

Floodplain Management and Wetlands Protection

AGENCY: National Capital Planning Commission

ACTION: Notice of adopted procedures

SUMMARY: This notice sets forth (1) procedures for implementing Executive Order 11988, "Floodplain Management", and Executive Order 11990, "Protection of Wetlands", and (2) an amendment to the Commission's Site and Building Plans requirements, both of which were adopted by the Commission on September 17, 1981. Notice of proposed procedures and of the proposed amendment were published in the Federal Register on July 23, 1981 (46 FR 37999) with a deadline for comments of August 24, 1981. No comments were received.

FOR FURTHER INFORMATION CONTACT:

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Procedures for Floodplain Management and Wetlands Protection

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Sec. 1. Purpose.

The Commission will, to the fullest extent possible, develop policies, plans and programs to protect and maintain the environmental quality of Floodplains and Wetlands.

Sec. 2. Definitions.

The following definitions shall apply throughout these procedures:

- (a) *Action* means any Commission activity including (1) acquiring, managing and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources planning, regulating, and licensing activities.
- (b) *Base Flood* means the flood which has a one percent chance of being equaled in any given year (also known as a 100-year flood).
- (c) *Commission* means the National Capital Planning Commission created by the National Capital Planning Act of 1952, as amended (40 U.S.C. 71-711, 72, 73, 74; D.C. Code, secs. 1-1001 to 1-1013).

- (d) *Direct Impacts* means changes in Floodplain or Wetland values and functions caused or induced by an Action or related activity. Direct Impacts are caused whenever Natural Values are affected as a direct result of an Action.
- (e) *Executive Director* means the director employed by the Commission.
- (f) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, those areas subject to a one percent or greater chance of flooding in any given year.
- (g) *Indirect Impacts* means an indirect result of an Action whenever the Action induces or makes possible related activities which affect the Natural Values of Floodplains or Wetlands. Such impacts occur whenever these values are potentially affected, either in the short- or long-term, as a result of undertaking an Action.
- (h) *Natural Values* means the qualities of or functions served by Floodplains and Wetlands which include, but are not limited to: (1) water resource values (natural moderation of floods, water quality maintenance, groundwater recharge: (2) living resource values (fish, wildlife, plant resources and rehabilitats): and (3) cultural resource values (open space, natural beauty, scientific study, agriculture, aquaculture, forestry,).
- (i) *New Construction* means the construction of a new structure or facility or the reconstruction of a structure or facility which has been totally destroyed.
- (j) *Non-structural Flood Protection Methods* means techniques designed to achieve desired future Floodplain conditions which may include such things as changes in flood regulations and flood insurance, and the development of educational and protection programs.
- (k) *Statement of Findings* is a written public explanation which includes a description of (1) why the proposed action must be located in the Floodplain or Wetland; (2) all significant facts considered in making the determination including alternative sites and Actions; and (3) a statement indicating whether the Actions conform to applicable State or local Floodplain protection standards.
- (l) *Structure* means anything constructed, including a building, mobile homes, and gas and liquid storage tanks, which requires permanent location on the ground.
- (m) *Wetlands* means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries (for purposes of these procedures, estuaries refer to non-major river estuaries), bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows and other similar areas. This definition includes those Wetland areas separated from their natural supply of water as a result of such activities as the construction of structural flood protection methods or solid-fill road beds, mineral extraction, and navigation improvements. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service.

Sec. 3. Objectives of Procedures.

The objectives of these procedures are to avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of Floodplains and Wetlands and to avoid direct or indirect support of development in Floodplains and Wetlands wherever there is a practical alternative. Where Floodplain or Wetland impacts cannot be avoided, these

procedures will focus on mitigation of the adverse effects of any action. In implementing these procedures the Commission will:

- (a) encourage the wise use and conservation of Floodplains and Wetlands to preserve their natural and beneficial values;
- (b) avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of Floodplains and the destruction or modifications of Wetlands;
- (c) avoid the direct or indirect support of development and New Construction in Floodplains and Wetlands whenever there is a practicable alternative;
- (d) minimize the potential harm to people and property and to Natural Values when an Action must be located in the Floodplain;
- (e) promote the use of Non-structural Flood Protection Methods to reduce the risk of flood loss; and
- (f) attempt to achieve a suitable balance between the protection of Floodplains and Wetlands and development.

Sec. 4. Scope and Responsibilities.

- (a) Applicability. These procedures apply to all Actions initiated by the commission which have the potential for adversely impacting Floodplains or Wetlands or their occupants, or which are subject to potential harm by location in Floodplains or Wetlands if the probability for adverse effects is associated with:
 - (1) The occupancy or modification of Floodplains both direct and indirect; or
 - (2) The destruction or modification of Wetlands both direct and indirect.
- (b) Scope. If the Commission finds that the Floodplain and/or Wetlands would be impacted the Commission shall:
 - (1) identify and evaluate practicable alternatives to locating in a Floodplain or Wetland, including practicable alternative sites outside the Floodplain or Wetland; alternative Actions which serve essentially the same purpose as the proposed Action but which have less potential to adversely affect the Floodplain or Wetland, and the "no action" alternative. The following factors should be analyzed in determining the practicability of alternatives.
 - (i) Natural environment (topography, habitat, hazards);
 - (ii) Social concerns (aesthetics, historical and cultural values, land use patterns);
 - (iii) Economic aspects (costs of space construction, services and relocation); and
 - (iv) Legal constraints.
 - (2) Identify the full range of potential direct or indirect adverse impacts associated with the occupancy and modification of Floodplains and Wetlands. The following factors should be analyzed:
 - (i) Flood hazard related factors such as (A) depth, velocity and rate of rise of flood water; (B) duration of flooding; (C) high hazard riverine areas (areas subject to high velocity waters); (D) available warning and evacuation time and routes; and (E) effects of special problems, e.g., levees and other protection works, erosion, subsidence, sink holes ice jams, combinations of flood sources debris load and pollutants.
 - (ii) Natural Values, such as (A) water values (natural moderation of floods, water quality maintenance, and ground water recharge); (B) living resource values (fish and wildlife and biological productivity);

(C) cultural resource values (archeological and historic sites, and open space for recreation and green belts); and (D) agricultural, aquacultural and forestry resource values.

- (c) Responsible Official. The Executive Director shall be the responsible official for ensuring Commission compliance with Executive Orders 11988 and 11990 and for preparing or reviewing an applicable Statement of Findings.

Sec. 5. Decisionmaking Process.

Prior to taking any Action subject to these procedures, the Commission shall:

- (a) Notify the public at the earliest possible time that consideration is being given to carrying out an Action potentially affecting or affected by a Floodplain or Wetland, and involve the broadest affected and interested public in the decisionmaking processing.
- (b) For actions subject to the Office of Management and Budget Circular A-95, the commission shall send a notice, not to exceed three pages in length, including a location map, to the state and areawide A-95, clearing-houses for the geographic areas affected. The notice shall include: (1) the reasons why the Action is proposed to be located in Floodplain or Wetland; and (2) a list of the practicable alternatives considered. A brief comment period of 30 days will be allowed prior to taking any Action.
- (c) If a Statement of Findings is required, it shall include the following:
 - (1) reasons why the Action is proposed to be located in the Floodplain or Wetland;
 - (2) a statement indicating whether the Action conforms to applicable state or local Floodplain management standards;
 - (3) a list of the alternatives considered;
 - (4) A list of the mitigation measures and/or revisions made to the proposed action so as to minimize harm to or within the Floodplain, and to minimize the destruction, loss, or degradation of Wetlands; and
 - (5) a map of the general area clearly delineating the proposal's locale and its relationship to its environs.

Site and Building Plans Requirements: Proposed amendment

Subsection C of section 3 of the Commission's Site and Building Plans Requirements, 37 FR 3011-3013 February 10, 1972), as amended, 37 FR 10330-331 (March 19, 1974), is further amended by adding at the end thereof the following:

"(7) Floodplain Management and Wetlands Protection. The initial submission by a Federal agency for a project to be located in a Floodplain or Wetland, as defined in the Commission's Floodplain Management and Wetlands Protection procedures (Vol. 46 FR p. 51329, Oct. 19, 1981), shall include a copy of the agency's statement of findings, evaluation of impacts, and proposed mitigation measures prepared pursuant to Executive Order 11988 or Executive Order 11990."

Daniel H. Shear,
Secretary to the Commission
October 9, 1981
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