



By Rebecca Quinn, CFM

ASFPM is highlighting the Federal Flood Risk Management Standard and draft Implementing Guidelines on its [website](#) and encouraging members to submit comments. The FFRMS builds on President Jimmy Carter's 1977 Executive Order 11988 for floodplain management. A lot of focus has been on the impacts that will flow down to states and communities given the EO, even before amended by EO 13690, applies to federally-financed or assisted construction and improvements of buildings. FEMA-funded mitigation projects (and post-disaster public assistance grants for recovery) could be affected, but that's not my topic today.

Of course, EO 11988 has always applied to federal agencies and their own activities, specifically the construction and improvement of federally-owned buildings. Prompted by issuance of the FFRMS, I decided to take another look at federal construction in SFHAs.

Recently I was asked about construction in flood hazard areas on federal land and construction of buildings for lease by federal agencies. In general, construction on federal land isn't subject to local permit requirements. Similarly, in many states, construction of state buildings on state-owned land isn't subject to local requirements. Because states are included in the NFIP definition of "community," states are supposed to have a mechanism to ensure their own activities in flood hazard areas comply with the NFIP requirements (compliance with local floodplain requirements is one such mechanism).

Every time the topic of federal construction comes up I'm reminded of something I heard from a FEMA floodplain management specialist many years ago: "Of course, the U.S. Post Office builds in the floodplain but only if the floodway isn't available!"

Have you ever had a developer claim that a building that will be occupied by a federal agency is not subject to local permit requirements? Apparently it happens more often than you might think. Exactly why someone would make that claim is puzzling – perhaps avoiding local permit review and inspection would give a bidder on a federal project an edge.

Recently I was asked that very question and I've learned that avoiding local requirements for leased buildings is contrary to federal requirements. The question also brought to mind a situation from years ago, when I worked for the state of Maryland. A developer under contract to build a facility for lease to a federal agency tried to convince the community and my agency that state and local floodplain permits weren't required. Indeed, he argued we had no authority whatsoever because it was a "federal project." It didn't take long for my agency's attorney to opine that because the land was not federal land, there was nothing to preclude a likely outcome that at some time in the future the federal agency would vacate the building. What then? Well, of course, then the building would revert to private occupancy.

We held firm that state and local permits were required. It should be noted that my agency had been issuing floodplain permits to federal agencies for activities on federal land since at least the late 1960s (including permits for activities on a number of "secret/secure" facilities). Given that track record, the hapless developer got no sympathy. I recall the building ended up elsewhere, on higher ground.

Some years later I found myself talking to a community official from a state that didn't have its own floodplain permit requirements. The local official found yet another way to deal with a pushy developer who argued a building for the US Postal Service wasn't subject to local permit requirements, even if located on private land. He

simply suggested the local fire department might not be able to respond to alarms if the community didn't issue permits. You guessed it, the developer ended up getting local permits.

Before we take a look at requirements for buildings on private property leased by federal agencies, let's take a look at what's required for buildings on federal property.

Standards for Federal Facilities. The [Facilities Standard for the Public Building Service](#) establishes design standards for new Government Services Administration-owned buildings, major and minor alterations, and work in historic federal structures (including leased buildings for which the government has an option to buy). The Facilities Standards state "each building constructed or altered by GSA or any other federal agency shall, to the maximum extent feasible, be in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes." Also see Public Buildings Amendments of 1988, 40 U.S.C. 3312 (formerly section 21 of the Public Buildings Act of 1959, 40 U.S.C. 619).

Nationally Recognized Codes. The Facilities Standards Nationally recognized codes include the International Codes® developed by the International Code Council (ICC) and codes and standards developed by the National Fire Protection Association (NFPA).

The technical requirements of nationally recognized codes supplement other GSA requirements mandated by federal laws and executive orders (this is where EO 11988, and its companion order on wetlands, EO 11990, comes into play). The latest edition of nationally recognized codes that is supposed to be used is the edition in effect at the time a design contract is awarded. The good news is the most widely-used building codes, International Codes® and NFPA 5000, include floodplain management requirements (see FEMA Building Science excerpts of the [flood provisions of the I-Code](#)).

Now, what about state and local requirements – do they apply to federal construction on federal land? The GSA "recognizes that the national building codes are typically the foundation of state and local building codes. However, state and local codes also represent important regional interests and conditions. As such, state and local building codes shall also be followed to the maximum extent practicable." Despite that policy, it's not the same as requiring federal agencies to obtain state and local permits.

"Lease Construction" on Private Land. "Lease Construction" is new construction of a building for government use in response to GSA's formal solicitation for offers. It involves construction on private land, with buildings leased to GSA. Of note, the Facilities Standard states "In these cases, the applicable State and local government codes apply. The developer/owner (i.e., offeror) must also obtain the necessary building permits and approvals from the appropriate state and/or local government officials." The added emphasis is mine.

Federal Projects and Local Zoning. In case you've ever wondered about federal projects and local zoning laws, the GSA Facilities Standards has that covered, too. Although long, it's worth quoting the whole paragraph:

"During the planning process and development of associated environmental documentation for new construction and renovation projects, GSA shall consider all requirements (other than procedural requirements) of zoning laws, design guidelines, and other similar laws of the state and/or local government. This includes, but is not limited to, laws relating to landscaping, open space, building setbacks, maximum height of the building, historic preservation, and aesthetic qualities of a building. The project design team is to fully address such laws and requirements in their planning and design documents. Any proposed deviations from such laws are to be documented, fully justified, and brought to the attention of the GSA project manager for resolution. Local regulations must be followed without exception in the design of systems that have a direct impact on off-site terrain or utility systems (such as storm water run-off, erosion control, sanitary sewers and storm drains and water, gas, electrical power and communications, emergency vehicle access, and roads and bridges)."

US Postal Service. Now let's circle back to USPS office construction. The USPS isn't subject to the GSA requirements, but has its own [Building Design Standards](#). Based on several word searches of the 2014 edition, it isn't clear that local building permits must be obtained. But it does lay to rest the question about compliance: "A/E design solutions are required to be compliant with the more stringent applicable requirements of current national, state and local building codes and standards ... the IBC shall be deemed as the model building code for the USPS. Where state or local governments have amended the IBC, the current version of state and local amendments shall apply to USPS projects within that jurisdiction." Again, the emphasis added is mine.

Perhaps less encouraging, the USPS Building Design Standards require surveyors to "state whether all or any part of the site lies within a known floodplain or floodway fringe," but nowhere else is the word "flood" used and EO 11988 isn't referenced, either.

Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcomed!

Job Corner

Visit [ASFPM Job Corner](#) for up-to-date job listings. Have a job opening you'd like to post? It's free!



ASFPM subcommittee needs your help gathering examples of state and local efforts to regulate/map/manage riverine erosion hazards

In the last *News & Views*, we made an announcement about a subcommittee formed to write a discussion paper regarding flood-related riverine erosion hazards. Currently, a lead writing team has been formed to update the 2010 Arid Regions Committee Discussion Paper about riverine erosion hazards. The group wants to be sure that information on any and all local, state or academic efforts to map, plan for, or regulate riverine erosion hazards is included. If there is a state, local or academic effort you are aware of, please share it with the group! We plan to include a link and contact person for each program/effort, so if there are any that you know of, please contact Rebecca Pfeiffer, co-chair of the Natural and Beneficial Floodplain Functions Committee, at rebecca.pfeiffer@state.vt.us.