

granted to a property owner]. It is only where a government unit causes flood damages or increases natural flood damages that liability may arise.”

Listed below are the applicable Local, State or Federal Laws that the proposed project PR 2019-002184 should be assessed by as to whether the provisions are being upheld:

* *National Flood Insurance Act of 1968*, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), states that a proposed project shall “avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” In reality, the proposed indoor storage building will: a) remove the capacity of an estimated 2.37 acres of watershed absorption ability and flood containment from the Oso Grande portion of the floodplain; and, b) transfer property damage risks and adverse impacts onto nearby private property owners.

* *Federal Executive Order 11988* dated May 24, 1977 regarding Floodplain Management, requires executive departments and agencies:

a) “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 or indirect support of floodplain development wherever there is a practicable alternative”.

b) further, the importance of the [proposed construction] location must clearly outweigh the requirements and intent of E.O. 11988, to wit, E.O 11988 Section 6.A. LOCATION IN THE FLOODPLAIN states: “In determining whether the proposed action will be located in the floodplain, the agency must ascertain that the floodplain site is the only practicable alternative.”

Required Encroachment Review and Certification

* All development projects in a ‘regulatory floodway’, [see definition ^{/1} below], must undergo an Encroachment Review and Certification (called a ‘No-Rise Certification), to ensure the project will not increase flooding hazards on other properties. 44 CFR 60.3(d)(3) states that: [in a regulatory floodway, communities must....] “Prohibit encroachments, including fill, new construction, ... and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.” Projects must be reviewed to determine whether they will obstruct flood flows resulting in any increase in flood heights.

^{/1} Per FEMA, a “**Regulatory Floodway**” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. March 18, 2019.

Reference: *National Flood Insurance Program (NFIP) Floodplain Management Requirements*

https://www.fema.gov/media-library-data/1481032638839-48ec3cc10cf62a791ab44ecc0d49006e/FEMA_480_Complete_reduced_v7.pdf