



## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2023-0027]

### Programmatic/Class Floodplain Review Procedures for Specific Preparedness

### Grant Projects

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Final notice.

**SUMMARY:** On October 4, 2023, FEMA published a notice requesting public comment on its determination that a programmatic/class review is appropriate for six categories of activities, in specific grant programs that do not have an adverse impact, individually or cumulatively, on floodplain values placing property and persons at risk. FEMA received no comments and is now publishing final notice of its determination in compliance with Federal regulations.

**FOR FURTHER INFORMATION CONTACT:** Frederick Holycross, Coordinator, Grant Programs Directorate, Environmental Planning and Historic Preservation, FEMA, [frederick.holycross@fema.dhs.gov](mailto:frederick.holycross@fema.dhs.gov), or 202-812-4938.

### SUPPLEMENTARY INFORMATION:

#### I. Background

FEMA's floodplain management regulations are found at 44 CFR part 9. Part 9 sets forth the policy, procedure, and responsibilities to implement and enforce Executive Order 11988, Floodplain Management.<sup>1</sup> Part 9 sets forth an eight-step process which FEMA must follow when taking actions in floodplains<sup>2</sup> which have the potential to affect

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<sup>1</sup> "This regulation sets forth the policy, procedure, and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands." 44 CFR 9.1.

<sup>2</sup> The 8-step process set forth in 44 CFR Part 9 also governs agency actions that take place in wetlands.

floodplains or their occupants, or which are subject to potential harm by location in floodplains.<sup>3</sup> FEMA completes the eight-step process for each action it is taking in a floodplain as part of the comprehensive environmental and historic preservation (EHP) compliance reviews that are required for all projects funded under its disaster and non-disaster grant programs.<sup>4</sup>

For such actions, FEMA is required to take the following steps: (1) determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions), and whether it has the potential to affect or be affected by the floodplain;<sup>5</sup> (2) notify the public at the earliest possible time of the intent to carry out an action in a floodplain, and involve the affected and interested public in the decision-making process; (3) identify and evaluate practicable alternatives to locating the proposed action in a floodplain (including alternative sites, actions and the “no action” option); (4) identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and the potential direct and indirect support of floodplain development that could result from the proposed action; (5) minimize the potential adverse impacts and support to or within floodplains to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains; (6) reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5; (7) prepare and provide the public with a finding and public explanation of any final decision that the floodplain is the only practicable alternative; and (8) review the implementation and post-

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<sup>3</sup> 44 CFR 9.5(a)(1).

<sup>4</sup> See generally FEMA’s website at Environmental Planning and Historic Preservation for a description of the EHP process and the applicable regulations, directives, and legal mandates which govern it. (Last accessed on April 12, 2024.)

<sup>5</sup> Any project considered for streamlined process will also be subject to a determination of whether the proposed action is located in a wetland and/or floodplain.

implementation phases of the proposed action to ensure that the minimization requirements are fully implemented.<sup>6</sup>

FEMA completes the eight-step process for each action it is taking in a floodplain as part of the comprehensive environmental and historic preservation (EHP) compliance reviews that are required for all projects funded under its disaster and non-disaster grant programs.<sup>7</sup> The implementing guidance for E.O. 11988 (Guidelines) allows for an altered or shortened decision-making floodplain evaluation “class review” process for certain routine or recurring actions, known as repetitive actions.<sup>8</sup> Class reviews or programmatic approaches allow for efficient and effective ways to meet EHP requirements, including floodplain reviews.

In considering whether to undertake such a review, the Guidelines instruct Federal agencies to examine past actions that have been reviewed on an individual basis with public notice and opportunity to comment.<sup>9</sup> If the individual reviews have indicated uniformly that the actions would not have an adverse impact individually or cumulatively on floodplain values placing property and persons at risk, and little or no public comments to the contrary were received, a class review to streamline agency coordination and processing efforts may be appropriate.<sup>10</sup> Agencies may conduct class reviews of routine or recurring actions when: (1) consideration of whether to locate in a floodplain is substantially similar; (2) there is no practicable alternative(s), consistent with any Executive Orders and applicable agency codes, to siting in a floodplain for each action within the class; and (3) all practical measures to minimize harm to the floodplain are

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<sup>6</sup> 44 CFR 9.6.

<sup>7</sup> See generally FEMA’s website at Environmental Planning and Historic Preservation for a description of the EHP process and the applicable regulations, directives, and legal mandates which govern it. (Last accessed on April 12, 2024).

<sup>8</sup> See Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input at 44.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

included in the review criteria that, if followed, will minimize any adverse impacts that may be associated with the individual actions covered in the class review.<sup>11</sup>

FEMA reviewed six project categories from 13 grant programs and determined they were appropriate for the shortened class review procedures.<sup>12</sup> For the specific project categories, FEMA completed steps 3-6 of the eight-step process by cumulatively considering the potential that the project types might directly or indirectly have adverse impacts to floodplains, might promote floodplain development directly or indirectly, and whether there could be any practicable alternative locations or actions. FEMA determined that the projects would not have direct or indirect adverse impacts to floodplains, would not promote floodplain development directly or indirectly, and that there were no practicable alternatives outside the floodplain. On October 4, 2023, FEMA published an initial notice of its determination; the comment period closed November 3, 2023, with no comments received.<sup>13</sup>

## **II. Final Notice: Compliance with Step 7 of the Eight-Step Process**

Step 7 of the eight-step process requires FEMA to prepare and provide the public with a finding and public explanation of any final decision that the floodplain is the only practicable alternative for the identified actions.<sup>14</sup> The final notice is required to include the following: (1) a statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland; (2) a description of all significant facts considered in making this determination; (3) a list of the alternatives considered; (4) a statement indicating whether the action conforms to applicable State and local floodplain protection standards; (5) a statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved; (6) identification of

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<sup>11</sup> *Id.*

<sup>12</sup> *See* 88 FR 68644.

<sup>13</sup> 88 FR 68644.

<sup>14</sup> 44 CFR 9.6(b); 9.12.

the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and (7) a map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.<sup>15</sup>

FEMA reviewed six project categories that must be located in the floodplain because the project categories involve modifications of structures or features that currently exist in the floodplain.<sup>16</sup> Within these project categories, FEMA conducted a review of 570 project types funded through the Grant Programs Directorate<sup>17</sup>(GPD) from 2008 to 2023 that previously received floodplain reviews on an individual basis. The results of those individual reviews indicate that these identified types of activities will not have an adverse impact on floodplain values and that the activities should remain in the floodplain because they support existing facilities or structures. FEMA did not receive public comments suggesting that there would be impacts or that the activities should not be located in the floodplain. FEMA did not consider alternative sites outside of the floodplain because the projects are small-scale security improvements or modifications made to existing facilities or structures. There are no practicable alternatives because the existing facility or structure would need to be relocated outside the floodplain and no alternative actions would serve the same purpose and have less potential to affect or be affected by the floodplain.

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<sup>15</sup> 44 CFR 9.12(e).

<sup>16</sup> See 88 FR 68644; FEMA's class review does not apply to actions located in regulatory floodways or coastal high hazard areas, including V/VE Zones; construction of new buildings, structures, infrastructure or facilities.

<sup>17</sup> GPD's mission is to deliver and support grant programs that help the Nation before, during and after disasters to make the country more resilient. GPD administers and manages FEMA grants to ensure critical and measurable results for customers and stakeholders, while also ensuring transparency in the grant process; consolidates the grant business operations, systems, training, policy and oversight of all FEMA grants; establishes and promotes consistent outreach and communication with State, local, Tribal and territorial (SLTTs) stakeholders; and offers information about FEMA's preparedness grants funding provided to SLTT governments in the form of non-disaster grants. For more information, please visit <https://www.fema.gov/about/offices/grant-programs>.

FEMA will condition grant funding for the listed activities in accordance with local floodplain ordinances and applicable codes and standards. The activities will not alter floodplain characteristics nor materially extend the life of existing structures or facilities. The activities will not modify the floodplain or increase the risk of flood loss. Construction associated with the listed activities may create short term, direct adverse impacts through the discharge of runoff water containing pollutants and sediment into a floodplain. The installation of temporary structures may create temporary, direct impacts to the floodplain by affecting flow characteristics and by capturing debris. However, mitigation of the short-term, direct adverse impacts associated with construction activities will be achieved through the application of typical construction practices including runoff controls.

For covered activities in participating National Flood Insurance Program (NFIP) communities, FEMA will require a floodplain development permit or documentation from the local floodplain administrator that the work is consistent with NFIP requirements.<sup>18</sup> FEMA will include a condition for all projects located in the floodplain that the Recipient and sub recipient must coordinate with the local floodplain administrator/permitting official to obtain any required permitting. Further information about these activities can be obtained from GPD, at [GPDEHPinfo@fema.dhs.gov](mailto:GPDEHPinfo@fema.dhs.gov). When FEMA provides funding for these activities, a map of the location may be available at [GPDEHPinfo@fema.dhs.gov](mailto:GPDEHPinfo@fema.dhs.gov).

This serves as FEMA's final public notice that the floodplain is the only practicable alternative for the six categories of activities in the thirteen specified grant

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<sup>18</sup> Created by Congress in 1968, the NFIP provides insurance to help reduce the socio-economic impact of floods. Flood insurance is a separate policy that can cover buildings, the contents in a building, or both. The NFIP provides flood insurance to property owners, renters, and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP is a public-private partnership between the Federal Government, the property and casualty insurance industry, States, local officials, lending institutions, and property owners. The NFIP is administered by FEMA, while insurance policies are sold and serviced by a network of more than 50 insurance companies and the NFIP Direct. For more information, please visit [floodsmart.gov](http://floodsmart.gov).

programs identified in its October 4, 2023 initial notice.<sup>19</sup> Pursuant to 44 CFR 9.12(f), FEMA will wait 15 days from the date of this determination to carry out any actions subject to this notice.

**Deanne Criswell,**

*Administrator,*

*Federal Emergency Management Agency.*

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<sup>19</sup> 88 FR 86844; the non-disaster preparedness grant programs to which FEMA's determination applies are as follows: (1) Assistance to Firefighters Grant Program; (2) Fire Prevention and Safety Grant Program; (3) Staffing for Adequate Fire and Emergency Response Grant Program; (4) Nonprofit Security Grant Program; (5) Tribal Homeland Security Grant Program; (6) Emergency Management Performance Grant Program; (7) Operation Stonegarden; (8) State Homeland Security Program; (9) Urban Area Security Initiative; (10) Intercity Bus Security Grant Program; (11) Intercity Passenger Rail Program; (12) Port Security Grant Program; and (13) Transit Security Grant Program.