

Project 103-ED-33748-2013
EO 11988 Floodplain Management and EO 11990 Wetlands Protection Determination
Commercial & Economic Development Initiative within NY State Community
Development Block Grant Disaster Recovery Program

June 8, 2017

Introduction & Overview

The purpose of Executive Order 11988, Floodplain Management, is “to avoid to the extent possible the long- and short-term adverse impacts associated with occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” This report contains the analysis prescribed by 24 CFR Part 55.

This project involves U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program – Disaster Recovery (CDBG-DR) funding for future dredging activities and reinforcing a protective barrier for a single business impacted by Superstorm Sandy. The analysis that follows focuses on floodplain and wetland impacts. Based on the “non-substantial” level of work, and other case characteristics, it is concluded that there is a reasonable basis to proceed with funding for this project/activity within the floodplain and wetlands. Moreover, in the [March 5, 2013 Federal Register Notice](#), HUD expressly recognized that “without the return of businesses and jobs to a disaster-impacted area, recovery may be impossible. Therefore, HUD strongly encourages grantees to envision economic revitalization as a cornerstone to a long-term recovery” (78 FR 14335). Thus, alternatives preventing or impeding small business recovery are not considered reasonable alternatives.

Description of Proposed Action & Land Use

Goldsmith’s Boat Shop Inc. (Applicant) is a full service marina. It is located at 64150 Main Road in the Town of Southold, Suffolk County, New York 11971. Based on Town Assessment data, this commercial property is Section 56, Block 7, and Lot 1. The Property Description shows a 17.2-acre lot. This marina facility is located adjacent to the mouth of Mill Creek and Hashamomuck Pond, due north of Paradise Point and 2.5 miles west of Greenport Harbor on the eastern end of Long Island, New York.

The proposed support involves a limited grant award of \$100,000.00 in proposed construction support. The proposed construction expenses include dredging approximately 250-290 cubic yards of material in the southeastern most portion of the marina’s only entrance/ exit channel, and reinforcing a protective barrier with 400 tons of new granite stone and rocks on existing sand spit protective barrier on the western portion of the marina parcel. A previous environmental review for separate activities categorized under 24 CFR 58.35(b)(4) for this Applicant was completed on October 28, 2016 and is included in the Environmental Review Record.

Applicable Regulatory Procedure Per EO 11988

The proposed action corresponds with a noncritical action not excluded under 24 CFR §55.12(b) or (c). Funding is permissible for the use in the floodplain if the proposed action is processed under §55.20 and the findings of the determination are affirmative to suggest that the project may proceed.

Based on online data, including data managed and updated by the U.S. Fish & Wildlife Service (USFWS) and NYSDEC there are mapped wetlands on the Subject Property. This work will be located in 100-year floodplain (SHFA Zone VE) and wetlands. Approximately 0.68 acres of floodplain and wetlands would be disturbed during the proposed activities.

The project activities will be conducted in the wetlands on the edge of the Subject Property, the dredging activities and protective barrier reinforcement constitutes new construction in wetlands. Thus, in

accordance with the decision-making process set forth in 24 CFR Part 55, this analysis focuses on floodplains and wetlands.

According to 24 CFR §55, the activity planned to repair impacted structure occurs in a community that is in the regular program of the National Flood Insurance Program (NFIP) and the community is currently in good standing. Using the total amount of damage reported after Superstorm Sandy, this project does not exceed the substantial improvement threshold of 50% in 24 CFR §55.2(b)(10). This is evidenced by Program materials indicating that there was not a substantial damage determination and improved property value data shows the cost of funded maintenance and mitigation work is a small fraction of the total value, which is shown to be approximately \$2,601,852.00. However, the project activities involve the dredging of the marina entrance/ exit and reinforcement of the existing protective barrier located in 100-year floodplain and wetlands. As such, the full eight-step floodplain/ wetlands determination process in §55.20 is being followed. The following analysis examines each step in a floodplain and wetlands management determination process.

Step 1. Determine Whether the Proposed Action is Located in the 100-year Floodplain (500-year for Critical Actions) or results in New Construction in Wetlands.

The location of the proposed action, per the applicable FEMA flood map Firmette, is within the 100-year floodplain (SFHA – AE Zone and VE Zone). There is an established Base Flood Elevation (BFE) of approximately 7 feet in Zone AE, and 8-10 feet in Zone VE across the Subject Property. The proposed mitigation project activities are located in Zone VE. This action does require a Section 404 permit under the Clean Water Act (see 55.20(a)(1)).

Step 2. Initiate Public Notice for Early Review of Proposal.

Because the proposed project is located in floodplain and wetlands, the Governor's Office of Storm Recovery (GOSR) published an early notice that allowed for public and public agency input on the decision to provide funding for reconstruction and development activities. The early public notice and 15-day comment period is complete. No public comments were received.

The early notice and corresponding 15-day public comment period started on March 3, 2017 with the "Notice of Early Public Review of a Proposed Activity in 100-Year Floodplain and Wetlands" being published in Newsday newspaper, with the 15-day period expiring on March 20, 2017. The notice targeted local residents, including those in the floodplain. The notice was also sent to the following state and federal agencies on March 3, 2017: Federal Emergency Management Agency (FEMA); USFWS; U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (USACE); NYSDEC; and New York State Office of Emergency Management. The notice was also sent to the Town of Southold. (See **Appendices 1 and 2** of this EO 11990 Wetlands Protection and EO 11988 Floodplain Management Determination for the letter distributed to these agencies and the associated newspaper notice affidavit).

Step 3. Identify and Evaluate Practicable Alternatives to Locating the Proposed Action in a 100-year Floodplain (or 500-year Floodplain if a Critical Action) or Wetland.

The Program is structured to provide eligible businesses with loan or grant assistance for activities necessary to restore storm-damaged businesses, including through damage reimbursements, and support for rehabilitation, reconstruction, elevation, and/ or other mitigation activities. This small business suffered damage during Superstorm Sandy and proposed future mitigation work located in wetlands and floodplain, as such potential alternatives must be considered in order to try and mitigate the amount of damage from future flood events.

One potential alternative is to relocate the business out of the 100-year floodplain; however, this marina would be difficult to move to a replacement property outside floodplain due to the functionally dependent nature of the business. Additionally, the marina serves local and regional recreational and tourism demand

and is a type of land use that could be a compatible form of floodplain development. As such, relocation is not considered a viable option.

Another alternative would be for no action to occur, meaning the Applicant would not be receiving grant funds to restore and sustain business. This option means there would be a potential inability for the business to rehabilitate after the storm. Furthermore, the ability for the owner to successfully mitigate any future damages from floods would be impeded due to the lack of financial support; which means the property would be more vulnerable. This could greatly impact this business and the surrounding community, as recovery would be greatly impaired due to lack of support. Accordingly, the “no action” decision would neither support this business’s recovery nor help the community recover from the devastating storms.

Due to the number of developed parcels within this community, prohibition of rehabilitation within floodplain is not practicable. The above identified alternatives will be re-evaluated in response to public comments received.

Step 4. Identify & Evaluate Potential Direct & Indirect Impacts Associated with Occupancy or Modification of 100-year Floodplain and Potential Direct & Indirect Support of Floodplain and Wetland Development that Could Result from Proposed Action.

The focus of floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include consideration of potential for adverse impacts on water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge.

According to the FEMA Report - A Unified National Program for Floodplain Management, two definitions commonly used in evaluating actions in a floodplain are “structural” and “non-structural” activities. Per the report, structural activity is usually intended to mean adjustments that modify the behavior of floodwaters through the use of measures such as public works dams, levees and channel work. Non-structural is usually intended to include all other adjustments (e.g., regulations, insurance, etc.) in the way society acts when occupying or modifying a floodplain. These definitions are used in describing impacts that may arise in association with potential advancement of this case.

Natural moderation of floods

As the Applicant’s property is one of many developed parcels situated within the 100-year floodplain, the continued occupancy may potentially result in future direct impacts to property during certain severe floods and related natural disasters. However, the direct effects to this property would be no greater than those expected to the other adjacent occupied properties within this floodplain.

Living resources such as flora and fauna

This land use may constitute a type of business where, after flooding, materials used in operations could potentially be released into the environment, thereby having unquantifiable potential to impact water quality maintenance and ecological resources. A potential impact that may arise is that materials used or stored on-site would be caused to be released into the environment, such as a result of wind or floodwaters. However, this would be more likely if there are not non-structural and structural floodproofing techniques in place, such as if materials are not stored in water-tight containers, and/ or said containers break or migrate out of a non-enclosed building due to lack of proper preparation. A qualitative evaluation suggests the potential would be relatively small and if such releases do occur, it is likely as part of a potential area-wide impact. In such an instance, floatable debris could contribute to litter and if there were minor amounts of chemicals used on the Subject Property, floodwaters may induce rapid dilution. Given the nature of this business, the potential for an acute or chronic level of water quality impact from the Subject Property is low.

Impacts to Property & Lives

The action does present potential to impact commercial occupancy of the floodplain, but it does not impact residential structures. The project does not alter the floodplain because it does not in any way directly or physically modify the floodplain through new ground disturbance – it only restores the existing protective barrier and existing marina entrance to pre-storm depths. Moreover, supporting the recovery of small businesses is an essential component of recovery in storm-affected communities, as recognized by the [March 5, 2013 Federal Register Notice](#).

Occupancy of this floodplain in this developed area has taken place since World War II. According to Suffolk County's [Multi-Jurisdictional Hazard Mitigation Plan](#), 2014, the Town of Southold is at risk for occasional hurricanes, frequent floods, and frequent severe storms (page 9.43-1 to 9.43-2). Considering the context of the area, this action represents an activity at only one parcel among others that are located within the contiguous floodplain. Thus, funding this project/ activity does constitute indirect continued support of floodplain occupancy and development for this business. In the event of severe flooding and associated natural hazards in the future, there is potential for further damage to this property, business disruption, and impacts to this small business.

The rehabilitation of the Subject Property sustains area property values and community character within a developed district and neighborhood. It enables continued viability of this small business, which might otherwise degrade, or cease to exist, without support in rehabilitating facilities, restarting business operations, and/or recouping some revenue lost as a result of the disaster. Similarly, the proposed investment supports the area by sustaining an asset. With sustained operations here, the market is not disrupted in that customers and tenants are required to travel greater distances. Support to sustain this business also helps ensure a diverse economic base. If this project were not funded, there probably would be other undefined, undesirable indirect impacts to lives and the area economy, on a short- and long-term basis, such as relating to economic multipliers and support that this business provides to surrounding businesses, as it purchases products and services.

Cultural resources such as archaeological, historic & recreational aspects

The impacted property appears to have been developed more than 50 years ago. There are no recorded historic properties listed on or deemed eligible for the State and National Register of Historic Places located on or adjacent to the Subject Property. The New York State Historic Preservation Office confirmed on December 19, 2016 that this project will have no effect on historic properties. Project information was sent to the THPO of the Shinnecock Nation and Unkechaug Nation on December 23, 2016 for a determination if there are any significant cultural resource concerns with this project. Any response received from the THPO of the Shinnecock Nation and Unkechaug Nation will be incorporated into the requirements under this environmental review and appended to **Attachment 9**. Without support, building resources could degrade and there could be loss of development character and identity for the business and the area.

According to the Outdoor Industry Association's two page fact sheet [New York: The Outdoor Recreation Economy](#), outdoor recreation generates \$33.8 Billion in consumer spending and 305,000 direct jobs within the State. This is an important sector of the regional economy and the subject business is an example of a constituent part of this aspect of the economic base. It is presumed that market demand for marina services is strong and if the service here were disrupted, consumer demand could not easily shift to other facilities located in the floodplain because of finite supply.

Agricultural, aquacultural, & forestry resources

The Suffolk County area has several agricultural sites located in the flood zone, as well as undeveloped woodlands. There is substantial agriculture and fishing industry in Nassau and Suffolk Counties on Long Island, including aquaculture in the form of oyster farming. While there appears to be a higher concentration of aquaculture on Eastern Long Island, per the 2012 State Comptrollers Report [Agriculture in Long Island](#)

and Agricultural Production by Commodity Group in Long Island (2007), aquaculture represents 2.9% of the economy at a \$7.5 million sales revenue. It is possible that if there is a materials release from this property, it could potentially affect natural resources including agricultural and forestry. However, while it is conceivable that flooding of a business like this could be part of a cumulative influence on such resources, the impact attributable to this use could not have been quantitatively derived, and the potential impact, with planning for and practice of non-structural management practices, is considered minor.

Wetland Evaluation

The purpose of wetland evaluation is to consider factors relevant to a proposal's effect on the survival and quality of the wetland. These factors should include public health (including water supply and water quality), maintenance of natural systems, cost increases attributed to construction in wetland, and other uses of wetland in the public interest.

Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion.

The project location is in wetlands that are classified SA marine waters (NYSDEC) and estuarine/ marine wetland/ marine deep-water (USFWS). These wetlands are not freshwater wetlands and, therefore, are not directly used for water supply. However, these wetlands along the coast can serve to absorb the force of storm waters and tidal erosion. These areas help protect upland soil and freshwater resources. The scope of work for this project involves in-kind work to restore the marina basin entrance/ exit and reinforce a protective barrier with stone and rocks on the existing sand spit protective barrier. This work is not suspected to pose a threat to public health and safety, or to increase flood and storm hazards. The proposed action does not include reshaping or filling of the wetland, merely restoring the existing marina basin to pre-storm depths and reinforcing the existing sand spit protective barrier that has been eroded. These reinforcing actions will make this property and surrounding area safer from future damages as erosion will be decreased during storm events. The proposed action will not decrease the area of the wetland, merely restore it to pre-storm conditions.

Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources.

The proposed action will not further affect the natural systems/ wetlands at this preexisting developed marina parcel, which is located in an area that is primarily developed with other marinas, commercial properties, and residential properties. The proposed work is for restoration of the marina basin entrance/ exit basin to pre-storm depths and reinforcement of the existing, eroded sand spit protective barrier. The Applicant shall comply with all best management practices and permit conditions that are set forth in the applicable federal, state, and local environmental permits. As the work will not increase the area of the marina and will occur in the footprint of the previously existing basin, it is presumed that there will not be new adverse impacts on the existing flora/fauna, habitat, natural hydrologic function, or natural resources at the location.

Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use.

The proposed scope of work involves alteration of wetlands through maintenance dredging of the marina exit/ entrance and reinforcing the existing sand spit protective barrier that was eroded during Hurricane Sandy and subsequent storm events. The dredging will restore the marina entrance to pre-storm conditions. The existing sand spit protective barrier was washed out during Superstorm Sandy, with storm events after Superstorm Sandy continuing the erosion from the sand spit and sediment deposition in the estuary behind the sand spit and in the marina exit/ entrance. The proposed reinforcement using approximately 400 tons of granite rock and reclaimed sediment from the dredging activities would prevent future erosion from occurring while protecting the estuary and marina from flooding and erosion during future storm events.

All work will comply with all applicable permits and their conditions, and be limited to permit allowances. Consequently, there are no cost increases attributed to necessary mitigation measures to minimize harm to wetlands that may result from such use.

Other uses of wetland in the public interest, including recreational, scientific, and cultural uses.

This functionally dependent marina offers the public recreational access to waterways in the area. According to the Outdoor Industry Association's two page fact sheet New York The Outdoor Recreation Economy, outdoor recreation generates \$338 Billion in consumer spending and 305,000 direct jobs within the State. This is an important sector of the regional and local economy and the subject business is an example of a constituent part of this aspect of the economic base. It is presumed that market demand for marina services is strong and if the service here were disrupted, consumer demand could not simply shift to other marinas located in wetlands and floodplains because of finite supply.

Step 5. Where Practicable, Design or Modify the Proposed Action to Minimize the Potential Adverse Impacts To and From the 100-Year Floodplain and to Restore and Preserve its Natural and Beneficial Functions and Values.

Given that proposed rehabilitation funded by this Program is very limited and does not rise to the level of substantial reconstruction, and considering the individual property scale, it is not financially feasible to specify mitigation measures such as elevating the building, dry floodproofing it, or promoting strategic retreat such as through government acquisition. However, it is reasonable to promote business owner awareness of future risks of natural hazards, including flooding, plus the physical, social and economic impacts that potential events could convey, including through potential for future physical damage to property, buildings, supplies, and equipment.

It is reasonable to promote business owner awareness of actions they can take to define and prepare for the impacts of many hazards they may face. There are free resources available to aid such preparedness planning found at the link: <http://www.ready.gov/business>. Also, the applicant could consider participating in The Clean Marina Initiative, an incentive-based program promoted by the State University of New York-Stony Brook and the National Oceanic and Atmospheric Administration that offers information about engaging in marina-specific operating and maintenance procedures in order to protect coastal water quality.

Step 6. Reevaluate the Alternatives and Proposed Action.

The action to fund rehabilitation, mitigation and business continuity at this small business is still practicable in light of exposure to flood hazards in the floodplain, possible adverse impacts on the floodplain, the extent to which it may aggravate current hazards to other floodplains, and the potential to disrupt natural and beneficial functions and values of floodplains. Moreover, the March 5, 2013 Federal Register Notice strongly recommends that the grantee engage in a robust policy for ensuring small business recovery affected by the storm events, as such recovery is essential to the continued vitality of surrounding communities. Thus, alternatives preventing or impeding small business recovery are not considered reasonable alternatives.

Step 7. Issue Findings and Public Explanation.

It is the finding of this report that there is no better alternative than to provide funding for the mitigation work at this small business. The location within floodplain cannot be avoided due to requirements of a marina and land economics, in terms of the high expected cost of land outside floodplain and the high development costs of relocating the business. However, not funding any actions would mean that this small business would struggle to recover, much less be able to mitigate any future damages. A final notice, formally known as "Notice of Policy Determination" was published in accordance with 24 CFR 55. (See **Appendices 3 and 4** of this Floodplain Management (EO 11988) and Wetlands Protection (EO 11990) Determination for the letter distributed to the associated agencies and the associated newspaper notice affidavit). The comment period started with the Final Notice publishing in Newsday newspaper on June 8,

2017. However, this notice was combined with the Notice of Intent to Request Release of Funds. The comment periods for the combined notice is 7 days, which expires at 5:00 pm on June 15, 2017. The combined notice describes the reasons why the project must be located in the floodplain, alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain values. (See **Appendix 3** of this EO 11990 Wetlands Protection and EO 11988 Floodplain Management Determination for the letter distributed to these agencies).

Step 8. Continuing Responsibility of Responsible Entity & Recipient.

The Governor's Office of Storm Recovery (GOSR), operating under the auspices of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, is the responsible entity. The responsible entity will make available educational materials regarding best practices for businesses located in floodplains. It will also require the business to demonstrate proof of current flood insurance, when applicable. It is acknowledged there is a continuing responsibility by the responsible entity to ensure, to the extent feasible and necessary, compliance with the steps herein.