

Guidance Document Part 2, Section 6 - *ADDITIONAL STATE & FEDERAL REQUIREMENTS*

ADDITIONAL STATE & FEDERAL REQUIREMENTS: States recognizing additional requirements concerning Hazard Analysis, Risk Assessment, and Project Identification and Evaluation, may create a new section for their inclusion in the LHMP, and include those additional requirements in a modified crosswalk for State & FEMA scoring and review.

Section 6 includes the following subsections:

6.1 *Environmental Protection & Historic Preservation Laws (State & Federal)*

Guidance for Section 6.1 - *Environmental Protection & Historic Preservation Laws (State & Federal)*

ADDITIONAL REQUIREMENT: Environmental compliance and historic preservation are essential components of the mitigation project planning and approval process. These requirements apply to land development, land use, or land disturbing, public works or other construction & mitigation programs. To streamline these environmental and historic reviews, applicants are encouraged to examine their proposed mitigation measures and project(s) during the planning stage, to determine if there are any environmental or historic issues that would require extensive/expensive studies, reviews, documentation or require difficult permitting. In such instances, applicants may find it advantageous to redesign their project(s) to avoid or minimize the environmental and/or historical impacts.

Since federal funds are used to fund hazard mitigation projects under many programs, the environmental and historic review process requires compliance with both federal and state laws and regulations. A summary of some of these laws are listed below.

STATE & FEDERAL GUIDANCE & RESOURCES: Below are summaries of some of the laws and federal executive orders that may apply to your project(s). Please note that this may not be a complete list of the laws and executive orders that may apply to your project. As a precaution, applicants should understand all of the laws that apply to their project(s) before construction begins.

Federal Environmental Protection & Historic Preservation Laws:

- **National Environmental Policy Act (NEPA)**
NEPA is the federal environmental law that is applied when there is a federal undertaking such as grant funding. Since FEMA provides funding for the hazard mitigation program, they are also the lead agency for ensuring NEPA compliance. In this capacity, FEMA examines each proposed hazard mitigation project and determines how NEPA should be applied and, if required, the type of NEPA environmental document that must be prepared. Applicants can assist FEMA in this process, when they requested, by providing environmental data or additional information about their projects or, by setting up and participating in site visit.

More information about FEMA's NEPA regulations can be found in 44CFR, Part 10. In addition, there may be issues that can require compliance with other environmental laws. The following is a list of those laws that may apply:

- **Executive Order 11990 Wetland Protection**
If a project may affect wetlands, the proposal will be subject to Executive Order 12898 Wetland Protection. The project will be subject to the 8-step process outlined in 44CFR Part 9.

- Executive Order 11988 Floodplain Management
If a project may affect a floodplain, the proposal will be subject to Executive Order 11988 Floodplain Management. The project will be subject to the 8-step process outlined in 44CFR Part 9.
- Clean Water Act (Section 404)
If the project site is located within the Waters of the United States defined by the Army Corps of Engineers or contains wetlands that fall under the jurisdiction of the Army Corps of Engineers, the applicant will be responsible for complying with the Clean Water Act (Section 404) and will be responsible for obtaining the necessary permits.
- Clean Water Act (Section 401)
If your project requires permitting by the Army Corps of Engineers you will also need a certification or waiver from the Regional Water Quality Control Board under Section 401 of the Clean Water Act. More information about water quality compliance in California can be accessed from the State Water Resources Control Board at <http://www.swrcb.ca.gov/>.
- Executive Order 12898 Environmental Justice
Projects that may have a disproportionate adverse affects on or disproportionate benefits to low-income or minority groups, will need to comply with Executive Order 12898 Environmental Justice. Information regarding socioeconomic characteristics of your community can be found on the United States Census Website, <http://www.census.gov>.
- Wild and Scenic Rivers Act
If the project is in the watershed area of a Wild and Scenic River it may have impacts on that river. To determine if your project may be within a watershed of a Wild and Scenic River you can visit the website of the National Wild and Scenic Rivers Program at <http://www.nps.gov/rivers/>.
- National Historic Preservation Act
If the project may affect properties on or eligible for listing on the National Register of Historic Places, a Section 106 Consultation with the State Historic Preservation Office (SHPO) will be required.
- Endangered Species Act
If federally endangered or threatened species may be affected by the project then a Section 7 Consultation with the US Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) will be required.

California Environmental Protection & Historic Preservation Laws:

- California Environmental Quality Act (CEQA)

Applicants for hazard mitigation funds are responsible for complying with CEQA requirements. As the lead agency under CEQA, applicants must evaluate their projects and determine how CEQA applies and how they will comply with those requirements. Your legal counsel can advise you on these requirements.

Information about the CEQA process may be obtained from the CERES website at <http://www.ceres.ca.gov> which publishes the CEQA guidelines in addition to other valuable information about CEQA.

A copy of the CEQA checklist is *may be found at the following Website:*

<http://ceres.ca.gov/topic/env_law/ceqa/guidelines/> Copyright 1996 California Resources Agency.

- Farmland Protection Act

Projects that impact farmland, may need to be evaluated under the Farmland Protection Act. The Farmland Protection Act protects prime or unique farmland. Maps and information regarding prime and unique farmland can be found at California Department of Conservation Website at <http://www.consrv.ca.gov/DLRP/fmmp/index.htm>. If the project is likely to affect prime or unique farmland a Farmland Impact Conversion Rating (FICR) will need to be prepared.

- Coastal Zone Management Act

In California, the Coastal Zone Management Act is managed by the California Coastal Commission. If the project is located within the coastal zone jurisdiction it may require a permit from the California Coastal Commission. If your project is located within the jurisdiction of the California Coastal Commission check the California Coastal Commission website at <http://www.coastal.ca.gov/web/> to view the regulatory requirements of the commission. If the applicant is a city or county issuing its own coastal permits then contact with the California Coastal Commission will not be required. If you do not issue your own coastal permits, then contact the California Coastal Commission to determine the necessary contact agency.

Other Federal Environmental Protection & Historic Preservation Laws

for Permitting: The applicant is also responsible for obtaining all of the necessary permits that may be required for the construction of the project. A list of possible permits and the web location of information is listed below. Permits may include but are not limited to:

- Clean Water Act, Section 404 permit from the United States Army Corps of Engineers
<http://www.spk.usace.army.mil/cespk-co/regulatory/>
- Rivers and Harbors Act, Section 10 permit from the United States Army Corps of Engineers <http://www.spk.usace.army.mil/cespk-co/regulatory/>
- Clean Water Act, Section 401 Water Quality Certification or Waiver from the California Regional Water Quality Control Boards <http://www.swrcb.ca.gov/>

Other California Environmental Protection & Historic Preservation

Laws for Permitting: The applicant is also responsible for obtaining all of the necessary permits that may be required for the construction of the project. A list of possible permits and the web location of information is listed below. Permits may include but are not limited to:

- Coastal Development Permit from the Coastal Commission
<http://www.coastal.ca.gov/web/>
- Clean Water Act, Section 401 Water Quality Certification or Waiver from the California Regional Water Quality Control Boards <http://www.swrcb.ca.gov/>
- Various air quality permits from the Air Resources Control Board
<http://www.arb.ca.gov/homepage.htm>
- Streambed Alteration Agreement from the California Department of Fish and Game
<http://www.dfg.ca.gov>
- Encroachment permit from CALTRANS <http://www.caltrans.ca.gov>
- Leases and permits from the California Lands Commission
<http://www.swrcb.ca.gov/>

Example CEQA Environmental Checklist Form, to assist a Local Governments in evaluating the criteria of Section 6.1 *Environmental Protection & Historic Preservation Laws (State) may be found at the following Website:* <http://ceres.ca.gov/topic/env_law/ceqa/guidelines/>

ADDITIONAL RESOURCE: *Community Land Use Evaluation for Natural Hazards, A Questionnaire for Community Planners* - (A copy of this Questionnaire can be downloaded from the "Land Use Planning" section of the Institute for Business & Home Safety website: <http://www.ibhs.org/research_library/downloads/95.pdf>

End of Section 6.1