

**Guidance Document Part 2, Section 2 *PLANNING PROCESS & LOCAL MITIGATION CAPABILITIES ASSESSMENT***

**REQUIREMENT:** §201.4(b) and §201.4(c)(1) require that there be an open public involvement process in the formation of a plan. This includes opportunities for the public to comment on the plan at all stages of its formation, and the involvement of any neighboring communities, interested agencies, or private and non-profit organizations. This should also include a review of any existing plans or studies and incorporation of these if appropriate. Documentation of the planning process, including how the plan was prepared, who was involved in the process, and how the public was involved is essential.

**2.1 – *Documentation of the Planning Process*****2.2 – *Local Capability Assessment***

**Section 2.1 – Documentation of the Planning Process**

**REQUIREMENT:** IFR §201.6(c)(1) - The plan must document the planning process used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

**Guidance for Section 2.1 – *Documentation of the Planning Process***

**EXPLANATION:** A description of the planning process should include how the plan was prepared, who was involved in the planning process, and the timeframe for preparing the plan.

The plan should document how the planning team was formed and the number and outcomes of the meetings the planning team held. Ideally, the local mitigation planning team is composed of local, State, and federal agency representatives, as well as community representatives, local business leaders, and educators.

In addition to the core team preparing the plan, it is also important to indicate how the public (residents, businesses, and other interested parties) participated, including what means (e.g., WebPages, storefronts, toll free phone lines, etc.) were made available to those who could not attend public forums to voice concerns or provide input during the planning process.

**FEMA's GUIDANCE:** A Satisfactory submittal will include a description of the planning process and will include a listing of the representatives from any organizations that participated, as well as documentation of those groups or individuals representing public involvement in the planning process, that contributed or participated in the planning process.

FEMA recommends that local governments utilize the following approach to the planning process for completing this section:

1. Use best available data, update if appropriate.
2. Use existing authorities and capabilities (and document them).
3. Document what you've done and what you haven't done.
4. "Recycle" items you can't do now into your mitigation strategy (section 3).

**STATE PERSPECTIVE:** Although the object of creating a LHMP that meets the IFR criteria remains paramount, this criteria reemphasizes the importance of "The Planning Process" in obtaining FEMA's approval of the plan. At each stage of the plan development, **Hazard Analysis, Risk Assessment, and Project Identification and Evaluation**, the requirement for public access and involvement is essential. The

following are recommended to "get the community involved:"

1. Sponsor an open public involvement during drafting and approval stages.
  2. Provide an opportunity for comments from neighboring communities, other agencies, businesses, academia, and non-profit interests.
  3. Incorporate existing local, state and federal information, including local plans, studies, reports and technical information.
  4. Document, document, document the planning process, and take credit for all persons and organizations that are involved, in any way, local hazard mitigation planning.
- For California local governments, the following is a partial list of suggested planning partners, that should be invited to meetings and/or workshops at each stage. The list is not intended to be complete as there are likely to be other organizations or groups of people locally that should be invited to participate and may have valuable input:

The public, concerned citizens/local activists  
 Local civic associations and nonprofit organizations  
 Chamber of Commerce  
 Area academic institutions, including colleges and universities  
 Local or regional foundations  
 Major businesses or industries in the community or surrounding area  
 Regional planning agencies, councils, or commissions  
 Regional economic development agencies and commissions  
 Water management districts and river basin commissions  
 Historic preservation organizations  
 School Boards & Other State/Local Governmental Entities  
 Planning Agencies & Associations

It is important to describe the plan development process and groups involved prior to public meetings. For example if the OES Coordinator, Planning Director, Police and Fire Chiefs' met to decide what major hazards were to be included in the plan, prior to a public meeting on the subject, this must be documented. This would also apply if the same group attended the Operational Area, multi-jurisdictional meeting, to participate and represent the community.

It is recognized that the public and members of invited organizations may not choose to attend meetings and workshops, but the schedule, agenda, invitation list, method of notification and actual attendance must be documented. It should be noted that a community involved as one of a number of communities developing a multi-jurisdictional plan is not relieved of the requirement for involving, informing and documenting the participation and public involvement in the plan development. The multi-jurisdictional plan, when complete, and adopted, is still "their" local plan.

**LOCAL EXPERIENCE / PERSPECTIVE:** (Comments applicable to this

section/criteria, submitted by California local governments, that may be of value to other local governments who are developing their local mitigation plans, will be included here in the future.)

**SUGGESTED RESOURCES:** For more information on the planning process; ideas on finding stakeholders, generating public interest, enlisting partners, and choosing an appropriate public participation model; and advice to local governments seeking to initiate a comprehensive local mitigation planning process, see:

**Federal:** 1. FEMA "How To Guide" #386-1): *Getting Started:* For information on beginning the local mitigation planning process. (available on the Web at <http://www.fema.gov/fima/planresource.shtm>)

**State:** Project Impact's Workbook, *"Rebuilding for a More Sustainable Future – An Operational Framework"* This is an older FEMA Project Impact document made available through State OES. This is an excellent guide on initiating mitigation activities and involving the community (public) primer on the multi-hazard mitigation planning process, and for overcoming barriers to hazard mitigation. (available on the Web at [http://www.fema.gov/fima/planning\\_toc2.shtm](http://www.fema.gov/fima/planning_toc2.shtm))

**Local:** It is recommended that the Local Public Affairs/Information Office should be involved in determining the best way to involve and invite the public to participate throughout the planning process.

In addition, Local Governments, when proposing mitigation plans and measures, may want to review the provisions of California Government Code Section 54950-54963, known as the Ralph M. Brown Act. In enacting this chapter, the Legislature found and declared "that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

**Tools:** Check for local procedures on Public Comment Periods involving Government Proposed Actions.

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**EXAMPLE TEXT:** To complete the criteria of Section 2.1 - *Documentation of the Planning Process*

**NOTE:** The following example of text for Section 2.1 is considered satisfactory by FEMA. Similar content, tailored for local circumstances, should be considered by a Local Government for their LHMP. OES intends to replace the FEMA provided example text provided below, with examples from approved California Local Government Plans, at the earliest opportunity.

**FEMA TEXT:** Golden County has developed a local hazard mitigation plan. The County Planning Department was responsible for development of the plan. The Planning Department formed a planning team comprised of representatives from FEMA Region IX, State government, local City governments, community groups, local businesses, and the State University, which is located in Friendly County (see Appendix T (as an example)) for a list of team members). This team met every two weeks for three months and once a month thereafter. The plan was developed over one year.

An effort was made to solicit public input during the planning process and four public meetings were held during the formation of the plan: one at the beginning, one after a first draft was produced, and one after a final draft was produced. Citizens could also access the County Hazard Mitigation Plan website to provide input.

The State University assisted greatly in the development of the plan by providing graduate students from the Urban Studies and Planning Department to help County Planning Department Staff. These students helped organize the public meetings and maintained the website.

Feedback received from the public proved valuable in the development of the plan. Several comments were received that led to the rethinking of some of proposed priority mitigation actions including some from residents of the rural southern portion of the county that illustrated the need for assistance with maintaining drainage channels. As access to this very rural area is by one-lane or gravel roads, it is often overlooked by the County Public Works Office. During the last heavy rainfall several of the small creeks were blocked by debris, causing backup flooding of several of the properties. Maintenance and clearing of channels are activities that are now included in the flood hazard portion of the Hazard Mitigation Plan.

**End of Section 2.1**

**Section 2.2 – Local Capability Assessment**

**REQUIREMENT:** Requirement §201.4(c)(3) (ii) of the Federal Register Interim Final Rule 44 CFR Parts 201 and 206 states, “[The State mitigation strategy shall include] a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

**Guidance for Section 2.2 – *Local Capability Assessment***

**FEMA's GUIDANCE: Planning resources.** There are three primary types of resources for hazard mitigation planning within each community. These three categories should be thoroughly documented within each local hazard mitigation plan. The three are: **technical, financial, and human.**

**1. Technical resources** for mitigation planning include professional advice on matters related to economics, science, engineering, mapping, and planning, as well as procedural information. In mitigation planning, expertise on this wide array of topics is often needed in order to have enough information to make determinations as to project type and priority. Not all of this expertise is needed in the beginning stage of planning. However, you should note when you feel you will need to obtain such assistance and where you might obtain such assistance. Technical resources also include data necessary to complete risk assessments or make project decisions.

**2. Financial resources** are critical for implementing most projects, as well as for securing the technical resources discussed above. In addition to the ‘traditional FEMA funding programs, you should seek out community, state, and other federal agency funding sources from programs with missions related to the type of mitigation activity being pursued. For example, funding for mitigation of transportation facilities should also be sought from transportation programs. Financial resources for planning will be summarized in this section.

**3. Human resources.** In addition to private citizens, employers, industries, and organizations can provide the staff and expertise necessary to conduct a meaningful planning process.

**1. Technical resources.**

These include existing planning, engineering, and scientific resources on staff, GIS, local universities and colleges, and regional planning associations. States often have staff devoted to technical matters within the state, such as the State Geologist and State Climatologist. Program staff such as the State Hurricane Program Manager and State Earthquake Program Manager can also provide technical assistance.

Local and state higher education institutions can often be excellent sources of student and faculty expertise and data. In addition, the National Earthquake Hazards Reduction Program (NEHRP) provides technical materials to the 45 states and territories that have earthquake program managers. Some technical assistance is provided through the National Earthquake Technical Assistance Program (NETAP) sponsored by FEMA.

## **2. Financial resources.**

### *Pre-Disaster Programs*

- The Pre-Disaster Mitigation Program (PDM), authorized by DMA 2000, can provide funding to states, communities, and tribes for cost-effective hazard mitigation planning activities that complement a comprehensive mitigation program and reduce injuries, loss of life, and damage and destruction of property before a disaster strikes. Check with your FEMA regional office on the status of funding.
- The Flood Mitigation Assistance Program (FMA) provides funding to assist states and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. The three types of grants available through FMA are planning, project, and technical assistance grants. Only communities that participate in the National Flood Insurance Program (NFIP) can apply for project and technical assistance grants. Planning grants are to be used by states and communities to prepare flood mitigation plans, with a focus on repetitive loss properties. Currently, funding for FMA is provided through the NFIP and is funded at \$20 million annually.

### *Post-Disaster Program*

- The Stafford Act (Public Law 100-107, as amended) authorizes funding for all federal disaster-related assistance in place today.
- The Hazard Mitigation Grant Program (HMGP), authorized by Section 404 of the Stafford Act, provides grants to state, local, and tribal governments (up to 15% of the FEMA disaster funds they receive) to implement long-term hazard mitigation measures after a major disaster declaration.
- The Assistance to Individuals and Households Grant Program is authorized by Section 411 of the Stafford Act and authorizes grants to be used for mitigation measures to cover serious unmet, disaster-related real property losses.
- The Public Assistance Program (PA) is authorized under Section 406 of the Stafford Act. This program provides funding, following a disaster declaration, for the repair, restoration, or replacement of damaged facilities belonging to governments and to private nonprofit entities, and for other associated expenses, including emergency protective measures and debris removal. The program also funds mitigation measures related to the repair of damaged public facilities.

### 3. Human resources.

These include the community's citizens, businesses, and association leaders who want to be involved in the planning process.

In addition to the staff it brings, private sector participation can also lead to financial and in-kind resources. Citizens with expertise in areas such as survey techniques, fundraising, public relations, and other technical subjects can be valuable to the planning team. For additional guidance on planning resources, see *Securing Resources for Mitigation Planning* (FEMA 386-9) (not yet available).

**STATE PERSPECTIVE:** See comprehensive listing of local capabilities and resources in the example text section below.

**LOCAL EXPERIENCE / PERSPECTIVE:** (Comments applicable to this section/criteria, submitted by California local governments, that may be of value to other local governments who are developing their local mitigation plans, will be included here in the future.)

**SUGGESTED RESOURCES:** For more information on the planning process; ideas on finding stakeholders, generating public interest, enlisting partners, and choosing an appropriate public participation model; and advice to local governments seeking to initiate a comprehensive local mitigation planning process, see:

**Federal:** 1. FEMA "How To Guide" #386-1): *Getting Started:* For information on beginning the local mitigation planning process. (available on the Web at <<http://www.fema.gov/fima/planresource.shtm>>)

**State:** Project Impact's Workbook, *"Rebuilding for a More Sustainable Future – An Operational Framework"* This is an older FEMA Project Impact document made available through State OES. This is an excellent guide on initiating mitigation activities and involving the community (public) primer on the multi-hazard mitigation planning process, and for overcoming barriers to hazard mitigation. (available on the Web at <[http://www.fema.gov/fima/planning\\_toc2.shtm](http://www.fema.gov/fima/planning_toc2.shtm)>)

**Local:** It is recommended that the Local Public Affairs/Information Office should be involved in determining the best way to involve and invite the public to participate throughout the planning process.

In addition, Local Governments, when proposing mitigation plans and measures, may want to review the provisions of California Government Code Section 54950-54963, known as the Ralph M. Brown Act. In enacting this chapter, the Legislature found and declared "that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

**Tools:** Check for local procedures on Public Comment Periods involving Government Proposed Actions.

**EXAMPLE TEXT:** To complete the criteria of Section 2.2 - *Documentation of the Planning Process*

**NOTE:** The following sections were developed by OES as guidance for local governments in covering a comprehensive Local Capabilities Assessment. In completing a local mitigation plan, a local government should include locally relevant comments concerning each of the categories of information as outlined below.

**An example would be:** "Our-Town" is aware of, and has adopted the Uniform Building Code (UBC) as codified in California law by its adoption in our local regulations as *Title xx Our-Town Code of Regulations*. These codes include:

- Uniform Plumbing Code
- Uniform Electrical Code
- Uniform Fire Code
- Dangerous Buildings Code

**Local Capability Assessment (continued)**

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**Introduction** California [**Our Town**] has developed a number of comprehensive and effective local pre- and post-disaster mitigation policies, programs, codes, standards and capabilities.

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**California Vision** The California vision for implementing a statewide Hazard Mitigation Planning program includes-----beyond the approved, comprehensive, Standard State Mitigation Plan-----the implementation of a statewide, multi-faceted, Local Hazard Mitigation Program (LHMP), and the establishment of a California Mitigation Advisory Council (CMAC).

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**Authority** Requirement §201.4(c)(3) (ii) of the Federal Register Interim Final Rule 44 CFR Parts 201 and 206 states, “[The State mitigation strategy shall include] a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

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**Land Use Planning, Codes and Standards in California** Planning codes and standards include:

- (§65300) California state law requires each city and county to adopt a general plan “for the physical development of the county or city, and any land outside its boundaries which bears relation to its planning.” The general plan must cover a local jurisdiction’s entire planning area and address the broad range of issues associated with a city’s or county’s development.
- (§65030.1) The California Legislature declared in 1976 that “decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan.”
- (§65030) The Legislature has further declared that the state’s land is an exhaustible resource, not just a commodity, and is essential to the economy, environment, and general well-being of the people of California.

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**Examples of responsible planning in California** The need to balance population and economic growth with environmental quality has long been a concern of Californians. Three examples of California’s efforts to plan responsibly include

- The State Planning Law
- The California Environmental Quality Act, and,
- The Cortese-Knox-Hertzberg Local Government Reorganization Act

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**The role of the local general plan**

The role of a community's general plan is to act as a "constitution," a basis for rational decisions regarding a city's or county's long-term physical development. Information found in the general plan is intended to underlie most land use decisions made by local governments. In counties and general law cities, zoning and **specific plans** are required to conform to the general plan (this will include the Local Hazard Mitigation Plan (LHMP)).

The general plan bridges the gap between community values, visions, and objectives-----and physical decisions such as-----subdivisions, public works and hazard mitigation projects.

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**The essential role of OPR in local planning**

In California, the Governor's Office of Planning and Research, (OPR), serves essential core functions including, but not limited to:

- Providing research staff to the Governor
- Coordinating and reviews general development for local California governments
- Conducting comprehensive statewide planning
- Providing interagency coordination
- Providing local agency planning assistance
- Managing California's environmental review process through the California Environmental Quality Act (CEQA).

**Note:** The role of OPR is not to dictate or regulate local governments, but to provide an essential set of tools and resources to accomplish local planning requirements.

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**Requirements of the plan**

According to OPR's *2002 General Plan Guidelines*, the general plan must cover the territory within the boundaries of the adopting city or county as well as any land outside its boundaries which in the planning agency's judgment, bears relation to its planning" (§65300).

The *2002 General Plan Guidelines* emphasizes viewing a local general plan in it's "regional" context, and to view planning issues, including issues that affect mitigation planning, from beyond the artificial boundaries of a city or county whenever the affects of those issues transcend those boundaries. Transportation incidents, wildfire, flooding and adverse air quality are examples of hazards that could extend across jurisdictional boundaries.

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**Recommendations for the plan**

OPR recommendations for developing an effective plan include:

- When establishing its hazard mitigation planning area, OPR recommends that each local government should consider using its sphere of influence as a starting point. The sphere of influence is usually defined for each county and city by the Local Agency Formation Commission (LAFCO) and typically extends beyond the strict physical limits or boundaries of a jurisdiction (§56076).
- For mitigation purposes, the *2002 General Plan Guidelines* recommend that each local jurisdiction evaluate hazards that extend beyond their boundaries, and then use any available data, such as information for watershed-based floodplain management, mapped earthquake faults, or high fire-hazard areas to comprehensively identify and evaluate their hazards and risks. Cooperation within other jurisdictions affected by these cross-boundary planning areas is also strongly encouraged.
- In the same way, the *2002 General Plan Guidelines* recommend that a county should consider the general plans of every city within the county in its own plan. Similar consideration should be given to the Local Hazard Mitigation Plans developed by cities and jurisdictions within a county. Mitigation measures proposed in a Local Hazard Mitigation Plan should be consistent with any general plan that covers the same planning area.

**Recommendations for the plan, (cont.)**

- Counties should consider and include city and district hazard mitigation plans when developing it's own hazard mitigation plan and proposals. Cities and counties should work together to delineate hazard mitigation planning areas and should collaborate in the development of their respective plans.

**Environmental Review in the Local Hazard Mitigation Plan**

Environmental review is fundamental to the local hazard mitigation planning process. Therefore, undertaking a concurrent CEQA document is usually more efficient than waiting until the LHMP is ready for adoption to begin the EIR. *Chapter 7 of the 2002 General Plan Guidelines* discusses CEQA's requirements in detail. OPR is required to provide guidance to cities and counties for integrating environmental justice into their general plans (§65040.12).

**Environmental Justice in the Local Hazard Mitigation Plan**

Environmental justice is defined in state planning law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations, and policies. Ideas for data and analysis and environmental justice policies are included in the discussion of the mandatory general plan elements, which is found in *Chapter 2 of the 2002 General Plan Guidelines*.

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<b>Community participation</b>	<p>Community participation plays an important role in formulating a general plan, and it is anticipated that it will also be essential in the process of hazard identification, analysis and project proposals for local mitigation. Opportunities for participation should be reflected in the work plan for the local mitigation program.</p> <p>In the development of a mitigation plan, local governments may reference any such community participation meetings where elements of local hazard mitigation planning are discussed.</p>
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<b>Law requiring community participation</b>	<p>State law specifies that “[during the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate” (§65351).</p> <p>It is intended to “make a diligent effort to achieve public participation of all economic segments of the community,” when developing a local mitigation plan in California (§65583).</p>
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<b>Resource</b>	<p>The goals and methods of community participation are discussed in detail in <i>Chapter 8 of the 2002 General Plan Guidelines</i>, and should be utilized by planners in the development of a local hazard mitigation plan.</p>
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<b>Building and Land Use Codes and Standards in California</b>	<p>In California, Codes and Standards are defined as a systematic group or body of laws that define and regulate how structures and facilities will be built. For local hazard mitigation purposes, and in accordance with federal regulations, a facility that is damaged in a disaster that is going to be rebuilt, or a building that is to receive mitigating updates, must be rebuilt using the current, not previous, codes and standards. That is, repairs must be done to current codes and standards with pre-disaster design and function.</p> <p>Two ways to comply with the building and land use codes and standards</p> <ul style="list-style-type: none"> <li>• Grandfathering</li> <li>• Enforcement</li> </ul>
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<b>About Grandfathering</b>	<p>In California, buildings and facilities built to earlier standards will become out-of-date from current code compliance. However, these structures do not have to be made completely code compliant until most or all of the structure undergoes repair or upgrade. This is the legal practice of "grandfathering," which is allowing out-of-date structures to remain as they are until they are rebuilt, or receive additions or extensions.</p>

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**About Enforcement**

Enforcement is performed by a combination of pre-permit plan review and post-permit site inspection. Elements of building construction are signed off by inspectors as those components pass inspection. Buildings are considered legally completed when the enforcement agency issues a Certificate of Occupancy or other legal release document.

**Codes and standards enforcement**

Codes and standards are usually enforced by building inspectors from code enforcement agencies, or in extreme cases by law enforcement. Code enforcement agencies arbitrate disputes concerning portions of facilities involved in repairs or upgrades, and are tasked with making final decisions which must be respected.

**Definition of Enforcement Agency**

According to Section 16006 of the California Health and Safety Code, the “enforcement agency means the agency of a city, city and county, or county responsible for building safety within its jurisdiction. The office of the State Architect is the enforcement agency for state-owned facilities or facilities leased by the state.” The Division of the State Architect (DSA) is also the review agency for the design and construction of school facilities in California.

**Post-disaster building inspections**

After a disaster, building inspections are often necessary to determine if the buildings are safe to occupy. In California, the responsible enforcement agency sends out inspectors to review damaged buildings. These buildings are tagged with a colored placard posted on the building exterior and visible from the street. The color coding is as follows:

Green - safe to occupy

Yellow - safe only for limited use by occupants

Red - the building is unsafe and entry is not permitted

**Common codes and standards for California**

California codes and standards include

- [Uniform Building Code](#)
- [National Fire Protection Association \(NFPA\)](#)
- [National Electric Code \(NEC\)](#)
- [State Historic Building Code](#)
- [Caltrans Standards for Road Construction](#)
- [Seismic Safety Standards](#)
- [State of California Standards and Permit Processes](#)
- [Federal Standards and Permit Process](#)
- [Federal Requirements of Local Codes & Standards](#)

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**Role of the Uniform Building Code** The Uniform Building Code (UBC) is codified as law in California by its adoption as *Title 24 in the California Code of Regulations*. County and city agencies formally adopt a recent version of UBC to govern as law in their jurisdiction.

There are also related codes that the IJBC refer to and which are considered part of the UBC by default. These include

- Uniform Plumbing Code
  - Uniform Electrical Code
  - Uniform Fire Code
  - Dangerous Buildings Code
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**Amendments to the Uniform Building Code** There are certain situations where the authority having jurisdiction attaches amendments to the UBC. These amendments are in force as much as the rest of the code, and it is helpful to be aware of them. Examples include

- State of California Amended UBC (applies to all state facilities)
- City and County of San Francisco Amended UBC (applies within San Francisco)

**Role of the NFPA** The National Fire Protection Association (NFPA) regulates fire protection systems (fire sprinklers), standpipes (to which fire hoses are attached inside buildings), and other fire protection and life safety issues.

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**Role of the NEC** The National Electric Code (NEC) regulates electrical installations.

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**Role of the State Historic Building Code** The State Historic Building Code regulates repair/renovation of historic structures, allowing variances from current UBC while improving public safety in historic structures.

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**Caltrans Standards for Road Construction** Caltrans Standards for Road Construction may be locally adopted and in use for road repair.

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**Seismic Safety Standards** There are a variety of Seismic Safety standards, and some large communities have standards for seismic upgrade that must be resolved.

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**The State of California standards and permit processes**

This process includes:

- Caltrans Standards for Road Construction
- California Occupational Safety and Health Act (Cal-OSHA), regulates worker safety
- Division of the State Architect (DSA), reviews plans and monitors construction of school facilities
- Water Quality Discharge Permit (Regional or State Water Quality Control Boards), needed for discharging or affecting water clarity in natural waters
- California Environmental Quality Act (CEQA), state environmental law, provides for the identification of the impacts, on the environment, of proposed land use and development programs including those for mitigation purposes
- State Lands Commission Clearance, must be obtained for work on lands under lakes, bays, estuaries, and streams
- Office of Statewide Health Planning & Development (OSHPOD), is the building department for all hospitals and nursing homes in California
- Streambed Alteration Permit (Dept. of Fish and Game), are needed for doing work below the high water mark in a stream.

**Federal standards and permit process**

In California, this process includes:

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- Clean Water Act – Is administered by the U.S. Army Corps of Engineers, issues Section 404 permits for discharging fill into the commercially viable waters of the United States.
- Rivers and Harbors Act Section 10 Permits
- Clean Air Act
- Americans with Disabilities Act (ADA)
- [Endangered Species Act](#)
- National Environmental Policy Act (NEPA)
- National Historic Properties Act (NHPA) Section 106
- Secretary of the Interior Standards for Rehabilitation of Historic Structures
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**Federal Requirements of Local Codes & Standards**

California local governments, when dealing with federal agencies with regard to grants and claims, must be aware of the requirements found in the federal definition of codes & standards which are found in 44 *CFR Section 206.226(c)*. According to this definition, codes and standards must:

- Apply to the type of repair or restoration required
- Be appropriate to the pre-disaster use of the facility
- Be found to be reasonable
- Be in writing
- Be formally adopted and implemented by the jurisdiction before or on the disaster declaration date, or be a legal federal requirement applicable to this type of restoration
- Apply uniformly to all similar types of facilities within the jurisdiction
- Be enforced during the time it was in effect

**About the Endangered Species Act**

Additional Information and Implications concerning the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq. (ESA) in California:

Critical habitat refers to specific geographic areas that have been determined by the federal government, specifically the United States Fish and Wildlife Service (USFWS), to be essential for the conservation of a threatened or endangered species and may require special management considerations. A designation does not set up a preserve or refuge and only applies to situations where federal funding or a federal permit is involved. FEMA and other federal agencies must conduct an ESA "Section 7" consultation with the USFWS and/or NMFS before taking actions that could harm or kill protected species or destroy their habitat. Additionally, the Endangered Species Act requires consultation concerning proposed actions within designated critical habitats, even when the species is not present in the area of proposed action.

Significant acreage in California has been and continues to be designated as critical habitat, however, existing houses and similar developments that do not provide habitat for the species regulated by the critical habitat are excluded from the designation. The Environmental /Historical Unit is in the process of obtaining maps of all critical habitats in California. GIS shape files are available at OES for the species listed in the attached table.

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**Website of California Critical Habitats**

The California Farm Bureau Federation maintains detailed maps on their website of all California critical habitats involving animal species at <http://www.cfbf.com/maps/critical.asp>.

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<b>Selected Definitions Important to Local Governments concerning the ESA</b>	<p>Following are definitions of issues to be considered in planning.</p> <ul style="list-style-type: none"> <li>• <a href="#">Critical Habitat</a></li> <li>• <a href="#">Endangered Species</a></li> <li>• <a href="#">Federal Agency</a></li> <li>• <a href="#">Listed Species</a></li> <li>• <a href="#">Section 4</a></li> <li>• Section 7</li> <li>• Section 9</li> <li>• Section 10</li> </ul>
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<b>Critical habitat</b>	<p>The critical habitat for <a href="#">listed species</a> consists of:</p> <ol style="list-style-type: none"> <li>1. The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (constituent elements) <ol style="list-style-type: none"> <li>a. essential to the conservation of the species and</li> <li>b. which may require special management considerations or protection; and,</li> </ol> </li> <li>2. Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. [ESA §3 (5)(A)] Designated critical habitats are described in 50 CFR §17 and 226.</li> </ol>
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<b>Endangered Species</b>	<p>Any species that is in danger of extinction throughout all or a significant portion of its range. [ESA §3(6)]</p>
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<b>Federal Agency</b>	<p>Any department, agency, or instrumentality of the United States. [ESA §3(7)]</p>
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<b>Listed Species</b>	<p>Any species of fish, wildlife or plant which has been determined to be endangered or threatened under section 4 of the Act. [50 CFR §402.02]</p>
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<b>Section 4</b>	<p>The section of the Endangered Species Act of 1973, as amended, outlining procedures and criteria for:</p> <ol style="list-style-type: none"> <li>1. Identifying and listing threatened and endangered species;</li> <li>2. Identifying, designating, and revising critical habitat;</li> <li>3. Developing and revising recovery plans; and</li> <li>4. Monitoring species removed from the list of threatened or endangered species. [ESA §4]</li> </ol>
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**Section 7**

The section of the Endangered Species Act of 1973, as amended, outlining procedures for interagency cooperation to conserve Federally listed species and designated critical habitats.

- Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species.
- Section 7(a)(2) requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

Other paragraphs of this section establish the requirement to conduct conferences on proposed species; allow applicants to initiate early consultation; require FWS and NMFS to prepare biological opinions and issue incidental take statements. Section 7 also establishes procedures for seeking exemptions from the requirements of section 7(a)(2) from the Endangered Species Committee. [ESA §7]

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**Section 9**

The section of the Endangered Species Act of 1973, as amended, that prohibits the taking of endangered species of fish and wildlife. Additional prohibitions include:

1. Import or export of endangered species or products made from endangered species;
  2. Interstate or foreign commerce in listed species or their products; and
  3. Possession of unlawfully taken endangered species. [ESA §9]
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**Section 10**

The section of the Endangered Species Act of 1973, as amended, that provides exceptions to section 9 prohibitions. The exceptions most relevant to section 7 consultations are takings allowed by two kinds of permits issued by the Services. These are

1. Scientific take permits; and
2. Incidental take permits.

The Services can issue permits to take listed species for scientific purposes, or to enhance the propagation or survival of listed species. The Services can also issue permits to take listed species incidental to otherwise legal activity. [ESA §10]

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**The following information concerning the ESA may be found at OES**

OES maintains a copy of the *Consultation Handbook* – March 1998 – (for conducting consultation activities under Section 7 of the ESA) published by the USFWS and the NMFS. In addition, the following **maps** of federally designated critical habitats are available at OES HQ.

Species	Order
Marble Murrelet	Bird
Coastal California Gnatcatcher	Bird
Least Bell’s Vireo	Bird
California Red-legged Frog	Amphibian
Arroyo Toad	Amphibian
Tidewater Goby	Fish
Bay Checkerspot Butterfly	Insect
Riverside Fairy Shrimp	Crustacean
San Diego Fairy Shrimp	Crustacean
Peninsula Big Horn Sheep	Mammal

**Table 1.4.3B - References**

The table below lists Additional References for Local Government Land Use & Mitigation Planning.

Reference	Comments
FEMA How To Guide 386-3, Developing a Mitigation Plan	(Under development by FEMA).
The Land Use Planning and Information Network (LUPIN) <a href="http://ceres.ca.gov/planning">http://ceres.ca.gov/planning</a>	This website contains links to resource information, California county general plans, and other useful tools.
Curtin's California Land-Use and Planning Law	Examines the California planning codes in the context of applicable court cases.
OPR's Book of Lists - <a href="http://www.calpin.ca.gov">www.calpin.ca.gov</a>	May help to locate recently adopted general plan elements, and information on how to approach local planning issues.
Longtin's California Land Use Regulations	This is a detailed look at California's development codes and related litigation.
California Zoning Practice	Published by the California Continuing Education of the Bar looks at California's development codes and related litigation.

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**California  
Local Hazard  
Mitigation  
Planning  
Program  
(LHMP)**

In addition to the codes, regulations and the expertise and assistance available through various state agencies, California has proposed, through the Office of Emergency Services, a multi-faceted Local Mitigation Planning Program in order to provide technical assistance to, and track the progress and effectiveness of Local Government's Local Mitigation Planning Programs.

One of the main goals of OES is Hazard Mitigation and Risk Management. According to the IFR (see Authorities below), hazard mitigation means, "Any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards."

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**Purpose of the  
LHMP**

The purpose of the Local Hazard Mitigation Program (LHMP) is to support and assist local governments, state agencies and the private sector to integrate hazard identification, risk assessment, risk management, and loss prevention into a comprehensive approach to hazard mitigation planning including the development of local hazard mitigation plans, and the identification of cost effective mitigation measures and projects. In addition, OES desires to maximize the effective use of available public and private resources, grants and funds devoted to risk management and hazard mitigation.

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**Objectives of  
the LHMP**

The objectives are to

- Integrate hazard mitigation activities in all pertinent local government & state agency programs
  - Maximize the use of hazard mitigation resources, grants and funds to reduce the impact of future disasters at the local level
  - Maintain collaborative and cooperative relationships with local emergency managers, land use planners, and the scientific and technical communities involved in hazard mitigation
  - Provide technical assistance and guidance to local governments to improve all-hazard risk assessments, mitigation project identification and analysis, and the development of local hazard mitigation plans
  - Improve communications with OES stakeholders, legislators, and special interest groups involved in hazard mitigation
  - Continue to enhance OES Regional and Operational Area capability and coordination
  - Develop a statewide program of support for hazard identification and analysis and a risk-based approach to project identification, prioritization and support for local governments
-

**Authorities for the LHMP**

In October of 2000 Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5165, was enacted under § 104 of the Disaster Mitigation Act of 2000. On February 26, 2002, FEMA published, in the Federal Register, an Interim Final Rule (IFR), *Hazard Mitigation Planning and the Hazard Mitigation Grant Program*, (44 CFR Parts 201 and 206), for implementing the changes to Section 322 of the Stafford Act.

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**Key IFR responsibilities**

The IFR lists as key responsibilities of the State of California to:

- develop a Standard State Mitigation Plan, and
  - "coordinate all State and local activities relating to hazard evaluation and mitigation."
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**Other California responsibilities**

In addition, California is responsible for

- providing technical assistance and training to local governments to assist them in applying for HMGP planning grants, and
- developing local mitigation plans.

These provisions have formed the basis of a statewide local hazard identification, evaluation and mitigation planning program (LHMP).

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**End of Section 2.2**