

January 7, 1999

Re: Call-in Technical Inquiry 0425B – Definition of lease acquisition in ADM 1095.2

Dear NEPA User:

This letter is in further response to your October 21, 1998, request for guidance on whom at GSA is responsible for determining that siting in a regulated floodplain is the only practicable alternative. In our first previous response, NEPA Call-In stated that the Administrator has delegated responsibility for the determination to the Regional Administrator when the action involves regional disposal of real property or lease acquisitions. In all other cases, the PBS Commissioner is responsible for the determination. In a follow-up telephone call, you also asked what the difference was between a "Lease Acquisition" and "Federal Construction," terms which are used in GSA Order ADM 1095.2 (Change 1, October 31, 1983), "Consideration of Floodplains and Wetlands in Decisionmaking." In our second response, we contacted a leasing specialist within GSA's National Office who stated that he did not believe GSA has any formal written definition for the terms. The leasing specialist then stated that, in the broadest sense, "Federal Construction" refers to construction of a building or facility by the Federal government, on a government-owned site, where the Federal government will use the building or facility. The term "Lease Construction" refers to construction of a building or facility by a private entity, on a privately owned site, where the Federal government will use the building or facility. You then stated you wanted to know how the term "Federal Construction" applies to the delegations of responsibility for making determinations of only practicable alternative for siting in a regulated floodplain in GSA Order ADM 1095.2, "Consideration of Floodplains and Wetlands in Decisionmaking," October 31, 1983. NEPA Call-In stated we could not issue legal interpretations, but would contact General Counsel, GSA Central Office for assistance.

SUMMARY OF FINDINGS

NEPA Call-In obtained information from the Office of General Counsel, GSA National Office, that confirms the Commissioner of the Public Buildings Service (PBS) is the GSA "Responsible Official" for making determinations of only practicable alternative for federal construction actions sited within a regulated floodplain. According to the GSA NEPA Liaison, GSA National Office, correspondence from your region to the Commissioner of PBS should come from your Regional Administrator's office. Our detailed findings are presented below.

DETAILED FINDINGS

NEPA Call-In contacted the Environmental Counsel, Office of General Counsel, GSA Central Office, to inquire about the interpretation of the delegations of responsibilities as related to your inquiry. The Environmental Counsel provided NEPA Call-In with the following response:

ADM 1095.2 (July 23, 1979) was amended by Change 1 on October 31, 1983. Currently, the responsible official for determining whether a proposed action (in or affecting wetlands or floodplains) is the only practicable alternative is the PBS Commissioner, except "in cases involving regional disposal of real property or lease acquisitions to fulfill Federal space requirements." In those instances, the Regional Administrator is the responsible official. The Administrator has ordered that "this approval authority may not be redelegated." Thus, the PBS Commissioner must make practicable alternative determinations for any action other than disposal or lease acquisition -- this would include federal construction projects that are not part of a lease acquisition.

The draft revised Order (see Technical Inquiry 0434, "Draft GSA Floodplain Order and Wetland Order") would make the responsible official the Head of the Service or Staff Office or Regional Administrator under whose jurisdiction an action is planned. To further muddy the water, [Office of Management and Budget] OMB has announced that the White House soon will issue a replacement for the current floodplains Executive Order (EO 11988). GSA's draft revised Order is suspended pending the release of this new EO.

As a result of the Environmental Counsel's response and the previous research done by NEPA Call-In on this matter, it appears the Commissioner of PBS is required to be the final decisionmaker in the process of making determinations of only practicable alternative for Federal construction actions sited in a regulated floodplain. The Environmental Counsel's office did not have information about the programmatic means of presenting the Commissioner of PBS with the documentation used in the determinations.

We then contacted the GSA NEPA Liaison, GSA National Office, to inquire about how the Commissioner of PBS should be presented with supporting documentation from a GSA region for such an action. The NEPA Liaison stated when a GSA region proposes an action as you describe in your inquiry, floodplain determinations (determining which floodplain the proposed site is in) and determinations of only practicable alternative should be made by personnel within the region associated with the action. Documentation and records supporting the determinations should be reviewed on the Regional Administrator (RA) level before being forwarded, through the RA's office, to the Commissioner, PBS. The NEPA Liaison was unaware of a standard protocol or programmatic means of accomplishing this. The NEPA Liaison further stated you should contact him directly at for any additional information regarding this matter.

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