

Economic Development Administration Directives System
Directive No. 17.04
Effective Date: 11-9-92

Transmittal

**EDA PROGRAM TO IMPLEMENT EXECUTIVE ORDERS 11988
“FLOODPLAIN MANAGEMENT,” AND 11990, “PROTECTION OF
WETLANDS”**

The attached Directive 17.04 establishes the Agency's policy and procedures for implementing Executive Orders 11988 and 11990. These Orders direct Federal agencies to avoid, to the extent possible, all actions associated with occupying, modifying or destroying floodplains and wetlands or actions that may increase the risk of loss of life or property resulting from flood or storm damage.

This Directive has been amended to reflect the following changes: the former title Associate Director for Environment has been eliminated and the duties are now being performed by the Senior Environmental Specialist; the update separates procedures for wetlands and floodplains and explains processing as a series of “steps”; the new role of the Regional Director; and the Directive contains almost half as many pages, so it has condensed certain items and deleted others (such as the findings and reporting sections).

Addressees should place this Directive in the appropriate place behind tab 17.01-99 of the General Administration and Staff Services manual of the Directives System. This Directive supersedes Directive 17.04 of 4-26-85 (SN-569).

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GENERAL
ADMINISTRATION
& STAFF SERVICES

**EDA PROGRAM TO IMPLEMENT
EXECUTIVE ORDERS 11988, “FLOODPLAIN MANAGEMENT”
and 11990, “PROTECTION OF WETLANDS”**

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17.04.01

INTRODUCTION

a. Purpose

This Directive establishes the Economic Development Administration policy and procedures for implementing Executive Orders 11988 and 11990 in accordance with the Water Resources Council's "Floodplain Management Guidelines" (43 FR 6030), and the Water Resources Council's Unified National Program for Floodplain Management, Department of Commerce Administrative Order 216-11, "Floodplain Management and Wetlands Protection", and the EDA Directive 17.02-2 implementing the National Environmental Policy Act and the Council on Environmental Quality Regulations.

b. Scope

On May 24, 1977, the President issued Executive Orders 11988 "Floodplain Management" and 11990, "Protection of Wetlands," (attached as Appendix A). These Orders direct Federal Agencies to avoid, to the extent possible, all actions associated with

the occupancy, modification or destruction of floodplains and wetlands or actions that may increase the risk of loss of life or property resulting from flood or storm damage.

c. Natural Values and Functions of Floodplains and Wetlands

(1) EDA recognizes floodplains and wetlands as unique and vital natural resources. Both ecological systems possess natural values and carry on numerous functions that are of benefit to people. Because wetlands frequently lie within the margins of the floodplain, the two ecosystems share many of these natural values and functions.

(2) Floodplains and wetlands provide valuable protection against flooding and storm damage by acting as buffers which dissipate the energy of flood waters, wave attack and storm surge, and lessen the effects of storm-related erosion along streambanks and shorelines. Both areas possess natural capabilities to temporarily store and hold flood and storm waters and serve to lessen the magnitude and intensity of flood and storm events. Wetlands and, to a somewhat lesser degree, floodplains contribute to improved water quality by virtue of their abilities to remove and trap suspended solids and absorb organic and mineral pollutants from the water column. Both areas can constitute important aquifer recharge areas and as such may be substantial contributors to the replenishment of ground water supplies.

(3) Floodplains and wetlands furnish a significant portion of the habitat requirements for diverse species of wildlife and waterfowl. Many threatened and endangered species depend upon these areas for habitat and/or cover. Both areas provide open space and constitute valuable recreational and aesthetic resources.

(4) Wetlands occupy the transition zone between open water or aquatic ecosystems and upland or terrestrial ecosystems. This unique position provides a continuum of environments which furnish essential food supplies and provide crucial habitats for numerous, diverse organisms. As a result, wetlands rank among the most productive of ecosystems. Wetlands are vital spawning, nursery and feeding areas for many of the economically important species of coastal and marine fin and shell fishes. Freshwater wetlands provide spawning areas and habitat for large numbers of non-marine fish, important commercial or game species. Wetlands are also the major providers of nesting, migrating and winter habitat for most species of waterfowl.

d. Degradation of Natural Values and Functions

The degradation of floodplain and wetland natural values and functions contributes greatly to the pollution of the abundance and diversity of wildlife and vegetation; increases the costs and hazards associated with flooding and coastal storms; and accelerates erosion along stream banks and shorelines which increases the loss of lands productive to the economy and well-being of the people. Activities which debase floodplain and wetland values and functions result in increased costs to consumers, increased tax burdens on the public and a generally lowered quality of life for the American people. Wetlands, in addition to being highly productive and efficient

ecosystems, are extremely fragile and sensitive. The critical balance maintained in nature between the water and the land and the import and export of materials is far too often upset or destroyed by man's activities.

17.04.02

DEFINITIONS

a. Action - any form of EDA financial assistance including, but not limited to grants, loans, contracts and guarantees, and all amendments to such forms of financial assistance that involve a change in project design, scope or location or a change in participating private parties.

b. Alternatives - to avoid or minimize impacts on wetlands or floodplains by choosing alternative sites, actions, or taking no action.

c. Coastal High Hazard Area - any low-lying, relatively unprotected coastal area subject to flooding by wind-driven tides, coastal storms; or tsunamis. Examples of such areas include, but are not limited to, barrier islands, beaches, beach dunes, overwash areas and tidal wetlands. Such areas are often termed "V" zones by FEMA.

d. Critical Action - an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. The minimum floodplain of concern for critical actions is the 500-year floodplain. Critical actions include, but are not limited to, actions which create or extend the useful life of facilities:

(1) which produce, use or store highly volatile, flammable, explosive, toxic and water-reactive materials;

(2) such as schools, hospitals and nursing homes, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events; and

(3) such as civil defense centers, police and fire stations, and data storage centers, which contain records that could be lost or services that could become inoperative during flood and storm events.

e. Flood or Flooding - a general and temporary condition of partial or complete inundation of land areas from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source.

f. Flood Fringe - that portion of the floodplain outside the floodway (often referred to as "floodway fringe").

g. Floodplains - low, relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore slands. At a minimum, floodplains consist of those areas subject to a one percent or greater chance of flooding in any given year. The term

floodplain shall be taken to mean the base floodplain unless the action involves a critical action in which case the critical action floodplain is the minimum floodplain of concern.

(1) 100 Year Floodplain (Base Flood) - a flood of a magnitude that occurs once every one hundred years on the average. Within any one year period, there is one chance in one hundred of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20 year period, the length of time commonly defined as the useful life of a facility. Over a 30 year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) 500 Year Floodplain (Critical Action) - a flood of a magnitude that occurs once every five hundred years on the average. Within any one year period, there is one chance in 500 of the occurrence of such a flood. As with the one percent chance flood, the cumulative risk of this flood occurring also increases with time.

h. Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood.

i. Impacts -

(1) Direct Impacts - are changes in floodplain or wetland values functions caused or induced by an action or related activity (ex. the discharge of polluted storm waters into a floodplain or a wetland and construction-related activities, such as dredging and filling operations within the floodplain or a wetland).

(2) Indirect or secondary impacts - occur whenever these values and functions are potentially affected, either in the short or long term, as a result of an action.

j. Non-Structural Flood Protection Methods - are intended to preserve, restore or imitate natural hydrologic conditions by:

(1) controlling the uses and occupancy of floodplains and wetlands, by floodplain zoning and subdivision regulation;

(2) preserving floodplain and wetland values and functions through public ownership, e.g., fee title, easements, development rights;

(3) restoring the natural values and functions of floodplains and wetlands, e.g., move existing structures out of the floodplains;

(4) delaying or reducing the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins, use of flow restricting barriers on roofs;

(5) maintaining natural rates of infiltration in developed or developing areas, e.g., construction of see page or recharge basins, minimization of paved areas;

(6) protecting streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and hydrophilic plants;

(7) restoring and preserving floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(8) controlling soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod, minimization of exposed soil.

k. Practicable - capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology. Measures shall not be rejected as impracticable solely on the basis of increased cost or availability of funds.

l. Preserve - to prevent modifications to the natural floodplain environment or to maintain it as closely as possible to its natural state.

m. Related Activities - are undertakings that are inter- dependent parts of a Federal action which either make possible or support an action, or are themselves induced or supported by an action or related activities. Related activities may or may not be Federally permitted or assisted. These are also considered under cumulative impact assessment of EDA Directive 17.02-2.

n. Restore - to re-establish a setting or environment in which the natural values and functions of the floodplain or wetland can operate.

o. Structural Flood Protection Methods - those physical measures utilized to modify the natural hydrologic response of a waterbody to flood and storm events. Such measures are employed to protect human life and property and to enhance the value of the floodplain for human use and habitation.

Structural methods are intended to:

(1) confine flood waters to the waterbody and to inhibit their entry into adjacent low-lying areas;

(2) speed up or redirect the discharge of flood and storm waters; or

(3) drain and fill in low-lying areas.

Examples include: dams, dikes, levees, sea walls, storm drainage systems, dredging, filling, channelization, and elevated structures with fill.

p. Water Dependent Action - where location and function is directly dependent on proximity to a water body (ex. a port).

q. Wetlands - areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland hydrology (e.g. permanent or periodic inundation or prolonged soil saturation sufficient to create anaerobic conditions in the soil).

17.04.03

FLOODPLAIN AND WETLAND POLICY

a. EDA shall avoid, to the extent possible: the long and short term adverse impacts associated with the occupancy and modifications of floodplains; and direct or indirect support of floodplain development, wherever there is a practicable alternative.

b. EDA shall avoid to the extent possible: the long and short term adverse impacts associated with the destruction or modification of wetlands; and direct or indirect support of new construction in wetlands, wherever there is a practicable alternative. All actions should be reviewed at the earliest possible stage, to determine if they are in a floodplain or wetland.

c. EDA shall not participate in any action that would impact a floodplain or wetland, until it determines that no practicable alternative exists to the action. In this case, the no action alternative shall be considered. Where a determination is made that no practicable alternative exists to impacting a floodplain or wetland, and the no action alternative is unacceptable, EDA shall ensure that the action chosen is the alternative which minimizes those impacts, and that all practicable mitigation measures are incorporated into the action which:

(1) minimize the risks of loss of life and property due to flood and storm damage;

(2) minimize the adverse impacts on floodplain and wetland values and functions;
and

(3) restore and preserve the natural and beneficial values served by floodplains and wetlands.

d. Whenever an action requires locating in a floodplain or wetland area, EDA shall require locating the action, if practicable, within the floodplain, and not within the wetland (e.g. functionally dependent - the action must be near a body of water).

e. EDA shall ensure that its actions are consistent with State coastal zone management programs as approved by the Secretary under the Coastal Zone Management Act (PL 92-583, as amended) 16 U.S.C. §1451 et seq. EDA shall also ensure that its actions are in compliance with Section 10 of the Rivers and Harbors Act of 1899, and with Section 404 of the Clean Water Act (Federal Water Pollution Control Act) (PL 92-500, as amended) 35 USC §1251 et seq, which require Department of the Army permits for construction and disposal of dredged material in waters of the United States, including adjacent

wetlands (33 CFR 320-340), and with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973, as amended.

f. Promote the use of non-structural flood protection methods to reduce the risk of flood loss.

g. Provide the public with early and continued opportunity for involvement in the decision making process concerning floodplains and wetlands.

h. EDA shall continuously monitor all actions and mitigations to ensure they are carried out in accordance with the Agency's findings and recommendations. Any action which fails to adhere to the design, scope, location and purpose of the action and mitigation shall be subject to termination for cause.

i. Since many actions affecting either floodplains or wetlands have demonstrated significant effects on the quality of the human environment, consideration of such proposed actions may necessitate the preparation of an Environmental Impact Statement under Section 102(2)(C) of NEPA.

17.04.04

RESPONSIBILITIES

a. Senior Environmental Specialist (SES)

(1) Serves as the principal advisor to the Assistant Secretary in implementing the duties and responsibilities required by Executive Orders 11988 and 11990;

(2) Develops Agency procedures for compliance with Executive Orders 11988 and 11990;

(3) Reviews, as necessary, the Agency's activities and program involvements with respect to Executive Orders 11988 and 11990;

(4) Mediates all disputes, those within the Agency as well as those arising from outside sources, concerning findings made under Executive Orders 11988 and 11990;

(5) Provides policy guidance and training for the Regional Office staff in carrying out its responsibilities under the procedures contained herein;

(6) Provides technical assistance on a project by project basis to the Regional Environmental Officer in order to adequately implement these procedures;

(7) Monitors and audits the Agency's actions to ensure that the requirements of the Executive Orders are met;

(8) Coordinates the Agency's implementation of this Directive with other Federal agencies having jurisdiction over or expertise in this area, as well as with the

environmental programs of local, State and Federal agencies which become involved with EDA projects; and

(9) Recommends approval, disapproval, or modification by the Assistant Secretary for centralized projects.

b. Regional Director (RD)

Executes the appropriate finding for both floodplain and wetland upon the recommendation of the Regional Environmental Officer (REO).

c. Regional Environmental Officer (REO)

(1) Implements and carries out the duties and procedures required under the authority of Executive Orders 11988 and 11990;

(2) Provides guidance and training to Regional Office staff, including EDRs, on the requirements imposed by these procedures; and

(3) Monitors those actions approved by the Regional Office for compliance with this Directive and the Executive Orders 11988 and 11990.

d. Economic Development Representative (EDR)

(1) Informs all prospective applicants of EDA's wetland and floodplain policy. Informs all applicants to contact the REO for assistance.

(2) Notifies the REO as early as possible of any proposed action potentially impacting floodplains and wetlands.

(3) Directs prospective applicant to submit the following in the pre-application stage:
(1) all appropriate FEMA or HUD-FIA floodplain maps, as applicable, and related data;
(2) a 15 minute series (7-1/2 minute series if available) USGS topographic map with the project area clearly delineated; (3) site photographs; and (4) whenever possible, aerial photographs of the site and surrounding areas.

17.04.05

DECISION MAKING PROCESS

The following procedures apply to all EDA Programs and projects except those categorically excluded as Class I Actions in accordance with EDA Directive 17.02-2.

a. Assessment of Floodplain Impact

(1) STEP 1 - Determine if a proposed action is located in a floodplain.

(a) Determine if it is a critical action. If the proposed action is a critical action, the minimum area of concern becomes the 500 year floodplain; if not, the 100 year floodplain is the minimum area of concern.

(b) Determine if any portion of the proposed action or related activities lies within the floodplain by checking the FEMA flood hazard boundary maps and floodway maps as well as information available from other Federal agencies such as the U.S. Army Corps of Engineers, the Soil Conservation Service, and the U.S. Geological Survey and examine project area for any secondary impacts. Some key questions are:

(i) Will the proposed action or related activities result in discharge of any substances or materials into the floodplain?

(ii) Will hydrologic flow rates within the floodplain be affected?

(iii) Will the floodplain water level be affected?

(iv) Will the proposed action or related activity have the potential to make possible future developments which could impact floodplain values and functions?

(v) Will the proposed action affect an aquifer recharge area?

(vi) Are toxic, hazardous substances or wastes located in or near the floodplain?

(c) If no floodplain impacts are identified, the requirements for E.O. 11988 have been met and proceed to Section V.B. Assessment of Wetland Impact.

(d) The only exception to the above is at the discretion of the REO, when he/she determines that the locational impact on floodplain values and functions is minor due to the particular scope of work.

(2) STEP 2 - Identify and evaluate practicable alternatives to locating in a floodplain.

(a) Alternatives include: (1) locating the proposed action outside the base floodplain unless project is water dependent (alternative sites); (2) other means which accomplish the same purpose (alternative actions); and (3) no action.

(b) If the REO has identified no other practicable alternatives, project processing may proceed.

(3) STEP 3 - Identify impacts of the proposed action on floodplain values and functions.

(a) If any portion of the proposed action or related activities lies within the floodplain, the potential for impact exists. The only exception to this statement is when

the REO determines that the locational impact on floodplain values and functions is not significant due to the particular scope of work.

(b) The REO shall analyze the probable impacts of the proposed action and its alternatives on the natural values and functions of floodplains and/or wetlands. This analysis shall include an examination of the following impact areas.

(i) Public health and safety to include the effects of the proposed action on water supplies, both the quantitative and qualitative aspects, ground water recharge capability, energy dissipation, water pollution, including siltation and sedimentation effects, and flooding and storm hazards.

(ii) Preservation of natural systems to include the effect of the proposed action on species and habitat diversity, long term ecosystem productivity, and protection of flora and fauna indigenous to floodplains and wetlands.

(iii) Public welfare to include the effects on historic and cultural resources, land use patterns, aesthetics, and existing or future uses in the public interest such as recreation, education and scientific uses and the extent that the proposed action interferes with such uses or potential uses.

(iv) Cultivated resource values such as the effects on agriculture, aquaculture and forestry.

(v) Cumulative impacts resulting from other actions or related activities under consideration, planned or underway.

(4) STEP 4 - Determination of Significant Impacts

(a) The purpose of this analysis is to determine the significance of the proposed action and any identified practicable alternatives relative to Section 102(2)(C) of the National Environmental Policy Act (NEPA). If the floodplain values and functions effected are considered by the REO to be important and/or controversial, the REO shall consult with the SES in order to determine whether an Environmental Impact Statement (EIS) shall be prepared for the proposed action. Significant impacts may include the following:

(i) The public health and safety are identifiably affected. That is, whenever the proposed action may potentially result in a change in stream classification or affect any standards promulgated under the Safe Drinking Water Act (42 USC 300 f-j-9), the proposed action shall be considered significant and an EIS prepared. Additionally, should the proposed action or related activity present flood and storm hazards that could endanger life or property, an EIS shall be prepared for the proposal.

(ii) The preservation of natural systems are identifiably affected. Any proposed action or related activities that have the potential to create or induce changes in

the existing habitat that may affect species diversity and stability (both for flora and fauna and over the short and long term) or affect ecosystem productivity over the long term, are significant actions.

(iii) The proposed action involves the construction of a critical action within the boundaries of the critical action floodplain.

(iv) The cumulative effects on floodplain values and functions of the proposed action and related activities are of sufficient intensity to be declared a significant action under NEPA (see EDA Directive 17.02-2).

(v) The proposed action is controversial for environmental reasons.

(b) If the proposed action is determined not significant, the REO shall in addition to the requirements of this Directive, complete the normal environmental review process as specified in EDA Directive 17.02-2.

(5) STEP 5 - Floodplain Mitigation - When the REO determines that the proposed action is the practicable alternative which reduces to a minimum impacts on the floodplain, the REO shall develop practicable mitigation measures to the proposed action through consultation with the applicant and interested parties. These mitigation measures shall include restoration and preservation of natural values and functions. For a list of mitigation examples, see the U.S. Water Resources Council's "Floodplain Management Guidelines" (43 FR 6030, Part II Step 5.C).

(6) STEP 6 - Findings - The REO shall make a determination as to whether or not the proposal is both the practicable alternative with the least impact on floodplains, and whether the proposal incorporates all practicable mitigation measures necessary to (1) reduce to a minimum the risk of loss of life and property due to flood and storm damage and (2) reduce to a minimum the impact on floodplain values and functions. If the REO finds that these criteria have been met, the Regional Director shall be informed and shall execute the findings required by Executive Order 11988. If there is disagreement between the Regional Director and the REO, they will consult with the SES.

(7) STEP 7 - Public Notice

(a) Where all practicable mitigation measures have been identified and agreed to by the applicant, the applicant shall be required to publish notice of the proposed action. This notice, prepared by the REO, shall be published in the newspaper of greatest local circulation within the proposed action's area of impact for at least three consecutive days followed by a 30 day public comment period. It shall include:

(I) a physical description of the location of the proposed action, (include a map when necessary);

(ii) a detailed description of the proposal including the nature and extent of the proposed action;

(iii) the mechanisms utilized to mitigate the impacts of the proposal;

(iv) a statement of why the proposed action must be located in a floodplain and how the action affects floodplain values;

(v) a statement listing other involved agencies or individuals; and

(vi) EDA regional office address and telephone numbers

(b) The applicant shall provide EDA with an affidavit of publication and any comments received. If no adverse comments are received, this will be the only notice. Where the response to the notification raises environmental concerns not previously considered, EDA shall re-evaluate the issues and amend the findings as necessary.

(c) When another Federal agency such as the U.S. Army Corps of Engineers has issued a public notice which incorporates the EDA project description, the REO or SES may choose to waive any additional public notice. This waiver shall not negate the specific policy and technical considerations of this directive nor shall such a waiver negate the required findings by the appropriate agency official prior to taking any action on the proposal. In all cases, the “best practicable alternative” test must be met.

b. Assessment of Wetland Impact

(1) STEP 1 - Wetland Determination

(a) The review of information concerning the identification and delineation of wetlands shall be in accordance with the wetland definition, technical criteria, and procedures found in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989) and any revised or updated editions. See Table 2 in the Federal Manual for a complete list of primary sources of wetland information.

(b) If wetlands are identified, the appropriate Federal and State wetland authorities shall be contacted. The appropriate Regional Office of the U.S. Fish and Wildlife Service (FWS) shall be contacted for comments and guidance concerning wetlands in accordance with the Fish and Wildlife Coordination Act. Also, the U.S. Army Corps of Engineers should be contacted if permits are required in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, and the state Coastal Zone Management office where appropriate.

(c) Whenever a proposed action is judged by the REO to have no potential to impact wetlands, the Regional Director shall be informed that the review under these procedures is complete and that the appropriate findings be made in

accordance with the NEPA and EDA Directive 17.02-2 and Executive Order 11990 - Protection of Wetlands.

(2) STEP 2 - Identify and Evaluate Practicable Alternatives to Locating in a Wetland

(a) Alternatives include:

(i) locating the proposed action outside the wetland area unless the proposed use is water dependent,

(ii) other means which accomplish the same purpose (alternative actions), and

(iii) the no action alternative.

(b) If the REO has identified no other practicable alternatives, project processing may proceed.

(3) STEP 3 - Identify Impacts of the Proposed Action on Wetland Values and Functions

(a) If any portion of the proposed action or related activities lies in or in close proximity to a wetland, the potential for impacts exists. The only exception is when the REO determines that due to the particular scope of work the impacts will not be significant.

(b) The REO shall analyze the probable impacts of the proposed action and its alternatives on the wetland ecosystem, and should include an examination of important wetland functions such as:

(i) Wetlands serve as important habitat for fish and wildlife particularly as a nursery and spawning area for a variety of fish and animals.

(ii) Wetlands serve as habitat critical to the survival of many plants and animals including a number of rare and endangered species, as well as migratory waterfowl and other birds.

(iii) Wetlands improve water quality by acting as a natural filter by removing nutrients and sediments from incoming waters (including pesticides, herbicides, heavy metals and other pollutants).

(iv) Wetlands also provide flood protection by acting as a buffer zone in areas of high storm surge during hurricanes and by storing excess runoff during floods.

(c) If the environmental review conducted by the REO indicates that the proposed action will result in significant impacts or losses to the above wetland functions in accordance with the EDA NEPA Directive 17.02-2, then the REO shall consult with the SES in order to determine whether an EIS shall be prepared.

(d) If the proposed action is determined not significant, the REO shall in addition to the requirements of this Directive, complete the normal environmental review process as specified in EDA Directive 17.02-2.

(4) STEP 4 - Wetland Mitigation When the REO determines that the proposed action is the practicable alternative which reduces to a minimum impacts to wetland values and functions, the REO shall develop practicable mitigation measures through consultation with the applicant, wetland regulatory authorities, and other interested parties. Mitigation shall include measures to restore and preserve natural ecosystem values and functions.

(5) STEP 5 - Findings With respect to wetland values and functions, and in accordance with E.O. 11990, the REO will make an official finding in the same manner as that described for floodplains (see STEP 6 for floodplains).

(6) STEP 6 - Public Notice

(See STEP 7 for floodplain processing.)

17.04.06

SPECIAL CLASSES OF EDA ACTIONS-

Planning, Technical Assistance (TA), Title IX Strategies (LTED, SSED, and RLF's), and Working Capital Loans and Guarantees.

If, after the completion of Identification of Floodplains and Wetlands, Section V., any portion of the action lies within a floodplain or a wetland (including the storage of inventories of raw materials), the proposal will impact a floodplain or a wetland and the procedures contained in this Directive shall apply. On the other hand, if the action is not in a floodplain or wetland, the REO shall inform the Regional Director, recommend the appropriate finding as specified in this Directive which will complete the requirements of Executive Orders 11988 and 11990.

a. Planning

It shall be the responsibility of the regional planning division to inform its grant recipients of the intent of Executive Orders 11988 and 11990 and EDA's policy as stated in this Directive. Planning appraisals shall address the recipients ability to incorporate the considerations addressed herein into local plans. These reviews shall also consider the impact of the economic goals and activities expressed by the recipient on the natural values and functions of floodplains and wetlands, should potential impacts to floodplain or wetlands be identified. EDA shall encourage each recipient receiving assistance under

these programs to initiate a process to identify floodplains and wetlands within its planning jurisdiction or study area. The REO shall review the Overall Economic Development Plans (OEDPs) annually and advise the Economic Development Districts (EDDs) of the long-term policy of EDA to avoid impacting floodplains and wetlands.

b. Technical Assistance and Title IX Strategies

(1) The REO shall only apply the requirements of this Directive to those projects and strategies which may commit EDA to some future action which would impact values and functions of floodplains and wetlands or are site specific.

(2) For the purpose of this Directive, implementation grants (LTED and SSED's) shall be considered the same as actions under Title I.

c. Working Capital Loans and Guarantees

(1) For the purchase of machinery, equipment, furniture or fixtures for utilization totally within the confines of EXISTING structures and which do not involve construction or demolition of any portion of these structures nor any change in the types or quantities of waste produced, OR loans to meet current business' obligations (wages and salaries, rents, taxes, utility charges, interest on debts, and short-term debt principal), the "No Practicable Alternative" shall apply, the appropriate findings made, and all lenders and guarantors given written notification by letter (an example of which is found in Appendix A).

(2) In all other cases (including the purchase and storage of raw materials and other sensitive inventory), the procedures in this Directive shall apply including notification of lenders and guarantors as above.

(a) If the action involves the purchase of raw material inventories, the REO shall examine the nature and proposed method of storage of these materials. Mitigation will be necessary if these inventories are to be stored in a floodplain or wetland.

(b) Inventories that are subject to damage should they become wet must be stored above the base flood level, if practicable. Materials, such as water reactive substances, that fall within the definition of critical actions, must be stored above the level of the 500-year flood, if practicable.

In all such cases, EDA shall give special emphasis to the alternative of storage of such inventories outside of wetlands and floodplains. Additionally, for critical floodplains and wetlands, the REO shall examine the action under Sections V.A.3. to determine whether the proposed action has significant environmental impacts within the meaning of Section 102(2)(C) of NEPA.

d. Private Party Notification Requirements For all business development actions or amendments to such actions in which a change in the participating private party lender or

lenders is involved, it shall be the responsibility of the REO to inform the Regional Director or, in the case of centralized projects, the Director of Loan Management in coordination with the Senior Environmental Specialist to notify all private parties participating in the transaction (e.g., financial institutions) of the hazards of conducting activities within the floodplain (see Exhibit A for example letter).

17.04.07

APPLICABILITY TO PROJECTS

This Directive is effective upon signing for all projects arising within the EDA mandated program(s).

17.04.08

EFFECT ON OTHER DIRECTIVES

This Directive supersedes EDA Directive 17.04 (SN-569) issued April 25, 1985. This Directive compliments EDA Directive 17.02-2 in implementing the National Environmental Policy Act and the Council on Environmental Quality Regulations. Therefore, both directives should be used in conjunction when completing environmental analyses. This Directive has been developed to comply with Department of Commerce Administrative Order 216-11, "Floodplain Management and Wetlands Protection."

APPENDIX A

Directive No. 17-04
EXECUTIVE ORDER 11988
Floodplain Management

(May 24, 1977; Amended by Executive Order 12148 of July 20, 1979 Federal Emergency Management, 44 FR 43239, July 24, 1979)

(Editor's note: Executive Order 12148 Federal Emergency Management, July 20, 1979, substituted "Director of the Federal Emergency Management Agency" for "Federal Insurance Administration" in Section 2(d).)

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environment Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order 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, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and

facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain-for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverline, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the intent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference Environment Reporter in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section

105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and. 5146).

Sec. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

APPENDIX A

EXECUTIVE ORDER 11990 Protection of Wetlands

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order 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, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Sec. 2. (1) In furtherance of Section 101 (b) (3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 (b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors;

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102 (2) (C) of the National Environmental Policy Act of 1969, as amended.

Sec. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Sec. 4 When Federally-owned wetlands or portions wetlands are proposed for lease, easement, right-of-way or disposal to non- Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Sec. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific and cultural uses.

Sec. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those

of the Council on Environmental Quality and the Water Resources Council shall be utilized to fulfill the requirements of this order.

Sec. 7. As used in this Order.

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, digging, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats and natural ponds.

Sec. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Sec. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42U.S.C. 5304 (h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

EXHIBIT A

Private party lenders which participate in EDA business development actions impacting either floodplain or wetland values and functions shall be notified in writing of the

hazards associated with activities so located. The form letter provided below should be used for this purpose.

(Date)

(Name and Address)
(of Private Party)

Dear (Name of Responsible Official):

As a party involved in providing financial assistance to (Name of Applicant), it is our responsibility under Executive Orders 11988, "Floodplain Management" and 11990, "Protection of Wetlands," to inform the (Name of Private Party) that (Name of Applicant) located at (Location or Locations of Facilities or Structures Involved) are located within a floodplain and/or a wetland.

Also, it is our responsibility to inform you of the hazards associated with conducting activities within a floodplain and/or a wetland.

These include:

- a. Increased occurrence of flooding;
- b. Increased severity of flooding;
- c. Increased risk of public health and safety; and
- d. Increased risk of property losses.

If you have any questions or desire further information on this matter, please do not hesitate to contact us.

Sincerely,

(Name)
Regional Director
(or OBD Director if a Headquarters Project)