



FEMA

DISASTER ASSISTANCE POLICY

DAP9525.13

I. TITLE: **Alternate Projects**

II. DATE: AUG 22 2008

III. PURPOSE:

This policy provides guidance on allowable uses and limitations of alternate project funds when restoration of the original damaged facility is not in the best interest of the public.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Section 406(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172(c), and 44 Code of Federal Regulations (CFR) §206.203(d), 44 CFR §206.204, and 44 CFR §206.226.

VI. BACKGROUND:

When an applicant determines that the public welfare would not be best served by restoring a damaged facility or its function, the applicant may request approval of an alternate project from FEMA through the Grantee. Applicants receive Federal funding based on a percentage of the Federal cost share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility. Section 609 of the Security and Accountability For Every Port Act of 2006 (SAFE) (P.L. 109-347) amended section 406 (c)(1) of the Stafford Act by changing the contribution for alternate projects for public facilities from 75 to 90 percent of the Federal share of the eligible costs. 42 U.S.C. 406(c)(1)(A). There was no change to the contribution of 75 percent of the Federal share for alternate projects for Private Non-Profit facilities. 42 U.S.C. 406(c)(2)(A).

An "alternate project" is different from an "improved project." An improved project restores the facility and maintains its function or maintains the function in another existing or new facility. See 44 CFR 206.203(d)(1). Conversely, the application of eligible funding to repair or expand other public facilities, or construct a new-use facility, or purchase capital equipment or perform hazard mitigation measures unrelated to the original facility, would be considered



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alternate projects. Section 206.203(d)(2) of Title 44 CFR describes the basic requirements for alternate projects. This policy discusses applications of the regulation.

VII. POLICY:

The following policy guidelines provide detail on alternate project funding uses and limitations.

A. The applicant may request approval of an alternate project from FEMA through the Grantee when an applicant determines that the public welfare would not be best served by either restoring a damaged facility or by restoring the function of a damaged facility. Either one of the two conditions must be met. See 44 CFR 206.203(d)(2).

B. The proposed alternate project must be a permanent project that benefits the general public. See 44 CFR 206.203(d)(2).

C. A damaged facility whose repair costs were used for an approved alternate project may be eligible for future Public Assistance funding provided that the Applicant funded and performed the repairs to the original damaged facility.

D. Funds may be used to repair or expand other selected facilities, to construct new facilities, purchase equipment, or to fund hazard mitigation measures in accordance with other provisions of this policy.

E. FEMA expects the proposed alternate project to serve the same general area that was being served by the originally funded project.

F. The FEMA Regional Administrator must approve all alternate projects prior to the start of construction. See 44 CFR 206.203(d)(2)(v).

G. The proposal must include a description of the project, including the project location, an estimate of costs, a schedule of work, including a starting date for work, and a targeted completion date, and the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental review, hazard mitigation, protection of wetlands, and insurance. 44 CFR 206.203(d)(2)(v). Historic and any other legal considerations should also be identified. The applicant should identify the source of funding for projects when the cost estimate for the alternate project is greater than the eligible alternate project funding.



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H. Alternate projects must be completed based on existing regulatory time frames established in 44 CFR 206.204. The Region can approve time extensions under extenuating circumstances.

I. Funding for alternate projects:

1. Public facilities. Eligible costs for Public facilities are 90% of the approved Federal share of the project estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal cost share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Project Estimate of Eligible Damage

 x.75 – % of Federal Cost Share

\$ 75,000 – New Project Amount

 x.90 – of Federal Cost Share

\$ 67,500 – Maximum Grant Amount

Applicant must spend at least \$75,000 on the approved alternate project to receive \$67,500. The Federal grant is capped at this amount.

If the applicant spends less than the new project amount, then the Federal cost share would be 75% of the actual amount spent.

2. Private non-profit facilities (PNP). Eligible costs for PNPs are 75% of the approved Federal share of the project estimate of eligible repair/replacement costs of the damaged facility or the actual fixed cost of completing the alternate project(s), whichever is less. The appropriate Federal share will then be applied to the lesser amount.

Basic Calculation:

\$100,000 – Project Estimate of Eligible Damage

 x.75 – % of Federal Cost Share

\$ 75,000 – New Project Amount

 x.75 – of Federal Cost Share

\$ 56,250 – Maximum Grant Amount

Applicant must spend at least \$75,000 on the approved alternate project to receive \$56,250. The Federal grant is capped at this amount.

If the applicant spends less than the new project amount, then the Federal cost share would be 75% of the actual amount spent.



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In both cases, the eligible repair/replacement costs include the costs of meeting the requirements of 44 CFR 206.226. Projects must also meet the basic requirements outlined in 44 CFR 206.203(d)(2).

J. Mitigation Projects: The types of mitigation projects that may be approved for alternate project funds are very broad. The following guidelines are provided:

1. Mitigation measures may mitigate potential damages to a facility that would be eligible for funding under section 406 of the Stafford Act. However, the funding cannot duplicate any other mitigation funding.

2. Mitigation measures may be of the same type as would be eligible for funding under section 404 of the Stafford Act (the Hazard Mitigation Grant Program), if they meet a need for:

a. Governmental services and functions in the area affected by the major disaster, in the case of government applicants, (Stafford Act, section 406(c)(1)(B)(iii)), or

b. Eligible PNP's services and functions in the area affected by the major disaster (Stafford Act, section 406(c)(2)(B)(iii)).

3. The mitigation measure does not have to mitigate the same type of damage that was caused by the disaster and does not have to be for the same type of disaster.

K. Multiple Use of the Funds: Alternate project funds from a single project do not have to be used on a single project. Alternate project funds from multiple projects may be pooled or divided.

1. Alternate project funds can be divided and used on multiple projects to repair, expand, mitigate, or construct a facility that would be an eligible facility under the Public Assistance Program. (Stafford Act, section 406(c)(1)(B), (2)(B)).

2. Alternate project funds may be used across all permanent work categories (such as expanding an existing building or replacing a sewer line). Some potentially eligible examples include:

a. Upgrading a substandard undamaged road that is subject to repeated flooding, in order to better serve the general public and reduce the repetitive flood damage.

b. Upgrading a facility to mitigate future disaster damage whether or not the facility was damaged by the event. Upgrades might range from something as simple as hurricane clips or bracing, to a large project.



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c. Relocating, as a mitigation measure, undamaged facilities such as roads and utilities that are subject to repetitive damage.

d. Demolishing an outdated maintenance building (non-emergency work) and using the funds to construct a new water treatment plant at the same location.

e. Abandoning a county bridge and using the funds to build a new county maintenance shop.

f. Increasing the capacity of a new building. For example, adding a wing to an existing building being repaired.

g. Using funds eligible to repair a transportation administration building to acquire and renovate a building to serve as a school for the arts.

h. Purchasing pieces of equipment (such as scientific equipment, telecommunications switches, fire trucks, vehicles, etc.) that exceed \$5,000 per unit, and have a useful life of a year or more.

L. Insurance must be obtained and maintained on vehicles, buildings and building contents in an amount equal to the alternate project funding. See 44 CFR 206.203(d)(2)(v).

M. In accordance with applicable standards of safety, a facility that is not repaired, replaced, or sold must be rendered safe and secure or demolished. See 44 CFR Part 206, Subpart M.

N. Limitations: Ineligible Uses of Alternate Funds:

1. Repayment of debts.
2. Meeting budget shortfalls.
3. Creating a new community plan that extends beyond the alternate project building (e.g., a new master plan for a school, university, or hospital campus).
4. Landscaping projects.
5. The purchase of supplies, furniture, and equipment costing less than \$5,000 per unit (considered an operating expense).



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6. The funds may not be used to pay the non-federal share of any project, nor any operating expenses. See 44 CFR 206.203(d)(2)(v).

7. Construction of a facility that would not be eligible for Public Assistance Program funding in a subsequent disaster.

8. Buy-outs (i.e., acquisition of property for open space as a mitigation measure).

O. The value, or anticipated fair market value, of salvaged materials from the original facility (less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure) should be an adjustment on the Project Worksheet (PW) that has been written for the repair of the original project. Regardless of what the applicant decides to do with the original project after accepting the alternate funding option, the salvage issue should be resolved in the original PW.

P. Alternate Projects must satisfy compliance review requirements as established by 44 CFR Parts 9 and 10 and all other applicable Federal environmental and historic preservation requirements. In accordance with Section VII of this policy, an applicant must ensure that the original damaged facility does not create an imminent and substantial endangerment to human health or the environment like causing the release of hazardous pollutants or becoming a hazard to human health, safety and welfare in a future flooding event. The decision of the applicant regarding the future status of the original facility, including abandonment or applicant-funded demolition, is not a major Federal action under the National Environmental Policy Act (NEPA), an undertaking under Section 106 of National Historic Preservation Act (NHPA), or a Federal action under the Section 7 Interagency Coordination requirements of the Endangered Species Act (ESA) and does not require independent environmental and historic preservation compliance review by FEMA. However, the applicant is legally and financially responsible for compliance with any other applicable Federal, State, Tribal, or local requirements, including responding to and mitigating for releases of hazardous pollutants.

Q. The proposed alternate project is subject to FEMA environmental and historic preservation review. FEMA will be responsible for the administrative costs for conducting the environmental and historic preservation review and assessments. The applicant will be responsible for the costs of implementing any mitigation/treatment measures or costs associated with the alternate project at the new site.

R. The applicant must provide FEMA any information concerning the planned action(s) for the original site as soon as such plans are available. In the event that plans for the original site are available and reasonably likely to be implemented FEMA may require the applicant to



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consult with agencies including the State Historic Preservation Officer or Tribal Historic Preservation Officer (SHPO/THPO), Fish and Wildlife Service, National Marine Fisheries, or U.S. Army Corps of Engineers as condition for the approval of the alternate project to identify if the planned action will adversely affect a protected historic or environmental resource. The applicant must consider the agency's recommended measures to avoid, minimize, treat, or otherwise address any adverse impacts to the identified resource. The applicant will be responsible for all costs associated with implementing these measures.

S. Any action of the applicant using FEMA funds at the original site, such as demolition, is an undertaking under Section 106 of NHPA, a major Federal action under NEPA, and a Federal action under the Section 7 Interagency Coordination requirements of ESA and requires FEMA's environmental and historic preservation review before it can begin. FEMA may evaluate the alternate project and the action at the original site separately if they have independent utility, the approval of one action does not foreclose alternatives for the other, and the approval of one action does not justify or commit FEMA to the other action.

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESSION: This policy supersedes Recovery Policy 9525.13, Alternate Projects, published July 31, 2001 and any other previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate