

Severe Storms, Flooding and Landslides DR-4639-HI Federal Emergency Management Agency Environmental Considerations Greensheet



Environmental and Historic Preservation and Disaster Recovery

As with all federal funding, certain environmental and historic preservation requirements must be fulfilled as you repair and rebuild your communities. This brochure is provided to help you better understand environmental factors that you must consider as you apply for FEMA funding.

The information and assistance described here will help avoid any environmental roadblocks or time delays.

The most important message is that we are available to help you with all environmental requirements. Contained here are facts, procedures, and contacts to help you through the process.

You can help by identifying any potential environmental or historic issues, concerns, or problems related to your projects and discussing these with FEMA environmental staff as soon as possible. This will help us address issues and expedite funding.

Our work is performed under the direction of FEMA's Federal Coordinating Officer, Bern Ruiz, and in close coordination with his counterpart, Hawaii State Coordinating Officer, Luke Meyers.

In fact, the Hawaii Emergency Management Agency (HI-EMA) serves as the main point of contact for applicants, oversees grant administration, and is committed to following all environmental and historic preservation requirements in its disaster recovery operations under the Stafford Act.

Cindy Thomack leads FEMA's EHP team for this disaster, assisted by David Herdrich. Please contact either of them, HI-EMA staff, or FEMA Public Assistance staff for any environmental or historic preservation compliance assistance.



Kona Low Flooding. Photo source KITV.

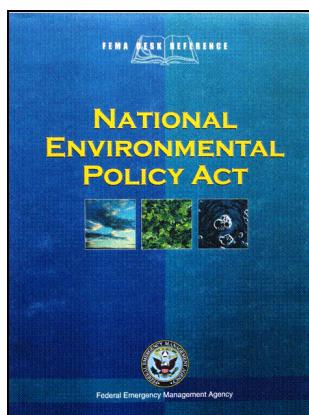
As the Acting Regional Environmental Officer, I pledge to assist you in understanding and complying with all applicable environmental and historic preservation requirements.

Sincerely,

Ken Sessa
Acting Regional Environmental Officer
FEMA Region 9

February 22, 2022

Environmental Laws and Project Requirements



The National Environmental Policy Act (NEPA) is the primary environmental law that directs federal agencies to consider the environmental effects of their actions (including funding).

In addition to NEPA, listed below are the other major environmental and historic preservation laws and executive orders that are triggered when protecting, rebuilding, or replacing public infrastructure. Many activities can proceed without environmental or historic review, others require some consideration for environmental and historic preservation compliance, and some projects need

very detailed reviews, including consultation with State and Federal agencies, before construction begins.

Failure to comply with applicable environmental and historic preservation laws and other requirements could jeopardize or delay potential funding.

Complying with state laws and ordinances and obtaining territorial permits and other approvals are the responsibility of the applicant. In addition, the applicant is responsible for complying with any Federal laws that would be triggered if FEMA-funding was not being requested.

Federal Laws and Executive Orders

- National Historic Preservation Act
- Endangered Species Act
- Clean Water Act
- Magnuson-Stevens Act
- Executive Order 11988: Floodplain Management
- Executive Order 11990: Protection of Wetlands
- Executive Order 12898: Environmental Justice
- Resource Conservation and Recovery Act

Some projects may not need detailed review

- Emergency Protective Measures and Debris Removal
- Repairs to pre-disaster condition or temporary repairs (unless older than 45 yrs)

Some projects require more extensive review

- Debris disposal in areas not previously permitted
- Where the footprint or scope of work is different than pre-disaster conditions
- Repairs that include hazard mitigation
- Involving threatened or endangered species, wetlands or floodplains

Some projects may need review and consultation

- Improved or Alternate projects
- Other projects that involve new ground disturbance

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Waterways, Including Culverts and Bridges

The Clean Water Act (CWA) and the U.S. Rivers and Harbors Act (RHA) apply to actions affecting "waters of the United States." This includes any part of a surface water system: natural waters including oceans, seas, bays, lagoons, streams, lakes, and wetlands; as well as isolated human-made waters. The U.S. Army Corps of Engineers (USACE) and Hawaii Department of Health (DOH) administer the laws in Hawaii.



For projects involving work proposed or completed in a waterway, CWA or RHA permits from the USACE and DOH are required. Repairs to previously permitted structures may require amendments or modifications to existing permits. Examples of actions requiring CWA or RHA permits include construction, demolition, and any dredging or filling in any part of surface waters, tributaries, or systems.

Obtaining CWA and RHA permits is the responsibility of the applicant performing the work and must be done prior to initiating any site activity. Exceptions exist for emergency actions that address immediate threats to life or property, in which case USACE and DOH should have been notified and the contact documented by the applicant.

Floodplains, Wetlands, and the Coastal Zone



Executive Order 11988 requires FEMA to review all projects for the potential to affect or be affected by the floodplain. For projects that take place in or affect a floodplain, FEMA must seek ways to avoid, minimize, or mitigate to the extent practicable the long and short-term impacts associated with occupancy and modification of the floodplain.

Executive Order 11990 requires FEMA to review all projects to evaluate the potential to affect a wetland. The applicant may be required to obtain a permit from USACE and DOH.

Some projects are exempt from floodplain and wetland review, including debris removal and repairs or replacements when the cost is less than \$5,000.

Debris should never be stored in a wetland or a floodplain, even temporarily. Debris removal from a wetland should be coordinated with USACE and DOH.

The "8-Step" process, which evaluates practicable alternatives and includes public review, may be required if the project has the potential to impact a floodplain or modify a wetland. For additional information about work in or affecting a floodplain, contact FEMA and the Hawaii National Flood Insurance Program (NFIP) Coordinator.

Hawaii Coastal Zone Management (CZM) Program. All land in Hawaii is designated a coastal zone. However, FEMA-funded projects are not subject to federal consistency certification and review. If a project requires permitting or other authorization under the Hawaii CZM Program, the applicant is responsible for obtaining any such approval.

Protected Species and Habitats

Under the Endangered Species Act (ESA), for any project that has the potential to affect federally threatened or endangered species or their habitats, FEMA must consult with the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS). Typically this process results in the development of measures to avoid or minimize impacts to such species or habitats.

It is very important to know whether a proposed project might impact protected species or habitat. **Applicants can contact experts at FEMA, USFWS, NMFS, or the Hawaii Division of Forestry and Wildlife (DOFAW) who can help determine if protected species or habitat may be affected by a proposed project.**

FEMA must also comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). MSA protects "essential fish habitat" (EFH) of commercial and recreational coastal fisheries. FEMA must consult with NMFS if a project may adversely affect EFH for any species. **FEMA, NMFS, and DOFAW can assist with identification of and impacts to EFH.**



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Historic Preservation

All proposed projects that may affect historic properties must be reviewed by FEMA and the Hawaii Historic Preservation Officer (SHPO).

A historic property is any prehistoric or historic building, site, district, structure, or object significant in American or Hawaiian history, architecture, archaeology, engineering, or culture.

Any structure (e.g., buildings, walls, bridges, culverts) **45 years old** or older may be eligible for listing on the National Register of Historic Places.

Archaeological resources also require special attention and may require coordination with the Office of Hawaiian Affairs (OHA) and Native Hawaiian Organizations.



Any proposed project that may alter previously undisturbed ground (e.g., new construction, utility relocation, road realignment, borrow pit development, site preparation for debris or equipment staging) must be evaluated for potential effects to historic properties and Native Hawaiian resources before work can begin.

Land that has been plowed or used for agriculture is not considered previously disturbed and must be evaluated.

Different measures can be implemented if historic and Hawaiian resources are affected. It is important to involve FEMA and the SHPO to make these determinations and to decide what measures, if any, are to be taken to avoid or mitigate any potential adverse effects.

Debris Disposal and Hazardous Materials



Management of storm-related debris (removal, staging, storage, sorting, and disposal) must be conducted in accordance with federal and state solid and hazardous waste regulations.

No FEMA or disaster-specific contacts, approvals, or permits are required to transfer solid waste debris to a licensed landfill. **Reopening closed landfills or hardfills, using unlicensed sites, or creating temporary debris staging areas requires FEMA and DOH review.**

Facilities potentially containing asbestos building materials must be tested prior to demolition. Asbestos building materials, if present, must be abated and disposed of in compliance with federal and state requirements.

Further information on FEMA's Public Assistance Program's debris removal policy and guidance can be found at www.fema.gov/public-assistance-policy-and-guidance.

Other Considerations



Hazard mitigation projects reduce the threat of future damage. Retrofitting for wind damage or elevating for flood protection are examples. All hazard mitigation projects will be subject to a thorough review by FEMA as they usually involve ground disturbance or alter a project's footprint.



Any project involving **ground disturbance** outside the previously disturbed footprint (such as facility relocation, material borrowing, utility pole or fence replacement, and access road construction), even if within an existing right-of-way, may require archaeological and biological reviews prior to construction.



Environmental Justice Executive Order 12898 strives to minimize negative health or environmental impacts on minority and low-income populations. Projects are examined to avoid these impacts. FEMA will not exclude any persons and populations from participating in benefits because of race, color, or national origin.

CONTACTS

This brochure presents an overview of many environmental and historic preservation laws that FEMA and applicants must comply with before approving Public Assistance projects. There are, of course, details beyond the scope of this document that may prove useful for you to better understand environmental and historic preservation requirements. You may contact the agencies listed below for more information on these requirements and for guidance on environmental and historic preservation review, permitting, and approval processes. **FEMA staff assigned to this Disaster and the Region 9 Office can assist in answering questions and directing you to the appropriate agencies to ensure that environmental and historic preservation considerations are adequately addressed for FEMA-funded projects.** More information regarding FEMA's EHP program is available at www.fema.gov/environmental-planning-and-historic-preservation-program.

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