

2 January 1997

Re: NEPA Call-In Technical Inquiry 0012 - EO 11988, EO 13006
Contradiction

Dear NEPA Call-In User:

This letter is in response to your November 22, 1996 request for information on how potential contradictions between Executive Orders (EO) are resolved. You stated there is a contradiction between EO 11988, "Floodplain Management," which directs Federal agencies to avoid locating in floodplains if possible, and EO 13006, "Locating Federal Facilities on Historic Properties in Nation's Central Cities," which directs Federal agencies to locate in historic properties and districts if possible. Specifically, you would like to know which EO takes precedence, locating outside a floodplain or locating inside a floodplain if the site is historic property?

NEPA Call-In reviewed EOs 11988 and 13006 which disclosed the following:

1. EO 11988 directs agencies to consider alternatives to avoid adverse effects and incompatible development in floodplains. An agency may locate a facility in a floodplain if the head of the agency finds there is no practicable alternative; and
2. EO 13006 requires the Federal Government to "utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central cities. When locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts." EO 13006 is subject to the requirements of EO 12072, "Federal Space Management" (enclosed), which requires first consideration to centralized community business areas when meeting Federal space needs except where it is otherwise prohibited.

NEPA Call-in contacted Mr. Joe Oglander, Assistant Solicitor for the Branch of Water and Power, U.S. Department of the Interior, (202) 208-4379. In Mr. Oglander's opinion, EO 13006 was intended primarily to provide for use of existing structures in historic districts. He knew of no specific guidance on this issue and suggested calling the General Counsel's Office at GSA.

We contacted a General Law Associate, General Counsel's Office, GSA, who knew of no specific guidance on this issue and referred us to another associate also of the General Counsel's Office.

We spoke to the Real Estate Environmental Attorney, who stated conflicts between EOs should be addressed to the Office of Management and Budget (OMB). The attorney stated agency lawyers should first determine if a conflict exists, and if so, contact the OMB. The attorney stated the EOs are not conflicting in this case. EO 13006 encourages agencies to consider sites within historic districts provided it is compatible with current authority, which would include EO 11988. EO 11988 allows agencies to locate in a floodplain if there is no practicable alternative. Therefore, if an agency determines there is no practicable alternative,

it may locate in a floodplain, in an historic district and meet the intention of EO 13006. However, if there is a practicable alternative, GSA must comply with EO 11988 and locate outside the floodplain, even if the floodplain is historic property.

According to the Federal Emergency Management Agency (FEMA) publication "Further Advice on Executive Order 11988 Floodplain Management," undated (enclosed), the steps necessary for a finding of no practicable alternative are:

1. Provide for public review;
2. Identify and evaluate practicable alternatives to locating in the base floodplain;
3. Identify the impacts of the proposed action;
4. Minimize threats to life and property and to natural and beneficial floodplain values. Restore and preserve natural and beneficial floodplain values;
5. Reevaluate alternatives;
6. Issue findings and a public explanation; and
7. Implement the action.

Finally, NEPA Call-in contacted the Advisory Counsel on Historic Preservation as recommended in EO 13006. We spoke to Ms. Charlene Vaughn, Office of Planning and Review, (202) 606-8503, who concurred with the Real Estate Environmental Attorney's assessment. If it is determined there is no practicable alternative to siting in a floodplain and the area is a historic property, then she recommends you state in your documentation you are also meeting the intentions of EO 13006.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher