NEW YORK DISASTER 4723-DR-NY
SEVERE STORMS AND FLOODING
FEDERAL EMERGENCY MANAGEMENT AGENCY

NEW YORK STATE | Homeland Security and Emergency Services

ENVIRONMENTAL AND HISTORIC PRESERVATION CONSIDERATIONS GREENSHEET

Environmental and Historic Preservation (EHP) and Disaster Recovery

As you repair and rebuild your storm damaged communities, there may be Environmental and Historic Preservation concerns that must be addressed as part of the federal funding requirements. The information and assistance described in this document will help you prepare the necessary information to assure your projects are in federal compliance. This will also ensure you avoid complications and funding delays. The FEMA Environmental Planning and Historic Preservation (EHP) team is committed to helping you identify and meet your EHP compliance responsibilities and secure your grant funding. The FEMA EHP team is also here to assist you navigate through all applicable federal compliance laws and Executive Orders.

This document discusses the EHP compliance process and provides important contact information and links to various state and federal agencies.

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: https://www.dhses.ny.gov/

Please identify any potential Environmental and Historic Preservation concerns and discuss them with the DHSES staff as soon as possible. This will help streamline the EHP review process.

Please contact FEMA EHP or Public Assistance for any Environmental or Historic Preservation support.

Sincerely,

Your DHSES and FEMA Team

Environmental Laws and Project Requirements

The National Environmental Policy Act (NEPA) is an overarching environmental law that directs federal agencies to consider the environmental effects of their actions. Additional 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 to ensure compliance. State agencies and local government applicants should weigh their projects' environmental, social, and economic impacts and complete their State Environmental Quality Review Act (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. However, 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.

FEMA EHP Regulations and Directives:
https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws

Other Federal Laws

- **Endangered Species Act**
- **National Historic Preservation Act**
- **Coastal Zone Management 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**

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Debris Management and Hazardous Materials

Storms from DR-4723 generated 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 non-woody debris must be completed by a properly permitted/licensed hauler. Final disposal of non-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 storm debris guidelines visit: https://www.dec.ny.gov/regulations/8751.html

NYSDEC Solid Waste Management Guidance:
https://www.dec.ny.gov/chemical/292.html and
https://www.dec.ny.gov/regulations/8492.html

Woody Debris Removal from Rivers and Streams:
https://www.dec.ny.gov/lands/92418.html

NYSDEC Invasive Species:
Regulations: https://www.dec.ny.gov/animals/99141.html
Emerald Ash Borer: https://www.dec.ny.gov/animals/7253.html
Asian Long Horned Beetle: https://www.dec.ny.gov/animals/7255.html
Oak Wilt: https://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 a project's effects 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 grant projects. 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). Project information, including the age of any existing above-ground resources 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 these changes as soon as possible to ensure that grant funding is not delayed or denied.

Smith Opera House, Ontario Co., NY (1894)
Photo: Wikimedia

Other Considerations

Environmental Justice
Executive Order (EO) 12898 directs federal agencies 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 including, but not limited to: temporary housing; debris staging and disposal; road repair that requires detours; temporary or relocation actions; and drainage improvements / actions in floodplains.

State, County and Local Permits and Approvals
Obtaining permits and approvals is the responsibility of the Subrecipient. For additional information, visit NYSDEC's webpage:: https://www.dec.ny.gov/63.html The State's Environmental Quality Review Act, which is similar to NEPA, requires a review for certain actions. For additional information, visit: https://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. For additional information, visit:
https://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 as they typically involve new ground disturbance, a change in project footprint, or may affect historic resources. Examples of mitigation projects include: acquiring, elevating or relocating at-risk buildings, upsizing culverts, improving erosion control measures, etc. For additional information visit: https://www.fema.gov/grants/mitigation

Work Along Coastlines and in Other Waters

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 Flood Insurance Flood Maps (FIRMs): 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 in a V Zone.

Coastal Zones Portions of the designated counties are located within Coastal Zones. Projects within the New York State Coastal Zone must be consistent with the New York State Coastal Zone Management Program and approved by New York State Department of State (NYSDOS) Division of Coastal Resources. An individual Federal Consistency Determination from NYSDOS Coastal Management Program may be required for certain projects. If you have experience coordinating with the NYSDOS 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 / DHSES to consult 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*. For the Coastal Zone boundaries mapper, visit: https://new-york-opd-geographic-information-gateway-nysdos.hub.arcgis.com/apps/14e0329a1a7b4439bb9a2a46b100468b/explore

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 to your FEMA/ DHSES team. 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 also require a permit or authorization from the U.S. Coast Guard (USCG). Additionally, local and state reviews and permitting may be required for work in water including, but not limited to, your local floodplain administrator, NYSDEC, Local Waterfront Revitalization Program, etc.

*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 its location within a 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 floodplain occupancy and modification. 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. As the Subrecipient, you 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.

Northern Long-Eared Bat
(Photo: NYS Dept. of Env. Conservation)

Protected Species and Habitats

- ***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. For listed species information, visit: 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 NYSDEC, 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 are unable to coordinate directly, please let your state-federal team know and FEMA EHP specialists can support you to complete the required consultation. 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 – New York JFO
James Zwolak
EHP Advisor
james.zwolak@fema.dhs.gov
(646) 832-6255

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC)
https://www.dec.ny.gov/

Contact Information: https://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

Environmental Permits Administered Under the Uniform Procedures Act (UPA)
https://www.dec.ny.gov/permits/6081.html

Regional Permit Administrators

NYSDEC Region 3
(Dutchess, Orange, Putnam, Rockland, and Counties)
(845) 256-3000
dep.r3@dec.ny.gov

NYSDEC Region 5
(Clinton, Essex, Franklin, and Hamilton Counties)
(518) 897-1200
dep.r5@dec.ny.gov

NYSDEC Region 8
(Ontario County)
(585) 226-2466
dep.r8@dec.ny.gov

State Environmental Quality Review
https://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
deppermitting@dec.ny.gov
(518) 402-9167

Division of Fish and Wildlife
https://www.dec.ny.gov/23.html
contact@dec.ny.gov
(518) 402-8013

Environmental Resource Mapper: https://www.dec.ny.gov/animals/38801.html
fw.ecohealth@dec.ny.gov
(518) 402-8848

Environmental Justice
https://www.dec.ny.gov/public/333.html
justice@dec.ny.gov
(518) 402-8556

State Wetlands
https://www.dec.ny.gov/lands/305.html
fw.ecohealth@dec.ny.gov
(518) 402-8848

Wetlands Mapper:
https://gisservices.dec.ny.gov/gis/erm/

Floodplain Management
Division of Water
https://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:
https://dos.ny.gov/coastal-management

Coastal Consistency Review:
https://dos.ny.gov/coastal-consistency-review

STATE HISTORIC PRESERVATION OFFICE
https://parks.ny.gov/shpo/

FEMA ENVIRONMENTAL JUSTICE
https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws/descriptions#12898

U.S. FISH & WILDLIFE SERVICE
Long Island Ecological Services Field Office (Serves Rockland County)
https://www.fws.gov/office/long-island-ecological-services
(631) 286-0485

New York Ecological Services Field Office (all other Counties on DR-4723)
https://www.fws.gov/office/new-york-ecological-services-field
(607) 753-9334

Information for Planning and Consultation (IPaC)
https://ecos.fws.gov/ipac/

Coastal Barrier Resource System
https://www.fws.gov/program/coastal-barrier-resources-act

NATIONAL MARINE FISHERIES SERVICE
https://www.fisheries.noaa.gov/
nmfs.gar.garfo@noaa.gov
(978) 281– 9300

U.S. ARMY CORPS OF ENGINEERS
Regulatory Branch New York District
https://www.nan.usace.army.mil/Missions/Regulatory/
Cenan.PublicNotice@usace.army.mil

Eastern Counties: Clinton, Dutchess, Essex, Franklin, Hamilton, Orange, Putnam, and Rockland:
(917) 790-8411

Western Counties: Ontario:
(716) 879-4330

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