

Part 1970 - Environmental

Subpart F -FLOODPLAIN MANAGEMENT

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Part 1970 - Environmental

Subpart F -FLOODPLAIN MANAGEMENT

§ 1970.251 Purpose.

This subpart provides guidance for all Agency personnel and encourages them to work closely with the State Environmental Coordinator (SEC) and the National Office Environmental Staff (NES), as appropriate, in implementing these procedures for those applicant activities and Agency programs and services that could adversely affect floodplains. The Agency recognizes that floodplains are essential to clean water, recharge of water supplies, reduction of flood risks, and protection of property, human safety, health and welfare, and fish and wildlife habitat.

The Agency has a separate regulation and Staff Instruction which outlines the Agency's policy on the requirements for obtaining flood insurance and complying with the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and can be found at 7 CFR 1806 Subpart B and RD Instruction 1806 Subpart B.

§ 1970.252 Authority.

The Agency will conduct floodplain management to implement the following:

(a) Executive Order 11988 (1977): Floodplain Management. Order 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, and the National Environmental Policy Act of 1969 (NEPA).

(1) Executive Order 11988 requires federal agencies 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 and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, "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 the following actions:

(i) Acquiring, managing, and disposing of federal lands and facilities;

(ii) Providing federally-undertaken, financed, or assisted construction and improvements; and

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(iii) Conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

(2) Interagency guidance developed an eight-step process to guide Agency decision-making as required under Section 2(a) of Order 11988 (see § 1970.256). The Interagency Task Force on Floodplain Management clarified Order 11988 with respect to development in floodplains, emphasizing the requirement for agencies to select alternative sites outside the floodplain for Agency actions, if practicable, and to develop measures to mitigate unavoidable impacts.

(b) Executive Order 13690 (2015): - Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Order 13690 was issued to improve the nation's resilience to flooding and to better prepare for the impacts of climate change. In amending and building upon Order 11988, Order 13690 and the associated Federal Flood Risk Management Standard (FFRMS) reinforce the important tenets and concepts articulated in Order 11988. When avoiding the floodplain is not possible, Executive Order 13690 calls for agencies to make efforts to improve the resilience of communities as part of federal actions. Importantly, Order 13690 established a new standard against which federal agencies are to evaluate the potential impacts of flooding on federal investments, the FFRMS. This standard sets a higher vertical elevation and a greater horizontal extent to the floodplain to be considered. The additional vertical and horizontal increments are calculated by one of three methods: climate-informed science approach; freeboard value approach; or, 0.2 percent annual chance flood approach.

(c) USDA Departmental Regulation 9500-3, Land Use Policy.

(1) This policy was issued to promote land use objectives responsive to current and long-term economic, social, and environmental needs. It is the Agency's responsibility to assure that Agency programs discourage the unwarranted alteration of wetlands or flood plains or the unwarranted expansion of the peripheral boundaries of existing settlements.

(2) It is the Agency's responsibility to advocate among federal agencies to take actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains;

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and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or federal rehabilitation assistance in the event of flooding.

(3) It is the Agency's responsibility to encourage state and local governments and individual landholders to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. The Agency will assist state and local governments, citizen's groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

(4) When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of flood plains, the Agency shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

§ 1970.253 Policies.

It is Agency policy to:

- (a) Provide leadership and take action to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains;
- (b) Avoid the direct or indirect support of floodplain development whenever there is a practicable alternative;
- (c) Reduce the risk of flood loss and minimize the impact of floods on property and human safety, health and welfare; and
- (d) Restore and preserve the beneficial and natural values served by floodplains.

1970.254 Responsible Parties.

The Secretary of Agriculture or designee is responsible for compliance with all applicable laws, regulations, and Executive Orders:

- (a) Undersecretary for Rural Development (RD). The Undersecretary has overall responsibility for the implementation of the authorities cited in this subpart.
- (b) Administrator. The RD Administrators have responsibility to ensure implementation within their respective program areas.
- (c) Approving Official. The Agency official with the authority to execute federal actions, usually approval of federal financial assistance. This official is usually a State Director, Program Administrator, or their designated delegate.
- (d) National Office Environmental Staff (NES). The National Office Environmental Staff provides:
- (i) Technical and programmatic advice and training on environmental matters to Agency staff.
 - (ii) Negotiation, approval, and execution of all memoranda of understanding or agreement, interagency or cooperating agency agreements, or programmatic agreements related to any environmental issue or actions taken under this part.
 - (iii) Liaison function with other federal agencies and Congress.
 - (iv) The same functions as an SEC for all programs administered at the National Office level (such as the Electric and Telecommunication Programs, some Energy Programs, etc.).
 - (v) Guidance on resolving environmental disputes.
 - (vi) National and state program oversight for compliance with this part.
 - (vii) Reviews of project specific environmental files from states submitted for National Office concurrence or approval.
- (e) State Director. Individual State Directors ensure compliance with the requirements and procedures contained in this subpart within their areas of jurisdiction. State Directors will ensure that guidance materials are issued to applicants for implementing the provisions of this subpart.

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(f) SEC. The SEC serves as the advisor to the State Director for issues related to floodplains. The SEC will coordinate all requirements of this subpart and will request assistance from the NES when necessary. The SEC will provide training to field and state staff, applicants, and technical service providers on the requirements of this subpart.

(g) Applicant. Any prospective applicant for financial assistance shall comply with all federal, state, and local regulations with respect to floodplain management as a condition to receive financial assistance from the Agency. The Agency expects the applicant to pay for any costs incurred for floodplain determinations and compliance and permitting associated with all statutes, Executive Orders and regulations.

§ 1970.255 Definitions.

The following definitions apply throughout this subpart:

(a) Action refers to any proposed federal action or activity including:

- (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.

(b) Actions affecting or affected by floodplains refers to actions that have the potential to result in long- or short-term impacts associated with:

- (1) The occupancy or modification of floodplains, and
- (2) The direct or indirect support of floodplain development.

(c) Agency refers collectively or individually, as appropriate, to RD (Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service).

(d) Base flood refers to a flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations. Base Flood Elevation (BFE) refers to the elevation of the base or 100-year flood. Base floodplain refers to the 100-year floodplain (one-percent chance flood floodplain) or the Special Flood Hazard Area (SFHA).

(e) Building is a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or

(1) A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

(2) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws

(3) Building in the course of construction. A walled and roofed building (see page GR 4 of the Flood Insurance Manual, <http://www.fema.gov/flood-insurance-manual>, for exception) that is principally above ground and affixed to a permanent site. It does not include building materials or supplies intended for use in construction, alteration, or repair unless such materials or supplies are within an enclosed building on the premises. The Flood Insurance Manual further states: "Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the base flood elevation. Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises."

(4) The term "building" does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle, except as described above. Underground utility lines and underground pumping stations are not "buildings." Generally speaking, most buildings, residential or non-residential, are eligible for flood insurance coverage, as long as they are not over water and were built in compliance with local ordinances. Most

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types of agricultural buildings, such as barns, sheds, grain storage buildings, cisterns and silos, and public buildings, water and sewer treatment plant buildings that are not below the ground can be covered. The Flood Insurance Manual will assist in the determination as to whether a specific building meets various criteria and is eligible for coverage.

(5) Conditional Letter of Map Revision (CLOMR) is the Federal Emergency Management Agency's (FEMA's) comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevation, or the SFHA. The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA.

(6) A CLOMR is similar to a LOMR, but is based on proposed conditions and does not change the Flood Insurance Rate Maps (FIRMs). A CLOMR is the method used by FEMA to let people know that for certain projects, if constructed per the design submitted to and approved by FEMA, revision of the FIRM panel with a LOMR is likely. For example, a CLOMR might be obtained by a developer who is modifying a floodplain through the use of constructed drainage infrastructure. Design drawings are submitted to FEMA showing the existing, pre-developed floodplain conditions and the proposed floodplain conditions after planned development. If FEMA approves the CLOMR, the developer can be reasonably sure that a LOMR for the project will be approved upon completion of the drainage infrastructure that alters the floodplain.

(g) Coastal high hazard area refers to special flood hazard areas along the coasts that have additional hazards due to wind and wave action. These areas are identified on FIRMs as Zones V1-30, VE or V.

(h) Critical action refers to an action for which even a slight chance of flooding is too great because such flooding might result in loss of life, injury to persons, or damage to property. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., the critical action floodplain. Critical actions include but are not limited to actions that create, or extend the useful life of, structures or facilities such as:

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

(2) Schools, hospitals and nursing homes, child care facilities, disabled/handicapped facilities, housing for the elderly, and other buildings which are likely to contain occupants who may not be sufficiently mobile to avoid death or injury during flood and storm events;

(3) Emergency operation centers that provide essential services;

(4) Data storage centers that contain records that may become lost or damaged during flood and storm events; and

(5) Utility systems vital to public health and safety, including potable water, wastewater, electric generation, communication systems and other principal utility infrastructure elements.

(i) Direct, indirect, or cumulative impacts and connected actions are all impacts that could result in changes in the natural values and functions of a floodplain. Therefore, unless the locational impact is so minor that the floodplain's natural values and functions are not affected, there would be an impact to a floodplain whenever either:

(1) The action or its related activities would be located within a floodplain, or

(2) The action through its indirect impacts has the potential to result in development within a floodplain.

(i) Direct impacts result from disturbances that occur within the floodplain such as construction, filling, or grading within a floodplain. Another example of a direct effect to a floodplain would be to discharge waters into the floodplain, or otherwise appreciably affect the drainage patterns in a floodplain.

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(ii) Indirect impacts result from disturbances that occur in areas outside of the floodplain, such as upland, but which affect the ability of the floodplain to effectively convey or manage large volumes of water. An indirect impact results whenever the action induces or makes possible related activities which affect the natural values and functions of floodplains, either in the short- or long-term.

(iii) Common indirect impacts include influx of surface water and sediments, fragmentation of contiguous floodplains, loss of flood storage volume, or changes in local drainage patterns.

(iv) Cumulative impacts are those impacts resulting from combined direct and indirect impacts to the floodplain over time, including those from actions taken by others. Cumulative impacts to floodplains are incorporated into the eight-step process of alternatives consideration.

(j) Enhance means to increase, heighten, or improve the natural and beneficial values associated with a floodplain.

(k) Facility refers to any (hu)man-made or (hu)man-placed item other than a structure e.g., bridges and roads ..

(l) Five hundred-year (500-year) floodplain (or 0.2 percent chance floodplain) refers to that area, including the base floodplain, which is subject to inundation from a flood having a 0.2 percent chance of being equaled or exceeded in any given year.

(m) Flood or Flooding refers to a general and temporary condition of partial or complete inundation of two or more acres of normally dry land or of two or more properties (at least one of which is the applicant's property) due to: overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, mudflow, or collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

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

(o) Flood Hazard Boundary Map refers to an official map of a community, issued by FEMA, where the boundaries of the flood, mudflow and related erosion areas having special hazards have been designated.

(p) FIRM refers to an official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community. (A FIRMette is a full-scale section of a FIRM that anyone can create online through the FEMA online map service center by selecting the desired area from an image of a FIRM. The FIRMette also includes the map title block, north arrow, and scale bar. There is no charge for making a FIRMette. Because a FIRMette is a full-scale section of an official FIRM, it can be used in all aspects of FEMA's NFIP, including floodplain management, flood insurance, and enforcement of mandatory flood insurance purchase requirements.)

(q) Flood Insurance Study refers to an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

(r) Floodplain refers to any land area susceptible to being inundated by flood waters from any source.

(s) Flood-proofing refers to any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

(t) Floodway refers to that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

(u) Letter of Determination Review (LODR) (see Exhibit C) refers to an amendment to the current effective status of a property which establishes that a property is not located in a SFHA. A LODR is only issued by FEMA. The LODR is often used if the lender's review shows the building in a special flood hazard area based on the map location but the borrower disagrees with the determination. The applicant may request that FEMA review the lender's determination. No elevation data is considered. *A LODR does not result in amendment to the NFIP map.*

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(v) Letter of Map Amendment (LOMA) (see Exhibit C) refers to an amendment to the current effective FEMA map which establishes that a property is not located in a SFHA.

(1) A LOMA is issued only by FEMA and can be requested by the applicant. A LOMA is used if the flood map shows the property as clearly being in a SFHA but the building on the property is above the BFE. Elevation data is required for a LOMA and is usually provided by a land surveyor or engineer (hired/paid for by applicant). A LOMA removes the SFHA designation from the property and amends the NFIP map.

(2) A LOMA is generally used for single-lot modifications to the floodplain or to remove individual structures from the floodplain, without actually modifying the floodplain delineation on the FIRM. LOMAs are typically used to remove the flood insurance requirement for a particular structure or for structures on a particular parcel. There are two types of LOMAs, those for properties and those for structures. Property LOMAs remove an entire parcel or a portion of a parcel from the floodplain. These LOMAs require a survey of the property to demonstrate what portions of the property are above the BFE. Structure LOMAs remove only the structure itself from the floodplain and are the easiest types of LOMAs to obtain. These LOMAs only require a survey to demonstrate that the ground immediately adjacent to the structure is above the BFE. If the footprint of the structure is expanded, a structure LOMA does not apply to the additional footprint unless another LOMA is approved.

(w) Letter of Map Revision (LOMR) (see Exhibit C) refers to an official amendment to the current effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations based on changes that have occurred due to flood control structures such as reservoirs, levees, channels, floodwalls, etc., which are actions initiated or approved by the community. A LOMR reflects changes to the 100-year floodplain or SFHA shown on the FIRM. In rare situations, LOMRs also modify the 500-year floodplain boundaries. Generally speaking, LOMRs are used for multi-lot projects and large scale changes in FEMA floodplains. Changes may include modifications to BF Es, floodplain widths, and floodways. The LOMRs are issued after a floodplain has been remapped due to a major flood event, after better mapping data becomes available, or after structural flood control improvements have been installed. A LOMR results in revisions of the NFIP map.

(x) Letter of Map Revision Based on Fill (LOMR-F) (see Exhibit C) refers to an official amendment to the current effective FEMA map. A LOMR-F is appropriate whenever a site has been previously graded and filled to raise the level of the land above the BFE and thought not to be represented as such on the FEMA FIRM Map. Applicants may request that FEMA issue a LOMR-F. LOMR-Fs require elevation data provided by a land surveyor or engineer (hired/paid for by applicant). A LOMR-F removes the SFHA designation from the property by letter, but no map revision is provided.

(y) Mitigation refers to all steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values.

(z) Mudflow refers to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as a landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

(aa) National Flood Insurance Program (NFIP) refers to a program managed by FEMA's Mitigation Directorate. The NFIP has three components: Flood Insurance, Floodplain Management, and Flood Hazard Mapping.

(1) Flood insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. Flood damage is reduced through communities implementing sound floodplain management requirements and property owners purchasing flood insurance. Additionally, buildings constructed in compliance with NFIP building standards suffer less annual damage than those not built in compliance.

(2) Floodplain management refers to the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

(3) Flood hazard mapping creates broad-based awareness of flood hazards and provides the data needed for floodplain management programs and to actuarially rate new construction for flood insurance.

(bb) New construction refers to buildings for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, including any subsequent improvements.

(cc) Practicable means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of all pertinent factors, such as environment, cost and technology.

(dd) Preserve in reference to floodplains means to prevent alterations to natural conditions and to maintain the values and functions which characterize the floodplain in its natural state.

(ee) Regulatory floodway refers to the area regulated by federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program).

(ff) Restore in reference to floodplains means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

(gg) Special Flood Hazard Area (SFHA) refers to the land area covered by the floodwaters of the base flood on NFIP maps. The SFHA is the area where the NFIP's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V.

(hh) Structure refers to a walled or roofed building, including mobile homes and gas or liquid storage tanks.

(ii) Substantial improvement. Any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) before the repair or improvement is started, or, if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of

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damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places. (See 44 CFR 59.1.) Please note that the term does not include any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions.

§ 1970.256 Eight-Step Decision Making Process for Alternatives Consideration.

Executive Order 11988, in Section 2(a), outlines an eight step decision-making process for floodplain impacts. Executive Order 11988 sets out the floodplain management decision-making process to be followed by the Agency for all actions involving new construction or substantial improvement in the floodplain. The specific floodplain area to be considered is described in § 1970.257.

The Agency also uses the eight step decision-making process for actions that involve purchase or repair of existing structures or facilities identified in § 1970.258 which may impose risk to health and welfare. Refer to Exhibit A for a flow chart diagram of the Eight-Step Decision Making Process for Alternatives Consideration. While the process is linear, as information is gathered throughout the decision-making process and as additional information is needed, it may be necessary to revisit or reconsider any of the steps.

(a) Step 1. DETERMINE IF THE PROPOSED ACTION IS IN A FLOODPLAIN. Determine whether the proposed action is located within the floodplain) and whether the action has the potential to affect or be affected by a floodplain. If the action will not occur within the floodplain and no impact to the floodplain is anticipated, then no further action is necessary. If the action occurs in the floodplain or if floodplain impact is anticipated, continue to step 2.

(b) Step 2. PRELIMINARY PUBLIC NOTICE and PRIVATE PARTY NOTIFICATION. Notify the public at the earliest possible time of the Agency's intent to carry out an action in the floodplain, and involve the affected and interested public in the decision-making process. The Preliminary Public Notice requirements for particular actions and Private Party Notice requirements are outlined in § 1970.261 and Exhibit B.

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(c) Step 3. SEARCH FOR PRACTICABLE ALTERNATIVES. Identify and evaluate practicable alternatives to locating the proposed action in the floodplain including off-site and on-site alternatives, alternative configurations, other avoidance actions and the "no action" alternative, as appropriate. All proposals with impact to floodplains should at least document the "no action" alternative. If a practicable alternative exists outside the floodplain, the Agency must consider that alternative. Alternative site analyses are not required to be completed by the Agency for existing single family housing within the guaranteed single family housing programs, but are required for those direct single family housing programs listed in § 1970.258(b).

(d) Step 4. IDENTIFY ADVERSE IMPACTS AND BENEFICIAL VALUES/FUNCTIONS. Identify the potential direct, indirect, and cumulative impacts associated with the proposed action. Identify the floodplain's beneficial functions and values such as water quality improvement, water filtration, floodwater storage, fish and wildlife habitat, aesthetics, and biological productivity. Then analyze the impacts to the following factors: 1) Natural environment (topography, water sources, habitat areas, etc.), 2) Social concerns (aesthetics, historic and cultural values, land use patterns, etc.) 3) Economic and engineering aspects (costs of construction, transportation, access, ingress, egress, etc.), and 4) Legal considerations (permits, leases, deed restrictions, setbacks, etc.)

(e) Step 5. MITIGATE ADVERSE IMPACTS. Mitigation can take the form of avoidance, minimization of floodplain impacts, or compensation for impacts, and can include all efforts to minimize the adverse impacts to floodplains identified under Step 4. Avoidance can often be accomplished by reviewing alternative layouts, designs, and configurations. Mitigation also employs on-site evaluation of those factors evaluated in Step 4, including the presence of other natural or cultural resources, economic constraints, engineering constraints, transportation constraints, traffic constraints, site access, site buffer setbacks, etc. Agency environmental staff or the applicant should ensure documentation in the environmental file of any efforts to avoid, minimize, and mitigate adverse impacts to the floodplain, including restoration, preservation or enhancement of the natural and beneficial values of the floodplain. Additional avoidance, minimization, and mitigation measures are listed in § 1970.260.

(f) Step 6. RE-EVALUATE ALTERNATIVES. Re-evaluate the proposed action to determine if it is still practicable in light of the remaining exposure to flood hazards, extent to which the action will aggravate hazards and the potential to disrupt floodplain values. Alternatives preliminarily rejected at Step 3 should also be re-evaluated as to whether they are practicable in light of the information gained in Steps 4 and 5. The Agency may deny financial assistance for a project that occurs in or affects a floodplain if the Agency determines there are practicable alternatives which would accomplish the proposed action's purpose and need without floodplain impact, or if there is not a significant need for the proposal, regardless of whether the applicant has an issued permit for the floodplain impacts.

(g) Step 7. FINAL PUBLIC NOTICE. Prepare and provide the public with a finding and public explanation of the Agency's final decision that the floodplain impact is the only practicable alternative as specified in § 1970.261 (Public Notification Requirements) and that there is a significant need for the proposed action (Exhibit B).

(h) Step 8. IMPLEMENT PROPOSED ACTION WITH APPROPRIATE MITIGATION. When floodplain (or other important resource) impacts would occur from an Agency action, but permits/authorizations are not yet issued, the Agency can complete an EA/EIS and publish a FONSI/ROD evaluating the proposed impacts with an indication within the EA/EIS, the FONSI/ROD, and the letter of conditions, that permit(s) and authorization(s) are pending and that any associated mitigation will be a requirement in the letter of conditions.

(1) However, the EA/EIS, FONSI/ROD, and Letter of Conditions shall indicate that no construction shall commence until after the permit(s) is/are issued. The EA/EIS, FONSI/ROD, and Letter of Conditions should also state that the applicant is required to send a revised project description to the Agency for evaluation should the impacts associated with the proposal vary significantly from those evaluated in the EA/EIS, and the agency will need to supplement to the EA/EIS.

(2) Per RD Instruction 1806-B flood insurance is a requirement ONLY when a structure is located within the FEMA FIRM designated 100-year floodplain; flood insurance is not currently a requirement for structures located outside of the FEMA FIRM 100-year floodplain.

§ 1970.257 Determining the Floodplain Area of Concern.

(a) Introduction. As noted in § 1970.252, Executive Order 13690 both amended Order 11988 and established new standards for federal agencies by which to evaluate flood and floodplain impacts. The implementing guidelines for Order 11988 dated from 1978; along with the new Executive Order, new implementing guidelines were also prepared (October 2015), which implement both Executive Orders 11988 and 13690. Although many key concepts of Order 11988 are carried forth in the new guidelines, significant changes were also made, in particular a higher flood risk management standard and accompanying methodologies to determine the 'risk-adjusted' floodplain.

(1) The new guidelines also called for agencies to update their own floodplain management regulations and guidelines, but noted that "Agencies will continue to comply with the requirements of the 1977 version of E.O. 11988 until they update their regulations and procedures to incorporate the amendments from E.O. 13690." Pending further policy considerations, the Agency has chosen not to update its guidance, and will continue to achieve compliance using the 1977 version of Executive Order 11988 and its accompanying guidelines. Applicable provisions of this Subpart will be modified and implementation plans put in place at the appropriate time.

(b) Floodplain Determination. The new implementing guidelines for Executive Orders 11988/13690 note that "The minimum standard for Federal actions ... is the 1-percent-annual-chance flood elevation and corresponding horizontal floodplain for non-critical actions (the SFHA). Agencies should continue to use the 0.2-percent-annual-chance flood elevation and corresponding horizontal floodplain for critical actions." Use of these standards has been Agency practice, and will continue to be so until revised guidance is issued.

(c) Floodplain Documentation and Mapping Resources. The floodplain determinations documentation should include a completed FEMA Standard Flood Hazard Determination Form (SFHDF- FEMA Form 086-0-32 or current SFHDF, see Exhibit C) to establish the FEMA FIRM 100-year floodplain and any other supplemental documentation, such as elevation determinations. Applicants are responsible, at the Agency's request, to perform the analyses necessary to determine the floodplain area of concern.

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(1) For any action with new construction or substantial improvement, a copy of the FIRM, or a FIRMette, that covers the subject property should be included in the Agency's environmental file for the project. The map must depict the location of all structures. FEMA FIRM Maps are located online at the FEMA Online Flood Map Store (Exhibit C). Photocopies or portions of the FIRM or FIRMette will be sufficient.

(2) If applicable and requested by the Agency, the applicant should submit an Elevation Certificate (FEMA Form 086-0-33) indicating the base flood elevation and elevations of the structure(s), or a LOMA, a LOMR removing the proposed action's location from the SFHA or other appropriate documentation.

(3) Applicants may hire surveyors or engineers to complete topographic and elevation surveys of their property or FEMA Form 086-0-33 in order to determine whether they are located within the floodplain and to determine the base flood elevation or calculate the floodplain. Applicants may also apply through FEMA to obtain a LODR, LOMA, LOMR, or LOMR-F.

(4) Exhibit C includes links to FEMA Forms. Granting of a LODR, LOMA, LOMR or LOMR-F by FEMA removes the requirement for flood insurance. A preliminary LODR/LOMA/LOMR/LOMR-F is not sufficient to waive the requirement of flood insurance.

(5) If FEMA FIRM Mapping is not available, it is up to the applicant working with Agency staff, to search for alternative floodplain mapping by contacting the following agencies:

- (i) Federal Emergency Management Agency (FEMA) Map Center
- (ii) Studies conducted by a Regional Office of FEMA or the NFIP
Community Floodplain Administrator
- (iii) U.S. Fish & Wildlife Service (USFWS)
- (iv) Natural Resources Conservation Service (NRCS) Soil Survey
Maps
- (v) U.S. Geological Survey (USGS) Maps
- (vi) U.S. Army Corps of Engineers (USACE)
- (vii) State Dept. of Transportation
- (viii) State/Local Government

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(1) If there are no existing floodplain maps, the approving official uses best professional judgment as to whether or not to issue federal financial assistance, based on the best interest of the applicant, the Agency and the Agency's mission. Flood insurance would not be required, but may be required if deemed necessary by the approving official.

(2) For guaranteed loans, the lender is responsible for the accuracy of the floodplain determination, regardless of whether the determination is made by the lender, the appraiser, a surveyor, or a specialized flood zone determination company. If the lender relies on a third-party to make the determination, the third-party must guarantee the accuracy of the information. The lender cannot rely on the statements of a borrower that the structure is either inside or outside a SFHA. The appraiser need not complete the section of the Uniform Residential Appraisal Report if the floodplain is determined by another party and a copy of the SFHDF is attached to the appraisal report.

§ 1970.258 Non-Agency-owned Properties.

(a) New Construction or Substantial Improvement. Executive Order 11988 applies to actions that propose new construction or substantial improvement located within floodplains.

(b) Existing Structures or Facilities. The goals of Executive Order 11988 can also be applied to actions that are already located in floodplains, that is, where the conversion has already occurred, in order to avoid the risk to safety and welfare of those who may occupy structures in a floodplain. The Eight-Step Decision Making Process in § 1970.256 is required where there is a potential for increased risk to health and welfare and a potential Environmental Justice issue by encouraging low to very-low income housing within a floodplain.

(c) The Agency must comply with the Eight-Step Decision Making Process when RHS programs for low to very-low income households involve the purchase of existing residential structures located in a floodplain. The following is a list of those current programs:

- (1) Single Family Housing - Direct
- (2) Direct Farm Labor Housing
- (3) Domestic Farm Labor Housing

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- (4) Multi-Family Housing Revitalization Programs
- (5) Rural Rental Housing Loans - Direct
- (6) Multi-Family Housing, Existing Structures, Greater than four units

§ 1970.259 Real Estate Owned (REO) Properties.

(a) Substantial improvements to REO properties - Executive Order. 11988 applies to substantial improvements to REO properties.

(b) Sale or lease of REO properties- Executive Order 11988 applies to the sale or lease of REO property. The Agency official responsible for the conveyance (sale or lease) of existing REO property must determine if the property can be safely used as a residence. The conveyance must specify those uses that are restricted under identified federal, state, and local floodplain regulations, as well as other appropriate restrictions on the uses of the property by the lessee or purchaser and any successors, except where prohibited by law.

(c) Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. A listing of any restrictions will be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale. Upon written request by the owner of any property so affected or determination by the appropriate Agency official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released.

§ 1970.260 Alternatives Analyses and Mitigation Measures.

(a) Off-site and On-site Alternative Sites. The main focus of the review process must be to locate a practicable alternative site located outside of the floodplain. In cases where there is a significant need for the proposal and no practicable alternatives exist, mitigation measures must be developed to reduce the impact of the action. Examples of mitigation include finding a site at a higher elevation within the floodplain or a site exposed to lower velocity floodflows, elevating the structure, and floodproofing.

(b) Avoid Filling in Floodplains. One of the objectives of Executive Order 11988 is to preserve and protect a floodplain's natural values and functions. When a significant need for the proposal exists and there is no practicable alternative for the action, the Agency shall, wherever practicable, elevate structures above the floodplain elevation rather than filling in land.

(c) Mitigation Measures. Mitigation measures are intended to reduce the risks to human safety, possible damage to structures, and disruption to the natural values and functions of floodplains. More traditional structural measures, such as filling in the floodplain, do not accomplish and conflict with the three purposes for mitigation. Nonstructural flood protection methods must be given priority consideration to preserve, restore, or imitate natural hydrologic conditions and eliminate or reduce the need for structural alteration of water bodies or their associated floodplains. Such methods may be either physical or managerial. Examples of nonstructural flood protection methods are:

- (1) Control the uses and occupancy of floodplains, e.g., floodplain zoning and subdivision regulation;
- (2) Preserve floodplain values and functions through public ownership, e.g., fee title, easements and development rights;
- (3) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;
- (4) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(5) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(6) Restore and preserve floodplain values and functions and protect life and property through regulation, e.g., providing compensatory storage volumes within the floodplain, flood-proofing building codes which require all structures and installations to be elevated above the level of the floodplain elevation; and

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

§ 1970.261 Public Notification Requirements.

(a) Preliminary Notice. A preliminary notice of all proposed actions involving new construction or substantial improvement in the floodplain must be published at the earliest possible time. The notice will be published and distributed in the manner specified in 7 CFR § 1970.14 and should notify the public of the Agency's intent to carry out an action in a floodplain so that the affected and interested public can engage in the decision-making process. The preliminary public notice period is 14 days, with an option to extend to 30-days at the Agency's discretion. A sample Preliminary Notice is contained in Exhibit B. Please note these notification requirements are not required for individual single family housing proposals.

(b) Private Party Notification. For all actions to be located in floodplains where a private party is the applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform all such parties in writing of the hazards associated with occupancy of such locations within the floodplain. Sample Private Party Notifications addressed to the applicant or lender are contained in Exhibit B.

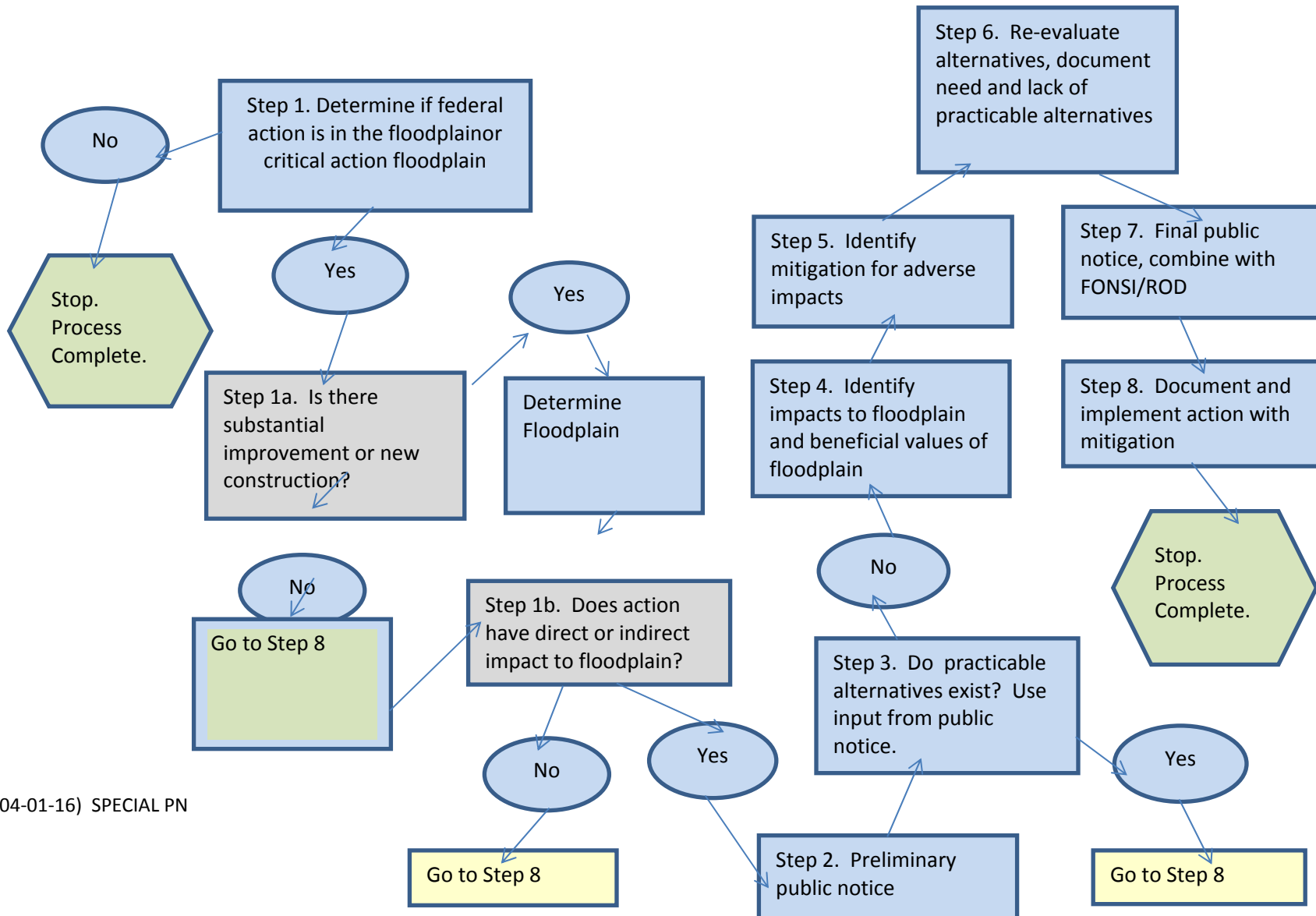
(c) Final Notice. Where it is not possible to avoid an impact to a floodplain and all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of all proposed actions which involve new construction or substantial improvement must be published. At the Agency's discretion, there may be an additional 7 day comment period on the final notice. A sample Final Notice is contained in Exhibit B. Please note these notification requirements are not required for individual single family housing proposals. The final notice will be published and distributed in the manner specified in 7 CFR § 1970.14 and contain the following information:

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- (1) A description of the applicant's proposed action and the Agency's involvement, the action location, and the surrounding area;
- (2) A description of the floodplain impacts and the mechanisms that will be used to mitigate them (if applicable);
- (3) A statement of why the applicant's proposed action must be located in a floodplain; Note that a preliminary notice was published and whether or not any comments were received, and if so, how they were resolved.
- (4) A statement indicating the applicant's action must conform to applicable State and local floodplain standards; and
- (5) A statement listing other involved agencies and individuals.

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Flowchart for Floodplain Evaluations - 8-Step Decision Making Process



Public Noticing and Private Party Noticing Templates:
Template Preliminary Public Notice Language for Potential Impacts to
Floodplains

[Insert applicant's name] intends to seek financial assistance from USDA, **[Rural Housing Service (RHS), Rural Business Service (RBS), Rural Utilities Service (RUS)]** for [insert type of project here: construction, infrastructure improvements, etc]. The proposed project consists of **[itemize the project's construction activities and locations]**. **[Insert a detailed written description of location]**. If implemented, the proposed project will convert **[Floodplain, Critical Action Floodplain- include definition of floodplain, acreage, and locations]**. In accordance with Executive Order 11988, Floodplain Management and USDA Departmental Regulation 9500-3, Land Use Policy, the purpose of this notice is to inform the public of this proposed conversion or effect and request comments concerning the proposal, alternative sites or actions that would avoid these impacts, and methods that could be used to minimize these impacts.

The environmental documentation regarding this proposal is available for review at **[insert Rural Development office location or applicant locations]**. For questions regarding this proposal, contact **[insert name and telephone number of Rural Development official]**. (If applicable) Other federal agencies involved in this proposal are _____.

Any person interested in commenting on this proposal should submit comments to the address above by **[insert a date that is 14-30 days from the date the notice is first published]**.

Template Private Party Notice to Applicant/Lender for Floodplains

Date

Applicant/Lender Name

Applicant/Lender Address

Re: Private Party Notice to Applicant of a **[RHS, RBS, or RUS]** Loan, Guaranteed Loan or Grant regarding the Hazards of Locating Structures within a Floodplain or Critical Action Floodplain, **[Project name]**.

Dear [Name of Applicant/Lender],

In accordance with Executive Order 11988, Floodplain Management and USDA Departmental Regulation 9500-3, Land Use Policy, notice is hereby given by USDA **[RHS, RBS, or RUS]** that the proposal for **[project name]**, for which a financing may be requested, contains elements located within a **floodplain or critical action floodplain** -. In keeping with Executive Order 11988, and the Agency's implementing regulations, it is the responsibility of the Agency to inform you of the hazards associated with locating structures in a floodplain or critical action floodplain. These hazards include but are not limited to:

Hazards associated with development within floodplains include the loss of life or limb or damage to or loss of real property, personal property, or other assets. Locating structures within a floodplain should be avoided to the maximum extent practicable as it can adversely impact important floodplain functions such as wildlife habitat, filtering capacity, flood holding capacity, and other critical functions. Locating a structure within floodplains requires coordination with the municipality which regulates floodplains in your state or local jurisdiction and determines if a permit is required.

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Exhibit B
Attachment B-2
Page 2

If a guaranteed loan, insert: **You are furthered advised that you will be required to provide a written notice of these hazards to the applicant, purchaser, or other provider(s) of financial assistance in connection with this proposed action, prior to loan closing.**

Flood insurance [**is or is not**] required as a condition of your loan closing.

Should you have any questions regarding this notice, please do not to hesitate to contact [**staff person**] at [**email address and telephone number**].

Sincerely,
[**Insert Name of USDA, Rural Development Official**]

[**Title**]

Template Final Public Notice Language for Potential Impacts to Floodplains

[Insert applicant's name] intends to seek financial assistance from USDA, **[Rural Housing Service (RHS), Rural Business Service (RBS), Rural Utilities Service (RUS)]** for [insert type of project here: construction, infrastructure improvements, etc] . The proposed action consists of **[itemize the project's construction elements and locations]**. **[Insert a detailed written description of location]**. **[RHS, RBS, RUS]** has assessed the environmental impacts of this proposal and determined that the location of **[insert construction activity or facility]** will convert or effect a floodplain or critical action floodplain. In accordance with Executive Order 11988, Floodplain Management and USDA Departmental Regulation 9500-3, Land Use Policy, the Agency is notifying the interested public of this land conversion. It has been determined that there is no practicable alternative to avoiding this conversion or effect and that there is a significant need for the proposal. The basis of this determination is **[summarize the justification, need and reasons for the conversion or effect, and note if/if not any comments were received and how they were resolved]**.

(If applicable) Other federal agencies involved in this proposal are _____

For information regarding this notice, contact **[Name and contact information for RD point of contact]**. Any person interested in commenting on this decision should submit comments to the address above by [If additional public review period is required insert a date seven days from the date the notice is first published].

External Resources

Association of State Floodplain Managers
www.floods.org

FEMA's Flood Map Service Center
msc.fema.gov/portal

National Flood Insurance Program Forms
<http://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-forms>

FEMA 086-0-32 Form (SFHDF) - Determine whether property is within the 100-year floodplain
<http://www.fema.gov/media-library/assets/documents/225>
http://www.fema.gov/media-library-data/20130726-1438-20490-8829/086_0_32.pdf

FEMA 086-0-33 Form (Elevation Certificate) - Determine elevation of structure
http://www.fema.gov/media-library-data/20130726-1437-20490-3457/f_053_elevationcertificate_jan13.pdf

FEMA flood designation changes such as LODR, LOMA, LOMR, LOMR-F
<https://www.fema.gov/change-flood-zone-designation-online-letter-map-change>

U.S. Army Corps of Engineers
<http://www.iwr.usace.army.mil/Missions/FloodRiskManagement/FloodRiskManagementProgram.aspx>

U.S. Geological Survey Flood Information
<http://water.usgs.gov/floods/resources/>

U.S. Geological Survey Flood Inundations Mapping
http://water.usgs.gov/osw/flood_inundation/

Natural Resources Conservation Service Web Soil Survey -
<http://websoilsurvey.nrcs.usda.gov/app/>

U.S. Fish & Wildlife Service - Regional studies
<http://www.fws.gov/>