

Introduction to Applicable Environmental Planning and Historic Preservation (EHP) Laws and Executive Orders



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Laws and Executive Orders: The Basis for FEMA's EHP Review

Endangered Species Act

**National Historic
Preservation Act**

**Executive Orders:
Environmental Justice
Floodplains
Wetlands**

NEPA

Clean Air Act

Clean Water Act

**Resource Conservation &
Recovery Act**

**Coastal Barrier
Resources Act
Coastal Zone
Management Act**

National Environmental Policy Act (NEPA)



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NEPA Principles

- NEPA is an umbrella law that serves as the cornerstone of FEMA's environmental review process
 - Applies to actions that have the potential to impact both the natural and man-made human environment
 - Gives the environment equal footing with economic and engineering considerations
 - Requires that the public be informed and interested parties have the opportunity to comment
 - Directs decision-makers to be informed of potential environmental impacts prior to deciding to fund a project
- NEPA is not an environmental “protection” act - it defines the decision making process required for evaluating federal actions



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When Does NEPA Apply?

- All major federal actions affecting the environment are subject to NEPA review. This includes:
 - Federal Funding
 - Federal Permits
 - Federal Facilities, Land & Equipment
 - Federal Agency Rulemaking



FEMA's Environmental Regulations

- 44 CFR 10 provides the framework for FEMA's compliance with NEPA
 - Outlines responsibilities
 - Establishes how to determine the level of NEPA review needed
 - Describes planning procedures
 - Provides guidance for the preparation of NEPA documents
 - Describes pre-implementation procedures



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Levels of NEPA Review & Documentation

- Categorical Exclusion (CE or CATEX)
- Environmental Assessment & Finding of No Significant Impact (EA/FONSI)
- Environmental Impact Statement & Record of Decision (EIS/ROD)



Categorical Exclusion

- A Categorical Exclusion (CATEX or CE) is defined as a category of actions that, based on the agency's past experience, do not individually or cumulatively have a significant effect on the human environment
- 44 CFR §10.8 provides a comprehensive list of FEMA's CEs:
 - Classroom-based training
 - Administrative actions
 - Preparation and distribution of documents
 - Certain kinds of activities at existing facilities
- Even if an action is categorically excluded from further NEPA review, all other EHP laws, Executive Orders, and permitting requirements still apply



Extraordinary Circumstances

- If the nature or location of a proposed action renders it substantially different from a typical action of its category, it cannot be approved as a Categorical Exclusion and requires further review
- Some examples of Extraordinary Circumstances include:
 - Greater scope
 - Public controversy
 - Unproven technology
 - Presence of threatened or endangered species
 - Hazardous/toxic substances
 - Health and safety
 - Legal violation
 - Special status areas
 - Cumulative impact
 - Historic place/landmark
 - Degradation of environmental conditions



Environmental Assessment (EA)

- An EA provides a full description and analysis of the environmental effects of a proposed federal action and its viable alternatives
 - Integrates compliance with other EHP laws and Executive Orders
 - Typically put forth for 30-day public comment
 - May set forth required project conditions or mitigation/treatment measures
- Potential Outcomes:
 - Finding of No Significant Impact (FONSI)
 - Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS)





Environmental Impact Statement (EIS)

- An EIS is similar to an EA in format, but is larger in scale and requires:
 - More rigorous data collection and analysis
 - More formal public involvement
 - A fixed schedule for public review and comment
- An EIS does not prevent actions having significant environmental impacts from being implemented
- Developing an EIS typically takes at least a year and costs over \$250,000
- Once an EIS is completed, the NEPA review process concludes with a Record of Decision





NEPA Review Process



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National Historic Preservation Act (NHPA)



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National Historic Preservation Act

- The NHPA is the primary law governing historic preservation programs across the United States
- Sections 106 and 110 outline the historic preservation requirements that FEMA must adhere to for every program, project, or activity involving federal money
 - Requires FEMA to consider the effects of its actions on historic properties that are listed or eligible for listing on the National Register of Historic Places
- The federal agency conducting the review is responsible for identifying historic properties



Historic Properties

- Historic properties are buildings, sites, structures, objects, districts, or landscapes that are at least 50 years old (with exceptions) and are significant within their historic context
 - Must retain integrity or convey their significance
 - Must be listed on or eligible for listing on the National Register of Historic Places
- Criteria apply to both above and below ground resources



National Register of Historic Places

- The NHPA established an official list of properties important in United States history and culture
 - Significant at local, state, regional and/or national level
 - Contains over 80,000 listings
- Properties are categorized as listed, eligible to be listed, or ineligible



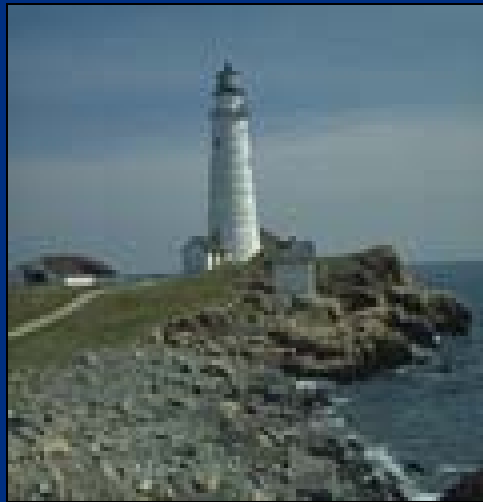
<http://www.nps.gov/nr/>



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National Historic Landmarks

- Approximately 2,400 National Historic Landmarks are listed on the National Register of Historic Places
- These properties possess exceptional value or quality in illustrating and interpreting the heritage of the United States at a national level



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<http://www.nps.gov/history/nhl/>

NHPA Consultation

- Per Section 106 of the NHPA, FEMA must consult both the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Advisory Council on Historic Preservation to conduct an NHPA consultation
- The process cannot be delegated to a grantee or consultant
- Grantees must comply with any conditions placed on project as a result of SHPO/THPO consultation



State/Tribal Historic Preservation Officer

- The State or Tribal Historic Preservation Officer maintains an inventory of historic properties in their respective state or tribal lands and coordinates historic preservation activities supported by federal grant funds
 - Serve as FEMA's primary contact throughout a Section 106 consultation
- Grantees are encouraged to contact SHPO/THPO to obtain information about the presence of historic properties in their project's vicinity
- ~~XXXXXX~~ can be found at the following web address:
<http://www.ncshpo.org/stateinfolist/fulllist.htm>



Advisory Council on Historic Preservation

- The NHPA established the Advisory Council on Historic Preservation as an independent federal agency serving as the major policy advisor to the government in the field of historic preservation
 - Their mission is to promote the preservation, enhancement, and productive use of our nation's historic resources
 - The Council will become involved as a consulting party on large and/or controversial projects



Helpful Information for the NHPA Review

- Age of buildings/structures directly affected
- Method and location of equipment installation
- Age of surrounding buildings/structures
- Site and structure photographs (color, labeled, good quality)
- USGS topographic quadrangle map (1:24,000 scale)
- Description of ground disturbance, if applicable



Biological Related Laws



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The Endangered Species Act (ESA)



ESA Requirements

- The ESA requires FEMA to consider the effects of its actions on threatened or endangered species (TES)
- FEMA cannot fund any action that would jeopardize the continued existence of any threatened or endangered species or result in the adverse modification of the habitat of these species



ESA “Taking”

- Under the ESA, it is unlawful to “take” any endangered species
 - “Taking” is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting a protected species
 - An incidental “take” is a take that is the result of, but not the purpose of, an otherwise lawful activity
- The ESA applies to everyone, regardless of whether federal funds are involved
- Violation of the ESA can result in individual civil and criminal penalties, including imprisonment and fines



ESA Consultation

- Section 7 of the ESA requires FEMA to consult with the appropriate regulating agencies, either the United States Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), on any proposed action that could jeopardize the existence of an endangered or threatened species
 - Consultation with the NMFS occurs only for marine species
 - The FWS conducts consultations for all other species
- The consultation will determine if a species or habitat is affected and what action is required to avoid or mitigate impacts to these species
- Grantees must meet any conditions placed on project as a result of FWS/NMFS consultation



Helpful Information for the ESA Review

- Grantees are encouraged to gather information from a regional FWS office or an appropriate state entity (e.g. Department of Natural Resources)
- Description of project location:
 - Urban/developed
 - Industrial
 - Wilderness/forested
 - Agricultural, etc.
- Site photographs help to provide context and enhance habitat descriptions
- TES lists are often available on the FWS or state DNR websites

<http://www.fws.gov/endangered/>



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Migratory Bird Treaty Act



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MBTA Purpose

- The MBTA protects migratory birds, their nests, eggs, and feathers
- FEMA consults with the FWS on MBTA consultations
 - FWS has developed guidance on the location, design, construction and operation of communications towers, which can be located at the web address below:

<http://www.fws.gov/habitatconservation/communicationtowers.html>



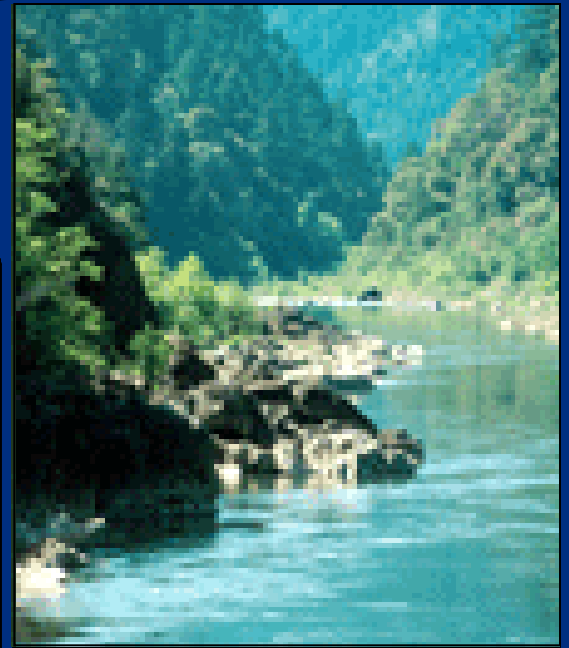
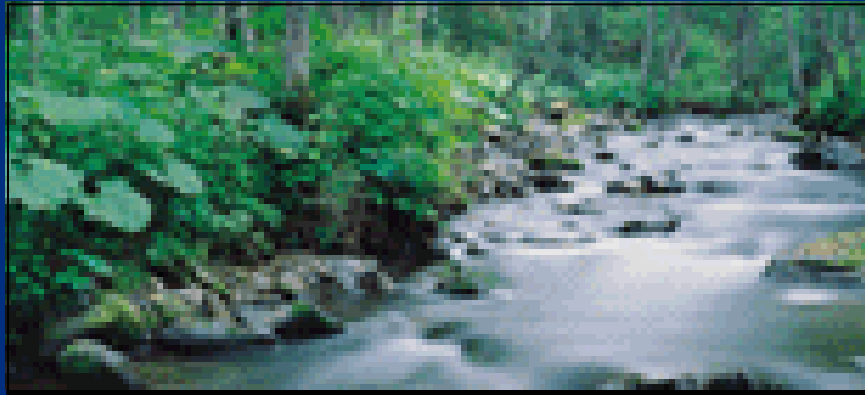
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Helpful Information for the MBTA Review (Tower Projects)

- Height of tower
- Guy wires vs. lattice design
- Description of aviation lighting (if applicable)



Water Related Laws and Executive Orders



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Wetlands and Floodplains

- Wetlands and floodplains play an important role in wildlife habitat, pollution control, and flood control
- FEMA's regulations for Floodplain Management & Protection of Wetlands are found in 44 CFR § 9
- Because of the critical nature of wetlands and floodplains, these resources are granted further protection under two separate Executive Orders (EO)
 - Floodplain Management (EO 11988)
 - Wetland Protection (EO 11990)



Executive Order 11988: Floodplain Management

- EO 11988 requires federal agencies to maintain the natural and beneficial values of floodplains and to avoid, to the extent possible, any actions within or affecting the floodplain
- If there is a reasonable alternative outside the floodplain, FEMA cannot fund the project within the floodplain
- For most projects, the regulations apply to 100-year floodplains; however, for projects that involve critical facilities (e.g. school, hospital), the regulations include 500-year floodplains
- FEMA's Flood Insurance Rate Maps (FIRMs) should be used to determine if a project is located in either a 100-year or 500-year floodplain



Helpful information for the Floodplain review

- Provide flood zone information
- Provide copy of FIRM covering project area

<http://www.fema.gov/business/nfip/mscjumppage.shtm>



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What is a Wetland?

“In the simplest sense wetlands are just places where land and water mingle in novel and intricate ways to create a remarkable diverse assortment of habitat types. Water is the dominant influence in soil structure and the kinds of plants and animals characterizing a wetlands.”

Excerpted from: The Wetlands Resource, United States Environmental Protection Agency, Office of Water, Office of Wetlands Protection, 2-9/89



Key Identifiers of Wetlands

- The 3 key identifiers of wetlands include:
 - Hydrophytic Vegetation
 - Hydric Soils
 - Hydrology



Helpful information for the Wetlands Review

- Provide National Wetlands Inventory Map of project area
<http://www.fws.gov/nwi/>
- Provide site photographs



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Eight-Step Planning Process for Floodplain/Wetland Management

8 > Comply with Executive Orders

7 > Provide Public Explanation

6 > Determine Practicality

5 > Minimize Impacts

4 > Assess Impacts

3 > Evaluate Alternatives

2 > Encourage Public Involvement

1 > Project Location in Floodplain/Wetland



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Clean Water Act



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Goals of the Clean Water Act

- Meet pollution control standards
- States set water quality criteria
- States receive money to reduce water pollution
- Protection of wetlands and aquatic habitat





Waters of the United States

- Rivers and streams
- Lakes and ponds
- Coastlines
- Wetlands
- Estuaries



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Clean Water Act Permits

- Permits regulate the discharge of dredged or fill materials
 - Nationwide Permit
 - Section 404 Permit
 - Section 10 Permit (Rivers and Harbors Act)
 - National Pollutant Discharge Elimination System (NPDES)





CWA/RHA Compliance

- Grantee is responsible for obtaining applicable permit(s) from USACE and state Department of Environmental Quality



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Pollution Management Related Laws



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Applicable Pollution Management Laws

- The Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are the two main statutes governing pollution management
- RCRA & CERCLA apply in the following circumstances:
 - Construction and demolition activities
 - Operation and maintenance activities involving the use, storage, and disposal of hazardous materials
 - Above-ground and underground storage tanks
 - Improper handling, storage, and disposal of hazardous materials
 - An uncontrolled or abandoned site where hazardous waste is

located
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CERCLA & RCRA Compliance

- FEMA may be liable for providing grant funds for a project that causes the release of hazardous pollutants
- If a site may contain hazardous waste or a project may cause the release of hazardous pollutants, the grantee should notify their PA and request guidance
- GPD must coordinate with FEMA's Office of Environmental Planning and Historic Preservation and the Office of Chief Counsel



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Clean Air Act (CAA)



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CAA

- The CAA seeks to protect and improve the nation's air quality
- Requires the Environmental Protection Agency (EPA) to establish primary and secondary National Ambient Air Quality Standards (NAAQS) for seven criteria pollutants considered harmful to the public and the environment
- Makes states responsible for air quality programs and requires states to adopt ambient air quality standards



When Does CAA Apply?

- Demolition of properties containing potentially harmful materials
- Equipment exhaust and fugitive dust from construction activities
- Release of air pollutants during facility operation
- Projects that cause an increase in traffic



Helpful Information for the CAA Review

- Indicate the kinds and number of construction equipment/vehicles that will be used
- Indicate whether the project will affect traffic levels or patterns
- Indicate whether the project is located in NAAQS attainment, maintenance, or non-attainment area
- Identify sensitive receptors in project vicinity, such as schools, nursing homes, and hospitals



Socioeconomic Laws and Executive Orders



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Farmland Protection Policy Act (FPPA)



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Types of Farmland

- Prime farmlands - land that has the best combination of physical and chemical characteristics for producing crops
- Unique farmland - land that is used for the production of high-value crops such as citrus, tree nuts, olives, fruits, etc.
- Farmland of statewide or local importance



FPPA Consultation

- FEMA consults with the Natural Resources Conservation Service (NRCS)



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Helpful information for the FPPA Review

- Total acreage of project area, including access roads, that will have an impact on farmland
- Soil type(s) present in project area
 - NRCS Web Soil Survey Map:
<http://websoilsurvey.nrcs.usda.gov/app/>
- Site photographs



Executive Order 12898 – Environmental Justice

- Mandates that federal agencies identify and address, as appropriate, disproportionately high and adverse human health, environmental, and/or socio-economic effects of their programs, policies, and activities on minority and low-income populations.





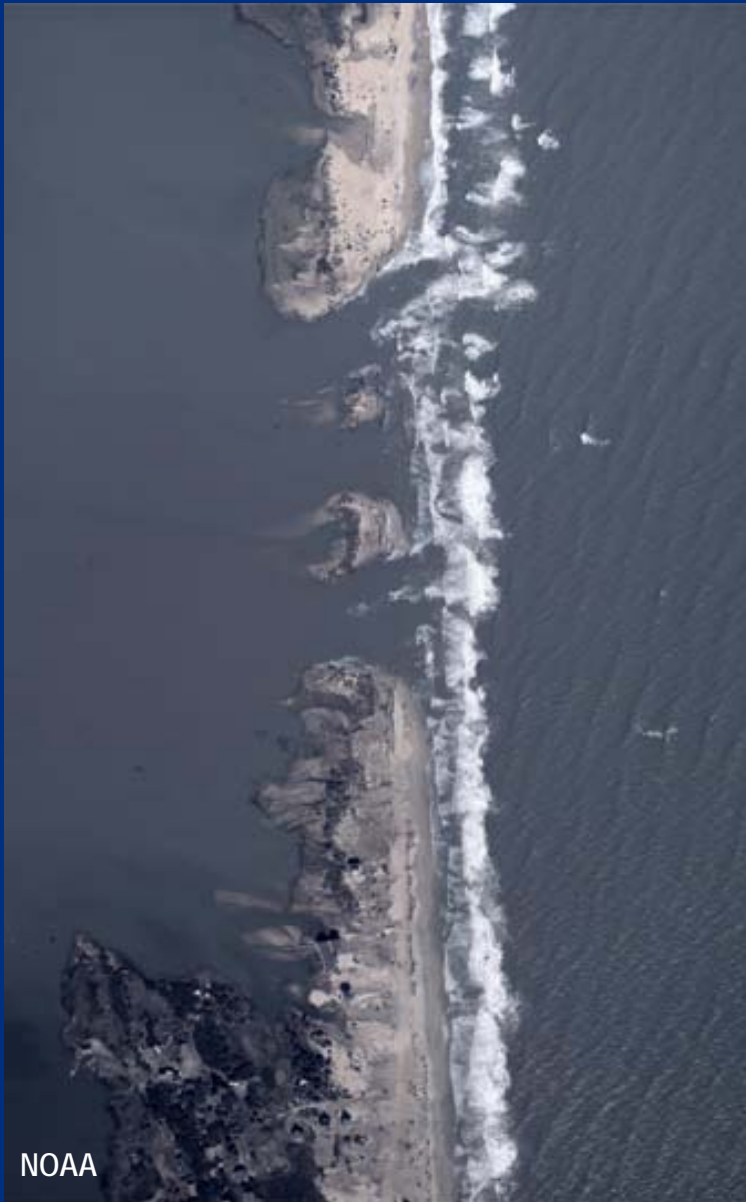
Helpful Information for the 12898 Review

- Grantees should collect socioeconomic and demographic data for the project area to help determine whether there are any potential EO 12898 concerns



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Coastal Area Laws



NOAA



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Coastal Zone Management Act (CZMA)



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CZMA Goals

- Reduce uncontrolled development on islands, beaches, salt marshes, transitional or inter-tidal areas, and other coastal areas



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CZMA Applicability

- States with a shoreline in the coastal zone or those that border the Great Lakes
- All states in a coastal zone have a Coastal Zone Management Plan



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Helpful information for the CZMA Review

- Grantees should contact their state office responsible for coastal zone management to determine if proposed project is consistent with that state's Plan

Coastal Barriers Resources Act (CBRA)



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CBRA Goals

- Protect ecologically sensitive coastal barriers that serve as barriers against forces of wind and tidal action caused by coastal storms or a species' habitat
- Establish the Coastal Barrier Resources System (CBRS) and Otherwise Protected Areas (OPAs)
- Prohibit new federal expenditures and financial assistance for development, in order to manage development and limit damage to property, wildlife, and natural resources in those areas



CBRA Compliance

- FEMA must consult with FWS before any action in a CBRS zone can occur



Questions?



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