

FEMA Suspends the Initiation of LOMR-F/ CLOMR-F Cases in Six Southern California Counties

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FEMA’s National Flood Insurance Program (NFIP) will suspend initiation of Letters of Map Revision Based on Fill (LOMR-F) and Conditional Letters of Map Revision Based on Fill (CLOMR-F) cases in Los Angeles, Orange, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties effective August 14, 2020.

- On May 18, 2020, Ecological Rights Foundation filed a lawsuit asking the court to require FEMA to consult on the implementation of the NFIP in these six counties. In this lawsuit, Ecological Rights Foundation alleges that FEMA causes, facilitates, influences, promotes, and encourages development in the floodplains that is harmful to federally listed threatened and endangered species and their critical habitat. Specifically, they allege that certain mapping changes have the potential to encourage people to fill and build in the floodplain.
- Prior to the filing of this lawsuit, FEMA committed to undertaking a statewide programmatic Endangered Species Act (ESA) consultation on the implementation of the NFIP in California. FEMA must first complete a Biological Evaluation (BE) of the effects of its implementation of the NFIP on federally listed species in California and then initiate consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.
- To ensure that Ecological Rights Foundation’s concerns are being addressed while FEMA is completing its BE, FEMA has decided to delay the initiation of LOMR-F and CLOMR-F cases.
- Processing of LOMR-F and CLOMR-F requests, received after midnight on August 13, 2020, will be suspended upon receipt. Requestors will receive written notice confirming the suspension and will be reimbursed for any fees already submitted in relation to the application.



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- All cases post-marked before August 14, 2020, will be processed as normal. Requests received prior to August 14, 2020, but that are inactive and awaiting additional information, will be processed if the requested documentation is received before the case is closed due to inactivity – generally 90 days from notification of the need for additional information.
- This suspension DOES NOT apply to all other Letters of Map Change (LOMC) including Letters of Map Amendment (LOMAs/eLOMAs), Conditional Letters of Map Revision (CLOMRs), and Letters Map Revision (LOMRs).

LOMR-F and CLOMR-F requests are based on engineering data that proves that a structure or development on compacted fill above the base flood elevation flood elevation identified on the NFIP's Flood Insurance Rate Maps (FIRMs). A LOMR-F removes the property from the floodplain and, therefore, the mandatory purchase of flood insurance requirement no longer applies.

- Impacts to local permitting should be limited because LOMR-Fs and CLOMR-Fs are not required under the NFIP regulations for participating communities as part of their permitting process. However, communities can promote higher building standards and their regulations could be more restrictive than NFIP minimum requirements. Property owners will need to check with local building and/or planning departments on what will be permitted.
- FEMA anticipates the suspension to last around two to five years in order to complete a BE and initiate consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. FEMA's Region 9 office in Oakland will conduct the BE.
- FEMA has notified each Chief Executive Officer (elected official) and community floodplain administrator of the NFIP participating communities that have special flood hazard areas identified within the identified counties.

Questions about the effects of FEMA's decision or questions about the consultation process with the U.S. Fish and Wildlife Service and the National



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Marine Fisheries Service should be directed to Julia Gillespie at (510) 627-7248 or nfip-esa-consultation-2020@fema.dhs.gov.

How does the ESA relate to the implementation of the NFIP by individual communities?

Currently, FEMA's minimum floodplain management criteria at 44 C.F.R. § 60.3(a)(2) require communities to, for all floodplain development permits, "review [the] proposed development to ensure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law...." This includes compliance with the ESA.

Would floodplain construction projects with an approved CLOMR-F be eligible for a LOMR-F request after August 14, 2020?

No. FEMA will consider this a new activity and subject to the processing hold. However, since LOMR-Fs are not required by the NFIP, any project proponent may apply for a community floodplain permit and proceed subject to all local regulations.

Why is FEMA suspending initiation of LOMR-F and CLOMR-F cases in these six counties?

Litigants have alleged that FEMA mapping actions facilitate development and encourage floodplain modification through the use of fill and other activities. Since FEMA has not completed an analysis of NFIP implementation in California, FEMA has committed to delaying the processing of new LOMR-F and CLOMR-F cases in these counties until the effects of its actions can be evaluated through the completion of a BE. In addition, environmental groups have expressed their concern that mapping actions involving fill may incentivize development.



How can development occur if FEMA will not issue LOMR-Fs and CLOMR-Fs in these counties?

FEMA's LOMR-Fs and CLOMR-Fs are not permits, nor are they required for local permitting processes under the regulations for community participation in the NFIP. The placement of fill material is a development action that is permitted at the local level. Property owners will need to check with local building and/or planning departments on what will be permitted.

