FINAL DETERMINATION:
Practicable Alternative Analysis
National Oceanic and Atmospheric Administration
Marine Operations Center-Pacific Lease Award

June 2, 2010

I. SUMMARY

The National Oceanic and Atmospheric Administration (NOAA) conducted an analysis of whether there was a practicable alternative to the Port of Newport, Oregon, for NOAA's lease award for its Marine Operations Center-Pacific (MOC-P). Since the award involved a proposal in a base floodplain, NOAA conducted an analysis pursuant to Executive Order (E.O.) 11988, and in response to a decision by the Government Accountability Office (GAO) concerning a protest against NOAA's lease award to the Port of Newport. NOAA documented the t analysis in its March 22, 2010, *Analysis of a Practicable Alternative to the Port of Newport (Newport, OR) for the National Oceanic and Atmospheric Administration's Marine Operations Center-Pacific Lease Award*, and concluded that there appeared to be no practicable alternative to the Port of Newport lease award. Following consideration of comments received during the public comment period (March 24 – April 23, 2010), on the March 22, 2010, *Analysis of a Practicable Alternative*, NOAA has made a final determination that there was no practicable alternative to the Port of Newport lease award.

II. BACKGROUND

NOAA issued a solicitation for offers (SFO) in November 2008 for a lease acquisition to address the agency's MOC-P requirements. NOAA stated in the SFO that "An award or contract will not be made for a property located within a base flood plain[1] or wetland unless the Government has determined that there is no practicable alternative." In its *Environmental Management: Floodplain Management Desk Guide*, the General Services Administration (GSA) defines "practicable alternatives" as follows:

> "Practicable alternatives" are those that are available to GSA and capable of being implemented within existing constraints such as cost, existing technology, and logistics, considering pertinent natural (topography, habitat, hazards, etc.), social (aesthetics, historic and cultural values, land use patterns, etc.), economic (cost of space, construction, services, relocation, etc.), and legal (deeds, leases, etc.) factors.

The SFO also stated that NOAA would make the award based on a "best value" determination: the offer that represented the best value to the government, based on a consideration of both technical factors and price. Based on the agency's MOC-P requirements, the area of consideration (Section 1.7) identified in the SFO was set forth as follows:

> "Harbors in the greater Puget Sound area, including U.S. waterside properties North to Bellingham, West to Port Angeles, South to the Columbia River, including Astoria, Oregon, along the Oregon coast to Newport, Oregon and Southeast to Portland, Oregon on the Willamette River...."

[1] Various terms are used throughout this document and the March 22, 2010, analysis to refer to areas that are subject to a 1% or greater risk of flooding in any given year. These terms reflect the evolution over time of terminology on this issue. As used herein, "floodplain," "base floodplain," "100-year floodplain," and "Special Flood Hazard Area" all refer to an area subject to a 1% or greater chance of flooding in any given year.

Four offers were submitted in response to the SFO and accepted for review:

- 1801 Fairview Ave East, Inc., Lake Union, Seattle, WA (existing MOC-P site);
- Port of Port Angeles, Port Angeles, WA (Terminal 3);
- Port of Bellingham, Bellingham, WA (Bellingham Shipping Terminal); and
- Port of Newport, Newport, OR (Dock 2).

NOAA's source evaluation board evaluated the four offers on six technical factors, and determined the proposal from the Port of Newport to be the highest technically-rated proposal. NOAA's contracting officer evaluated the price proposals, and determined the price offered by the Port of Newport to be the lowest-priced offer. NOAA awarded the Port of Newport the lease because it submitted the highest technically-rated and lowest-priced offer; and, therefore, represented the best value to the government under the evaluation criteria set forth in the solicitation.

Subsequently, the Port of Bellingham and the owners of 1801 Fairview Avenue protested NOAA's lease award decision to the Government Accountability Office (GAO). On November 19, 2009, GAO dismissed the Fairview protest. On December 2, 2009, GAO sustained the Port of Bellingham protest, stating the following:

> "... the contract award to Newport failed to comply with the solicitation requirements regarding lease of property within a base floodplain. Specifically, the agency should consider, and document, whether there was a practicable alternative to Newport's offer. In the event the agency's analysis identifies a practicable alternative, as contemplated by the solicitation, we recommend that the agency implement such alternative, if otherwise feasible. In the event the agency's analysis concludes there is no practicable alternative, it should comply with the procedural requirements established in EO No. 11988[2], as set out above."

NOAA's contracting officer had determined, during the lease acquisition process, that the Port of Newport's site was not located in a base floodplain, since the proposed deck of the pier (a functional necessity for operation of MOC-P), would be above the base floodplain level defined by the Federal Emergency Management Agency (FEMA) for that community. Therefore, NOAA did not proceed with an E.O. 11988 analysis. GAO rejected NOAA's assessment on this issue and concluded that portions of the Newport piers (the pilings) were in a base floodplain, and that NOAA was required to follow the E.O. 11988 process.

[2] Executive Order 11988 (*Floodplain Management*; May 24, 1977) requires the following:

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires sitting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

III. ANALYSIS OF PRACTICABLE ALTERNATIVE

NOAA conducted an analysis of whether there was a practicable alternative to the Newport lease award in compliance with the requirements under E.O 11988, and to address the recommended actions contained in GAO's decision. NOAA documented this analysis in its March 22, 2010, *Analysis of a Practicable Alternative to the Port of Newport (Newport, OR) for the National Oceanic and Atmospheric Administration's Marine Operations Center-Pacific Lease Award.* Based on its analysis, NOAA determined that there appeared to be no practicable alternative to the Port of Newport offer, in a base floodplain. As required under E.O. 11988, NOAA made available by posting on the Marine Operations Center-Pacific website, on March 23, 2010, the practicable alternative analysis for public review and comment. NOAA also posted a public notice in the *Newport News-Times* (Newport, OR) on March 26 and 30, and April 2, 2010, summarizing the conclusions NOAA had reached, and inviting public comments on the analysis and determination. NOAA also sent a copy of the practicable alternative analysis and public notice to the four offerors. The March 22, 2010, *Analysis of a Practicable Alternative*, was not a final determination. As stated in the March 22, 2010, document:

> *Prior to making a final determination on this matter, NOAA will, as required under E.O. 11988, issue a public notice and provide an opportunity for comment. NOAA will give serious consideration to all comments, and then make a final determination regarding whether there was a practicable alternative to the Port of Newport.*

The analysis documented in the March 22, 2010, report is summarized below.

Determination of No Practicable Alternative. Based on its analysis, NOAA determined that there appeared to be no practicable alternative to the Port of Newport offer for the following reasons:

- The Port of Bellingham (WA) and the Port of Port Angeles (WA) each submitted a proposal in response to NOAA's solicitation for offers that is located in a base floodplain, as determined by the Federal Emergency Management Agency (FEMA), and, therefore, is not a practicable alternative. Bellingham's proposal also significantly exceeded the prospectus threshold[3], and also would have been determined to be a capital lease; two additional factors that preclude the Bellingham proposal being considered a practicable alternative.
- The proposal submitted by Fairview Avenue (WA) was a not practicable alternative because, like Bellingham, the Fairview proposal significantly exceeded the prospectus threshold, and also would have been determined to be a capital lease.

[3] In identifying relevant factors to determine whether an alternative is a "practicable alternative," GSA includes cost, economic and legal factors. Among the limitations GSA operates under is a limit on the maximum value of a lease that may be awarded without triggering the prospectus requirements of 40 U.S.C. §3307. The specific limitation is that no appropriation may be made for lease payments above a set threshold, without obtaining specific authority from GSA's authorizing committees in the House and Senate. The prospectus threshold at the time of the MOC-P lease award was $2.66 million average annual rent for the lease excluding services and utilities.

Assessment of Potential Floodplain Impact at Newport Site. In compliance with the requirements of E.O. 11988 and as outlined in GSA's Floodplain Management Desk Guide, since NOAA concluded that there appeared to be no practicable alternative to the Port of Newport offer, NOAA has

- Assessed the potential impacts of the actions proposed under the Newport lease award on the base floodplain and surrounding area; and
- Taken appropriate steps to ensure that Newport is (a) designing its actions in the base floodplain to reduce the risks of flooding and minimize adverse impacts on the base floodplain, and (b) including all practical flood protection techniques, locating structures that are not dependent on the base floodplain to other locations outside the base floodplain, and elevating structures above the 500-year base flood level (i.e., areas at a 0.2 percent annual chance of flooding) for critical actions in design considerations.

The proposed actions presented in Newport's final revised proposal (June 2009) and in interim design documents (February 2010) consist of: (1) a pile-supported berthing pier to be constructed in Yaquina Bay; and (2) a group of upland facilities, including buildings and site improvements, to be built on shore adjacent to the shoreline. In summary:

- *Berthing and Approach Piers:* Newport's piers will be constructed in Yaquina Bay and would, therefore, be located in the base floodplain. The interim pier design is likely to adequately resist damage from severe coastal flooding. This is achieved by the expected placement of the pier deck above the base flood elevation (the elevation to which floodwater is anticipated to rise during the base flood) and the reduction in the number of piles (by increasing the size of the piles) to reduce the potential for trapping debris under the pier.
- *Upland Facilities.* Based on detailed topographic information for the current site obtained from Newport, on February 9, 2010, the location of the proposed office building at the northeast corner of the site would be in the base floodplain. Newport intends to construct the office building at an elevation at least 1 foot above base flood elevation using methods that comply with the standards of the floodplain management ordinance of the City of Newport to minimize the risk of flood damage. With respect to the hazardous materials building, according to a site plan for the upland facilities, the building will be located outside of the 0.2-percent annual chance floodplain.
- None of the facilities will be constructed on fill placed in bay waters.

IV. PUBLIC NOTICE COMMENTS

NOAA received comments from a total of nineteen (19) commenters on this matter. These comments are addressed below.

- Fourteen (14) of the commenters expressed support for the proposed action, and did not submit any concerns regarding the potential impact of the proposed action associated with the lease award to the Port of Newport. These comments, while considered, did not impact the Final Determination.
- Five (5) of the commenters expressed concerns on a variety of issues. NOAA considered each of the comments, and, for purposes of discussion in this Final Determination, has categorized the issues raised in these comments as follows:

A. MOC-P program of requirements/solicitation and technical evaluation of offers
B. NOAA's use of a broker to assist in the lease acquisition process
C. Comments on NOAA's July 2009 Environmental Assessment regarding issues not relevant to the practicable alternative analysis (such as environmental considerations not related to the floodplain analysis)
D. Cost analysis and recommended cost treatment of the offerors
E. NOAA's appropriate role and mission in conducting the practicable alternative analysis
F. Miscellaneous comments, including post-award design and permitting process
G. Comments determined directly relevant to the practicable alternative analysis and determination

After careful consideration of each comment, NOAA determined that comments in categories "A" through "F" either (a) did not raise concerns or new information that were relevant to the issues that NOAA was required to address in conducting the practicable alternative analysis; and/or (b) were issues that were subject to protest by interested parties at earlier stages of the lease acquisition process (e.g., during the solicitation or technical evaluation of offers). Therefore, after careful consideration of the comments in categories "A" through "F," NOAA determined that the issues raised in these comments did not impact the Final Determination.

NOAA determined comments in Category G were directly relevant to the practicable alternative analysis and determination. These comments are discussed specifically below, and fell into the following general sub-categories:

1. Basis of Determination of No Practicable Alternative
2. Assessment of Risk at Newport Site, and Risk Mitigation Plans
3. Procedural Issues

1. Basis of Determination of No Practicable Alternative

a. Location in a Floodplain. NOAA's solicitation for offers (SFO) stated that "An award of contract will not be made for a property located within a base flood plain or wetland unless the Government has determined that there is no practicable alternative." [Subsection 1.7] The December 2, 2009, GAO decision sustained the award protest on the basis that "the contract award to Newport failed to comply with the solicitation requirements regarding lease of property within a base floodplain," and recommended that NOAA "should consider, and document, whether there was a practicable alternative to Newport's offer." Comments questioned NOAA's determination that other sites located in a base floodplain did not represent a practicable alternative, advancing a distinction based on a belief that the other site(s) had more limited development than Newport. NOAA's SFO and the E.O. 11988 do not draw such a distinction; any property that would have been proposed for lease award based on the technical and price factors stated in the SFO, and that was located in a base floodplain to any extent would have been subject to the requirements of the SFO and E.O. 11988 that NOAA conduct a practicable alternative analysis. Since Newport's proposed site was located (even if partially, as in the case with two of the other three offers) in a base floodplain, NOAA was required to determine if there was a practicable alternative that (a) was not located in

a base floodplain, and (b) otherwise represented a practicable alternative based on considerations in the General Services Administration (GSA) *Environmental Management: Floodplain Management Desk Guide*[4] and the Department of Commerce Environmental Management Manual (2009)[5]. NOAA's March 22, 2010, *Analysis of a Practicable Alternative* complied with these requirements. Therefore, these comments did not impact the Final Determination.

b. Exceeding the Prospectus Level was not a Relevant Consideration. In considering the comments that exceeding the prospectus level was not a valid consideration in excluding an offer from being considered a practicable alternative, NOAA reiterates the basis for determining that offers exceeding the prospectus level could not be considered a practicable alternative. As stated in the March 22, 2010, *Analysis of a Practicable Alternative*:

> "In identifying relevant factors to determine whether an alternative is a "practicable alternative," GSA includes cost, economic and legal factors. Among the limitations GSA operates under is a limit on the maximum value of a lease that may be awarded without triggering the prospectus requirements of 40 U.S.C. §3307. The specific limitation is that no appropriation may be made for lease payments above a set threshold, without obtaining specific authority from GSA's authorizing committees in the House and Senate. The prospectus threshold at the time of the MOC-P lease award was $2.66 million average annual rent for the lease excluding services and utilities…
>
> NOAA requested and received from GSA a delegation (September 5, 2008) to conduct the MOC-P lease acquisition. Since GSA does not delegate authority to award a lease over the prospectus threshold, NOAA does not have authority to award a lease to an offeror whose final revised proposal came in above the prospectus level ($2.66 million). Bellingham's final revised proposal proposed an average annual lease amount significantly above the $2.66 million prospectus level. Therefore, the Bellingham [and Fairview] proposal was not a practicable alternative, because NOAA[6] did not have the legal authority to make an award above the prospectus level." [pp. 12-13]

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[4] "'Practicable alternatives' are those that are available to GSA and capable of being implemented within existing constraints such as cost, existing technology, and logistics, considering pertinent natural (topography, habitat, hazards, etc.), social (aesthetics, historic and cultural values, land use patterns, etc.), economic (cost of space, construction, services, relocation, etc.), and legal (deeds, leases, etc.) factors."

[5] The definition of "practical or practicable" contained in Chapter 4.18(3)(.11) of the Department of Commerce Environmental Management Manual (2009) is captured in the GSA definition: "… constraints imposed by environmental, economic, legal and technological considerations." Moreover, NOAA cites the GSA guidance because the GSA Floodplain Management Desk Guide is geared specifically to Government actions in real property transactions.

[6] As stated in the March 22, 2010, *Analysis of a Practicable Alternative*, for ease of reference throughout the document, when stating that NOAA did not have authority to make a lease award to an offeror whose offer exceeded the prospectus level, we are also stating that GSA did not request specific prospectus authority for the MOC-P lease, and NOAA lacked the authority to award a lease over the prospectus threshold.

Since the Newport offer was below the prospectus level, there was no need for NOAA to approach GSA and seek prospectus authority and funding in order to award the MOC-P lease; and NOAA did not have authority to award a lease above the prospectus level. Therefore, these comments did not impact the Final Determination.

c. Capital Lease was not a Relevant Consideration. In considering the comments that an offer that would have required a capital lease should not have been excluded as a practicable alternative, NOAA reiterates the statement contained in the SFO, that it was "NOAA's intention to make an award based on an operating lease" (see SFO section 1.3). The March 22, 2010, *Analysis of a Practicable Alternative* identifies the criteria set forth in Office of Management and Budget (OMB) Circular A-11, Appendix B (*Budgetary Treatment of Lease-Purchases and Leases of Capital Assets*). No specific data were presented in the comment supporting that the sites were not properly determined to be capital leases under these criteria. Therefore, these comments did not impact the Final Determination.

d. NOAA Should Have Considered Other Federal Sites as Practicable Alternatives. As NOAA stated in the March 22, 2010, *Analysis of a Practicable Alternative*, the GAO decision did not overturn the lease award decision, or require re-evaluation of the offers. In its January 29, 2010, response to GAO, NOAA stated that it would

> "conduct an analysis of the offerors' previously submitted final revised proposals to determine if there is a practicable alternative that does not involve development in a base floodplain, and otherwise presents a feasible selection award under the solicitation for offers. In making this determination, NOAA will consider the final revised proposals submitted in response to the SFO."

NOAA's decision to limit its practicable alternative analysis to the four offerors that responded to the MOC-P SFO was consistent with the GAO decision and recommended corrective actions; basing the March 22, 2010, *Analysis of a Practicable Alternative* on these four offerors was consistent with NOAA's response to GAO.

NOAA considered existing space in the Federally-owned inventory in Washington and Oregon prior to proceeding with the lease acquisition solution in 2008. The basic Federal real estate acquisition policy is stated in GSA regulations at 41 CFR §102-73-10:

> "When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner."

GSA policies are mirrored in the Department of Commerce Real Property Manual (2003). Chapter 5.4.1(c) and (d) of the Manual provide for the acquisition of real property by lease when every reasonable effort to utilize Government-controlled space that meets or can be economically altered to meet the requirements has been satisfied, and when there is no such property available that can meet the space requirements.

To carry out these mandates, the NOAA-sponsored market analysis conducted in 2007-2008 for the replacement to the current MOC-P lease examined the Federal Center South (Seattle, WA; GSA), Tongue Point (Astoria, OR; Department of Labor/Coast Guard), and NOAA's Western Regional Center (located on Lake Washington, Seattle, WA; NOAA) locations.

NOAA also directly contacted GSA in April 2008 regarding available space in the delineated area in Washington and Oregon. In its May 7, 2008, letter to NOAA, GSA stated that the Federal Center South facility was the only GSA property in the delineated area with potential for satisfying NOAA's requirements. In identifying that there were no other Government-owned properties available, GSA also noted that funding at the Federal Center South facility would be required, but stated that "funding for capital improvements is problematic as is your desired schedule for occupancy by July 1, 2011."

The Federal Center South facility is located on the Duwamish Waterway, which is designated as a Superfund site, and would have required dredging and pier construction that were considered to pose significant schedule and cost risks, because of the permitting, contaminant disposal, and mitigation actions likely to be necessary; maintenance dredging would also have been required every 2-5 years. In addition, NOAA determined that constructing new piers on the Duwamish Waterway that would meet NOAA's requirements was problematic because of property line limits, proximity to the shipping channel, and the impact of a directly-adjacent tribal fishery. Based on the concerns noted in GSA's May 7, 2008, letter, and the concerns identified above, NOAA determined that the Federal Center South site was not viable, and that GSA could not identify any other Government-owned facilities available to meet NOAA's needs.

With respect to NOAA's Western Regional Center (WRC), NOAA had several considerations that led it to conclude in the 2007-2008 timeframe that the WRC was not a viable MOC-P solution. First, at the time NOAA was planning (1970s) the scope of operations to be supported at the to-be-constructed WRC, NOAA had considered homeporting its vessels on a permanent basis at the WRC site. NOAA's plans were met with substantial opposition because of perceived potential adverse impacts to the environment and Lake Washington, and arguments that the intended use of the site for ship operations was inconsistent with the primary use of Lake Washington: recreational use by local residents. Following litigation against this proposed action, NOAA withdrew its plan to homeport the vessels at the WRC, and dropped these operations from the scope of the planned WRC facility.

The current WRC campus is fully-utilized and does not provide suitable space to accommodate additional staff and operations associated with MOC-P. NOAA would have been required to secure capital investment funding to develop the new buildings and facilities – including construction of new pier facilities – required to support both the vessel homeporting and shore-side operations. Since NOAA does not have a capital investment fund for modernization or consolidation of its facilities, NOAA would have been required to seek and obtain new funding for such new development and consolidation. The typical project development life-cycle for a Government-owned

solution normally requires 6-10 years, given requirements for obtaining funding (for the National Environmental Policy Act analyses, design and construction), completing all required analyses, and completing the actual development work. In 2007-2008, NOAA would not have had sufficient time to conduct the required analyses, secure the requisite capital investment funding, and complete design and construction of the new facilities by July 1, 2011. Based on all the considerations discussed above, NOAA determined that the Western Regional Center was not a viable solution to support a centralized MOC-P solution.

In summary, as demonstrated above, NOAA complied with the regulatory requirements at 41 CFR §102-73-10 that NOAA "should first seek space in Government-owned and Government-leased buildings." No space was available in existing Government-owned/Government-leased buildings, including NOAA's Western Regional Center (WRC) facility at Sand Point. Since there was no space in Government-owned or Government-leased buildings available to meet NOAA's MOC-P requirements, and given the capital investment and schedule considerations associated with NOAA's Western Regional Center, NOAA determined that pursuing a competitive lease acquisition was the most viable strategy for NOAA to meet its MOC-P requirements. Therefore, these comments did not impact the Final Determination.

e. Centralized vs. Decentralized MOC-P Solution. In considering comments that NOAA could have continued to conduct its MOC-P operations in the decentralized manner as it had since the 2006 pier fire, NOAA notes that it has been conducting its MOC-P operations under a centralized model for several decades. The fact that NOAA has been forced to conduct its operations in a decentralized, dispersed mode since the 2006 MOC-P pier fire cannot be interpreted as an indication that such a forced, interim solution is acceptable longer-term. The MOC-P requirements presented by senior program officials in NOAA's Office of Marine and Aviation Operations were for facilities that supported NOAA's vessel homeporting and shore-side personnel in a centralized solution. These requirements were reflected in NOAA's solicitation for offers, and were used as the basis for the competitive lease acquisition. A centralized solution continues to be NOAA's preferred business model for conducting its MOC-P vessel and related shore-side support operations, based on consideration of operational efficiencies NOAA has experienced over the last several decades. The operational efficiencies include the ability to coordinate logistics management and deployment of skilled personnel required for all phases of vessel operations and support, as well as minimizing travel time and personnel costs associated with deploying to a decentralized location. Therefore, these comments did not impact the Final Determination.

2. **Assessment of Risk at Newport Site, and Risk Mitigation Plans**

a. Reliance on FEMA's Floodplain Analysis. In considering the comments that NOAA should have questioned the findings and conclusions documented in the Federal Emergency Management Agency's (FEMA) January 22, 2010, memorandum to NOAA regarding the floodplain determination, NOAA notes that FEMA has the primary responsibility among Federal agencies for the analysis of flood hazards, publication of

flood hazard data, and coordination of floodplain management on a nationwide basis under the National Flood Insurance Program. FEMA's preparation of Flood Insurance Studies (FIS) and Flood Insurance Rate Maps (FIRM) is governed by detailed Federal regulations, and FEMA has developed rigorous standards, as described in its *Guidelines and Specifications for Flood Hazard Mapping Partners*, for the preparation of floodplain analyses and the mapping of flood hazard data. When preparing or revising an FIS and FIRM, FEMA provides communities with the opportunity to identify needs for updated flood hazard information and often collaborates with Federal agencies and other entities to ensure that the best available data is used. By regulation, FEMA also provides communities and property owners with the opportunity to appeal new base flood elevations shown on the FIRM based on better analyses or other technical data. Once a FIRM has been finalized and becomes effective, FEMA provides communities with the opportunity to request revisions if more detailed technical data or physical modifications to the floodplain would cause changes to the flood hazard data shown on the FIRM.

Given FEMA's role as the national provider of flood hazard data and the rigorous process FEMA uses to prepare FISs and FIRMs, NOAA regards FEMA's data as the best available information regarding flood hazards at the sites evaluated for MOC-P. NOAA is not aware of any data that would cause it to question FEMA's analysis. Additionally, FEMA recently completed a four-year process to update the FIRM for Lincoln County, and the flood hazard data for the Newport area, including data for Yaquina Bay. After review and input from local, state and Federal organizations to the FEMA Consultation Coordination Officer on March 31, 2009, the FIS was not revised due to any potential inadequacies. Therefore, these comments did not impact the Final Determination.

b. Potential Risk at Site: Tsunami Event at the Newport Site. In considering comments that the Port of Newport site is at risk of flooding due to a tsunami event, NOAA notes that the effect of a tsunami in establishing the base floodplain elevation at Yaquina Bay in Newport, Oregon, was evaluated in the Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) for Lincoln County, Oregon and Incorporated Areas (dated December 18, 2009). When FEMA established the base floodplain for this area, FEMA's study noted that the dominant influence was determined to not be from a tsunami event. In relevant part, the FIS concludes that "[f]lood damage in tidal and coastal areas is caused by high stillwater levels and wave action." [p. 14] The FIS found that of all the contributing forces, the "effects of wave runup during a coastal storm are more severe than that of a river flood so the flood-hazard data shown on the FIRM [Flood Insurance Rate Map] along the shoreline is a result of a coastal storm." Specifically, the FIS also states that the "effects of tsunamis were also analyzed and were determined to be less severe than the maximum wave-runup elevation due to a coastal storm without the tsunami effects." [p. 23] Therefore, these comments did not impact the Final Determination.

c. Wave Action at the Newport Site. In considering comments that the FEMA analysis did not take into consideration the impacts of wave actions at the Port of Newport site, as noted above, FEMA recently completed a four-year process to update the FIRM for Lincoln County, and the flood hazard data for the Newport area, including data for

Yaquina Bay. After review and input from local, state and Federal organizations to the FEMA Consultation Coordination Officer on March 31, 2009, the FIS was not revised due to any potential inadequacies. Consequently, NOAA has no reason not to accept FEMA's December 2009 analysis (contained in the December 18, 2009 FIS noted above) on the existence and severity of flood hazards for Newport and the Yaquina Bay area. These comments make specific reference to "additive" effects of waves; NOAA assumes that the comments regarding FEMA guidance stipulating the "additive" effects of waves refers to FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners.* While this document describes procedures for combining tidal, storm surge, and wave effects to determine base flood elevations, it does not imply that wave height should be added to the river flood elevation to determine the base flood elevation. The document stipulates that an analysis should be conducted to determine the combined probability of coastal and riverine flooding that would yield a 1-percent annual chance flood event. FEMA's December 2009 FIS specifically states that "[t]hree estuaries were studied to determine the combined effect of ocean storms and river flow on flood hazards. These were Siletz Bay, Yaquina Bay, and Alsea Bay." Therefore, FEMA's December 2009 FIS has considered any "additive" effect of ocean storms and river flow on flood hazards at the Newport site. Therefore, these comments did not impact the Final Determination.

d. Impact of Flooding Due to Presence of NOAA Vessels. In considering the comments that NOAA did not adequately take into consideration the impact of flooding due to the presence of NOAA's vessels (i.e., what would happen during a flood when a ship cannot get underway), NOAA notes that the evaluation of impact from flooding considered effects to pier structures and floodplain values, including when vessels are berthed at the pier during a severe flood event as contemplated under a 1-percent chance flood. Inside Yaquina Bay, the fetch associated with wave generation is limited, so that the dynamic forces on the pier structure and berthed steel-hulled vessels due to wind-wave action would not have a substantial effect. Pier fendering systems have been designed to sustain these loads. Floating debris was also considered and forces from those objects do not pose a threat to either the types of vessels moored at this facility or to the interim pier design description evaluated as of February 2010. The analysis conducted and reflected in the March 22, 2010, *Analysis of a Practicable Alternative*, indicates that moored vessels and the proposed pier would endure a severe flooding event without threat to life or property. Therefore, these comments did not impact the Final Determination.

e. Assessment of Impact of Development in a Base Floodplain at Newport. In considering comments that suggest that NOAA did not adequately consider the potential of future development at the Port of Newport site, NOAA notes that under each of the three offers involving sites determined by FEMA to be in a base floodplain, additional development in the base floodplain is proposed in response to the NOAA solicitation. In the March 22, 2010, *Analysis of a Practicable Alternative*, NOAA discussed the planned actions at the Newport site to minimize or avoid adverse impact of the proposed development. NOAA determined that the actions already taken or planned by Newport "reduce the risks of flooding and minimize adverse impacts on the base floodplain" and include "all practical flood protection techniques, locating structures that are not dependent on the base floodplain to other locations outside the base floodplain, and elevating structures above

the 500-year base flood level (i.e., areas at a 0.2 percent annual chance of flooding) for critical actions in design considerations."

NOAA believes that comments suggesting that the MOC-P lease award at Newport would directly stimulate additional development in the flood plain at Newport are speculative at best. NOAA does not view the award of the MOC-P lease as directly leading to the development of additional drydocking and major industrial repair facilities at the Port of Newport, since NOAA has not seen such development as a natural follow-on to its homeporting decisions for other vessels. In addition, comments received in support of the Newport award from the nearby Port of Toledo (OR) pointed out the availability at their port of shipyards for repair and maintenance of "the Newport-based Pacific commercial fleet." Any new, future development at the Port of Newport, particularly development that would involve development in the base floodplain, would be subject to specific review and permit approvals to ensure that such proposed actions do not increase the risk of flooding or adverse impacts on the environment. Therefore, these comments did not impact the Final Determination.

f. Assessment of Actions Taken or Planned to Minimize or Mitigate Risk at Newport. A number of comments were received on this issue, including comments regarding the appropriateness of NOAA's assessment of revised design documents submitted by the Port of Newport. In considering these comments, NOAA notes that at the time final revised proposals were submitted by the four offerors, none of them would have had "an approved and permitted design" as recommended in the comments submitted. In the March 22, 2010, *Analysis of a Practicable Alternative*, NOAA documented the assessment it had conducted of the potential impacts of Newport's proposed development in a floodplain, and the measures proposed to avoid or minimize adverse effects, based on both the final revised proposal design submitted by Newport and the interim design description subsequently prepared by Newport as part of the required design development process. As stated above, NOAA determined that the actions already taken or planned by Newport "reduce the risks of flooding and minimize adverse impacts on the base floodplain" and include "all practical flood protection techniques, locating structures that are not dependent on the base floodplain to other locations outside the base floodplain, and elevating structures above the 500-year base flood level (i.e., areas at a 0.2 percent annual chance of flooding) for critical actions in design considerations."

A specific concern was raised about the effectiveness of the storm drainage catch basins [noted on page 18 of the March 22, 2010, *Analysis of a Practicable Alternative*] containing spills that could occur at the Newport site. For reference, the cited section states: "Newport's pier design also includes the incorporation of a drainage system consisting of storm filter catch basins to treat runoff from the pier. The site design includes shut-off valves located downstream of the catch basins to provide the ability to contain any spills that could occur." The base flood elevation (BFE) is 13 feet NAVD88[7]

[7] North American Vertical Datum of 1988 (NAVD88). During the 1970s, the National Geodetic Survey (NGS), and counterpart agencies in Mexico and Canada, decided to adopt a vertical datum based on a surface that would closely approximate the Earth's geoid. The new adjustment, NAVD88, was completed in June 1991 and is now the only official vertical datum in the United States. NAVD88 was created by adding 625,000 kilometers of leveling,

in the vicinity of the project site. The height of the pier deck will be set at a minimum elevation of 16.25 feet NAVD 88. NOAA agrees that the storm filter catch basins to treat runoff from the pier should be located above the BFE for maximum effectiveness, in order to prevent any inadvertent fuel or other releases onto the pier from reaching flood waters during a 1% -chance flood event. Based on design discussions with the Port of Newport, the Port has indicated that it intends to locate these storm filter catch basins and shut-off valves above the BFE. Therefore, these comments did not impact the Final Determination.

3. **Procedural Issues**

a. Failure to Consider Environmental Assessment Published in July 2009. In considering comments that NOAA did not appropriately consider the July 2009 Environmental Assessment, NOAA notes that in conducting the March 22, 2010, *Analysis of a Practicable Alternative*, NOAA was responsible for ensuring its analysis reflected the most accurate and current information available, including the potential impact of development at the Port of Newport site. In addition, NOAA was responsible for ensuring that the actions taken or planned to be taken by the Port of Newport were adequate to minimize or mitigate potential damage from flooding. The final determination in the "Finding of No Significant Impact (FONSI)" (July 2009) stated that:

> *No significant unavoidable adverse impacts to any resource area were identified. It is expected that the lessor will mitigate potential effects by following the usual permitting and regulatory requirements and compliance with the requirements of the SFO. There are no recommended measures for the following environmental resources: land use, air quality, recreational resources, noise, transportation, utilities and solid waste, visual and aesthetic resources, and socio-economics.* [Pg. 4]

In conducting the technical analysis of the risks of development in the floodplain at the Newport site, and the actions taken or planned to be taken by the Port of Newport to minimize or mitigate the damage of potential flooding, NOAA contracted with the same organization that prepared the environmental assessment to update its findings (that had been based on the initial proposals) to reflect the final proposals and additional design decisions. Therefore, these comments did not impact the Final Determination.

b. Use of GSA Floodplain Manual vs. DOC Environmental Manual. In considering comments challenging NOAA's references to the General Services Administration (GSA) Floodplain Management Desk Guide, rather than relying solely on the Department of Commerce Environmental Management Manual, NOAA reiterates statements made in the March 22, 2010, *Analysis of a Practicable Alternative*,

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performed since the National Geodetic Vertical Datum of 1929 (NGVD29) was established, and performing a major least squares adjustment that constrained only a single tide station at zero elevation. The height of the primary tidal bench mark at Father Point/Rimouski in Quebec, Canada, was held fixed as the constraint, enabling NAVD88 and the International Great Lakes Datum of 1985 (IGLD85) to be one and the same.

> *The definition of "practical or practicable" contained in Chapter 4.18(3)(.11) of the Department of Commerce Environmental Management Manual (2009) is captured in the GSA definition: "... constraints imposed by environmental, economic, legal and technological considerations." Moreover, NOAA cites the GSA guidance because the GSA Floodplain Management Desk Guide is geared specifically to Government actions in real property transactions.* [See pg. 9, Note #8.]

and

> *The Department of Commerce Environmental Management Manual provides that the practicable alternative analysis cannot reject an alternative as practicable "solely on the basis of a reasonable increase in cost." Given the base floodplain status of the Bellingham proposal, and the legal authority and scoring issues that constrain both the Bellingham and Fairview Avenue proposals, NOAA is not rejecting those proposals solely on the basis of a reasonable increase in cost.* [See pg. 15, Note #16; emphasis added.]

Therefore, these comments did not impact the Final Determination.

V. DETERMINATION OF PRACTICABLE ALTERNATIVE

Since NOAA determined under the criteria set forth in the solicitation that the Port of Newport's offer was the highest technically-rated and lowest-priced offer and, therefore, represented the best value to the government, other offers also determined to be in a base floodplain would not represent a practicable alternative, since they would similarly involve development in a base floodplain, and received lower technical ratings and had higher costs under the evaluation criteria set forth in the solicitation.

NOAA consulted with FEMA to determine which offerors' final revised proposals involved sites in a base floodplain. FEMA's assessment of the final revised proposals submitted by the offerors, as reflected in their January 22, 2010, letter to NOAA, determined that Port Angeles' and Bellingham's proposals are both located within a National Flood Insurance Program Special Flood Hazard Area ("base floodplain") and are, therefore, subject to the E.O. 11988 process. Based on FEMA's determination that the Port Angeles and Bellingham proposals are both located in a base floodplain, NOAA has concluded that the Port Angeles and Bellingham proposals were not practicable alternatives to the Port of Newport's offer.

In addition, Bellingham's proposal suffers from two additional factors that preclude the Bellingham proposal being considered a practicable alternative. The Bellingham final revised proposal reflected a price significantly exceeding the prospectus level. Therefore, the Bellingham proposal was not a practicable alternative, since NOAA lacked authority to make a MOC-P lease award above the prospectus level. In addition, because the Bellingham proposal would have represented a capital lease, NOAA would have been required to have the net present value of all rental payments available for obligation at the time of award. NOAA stated in the SFO that it intended to award an operating lease; this was based on NOAA not having funding

available for obligation to award a 20-year capital lease. Therefore, the Bellingham proposal was also not a practicable alternative because it would have been a capital lease.

The Fairview Avenue final revised proposal, like the Bellingham proposal, reflected a price significantly exceeding the prospectus level. Therefore, the Fairview Avenue proposal was not a practicable alternative, since NOAA lacked authority to make a MOC-P lease award above the prospectus level. In addition, because the Fairview Avenue proposal would have represented a capital lease, NOAA would have been required to have the net present value of all rental payments available for obligation at the time of award. NOAA stated in the SFO that it intended to award an operating lease; this was based on NOAA not having funding available for obligation to award a 20-year capital lease. Therefore, the Fairview Avenue proposal was also not a practicable alternative because it would have been a capital lease.

NOAA considered all comments submitted in response to the public comment period provided by NOAA for review of the March 22, 2010, *Analysis of a Practicable Alternative*. Based on its analysis of these comments, NOAA has not identified new issues regarding the risks of flooding, or additional actions recommended to be taken to minimize or avoid potential adverse impacts of the proposed action.

VI. FINAL DETERMINATION:

NOAA determines, following its conduct, pursuant to E.O. 11988, of a practicable alternative analysis as documented in NOAA's March 22, 2010, *Analysis of a Practicable Alternative to the Port of Newport (Newport, OR) for the National Oceanic and Atmospheric Administration's Marine Operations Center-Pacific Lease Award*; and following consideration of comments received during the public comment period (March 24 – April 23, 2010) that there was no practicable alternative to the Port of Newport lease award for NOAA's Marine Operations Center-Pacific facility. This determination incorporates the analysis documented in the March 22, 2010, *Analysis of a Practicable Alternative*.

William F. Broglie
NOAA Chief Administrative Officer

6/2/2010
DATE