Update of Federal Executive Order on Floodplain Management
—in the Works?

Introduction
Executive Order (EO) 11988—Floodplain Management was signed by President Carter in 1977. Since the floods of 1993 it often has been suggested that the EO needs to be updated to reinforce the importance of floodplain management in federal policy and to make some minor adjustments to reflect contemporary issues that have a bearing on management of flood prone areas. The huge losses from flood disasters in the last 20 years have punctuated the need for federal leadership to reduce the nation’s exposure to preventable flood risk.

During the first half of 2009, it was widely known that the EO was being reviewed for potential update by the White House, as it has been by all administrations since 1994. A very preliminary draft version of a revised EO was circulated among agencies this past summer and, unfortunately, was leaked to the press. This leak fueled unfounded and uninformed speculation that the draft revision constituted a significant and unprecedented departure from EO 11988. Since that time, many professionals, including senior U.S. Army Corps of Engineers staff, academic policy experts, and the Association of State Floodplain Managers all have reported that the unofficial draft update was substantially consistent with EO 11988 and with the supporting guidance that was adopted by each agency after the 1977 EO was issued. In light of the misinformation circulating regarding the EO, this document attempts to correct that misinformation and articulate the need for an updated EO on floodplain management.

What is an Executive Order?
A federal Executive Order is simply direction from the Office of the President to Executive Branch agencies that focuses or otherwise clarifies the directed agencies’ missions with respect to a given topic. Executive Orders are similar to directives one might see from the Office of the Governor, Mayor, Chief Executive Officer, or other executive in any government organization. Executive Orders are usually directed to Executive Branch agencies to help guide the operations of the federal government. When issuing Executive Orders, presidents may cite the specific law under which they have authority to act. Federal Executive Orders tend to be continued from one administration to the next, as has been the case with EO 11988.

Why is an update to the 1977 Executive Order important?
- The need for a revision was first pointed out in the 1994 Interagency Report on the Midwest Flood of 1993, Sharing the Challenge. It identified federal and federally sponsored facilities that sustained flood damage and indicated that these facilities, including critical infrastructure, remained at risk. Further, it identified
the need for assessing the vulnerability of existing federal facilities to reduce the possibility of major losses.

- Flood damage in the United States continues to escalate as evidenced by Hurricanes Katrina, Rita, and Ike, and recent riverine flooding in the Midwest and upper Midwest. The vulnerability of floodplain inhabitants and their property persists, federal taxpayer expenditures for disaster relief and recovery continue to grow, and the natural functions of floodplains continue to deteriorate. Post-flood disaster assessments and concerns about recent development in floodplains have provided evidence of continued federal shortcomings in complying with the EO—that is, federal agencies have been locating or supporting development in floodplains. An updated EO would be based on over 30 years of implementation of the existing EO and would incorporate both lessons learned and best practices.

- An updated EO would clarify many issues that have arisen since 1977, such as the importance of critical facilities to public safety and community resilience, and requiring agencies to be consistent with the requirements of state, tribal, and local laws and ordinances concerning floodplain management and hazard mitigation.

- An updated EO, built upon EO 11988, would reaffirm the federal commitment to floodplain management and raise awareness with federal agencies about the need to reduce flood damage.

Issuing an updated EO would give the President and the Administration an opportunity not only to show federal leadership on floodplain management but also to take a significant step toward reducing potential flood damage, loss of life, and loss of natural floodplain resources and functions. In addition, a new EO would allow the President and the Administration to put emphasis on dealing with this important challenge at a time when escalating flood losses add to the federal deficit. An updated EO can also help prepare the nation to adapt to changing climatic conditions. Finally, through an updated EO, the President could take note of the important environmental benefits that natural floodplains provide and to emphasize the need to avoid using federal taxpayer funds to destroy these valuable resources.

**Rumors Associated with Leaked Executive Order**

During the summer of 2009, various organizations became alarmed by what they incorrectly perceived as a significant expansion of EO 11988. The following list attempts to capture and respond to the more widely circulated misconceptions.

**Myth:** The leaked draft was longer and hence must be a significant expansion in Executive direction.

**Reality:** The draft covered substantive areas addressed in EO 11988 and associated guidance that had been issued as part of its implementation. The most notable and significant changes were to recognize climate change among the many federal considerations when using taxpayer dollars to build or support activities in floodplains, and to require an inventory of federal critical facilities.
Myth: The leaked draft introduced a new topic of critical facilities and tied these to the 500-year floodplain.
Reality: Critical facilities tied to the 500-year flood were part of EO 11988 and its guidance, and pertain to critical facilities funded with federal taxpayer dollars. In federal and state funding for critical facilities, some states have been using the original EO 11988 guidance for years as it applies to critical facilities, in determining what to fund and what safeguards need to be built into the siting, design, and construction of such facilities.

Myth: The leaked draft Executive Order would violate the U.S. Constitution by imposing new requirements on states and local governments.
Reality: As noted above, the draft EO carried forward requirements of EO 11988 and associated guidance issued by federal agencies more than 30 years ago. If a new EO is issued on floodplain management under statutory authority, it will have to be in conformity with enabling statutes. In issuing an EO, the President cannot exceed the powers granted by the Constitution and Congress. Executive orders have no effect as law in the absence of constitutional or congressional authorization.

Myth: The leaked Executive Order was broadened to include waters versus floodplain lands.

Would an updated EO prohibit development in the floodplain? The draft does not prohibit federal investments or activities in floodplains, but it does create a consistent policy for evaluating such development to ensure that the federal government is not contributing to the loss of life and property and to the loss of the natural values that floodplains provide.

Will agencies be required revise or adopt new regulations or procedures to implement the new EO? Agencies likely will issue or amend existing regulations and procedures as needed within one year of the date of the new EO. This is standard procedure.

Next Steps We understand that the administration will work on an updated Executive Order, with the intent of renewing a focus on long-standing federal policy while also introducing timely updates, such as considerations for climate change. Although there is no official comment process or period, we understand that senior staff at the US Army Corps of Engineers and the Federal Emergency Management Agency has been identified to receive informal comments regarding the existing EO 11988 to help inform development of an updated Executive Order. For more information on this topic, please contact Larry Larson, ASFPM, at Larry@floods.org.