

8 September 1997

Re: NEPA Technical Inquiry 0096B - Blanket Floodplain Waiver

Dear NEPA Call-In User:

This letter is in further response to your May 22, 1997 inquiry regarding the Spring 1997 Update newsletter. You stated you were 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 wanted 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

GSA's Office of General Counsel concurs with the FEMA conclusion that blanket floodplain waivers are in violation of EO 11988. However, GSA may site activities in floodplains provided it follows the procedures given in GSA ADM 1095.2, "Consideration of floodplains and wetlands in decisionmaking," and EO 11988.

DETAILED FINDINGS

In our previous responses dated June 11, 1997 and June 27, 1997, 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and "Floodplain Waivers: Proper Documentation and Processing Procedures and GSA Policy on Blanket Waivers" are no longer valid, and have not been incorporated into official GSA guidance. We 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 was researching the issue. NEPA Call-In stated we would forward guidance from the General Counsel's office when received.

Since our previous response, the General Counsel referred us to another General Counsel, GSA National Office. We contacted the referred General Counsel who concurred with the FEMA conclusion that blanket floodplain waivers are in violation of EO 11988. The referred General Counsel also concurred with guidance given in NEPA Call-In Technical Inquiry (TI) 0007A, "Blanket Floodplain Waiver," and the Spring 1997 Update newsletter. Both documents state GSA may site activities in floodplains by following the guidance contained in GSA ADM 1095.2 and EO 11988. The FEMA document, "Further Advice on Executive Order 11988 Floodplain Management," also contains guidelines for siting in a floodplain.

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