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Landslides and Slope Failures: Navigating FEMA Eligibility in the Wake of Hurricane Helene

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October 09, 2024

Landslides and slope failures resulting from disasters cause millions of dollars in damage to infrastructure each year. Following a disaster, funding for repair and restoration of infrastructure, including roads and bridges, and slope stabilization may be available through FEMA's Public Assistance Grant Program. As multiple states and local governmental entities continue to assess the damage caused by Hurricane Helene to develop and implement a recovery plan to address the unprecedented impacts of this disaster, it will be critical for these entities to understand and follow applicable guidance in order to obtain (and keep) FEMA and other federal grant funding.

Throughout the country, tens of thousands of government-owned roads and other structures are located atop and supported by vulnerable sloped terrain. This is certainly evident following the devastation caused by Hurricane Helene, which resulted in mudslides and slope failures up and down the eastern portion of the United States. Understanding and navigating the requirements and nuances of FEMA's grant programs can be challenging. This is particularly true when requesting funding from FEMA for the repair of damaged infrastructure caused by slope failure.

Emergency Slope Stabilization

In the immediate aftermath of a disaster, if a landslide or other slope instability is triggered by the incident and poses an immediate threat to life, public health and safety, or improved public or private property, emergency protective measures to stabilize the slope may be eligible. FEMA does not pay to stabilize the entire slope in these instances, only the portion of the slope that poses the immediate threat. FEMA may also authorize funding for post-disaster inspections and limited geotechnical investigations to determine if the instability creates an unsafe condition that poses an immediate threat. Eligible emergency protective measures include, but are not limited to:

- Emergency drainage measures;
- Emergency ground protection to better stabilize the mass (rip rap, sheeting);
- Partial excavation at the head of a sliding mass to reduce its driving force;
- Backfilling or buttressing at the toe of a sliding mass using measures such as gabions, rock toes, cribwalls, binwalls, and soldier pile walls; and
- Installation of barriers to redirect debris flow.

Even when it appears obvious that a slope failure is a result of the disaster, FEMA will typically insist on documentation showing the pre-disaster condition of the slope to ensure there is no indication of failure pre-disaster. When applying for assistance, applicants must provide FEMA with any documentation available that can indicate the stability of the slope prior to the incident. This will help support and expedite FEMA's review and reimbursement processes. Also, before conducting any geotechnical investigations, applicants should discuss reimbursement with FEMA to ensure the scope of the investigation meets FEMA's eligibility requirements.

Eligible Facilities Damaged by Landslides or Slope Failures

FEMA treats permanent work associated with landslides and slope failures differently, particularly when the failure causes damage to a facility that is potentially eligible for Public Assistance (PA) funding, such as a road. If an eligible facility, such as a road, is located on a slope and is damaged as a result of a landslide or slope instability triggered by the incident, FEMA determines the stability of the slope that supports the facility before it approves PA funding to restore the facility. Restoration of the integral ground that supports the facility may also be eligible.

Integral ground is only the ground necessary to physically support a facility. Integral ground may be natural or improved ground upon which an eligible facility is located and that is essential to support the structural integrity and utility of the facility.

FEMA evaluates the pre-disaster condition of the slope to determine eligibility. That evaluation is critical, and is the basis for what FEMA will fund and when FEMA will fund it. FEMA determines eligibility as follows:

- If the site is stable, permanent restoration of the facility and its integral ground is eligible;
- If the site is unstable and there is no evidence of pre-disaster instability after the facility was constructed, permanent restoration of the facility and its integral ground is eligible, including measures to stabilize the integral ground; or
- If the site is unstable and there is evidence of pre-disaster instability after the facility was constructed, restoration of the facility's integral ground is ineligible. Restoration of the facility is eligible only upon the applicant stabilizing the site and restoring the integral ground.

As with emergency slope stabilization, site inspections, and limited geotechnical assessments to determine site stability and to obtain a technical opinion of the cause of the slope failure may be eligible for reimbursement. FEMA often insists these technical assessments be performed to determine the extent and cause of the failure. Likewise, it is critical for applicants to provide as much documentation regarding the pre-disaster stability of the slope as possible when applying for PA funding. This should include, at a minimum, any maintenance records associated with the slope and/or facility, geotechnical studies performed during the construction of the facility or after, and pre-disaster photographs of the site, if available.

It is also important for applicants to be mindful of any additional mitigation opportunities associated with disaster-related slope failures. Applicants should evaluate the opportunities available under FEMA's resiliency programs, particularly in light of new cost-share incentives established by FEMA. For more information regarding these incentives, we recommend reading our article, [FEMA is Making Post-Disaster Mitigation Less Expensive for Applicants](#).

With the devastation caused by Hurricane Helene, support for emergency work and permanent work from mudslides and slope failures will be critical to the recovery of many communities. Understanding FEMA's funding and eligibility criteria associated with slope failures and mitigation will be necessary to ensure these communities are able to maximize FEMA funding. Applicants should consult with counsel to develop a strategy to review and address potential regulatory or policy challenges. This includes understanding compliance requirements and exploring opportunities to challenge existing regulations or policies that may no longer hold under the new legal framework.

Baker Donelson's Disaster Recovery and Government Services professionals work proactively with state and local governments, governmental agencies and authorities, non-profits, and infrastructure providers to provide regulatory compliance, grant management, and legal representation that maximize access to federal funding,

assure its effective use, and, as needed, coordinate and negotiate with other governmental entities to maintain funding previously received. If you have questions about FEMA eligibility related to mudslides, slope stabilization, and/or facilities damaged by slope failures, please reach out to [Charles F. Schexnaildre](#), or any member of [Baker Donelson's Disaster Recovery and Government Services Group](#).