

8 September 1997

Re: NEPA Technical Inquiry 0096 - Blanket Floodplain Waiver

Dear NEPA Call-In User:

This letter is in response to your May 22, 1997 inquiry regarding the Spring 1997 Update newsletter. You stated you are concerned to read the conclusion from the Federal Emergency Management Agency (FEMA) that blanket floodplain waivers are in violation of Executive Order (EO) 11988, "Floodplain Management." You stated GSA conducts real estate activities in a number of cities where there are little or no alternatives to floodplain use and blanket waivers historically have been very useful. Specifically, you would like to know if the GSA memoranda "Procedures for Blanket Flood Plain Waivers," 26 January 1990, and "Floodplain Waivers: Proper Documentation and Processing Procedures and GSA Policy on Blanket Waivers," April 3, 1990, are still valid; and GSA legal counsel's opinion on the issue. You provided NEPA Call-In copies of the memoranda.

#### SUMMARY OF FINDINGS

NEPA Call-In found the memoranda "Procedures for Blanket Floodplain Waivers," and "Floodplain Waivers: Proper Documentation and Processing Procedures and GSA Policy on Blanket Waivers" are no longer valid, and have not been incorporated into official GSA guidance. GSA's legal counsel is currently researching the issue and will provide guidance in the near future.

#### DETAILED FINDINGS

NEPA Call-In contacted Directives and Correspondence Branch, Information Management Division, GSA. The Information Management Division stated memoranda are temporary documents that become invalid at the end of the fiscal year in which they were issued (September 30, 1990 in this case), and destroyed after two years. The Information Management stated memoranda fall under the category 01B002 (enclosed) of the GSA Records Disposition Schedules, mandated by OAD P 1820.2A, "GSA Records Maintenance and Disposition System." The Information Management further stated memoranda should not include guidance, as GSA guidance should only be included in official GSA directives and policies. NEPA Call-In found the procedures for blanket floodplain waivers have not been incorporated into an official GSA directive or policy.

We then contacted the General Counsel, GSA National Office, to determine GSA's legal opinion on blanket floodplain waivers, and determine if GSA concurs with the FEMA conclusion that blanket floodplain waivers are in violation of EO 11988. The General Counsel stated the General Counsel's Office is currently researching the issue, and will contact NEPA Call-In with a response in the near future. We will advise you of GSA General Counsel's response when it is received.

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that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher