clearly demonstrated.

Further, if after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted flood proofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

Although Lobo will be regrading the site for FEMA's reclassification and will deliver the site redesignated as outside of the floodplain, because Lobo's action is driven by the GSA action of building a Federal courthouse, NEPA Call-In recommends including a discussion of FEMA and Lobo's activities in GSA's environmental analysis documents. The regrading could be discussed as a mitigation effort to mitigate indirect impacts.

Although the proposed modification of the site (raising grade 6") appears to be contrary to the directive in EO 11988 (elevate structure), GSA presented this issue to FEMA which responded that the site would be redistricted outside the floodplain. NEPA Call-In recommends GSA obtain verification from FEMA on the floodplain redesignation if Lobo raises the grade 6."

Title 40 Code of Federal Regulations (CFR) Part 1501.2, "Apply NEPA early in the process" (enclosed), requires Federal agencies to take steps toward ensuring private parties and State and Local entities initiate environmental studies as soon as Federal involvement in their proposals can be projected. You stated it is GSA practice to obtain a Phase 1 and/or Phase 2 Environmental Site Assessment (ESA), prepared in accordance with American Society for Testing Materials (ASTM) guidelines, to determine the site's current environmental condition. Prior to accepting the property, GSA must prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). NEPA requires consideration of significant impacts a proposed action may have on the environment and requires examination of alternative sites and responses to the "purpose and need" statement.

NEPA Call-In reviewed the GSA Handbook, "PBS Preparation of Environmental Assessments and Environmental Impact Statements" (PBS P 1095.4B) and GSA Order ADM 1095.1E, "Environmental Considerations in Decision Making." Potential considerations for this site include impact to floodplains, wetlands, ambient air quality, existing community land use and zoning (including available housing), environmental justice issues, open space and recreation facilities, cultural and archaeological resources, and impact on the existing infrastructure (utilities, roads, parking).

Several environmental acts and executive orders are applicable to GSA's acquisition of this site. The following 14 acts or orders apply:

1. NEPA;
2. Clean Air Act (CAA);
3. Clean Water Act (CWA);
4. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and the Superfund Amendments and Reauthorization Act of 1986 (SARA);
5. Environmental Quality Improvement Act (EQIA) of 1970;
6. National Historic Preservation Act (NHPA) of 1996;
7. Archaeological Resources Protection Act (ARPA) of 1979;
8. Executive Order 11593: "Protection and Enhancement of the Cultural Environment;"
9. Executive Order 11988: "Floodplain Management;"
10. Executive Order 12072: "Locating Federal Facilities - First Considerations to Centralized Community Business Areas;"
11. Executive Order 12898: "Federal Actions to Address Environmental Justice;" and
12. Executive Order 13006: "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities."

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Sincerely,
(Original Signed)
NEPA Call-In Researcher