



Department of Homeland Security Office of Inspector General

FEMA Policy Relating to Coastal Velocity Zones





Homeland
Security

May 27, 2009

MEMORANDUM FOR: The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency

FROM: *Richard L. Skinner*
Richard L. Skinner
Inspector General

SUBJECT: *FEMA Policy Relating to Coastal Velocity Zones*
(OIG-09-71)

We reviewed FEMA's policy for public assistance and hazard mitigation projects located in Coastal Velocity Zones (V Zones).¹ Ambiguities in the policy led FEMA staff to approve and obligate funds for ineligible projects.² We are recommending that FEMA: (1) clarify its policy regarding federal assistance for recovery projects located in V Zones; (2) harmonize its V Zones policy with that of other federal departments and agencies charged with implementing Executive Order 11988; and, (3) update its floodplain management training accordingly.

Policy

The Code of Federal Regulations (44 CFR Part 9) establishes FEMA policy, procedures, and floodplain management responsibilities in implementing Executive Order 11988,³ *Floodplain Management*. It describes an 8-step decision making process that FEMA staff followed to approve and obligate funding for 34 public assistance projects located in V Zones in Louisiana between March 2006 through August 2008. During this period, FEMA staff also approved two Hazard Mitigation Grant Program projects involving

¹ V Zones are an area of special flood hazard identified on Flood Insurance Rate Maps extending from offshore to the inland limit of primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

² We did not analyze FEMA's legal conclusions.

³ Executive Order 11988 was signed by the President on May 24, 1977. The Executive Order requires that each federal agency provide leadership and 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.

1,273 residential properties, of which 198 have been funded, that are located in V Zones in Louisiana. FEMA staff told us they followed the 8-step process to determine project eligibility based upon training and guidance, and it was not until the later part of calendar year 2008 that they realized FEMA regulations (44 CFR §9.11 (d)(1)) prevent them from approving new construction, including any temporary facilities or replacement projects, in V Zones.⁴ They also told us they believe they have identified all the properties that are impacted by the V Zones issue in Louisiana. However, this issue may also exist in Texas and Mississippi, as well as other states with V Zones.

FEMA issued a memorandum to Gulf Coast Transitional Recovery Office Directors on December 18, 2006, that discussed Executive Order 11988. It underscored that all FEMA programs, including mitigation programs, are responsible for implementing the requirements of 44 CFR Part 9. It also recognized “that implementing this requirement can sometimes be a challenge, and the value of the decision-making process and these requirements may not be fully understood.” There is no mention, however, of V Zones or prohibitions on public assistance or mitigation projects located in coastal high hazards areas. The memorandum employed the use of FEMA’s decision-making process to minimize the impacts of floods and to create safer communities:

“While [Executive Order] 11988 is fundamental to FEMA’s mission to reduce the risk of flood loss and minimize the impacts of floods on human health, safety, and welfare, it requires all Federal agencies to lead by example and take action to attain these standards and restore and preserve natural and beneficial functions inherent in floodplains. The overall strategy calls for avoiding actions in or adversely affecting floodplains unless there is not practicable alternative. It is not the intent of the Order to prohibit all Federal actions in the floodplain, but rather create a consistent policy against such development without evaluation and justification. 44 CFR 9 contains FEMA’s decision-making process for achieving the objectives of the Order.”

FEMA headquarters issued another memorandum to Gulf Coast Transitional Recovery Office Directors on June 5, 2007, about complying with floodplain management in coastal high hazard areas on the Gulf Coast. This memorandum underscored that FEMA is not permitted to fund new construction of facilities or structures, other than those that are functionally dependent or facilitate open space use (44 CFR 9.4 and 44 CFR 59.1), in a coastal high hazard area. However, the decisions to approve and obligate funding for 26 of the 34 public assistance projects located in V Zones within the State of Louisiana, based upon the 8-step process, were made prior to the issuance of this memorandum.

⁴ Although the placement of temporary and permanent new structures in V Zones is ineligible for FEMA funding, FEMA can fund the repair of damaged structures that are located in V Zones. In some instances, the costs of repair or replacement facilities that are “functionally dependent” upon their location or in close proximity to water are eligible, 44 CFR §59.1 defines “functionally dependent” use. Bridges, water control facilities, piers, and marinas are examples of facilities that require proximity to water.

The 8-step decision-making process was implemented by the Environmental and Historic Preservation staff assigned to the Louisiana Transitional Recovery Office. FEMA officials told us the staff were generally contractors familiar with floodplain management and the principles and objectives of Executive Order 11988 and the decision-making process described in 44 CFR 9.

Training

A training module was also developed for FEMA program staff that addressed Executive Order 11988 and FEMA's implementation requirements of the Executive Order through 44 CFR 9. The training module did not prohibit public assistance or mitigation projects in V Zones. Instead, it emphasized: "New construction and substantial improvement structures shall be elevated on open works such as on piles, columns, and piers, rather than on fill in all cases in coastal high hazard areas (V Zones) and elsewhere, where practicable." As such, FEMA program staff believed that projects located in V Zones were allowed when: (1) the structure was properly elevated and used specific construction standards to mitigate against flood and wind hazards; (2) the site is the only practicable alternative; and, (3) harm to and within the floodplain is minimized.

Reconstruction Mitigation

In addition to the training module allowing new construction when done properly, the FEMA Mitigation Directorate introduced the Hazard Mitigation Grant Program (HMGP) reconstruction grant pilot program on February 15, 2006. The intent of the program was to incorporate mitigation directly into the reconstruction process and thereby create more disaster resistant communities. According to FEMA guidance for the pilot program, "mitigation reconstruction activities may involve the demolition of the existing structure followed by replacement on site with a hazard resistant (flood, wind and fire) code-compliant structure." FEMA also distributed coastal construction guidance (FEMA 55 Coastal Construction Manual, FEMA 499 Homebuilder's Guide to Coastal Construction) to facilitate implementation of the pilot program activities. FEMA officials told us that this pilot and the subsequent construction manuals reaffirmed their belief that public assistance and mitigation projects in V Zones were allowed. On December 2, 2008, the FEMA Mitigation Directorate determined that the HMGP reconstruction grant pilot program was not consistent with FEMA environmental considerations regarding wetlands and floodplains and could not to be used to fund projects located in coastal high hazard areas or V Zones.

Implementation of Executive Order 11988

It is important to note that other federal departments and agencies have funded new construction in floodplains. For example, the Department of Defense is spending \$287 million to build 1,028 new homes for Kessler Air Force Base personnel in Biloxi, MS on coastal lowlands devastated by Hurricane Katrina. The new homes are being built on 18-foot elevations and with walls designed to withstand 140-mile-per-hour-winds. The U.S. Department of Housing and Urban Development (HUD) made \$100 million in grant

funds available to the Mississippi Development Authority for 24 public housing projects, 13 of which are in floodplain areas. The Mississippi Development Authority followed HUD's 8-step decision making process (24 CFR 55.20) to determine eligibility and requires elevation for all new construction. For the Biloxi East End Homes project, the structures will be built on columns and elevated to 23 feet.⁵

FEMA regulations regarding the implementation of public assistance and mitigation projects located in V Zones is derived from Executive Order 11988, which requires federal agencies and responsible entities to avoid direct or indirect support to floodplain development wherever there is a practicable alternative.⁶ FEMA's policy not to fund new construction in V Zones aligns with this Executive Order and its regulations. However, FEMA continues to approve and fund substantial improvement projects⁷ and provide insurance under the National Flood Insurance Program to properties located in V Zones. Because these policies directly support recovery and community development in V Zones, it is understandable that FEMA staff would be confused about prohibitions on other types of recovery assistance in V Zones.

Recommendations

We recommend that FEMA clarify its policy regarding V Zones by addressing: (1) why repairs and substantial improvements are allowed, but new construction that incorporates mitigation actions are prohibited; and, (2) why FEMA continues to market and sell insurance policies in V Zones thereby encouraging settlement in hazardous areas. Furthermore, we recommend that FEMA (1) harmonize its V Zones policy with that of other federal departments and agencies charged with implementing Executive Order 11988; and, (2) update its floodplain management training accordingly. The removal of ambiguity regarding FEMA's V Zone policy will benefit FEMA staff charged with making decisions about recovery assistance, as well as help disaster victims better understand the basis for those decisions.



We conducted this review to determine how funds for projects located in V Zones were inadvertently approved and obligated. The nature and brevity of this review precluded the use of our normal audit protocols. We appreciate the extensive assistance and full cooperation we received from FEMA staff located at the Transitional Recovery Office in New Orleans, as well as input from FEMA management in Washington, DC.

⁵ U.S. Department of Housing and Urban Development, Office of Inspector General, *Reconstruction of Public Housing Damaged by Hurricane Katrina On the Mississippi Gulf Coast*, September 2008, IED-08-003.

⁶ FEMA officials told us that a federal interagency workgroup, which includes FEMA, has been convened to review the efficacy of Executive Order 11988.

⁷ Substantial improvement (44 CFR 9.4) means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed.

Please advise my office within 30 days of the actions taken or planned to implement our recommendations, including target completion dates for any planned actions. Should you have any questions concerning this report, please call me, or your staff may contact Matt Jadacki, Deputy Inspector General, Office of Emergency Management Oversight, at (202) 254-4100.



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