

EXECUTIVE ORDER 11988 – FLOODPLAIN MANAGEMENT

EXECUTIVE ORDER 11990 – PROTECTION OF WETLANDS

EIGHT-STEP PROCESS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

- Stronger New Jersey Business Loans (SBL) Project No. SBL39754, “Yank Marine Services”
- Decision Process for Executive Orders 11988 and 11990 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) or wetland.*

The project is located at 487 Main Street in Dorchester, Maurice River Township, Cumberland County, New Jersey. The proposed project will consist of activities within the 100-year floodplain, including removal of existing bulkheads, fixed piers and docks and construction of a new 6’ by 175’ berthing pier, 12’ by 20’ timber dock and two concrete deck/runway piers measuring approximately 20’ by 180 feet to support the new 200-ton boat lift equipment. Ultimately, the 200-ton lift will be replaced by a 600-ton boat lift. Because USACE and DLUR approved of a 600-ton lift, it is not anticipated that the short term use of a smaller-capacity lift and then replacement of that lift with the 600-ton lift will cause any additional environmental impacts. In addition, the project will involve dredging to deepen the boat well to provide space for larger boats. The applicant will also construct wetland mitigation areas on-site (0.174 acres of coastal wetland mitigation will be created, 3,100 square feet of which will also be accounted for in a 5,000 square foot subtidal shallow mitigation area) to account for wetlands and subtidal shallows disturbed during the construction process. .

The property is approximately 5.81 acres, of which approximately 1.5 acres is located within the A Flood Zone (Base Flood Elevations determined), as indicated on Flood Insurance Rate Map (FIRM) Panel 20 of 35 no. 3401720020C, revised September 17, 1982. This measurement was used in the early floodplain notice (Step 2 below); however, subsequent to the publication of this notice, more recent Preliminary FIRM mapping was made available on the New Jersey Department of Environmental Protection (NJDEP) ArcGIS tool which identified approximately 0.8 acres of the property within the floodplain (Zone A) and approximately 0.25 acres of the property within the floodway of the Maurice River.

Executive Orders (EO) 11988 and 11990 within HUD Regulations 24 CFR Part 55 detail floodplain management and protection of wetlands, respectively. 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. The purpose of EO 11990 is “to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”

EO 11990 applies because wetlands are located on-site. An evaluation of direct and indirect impacts associated with construction, occupancy, and modification of the floodplain and wetlands is required.

An Early Floodplain Notice was published in English and Spanish newspapers for public comment on February 13, 2015. The Notice comment period was 15 days. No public comments were received from the publications Regulatory agencies were also solicited for comment on the project on February 13, 2015. Comments can be found in Step 2 below.

Temporary impacts to the floodplain and wetlands would result during the construction phase of the project, as well as lasting permanent impacts to the floodplain and coastal wetlands after the project is completed (through the addition of structures within the floodplain and the destruction of coastal wetlands). It is noted, however, that based on the scale of the project, and the mitigation requirements stated in the permits, these floodplain and wetland impacts are not considered significant over what is currently developed at the property. The project includes the 1:1 replacement of subtidal shallows and 3:1 replacement of impacted coastal wetlands. Furthermore, the project would involve the relocation of ASTs that are currently within the floodplain to a location outside of the floodplain. This would alleviate the existing potential for release from the tanks in the event of a future flood.

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 South Jersey Times, the local and regional newspaper, on February 13, 2015. A Spanish translation of the notice was published in the Reporte Hispano newspaper on February 13, 2015. The notice targeted local residents, including those with homes in the floodplain and wetlands. A copy of the published notifications are kept in the project's environmental review records and are 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), U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS) 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. No public comments were received. The following agency comments were received:

- USACE responded on February 13, 2015 deferring to the comments and conditions in their previously approved permit for the project.
- NMFS responded on February 18, 2015; however, the comments were in regard to endangered species concerns, not floodplain impacts. NMFS stated that no species under NMFS jurisdiction were expected to occur within the project area; therefore, no Endangered Species Act (ESA) Section 7 consultation would be necessary. It is noted that NMFS's comments to the USACE during the 2010 USACE permitting process did indicate the potential for anadromous fish within the project area, and stipulated timing restrictions on construction activities. A discussion of NMFS's 2010 comments can be found within the Environmental Assessment.

- FEMA responded on March 3, 2015, stating that the project activities were not regulated by the National Flood Insurance Program (NFIP); therefore their office had no comments on the project.

The project area is also underlain by the Coastal Plain Sole Source Aquifer (SSA). To meet HUD requirements, Dewberry contacted EPA regarding SSA compliance on February 3, 2015. EPA's comments on the project, as they pertain to potential floodplain/wetland impacts, are below:

- Tanks 1-5 must be stored in a location outside of the 100-year floodplain when not in use. Secondary containment must be installed at this new location sufficient to contain any release from the tanks.
- Secondary containment must be installed at Tank 6 sufficient to contain any release.
- Per 40 CFR Part 112, any facility storing a total of 1,320 gallons or more of fuel oil in aboveground storage tanks (ASTs) is subject to a Spill Prevention Control & Countermeasure Rule (SPCC) and must prepare an SPCC plan to address requirements including tank tightness testing, secondary containment, overfill protection, etc.

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

The Stronger New Jersey Business Loans provides loans to small businesses and non-profits that were impacted by Superstorm Sandy for rehabilitation and reconstruction projects to expand businesses within storm-impacted communities and contribute to economic revitalization throughout New Jersey.

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. There are a great number of parcels located within the floodplain in the counties most affected by Superstorm Sandy. The following viable alternatives have been identified:

- A. Demolish the damaged pier and construct new concrete decks, boat lift, berthing pier and wetland mitigation area in accordance with the previously approved USACE and NJDEP Division of Land Use Regulation (DLUR) Waterfront Development permits. (Option A)
- B. Demolish the damaged pier and construct new concrete decks, boat lift, berthing pier and wetland mitigation area in accordance with the NJDEP SBL grant application project description (Option B).
- C. "No Action Alternative" (Option C).

Option A is the Proposed Alternative as identified in the project's previously approved USACE and NJDEP DLUR permits. This option will involve removing an existing damaged stationary dock and replacing it with two new approximately 180' by 20' concrete deck/runway piers to accommodate a new 200-ton boat lift (ultimately a 600-ton boat lift will be used, as shown in the approved permits). In addition, a new 175' by 6' berthing pier and a 12' by 20 foot timber dock will be constructed. Approximately 5,000 square feet of dredging will be conducted to create new intertidal/subtidal shallows for the purposes of creating a deeper boat well and area for berthing boats along the new berthing pier. These impacts will require mitigation measures including the 1:1 creation of new intertidal shallows (5,000 square feet). In addition, the dredging will impact approximately 2,500

square feet of coastal wetlands. This will require a 3:1 coastal wetland mitigation (approximately 0.174 acres or 7,500 square feet), of which approximately 0.071 acres will be accounted for in the new subtidal shallows and approximately 0.103 square feet through the re-establishment of on-site coastal wetlands and mudflats. This wetland/subtidal shallow restoration will be conducted through the excavation upland of the current Mean High Water Line (MHWL). It is noted that the written description of the wetland/subtidal shallows mitigation areas are slightly different in the USACE and DLUR permits; however, the size, layout, and measurements is identical in the approved site plans of both permits. The discrepancy in the descriptions is likely due to the different jurisdictional responsibilities of the two agencies.

The proposed piers, bulkheads and docks will be located within the floodway of the Maurice River. The placement of these structures within the floodway is permitted as they are “functionally dependent uses” per 24 CFR 55.5(b)(6) (i.e., their location within the waterway is a necessity for their operation). Option A will also involve the relocation of the project’s above-ground storage tanks (ASTs) outside of the floodplain, into an area of secondary containment, to meet HUD’s SSA requirements as well as HUD’s Acceptable Separation Distance (ASD) requirements per 24 CFR 51 Subpart C. This action will reduce the existing potential impacts of the project’s ASTs on the floodplain. A complete discussion of the ASTs can be found in the Environmental Assessment.

Option B is the project alternative as described in the applicant’s NJDEP/NJEDA SBL grant application. This project description deviates from the permitted Option A activities in a few ways, notably through the construction of a 210’ by 10’ berthing pier instead of a 175’ by 6’ berthing pier. This increased footprint would require permit revisions because the proposed improvements would be inconsistent with the previously approved permits. Due to the intent of getting the proposed improvements constructed in a timely manner this option was rejected, and the applicant stated that their project activities would conform to those that are identified in their approved permits. It is noted, however, that one interim activity (the temporary installation of a 200-ton boat lift (as shown in the grant application) instead of a 600-ton lift (as shown in the permits) will be conducted. This is due to cost limitations; the applicant currently owns a 200-ton lift at another facility and will operate it at the project site until they are able to replace it with the new 600-ton lift.

Option C is the “No Action Alternative”. Under this alternative, the applicant would not receive funding. This alternative would not enable the applicant to expand their operations, thereby providing no benefit to local employment, and causing the demand for larger shipyard facilities in New Jersey to remain unmet. This alternative would not meet the State’s need to rehabilitate and revitalize storm-impacted communities.

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

The HUD-funded SBL program is for projects that contribute to economic revitalization throughout New Jersey. HUD’s regulations limit what actions can be considered under the SBL program, including the prohibition of any construction in the floodway, with exceptions (e.g., construction is permitted by HUD if they are considered “functionally dependent uses” per 24 CFR 55.5(b)(6)). Descriptions of the potential impacts from the proposed actions are below:

- Option A – This option would involve the construction activities as described above. Temporary impacts to the floodplain and wetlands would result during the construction phase of the project, as well as lasting permanent impacts to the floodplain and coastal wetlands after the project is completed (through the addition of structures within the floodplain and the destruction of coastal wetlands). It is noted, however, that based on the scale of the project, and the mitigation requirements stated in the permits, these floodplain and wetland impacts are not considered significant over what is currently developed at the property. The project includes the 1:1 replacement of subtidal shallows and 3:1 replacement of impacted coastal wetlands. Furthermore, the project would involve the relocation of ASTs that are currently within the floodplain to a location outside of the floodplain. This would alleviate the existing potential for release from the tanks in the event of a future flood.
- Option B – This option would involve construction activities similar to Option A, with the expansion of some areas of disturbance, notably the berthing pier. As a result, this option’s impacts on the floodplain and coastal wetlands would be slightly greater in acreage than Option A. The approved permits for Option A would need to be modified to accommodate the increased footprint of disturbance for this option.
- Option C – Because this option would involve no construction activities at the property, this option would not involve any additional impacts to the floodplain and wetlands beyond what currently exists.

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 and wetland.*

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. It is noted, however, that none of the on-site buildings are located within the 100-year floodplain, and no buildings are proposed to be constructed within the floodplain as part of this project.

The NJDEP and EO 11990 aim to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. This project proposes a 3,100 square foot onsite wetland mitigation area to mitigate the anticipated wetland impacts.

Project-specific mitigation measures were incorporated in the conditions of the approved USACE and DLUR permits. A complete list of these conditions can be found in the permits. The permits allow for certain dredging, excavation, placement of fill, discharge and dewatering activities to occur within the floodplain and floodway. The permits also allow for disturbance of the on-site wetlands as long as the 1:1 wetland restoration condition is met. The permits also include non-floodplain/wetland specific conditions to mitigate the potential for impacts to threatened/endangered species and historic resources.

In addition to the conditions in the project's permits, the EPA stated conditions that should be met to ensure SSA compliance (see Step 2). These measures, while necessary for SSA compliance, would also mitigate impacts to the floodplain. A complete list of the EPA's conditions can be found within the Environmental Assessment.

Step 6: *Reevaluate the Alternatives.*

Option C 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 an acceptable alternative.

Options A and B would involve construction activities; therefore, both would represent impacts to the floodplain and coastal wetlands. The floodplain and wetland impacts anticipated for Option A have been identified and will be mitigated to the satisfaction of state and federal regulatory agencies, as identified in the conditions of the project's approved USACE and DLUR permits. Option B, however, would deviate from the actions approved of in Option A, with activities such as increasing the footprint of the proposed berthing pier. Pursuing Option B would require the applicant to seek out permit modifications from the agencies. Due to time constraints, this was not considered a feasible alternative. Therefore, Option B was rejected and Option A is considered 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 and coastal wetland areas. This is due to: 1) the location of the piers, docks, bulkheads and boat lift within the 100-year floodplain and floodway (which is permitted as these are "functionally dependent uses" per 24 CFR 55.5(b)(6)) and the necessity to utilize these facilities for the continued operation of the property; 2) location of wetlands adjacent to the existing and proposed docks and piers; and 3) the desire to meet demand for increased shipbuilding through the expansion of existing shipbuilding facilities.

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 and wetland, a list of alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain and wetland values. All comments received were considered.

Step 8: *Implement the Proposed Action*

Step eight is implementation of the proposed action. The New Jersey Department of Community Affairs (DCA) will ensure that all mitigation measures prescribed in the steps above will be adhered to. The implementation of the proposed action may require additional local and state permits, which could place additional design modifications or mitigation requirements on the project.