Chapter 4: General Facility and Work Eligibility

FEMA processes PA grant funding according to the type of work an applicant undertakes. For work to be eligible, it must be required as a result of the declared incident, be located in the designated area, be the legal responsibility of the applicant, and be undertaken at a reasonable cost. This chapter provides important information relating to PA facility eligibility and general requirements for work to be eligible.

I. Facility Eligibility

In general, a facility must be determined eligible for work to be eligible. There are exceptions for some emergency protective measures as shown in Figure 6. Facility Eligibility and discussed in Chapter 7: Emergency Work Eligibility.

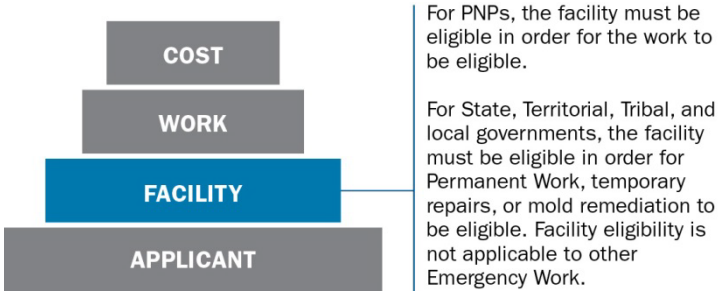


Figure 6. Facility Eligibility

A. Public Facility

An eligible public facility is one that a state, local, Tribal Nation, or territorial (SLTT) government owns or has legal responsibility for maintaining. A facility includes any:

- System including flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, or watershed development;[109]
- Building, such as maintenance and storage sheds, restroom facilities, bath houses, or outbuildings including ancillary facilities;
- Non-federal-aid street, road, or highway;[110] ramps, or access roads[111];
- Public buildings, structure, or system, including those used for educational, recreational, or cultural purposes;
- Airport facility[112] including runways;
- Park[113] including piers, docks, trails, benches, picnic tables, swimming pools, golf courses, or ball fields; or
- Other public facilities including pumping stations, communication towers and antennas, contents, supplies, equipment, vehicles, fences, parking lots, stairs, signage, lighting, sidewalks, gutters, ditches, guard rails, integral ground, catch basins, or outfall structures.

A natural feature is improved and maintained if it meets all of the following conditions:

[109] Stafford Act § 102(10); 42 United States Code (U.S.C.) 5122; 44 Code of Federal Regulations (C.F.R.) § 206.221(h).
[110] Ibid.
[111] BIA roads are an exception but must meet certain criteria.
[112] Stafford Act § 102(10); 42 U.S.C. 5122; 44 C.F.R. § 206.221(h).
[113] Ibid.

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel;
- The constructed improvement enhances the function of the unimproved natural feature; and,
- The applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed.

Only the section of a natural feature that meets the criteria above is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, the eligible facility would be limited to that 150-linear-foot section.

The following are ineligible facilities:

- Unimproved property that is not enhanced or maintained (e.g., a hillside or slope, forest, or natural channel bank); and,
- Land used for agricultural purposes.[114]

When a facility maintained by a community development district is not open to the general public or does not provide a service to the general public, the facility is ineligible.

B. Inactive or Partially Inactive Facility

To be eligible, a facility must have been in active use at the start of the incident period. Inactive or partially inactive facilities are ineligible, unless one of the following conditions is met:

- The facility was only temporarily inactive for repairs or remodeling (provided a contractor is not responsible for the repair of disaster-related damage);
- The applicant established future active use in an approved budget or plans; or
- The applicant can clearly demonstrate its intent to begin use within a reasonable amount of time.[115]

For facilities that are partially occupied and therefore partially inactive at the start of the incident, the inactive portions would not be eligible unless one of the above stated conditions apply. In all cases, the facility in question must have been eligible for assistance during the time it was in use. When the eligible repairs would benefit a non-active area, the assistance will be prorated according to the percentage of the facility that was in active use. For example, if the roof of a partially used building is destroyed, FEMA limits the eligible cost to a prorated amount of the total cost to replace the roof based on the percentage of the building that was in active use.

For private nonprofit (PNP) mixed-use facilities to be eligible, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident.

C. Facility Scheduled for Repair or Replacement

Facilities that are not yet under contract but are scheduled for repair or replacement using non-federal funds are eligible provided that the claimed damage did not exist prior to the incident (FEMA reviews procurement

[114] 44 C.F.R. § 206.221(d).
[115] 44 C.F.R. § 206.226(k)(2).

and contract documents to validate). If damage existed prior to the incident, only the repair of damage caused by the incident is eligible.

II. General Work Eligibility

Through the PA Program, FEMA provides grant funding for:

- Debris removal (emergency work);
- Emergency protective measures (emergency work);
- Permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (permanent work); and,
- Building code and floodplain management administration and enforcement activities (permanent work).

If an entity does not comply with all applicable statutes, executive orders (EOs), regulations, and policies, FEMA may take one of several actions including disallowing all or part of the cost of the project not in compliance.[116]

A. Emergency Work vs. Permanent Work

Emergency work addresses an immediate threat. Permanent work includes the restoration of a damaged facility or building code and floodplain management administration and enforcement activities. To facilitate the processing of PA funding, FEMA further separates both emergency work and permanent work into categories. These categories are shown in Figure 7. Categories of Work.

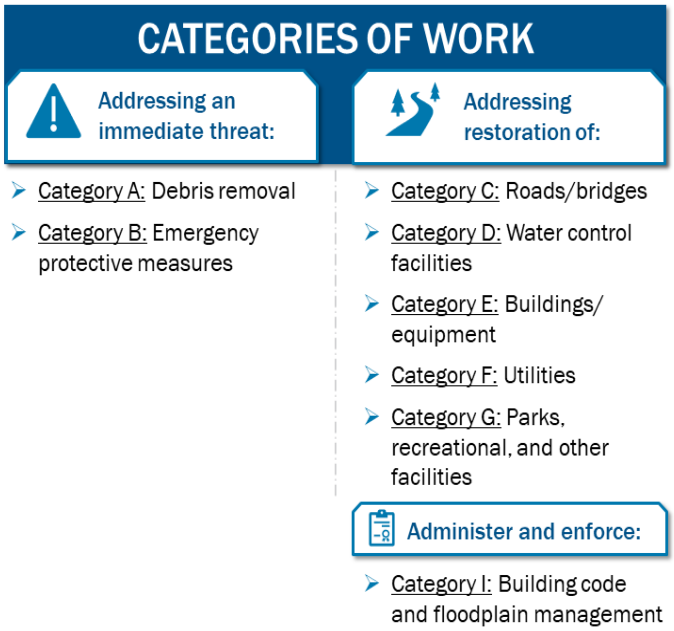


Figure 7. Categories of Work

B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the declared area; and,
- Be the legal responsibility of an eligible applicant.[117]

Work eligibility is discussed in detail in Chapter 7: Emergency Work Eligibility and Chapter 8: Permanent Work Eligibility (Categories C-G).

[116] 2 C.F.R. § 200.339.
[117] 44 C.F.R. § 206.223(a).

1. RESULT OF DECLARED INCIDENT

Applicants must be able to demonstrate that any claimed impacts and damage occurred during the declared incident period, were caused directly by the declared incident, and that the work claimed is required to address the incident-related impacts and damage as follows:

- For debris removal, applicants must be able to demonstrate that the debris claimed was generated by the declared incident, during the declared incident period, and that removal of the debris addresses an immediate threat resulting from the declared incident.
- For emergency protective measures, applicants must be able to demonstrate that the work addresses an immediate threat resulting from the declared incident.
- For permanent work, temporary repairs, and mold remediation, applicants must demonstrate that the work addresses damage caused by the declared incident.

Applicants must clearly define impacts and damage caused by the declared incident and separate them from any impacts or damage not caused by the declared incident. Applicants must also separate any work or costs associated with addressing impacts or damage not caused by the declared incident.



Examples: Impacts or Damage Not Caused by the Declared Incident

Examples of impacts or damage not caused by the declared incident include:

- Previously existing damage or debris;
- Impacts or damage resulting from a different incident even if it occurred during the incident period of the declared incident;
- Impacts or damage that occur after the incident period and prior to conducting incident-related repairs;
- Deterioration (wear and tear);
- Deferred maintenance;
- Impacts or damage due to failure to take measures to protect a facility from further damage in a timely manner; or
- Impacts or damage due to negligence.[118]

[118] 44 C.F.R. § 206.223(e).

i. Documentation and Information to Support Cause of Impacts and Damage

Table 7. Documentation and Information to Support Cause of Impacts and Damage

For Small Projects	For Large Projects
▪ Applicants must certify, in lieu of providing documentation, to the following: ○ Debris removal: The debris was generated by the declared incident, during the declared incident period, and that removal of the debris addresses an immediate threat resulting from the declared incident; ○ Emergency protective measures: The immediate threat resulted from the declared incident; and, ○ Permanent work: The damage was caused directly by the declared incident and did not result from a lack of maintenance.	▪ If necessary to validate that the impacts or damage was caused by the declared event, applicants will be required to provide: ○ Pre-incident photographs and/or video of the impacted site or facility; and/or, ○ Documentation supporting pre-disaster condition of the facility (e.g., facility maintenance records or inspection/safety reports).

Not every large project requires documentation to substantiate the impacts and damage caused by the event. Frequently, during site inspections, it is evident that the claimed damage, as explained by the applicant, is a direct result of the specific event, as indicated by the effects of the event in the vicinity of the damage. In such instances, the applicant is not required to furnish pre-incident images, records of maintenance, or reports on inspections and safety measures. For instance, in scenarios where an entire bridge or section of road is washed away during flooding or a building is consumed by fire, there is no requirement for maintenance records to validate that the incident caused the damage. This applies even if there are signs that the bridge or road surface had not been consistently maintained (e.g., visible fatigue cracks on the road surface in nearby sections). In these cases, maintenance records are not needed to support the overall failure caused by the event when it is evident that the disaster caused the damage due to the structure being completely destroyed as a result of the incident.

Certain project types (e.g., the restoration of well-maintained natural features and beaches) do mandate the submission of maintenance records and/or photographs. These requirements are elaborated upon in subsequent sections of this document.

If a facility was functioning prior to the disaster and the disaster caused damage that rendered the facility non-functional, the facility may be eligible, provided the pre-disaster condition was not a significant contributing factor in the cause of failure.

ii. Protecting Tribal Sensitive Locations

Each Tribal Nation is unique, with cultures and governments deeply rooted in their history, customs, and sacred sites. FEMA recognizes the importance of protecting these locations for several reasons. First, many sensitive tribal locations are sacred. Non-tribal members sharing information about or accessing these locations may be seen as disrespectful or a violation of tribal and/or federal law. Protecting the sanctity of

these sites is essential to maintaining the religious, cultural, and governmental integrity of the Tribal Nation.[119] Some Tribal Nations utilize sensitive tribal locations not only for ceremonial activities, but also as vital locations to execute governmental functions, such as selecting their next leaders or making final decisions on complex matters that will impact their Nation for generations to come.

Second, pottery, jewelry, regalia, clothing, weapons, sacred objects, and even human remains found on tribal lands have been historically (and continue to be) targeted by individuals looking to collect or sell them.[120] These items must be protected before, during, and after disasters. They are integral to the identity, spirituality, and governing bodies of tribal communities. Protecting these resources is about preserving the sanctity and reverence of the Tribal Nation's culture and their sovereignty as a government. Despite the efforts of federal agencies to protect these invaluable resources, there are individuals who continue to engage in illegal activities, such as theft and damage, with devastating effects on Tribal Nations and their communities.

Finally, protecting tribal sensitive locations is a fundamental responsibility. It is an affirmation of the respect and recognition of the unique cultures, traditions, practices, and government autonomy of Tribal Nations. These locations are the living repositories of Tribal Nations and Alaska Native heritage and vital to supporting tribal government functions. Safeguarding them is a collective duty that FEMA must uphold.[121]

For locations that are sacred to a Tribal Nation[122] where non-tribal members are not allowed, site inspections by FEMA staff are not permitted. Instead, FEMA will accept a Tribal Nation's certified damage assessment as a valid alternative to requiring FEMA staff to document and validate damage at these sacred sites. Additionally, to support the protection of tribally significant artifacts and human remains, FEMA will not require photos, site maps, and specific location details (such as GPS coordinates) for locations where tribal artifacts are located. This ensures that culturally sensitive data remains protected, that the Tribal Nation's cultural heritage is safeguarded, and its governmental sovereignty is strengthened.

2. WITHIN DESIGNATED AREA

To be eligible, the facility must be located, and work must be performed, in a designated area defined by the incident (except for sheltering, evacuation, and Emergency Operations Center (EOC) activities). Sheltering, evacuation, and EOC activities may occur outside of a designated area but must be used for activities resulting from the designated area.[123] Work performed on a facility located outside of a designated area is ineligible. This is true even if an eligible applicant is legally responsible for the work, including work performed outside the designated area to protect a facility within the designated area.

Tribal Nations do not always have geographical boundaries (e.g., counties, parishes or other) and some have boundaries that cross state lines. Therefore, tribal declarations do not usually define specific declared

[119] For more information, refer to: Executive Order 13007: Indian Sacred Sites.
[120] For more information, refer to: Native American Graves Protection and Repatriation Act | nps.gov.
[121] Federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942).
[122] American Indian Religious Freedom Act (1978).
[123] 44 C.F.R. § 206.223(a)(2).

geographical areas for Tribal Nations. For Tribal Nations, FEMA determines eligibility based on legal responsibility and whether the work is required due to the declared incident.

i. Documentation and Information to Support Within Declared Area

Table 8. Required Documentation and Information to Support Within Declared Area

For Small and Large Projects
▪ Facility location (e.g. address or global positioning system (GPS) coordinates; or ▪ Certification that the facility and subsequent work is located within the designated areas.

3. LEGAL RESPONSIBILITY

To be eligible, work must be the legal responsibility of the applicant requesting assistance.[124] To determine legal responsibility for debris removal and emergency protective measures, FEMA evaluates whether the applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

To determine legal responsibility for permanent work, FEMA evaluates whether the applicant claiming the costs had legal responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a federal agency). Ownership of a facility is usually sufficient to establish the applicant's legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

[124] 44 C.F.R. § 206.223(a)(3).

i. Documentation and Information to Support Legal Responsibility

Table 9. Required Documentation and Information to Support Legal Responsibility

For Small Projects	For Large Projects
▪ Certification that the facility and work are the applicant's legal responsibility.	▪ If necessary to validate legal responsibility, applicants must provide one or more of the following documents: ○ Deed; ○ Title; ○ Lease agreement (required for leased facilities); ○ Bill of sale; ○ Land contract; ○ Mortgage booklet or reoccurring mortgage payments; ○ Property tax receipt or property tax bill; ○ Real property structured insurance policy; and/or, ○ Contract (required for facilities under construction at the time of the incident).

ii. Facilities Under Contract for Construction

If a construction contract was in place for the facility at the time of the incident, FEMA reviews the contract to determine whether the applicant is legally responsible for the repair of the damage caused by the incident.[125] At a minimum, FEMA evaluates the contract to determine if it:

- Identifies the contractor or owner as being responsible for disaster-related repairs;
- Requires a builder's risk policy for losses that occur while the contractor has control of the facility;
- Has a *force majeure* provision, which is a clause that relieves the contractor from responsibility for damage beyond its reasonable control, such as natural disasters (often referred to as "acts of God") or acts of war; or,
- Has a provision that identifies the point at which the contractor transfers legal responsibility for the facility, or portions of the facility, back to the owner.

iii. Leased Facilities

An applicant may own a facility and lease it to a tenant, or an applicant may lease a facility owned by another party. In either case, FEMA reviews the lease agreement to determine legal responsibility for repair of

[125] Stafford Act § 406(e)(2); 42 U.S.C. § 5172.

damage caused by the incident. If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.

If the lease is between two eligible applicants, FEMA provides PA funding to the applicant legally responsible for the restoration.

iv. Federal Facilities

Facilities owned and maintained by federal agencies are ineligible. There are instances when a federal agency constructed a facility and formally designated the applicant as the legally responsible entity for facility operation, maintenance, and repairs. FEMA reviews the other federal agency's authority and agreement between the federal agency and the applicant to confirm the legally responsible entity.

v. Jurisdiction Over an Area

In general, an applicant only has legal responsibility to conduct activities within its jurisdiction. If an applicant conducts activities outside its jurisdiction, it must demonstrate and document its legal basis and responsibility to conduct those activities.

vi. Conducting Activities on Private Property

Work on private property is the legal responsibility of the property owner and generally ineligible for PA funding. In rare cases, FEMA may provide PA funding for specific limited activities. In such cases, at a minimum, the applicant must have legal authority to conduct the activity. To determine whether a SLTT government has legal authority to conduct activities on private property, FEMA reviews the applicant's legal basis and specific authority to conduct the activities. See Private Property Debris Removal (PPDR) and Emergency Protective Measures on Private Property in Chapter 7 for additional eligibility requirements.

vii. Work Under the Authority of Other Federal Agencies

Other federal agencies (OFAs) have authority to conduct work that may overlap with FEMA's authority. FEMA's authority is broad, and most OFA authorities are more specific than FEMA's authorities. FEMA evaluates its authorities against OFA authorities.

Some of the factors that FEMA considers when evaluating whether an OFA has more specific authority are whether the OFA's authority is specifically and exclusively:

- Available for a particular type of facility, work, or activity;
- Applicable to a presidential declaration under the Stafford Act;
- Specific to an incident or type of incident; or,
- Delineated under direction by Congress.

In such cases, FEMA does not provide assistance for the facilities or work even if that OFA does not provide funding for the facility or work.[126] This restriction includes any activities or costs related to the work that falls

[126] 44 C.F.R. § 206.226(a).

under OFA authorities as the costs are not related to eligible work. Applicants should apply to the respective agency for assistance with a facility or work under that agency's authority.

viii. Environmental and Historic Preservation Requirements

Several laws, executive orders (EOs), and regulations establish requirements to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable federal EHP laws and implementing regulations, and applicable EOs.[127] The applicant is responsible for complying with applicable federal, state, Tribal Nation, or territorial EHP laws even if FEMA is not providing PA funding for all the work. See Chapter 10: Environmental and Historic Preservation for more information on EHP review and considerations. See Appendix D: Environmental and Historic Preservation Compliance for a description of common EHP laws, regulations, and EOs.

FEMA provides technical support to applicants throughout the recovery process to help ensure compliance with all EHP laws, regulations, and EOs, as well as to identify opportunities to incorporate conservation and/or mitigation measures in the project area for the protection and preservation of environmental or historic resources.

ix. Policy Implementation Considerations

Disaster impacts can vary for communities and are often influenced by a complex interplay of geographical, demographic, political, historical, and cultural factors..

To disrupt this detrimental pattern and foster a more resilient nation, FEMA is focused on ensuring our core values of compassion, fairness, integrity, and respect are present as fundamental principles during recovery operations. Recognizing and addressing the distinct requirements of impacted communities is crucial. This principle aligns with the Stafford Act intent which mandates that FEMA assistance be administered without discrimination based on race, color, religion, nationality, sex, age, disability, English proficiency or economic status.

In this endeavor, FEMA commits to integrating our core values throughout our mission and transformative changes across our workforce, programs, and the broader emergency management community. This objective emphasizes the necessity of viewing compassion, fairness, integrity, and respect not as isolated notions, but as integral components woven into the fabric of PA. Through these objectives, PA aims to forge a path towards a more resilient nation, where all communities can effectively withstand and recover from the impact of disasters.

x. Resilience Considerations

As our nation continues to witness devastating disaster activity year after year, it is imperative that FEMA invest in building a more resilient nation. The PA Program and policies must protect communities and the economy from the worst impacts of natural disasters before they occur. PA continues to develop new initiatives through its existing authorities and responsibilities.

[127] 2 C.F.R. § 200.300.