

Introduction

This document provides guidance to Recipients and Subrecipients regarding Environmental Planning and Historic Preservation (EHP) compliance requirements for Federal Emergency Management Agency (FEMA) Public Assistance (PA) grants. EHP is a complicated topic involving many federal and state laws and executive orders along with permit requirements from multiple regulatory agencies. This guide is not comprehensive but provides a basic understanding of the process and offers helpful resources.

EHP Role in a disaster process

FEMA EHP participates in every step of the disaster process from Preliminary Damage Assessments (PDA) to Project Closeout. The role of EHP is to ensure FEMA funded projects are in compliance with all Laws and Executive Orders. EHP operations and responsibilities change throughout the project lifecycle from Preliminary Damage Assessment (PDA) to Project Closeout.

PDA

During the PDA process, EHP either participates in the inspections or reviews the reports provided by Public Assistance. In either case, EHP seeks to identify the largest concerns to staff the disaster with appropriate specialists and prepare technical guidance and other resources.

Phase I – Operational Planning

- Exploratory Call – EHP listens in on most calls for early identification of potential projects that may have EHP considerations to address. EHP does not have a speaking role during these calls unless specifically asked a question from PA or the applicant
- Recovery Scoping Meeting – The EHP goal is to attend 100% of these meetings as they may be the only point of direct outreach to the subrecipients. EHP listens for projects that may have potential environmental or historic preservation concerns and provides guidance to the applicant including Green sheets and other resources. Additionally, EHP identifies potential Site Inspections to attend.

Phase II – Damage Intake and Eligibility Analysis

- Site Inspection (SI) – EHP has a goal of attending 25% of site inspections but will attend as many as time and availability allow. During SIs, EHP looks for specific site conditions including species habitat, historic resources, presence of water, etc. If site conditions warrant, EHP will advise applicants of potential concerns and provide guidance on compliance. Additionally, a report will be written of what is observed and include it in project documentation.

Phase III – Scoping and Costing

During phases II and III, the applicant provides detailed information about the damages and proposed scope of work used by the EHP Specialist to assure compliance is achieved. Some common examples are:

- Locations of project including start and end points as well as any staging areas (latitude/longitude in decimal degrees)
- Detailed descriptions, including:
 - Description of facilities and the damages that occurred.
 - If the proposed work involves repair, demolition, or new construction,
 - If the proposed work will use “in-kind” repairs to return the site to the “pre-disaster” condition, that is, to return it to the exact condition it was before the disaster occurred, or

- If the proposed work will include upgrades, changes, or additions due to mitigation codes and standards, or using an alternate standard method of repair.
- The type and size of equipment and method of repairs
- Size and location of project construction features including:
 - Areas for staging and storage of equipment and materials,
 - All ground disturbance dimensions (length, width, depth),
 - Temporary features such as access points, roads, cofferdams, etc.
 - Location of areas used for disposal of any materials from the site, and
 - Location of borrow areas used to obtain any fill materials.
- Number of trees to be removed including the type, condition, and size (approximate diameter at breast height or dbh), and
- What work has been completed and an estimate of when the remaining work will be started and/or completed.
- General documentation, this includes:
 - Actual or estimated age of all man-made structures including culverts, bridges, abutments, walls, and buildings,
 - Architectural or engineering documents,
 - Any permits such as for the Clean Water Act (CWA) or floodplain management, or coordination with agencies such as US Fish and Wildlife Service (USFWS), US Army Corps of Engineers, State Historic Preservation Office (SHPO), or others,
 - If the project will stay within the pre-disaster footprint or will be expanded,
 - Any documentation related to the historical significance of the property, and
 - Photographs of the project site including the damaged features, the surrounding environs, trees, proximity to streams, surrounding houses/buildings,

Phase IV – Obligation

During this phase, EHP receives the approved scope of work in Grants Manager and the Environmental Management Information System (EMIS) for official EHP review. It is only after a scope has been submitted into Grants Manager and reviewed by Public Assistance for eligibility can EHP start any consultation that may be required with outside agencies. Once all consultations have been completed and any public notice requirements fulfilled, a Record of Environmental Consideration (REC) will be created with details of all compliance reviews and project conditions/requirements.

Post-Award Phase

At final closeout, FEMA EHP will review the final inspection report (FIR) and applicable documents to determine if they address the conditions put on the REC. Documentation of all conditions being met is required for compliance review completion.

Environmental and Historic Preservation Review Process

It is important for Applicants to allow FEMA EHP to fully review the proposed projects prior to starting work. Proceeding without the proper EHP review could render a project non-compliant with a federal or state laws or executive orders and jeopardize federal funding.

NEPA

The [National Environmental Policy Act \(NEPA\)](#) requires federal agencies to assess the environmental impacts of the proposed actions. Under NEPA, FEMA considers all federal laws and executive orders under one review to fully determine the direct, indirect, and cumulative impacts to all resources.

There are several EHP outcomes for projects during the EHP review:

- **Statutory Exclusion (STATEX):** This means the project activity meets a specific exclusion written into the statute making it “statutorily excluded” from NEPA review. Projects that may meet this review exemption are mostly emergency protective measures, debris removal, and projects with exact in-kind repairs. **However, even though the project may be exempt from NEPA review, the Applicant is still required to comply with all Federal and State environmental laws and Executive Orders.**
- **Categorical Exclusion (CATEX):** This means the project activity falls within one of several categories of action listed in the NEPA statute that FEMA and DHS have determined will have no significant impact on the environment. Projects that can typically be categorically excluded or “CATEXed” include those that have minor changes to in kind repairs for codes and standards or mitigation. Each CATEX is specific to types of work, such as new construction on undisturbed ground, but each CATEX has specific parameters such as new construction must be less than .25 acres. For a project to qualify for a CATEX, it must not have any Extraordinary Circumstances which could include issues such as Public Controversy or Adverse Effects to species or Historic Resources. If Extraordinary Circumstances occur or the project cannot meet any CATEX requirement, the project will be elevated to an Environmental Assessment. For a complete list of categorical exclusions, please refer to [FEMA Categorical Exclusions](#).
- **Environmental Assessment (EA):** If the actions of a project cannot be statutorily or categorically excluded, then an EA will be conducted. The purpose of an EA is to evaluate cumulative environmental impacts resulting from the project. During the process, the proposed project will evaluate impacts on environmental resources such as endangered species, historic resources, and floodplains as well as other impacts such as noise, traffic, and sense of community. Part the of evaluation will require comparing the proposed project or “preferred alternative” against other alternatives considered. If a project requires an EA, FEMA EHP will reach out to KYEM and the applicant to inform them of the requirement and have a ‘kick off’ meeting to detail the review process, issues, and timelines. During the EA review process, if no significant environmental impacts are found, then a Finding Of No Significant Impact (FONSI) will be issued and the review concluded. Further information into the EA process can found at: <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/assessments>

Environmental Impact Statement (EIS): If, during the EA review process, a FONSI cannot be written, the project review will be elevated to an EIS. Additional information will be provided on a case-by-case basis when these situations arise.

National Historic Preservation ACT

FEMA must review all projects for compliance with the [National Historic Preservation Act \(NHPA\) Section 106](#) as it applies to all federally funded projects. This act evaluates potential impacts to Historic Resources. These can include permanent changes to any man-made structures (buildings, bridges, walls, sewers, etc.), disturbances to archeological sites, and even visual alterations within sight of historic places.

- To streamline the review process, FEMA, the state office of emergency management, the State Historic Preservation Office ([SHPO](#)) and some Tribal Historic Preservation Office (THPO) have signed a Programmatic Agreement (PA).

- This PA defines “allowances” for specific methods of repair that are agreed to likely have little or no impact on historic resources without need for project-specific consultation. These may include:
 - Emergency Protective Measures to protect life and safety such as sand bagging, pumping, operation of emergency centers, and overtime for first responders,
 - Exact, in kind repairs to pre-existing facilities and structures, and
 - Some mitigation where it does not affect historic structures or undisturbed ground
- Allowances will be approved by FEMA Historic Preservation Specialists who meet the U.S. Secretary of Interior (SOI) standards.
- Emergency work must be reviewed for compliance as well. The Programmatic Agreement contains stipulations that may provide limited exceptions on a case-by-case basis however, formal consultation or site-specific conditions may still be required.
- Projects that have started or completed work will be reviewed on a case by case basis. Should a project require consultation after the fact, Tribes or SHPO may decline to participate which could result in non-compliance and ineligibility for funding. If the outside agencies agree to a consultation, the applicant may be responsible for the costs of mitigation or Treatment Measures required to remediate impacts to historic resources that occurred prior to consultation.
- [THPOs](#) are typically consulted on projects that involve new ground disturbance. This could include expansion of work beyond the original footprint of a structure or the addition of new culverts or other features through mitigation. These Tribes may no longer live in the state but have ancestral ties to the areas of interest that may have or be near sacred sites or structures of historic interest.
- Historic Resources can include buildings, structures, sites, objects, and districts. Historic Resources may not be obvious but the age of the structure, occurrence of ground disturbing activities, and the historic and cultural significance of the project site (regardless of its age) can be factors that will be considered during the NHPA review.

Endangered Species Act

The [Endangered Species Act \(ESA\) Section 7](#) requires all persons, including Federal agencies and Applicants receiving grant funding, to avoid direct and indirect affects to listed [threatened or endangered species and critical habitats](#). For projects determined to have a potential to affect a species, EHP will consult with U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the ESA.

- “Affects” to species can include detrimental or beneficial impacts. *Any* affect, regardless of type or significance, must be consulted on with [USFWS](#).
- Only projects that EHP determines to have No Effect to species can be approved without consultation
- There are no consultation exemptions for Emergency Actions, but there are some allowances.
 - The definition of emergency actions and timeframes will be based on USFWS standards and not by FEMA Public Assistance. This will vary depending on size and impact of an event.
 - Only emergency actions can be consulted on after the fact. Any project started or completed prior to consultation, but not considered an emergency, will likely be considered noncompliant and ineligible for funding.
 - Coordination with USFWS can/should be done by the Applicant prior to FEMA review especially in cases that would be considered an emergency. Documentation concerning such

coordination will not serve as a consultation pursuant to Section 7 but can reduce the likelihood of non-compliance issues during the FEMA review process.

- Projects most common to have impacts to species are
 - Work in water (Culverts, bridges, low water crossings, road shoulder/stream embankment, utility stream crossings)
 - Tree removal
- To assist in identifying any Threatened and Endangered Species or Critical Habitat in a project area, you can go to <https://ecos.fws.gov/ipac/>

Permits and Documentation

Depending on the project, FEMA EHP may require applicants to provide proof that applicable permits have been obtained either during project submission or at closeout. Even if you are sure your project does not need a specific permit, it is better to apply and receive a letter from the regulatory agency saying a permit is not necessary. All permits should be obtained before any work on the project is performed. FEMA is not a regulatory agency and cannot make the decision on whether a permit is needed for your project. It is the responsibility of the applicant to apply for applicable permits, understand permit conditions, and submit the necessary documentation (surveys, studies, assessments, exemptions, etc.) to FEMA EHP for review.

Common Types of Permits

Clean Water Act

US Army Corps of Engineers

The U.S. Army Corps of Engineers' (USACE) regulates discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. A proposed project's impacts to these areas will determine which of the two main types of permits are required: general permits and individual permits.

- General Permit - General permits (such as the "[Nationwide Permits \(NWP\)](#)") are issued for activities that will result in minimal adverse effects to the environment and streamline the authorization.
 - All NWP have conditions that must be adhered to but may not require coordination with USACE.
 - Some NWP have conditions that do require reporting to USACE such as pre-construction notification of intent to begin work.
 - Some NWP have special considerations which may require an Individual Permit be obtained.
- [Individual Permit](#) – Individual permits are utilized for actions that are not addressed by a general permit, do not meet the conditions of a General Permit, or have cumulative impacts and are issued on a project specific basis
- An applicant is responsible to obtain all permits, adhere to all conditions, and complete all reporting. If an applicant believes any project activity is authorized under a General or Nationwide Permit, they must provide a statement in their project submission of which one(s) are applicable and that all conditions have or will be met.

Kentucky Division of Water

The Kentucky Division of Water (KDOW) is responsible for certification of federal license or permits per Section 401 of the CWA. Any project that requires federal permitting pursuant to the Clean Water Act, such as an USACE Nationwide Permit or an Individual Permit, will require state review.

- [General Certification](#) USACE – These are state certifications of most of the USACE Nationwide Permits. There are multiple KDOW General Certifications that directly align with a specific USACE NWP.
 - Not all USACE NWPs have a corresponding KDOW General Certification. Any project that does not have a corresponding KDOW General Certification will require the Applicant to apply for an Individual Certification.
 - All General Certifications have conditions that must be adhered to but do not require reporting to KDOW.
 - Some General Certifications have conditions that do require reporting to KDOW such as pre-construction notification of intent to begin work.
 - Some General Certifications have special considerations which may require an Individual Certification be obtained. [Special Use Waters](#) – Special-use waters are waters listed in Kentucky Administrative Regulations (KAR) that are worthy of additional protection. These special-uses include cold water aquatic habitats, outstanding state resource waters, outstanding national resource waters, exceptional waters, reference reach waters, state wild rivers and federal wild and scenic rivers. If an Applicant's project involves work in these waters, an Individual Certification is required.

EXECUTIVE ORDER 11988: Floodplain Management

This Executive Order directs Federal Agencies to reduce losses to environmental values served by floodplains; avoid actions located in or adversely affecting floodplains unless there is no practicable alternative; take action to mitigate losses if avoidance is not practicable; and establishes a process for flood hazard evaluation based upon the 100-year base flood standard of the National Flood Insurance Program (NFIP).

- [Kentucky Division of Water](#) – The KDOW is authorized through Kentucky Revised Statutes (KRS) 151 to manage development in floodplains. Any type of development in, along, or across a stream requires a floodplain permit from the Division. Typical activities requiring a permit include, but are not limited to, repair or replacement of residential & commercial structures, stream crossings, fill, stream alterations & relocations, excavation, grading, and small stream impoundments.
- National Flood Insurance Program (NFIP) – The [local floodplain administrator](#) may also be required to approve certain work even when KDOW has authorized it. Local Floodplain administrators will be ensuring that any local requirements as well as national NFIP requirements will be met. This could include any floodproofing or elevation of structures and approved staging and disposal of debris.

DEBRIS DISPOSAL AND BURNING

Types of Debris

- **Vegetative Debris**
 - Woody materials such as trees, shrubs, and herbaceous growth from slope failures, ice storms, utility line clearance, road repair and other land surface disturbances.
- **Soil and Rock Debris**
 - Soil, rock, sand, sediment, and gravel from slope failures, road repairs, and other land disturbances or by deposition from flood waters.
- **Demolition Debris**
 - Mixed, non-putrescible solid waste comprised of wood, metal, plastic, brick, concrete, drywall, and other material resulting from the destruction or demolition of structures
- **Other Solid and Hazardous Waste**
 - Debris is often a mixture of regulated solid and hazardous waste (including e-waste, white goods, utility poles, etc.) and unregulated vegetative/soil/rock wastes.
 - Debris must be segregated into applicable waste streams prior to handling and disposal

All debris must be disposed of in a permitted manner per the [Kentucky Division of Waste Management](#). This can include permitting landfills, reuse of vegetative debris for mulching, cut and toss of vegetation, and recycling.

Debris that is to be staged or stored on unhardened surfaces such as school playing fields, community parks, or private property may be subjected to approval and reviews under other laws including NHPA, Floodplains, and ESA

Any applicant that intends to burn debris need to contact the [Kentucky Division of Air Quality](#) and [Kentucky Division of Forestry](#) for any restrictions and permitting requirements for burning and ash disposal.

Debris should not be disposed of in waterways. Minor cleaning of boat ramps and adjacent parking lots may be cleared by washing flood deposited silt, but applicants need to coordinate with the local KDOW office for any restrictions or guidance.