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SOURCES OF MAPS AND TECHNICAL INFORMATION

Department of Agriculture: Soil Conservation Service
Department of the Army: Corps of Engineers
Department of Commerce: National Oceanic and Atmospheric Administration
Federal Insurance Administration
FEMA Regional Offices/Natural and Technological Hazards Division
Department of the Interior:
Geological Survey
Bureau of Land Management
Bureau of Reclamation
Tennessee Valley Authority
Delaware River Basin Commission
Susquehanna River Basin Commission
States

(iii) If the sources listed do not have or know of the information necessary to comply with the Orders' requirements, the Regional Director shall seek the services of a Federal or other engineer experienced in this type of work.

(2) If a decision involves an area or location within extensive Federal or state holdings or a headwater area, and an FIS, FIRM, FBFM, or FHBM is not available, the Regional Director shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in this section. If none of these sources has information or can provide assistance, the services of an experienced Federal or other engineer shall be sought as described above.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If state or other sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS

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or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

(4) If an action is in a wetland but not in a floodplain, and the action is new construction, the provisions of this regulation shall apply. Even if the action is not in a wetland, the Regional Director shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See §9.6.) In such a case the wetland will be considered as one of the natural and beneficial values of floodplain.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 33879, Aug. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

§9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when proposing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see §9.12); and

(2) Rely on its environmental assessment processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall

precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the FEDERAL REGISTER as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6) and (7) of this section) on factors which include, but are not limited to:

- (i) Scale of the action;
- (ii) Potential for controversy;
- (iii) Degree of public need;
- (iv) Number of affected agencies and individuals; and
- (v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall entail as appropriate:

- (i) [Reserved]
- (ii) Notice to Indian tribes when effects may occur on reservations.
- (iii) Information required in the affected State's public notice procedures for comparable actions.
- (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
- (v) Notice through other local media.
- (vi) Notice to potentially interested community organizations.
- (vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Holding a public hearing.

(5) The notice shall include:

(i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in paragraph (c)(3) of this section, a map of the area or other identification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is discernible; instead of publication of such map, FEMA may state 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;

(iii) Based on the factors in paragraph (c)(3) of this section, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions

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having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

§9.9 Analysis and reevaluation of practicable alternatives.

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in §9.6, of this part, in order to clarify and emphasize the 'Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see §9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable

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location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.* (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain