

EXECUTIVE ORDER 11988 – FLOODPLAIN MANAGEMENT

EIGHT-STEP PROCESS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RELIEF (CDBG-DR) PROGRAM

- Neighborhood and Community Revitalization (NCR) Project No. NCR39812
- Decision Process for Executive Order 11988 as Provided by 24 CFR §55.20

Step 1: *Determine whether the action is located in a 100-year floodplain (or a 500-year floodplain for critical actions).*

The project is located at 117-301 Channel Drive, Point Pleasant Beach, Ocean County, New Jersey. Phase I of the proposed project is intended to demolish the existing storm-damaged buildings on the subject parcels, with the exception of the existing fish handling building (301 Channel Drive), which will be rehabilitated and modernized. Phase II activities will include construction of a new elevated restaurant building at 205 Channel Drive and demolition of the welding shop at 117 Channel Drive and replacement with a new elevated hotel building.

The project is located entirely within the 100-year floodplain. The property is located within the AE (Base Flood Elevations determined) Flood Zone, as indicated on Flood Insurance Rate Map (FIRM) Panel 206 of 611 no. 34029C0206F, revised September 29, 2006. The northeastern corner of the property, including the damaged bulkhead and buildings at 205 Channel Drive (to be demolished), is within the VE zone, BFE of 12 feet. The remaining buildings, including the fish handling building at 301 Channel Drive (to be rehabilitated) and the welding shop at 117 Channel Drive (to be demolished as part of Phase II) are within the AE zone. According to ArcGIS measurements, the property is 7.66 acres, of which 0.23 acres are within the VE zone. The remainder of the property is within the AE zone. According to the applicant's conceptual plans (see "Appendix 7 & 8 - Drawings, Cost Est, CAFRA JD.pdf"), the proposed restaurant building at 205 Channel Drive may partially overlap the VE zone. Please note, the AE zone is a subset of the A zone, and the VE zone is a subset of the V zone.

The open waters (and all wetlands below the mean high water line [MHWL]) of the Wills Hole Thoroughfare (adjacent to the north of the property) are under U.S. Army Corps of Engineers (USACE) jurisdiction. The USACE jurisdiction also extends to all wetlands within 1,000 feet landward of the MHWL. According to the New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR), the applicant has obtained a Waterfront Development Individual Permit for 551 linear feet of bulkhead replacement from 205 to 117 Channel Drive (Block 172 Lot 1 and Block 171 Lot 9). This portion of the project will also be subject to a USACE Nationwide Permit 3. Activities covered by this permit include "*repair, rehabilitation or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or most recently authorized modification.*" The nationwide permit authorizes minor deviations in the

structure's configuration or area, including changes necessary due to changes in building materials, requirements of regulatory agencies, or current construction codes or safety standards.

Executive Order (EO) 11988 within HUD Regulations 24 CFR Part 55 details floodplain management. The purpose of EO 11988 is "to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." The project is located within the 100-year floodplain and for this reason, EO 11988 applies. An evaluation of direct and indirect impacts associated with construction, occupancy, and modification of the floodplain is required.

Step 2: *Notify the public for early review of the proposal and involve the affected and interested public in the decision making process.*

A public notice describing the project was published in the Star Ledger, the local and regional paper, on January 30, 2015. A Spanish translation of the ad was published in the Reporte Hispano newspaper on January 30, 2015. The ad targeted local residents, including those in the floodplain. A copy of the published notification is kept in the project's environmental review records and is attached to this document. In addition, a request for comment on the project was submitted to the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS), National Parks Service (NPS), USACE, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS) Federal Emergency Management Agency (FEMA) and U.S. Department of Housing and Urban Development (HUD). The required 15 calendar days were allowed for public and agency comment. As required by regulation, the notice also included the name, proposed location and description of the activity, total number of floodplain acres involved, and the HUD official or responsible entity contact for information as well as the location and hours of the office at which a full description of the proposed action can be viewed. Comments were received from the NMFS; however, these comments were pertaining the project's potential impact on species habitat and were not in regards to the project's impact on the floodplain. A discussion of NMFS's comments and conditions can be found in the environmental assessment report. No comments were received by the USACE, EPA, USFWS or HUD. FEMA responded on March 3, 2015 with comments. These are discussed in Section 5 below.

Step 3: *Identify and evaluate practicable alternatives to locating in the base floodplain.*

The Neighborhood and Community Revitalization program funds projects that contribute to economic revitalization throughout New Jersey. These projects are commercial or mixed use projects, typically development and public improvement or streetscape revitalization.

New Jersey is the most densely populated state in the country and therefore a policy to prohibit any development in the floodplain is not considered practicable due to the great number of parcels located within the floodplain in the counties most affected by Superstorm Sandy. The following viable alternatives have been identified:

- A. Demolition of the storm-damaged buildings and rehabilitation and modernization of the fish handling building with the incorporation of flood-proofing measures, and construction of a restaurant and hotel building. (Option A).

B. “No Action Alternative” (Option B).

The proposed project is for a site plan development. The applicant did not provide any other alternatives to their proposed improvements. Since the project is a water-dependent use (i.e., a commercial fishing operation) and the entire property boundary is within the floodplain, there was no feasible alternative for locating the project outside of the floodplain.

Option A is the Proposed Alternative as identified in the project application. This option will involve the demolition of dilapidated storm-damaged buildings and the rehabilitation and modernization of the fish handling building at 301 Channel Drive (Phase I). The rehabilitation would include the incorporation of dry flood-proofing measures within the building’s office space (installation of flood gates in doorways) and wet flood-proofing within the warehouse area (elevation of water sensitive utilities, installation of barriers that allow water to freely enter and exit the building) to an elevation of one foot above the BFE. No work is proposed at the building at 117 Channel Drive as part of Phase I. Phase I will also include the reconstruction of 551 linear feet of bulkhead along 205 and 117 Channel Drive. It is noted that while not part of the current project scope, the applicant intends to eventually construct a hotel and restaurant on the property (Phase II). The hotel will be located at 117 Channel Drive and the restaurant will be located at 205 Channel Drive. These buildings are proposed to be elevated above the BFE, with parking incorporated beneath and surrounding the structures.

Option B is the “No Action Alternative”. Under this alternative, the existing dilapidated buildings would not be demolished and no flood mitigation and modernization measures would be incorporated into the fish handling building. This would hinder the vitality and recovery of the fishing industry in New Jersey, and the dilapidated state of the property’s buildings would detract from the quality of the local community. In addition, this would not enable the applicant to move on to Phase II of the project and construct the restaurant and hotel on the property. This alternative would not meet the State’s need to rehabilitate and revitalize storm-impacted communities.

Step 4: *Identify Potential Direct and Indirect Impacts of Associated with Floodplain Development.*

The HUD-funded NCR program is for projects that contribute to economic revitalization throughout New Jersey. HUD’s regulations limit what actions can be considered under the NCR program, including prohibition of any construction in the floodway. Descriptions of the potential impacts from the proposed actions are below:

- Option A – This option would involve rehabilitation and modernization of the fish handling building and demolition of all the other buildings on the property and approximately 551 feet of bulkhead reconstruction (Phase I), with the ultimate construction of an elevated restaurant and hotel (Phase II). While the proposal will continue to represent an impact on the floodplain (i.e., the fish handling building will remain within the floodplain, impervious cover age will be added and new buildings will be constructed within the floodplain) the project will result in long-term benefits by mitigating impacts of the existing development on the floodplain (through the incorporation of floodproofing measures at the fish handling building) and minimize impacts on the floodplain from future development (i.e., elevation of the proposed restaurant and hotel above the BFE). As part of the project stormwater management improvements will also be incorporated. The property will continue to be connected to the borough’s sanitary sewer system. The proposed project will also ensure the continued

operation of the current occupant (Atlantic Capes Fisheries) and, according to the applicant, will provide for an estimated 325 additional employment opportunities at the restaurant and hotel. In addition, through improved public access to the waterfront, the proposal will help the local community attract shore tourism, providing further benefit to the local commercial facilities as well as the community at large.

- Option B – This option would not demolish the dilapidated buildings and would not rehabilitating the fish handling building. This would enable the existing buildings to continue to deteriorate, which would represent a blight to the local community and hinder the economic recovery of the shore’s fishing industry. In addition, the buildings on the property would continue to remain vulnerable to future flooding events. This would not assist the state’s efforts to provide for a more resilient shore community, would not meet the project objectives and would not meet the NCR program goals.

Step 5: *Where practicable, design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain.*

New Jersey Department of Environmental Protection (NJDEP) requires elevation or flood proofing of all “substantially damaged” structures in the floodplain. When followed, these regulations will reduce the threat of flooding damage to properties located in the floodplain and reduce the impact of development on the floodplain. Applicants are required to adhere to the most recent floodplain elevation levels when considering reconstruction of their “substantially damaged” property.

In summary, applicants participating in this program would be required to adhere to the following conditions to minimize the threat to property, minimize losses from flooding and high wind events, and benefit floodplain values:

- A. All proposed reconstruction and repair of “substantially damaged” structures in the floodplain must adhere to the latest (most recent) elevation requirements in accordance with the Emergency Flood Hazard Area Control Act rules (N.J.A.C. 7:13). Flood elevations are now determined either using the higher of the ABFE, the effective BFE, or the design flood elevation shown on the NJDEP flood maps;
- B. All participants in the NCR Program must carry flood insurance on the subject structure, when mandated, in perpetuity; and
- C. In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the latest [most recent] FEMA-issued Maps), that the applicant adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3).
- D. With the exception of the demolition of existing buildings and rehabilitation of the bulkhead, no work is proposed in the V or VE zones for Phase I. This Phase I work (rehabilitation of the bulkhead) is permitted in the V or VE zone because it is a “functionally dependent use” (i.e., is a waterfront structure) per 24 CFR 55.2(b)(6) and will be built to V and VE standards per 24 CFR 55.1(c)(3).

- E. Regarding Phase II activities, per 24 CFR 55.1(c)(3), no new construction is permitted in a V or VE zone. The northeast corner of the property is shown on Preliminary FIRM maps as being within the VE zone. The proposed restaurant in Phase II of the project may be partially located within this area, as shown on the applicant's conceptual plans (see "Appendix 7 & 8 - Drawings, Cost Est, CAFRA JD.pdf"). Construction of these buildings is permitted within the AE zone, as long as elevation, flood-proofing and flood insurance requirements are met. Please also see 76 FR 77165, December 12, 2011 and 78 FR 68722, November 15, 2013. Should Phase II move forward, the location of these buildings will need to be in the A or AE zone (or outside of the V or VE zone).
- F. To mitigate floodplain impacts, the rehabilitation of 301 Channel Drive will be subject to the floodproofing requirements of an FHA Individual Permit per N.J.A.C. 7:13-11.5(q). Phase II of the project would also be subject to a Flood Hazard Area Individual Permit; however, demonstration of these requirements will be met in the Phase II CAFRA permit.
- G. The project is subject to a USACE Nationwide Permit 3 and is subject to all the conditions of this permit as stated in 33 CFR Part 330. It is noted that fill dirt and debris removal associated with the reconstruction of the bulkhead is permitted within the requirements of the USACE Nationwide Permit 3.
- H. The project will involve an overall increase in the impervious cover of the property, through the creation of buildings and associated parking. The project will also involve the installation of a stormwater management system on the property. Any potential adverse stormwater or runoff issues (as well as their associated mitigation measures) will be addressed during the site plan approval process.
- I. A Waterfront Development Permit is required if bulkhead work occurs offshore from Block 172 Lot 1 and Block 171 Lot 9, according to NJDEP Division of Land Use Regulation (DLUR) correspondence dated February 6, 2015.

Therefore, the requirements of the NCR Program will help ensure a minimal adverse impact to the floodplain.

In addition, FEMA responded to the agency consultation request with the below comments and conditions:

- A. In terms of NFIP regulations, any development activity on the property is required to be in conformance with the minimum requirements of the National Flood Insurance Program (NFIP). These requirements are codified in Title 44 of the Code of Federal Regulations (CFR), Part 60.
- B. Minimum NFIP regulations require that new and substantially improved structures in A Zones must be elevated or floodproofed, if it is non-residential, to or above the level of the base flood, and meet other applicable program requirements as specified in Section 60.3 of the CFR.
- C. If a structure is located in a coastal high hazard area, V-Zone, it not only must be elevated to or above the base flood elevation, but it also must comply with additional requirements contained in Section 60.3(e) of the NFIP regulations.
- D. In addition, the NFIP requires communities, in this case, the Borough of Point Pleasant Beach, to review all applications for development in SFHAs and to apply their floodplain management regulations and building codes to work on both the existing and proposed structures. The Borough will be responsible to regulate any construction activity, issue permits and enforce the

requirements of their Flood Damage Prevention Ordinance and the minimum requirements of the NFIP for development of this property.

Step 6: *Reevaluate the Alternatives.*

Option B would involve conducting no improvements to the property. Therefore, this option would not contribute to the state's efforts to rehabilitate and to provide for a more resilient shore community. This option was not considered a viable alternative.

Options A would involve demolition of dilapidated buildings and rehabilitation and modernization of the in-use fish handling building. This option would remove buildings that were rendered uninhabitable by the storm. The fish handling building would be rehabilitated, making it more resilient to flood damage. This would allow the business to better recover from a future flood or storm event. In addition, the project will enable the applicant to ultimately construct a new restaurant and hotel on the parcel, which would have benefits on the local economy. As a result, this option is the preferred alternative.

Step 7: *Determination of No Practicable Alternative*

It is our determination that there is no practicable alternative to locating the project in the floodplain. This is due to: 1) the location of the project entirely within the 100-year floodplain; 2) the desire to restore pre-existing commercial facilities and construct new facilities on previously-developed properties; and 3) the ability to mitigate and minimize impacts on human health, public property, and floodplain values.

A final notice detailing the reasons why the modified project must be located in the floodplain was included in the joint Finding of No Significant Impact/Notice of Intent to Request Release of Funds (FONSI/NOI-RROF) publication. The notice stated the reasons why the project must be located in the floodplain, a list of alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain values. All comments received were considered.

Step 8: *Implement the Proposed Action*

Step eight is implementation of the proposed action. The DCA will ensure that all mitigation measures prescribed in the steps above will be adhered to.