

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

- Stronger New Jersey Business Loans (SBL) Project No. SBL39568
- Decision Process for Executive Orders 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) or wetland.*

The project is located at 3006 Route 37 East in Toms River Township, Ocean County, New Jersey. The proposed project will consist of activities within the 100-year floodplain, including removing an existing 2,400 square foot (SF) pre-fabricated single story building and attached car wash and replacing it with an approximately 4,000 SF, 2-story structure, which incorporates a 100-foot long car wash tunnel, retail area and three oil change/detailing bays. A self-contained basement service area will be constructed beneath the oil change/detailing bays. The ground-floor level of the building, along with all HVAC, electrical and utility equipment, will be built to one foot above the Base Flood Elevation (BFE) as determined by FEMA floodplain mapping. The fueling area will be downsized from six fueling dispensers oriented in two (2) rows to a single row of four (4) dispensers configuration. This will decrease the number of fueling positions from twelve (12) to eight (8). The equipment will be modernized, and the existing piping, fills, and containments related to the UST system will be replaced and brought to current code; however, the existing underground storage tanks (USTs) will remain on-site and in-use. The project will also use renewable energy (solar panels), and the car wash will include an advanced water recycling system. Prior to the Preferred Alternative described above, an initial concept design was provided that excluded the construction of the self-contained basement beneath the proposed repair bays. This is the concept design that was provided in the applicant's NJDEP/NJEDA Grant Application. The applicant determined, however, that a basement would be required for storage and would allow for more efficient and economical automotive servicing and oil changes. In addition, the Preferred Alternative above also includes an increase in the car wash tunnel from 80 feet to 100 feet and enlargement of the associated equipment room by approximately 200 SF is proposed over the initial concept design. A second floor was also incorporated in the design over the retail and service area for an office and for storage.

The property is approximately 1.16 acres, of which the entire property is located within the A (BFEs determined) Flood Zone, as indicated on Flood Insurance Rate Map (FIRM) Panels 309 of 611 no. 34029C0309F, revised September 29, 2006 and 328 of 611 no. 34029C0328F, revised September 29, 2006. This measurement was used in the early floodplain notice (Step 2 below). A public notice describing the project was published in the Star Ledger, the local and regional paper, on March 27, 2015. A Spanish translation of the ad was published in the Reporte Hispano newspaper on March 27, 2015.

Executive Orders (EO) 11988 within HUD Regulations 24 CFR Part 55 detail floodplain management with the purpose of EO 11988 “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. As described in Step 4, an individual Flood Hazard Permit will be required for any of the build alternatives.

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 March 27, 2015. A Spanish translation of the ad was published in the Reporte Hispano newspaper on March 27, 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), 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 or agency comments were received, except for the following:

- USACE responded on March 30, 2015 that the project is located outside the jurisdiction of the USACE authority and that USACE permits are not required.
- NMFS responded on March 26, 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 was necessary.

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 March 11, 2015. EPA’s comments on the project, as they pertain to potential floodplain are below:

- The basement must have no drains in the event of a spill and be completely sealed (“flood-proofed”). In the event a spill does occur, proper procedures must be undertaken to ensure clean-up.
- Fill ports and vent pipe outlets be placed above the base flood elevation to reduce the risk of release should a flood occur in the future.
- It is recommended that stormwater be diverted from the area above or around the underground fuel storage tanks.

- The applicant must meet appropriate NJDEP requirements for the operation and maintenance of USTs.

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

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 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. Demolish the existing facility and reconstruct the facility above the BFE. This option represents the initial concept design provided in the applicant's NJDEP/NJEDA Grant Application (Option A).
- B. The existing building, fueling dispensers, convenience store and car wash will be demolished and replaced with a new facility that includes a new structure that incorporates a car wash tunnel, retail area, and three oil change/detailing bays with a basement service area (Option B).
- C. "No Action Alternative" (Option C).

Option A would demolish and reconstruct the facility above the BFE to minimize flood impacts. The new facility would feature an 80 foot long car wash and a new approximately 4,000 square foot single-story convenience store building. The building would include three oil change/detailing service bays. The new facility would also incorporate renewable energy sources (i.e., roof canopy solar panels), the car wash would utilize an advanced water recycling system, and the piping associated with the USTs would be upgraded and brought up to code.

Option B is the Preferred Alternative. Similar to Option A, the existing building, fueling dispensers, convenience store and car wash will be demolished and replaced with a new facility, elevated to one foot above the BFE, that includes a new, structure that incorporates a car wash tunnel, retail area, and three oil change/detailing bays. The equipment would be modernized, and the existing piping, fills, and containments related to the UST system will be replaced and brought to current code. The Project will implement the use of renewable energy (solar panels) on the on the canopy structure over the fuel dispenser islands, and the car wash will utilize an advanced water recycling system.

Additionally, the construction of a basement beneath the proposed repair bays is proposed. The basement will be used for storage and will allow for more efficient automotive servicing and oil changes. In addition, an increase in the car wash tunnel from 80 feet to 100 feet and enlargement of the associated equipment room by approximately 200 SF. A second floor would be incorporated in the design over the retail and service area for an office and for storage.

The project would meet the Purpose and Need to raise the facility above the BFE, while replacing the inefficient facility with a modernized service center that utilizes energy efficient and renewable resource technology that provides the same services for the community.

Option C is the “No Action Alternative”. Under this alternative, the applicant would not receive funding. This would not enable the applicant to modernize their operations, thereby providing no benefit to local community.

Step 4: *Identify Potential Direct and Indirect Impacts of Associated with Floodplain 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 prohibition of any construction in the floodway. Descriptions of the potential impacts from the proposed actions are below:

- Option A – This option would involve the construction activities as described above. This would result in impacts to the floodplain during the construction phase of the project, as well as lasting permanent impacts to the floodplain after the project is completed (through the addition of structures within the floodplain). An NJDEP Division of Land Use Regulation (DLUR) Flood Hazard Area (FHA) Individual Permit would be required due to the expansion of the footprint within the 100 year floodplain. It is noted, however, that based on the scale of the project, and the mitigation requirements stated in FHA permits, these floodplain impacts are not considered significant over what is currently developed at the property. Ultimately, this option does not meet the Purpose and Need because without the basement component the project is not economically feasible.
- Option B – This option would involve construction activities similar to Option A, with the addition of a basement component. In regards to the construction of the basement, impacts to the floodplain would be mitigated due to the basement being sealed (no drains) and its openings (ground floor above) would be above the BFE”. Notwithstanding the impact of constructing the basement component within the 100 year floodplain, an additional benefit of providing a more efficient layout for the proposed oil changing use through the construction of the basement will be achieved. The basement will allow the project to be more economically viable by allowing this additional service (oil changing) as compared to Option A above. Similar to Option A, an FHA Individual Permit will be required. This option meets the Purpose and Need because the basement component makes this project economically feasible.
- Option C – Because this option would involve no construction activities at the property, this option would not involve any additional impacts to the floodplain 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.*

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.

Project-specific mitigation measures will be incorporated in the conditions of the anticipated FHA Individual Permit. 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.

- All proposed reconstruction, substantial improvements, and elevation activities in the 100-year floodplain must adhere to the most recent elevation requirements in accordance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).
- All structures funded by the CDBG-DR programs, if in, or partially in, the 100-year floodplain shown on the effective FEMA Flood Insurance Rate Map, must be covered by flood insurance and the flood insurance must be maintained for the economic life of the structure [24 CFR 58.6(a)(1)]. This means no funding can be provided in municipalities not participating in or suspended from participation in the National Flood Insurance Program.
- No funding will be provided to any person who previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance, but failed to obtain and maintain the insurance [24 CFR 58.6(b)].

In addition to the conditions in the project’s permits, the EPA stated the following conditions should be met to ensure SSA compliance. These measures, while necessary for SSA compliance, would also mitigate impacts to the floodplain:

- The basement must have no drains in the event of a spill and be completely sealed (“flood-proofed”). In the event a spill does occur, proper procedures must be undertaken to ensure clean-up.
- Fill ports and vent pipe outlets be placed above the base flood elevation to reduce the risk of release should a flood occur in the future.
- It is recommended that stormwater be diverted from the area above or around the underground fuel storage tanks.
- The applicant must meet appropriate NJDEP requirements for the operation and maintenance of USTs.

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. Both options would involve the incorporation of flood mitigation measures to the subject property (elevation of the structure and all electrical, HVAC and utility equipment to one foot above

the BFE). Option A would not include a basement component and therefore not be economically viable as compared to Option B. Option B, with the addition of the basement component represents the most economic viable alternative, thereby meeting the purpose and need of the SBL program. In regards to the construction of the basement, impacts to the floodplain would be mitigated due to the basement being sealed (no drains) and its openings (ground floor above) would be above the BFE. 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. This is due to: 1) the location of the project entirely within the 100-year floodplain; 2) the desire to expand businesses through the SBL program; 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 and wetland 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. 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.