

DR-4655 Montana Green Sheet

Environmental and Historic Preservation and Disaster Recovery

Please identify any potential environmental concerns or challenges and discuss these with our environmental staff as soon as possible. This will help us address issues and expedite funding. For environmental or historic preservation assistance for DR-4655-MT please contact Environmental and Historic Preservation (EHP) Advisor, Martin Thompson at martin.thompson@fema.dhs.gov

Failure to comply with applicable environmental and historic preservation laws could jeopardize or delay potential funding.

Threatened and Endangered Species

Under the Endangered Species Act, projects that might affect threatened or endangered species and their habitats must be coordinated to avoid impact. All counties in Montana have at least one T&E species. Critical habitats may be located not only in or near water or forested areas but may also be in fields or along road edges. It is very important to know whether a proposed project might impact a critical habitat for any of these species. If T&E Species, migratory birds, and critical habitat are potentially impacted by a proposed project, applicants should contact FEMA Environmental staff with project details. FEMA will coordinate with USFWS.



Figure 1. Montana has many protected species, such as the Grizzly Bear, which may require FEMA to consult with USFWS. Photo/ USFWS National Digital Library

USFWS recommends development of an Avian Protection Plan for Rural Electric Co-ops. For more information on electric utility repair and migratory bird protection, consult the following:

- Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006
- Mitigating Bird Collisions with Power Lines: The State of The Art In 1994

Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act

The Migratory Bird Treaty Act stipulates protection for not only migratory birds, but also for habitats and environments necessary for the birds' survival. The Bald and Golden Eagle Protection Act provides special rules to protect these species and their nesting areas, especially during the nesting season.

Waterways, Culverts, and Bridges

The Clean Water Act and The U.S. Rivers and Harbors Act apply to actions affecting waters of the United States. This includes any part of the surface water tributary system (natural waters including small streams, lakes, and wetlands) as well as isolated man-made waters. The US Army Corps of Engineers (USACE) administers both laws.

Examples of actions requiring permits include any repair, construction, demolition, dredging, or filling in any part of surface water tributaries or systems. Work in waters that include repair to pre-disaster condition and minor mitigation measures in most cases fit under a Nationwide Permit (NWP). The applicant should be familiar with the NWPs and is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre-Construction Notification (PCN) conditions of the applicable NWP. If the applicant needs assistance in determining whether their project fits under a NWP or if an Individual 401 or 404 Permit is needed, the applicant should contact USACE before start of work.

For all culvert and bridge work done on navigable waterways, a Land use License of Easement may be required from the Department of Natural Resources and Conservation. DNRC can provide a determination of stream navigability.



Figure 2. Work in water due to a road collapse may require US Army Corps of Engineers NWP or 401 or 404 depending on the method of repair. FEMA photo.

Executive Order 12898 on Environmental Justice (EJ)

EJ directs each federal agency to avoid disproportionately high and adverse human health or environmental effects to low-income and minority populations. EJ is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Debris Disposal and Hazardous Materials

For any debris removal projects, applicants must follow the disposal guidance provided by the Montana Department of Environmental Quality (DEQ). Different types of debris must be separated and disposed of accordingly, such as sediment, vegetative, white goods and construction and demolition (C&D).

No agency contact, approval, or permits are needed to take solid waste debris to a licensed landfill. Asbestos, if present, must be removed prior to building demolition. Contact the DEQ, Asbestos Control Program for guidance.

Damaged utility poles are considered solid waste. Damaged transformers may be considered hazardous waste depending on the level of PCB and will either need to be disposed at a Toxic Substance and Control Act (TSCA) approved disposal facility or a landfill/recycling facility. All RECs should have documentation of where utility poles and transformers are being disposed of, following Environmental Protection Agency's (EPA) regulations, see EHP's "Transformer Disposal Requirements" for further info.

Temporary Staging of Debris

For temporary storage of debris outside of licensed or approved landfills, applicants must contact DEQ and FEMA for site approval. Prior to setting up a household hazardous waste collection (Clean Sweep), notify DEQ staff and follow their guidance. Staging of debris must be on previously disturbed land such as a parking lot, roadway, public park, or ball field, etc. If staging occurs on non-disturbed land, FEMA will have to consult with SHPO, USFWS, etc. for potential cultural/environmental survey before staging occurs. Staging of debris in the floodplain is to be avoided, if staging occurs within a floodplain, it can only be temporary and will need to be removed for final disposal.

Vegetative Debris

Burning clean woody vegetative debris (open burn) is allowed year-round in Montana, however, a burn permit and all DEQ requirements must be followed, including disposal of vegetative ash. Chipped or chopped clean vegetative debris can be spread on site, composted, or taken to a wood/yard waste facility.

Helpful Links

- Waste Management/Debris Removal: <https://deq.mt.gov/twr/index>
- Debris Burning Guidance: <https://deq.mt.gov/air/Programs/burning>
- Asbestos: <https://deq.mt.gov/cleanupandrec/programs/asbestos>.
- Household Hazard Waste: <https://deq.mt.gov/twr/Programs/recyclingandwaste>
- EPA Transformer PCB Guidance: <https://www.epa.gov/pcbs/managing-remediation-waste-polychlorinated-biphenyls-pcbs-cleanups>

Historic Preservation and Tribal Relations

Per Section 106 of the National Historic Preservation Act, any proposed project which alters a previously undisturbed area (e.g., hazard mitigation and alternative projects such as relocating a roadway/utility, burying a utility line, road realignment, a material borrow area for construction etc.), even if within a right-of-way, must be reviewed by FEMA and the State Historic Preservation Office (SHPO) or Tribal Historical Preservation Officer (THPO) for archeological concerns. Land that has been plowed or used for agriculture use is not considered previously disturbed and must be evaluated.

Any structure (e.g., buildings, walls, bridges, culverts) 45+ years old may be eligible for the National Register of Historic Places. These structures must be reviewed by FEMA and the SHPO or THPO. For applicants that are working within Tribal boundaries, contact FEMA before digging and FEMA will consult with the THPO.



Figure 3. Structures 45+ years may require consultation with SHPO or THPO. FEMA photo.

Different measures can be taken if historic resources might be affected. It is important to involve FEMA and the MT SHPO or THPO offices to make these determinations, and to decide what measures, if any, are to be taken.

Borrow Material

For a project to be compliant with the National Historic Preservation Act all borrow material (fill, gravel, rip rap, etc.) must come from a previously disturbed MT DEQ Opencut permitted pit or Hard Rock Quarry that has been recommended by MT SHPO. The applicant must obtain both of the following prior to construction to ensure compliance.

1. Material must originate from a MT Department of Environmental Quality (DEQ) Open Cut permitted site and
 2. Provide FEMA a letter from the State Historic Preservation Office listing their recommendation for that material source.
- Note: Borrow material taken from a non-DEQ permitted site or from a DEQ Limited/Short Form Site or Small Miners exclusion Pit, is not accepted due to its lack of environmental and cultural compliance.

Executive Order 11988 Floodplain Management

FEMA reviews all projects that take place in the floodplain for opportunities to reduce flood risk to the facility, minimize the impacts human health and safety, and restore and preserve natural and beneficial floodplain values. Floodplain development permits issued by the local community are required for all projects (not just FEMA-funded projects) occurring within the SFHA. Development is defined as any human activity as described in 44CFR § 59.1. The Applicant is responsible for coordinating with their local floodplain manager for any projects located within a floodplain. For major projects, this could require further review using the “8-Step” process, which looks at and evaluates alternatives, and includes public review. Staging of debris in the floodplain is to be avoided, if staging occurs within a floodplain, it can only be temporary and will need to be removed for final disposal. Final debris disposal in the floodplain is not permitted.

Executive Order 11990 Protection of Wetlands

FEMA reviews all projects that have the potential to affect wetlands to consider alternatives and limit potential damage if an activity affecting a wetland cannot be avoided. As with floodplains, an “8-Step” process may be required whenever a project would modify a wetland. Temporary Debris Reduction Sites (TDRS), staging areas and final disposal locations such as, landfills, town garages, and dumps are not exempt from wetland review.

Contacts – Federal and State

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US Army Corps of Engineers

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Projects in the Floodplain

For permits regarding work in the floodplain contact your local FP administrator. A list can be found at: <http://www.mtfloodplain.mt.gov>

State Historic Preservation Office

<https://mhs.mt.gov/Shpo/Staff>
Main Line: 406-444-2694

Montana Department of Environmental Quality

<https://deq.mt.gov/about/ContactUs>
Main Line: 406-444-2544

DNR Water Resources Division

<http://www.dnrc.mt.gov/wrd/>
Main Line: 406-444-6601

MT Fish Wildlife and Parks

Main Line: 406-444-2535
Email: fwpgen@mt.gov