

**DOCUMENTATION  
FOR  
EXECUTIVE ORDER 11988 – FLOODPLAIN MANAGEMENT**

**SBL38840  
C-Lyn, Inc.  
226 Q Ave  
West Wildwood, NJ**

Proposed projects located within the 100-year floodplain (A or V zones) are subject to Executive Order 11988 (Floodplain Management) which prescribe measures for protecting this resource. HUD has developed an 8-step decision making process for such projects to ensure compliance with this Executive Order, detailed in §55.2(b). This 8-Step Decision-Making Process Document details this process for a proposed action under the Neighborhood Enhancement Program.

The Small Business Loan Program (SBL) 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.

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

The proposed project (SBL38840) consists of the repair of a marina in West Wildwood, Cape May County to its pre-storm conditions by replacing pilings, ramps, and a retaining wall. The 0.3673 acre property site is located within the Special Flood Hazard Area Zone “AE10” floodplain, as shown on the Federal Emergency Management Agency (FEMA) Preliminary Work Map.

FEMA, in order to promote stronger, safer rebuilding, published Advisory Base Flood Elevation (ABFE) maps for the State of New Jersey that advise a significant expansion of New Jersey’s 100-year floodplain. Data suggests that more than 33,000 residential structures that were not within the floodplain under FEMA’s effective Base Flood Elevation maps are now within the floodplain under the newly released ABFEs. FEMA had been in the process of remapping the floodplain along New Jersey’s coastline for two years when Sandy hit. The ABFEs were recognized as the best available flood mapping data because FEMA’s current, formally adopted maps are outdated and do not accurately reflect flood risk. The most recent flood map that covers West Wildwood is the Preliminary Work Map.

There are no wetlands on or in the vicinity of the project site mapped on the Fish and Wildlife Service - National Wetlands Inventory (NWI) and wetlands were not observed during the site inspection.

This analysis will consider both impacts to the floodway and concerns for loss of life and property.

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

An Early Public Notice was published in an English-language newspaper (The Press of Atlantic City) on April 11, 2014 and a Spanish-language newspaper (Reporte Hispano) on April 10, 2014 that both serve the project area. The notice listed information about the project, described the project activities, listed the number of floodplain acres involved, and provided contact information to submit comments in response to the notice. Copies of the notices published and affidavits of publication are included after this analysis.

The required 15 days were allowed for public comment. Comments were accepted electronically at <http://www.nj.gov/dca/divisions/sandyrecovery/review/> or by written correspondence to the NJDCA.

Individual and agency comments received from the early notice concerning the proposed action, and NJDEP responses, are summarized below:

Carlo Popolizio, Biologist, USFWS New Jersey Field Office

- A. We don't see in this notice your determination - as the non-federal entity designated by HUD to conduct Endangered Species Act consultation with the USFWS, we need your determinations on these projects and all other projects:
- o **No Effect:** your determination does not require our concurrence.
  - o **Not Likely to Adversely Affect:** your determination requires our concurrence.
  - o **May Affect:** your determination may require formal consultation with us, unless specific conditions are included to keep consultation at the informal level.

You need to send the latter two determinations to my attention as individual, separate projects with all information included.

*DEP response: The required consultation with the USFWS occurs during the development of the environmental review record and impacts to federally listed plant and animal species is factored into the floodplain analysis.*

Samuel Reynolds, Chief-Application Section II, USACE Philadelphia District:

- B. Based upon a review of the project information provided in the early notice, it is noted that some of the projects involve work that would be regulated by the Corps. While most of these would likely be authorized by an applicable nationwide permit (such as Nationwide Permit #3 for maintenance), I wanted to see if you can provide any information on whether the applicant will be required to get a permit or permit verification letter from the Corps. In addition, are the applicant's required to get a letter or permit from the State. If you think it would be beneficial to discuss just let me know.

*DEP Response: Our process for completing these reviews requires consultation with the Department's Land Use Program to determine if permits are required and confirmation of the types of permits. It also requires our consultants to contact the ACOE to determine the need for a permit. This is to accomplish two things, first to ensure that the required permits are a condition of the approval; and second to ensure that any T&E species or other requirements are conditioned within the Department issued permits. This is detailed in our guidance document to all of our consultants. Please see the wetlands excerpt below. Please let me know if you would like to further discuss and if you had any other comments concerning these notices.*

#### *Wetland Protection*

*Applicable Activities: Acquisition of undeveloped land, change of land use, construction, expansion of building footprint.*

*Threshold Question: Is the project located within a wetland, wetland transition or buffer area (150 feet of a wetland), tidal or non-tidal waterway, or at or below mhw? Is there a potential for impact to these areas?*

*Guidance: HUD policy is to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. Impacts to wetlands from new construction require the 8-step decision making process to be completed. Projects may be approved if there is no practicable alternative outside the wetland area. Use NJDEP HUD Environmental Review Tool, Wetlands and the Mean High Water Buffer Zone (150 ft.) layers at <http://bit.ly/1dREWkD> and conduct a site inspection. If the project will impact, or has the potential to impact wetlands, transition/buffer areas, or areas below mhw, consult with DLUR for a JD. A*

*Water Quality Certificate may be needed.*

*If wetlands within 1000' of mhw will be impacted, the US Army Corp of Engineers (USACOE) must also be consulted. Wetlands within 1,000 feet of mhw are regulated by both NJDEP and the USACOE.*

*Work proposed at or below the high water line, e.g. along beaches, dunes areas/bulkheads, etc. (which may be above mhw line) or in areas that may not have regulated vegetated wetlands present may also be regulated by the USACOE.*

*Provide a pdf map of the wetlands layer from the NJDEP HUD Environmental Review Tool. See end note for file naming convention Reference the map in the Compliance Documentation section of the CEST or EA. Provide a pdf of any DLUR - JD document.*

*Consultation Contact:*

*Ryan Anderson, NJDEP DLUR, 609-292-1230, [Ryan.Anderson@dep.state.nj.us](mailto:Ryan.Anderson@dep.state.nj.us) USACOE NY District-Eastern Section (Passaic, Essex, Union, Middlesex, and Monmouth): Steve Ryba, 917-790-8512, [Stephan.A.Ryba@usace.army.mil](mailto:Stephan.A.Ryba@usace.army.mil) USACOE NY District (Hudson and Bergen): Jim Cannon, [James.H.Cannon@usace.army.mil](mailto:James.H.Cannon@usace.army.mil), 917-790-8412*

### **Step 3: Identify and evaluate practicable alternatives.**

The SBL program was developed to provide 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. 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 potentially viable alternatives have been identified:

- A. Rehabilitation of the marina in the 100-year floodplain (Option A): this option is the proposed project alternative. The proposed action will not negatively affect the floodplain and will support the State's goal to rehabilitate small businesses that were impacted by Superstorm Sandy.
- B. Rehabilitation of the marina outside the 100-year floodplain (Option B): The entirety of the Borough of West Wildwood and the surrounding locales are located within the 100-year floodplain. As the proposed project is the rehabilitation of a marina, it is functionally dependent on being located in close proximity to the water. For these two reasons, this alternative was considered and rejected.
- C. "No Action Alternative" (Option C): Under this alternative, the applicant would not be provided financial assistance to renovate the equipment for the functioning of the marina. Thus, the No-Action alternative would not address the State's goal of rehabilitating small businesses that were impacted by Superstorm Sandy.

#### **Step 4: Identify Potential Direct and Indirect Impacts of the Proposed Action**

The HUD-funded Small Business Loan Program (SBL) 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. HUD regulations limit what actions can be considered under the New Jersey SBL Program, including the prohibition of any construction in the floodway. The proposed action will not negatively affect the floodplain and will support the State's goal to rehabilitate small businesses that were impacted by Superstorm Sandy. As the proposed project is the rehabilitation of a marina, it is functionally dependent on being located in close proximity to the water. In addition, funding will be used for general site and waterway clean-up from storm-related impacts, having a positive impact on floodplain values.

West Wildwood Borough is a member of the National Flood Insurance Program and structures located in the flood zone must comply with the local flood ordinance. HUD requires projects located in the floodplain to maintain flood insurance for the life of the property.

Finally, because this program is focused on rehabilitating small businesses, the funding of program applicants will not increase the density of people living in the floodplain.

#### **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.**

Applicants participating in the SBL Program will be required to adhere to the following conditions to minimize the threat to property and life as well as protect floodplain values when applicable:

1. Projects must adhere to the latest (most recent) elevation requirements in accordance with the 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. The lowest occupied floor of the structure must be elevated at least 1 foot above the highest applicable 100-year flood level based on the best available data.
2. The applicant must carry flood insurance on insurable, subject structure for its economic life.
3. 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)

Based on the scope of the project, the proposed project would not result in significant adverse impacts to flood levels, flood risk, or the flow of flood waters on the project site or surrounding areas.

#### **Step 6: Reevaluate the Proposed Action.**

The only practicable alternative would be the 'No-Action' alternative, which would mean that the property would not receive grant funding for rehabilitation to provide bring the marina into working order

and complete clean-up activities. The No-Action alternative would not address the State's goal to rehabilitate small businesses in areas affected by Superstorm Sandy. In addition, the nature of the business, as a marina, is a functionally dependent use, which must necessarily be located in close proximity to the water. Therefore, the No-Action alternative has been also rejected.

### **Step 7: Issue Findings and a Public Explanation**

It is our determination that there is no practicable alternative for not locating the proposed project in the flood zone. This is due to: 1) the state's goal to rehabilitate small businesses in Superstorm Sandy-affected areas; 2) the functional dependence of the proposed project as a marina 3) the limited impacts on human health, public property, and floodplain values.

A Final Public Notice will be published in accordance with 24 CFR 55 in English- and Spanish-language newspapers that cover the proposed project area. The final notice will detail the reasons why the project must be located in the floodplain, a list of alternatives considered, and measures taken to minimize adverse impacts and preserve floodplain values. Any comments received during the 7-day comment period will be responded to and taken into consideration.

### **Step 8: Implement the Proposed Action**

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