

Unified Public Assistance Project Decision Team
Eligibility Decision
Decision Date: March 27, 2009

Dispute #: 8
Subgrantee: Facility Planning and Control
DR: 1603
PW(s):
Project: LSU Health Sciences Center

Description of Dispute

- (1) Eligibility of 406 mitigation beyond the ABFE,
- (2) Eligibility of new structures or structural additions under 406 mitigation,
- (3) FEMA requirement of most cost-effective versus cost-effective,
- (4) Eligibility of 406 mitigation proposal related to the LSU Health Sciences Center.

Unified PAPDT Decision

Concur with applicant, on items 1, 2, and 3. Further evaluation of 406 mitigation proposal needed to determine eligibility of item 4.

- (1) In accordance with the June 9, 2008 letter from the Director of the Louisiana Transitional Recovery Office to the Louisiana State Coordinating Officer, "FEMA will not fund Section 406 HM proposals for elevation beyond the level specified in the adopted floodplain management code or the ABFE, whichever is higher." This statement is inconsistent with FEMA Disaster Assistance Policy 9526.1, which states under VII.E, "The costs of meeting applicable codes/standards in accordance with 44 C.F.R. 206.226(d) and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately". Thus, applicants may propose and FEMA may consider and deem eligible 406 mitigation measures that elevate beyond the adopted floodplain management code or the ABFE. Mitigation measures considered under 406 mitigation are not inherently bound by regulatory requirements, thus the referenced statement in said June 9, 2008 letter is hereby rescinded. All 406 mitigation proposals must still be cost-effective and comply with all other requirements specified in statute, regulations, and policy.
- (2) FEMA has issued the following statement in the denial of 406 mitigation proposals, "Mitigation is limited to repair work of damaged components only and cannot result in construction of new buildings, or expansion of functions and/or capacity of existing buildings." This statement is appropriate for the majority of cases but FEMA Disaster Assistance Policy 9526.1 allows for additional flexibility under VII.A, which discusses how 406 mitigation opportunities usually present themselves in repair, must be related to disaster related damage, and must be performed on the parts of the facility that were actually damaged. This section of policy logically and most commonly would result in construction of new

buildings or expansion of buildings not being appropriate, thus ineligible, under the policy. However, VII.A of the policy concludes with the following statement in bold, "Exceptions to this provision will be reviewed on a case-by-case basis" providing FEMA with the authority to consider mitigation proposals and potentially fund mitigation measures that result in construction of new buildings or expansion of buildings. An example of a 406 mitigation proposal resulting in such may include a critical facility (ie hospital or fire station), which was subject to heavy damage, critical components (ie mechanical/electrical) of the building were heavily damaged or destroyed and must be elevated in order to prevent future disaster damages from a similar event, elevation of critical components without new construction would result in displacement of essential functions on other floors, thus the only practical means of attaining the critical component elevation would be via the construction of a new building or expansion of the existing building(s). All 406 mitigation proposals must still be cost-effective and comply with all other requirements specified in statute, regulations, and policy.

- (3) FEMA has inserted the following language when 406 mitigation measures have been denied, "When more than one viable mitigation solution is available, FEMA's obligation for the prudent stewardship of federal disaster funds requires funding the most cost-effective option only." While this statement is appropriate in a theoretical sense, it seems to lose applicability in a practical sense. All mitigation measures must be cost effective in accordance with statute, regulation, and policy. The appropriate approach is for FEMA, the State, and the applicant to discuss mitigation measures together, determine which options are appropriate, technically feasible, and cost-effective.
- (4) Further evaluation of the applicant's 406 mitigation proposal is needed to determine if eligible. A follow-up meeting or site visit will be scheduled.

CA
~~DRAFT ONLY~~ *[Signature]* 3-27-09
Charles R. Axton
FEMA Lead
Unified PA Project Decision Team

[Signature]
Mark S. Riley
Assistant Deputy Director
Disaster Recovery

Concur
 Non-Concur

*recommended
concurrent
3-26-09*