

**Alternative Arrangements to Meet National Environmental Policy Act
Requirements for the Reconstruction of New Orleans Metropolitan Area Critical
Infrastructure Funded by Federal Emergency Management Agency Grant
Programs**

I. Scope of the Emergency

Hurricanes Katrina and Rita caused sufficient damage in parts of the state of Louisiana to trigger Presidential disaster declarations for these areas. Damage was so severe and wide spread that the impact of Hurricane Katrina was also designated as the first catastrophic incident of national significance under the National Response Plan. Disaster-related damages to the critical physical infrastructure in the New Orleans Metropolitan Area (NOMA) have rendered parts of the city inoperable and uninhabitable. Without this critical infrastructure the city cannot adequately support a safe and healthful reconstruction and repopulation process.

The Department of Homeland Security's Federal Emergency Management Agency (FEMA) expects numerous grant applications requiring agency action in a timeframe¹ that would not allow for completion of an EIS and Record of Decision (ROD). This constitutes an emergency situation.

The Department of Homeland Security and the Council on Environmental Quality (CEQ) in coordination with FEMA have established these alternative arrangements to enable timely action on grant applications to restore safe and healthful living conditions in NOMA while observing the requirements and objectives of the National Environmental Policy Act (NEPA). These alternative arrangements will enable FEMA to consider the potential for significant impacts to the human environment from its funding the reconstruction of critical physical infrastructure in NOMA through its grant programs. These alternative arrangements have been developed in consultation with CEQ pursuant to NEPA regulations found in 40 CFR 1506.11 and 44 CFR Part 10.13.

II. Actions Needed to Control the Immediate Impacts of the Emergency

FEMA currently administers grant programs to fund the repair, restoration and replacement of eligible infrastructure that has been damaged or destroyed in areas that have been included in a Presidential disaster declaration. Although the restoration of eligible infrastructure substantially to its pre-disaster conditions is excluded from NEPA by Section 5159 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, FEMA anticipates that the applications from the State of Louisiana for NOMA will more strongly reflect future demands than returning to pre-disaster conditions. Proposed projects will not necessarily be the same size, nature or location; will use current building

¹ This limited timeframe is the time from the receipt of the grant application to the approval and execution of the proposed action.

codes, and construction methods; and take advantage of current community and urban planning principles, and hazard mitigation opportunities. In such situations NEPA does apply. The following types of critical physical infrastructure² projects in NOMA that may qualify for FEMA grant funding are addressed by these alternate arrangements:

- Hospitals and health care facilities
- Utilities and Wastewater Treatment Plants
- Permanent police and fire stations
- Government and court administration buildings
- Detention Centers (jailhouses)
- Permanent schools

III. Potential Significant Effects of the Proposed Action

Both the Department of Homeland Security and FEMA consider this a unique situation where the sensitivity of the area and the level of devastation and the density of reconstruction warrant the agency to consider the FEMA funded projects together rather than individually. The combined effects of these numerous actions are highly uncertain and may involve unknown risks. However, FEMA believes the following factors that could trigger the need for an Environmental Impact Statement (EIS) may be present:

- Actions will likely result in an extensive change in land use;
- Actions could result in a land use change which is incompatible with existing or planned land use of the surrounding area;
- Many people, including low income and minority communities, will be affected by these actions;
- The environmental impacts of these actions will likely be controversial;
- Actions could adversely affect a significant amount of properties listed or eligible to be listed in the National Register of Historic Places; and
- Actions are likely to be either a part of or closely related to other actions underway or planned for NOMA and the cumulative nature of these projects could cause significant environmental impacts.

IV. Components of the NEPA Process that Add Value and Will Be Used

² While levees are considered critical infrastructure, their restoration is not an eligible FEMA activity because they fall under the purview of the U.S. Army Corps of Engineers

Public Involvement

FEMA will continue to provide opportunities for stakeholders to become involved in the environmental review process through regular outreach mechanisms. An example of these mechanisms is meetings with the applicant and local officials to explain the Public Assistance (PA) Program requirements, including those environmental and historic preservation compliance requirements and related environmental, social, economic, cultural and historic consequences. Other existing venues for the involvement of stakeholders will be identified and utilized to the extent practical. Public input will be used to further develop appropriate outreach mechanisms best suited to assist in assessing the potential for impact to the human environment from the reconstruction critical physical infrastructure projects required to restore safe and healthful conditions for the repopulations of NOMA.

Special effort will be taken to involve the general public and NOMA residents, including those that have temporarily relocated outside of NOMA. FEMA will develop an internet page for environmental related public notices and environmental related information specific to the proposed actions in NOMA. This page would also track other projects in NOMA in order to provide the public with information on the individual and cumulative nature of impacts of the FEMA funded actions. Efforts would be made to link to other public involvement forums such as state, parish, local group, and committee hearings and make this information available via electronic and non-electronic modes of outreach to assure availability to all those potentially affected.

For each project type, such as those identified above, FEMA will develop public involvement strategies that take into consideration the nature of that project type and the likely stakeholders that would have an interest in or be affected by those projects. Such strategies will include addressing national, state and local media, notifying groups linked to the various types of infrastructure, involving various civic, ethnic and religious groups, etc. When an action also requires public involvement to satisfy requirements under other federal laws, regulations, or Executive Orders, including the *National Historic Preservation Act* and *Executive Order 11988, Floodplains*, FEMA will work to integrate those public involvement requirements into the alternate arrangements public involvement process.

Alternatives and Mitigation Measures

FEMA has developed the list of types of critical infrastructure projects (Section II) that would be addressed by these alternative arrangements when applications are received from the State of Louisiana. Grant applications are project specific and provide the proposed sites or alternative sites. Potential alternatives also include whether to approve or condition the grant.

FEMA will establish criteria that will be followed for each type of critical physical infrastructure reconstruction project to mitigate or avoid significant environmental impacts whenever possible. Public input and consultation with the appropriate Federal,

tribal, and state resource agencies will be used to help identify appropriate measures to minimize the potential for adverse environmental impacts associated with the reconstruction of each type of critical infrastructure. As these environmental impact evaluations are completed and mitigation measures are developed, FEMA will post available and relevant documents on the internet site and make copies available to interested groups and members of the public upon request.

Given the urgency of the reconstruction effort, it is likely that some environmental impact analyses will need to proceed with incomplete or unavailable information. When information on the environmental effects of a type of critical physical infrastructure reconstruction is limited by incomplete or unavailable information, FEMA will use the direction in the Council on Environmental Quality regulations at 40 CFR 1502.22.

Environmental (including related social, cultural, historic and economic) Impacts and Incorporation of Other Environmental/Historic Preservation Documentation and Processes

FEMA will post on the internet site prepared for NOMA and use the public outreach described above to provide the projects and associated environmental reviews. This will allow the public and environmental reviewers an opportunity to track all the projects and associated impacts in a given area in NOMA.

FEMA will refer to and incorporate other available environmental and planning documents and data prepared for the NOMA area that provide useful information. The agency also intends to incorporate and utilize, to the extent feasible and practical, the environmental documentation or information prepared or gathered by other agencies before this event and those that will be prepared during the reconstruction and rebuilding efforts in NOMA. Examples of documents incorporated by reference include:

- New Orleans International Airport EIS
- New Orleans Regional Transit Authority EIS for city's streetcar system
- East-West Corridor Environmental Impact Study
- New Orleans Riverfront Redevelopment Master Plan

FEMA will also document and incorporate its ongoing consultation efforts with other regulatory and environmental agencies including the State Historic Preservation Offices and the Advisory Council on Historic Preservation.

V. Duration of the Emergency

The emergency identified above started at the moment of the Presidential disaster declaration and will continue until critical infrastructure in NOMA that is immediately necessary to protect the health and safety of the public is fully restored. Although the submission of some project applications may be contingent upon the occurrence of an independent event (i.e. reconstruction of levees, development of local plans, etc.), the

need for the alternative arrangements would continue to exist so long as the amount of time (from the submission of the application to the date agency action on the application is necessary to allow timely implementation or execution of the action) is limited.

FEMA and DHS will review these alternative arrangements with the Council on Environmental Quality on a quarterly basis to assess their effectiveness and longevity.

VI. Documentation

Documentation of the analysis of the proposed actions on grant applications and the potential for significant impacts to the human environment will consist of these alternative arrangements and the evolving website and available documents incorporated by reference, with updates as new information becomes available, and the posting of agency actions (receiving, approving, conditioning, or denying) critical infrastructure grant applications as well as notices of other actions being taking in the NOMA.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

1. A statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.