§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) Purpose. (1) The purpose of this section is to expand upon the directives set out in § 9.6, of this part, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see § 9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) Analysis of practicable alternatives. The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) No action. The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);
(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.); (3) Economic aspects (costs of space, construction, services, and relocation); and (4) Legal constraints (deeds, leases, etc.).

(d) Action following the analysis of practicable alternatives. (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) Reevaluation of alternatives. Upon determination of the impact of the proposed action to or within the floodplain or wetland, and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§9.11), FEMA shall:

(1) Determine whether:
   (i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;
   (ii) The floodplain or wetland site is the only practicable alternative;
   (iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and
   (iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirements of E.O. 11990 to:
   (i) Avoid the destruction or modification of the wetlands;
   (ii) Avoid direct or indirect support of new construction in wetlands;
   (iii) Minimize the destruction, loss or degradation of wetlands; and
   (iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section, the great weight intended by the Orders.

(5) Choose the “no action” alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e)(2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the “no action” alternative shall be selected.

(6) In any case in which the Regional Director has selected the “no action” option, FIA may not provide a new or renewed contract of flood insurance for that structure.

Effective Date Note: At 45 FR 79070, Nov. 28, 1980, §9.9(e)(6) was temporarily suspended until further notice.

§9.10 Identify impacts of proposed actions.

(a) Purpose. The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands.