

Part IV - Programs Which Assist Public Agencies

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PART IV - PROGRAMS WHICH ASSIST PUBLIC AGENCIES

SECTION A: FEMA-OEM PUBLIC ASSISTANCE (PA) PROGRAM

The FEMA-OEM Public Assistance Program provides assistance to public agencies in recovering from the effects of a major disaster. Funding under this program is to repair or restore damaged facilities to their pre-disaster condition, and to help eligible applicants recoup some of the costs of responding to the disaster. The program also has a mitigation component which allows additional funding in order to prevent or reduce future damage.

Public Assistance (PA) is a cost-share program with the usual funding arrangement being 75% federal and 25% non-federal. OEM is the grantee. Local units of government, certain private nonprofit organizations, and other state agencies are subgrantees under this program.

OEM maintains an administrative plan for the Public Assistance Program which contains detailed information in addition to that presented here. Additional information may also be found in FEMA publications 321, 322, and 323, available via the FEMA website...

www.fema.gov

1. Eligible Applicants

Eligible applicants under the Public Assistance Program are units of local government, state agencies, organizations and agencies of native peoples,¹ and private nonprofit organizations which meet certain criteria.²

2. Eligible Projects

To be eligible for assistance, a project must result from a Presidentially declared emergency or major disaster, must lie within the designated disaster area, must be the responsibility of an eligible applicant, and must not fall within the authority of another federal agency.³

¹ In the State of Oregon native agencies and organizations have a direct grantee relationship with FEMA and are not subgrantees of OEM.

² Criteria for private nonprofit eligibility can be found in 44 CFR, Part 206.221 and .222. As of October 30, 2000, non-critical PNP facilities are required to apply for a loan from the SBA, if there is an SBA declaration. If they are unable to obtain a loan or the loan does not cover all eligible damages, they may apply for FEMA assistance. This provision applies only to permanent work. Critical PNPs (power, water - including certain irrigation districts, sewer, wastewater treatment, communications, and emergency care) are not required to apply to SBA for a loan. In December 2002 FEMA additionally clarified that educational, utility, emergency, medical, rehabilitational, and custodial care facilities are not required to be open to the general public. All other PNPs are required to be open to the general public to be eligible for FEMA assistance.

³ Among the several federal agencies with authority to provide various types of disaster assistance to public agencies are the Federal Highway Administration (FHWA), U.S. Army Corps of Engineers (USACE), and the Natural Resources Conservation Service (NRCS).

3. Categories-of-Work

The PA Program consists of two main types of work, emergency work and permanent work, which are further defined in the following categories:

Emergency work is that work done during the duration of the emergency to save lives, protect and preserve property, public health and safety, and to provide temporary facilities to restore essential public services. Emergency work does not necessarily have to comply with codes and standards since the work involves life sustaining or life protecting actions.

The two emergency work categories are identified by the letters "A" and "B" and include the following:

"A" Debris removal - on public roads and streets including rights-of-way, and public or private property when it is necessary to eliminate threats to life, public health or safety, or threats of further damage to improved property; or to help ensure the economic recovery of the affected area. Debris clearance from agricultural land is usually not eligible under this program.

"B" Protective measures - taken by a community immediately prior to, during, and following a disaster to protect life, public health and safety, and improved public and private property. Costs of warning the public, providing security, placing barricades, activating an EOC, sandbagging, and search and rescue operations are examples of activities which will often be considered eligible expenses under protective measures.

Permanent work is that work required to restore a damaged facility to its pre-disaster condition. The additional cost of rebuilding to a local, state, or national standard that went into effect since the original construction is eligible also, if that standard is in writing and was adopted prior to the disaster, if the standard applies uniformly to all similar types of facilities regardless of funding sources, and if the standard is consistently enforced.

A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used immediately prior to the disaster. To mitigate future damage, relocation may be required. If so, the cost, including land, may be eligible if the overall project can be justified by the opportunity for hazard mitigation.

If a facility is under construction at the time of the disaster, any part of the facility still the responsibility of the contractor will not be eligible.

The five permanent work categories are identified by letters "C" through "G" and include the following work:

- "C" Road and bridges** - dirt, gravel, and paved surfaces, bases, shoulders, ditches, drainage structures, low water crossings, and bridge elements including decking, pavement, piers, girders, abutments, slope protection, and approaches, so long as these facilities are not on the Federal Aid System (FAS). Roads and bridges which are FAS, are ineligible under PA, but following Presidential declarations, FEMA can participate in the funding of emergency work if there is no FHWA declaration, but not permanent work, category "C."
- "D" Water control facilities** - such as dikes, levees, dams, drainage channels, and irrigation works, if not under the authority of another federal agency. For more information on coordinating the repair of water control facilities post-disaster, see "Water Control Facility Coordination" (Interagency Levee Task Force), Section G of this Part.
- "E" Public buildings and equipment** - including supplies and inventory, vehicles, equipment, and interior systems such as electrical.
- "F" Public utility systems**- storm water drainage, sanitary sewerage, light and power systems, water treatment plants and delivery systems, and other publically owned utilities.
- "G" Parks and other** - park and recreation facilities, and any other eligible facilities which do not fall under the other categories.

4. Time Frames for Completing Work

The time frames for completing eligible work are measured from the date of declaration of the disaster and vary depending on type of work:

- < debris clearance 6 months
- < emergency work 6 months
- < permanent work 18 months

Time extensions may be requested through the grantee (OEM) if extenuating circumstances or unusual project conditions exist.

5. Typical Sequence of Public Assistance

a. Applicant Briefing

Soon after the Disaster Field Office (DFO) is established, there will be a well-publicized Applicant Briefing on the Public Assistance Program conducted by FEMA and OEM staff. All potential applicants in the declared disaster area should send a representative to the meeting. The Request for Public Assistance form is usually distributed and collected at this time.

b. Request for Public Assistance
(FEMA Form 90-49)

Filing a Request for Public Assistance (“Request”) form is an applicant’s official notification to FEMA of their intent to apply for Public Assistance. The form outlines general information identifying the applicant, including the applicant’s name, address, and primary and secondary contacts. If the applicant is unable to submit the Request to OEM at the Applicants’ Briefing, the applicant must submit the form within 30 days of the date of designation of the county for Public Assistance. An applicant need not wait until all damage is identified before requesting assistance.

The Request for Public Assistance form can be obtained in the Forms Appendix of this *Guidebook* or electronically via the FEMA website...

<http://www.fema.gov/rrr/pa/appfrm1.shtm>
<http://www.fema.gov/rrr/pa/appfrm2.shtm#request>

Federal and state personnel will review each Request to ensure applicant eligibility. Once a Request has been submitted, the project formulation process can begin.

c. Public Assistance Contract

In order for OEM to pass-through FEMA Public Assistance funding to eligible applicants, each must enter into a contract with OEM (the grantee) by means of the OEM-Subgrantee Public Assistance Contract. Upon receipt of the Request for Public Assistance, a contract will be mailed to the applicant. Once signed by both parties, the applicant becomes a subgrantee to OEM for Public Assistance funding. No funds are released without the contract in place.

d. Immediate Needs Funding (INF)

INF is money earmarked for the most urgent work necessary in the initial aftermath of a disaster. It is a partial advance on emergency work (EW) items identified during the joint Preliminary Damage Assessment (PDA). INF is designed to assist the subgrantee in dealing with their urgent needs, meaning that it generally covers those items that will require payment by the subgrantee within the first 60 days after the disaster declaration. The state and FEMA will assess and determine the need to provide INF following a disaster. A completed Request for Public Assistance (FEMA Form 90-49) must be submitted and contract signed before OEM will release any INF. If INF is provided, the state may also impose separate requirements for INF recipients. INF is not intended for those EW items that involve special considerations or items of work that will require longer than 60 days to complete. These particular items will be funded in the normal manner.

Items that are normally eligible for INF includes debris clearance and emergency protective measures, such as clearing debris from the road to the right-of-way, sandbagging operations, shoring a listing building and disposal of dead animals. The funding may also be used to cover such costs as overtime and temporary employee payroll. Items that would not be eligible for INF include demolition of historic structures, removal of debris with known hazardous materials, and emergency work efforts covered by an existing insurance policy.

If the subgrantee has drawn on the INF, reconciliation (adjustment of funds) will be offset against all other emergency work. If the INF amount for EW is more than actual cost for work completed, a de-obligation of funds will take place and reimbursement of funds will be necessary.

e. Assignment of the Public Assistance Coordinator (PAC)

When the Request is forwarded to FEMA , the applicant/subgrantee is assigned to a PAC. The PAC is a FEMA program expert who serves as the applicant's customer service representative on PA program matters while the DFO is operational. The PAC has authority to approve project costs up to \$100,000 and provide recommendations for approval for project cost greater than \$100,000.

f. Kickoff Meeting

A Kickoff Meeting is scheduled after receipt of the Request. This meeting includes the PAC, OEM staff and any representatives of the applicant/subgrantee who will be involved in the disaster recovery process. (This could include an elected official, manager, public works director, fiscal staff, etc.) This approach allows the PAC and OEM to concentrate on eligibility and documentation requirements that are pertinent to the applicant/subgrantee. The applicant/subgrantee is requested to bring a list of identified damages to this meeting; however, all damages *must* be identified and reported to FEMA within 60 days from the date of the Kickoff Meeting. Special considerations, such as insurance, hazard mitigation opportunities, and compliance with environmental and historic preservation laws will also be discussed. Project Worksheets (see the Forms Appendix) are provided at this meeting.

g. Project Formulation

Is the process of identifying the eligible scope of work and estimating the costs associated with that scope for each of the applicant's projects. There are several methods that can be used for project formulation. The basis could be type of damage, system damage, using boundaries, or method of work completion. Projects with special considerations may be formulated separately and submitted to the PAC to immediately begin to resolve the special considerations issue.

**h. Development of Project Worksheets (PW)
(FEMA Form 90-91)**

A Project Worksheet is the primary form used to document the scope-of-work and cost estimate for a project. It includes the location, damage description and dimensions, scope-of-work, and cost estimate for each project. The PW will also be used to identify and resolve all special consideration issues and describe any unique aspects of the project. When the estimated or actual cost amount on a PW is less than \$1,000, that work is not eligible for FEMA cost-share reimbursement.

A project is not limited to damages at one site. Instead, subgrantees have the option of combining several sites into one project, thereby organizing management around their own administrative system and recovery needs, and reducing the number of documents related to their recovery funding.

The damage must be described in terms of the facility, features, or items requiring repair. It may also be necessary to provide a brief description of the pre-disaster condition and use of facility. PWs for eligible private nonprofit organizations must include a copy of IRS tax exempt status forms, and a copy of the organization's articles of incorporation.

A Project Worksheet Form (FEMA Form 90-91) can be obtained in the Forms Appendix to this *Guidebook* or electronically via the FEMA website at...

<http://www.fema.gov/rrr/pa/appfrm1.shtm>
<http://www.fema.gov/rrr/pa/appfrm2.shtm#pw>

i. Small Projects

For small projects the subgrantee has the opportunity to describe and estimate the costs associated with PWs and submitting completed PWs to the PAC. Detailed project worksheets for small projects must be submitted within 30 days of the Kickoff Meeting. If the subgrantee requires assistance with the preparation of PWs, the PAC may assign a Project Officer or Specialist to provide the subgrantee with technical assistance.

The subgrantee will develop an accurate scope-of-work and then develop an accurate, reasonable cost estimate for completing the work. Actual costs may be used if they are known or cost codes provided by FEMA can be used for estimating the cost of repair.

Once a subgrantee has submitted completed project worksheets, FEMA and/or OEM will verify documentation on a small portion (typically 20%) of the small projects. Disaster recovery staff will meet with the subgrantee to review supporting documentation (such as labor, equipment, and materials records or contracts), ensure accuracy in the application of program eligibility, and certify the reasonableness of costs. This is called validation. All PWs submitted to the PAC more than 30 days after the Kickoff Meeting will require validation.

For federal FFY 05, small projects were defined as those under \$55,500, an amount adjusted annually on October 1 based on the Consumer Price Index.

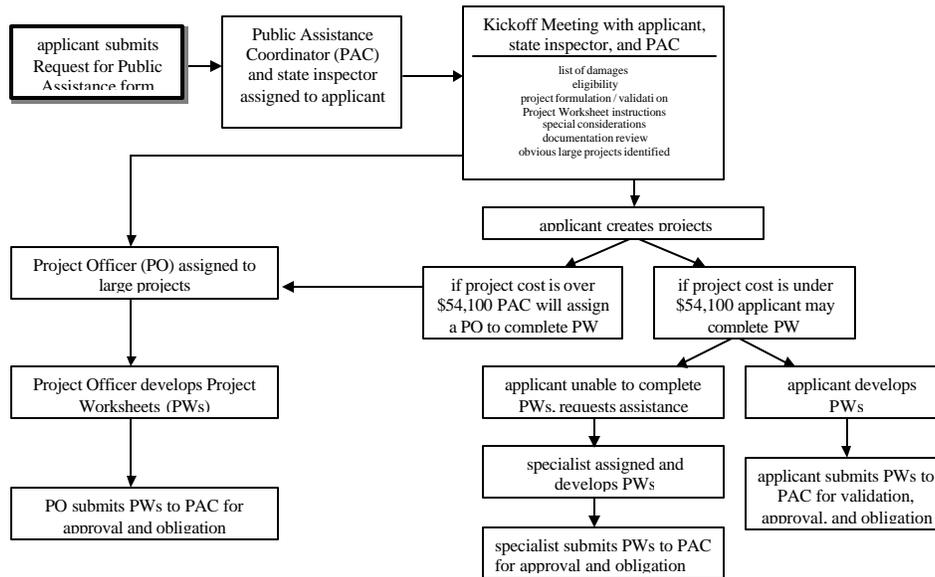
ii. Large Projects

For large projects a Project Officer (PO) is assigned by the PAC. The PO will work with OEM and the subgrantee to develop the scope-of-work and cost estimates for all large projects.

Because of the complexity and nature of most large projects, work typically is not complete at the time of FEMA approval. Therefore, large projects initially are approved based on cost estimates and funds generally are made available by progress payment as the work is performed. Estimates will be developed by technical specialists using a professional cost estimating methodology. This methodology uses standard construction industry practices and includes: labor, materials, equipment, project design and management, contractor overhead and profit, escalation due to inflation and other factors that can increase project costs significantly over long construction periods.

For federal FFY 05, large projects were defined as those over \$55,500, an amount adjusted annually on Oct. 1 based on the Consumer Price Index.

Project Formulation Flowchart ⁴



There are five primary steps to obtaining disaster assistance:

1. Request for Public Assistance is submitted by the applicant.
2. Public Assistance Coordinator (PAC) is assigned to each applicant.
3. The applicant presents a list of damages to the PAC at the Kickoff Meeting. This list is the basis for building Project Worksheets. The applicant then has 60 days from the date of the Kickoff Meeting to report or identify damages to FEMA.⁵
4. The PAC and state staff work with the applicant/subgrantee to identify any special considerations, ensure that all damage and emergency work costs are identified, and that the scope-of-work on Project Worksheets is eligible and complete.
5. Upon approval of Project Worksheets, the funds are obligated to OEM, who is the grantee and will disburse Public Assistance funds to the subgrantee. Federal funds for small projects will be disbursed after approval and federal funds for large projects will be disbursed as work is accomplished.

⁴ <http://www.fema.gov/rrr/pa/pfchart.shtml#PF>

⁵ 44 CFR 206.202(d)(ii)

iii. **Method of Work**

For all eligible work included on Project Worksheets, a subgrantee may choose the method by which that work has been or will be accomplished, either by contract or by force account:

Contract The applicant/subgrantee contracts with a private firm to do the work. No cost-plus or contingency contracts may be used. Contracts must be based on competitive bidding, and must comply with applicable labor regulations. Subgrantees must comply with federal, state, and local procurement standards.

Force Account Force account is work done by a public agency's own equipment and labor forces consisting of its regular and temporary employees. Rates developed by a local government can be used for equipment if their rates are less than the rates published by FEMA that are applicable on a national basis.

iv. **Documentation**

[Sample project documentation forms may be found in the Forms Appendix of this *Guidebook*.]

Begin documentation as soon as you begin responding to the disaster. Do not wait until you have been instructed to begin documentation or until a major disaster has been declared. If you wait, you may lose reimbursement which you would have otherwise received. Problems with reimbursement later in the disaster can sometimes be solved by reference to documentation done early during response and recovery.

Proper documentation of disaster recovery expenditures is necessary in order to be eligible for federal funds, and properly kept records will help avoid unnecessary difficulties in receiving those funds. Proper record keeping will provide a means of identifying the need for time extensions and supplemental funds.

Generally, record keeping should include not only the specific documents identified herein, but also photographs and sketches for additional clarity. The applicant/subgrantee should establish a file system for disaster recovery operations organized by Project Worksheet number. File each Project Worksheet (PW) in a separate folder and include all supporting documents. Good record-keeping will leave an audit trail of expenditures, and provide documentation for reviewers who will need to recommend reimbursement of eligible disaster recovery costs.

The following information on record keeping is offered as a suggestion, and is presented to give an idea of the kinds of records that will be required. If the applicant/subgrantee has a better record keeping system, and prefers to use it, this is acceptable so long as records are tied to specific Project Worksheets. In order to be eligible for reimbursement, records must apply to, and be identifiable as within the scope-of-work of a particular PW.

Documents which should be placed in the file folder for contract work are: the Project Worksheet, requests for bid, bid documents, contracts, invoices submitted by the contractor, authorization for check issuance, and copies of checks issued in payment.

Documents which should be placed in the file folder for work done by the subgrantee's own forces (force account) are: the Project Worksheet, extracts from payroll with any cross-reference needed to locate original documents, a schedule (list) of equipment used on the job and hours of use, invoices, warrants and checks issued and paid for materials and supplies used on the job, and inventory withdrawal forms for items taken from stock.

In addition, all Project Worksheet file folders should contain a summary that lists, with a brief description, the individual costs which make up the total claimed costs for the Project Worksheet.

Additional information on documentation exists in OEM's *Public Assistance Administrative Plan*.

v. Special Considerations

When providing funds under the PA Program, FEMA must consider a range of federal laws that apply to the use of PA funds. Emphasis is placed on the importance of identifying potential issues that could affect program delivery. FEMA has developed a list of questions to help the subgrantee identify any special considerations. The subgrantee must wait for FEMA approval of necessary environmental reviews before beginning work.

The Special Considerations Questionnaire (FEMA Form 90-120) can be obtained in the Forms Appendix to this *Guidebook* or electronically via the FEMA website at...

<http://www.fema.gov/rrr/pa/appfrm2.shtm#pw>

Form 90-120 asks nine questions about special considerations associated with the Public Assistance Program.

These nine questions may be grouped into the six general areas below:

Hazard Mitigation

The subgrantee should identify and request funding for hazard mitigation opportunities associated with the project by attaching a completed Hazard Mitigation Proposal Form. Hazard mitigation is defined as cost-effective action taken to prevent or reduce the threat of future damage to a facility. Section 406 of the Stafford Act provides discretionary authority to fund mitigation measures in conjunction with the repair of damaged facilities. They are limited to permanent work, and subgrantees may not apply mitigation funding to improved or alternate projects. Upgrades required to meet applicable codes and standards are not mitigation measures because meeting codes and standards are part of eligible restoration work.

The Hazard Mitigation Proposal Form (FEMA form 90-61) Form can be obtained in the Forms Appendix to this *Guidebook*.

Insurance Requirements

FEMA will reduce otherwise eligible costs by the actual or anticipated insurance recoveries the subgrantee receives. For insurable buildings located in a special flood hazard area (SFHA) and damaged by flood, the reduction is the maximum amount of insurance proceeds the subgrantee would have received had the building and its contents been fully covered by a standard flood insurance policy under the National Flood Insurance Program.

The subgrantee is required to buy and maintain insurance in at least the amount of the eligible damages for flood and other insurable hazards. The commitment to purchase and maintain insurance must be documented and submitted to FEMA before project approval. A subgrantee is exempt from this requirement for projects where the total eligible damage is less than \$5,000 .

Improved and Alternate Projects

When a subgrantee wants to make improvements to a facility instead of merely restoring that facility to its pre-disaster condition, this is called an improved project. Funding of the improvements is the responsibility of the subgrantee. Prior to initiating an improved project, a detailed written proposal shall be submitted to OEM.

In any case where a subgrantee determines that the public welfare would not be served by restoring a damaged public facility or the function of that facility, the subgrantee may request approval of an alternate project. Funds contributed towards an alternate project may be used to repair or expand other selected public facilities or to purchase equipment. The subgrantee must obtain prior approval from OEM.

The alternate project percentage is 75% of the federal estimate to restore the facility to its pre-disaster condition, except in certain circumstances for government facilities "in an area of unstable soil" where the percentage is 90% of the federal estimate for restoration. Alternate project funding cannot be transferred to any facility located in a regulatory floodway, nor to any uninsured facility located in a mapped 100-year floodplain.

Alternate projects and improved projects can be either small projects or large projects and must be reviewed for compliance with the National Environmental Policy Act (NEPA) and other environmental laws and statutes.

Environmental Requirements

In order for subgrantees to receive FEMA funding, their project must comply, as necessary, with several federal environmental laws. In addition to the laws and executive orders noted in Floodplains, Coastal Areas, Watersheds, Wetlands, Historic Preservation, and Cultural Resources below and on the next page, the following may also apply to projects proposed for funding under Public Assistance:

- < National Environmental Policy Act (NEPA)
- < Resource Conservation and Recovery Act
- < Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- < Endangered Species Act (ESA)
- < Clean Air Act
- < Executive Order 12898 - Environmental Justice
- < Executive Order 12941 - Seismic Safety

Generally the following work may be completed without special considerations attention being given to meet environmental requirements:

- < Emergency actions such as search and rescue, and other actions pertaining to preserving life and safety;
- < Debris removal (but not necessarily disposal or storage/staging);
- < Repairs and restoration to pre-disaster condition (unless the structure is more than fifty years old - see Historic Preservation and Cultural Resources on the next page); and
- < Temporary repairs (unless the structure is more than fifty years old).

All other work contemplated should be examined for possible special considerations issues.

Floodplains, Coastal Areas, Watersheds, and Wetlands

The following environmental requirements are often grouped together because they all have to do with water. The last three on the list below most often affect recovery of public facilities:

- < Rivers and Harbors Act, Section 10
- < Clean Water Act, Section 404
- < Coastal Zone Management Act
- < Executive Order 11988 - Floodplain Management
- < Executive Order 11990 - Wetlands Protection

Congress passed the Coastal Zone Management Act (CZMA) in 1972 (amended in 1996) to address competing uses and resource impacts occurring in the nation's coastal areas. The Act included several incentives to encourage coastal states to develop coastal management programs. One incentive was a legal authority called "federal consistency" that was granted to coastal states with federally approved coastal management programs. The federal consistency provisions of the CZMA require that any federal action occurring in or outside of Oregon's coastal zone which affects coastal land or water uses or natural resources must be consistent with the Oregon Ocean-Coastal Management Program. The federal consistency requirement is a rather unique concept in that state programs for coastal management cannot generally be preempted by federal law. In Oregon, the lead state agency for implementation of the CZMA is the Department of Land Conservation and Development (DLCD). The Ocean-Coastal Management Program staff at DLCD also participate in various local and state permit reviews for projects proposed in Oregon's coastal zone.⁶

Executive Order (EO) 11988 - Floodplain Management requires that federally funded projects located in a floodplain follow the "eight-step process" described in the EO, including public notification.

Executive Order 11990 - Wetlands Protection concerns itself with modifications to wetlands, including filling, and also requires the eight step process as noted above. Debris cannot be stored in a wetland, even temporarily. The Division of State Lands and the U.S. Army Corps of Engineers have developed a joint permit process that applies to any proposed fill or removal from the waters of the State of Oregon, including wetlands.

Historic Preservation and Cultural Resources

The National Historic Preservation Act (NHPA) requires federal agencies to consider what effects their actions may have on historic properties. To that end, each project involving historic property must go through a review process to explore how to reduce or avoid potential adverse impacts. FEMA has a Programmatic Agreement to streamline the review required by Section 106 of the NHPA.

If FEMA determines that a proposed scope-of-work will cause damage to character defining features, then further consultation is required with the State Historic Preservation Office (SHPO).

Historic properties include archeological sites as well as various types of structures, artifacts, records and remains located within and related to a historic property can also be historically significant. Known archeological sites are listed in the state and national registers, but previously undisturbed subsurface can also trigger historic review. Hence even if the property is not registered and the subgrantee finds archeological or historical artifacts during excavation, it is necessary to stop work and contact your Public Assistance Coordinator immediately.

⁶ For more information, see http://www.lcd.state.or.us/coast/permits_projectrev.html

For structures (buildings, bridges, walls, etc.), the rule-of-thumb often used to determine whether the structure might be eligible for listing on the historic register is if it is more than fifty years old, but OEM recommends using forty-five years old to provide some margin-of-error. FEMA Form 90-122, Historic Review Assessment for Determination of Effect, can be found via...

<http://www.fema.gov/rrr/pa/appfrm2.shtm>

i. Reimbursement

An OEM Payment Request Form will be sent to the subgrantee with each approved PW. This form must be submitted whenever a subgrantee requests reimbursement. Funds can be distributed by OEM following project approval and receipt of the Payment Request Form. For a small project, payment is normally the entire federal share of the approved estimate, whether or not the project has been completed. Large projects are reimbursed via progress payments based on actual eligible costs.

j. Quarterly Reports

Blank copies of Project Status Questionnaires (OEM's method for quarterly progress reports) are mailed to subgrantees with large projects approximately one week prior to the end of a quarter. The questionnaire asks if the project has been completed, and if so, what date was it completed? If the project is not complete, the form asks for an anticipated timeline showing tasks and anticipated project completion dates. The form also asks if the subgrantee expects a cost overrun, and if so, why? This report is required to be returned by the subgrantee to OEM not later than the 15th of the month following the close of the quarter.

k. Final Inspection

Final inspections apply only to large projects. When work has been completed on a large project, the subgrantee must submit a Project Completion and Certification Form (P4), along with a final Payment Request Form. OEM will contact the subgrantee to schedule an on-site inspection. The project must have been completed as described in the scope-of-work. Eligible costs will be determined based on the work and supporting cost documentation. Final payment will not be issued without this inspection.

l. Final Payment

Since the federal share of a small project is ordinarily paid in its entirety upon PW approval, usually the "final payment" on a small project is the only payment. However, when a small project has been completed, the subgrantee still needs to submit the Project Completion and Certification Form (P4). For large projects, the subgrantees submission of the P4 serves as the vehicle for prompting a final inspection of the project by OEM, and the final payment.

m. Project Close-Out

i. Small Projects

After OEM receives a P4 from a subgrantee stating that a Project Worksheet is complete, OEM sends FEMA Region Ten a copy of the P4 with a letter asking that FEMA close the project. FEMA returns a copy of the letter stating the project is closed. OEM then sends a letter to the subgrantee that OEM and FEMA do not expect to take any future action on the PW, and advises the subgrantee to retain project files for three years after the date of closure of the disaster.

ii. Large Projects

Based on the final inspection, the goal of which is to certify that all costs were eligible and within the scope-of-work as described in the PW, OEM sends FEMA Region Ten a copy of the P4, photographs, and a Final Inspection Report asking that FEMA close the project. FEMA then sends notification to OEM that the project is closed, and OEM sends a letter to the subgrantee stating that the project is closed and advising the subgrantee to maintain records for at least three years after its last expenditure report.⁷

6. Audits

All approved Project Worksheets are subject to audit. In addition, any jurisdiction receiving \$500,000 or more in total federal financial assistance from all sources in a fiscal year are subject to a single audit under the requirements of the Single Audit Act.

7. Appeal Procedures ⁸

If there is a disagreement about eligibility, time limits, funding, or any other determination made about Public Assistance, an appeal process is available for review and reconsideration of the situation. The appeal procedure requires the subgrantee to make a written request to the Governor's Authorized Representative, giving an appropriate justification for the appeal, and asking for reconsideration under the appeal procedure. This request must be made within 60 days of the date of the action in question. The appeal must identify the specific matter in question, and include copies of any appropriate reference material.

The GAR shall, after due consideration, forward such appeals to the FEMA Regional Director within 60 days of receipt of the appeal, together with appropriate comments, recommendations, and any relevant additional information available.

The FEMA Regional Director will review the appeal, and reference materials submitted, and make such additional investigation as deemed appropriate. Following this, within 90 days of receipt of the appeal, the Regional Director will notify the GAR in writing of the decision to grant or deny the appeal. If the decision is to grant the appeal, the Regional Director will take such additional action as is necessary to implement the decision.

A second appeal may be made if the Regional Director denies the first appeal. The subgrantee may request OEM to submit a second appeal in writing to the Associate Director/Executive Associate Director for Response and Recovery not later than 60 days after the date of the Regional Director's denial of the first appeal. Action by the Associate Director is final.

⁷ 44 CFR 13.42(b) and (c)

⁸ For more information see 44 CFR 206.206

SECTION B: OTHER FEMA DIRECTED PROGRAMS

The first four programs described in this section are associated with Presidential emergency or major disaster declarations; the last one can be made available to the state and its local governments without a Presidential declaration. All are directed by FEMA, the first four under the Federal Coordinating Officer, and the last by the FEMA Regional Director.

1. Direct Federal Assistance

Direct federal assistance, strictly speaking, is not a program, but a vast array of possible programs of various federal agencies which respond at the direction of the Federal Coordinating Officer (FCO) under the *Federal Response Plan*.

"When the state and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal...(they) may request that the work be accomplished by a federal agency...All requests for direct federal assistance shall be submitted by the (state) to the Regional Director, and shall include:

- < A written agreement that the state will provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work; hold and save the United States free from damages due to the requested work, and shall indemnify the federal government against claims arising from such work; provide reimbursement to FEMA for the non-federal share of the cost of such work in accordance with the provisions of the *FEMA-State Agreement*; and assist the performing federal agency in all support and local jurisdictional matters.
- < A statement as to the reasons that the state and the local government cannot perform or contract for performance of the requested work." ⁹

This assistance is subject to the eligibility requirements applicable to Public Assistance generally, and "if all or part of the requested work falls within the statutory authority of another federal agency...(that) portion of the request will be referred to the appropriate agency for action." ¹⁰

Work done under direct federal assistance must be completed within 60 days after the President's declaration, unless the Regional Director extends the time limitation.

Also, "during the immediate aftermath of an incident which may ultimately qualify for assistance under (a major disaster or emergency declaration), the Governor of the state...may request the President to direct the Secretary of Defense to utilize resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property...Such emergency work may only be carried out for a period not to exceed 10 days." ¹¹

⁹ 44 CFR 206.208

¹⁰ *ibid.*

¹¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended by PL 100-707 (Washington, D.C.: U.S. Congress, 1988), Section 403 (c)(1)

2. Emergency Communications Assistance

"The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to state and local government officials and other persons as he deems appropriate."¹²

3. Emergency Public Transportation

"The President is authorized to provide temporary transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible."¹³

4. Community Disaster Loans

Section 417 of the Stafford Act authorizes loans to local governments for continuing normal government operations, and to meet disaster-related needs, in circumstances where there has been a substantial loss of revenue due to a major disaster. To be eligible, the local government must be located within the area designated under the major disaster declaration.

Loans are based on an assessment of need, and may not exceed 25% of the operating budget for the year in which the disaster occurs. Loans can not be used for capital improvements or for repair of public facilities, nor can community disaster loans be considered non-federal match for any purpose. Loans under this program do not affect or reduce any grants or other assistance provided to the community through other Stafford Act programs. Loans may be made for the local government fiscal year of the disaster or the following one.

Repayment of all or any part of such loans may be canceled to the extent that revenues of the local government during the three fiscal years following the disaster are insufficient to meet operating expenses due to disaster-related revenue losses, and non-reimbursed disaster-related municipal operating expenses.

The Disaster Mitigation Act of 2000 set a cap of \$5,000,000 on the amount of any community disaster loan that FEMA might make, and states that a local government will not be eligible for further community disaster loan assistance if the community is in arrears on any required repayment of a previous community disaster loan.

Application is made through the GAR and FEMA Regional Director to the Associate Director. More information on this program can be found at 44 CFR 206.361.

¹² Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended by PL 100-707 (Washington, D.C.: U.S. Congress, 1988), Section 418

¹³ *ibid.*, Section 419

5. Fire Management Assistance Grant Program

The Fire Management Assistance Grant Program (FMAGP), formerly known as Fire Suppression Assistance, was expanded and amended by the Disaster Mitigation Act of 2000. 44 CFR Part 204 makes this program available to states and their communities for the "mitigation, management, and control" of a declared fire or fire complex. The intention of the program is to reduce the spread of a fire, minimizing associated health and safety threats, to prevent potential damage by a fire or fire complex to homes and businesses, community infrastructure, and critical watersheds, thereby reducing greatly the possibility of the need for a major disaster declaration. A fire for which FMAGP is made available is commonly referred to as a "FEMA Fire."

Activation of the FMAGP requires a declaration by the FEMA Regional Director.¹⁴ FMAGP is a cost-share program with the usual funding arrangement being 75% federal and 25% non-federal.

Eligible assistance (44 CFR 204.42) may include:

- < Equipment and supplies, including tools, materials, expended or lost, to the extent not covered by reasonable insurance;
- < Operation and maintenance costs of publicly owned, contracted, rented, or volunteered equipment used in eligible firefighting activities;
- < Use of U.S. Government-owned equipment based on reasonable costs as billed by the federal agency and paid by the state;
- < Labor costs for overtime of permanent or reassigned state and local employees; regular time and overtime for temporary and contract employees hired to perform fire related activities;
- < Travel and per diem costs, including those associated with field camps and meals when made available in place of per diem;
- < Pre-positioning costs (this is complicated, and applies almost exclusively to Oregon Department of Forestry);
- < Emergency work including barricading and traffic control, extraordinary emergency operations center expenses, evacuations and sheltering, search and rescue, arson investigation teams, public information, and the limited removal of trees that pose a threat to the general public;
- < Temporary repair of damage caused by eligible firefighting efforts and activities, including minimal repair to bulldozer lines, camps, and staging areas; as well as minimal repair to roads, bridges, fences, buildings, etc. to address safety concerns (all temporary work must be completed within 30 days of the close of the incident period); and
- < Costs for mobilization to, and demobilization from, a fire or fire complex.

¹⁴ Additional information on the declaration process for the FMAGP is included under Other Federal Declarations on page I-18 of this *Guidebook*)

Ineligible costs (44 CFR 204.43):

- < Costs not directly associated with the incident period are ineligible, except certain pre-positioning, mobilization and demobilization activities, and grant administrative requirements (the incident period is a beginning and ending time negotiated by Oregon Department of Forestry and FEMA or its federal advisor, usually a USFS official representing FEMA);
- < Costs incurred in the mitigation, management, and control of undeclared fires;
- < Costs related to planning, presuppression (e.g., cutting fire-breaks without the presence of an imminent threat, training, road widening, and other similar activities), and recovery (e.g., land rehabilitation activities, such as seeding, planting operations, and erosion control, or the salvage of timber and other materials, and restoration of facilities damaged by fire);
- < Regular time costs for permanent or reassigned employees of the applicant;
- < Costs incurred while fighting fires on federally owned land reimbursable by another federal agency.

Oregon Department of Forestry (ODF) acts as the state grantee for this program. Through ODF, other state agencies, such as Oregon Military Department, Oregon Department of Transportation, etc. can be reimbursed the federal share of eligible costs. Many costs incurred by the state and local firefighting agencies under the Conflagration Act are eligible for FEMA-declared fires through ODF and the Office of State Fire Marshal. Eligible costs that local firefighting agencies and other local agencies incur in managing a wildfire emergency within their jurisdiction may also be eligible as subgrantees of ODF.

SECTION C: FEDERAL HIGHWAY ADMINISTRATION (FHWA) EMERGENCY RELIEF (ER) PROGRAM

The ER Program helps pay for repair of roads and bridges on Federal Aid Highways, which have been damaged by a natural disaster or catastrophic failure. Federal Highway Administration assistance through the Emergency Relief Program can be rendered with or without a Presidential major disaster declaration. Authority for providing Emergency Relief assistance to states can be found at Title 23, USC, Section 125.

Damage surveys for ER are covered on page I-12, and the process used by the state to request ER is covered on page I-17 of this *Guidebook*.

The ER Program provides for repair and restoration of highway facilities to pre-disaster conditions. Restoration in kind is therefore the predominate type of repair accomplished. Emergency Relief funds are not intended to replace other federal aid, or state/local funds for new construction to increase capacity, correct non-disaster related deficiencies, or otherwise improve highway facilities.

Highways are eligible for ER funds if:

- < The highway is classed a major collector or above (i.e., a Federal Aid Highway);
- < The Governor declares a state of emergency in the affected county or counties (occasionally the Governor will make a state of emergency declaration strictly in order to request FHWA Emergency Relief);
- < Estimated cost of repairs to FHWA eligible highways statewide due the disaster total at least \$700,000;¹⁵ and
- < There is a favorable finding of eligibility by the FHWA.

Local government application for ER is made through the Highway Division of ODOT, the state administering agency for these funds. ODOT assists local road departments and public works agencies with application, necessary documentation, and in establishing funding and reimbursement mechanisms.

1. Emergency Repairs

FHWA pays 100% of the cost of eligible emergency repairs completed within 180 days from the start of the disaster. After 180 days, the following applies for FHWA ER funding:

- < Interstate highways - 92.22%
- < Forestry land highways - 100%
- < All other highways - 89.73%.

Emergency repair work should begin right away, before FHWA determines eligibility. If the event that caused the damage is approved for funding, FHWA will reimburse eligible repair work retroactively.

2. Permanent Repairs

FHWA pays 89.73% of the cost of eligible permanent repairs. FHWA must approve permanent repairs before work begins.

¹⁵ The estimated cost of repairs must come from a single disaster or catastrophic failure. Local jurisdictions and the state cannot combine more than one event to reach the \$700,000 threshold.

3. Eligible Costs

Costs generally eligible under ER are:

- < Payments to contractors (hired resources), materials, and equipment
- < Regular and overtime of employees directly engaged in repair
- < Payroll additives
- < Design engineering, right-of-way, and construction engineering
- < Flexible service consultants for geotechnical and other engineering advice
- < Some of the costs associated with debris removal from the right-of-way

4. Ineligible Costs

Costs not eligible under ER include:

- < Maintenance
- < General supervision
- < Administration and overhead
- < Damage assessment costs (this is also true of the FEMA-OEM Public Assistance Program)

A minimum \$5,000 in repair cost per site is used as non-regulatory guidance to determine if the extent of repair work at a site is beyond the scope of heavy maintenance. Normally, eligible work must be within the right-of-way limits.

5. Hazard Mitigation/Betterment

Protective features, such as the relocation of roadways, lengthening or raising of bridges, and added facilities which did not exist prior to the natural disaster or catastrophic failure, such as additional lanes, upgraded surfacing, etc. are commonly referred to as betterments (protective features are considered hazard mitigation in the FEMA-OEM Public Assistance Program). While the FHWA may approve protective features if they represent good engineering that will reduce or prevent damage and expenditure of ER funds in the future, betterments which are new or improved facilities are not generally eligible for ER funding.

Hence, each applicant should justify any betterment costs proposed for protective features (hazard mitigation). The request must describe conditions and problems at the site prior to the disaster and current conditions. Proposals should generally outline the "do-nothing" alternative and at least two "build" alternates, including estimated costs.

SECTION D: RURAL UTILITIES SERVICE

Rural Utilities Service (RUS) is part of the U.S. Department of Agriculture's rural development function. It offers the following programs that relate most directly to disaster recovery:

1. Rural Economic Development Loan and Grant Program

The Rural Economic Development Loan and Grant Program provides zero-interest loans and grants to Rural Utility Service borrowers, who in turn re-lend the money as a zero interest loan to local entities, usually telephone and electric utility companies.

The grant program provides funds to rural utility companies to establish a revolving loan fund for community facilities and infrastructure.

Zero interest loans and grants may be made to any electric or telephone RUS borrower or certain former RUS borrowers who prepaid their REA loan early at a discount, that are not financially distressed, delinquent on any federal debt or in bankruptcy proceedings. The ultimate recipients of the zero interest loans may be for-profit businesses that provide economic development or job creation in a rural area. The ultimate recipients of the loans made from the RUS revolving fund must be nonprofit entities that provide needed community facilities or infrastructure.

Application is made via the Rural Development State Office. Funding selections are made at RUS in Washington, DC, based upon a national competition.

2. RUS Electric Program

RUS makes insured loans and guarantees of loans to nonprofit and cooperative associations, and public utilities for electric, water, and telecommunication facilities. One of several types of loans, "hardship loans" are used to finance electric distribution and sub-transmission facilities. These direct loans are made to applicants that meet rate disparity thresholds and whose consumers fall below average per capita and household income thresholds. They may also be made if the RUS administrator determines that the borrower has suffered a severe, unavoidable hardship, such as a natural disaster.

For many natural hazard events not declared major disasters by the President (in this case, usually wind or winter storms), RUS loans are a primary source of assistance to rural electric cooperatives (co-ops) and people's utility districts (PUDs). Please keep in mind that the U.S. Small Business Administration can also make physical disaster loans available to PNPs such as co-ops, to PUDs, and to private utilities.

On November 1, 1993,¹⁶ the Rural Electrification Loan Restructuring Act, P.L.103-129, amended the Rural Electrification Act of 1936, to establish a new interest rate structure for insured electric loans. Insured electric loans approved on or after this date, are either municipal rate loans or hardship rate loans. Borrowers meeting the criteria set forth in §1714.8 are eligible for 5% hardship rate loans.

¹⁶ This information was copied from the following website... <http://www.usda.gov/rus/electric/rates.shtml> Please note that despite the 1993 date, other things on this page of the website were dated as recently as Sept. 2003. In the current interest rate environment, many regular loans are at lower rates of interest for terms less than 20 years. The "hardship" rate is generally only lower beyond a 20 year term.

SECTION E: U.S. ARMY CORPS OF ENGINEERS (USACE)

The U.S. Army Corps of Engineers has been of service to the United States for over 200 years. USACE has responded during times of need with engineering, construction, and water resources expertise. Because of first hand knowledge of local conditions throughout the United States, USACE is able to play a major role in saving lives and easing human suffering when disasters occur. The geographically diverse location of USACE offices nationwide assures a timely response to disasters. USACE is divided by drainage basins into regional divisions. The divisions are subdivided by smaller drainage basins into districts. Personnel are also assigned to various field offices scattered throughout each district. During disasters, personnel in any locale may be quickly mobilized to assist in response and recovery work.

Emergency Operations Managers have been appointed to each division and district to implement emergency actions. Each is responsible for maintaining an emergency organization of trained specialists. Most important, however, each district has a single point-of-contact for all emergency activities. Local officials are encouraged to contact the closest USACE office for specific information concerning programs and to accomplish joint planning, training, and information exchange opportunities.

USACE can assist state and local governments without a Presidential declaration to accomplish response and recovery - especially for the flood hazard - including taking such actions as may be required to save human life, prevent suffering, and mitigate damage to property.

With the exception of the rehabilitation program noted on page IV-24 any other request from local officials for USACE assistance should be made through the OEM Director to the Governor. OEM will work with appropriate USACE officials, and advise the Governor on how to proceed with the request. Most assistance requires a written request from the Governor. USACE resources noted here are supplemental to local and state resources. For Indian tribal lands, the Bureau of Indian Affairs will normally submit the request for assistance.

USACE assistance is limited to the preservation of life and protection of residential and commercial developments, to include public and private facilities that provide public services. Exclusive assistance to individual homeowners and businesses, including agricultural businesses, is not authorized. However, during periods of extreme drought, such assistance may be provided to farmers and ranchers under certain circumstances. USACE has no authority to reimburse local governments for the costs of local emergency response and recovery actions.

1. Emergency Operations

The authority for the resources described below is granted via Public Law 84-99, as amended, which is directed at flood and coastal storm response (USACE calls this "emergency operations") such as:

- < Temporarily raising the elevation of existing levees with sandbags or by other means;
- < Strengthening and providing emergency repairs to levees and other flood control projects;
- < Evacuating people and assisting in search and rescue operations;
- < Providing materials and equipment, such as sandbags,¹⁷ plastic sheeting, lumber, rock, and pumps, if USACE is actively participating in a flood fight;¹⁸
- < Providing twenty-four hour technical assistance during the event; and
- < Loaning equipment or emergency contracting of equipment.

¹⁷ Sandbags are only available to communities which have made a good faith effort to stock a supply prior to a flood, and only after mutual aid and/or state resources have been engaged.

¹⁸ If USACE is not actively participating in a flood fight, federal supplies may be furnished only if local resources are exhausted or will be exhausted; under such circumstances, supplies must be replaced in kind or paid for by local interests. All unused stock should be returned or reimbursed to the federal government at replacement cost.

Under post-flood response (this also falls broadly under “emergency operations,” and is also known as “Ten Day Authority”), USACE can assist in:

- < Removing logs, debris, and ice jams from drainage channels, bridge openings, water supply intakes, and sewer outfalls;
- < Removing debris as necessary to reopen vital transportation routes;
- < Assisting in the temporary restoration of critical public services or facilities;
- < Providing emergency water (this is limited to 30 days or up to the date of the Presidential declaration, whichever comes first);
- < Providing technical assistance; and
- < Assisting in identifying hazard mitigation opportunities.

“Ten Day Authority” requires the Governor’s written request to both USACE and FEMA. The ten days begin with the Governor’s request to FEMA for a joint Preliminary Damage Assessment (PDA) and end after ten days or with receipt of a Presidential major disaster or emergency declaration, whichever comes first. Once the declaration has been made, USACE resources can continue to assist, but a non-federal cost share begins, usually at a rate of 25%.

2. Emergency Water

USACE can provide emergency supplies of potable water to any locality which is confronted with a source of contaminated water, or a drought causing, or likely to cause, a substantial threat to the public health and welfare. Emergency water assistance provided by the USACE can include:

- < Transportation of water by vehicles, small diameter pipelines, or other means for human consumption (water tank trucks typically haul water from a safe source to a point established for local distribution);
- < Procurement and distribution of bottled water;
- < Temporary connection of a new supply to the existing distribution system;
- < Installation of a temporary filtration system;
- < Provision of mobile military purification units; and
- < Construction of wells.

Like other USACE assistance, emergency water assistance is supplemental to local and state efforts, and is a temporary measure. State and/or local interests should have:

- < A drought state of emergency declaration by the Governor;
- < Utilized all available state and local resources to include funds, labor, and equipment such as National Guard trucks to haul water;
- < Instituted mandatory water conservation measures;
- < Prioritized use of available water (human consumption and sanitary needs take priority over industrial processes and irrigation of crops);
- < Established minimum requirements for public health and welfare; and
- < Initiated a long-term solution.

Assistance is limited to thirty days or until such time as FEMA takes the lead under its authority, whichever is earlier. For more information, please refer to the Drought Annex of the *Oregon Emergency Operations Plan*.

3. Advanced Measures

Under this program USACE can conduct preventative work prior to predicted unusual flooding. This may have applications for ice jam removal, snowmelt flooding, unusual flooding on the lower reaches of larger watersheds, etc. There must be an imminent threat to life or improved property. There must also be a reasonable assurance that the work can be completed in time to prevent or reduce damages, and the proposed work must be both technically feasible and cost effective.

Types of assistance provided by USACE under Advanced Measures can include:

- < Strengthening of federal and non-federal flood control structures;
- < Construction of temporary levees to protect life and improved property;
- < Channel clearance and dredging of federal projects to restore original design capacity; and
- < Relieving the threat of flooding from possible dam failures by de-watering the impoundment, controlled breaching, or strengthening the structure.

Costs associated with removing a measure, or upgrading it to a permanent facility are generally borne by the local or state government sponsor.

4. Rehabilitation Program

The Rehabilitation Program is an exception in that local governments such as diking and drainage districts have a direct relationship with USACE. This program assists local governments to repair flood control structures damaged or destroyed by wind, wave, or water action to their pre-disaster condition, if...

- < The structure has a public sponsor (city, county, or special district);
- < Has been properly maintained by the sponsor; and
- < The proposed rehabilitation is cost effective.

USACE can provide 100% federal funding if the water control structure (usually a levee) was built by USACE, and has since been properly maintained. It is an 80% federal and 20% non-federal cost-share program if the levee (or other structure) meets USACE standards, but was locally built. The sponsor has thirty days to request rehabilitation assistance following a flood or coastal storm.

5. Conditions of USACE Assistance

In many circumstances USACE assistance requires that the public sponsor agree to conditions similar to the following:

- < provide without cost to the United States all lands, easements, and rights-of-way necessary;
- < hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; and
- < if feasible, operate and maintain the emergency work or remove temporary work constructed by USACE or its contractor.