NEW YORK DISASTER 4694-DR-NY
FEDERAL EMERGENCY MANAGEMENT AGENCY
ENVIRONMENTAL CONSIDERATIONS GREENSHEET

NEW YORK STATE | Homeland Security and Emergency Services

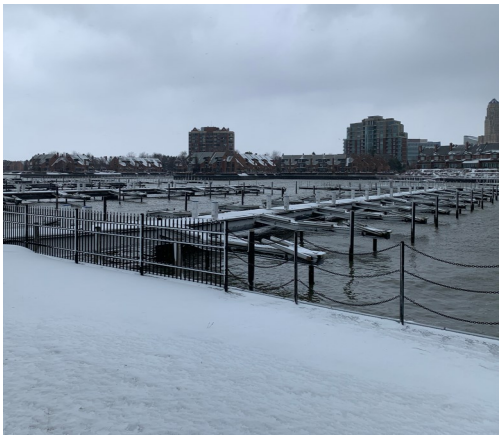
Environmental and Historic Preservation and Disaster Recovery

As you repair and rebuild your storm damaged communities, there may be environmental and historic preservation issues. As with all federal funding, however, certain requirements related to environmental and historic resources must be addressed. The information and assistance described in this document will help you avoid complications and funding delays. The most important message is that FEMA Environmental Planning and Historic Preservation (EHP) staff is committed to helping you identify and meet your environmental compliance responsibilities. This document discusses the environmental compliance process and provides important contacts.

New York State Division of Homeland Security and Emergency Services (DHSES) is the main point of contact for Subrecipients and the public. DHSES oversees grant administration and is committed to following all environmental laws and regulations in its disaster recovery operations under the Stafford Act. For more information regarding DHSES, visit: www.dhses.ny.gov .

Please identify any potential environmental issues and discuss them with the DHSES staff as soon as possible. This will help streamline the environmental review process.

Please contact EHP staff or FEMA Public Assistance for any environmental or historic preservation support.



City of Buffalo Marina - Erie County

Sincerely,

Your DHSES and FEMA Team

Environmental Laws and Project Requirements

The National Environmental Policy Act (NEPA) is a major environmental law that directs federal agencies to consider the environmental effects of their actions. Additional EHP laws, regulations and Executive Orders (EOs) may be triggered by the action depending on the scope of work. NEPA reviews need to be completed before FEMA approves work or obligates funding, and should be performed as part of the planning process on larger projects for best results. State agencies and local government applicants should weigh their projects' environmental, social and economic impacts and complete their SEQR reviews per the requirements of 6 NYCRR Part 617 regulations.

National Historic Preservation Act (NHPA) and Endangered Species Act (ESA) reviews are best incorporated into the NEPA or SEQR process in case any conditions must be incorporated into the project. Other due diligence investigations (e.g., geotechnical investigations, Phase I Environmental Site Assessments, wetland delineations, etc.) do not typically require permits. Permits are often required for site preparation, excavation, demolition, and construction. Applicants should obtain all required permits and approvals prior to initiating the activities they authorize. *Documentation of permits and approvals is required per closeout procedures as part of partial and final reimbursement to the Subrecipient.* Failure to comply with applicable federal, state and local environmental and historic laws could jeopardize or delay potential funding. Please contact your DHSES/FEMA team with questions.

Other Federal Laws

- **Endangered Species Act**
- **National Historic Preservation Act**
- **Coastal Barrier Resource Act**
- **Magnuson-Stevens Fisheries Act**
- **Clean Water Act**
- **Executive Order 11988: Floodplains**
- **Executive Order 11990: Wetlands**
- **Executive Order 12898: Environmental Justice**

EHP Review Requirements

Project types such as emergency protective measures and some debris removal may not require a detailed EHP review.

Here are examples of projects types that may require a detailed EHP review, including consultation:

- **Debris removal in streams or waterways**
- **Debris disposal in areas previously not permitted**
- **Projects that may affect historic properties or endangered species**
- **New construction and changes in facility footprint**
- **Projects located on the beach**
- **Improved or alternate projects**

Debris Management and Hazardous Materials

Disasters may generate a large amount of debris consisting of vegetative, construction & demolition (C & D) building materials, and mixed debris. Management of storm-related debris (removal, staging, storage and disposal) must be conducted in accordance with federal, state, and local solid and hazardous waste regulations. Temporary debris staging locations must be approved by the New York State Department of Environmental Conservation (NYSDEC) prior to storing debris. Transport of debris (except woody debris) must be completed by a properly permitted/licensed hauler. Final disposal of debris (except woody debris) must be at a landfill that has been properly permitted by the NYSDEC.

Vegetative and woody debris should be separated from storm-generated C & D debris. Woody debris should not be transported outside the County of origin unless it is to a permitted landfill, or is chipped to the appropriate size to limit the spread of invasive species. Mixed storm-related C & D debris can be temporarily staged for sorting and separating at a NYSDEC-approved location. Communities considering opening new sites for storage, processing and disposal of storm-related debris are advised to call NYSDEC for guidance and permitting requirements. For a listing of temporary staging areas and permitted landfills visit: www.dec.ny.gov/regulations/8751.html

DEC Solid Waste Management Guidance:

www.dec.ny.gov/chemical/292.html and

www.dec.ny.gov/regulations/8489.html

Woody Debris Removal from Rivers and Streams:

www.dec.ny.gov/lands/92418.hmtl

NYSDEC Invasive Insects:

Regulations: www.dec.ny.gov/animals/99141.html

Emerald Ash Borer: www.dec.ny.gov/animals/7253.html

Asian Long Horned Beetle:

www.dec.ny.gov/animals/7255.html

Oak Wilt: www.dec.ny.gov/lands/46919.html

Historic Preservation and Tribal Nation Relations

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their project activities on historic properties prior to the approval of the expenditure of Federal funds. Historic Properties are defined as any district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP). Various types of cultural resources include, but are not limited to, buildings, parks, bridges, landscapes, shipwrecks, culverts, archaeological sites, canals, artifacts, and/or cultural properties that may have religious or cultural significance to Federally-Recognized Indian Tribes (Tribal Nations). FEMA has executed a Programmatic Agreement (PA) with the State Historic Preservation Officer (SHPO), which streamlines project review and reduces the timeframes needed to review the majority of FEMA's grants. Projects involving properties that are 45 years of age or older may require FEMA consultation with SHPO, as well as Tribal Nations. FEMA must consider project impacts on cultural resources for both historic buildings and structures (above-ground) and archaeology (below-ground). All ground disturbing activities must be reviewed by a FEMA archaeologist and may require FEMA consultation with the SHPO and Tribal Nations. Previously undisturbed soils have a higher potential for containing significant historic and cultural artifacts and work in these areas requires involved consultation. Project information including the age of any existing buildings or structures and the location and description of all ground disturbing activities is required to complete a review of the project. If you must deviate from an already approved scope of work, contact your DHSES/FEMA team to discuss as soon as possible to ensure that reimbursement is not delayed or denied.

Other Considerations

Environmental Justice

Executive Order (EO) 12898 directs each federal agency to avoid disproportional and high adverse human health or environmental effects to low-income and minority populations. Applicants can play a critical role in achieving Environmental Justice by identifying the presence of low-income and minority populations so that disproportionate impacts to human health and environmental hazards can be considered early in the project development stage, and avoided, when possible.

The following types of projects may trigger EO 12898 include, but are not limited to:

- debris staging and disposal
- road repair that requires detours
- temporary or relocation actions
- drainage improvements / actions in floodplains
- disruption or restoration of services.

State, County and Local Permits and Approvals

Obtaining permits and approvals is the responsibility of the Subrecipient. NYSDEC has provided a webpage that addresses permit information and guidance: http://www.dec.ny.gov/63.html. The State's Environmental Quality Review Act requires a review for certain actions, similar to NEPA. Additional information is located at: http://www.dec.ny.gov/permits/357.html.

Stormwater Permits

Stormwater management programs under the Clean Water Act and State authorities require permits to discharge stormwater from both industrial facilities and construction projects that are one acre or greater in size. These permits must be obtained by the Subrecipient. More information can be found at: *www.dec.ny.gov/chemical/8468.html*

Hazard Mitigation

Hazard Mitigation is intended to reduce or eliminate the threat of future damages. All hazard mitigation proposals undergo environmental review because they typically involve new ground disturbance, a change in project footprint, or may affect historic structures. Examples of mitigation projects include: acquiring, elevating or relocating at-risk structures, upsizing culverts, improving erosion control measures, etc. For additional information on this program go to: www.fema.gov/hazard-mitigation-grant-program.

Work Along Coastlines and in Other Waters

Coastal Barriers More than 150 miles of Long Island coastline and 156 miles of Great Lakes coastline fall within the boundaries of Coastal Barrier Resources System (CBRS) Units or "Otherwise Protected Areas (OPAs)", designated under the Coastal Barrier Resources Act (CBRA) and identified on FEMA Flood Insurance Rate Maps (FIRMs): https://msc.fema.gov/portal These lands function as protective buffers to the New York mainland to protect it from storms and serve as important habitat for fish and wildlife. Consultation between FEMA and the U.S. Fish and Wildlife Service (USFWS) is required for any actions proposed in a CBRS Unit or OPA.

Coastal High Hazard Areas (CHHA) Also known as velocity or (V) zones, CHHA are locations where wave heights 3 feet or greater create hazardous conditions due to the power and speed by which waves come ashore during storms. Areas designated as V Zones are mapped on FEMA FIRM: https://msc.fema.gov/portal. All projects must meet the requirements of Executive Order 11988 Floodplain Management and the National Flood Insurance Program (NFIP). Additional review may be required if a project is located in a V Zone.

Coastal Zones Portions of the designated counties are located within Coastal Zones. Projects within the New York Coastal Zone must be consistent with the New York Coastal Zone Management Program and approved by New York Department of State (NYDOS) Division of Coastal Resources. An individual Federal Consistency Determination from NYDOS Coastal Management Program may be required for certain projects. If you have experience coordinating with the NYDOS Coastal Zone Management Program, and would like to pursue a determination of consistency for your project, please submit this determination to FEMA to help reduce review timelines. If you would prefer for FEMA to coordinate consultation on your behalf, please let your state-federal team know and EHP specialists can perform the required consultation for you. *The consistency determination must be obtained prior to the obligation of funding*. Coastal Zone boundaries are located at: http://dos.ny.gov/coastal-consistency-review.

Work in Water For any project involving work in a waterway (proposed or completed), you as the Subrecipient must notify the U.S. Army Corps of Engineers (USACE). You must obtain and comply with required USACE permits and you must provide documentation of coordination efforts. The Clean Water Act (CWA) and the U.S. Rivers and Harbors Act (RHA) apply to actions in and/or adjacent to waters of the U.S., including coastal areas, small streams, lakes and wetlands. Examples of actions requiring permits include construction, demolition, or any dredging or filling, **including culvert repair or replacement**, in any part of surface water, tributaries or systems. Repairs to piers, bridges, causeways, etc. may require a permit or authorization from the U.S. Coast Guard (USCG).

*Obtaining permits is the responsibility of the Subrecipient or person performing the work and must be done **prior** to initiating the permitted activity, with the exception of emergency actions that address immediate threats to life or property, in which case the regulatory agencies should have been notified and documentation of the contact made by the Subrecipient.*

Floodplains

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 near a floodplain, FEMA must seek ways to avoid, minimize or mitigate to the extent possible, long and short term impacts associated with occupancy and modification of a floodplain. Depending on the potential for impacts, an alternative analysis and public notice may be required. *For additional information about working in a floodplain, contact your local floodplain administrator.*

Wetlands

Executive Order 11990 requires FEMA to review proposed projects to evaluate the potential to affect a wetland. You, as the Subrecipient, may be required to obtain a permit from USACE, New York State and/or the local jurisdiction. Depending on the potential for impacts, an alternative analysis and public notice may be required.

Debris should not be stored in a wetland, even temporarily. You must coordinate debris removal from a wetland with the USACE and USFWS prior to initiating work.

Protected Species and Habitats

Piping Plover

(Photo: USFWS Northeast Region)

- **All FEMA-funded activities must comply with both the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).**
- The USFWS and the National Marine Fisheries Service (NMFS) are the two federal agencies with ESA jurisdiction.
- Under ESA, projects must avoid impacts that are likely to adversely affect threatened or endangered ("listed") species. Listed species can be found at: https://ecos.fws.gov/ipac/
- FEMA must consult with NMFS and USFWS before funding any activities that have the potential to affect listed species or their Critical Habitat. MSA protects the "essential fish habitat" of commercial and recreational coastal fisheries. FEMA must consult with NMFS if a project may adversely affect such habitat. ESA and MSA frequently require project conditions (e.g., project or timing restrictions) to minimize potential impacts.

CONTACTS

Some Subrecipients already have well-established relationships with agencies like the DEC, USACE, and SHPO. If you have qualified professionals interested in participating in some part of the EHP process (e.g., performing archeological investigations or preparing NEPA documents that DHSES and FEMA would then review and comment on), please discuss this with your DHSES/FEMA team. Copies of complete consultation packages you have prepared and responses that you have received need to be shared with DHSES and FEMA. If you're unfamiliar with these reviews, or if you're overwhelmed by the disaster and unable to coordinate directly, please let your state-federal team know and FEMA EHP specialists can perform the required consultation for you. You can contact the following agencies for more information and guidance on the laws and requirements for EHP review, permitting and approvals. For more information regarding FEMA's EHP program, see https://www.fema.gov/environmental-and-historic-preservation.

FEMA – Albany JFO
Amelia Leonard
EHP Advisor
amelia.leonard@fema.dhs.gov
(202) 714-8445

NYS DEPT OF ENVIRONMENTAL CONSERVATION (NYSDEC)

http://www.dec.ny.gov/

Contact Information: http://www.dec.ny.gov/about/259.html

NYSDEC Division of Environmental Permits
625 Broadway, Albany, NY 12233-1750
deppermitting@dec.ny.gov
(518) 402-9167

NYSDEC Region 1
(Suffolk County)
dep.r1@dec.ny.gov
(631) 444-0365

NYSDEC Region 6
(St. Lawrence County)
dep.r6@dec.ny.gov
(315) 785-2245

NYSDEC Region 8
(Genesee County)
dep.r8@dec.ny.gov
(585) 226-5400

NYSDEC Region 9
(Erie & Niagara counties)
DEP.R9@dec.ny.gov
(716) 851-7165

State Environmental Quality Review
www.dec.ny.gov/permits/357.html
Division of Environmental Permits
deppermitting@dec.ny.gov
(518) 402-9167

Stormwater Management: State Pollutant Discharge Elimination System (SPDES)
Division of Environmental Permits
https://www.dec.ny.gov/permits/6054.html
(518) 402-9167

Division of Fish and Wildlife

fw.information@dec.ny.gov

(518) 402-8924

Environmental Resource Mapper:
Environmental Resource Mapper (ny.gov)

(518) 402-8848

Environmental Justice
http://www.dec.ny.gov/public/333.html
justice@dec.ny.gov
(518) 402-9498

State Wetlands
http://www.dec.ny.gov/lands/305.html

Floodplain Management
Division of Water
http://www.dec.ny.gov/lands/24267.html
floodplain.floodplain@dec.ny.gov
(518) 402-8185

NYS DEPARTMENT OF STATE
Coastal Zone Management
Division of Coastal Resources: Consistency Review
Coastal Consistency Review | Department of State (ny.gov)
cr@dos.ny.gov
(518) 474-6000

STATE HISTORIC PRESERVATION OFFICE
https://parks.ny.gov/shpo/
femarecovery@parks.ny.gov
(518) 268-2166

FEMA ENVIRONMENTAL JUSTICE
Executive Order 12898: Environmental Justice | FEMA.gov

U.S. FISH & WILDLIFE SERVICE
http://www.fws.gov/northeast/nyfo/
(607) 753-9334
Information for Planning and Consultation (IPaC)
http://www.fws.gov/northeast/nyfo/
https://ecos.fws.gov/ipac/

Coastal Barrier Resource System
http://www.fws.gov/CBRA/

NATIONAL MARINE FISHERIES SERVICE
http://www.fisheries.noaa.gov/
(978) 281– 9300

U.S. ARMY CORPS OF ENGINEERS
Regulatory Branch

New York District
http://www.nan.usace.army.mil/Missions/Regulatory/

NYC Office
Cenan.PublicNotice@usace.army.mil

Nassau, Suffolk, Kings, Bronx, New York, Queens, and Richmond Counties: (917) 790-8511

Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties: (917) 790-8411

Upstate Regulatory Office
Cenan.RFO@usace.army.mil

Albany, Columbia, Delaware, Greene, Montgomery, Otsego, Rensselaer, Schenectady, Schoharie, Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington Counties: (518) 266-6350

Buffalo District
http://www.lrb.usace.army.mil/Missions/Regulatory.aspx

LRB.Regulatory@usace.army.mil

Herkimer, Jefferson, Lewis, Oneida, St. Lawrence, Broome, Cayuga, Chenango, Cortland, Madison, Onondaga, Oswego, Tioga, Tompkins, Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Yates, Allegany, Chautauqua, Cattaraugus, Erie, Niagara, and Wyoming Counties: (716) 879-4330

U.S. COAST GUARD
http://www.uscg.mil/