



# FEMA

## FP 204-078-112-1

### MITIGATION POLICY

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#### I. TITLE:

Eligibility of Flood Risk Reduction Measures under the Hazard Mitigation Assistance (HMA) Programs

#### II. DATE OF ISSUANCE:

June 27, 2014

#### III. POLICY STATEMENT:

This policy updates FEMA's HMA Unified Guidance (Guidance) concerning the eligibility of flood risk reduction measures under the Hazard Mitigation Grant Program (HMGP), the Pre-Disaster Mitigation (PDM) program and the Flood Mitigation Assistance (FMA) program.

Guidance preceding this policy prohibited the funding of major "flood control" (flood risk reduction) projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization and erosion projects related to beach nourishment or re-nourishment, under all HMA programs. While these project types continue to be ineligible under the FMA program, they are eligible for consideration under the HMGP and PDM program.

Other flood risk reduction measures, such as property acquisition, structure elevation, and minor localized flood reduction measures, remain eligible activities under all HMA programs.

Under all HMA programs, approval of an eligible project must not result in a duplication of programs (DOP) with other federal agencies. The DOP issue is of particular concern in determining eligibility for flood risk reduction projects because other federal agencies (most commonly the U.S. Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS)) may be engaged in funding similar flood risk reduction measures under more specific authorities. Examples of potential DOPs regarding major flood risk reduction measures are described later in this document.



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### IV. PURPOSE:

The purpose of this policy is to revise FEMA guidance concerning eligible and ineligible flood risk reduction measures under the HMA programs.

### V. SCOPE AND EXTERNAL AUDIENCE:

This policy applies to Federal, State, Tribal and local officials involved in the administration of HMA programs.

### VI. AUTHORITY:

HMA programs are established by Sections 203 (PDM) and 404 (HMGP) of the Robert T. Stafford Disaster and Emergency Assistance Act, 42 U.S.C. §§ 5133, 5170c-(b)(2) and by Section 1366 (FMA) of the National Flood Insurance Act of 1968 (NFIA), as amended by the Biggert-Waters Flood Insurance Reform Act of 2012, 42 U.S.C. § 4104c. The HMA programs are also governed by Title 44 Code of Federal Regulations (C.F.R.) Part 9, Part 10, Part 13, Part 59, Part 65, Part 79 (FMA), Part 80 and Part 206, Subpart N (HMGP).

### VII. DEFINITIONS, ABBREVIATIONS, AND FORMATTING:

#### Definitions

**Dam** means an artificial barrier that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water.

**Dike** – see definition for Levee.

**Floodwall** means a concrete and/or steel wall, built on top of a levee, or in place of a levee, to retain floodwater for the purposes of reducing flood risk.

**Groin** means a shore protection structure built to trap and retain sand. Groins are usually perpendicular or nearly at right angles to the shoreline and relatively short when compared to navigation jetties at tidal inlets.



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**Jetty** means a structure built at the mouth of a river or tidal inlet to help deepen and stabilize a channel. A jetty is a structure extending into a body of water, designed to reduce erosion and to direct and confine the stream or tidal flow.

**Levee** means an earthen embankment that is designed and constructed in accordance with sound engineering practices to contain, reduce or divert the flow of water so as to provide protection from temporary flooding.

**Seawall** means a structure separating land and water areas and is primarily designed to prevent erosion and other damage from wave actions.

### Abbreviations

C.F.R.	Code of Federal Regulations
FEMA	Federal Emergency Management Agency
FIMA	Federal Insurance and Mitigation Administration
FMA	Flood Mitigation Assistance program
Guidance	Hazard Mitigation Assistance Unified Guidance
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
PDM	Pre-Disaster Mitigation program
USACE	U.S. Army Corps of Engineers
NRCS	Natural Resources Conservation Service



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### VIII. POLICY DETAILS:

#### Eligibility

Guidance states, and this policy maintains, that minor localized flood reduction projects are eligible for funding under the HMGP, PDM, and FMA programs. Eligible minor physical mitigation efforts include measures that reduce flood losses for single structures or facilities, groups of structures or whole neighborhoods. Examples of such minor physical flood mitigation efforts include but are not limited to:

- Stormwater management projects including the construction, installation or improvement of culverts, drain pipes, pumping stations, floodgates, and detention or retention basins;
- Flood protection measures for water and sanitary sewer systems or other utility systems;
- Slope stabilization or grading to direct flood waters away from homes, schools, businesses, utilities or governmental facilities;
- Vegetation management for shoreline stabilization (coastal, riverine, riparian and other littoral zones); and
- Flood protection and stabilization measures for roads and bridges.

Guidance also states that major flood risk reduction projects related to the construction, demolition, or repair of dams, dikes, levees, floodwalls, seawalls, groins, jetties, breakwaters, and erosion projects related to beach nourishment or re-nourishment *are ineligible* activities under all HMA programs. This policy maintains that major flood risk reduction projects are not eligible under the FMA program because such projects are prohibited by FMA authorizing legislation and implementing regulations (Section 1366 of the NFIA, 42 U.S.C. §4104c(e)(5)(D) and 44 C.F.R. §79.6(c)(2)(vi), respectively). However, HMGP and PDM authorities are general mitigation authorities that do not restrict the eligibility of specific flood risk reduction measures. Therefore, this policy clarifies that any long-term flood hazard mitigation measures, including major flood risk reduction projects, which are cost-effective, feasible, and designed to substantially reduce risk of future damage and loss of life from flooding, are eligible for consideration under the HMGP and PDM



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(Sections 203 and 404 of the Stafford Act, 42 U.S.C. §§ 5133 and 5170c, respectively; 44 C.F.R. §§ 206.430-440).

### Requirements

All HMA projects must comply with 44 C.F.R. Part 9, Floodplain Management and the Protection of Wetlands and Part 10, Environmental Considerations or superseding FEMA National Environmental Policy Act implementing procedures. Because major flood control projects involve construction in sensitive environmental areas, floodplains and/or wetlands, compliance of these projects with the required environmental review at 44 C.F.R. Parts 9 and 10 is particularly important. HMA eligibility requirements include an 8-step process for projects located in wetlands and/or floodplains (44 C.F.R. § 9.6, Decision-making Process). These requirements are intended to identify and avoid potential floodplain and environmental impacts and necessitate the review of alternative locations and actions to minimize floodplain and environmental impacts, including no action.

For complex flood risk reduction projects, subapplicants are strongly encouraged to use a phased project approach (Unified HMA Guidance, Part IX, A.10, Phased Projects).

### Clarification Concerning the Prohibition against DOP

Federal law and FEMA HMA regulations prohibit DOP unless, in a post-disaster situation, there is an extraordinary threat to lives, public health or safety or improved property (44 C.F.R. § 206.434(f), Duplication of Programs).

For certain major flood risk reduction projects, FEMA's authority to fund the project may overlap with USACE's or NRCS's authority to fund a similar project. To avoid a DOP concerning a major flood risk reduction project, Applicants and subapplicants should consult their local USACE or NRCS office prior to developing an HMA application for the project. The following represent the most common DOP situations with respect to major flood risk reduction projects:

1. If the USACE or NRCS is authorized to complete a specific structural flood risk reduction **project**, FEMA may not fund a structural flood risk reduction



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- project of a similar nature in the area identified in the USACE or NRCS project plan. A DOP exists regardless of whether funds have been appropriated for the project.
2. If the USACE or the NRCS are authorized to perform a flood risk reduction **study** with the goal of exploring options for structural flood protection systems in a specified area, FEMA generally may not provide HMA funds for projects of a similar nature in the same area. When the other Federal agency has completed the study and selected a project alternative – as indicated by a public record of decision – the study no longer presents a DOP. At that point, generally only the selected project elements indicated in the public record of decision represent a DOP.
  3. There is generally no DOP presented by FEMA performing property acquisition for open space, elevation, or minor localized measures within a USACE or NRCS flood risk reduction project or study area. However, FEMA regulations require subapplicants to coordinate with USACE to assure that no levee projects are planned in areas proposed for HMA property acquisition for open space activities (44 C.F.R. §80.13(b), Consultation Regarding Other Ongoing Federal Activities).
  4. FEMA may not use HMA funds to mitigate a portion of a flood risk reduction project owned or operated by another Federal agency. However, if a flood protection project is only regulated by another Federal agency for a purpose other than flood risk reduction, the structure is still eligible for HMA. For example, dams regulated by the Environmental Protection Agency for water quality may be eligible for HMGP and PDM program flood protection improvements.
  5. FEMA may not fund a project where there is a statute stating that another Federal agency has exclusive jurisdiction to construct flood risk reduction structures in a specified part of the United States.



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### **IX. ROLES & RESPONSIBILITIES:**

The roles and responsibilities for all Federal, State, Tribal and local parties are consistent with those outlined in the Uniform Administrative Requirements (44 C.F.R. Part 13), Hazard Mitigation Grant Program (44 C.F.R. Part 206 Subpart N), Flood Mitigation Grants (44 C.F.R. Part 79) and Guidance.

### **X. MONITORING AND EVALUATION:**

The grantee must comply with FEMA requirements outlined in the Uniform Administrative Requirements (44 C.F.R. Part 13), Hazard Mitigation Grant Program (44 C.F.R. Part 206 Subpart N), Flood Mitigation Grants (44 C.F.R. Part 79), and Guidance. Grantees must also comply the terms and conditions of the grant award agreement.

Projects to be accredited for mapping purposes must meet the requirements provided in 44 C.F.R. § 65.10, Mapping of Areas Protected by Levee Systems.

### **XI. RESPONSIBLE OFFICE:**

The FIMA Risk Reduction Division Grants Policy Branch is the originating office for this policy document, with the overall responsibility for policy updates and enforcement.

### **XII. SUPERSESSION:**

FY 2013 HMA Unified Guidance, Part IV, Eligibility Information, D.2 Ineligible Activities.



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### XIII. REVIEW DATE:

FEMA will review this policy 3 years from the date of issuance in accordance with Directive 112-12.

A handwritten signature in blue ink, appearing to read "Roy E. Wright", written over a horizontal line.

Roy E. Wright

Deputy Associate Administrator  
Federal Insurance and Mitigation Administration  
Federal Emergency Management Agency