

Chapter 4 Eligibility

This chapter provides guidance regarding Federal Road eligibility as well as specific eligible costs under the ERFO Program. Questions about eligibility should be directed to the Federal Lands Highway ERFO Coordinator. The Federal Lands Highway Division Engineer is responsible for approving all repairs under the ERFO program.

4.1 Federal Roads that are Open to Public Travel are eligible for funds under the ERFO Program as follows:

- (a) **Bureau of Reclamation Roads** owned by the Bureau of Reclamation for which title and maintenance responsibility is vested in the United States Government.
- (b) **Corps Recreation Roads** are public roads owned by the U.S. Army Corps of Engineers that provide access to or within an U.S. Army Corps of Engineers recreation areas and other administrative units for which title and maintenance responsibility is vested in the United States Government.
- (c) **Department of Energy Roads** are public roads that provide access to or within facilities such as transmission lines, switch yards, substations and related facilities on public lands, including those lands and facilities located on withdrawn public lands, previously under the jurisdiction of the Bureau of Reclamation (i.e., owned by the Western Area Power Association).
- (d) **Forest Development Roads** owned by the Forest Service and under Forest Service Jurisdiction (maintenance level 2-5). During periods of funding shortages, repair of maintenance level 2 roads, that are Open to Public Travel, will not be approved for funding unless they meet the following criteria:
 - (1) Access high use trails
 - (2) Provide high value recreational through traffic
- (e) **Forest Highways** are public roads serving National Forests and National Grasslands that have been designated in accordance with 23 CFR 660. These roads are under the jurisdiction of, and maintained by, a public authority and open to public travel.
- (f) **Indian Reservation Roads** (see 23 U.S.C. 101(12)) are public roads that are designated by the Bureau of Indian Affairs as Indian Reservation Roads that provide access to or within the following:

- (1) Indian reservations.
- (2) Indian trust lands.
- (3) Restricted Indian land.
- (4) Alaska native villages, groups, or communities.

(g) Military Installation Roads that are public roads and owned by the Department of Defense (DOD) on military installations.

(h) Park Roads and Parkways owned by the National Park Service that are:

- (1) Park Roads – Public roads that provide access to or within the National Park System with title and maintenance responsibilities vested in the United States Government.
- (2) Parkways – Public roads authorized by an Act of Congress on lands to which title is vested in the United States Government.

(i) Public Lands Development Roads - Roads that the Secretary of the Interior determines are of primary importance for the development, protection, and utilization of public lands and resources under the control of the Secretary of the Interior (maintenance level 2-5). This category includes administrative roads that are classified by the Bureau of Land Management as "Land Management Roads," as well as roads on the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road Grant Lands in Oregon (commonly called O&C roads). During periods of funding shortages, repair of maintenance level 2 roads, that are Open to Public Travel, will not be approved for funding unless they meet the following criteria:

- (1) Access high use trails
- (2) Provide high value recreational through traffic

(j) Refuge Roads owned by the United States Fish and Wildlife Service that are public roads providing access to or within the United States Wildlife Refuge System and which title and maintenance responsibility is vested in the United States Government.

(k) Selected State, County, and Other Roads as listed:

- (1) Forest Highways that are designated by the Federal Highway Administration.
- (2) Defense Access Roads that are designated by the Surface Deployment & Distribution Command.

- (3) Land Management Highways that are designated by the Bureau of Land Management.

4.2 Federal and Administrative Roads and Trails that may or may not be approved for limited ERFO Funds include the following:

- (a) **Administrative Roads** can be closed by their owners at any time, for any reason and remain closed indefinitely and as a result do not meet the definition of a public road. Administrative roads owned by the agencies listed below are NOT eligible.

- (1) Bureau of Indian Affairs.
- (2) Bureau of Reclamation.
- (3) Department of Defense.
- (4) U.S. Army Corp of Engineers.
- (5) Fish and Wildlife Service.
- (6) National Park Service.
- (7) Tribal governments.
- (8) Department of Energy.

- (b) **U.S. Forest Service and Bureau of Land Management Administrative Roads** that are not open for public travel will only be approved for abandonment and limited work to reduce additional adverse resource impacts caused by the disaster. These roads are typically identified as follows:

- (1) Forest Development Roads with traffic management strategies that discourage, eliminate or prohibit standard passenger autos (Maintenance Levels 1 and 2).
- (2) Public Lands Development Roads (Maintenance Level 1 and 2).

- (c) **Trails and trailheads** will be approved if they are:

- (1) An integral part of an eligible damaged roadway cross section;
- (2) Designated by the U.S. Congress as a National Trail under the National Trails System Act of 1968 (as amended), or

- (3) Trail bridges on other trails that provide the only access to significant points of interest are eligible for ERFO funding on a case by case basis.
- (d) **Roads Open to Public Travel less than 5 months each year** may only be approved for limited work to reduce additional adverse resource impacts caused by the disaster. The scope of these repairs may include items such as minor grading, reshaping of embankments and cut slopes, installing low-cost erosion controls to reduce sedimentation, and minor reshaping of damaged ditches. The cost to reduce additional resource impacts may not exceed the estimated cost to repair the road to pre-disaster condition.
- (e) **Roads Identified in an Abandonment or Decommissioning Plan** will NOT be approved for ERFO funding. Abandonment and decommissioning costs should be funded as originally planned.
- (f) **Tribal Owned Public Roads NOT on the Indian Reservation Road System** will NOT be approved for ERFO funding.

4.3 Items Eligible for ERFO Funds - The ERFO program is not intended to fund all repairs resulting from a natural disaster or catastrophic failure. Only repair of serious damage is eligible for ERFO funding. Restoration in-kind to pre-disaster conditions is expected to be the predominate type of repair. When it is not practical or economically feasible to repair or restore a damaged element to its pre-existing condition, replacement facilities are appropriate. Betterments may be approved when economically justified to the ERFO Program. The subsections listed below provide guidance in determining eligible costs.

- (a) **Abandonment of Roads** is eligible if the road is open to public travel, is difficult to maintain, has experienced frequent storm and flood damage, and if abandonment is in line with the road's management objectives. Abandonment costs are capped at the cost to repair the road. A portion of the abandoned road can be left to function as a trail; however, trail construction along the abandoned facility is NOT eligible. Suitable turnaround facilities at the beginning of the abandoned road section are eligible.
- (b) **Access Road Damage** is eligible provided the applicant is able to document the pre-disaster condition of the roadway and the damage is the result of the following:
 - (1) Damage caused by vehicles hauling roadway construction equipment or material necessary for making eligible ERFO repairs. Damage to the roadway caused by other traffic is NOT eligible.

- (2) Damage on detour routes around eligible damage, caused by increase traffic volume.
- (3) Damage caused by emergency vehicles responding to the disaster.

(c) Additional Damage to a Previously-Approved Site.

(1) Damage that occurs before permanent repairs are completed is eligible for ERFO funds as follows:

- (i) The additional damage could not have been anticipated and appropriate emergency ERFO repairs were made to prevent further damage.
- (ii) The repairs are not the responsibility of the contractor.
- (iii) The permanent repairs were under construction by the end of the second fiscal year following the year of the disaster.

(2) Damage that occurs after permanent repairs are completed may be eligible if it can be shown that the damage was directly caused by the disaster and not by other factors and the repair shows signs of failure within three (3) months after final inspection.

(3) When additional damage is the result of a subsequent eligible disaster, the repairs are eligible. The repairs may be combined under either disaster as follows:

- (i) If the cost of the additional damage is applied to the original disaster, an amended Damage Survey Report is required.
- (ii) If the cost of the additional damage is applied to the new disaster, a new Damage Survey Report is required and the original Damage Survey Report for that site must be amended.

(d) Basin Flooding - According to 23 CFR 668.109(b)(8), raising the grade as a result of basin flooding may be eligible for ERFO funds if the Federal Highway Administration makes a formal determination based upon the following factors:

- (1) The affected road must be considered a critical Federal-Aid highway or transportation route with potential long-term loss of use.
 - (2) The proposed increase in grade must be substantial, reasonable, and economically feasible.
- (e) **Betterments** may be eligible if the applicant demonstrates through a benefit/cost analysis that the betterment is economically justified to the ERFO Program. See Section 4.5 - Betterments and Appendix A.8 - Benefit/Cost Analysis

Special Note: In many instances betterments will fail to meet the test of being economically justified to the ERFO Program. If a betterment provides considerable benefit when other factors are considered, the applicant is encouraged to use other funds, as appropriate, to fund the betterment.

(f) **Bridges**

- (1) Bridges that are scheduled for replacement may be eligible for Emergency ERFO repairs only. Permanent repairs should be completed as originally planned.
- (2) Structurally Deficient Bridges.
 - (i) Emergency repairs to restore essential traffic are eligible. These funds may be combined with non-ERFO funds to correct nondisaster-related deficiencies so that the bridge will be structurally sufficient when repairs are completed.
 - (ii) A replacement structure, meeting current design standards, is eligible for funds if all the following apply:
 - (aa) The bridge was completely destroyed or repair is not feasible.
 - (bb) The bridge was not scheduled for replacement.
 - (iii) Increased bridge width or other geometric improvements and correction of nondisaster-related structural or surfacing improvements, such as deteriorated piling or decks, are not eligible for ERFO funds.

- (3) Bridges that are NOT structurally deficient (including functionally obsolete bridges) may be eligible as follows:
 - (i) When a minor section or a single span of a functionally obsolete bridge is damaged or destroyed as a result of a disaster, in addition to emergency repairs, ERFO funds may be used to repair or rebuild that section to geometric standards consistent with undamaged sections of the structure.
 - (ii) If the bridge is destroyed as a result of the disaster, ERFO funds may be used for a replacement bridge that is constructed to current design standards required for the types and volume of traffic over its design life.
 - (iii) If the bridge is not totally destroyed as a result of the disaster, but the damage is extensive and the applicant can economically justify that a total replacement rather than repair is warranted, the Federal Lands Highway Division Engineer may approve ERFO funds for the replacement on a case-by-case basis.

- (4) Log Stringer Bridges.
 - (i) Damaged Structures - Costs to repair damaged structures to pre-disaster conditions are eligible. ERFO funds can be combined with non-ERFO funds to replace the bridge with a new structure.
 - (ii) Destroyed Structures - It is the policy of the Federal Lands Highway not to replace log stringer bridges "in kind". The costs and type of replacement structure eligible for ERFO funds will be determined on a case-by-case basis as mutually agreed upon by the applicant and the Federal Lands Highway Division Engineer.

- (g) **Clearing Debris/Timber Removal** from roadways and water courses around bridge piers to adjacent locations within the right-of-way are eligible for ERFO funds. The costs of hauling timber to sawmills or to other locations beyond the proximity of the highway right-of-way are not eligible for ERFO funds.
 - (1) Debris removed on roads is limited to that necessary to clear the traveled way and to assure the safety and full function of the roadway.

- (2) Debris removed from watercourses is limited to that necessary to protect the structural integrity of the road or bridge and is limited to debris within the actual drainage channel, right-of-way boundary (or typical boundary if none).

(h) Culverts

- (1) Destroyed culverts may be replaced to current design or environmental standards if such culverts currently are being installed in accordance with the applicant's normal practices and if damage is not attributable to lack of maintenance.
- (2) Damaged culverts may be repaired or re-set as long as it is not considered heavy maintenance.

(i) Detour Construction costs are eligible to restore essential traffic consistent with anticipated volume and type of traffic, considering appropriate speeds, safety considerations, duration of use, and overall costs. However, detour construction that establishes pre-disaster levels of service requires prior approval by the Federal Lands Highway Division Engineer.

(j) Embankment replacement to repair eligible serious damage is eligible under the following conditions:

- (1) Repair of slip-outs extending into the traveled way is eligible.
- (2) Repair of slip-outs NOT extending to the traveled way is eligible if the roadway is in imminent danger of failure.
- (3) Repair of slips-outs NOT extending into the traveled way must be justified through a cost-benefit analysis if the roadway is NOT in imminent danger of failure.

(k) Emergency Repairs are eligible and should be accomplished in a manner that reduces the additional work required for permanent repairs.

(l) Engineering costs are eligible as follows:

- (1) Preliminary engineering.
- (2) Construction engineering directly attributed to repair of eligible damage or related to contract administration and inspection of construction work.

- (m) **Environmental studies**, review, and documentation required to comply with the National Environmental Policy Act and the applicant's implementing regulations are eligible. Requests for payment for repairs required by proposed actions to avoid, minimize, or mitigate for environmental impacts, resulting in costs above replacement in-kind, are eligible if:
- (1) Thoroughly documented.
 - (2) Mutually shared.
 - (3) Submitted to the Federal Lands Highway Division Engineer for consideration on a case-by-case basis.
- (n) **Equipment** cost may be eligible as follows:
- (1) Purchase (minus resale value) must be approved in advance by the Federal Lands Highway Division Engineer and must be cost effective when compared to renting.
 - (2) Rentals may include applicant-owned equipment, equipment rented from another public entity, and equipment rented from commercial sources. Rental rates should include operation, maintenance and depreciation costs. Documentation required to support costs include the following:
 - (i) A commercial invoice or other applicant-generated time and equipment use report that specifies, for each Damage Survey Report the equipment was used on, the date of use and hours of operation.
 - (ii) The equipment use record must be signed by the applicant's employee.
- (o) **Flood Fighting Operations** at an eligible site that restores essential traffic, protects remaining facilities, and minimizes the extent of the damage are eligible.
- (p) **Mobilization** costs are eligible as calculated from:
- (1) The pre-disaster location of the equipment to the first eligible site.
 - (2) From one eligible site to the next logical eligible site.

- (q) **Permanent Repairs that Receive Prior Approval** from the Federal Lands Highway Division Engineer are eligible.
- (r) **Picnic and Camping Areas** - Roads within an area that serves mainly as a picnic area or as an overnight camping facility must meet the eligibility and funding approval criteria listed in Sections 4.1 and 4.2.
- (s) **Replacement of Highway Facilities** - Replacement highway facilities are appropriate when it is not practical and economically feasible to repair or restore a damaged element to its pre-existing condition. See section 4.6 Replacement Facilities.
- (t) **Rest Areas.** The repair of roads and bridges within Rest Areas are eligible.
- (u) **Right-of-Way Acquisition** required for repair of eligible damage.
- (v) **Roadway Surfacing.** Major loss of roadway surfacing is eligible.
- (w) **Salaries**, including overtime pay, for all applicant employees directly assigned to and working on a specific ERFO eligible project(s) provided their time is properly documented in accordance with acceptable accounting standards (e.g. time slips, time and attendance reports, or time books) and readily available for inspection by the Federal Lands Highway Division ERFO Coordinator.
- (x) **Slides** extending to the top of cut or toe of fill that create a significant stability problem or safety problem are eligible for ERFO funds. Eligible repairs include removing debris, restoring slopes, and reconstructing the roadway and drainage facilities. Slides that occur after the disaster period may be eligible for ERFO funds if written documentation shows that the slides were the direct result of the disaster. Other limitations to the eligibility of ERFO funds are as follows:
 - (1) Slide stabilization is a betterment. ERFO funds may be approved based on a detailed analysis of the slide and on reasonable assurance that the stabilization will prevent similar future damage.
 - (2) The analysis must show that the stabilization cost does not unreasonably exceed anticipated future ERFO costs. The analysis must include road relocation and do-nothing alternatives and must consider previous geotechnical recommendations for the area.

- (3) Additional corrective repairs after completion of the initial stabilization is NOT eligible. ERFO funding in the initial construction does not create a continuing responsibility for future additional work. The cost of monitoring slide stabilization measures after construction is NOT eligible for ERFO funds.
- (4) Repairs to provide a safe roadway are eligible for ERFO funds for existing slides if the slide is significantly accelerated by the disaster. ERFO funds may not be provided for all corrective measures performed by the applicant to "stabilize" the slide. ERFO funds generally are limited to paying the cost to provide a usable road.
- (y) **Snow and Ice Removal** associated with repairs from a catastrophic failure.
- (z) **Stone Walls (Substandard).** A replacement wall meeting current standards is eligible for ERFO funds if the applicant agrees to reconstruct the entire wall to current standards and uses non-ERFO funds to replace the undamaged portion(s) of the wall. However, if small sections were damaged, ERFO funds could be used to repair the wall to pre-disaster conditions.
- (aa) **Stream Channel restoration** necessary for the continued safe operation of bridge and drainage facilities. The applicant must have responsibility and authority for maintenance and proper operation of the stream.
- (bb) **Supplies and Materials**, provided they are:
 - (1) Expendable.
 - (2) Properly identified on the stock-issue slip or vendor's invoice with the project charged and readily available for inspection by the Federal Lands Highway ERFO Coordinator.
- (cc) **Temporary/Prefabricated/Portable Bridges** may be leased or purchased to maintain essential traffic contingent upon the following stipulations:
 - (1) Purchase price minus resale value only.
 - (2) An economic analysis is completed prior to the purchase that demonstrates significant cost benefit of purchasing over leasing.

- (3) Removal of the structure following permanent repairs.

Special Note: Maintenance of bridge after installation is not eligible.

- (dd) **Traffic Control** devices, barricade erection and removal, and flagging traffic through or around damaged sections of roadway or bridges.
- (ee) **Travel and Per Diem expenses** properly assigned to an eligible site and directly attributable to individual ERFO projects in accordance with Federal Joint Travel Regulation.

4.4 Items NOT Eligible for ERFO Funds included but not limited to the following:

- (a) **Additional Damage** resulting from an applicant's lack of protection of remaining facilities.
- (b) **Administrative Costs.** Administration and overhead costs are not eligible. Costs such as a general overall assessment of damage, general supervision, contract administration other than construction engineering, and project planning and scheduling are considered administrative costs. These costs relate to the overall responsibilities of an agency to manage and operate a highway system rather than to the design and construction of an individual ERFO repair project.
- (c) **Boat Ramps.**
- (d) **Bridge(s):**
 - (1) Permanent repair of bridges that were structurally deficient before the disaster and were not totally destroyed.
 - (2) Bridges that are scheduled for replacement at the time that a natural disaster or catastrophic failure occurs.
 - (3) If the bridge receives little or no damage, but the channel has been altered, ERFO participation is limited as follows:
 - (i) The cost to replace the bridge or raise the superstructure is NOT eligible.
 - (ii) Repair of the approach is eligible. A bridge extension may be eligible if it is cost effective compared to channel and approach repairs. Bridge replacement or extension is generally NOT eligible.

- (e) **Deficient Facilities:** Repairs to roadways damaged as a result of preexisting and non-disaster related, i.e., inherent deficient conditions are not eligible.
- (1) Pre-disaster structurally deficient roads, walls and drainage structures. Rusted culverts are NOT eligible for replacement but may be reinstalled if unseated.
 - (2) Work already programmed to repair or replace deficient facilities that are damaged during a disaster. This work must be financed as originally intended. A project is considered "programmed" if the construction phase is included in the Federal Lands Highway Program or State Transportation Improvement Program or if contract plans are being prepared.
- Special Note:** Emergency repairs to restore essential traffic may be eligible.
- (3) Damage attributable to deterioration or lack of maintenance such as:
 - (i) Drainage ditches obstructed with sediment and vegetation.
 - (ii) Culverts with leaking joints, deteriorated materials or piping along the outside of the culvert.
 - (iii) Log culverts.
- (f) **Delayed Projects.**
- (1) Force account projects not completed by the end of the second fiscal year following the year of the disaster.
 - (2) Contract work not awarded by the second fiscal year following the year of the disaster unless a time extension is granted.
- (g) **Embankments** damaged by slides and slip-outs, erosion, settlement, and sloughing not extending into the traveled way.
- (h) **Flood Fighting** operations normally expected by an applicant.
- (i) **Force Account Repair Costs** that exceed the costs comparable to those expected by the competitive bidding process.

- (j) **Heavy Maintenance** normally required after heavy rains or other frequently occurring natural events even though it is more extensive (more wide area).
- (k) **Isolated Sites** not directly related to, or away from, the pattern of the disaster.
- (l) **Levees and Dikes** used for water control. Roads on top of levees and dikes are eligible after repairs are completed.
- (m) **Material Stockpiles, Equipment, and Other Losses.**
 - (1) Replenishing or paying losses for damaged or destroyed material stockpiles (i.e., sand, gravel, pipe, etc.).
 - (2) Damages to an applicant's equipment (i.e., motor graders, tractors, etc.) and other losses (i.e., maintenance sheds, offices, picnic tables, trash cans, tent pads, boat launch ramps, etc.).
- (n) **Miscellaneous Damage**
 - (1) Not directly attributable to the natural disaster.
 - (2) Not included in an eligible site.
 - (3) Outside the highway right of way that is caused by or attributed to the highway facility (even if the applicant may be found liable for the damage).
- (o) **Permanent repairs** are not eligible if performed prior to authorization unless it is determined to be more economical or practical to perform such work as an associated part of the emergency repairs.
- (p) **Roads Closed to Public Travel** for more than 7 months of the year.
- (q) **Roadway Surface Upgrades** beyond the pre-disaster conditions.
- (r) **Routine Maintenance of Detour Routes** not related to increase traffic volumes such as:
 - (1) Brushing.
 - (2) Maintaining drainage.

- (3) Snow plowing.
- (s) **Routine Snow and Ice Removal.**
- (t) **Slides:**
 - (1) Pre-existing, slow moving slides that are not significantly accelerated during the disaster.
 - (2) Additional corrective repairs after completion of the initial stabilization.
 - (3) The cost of monitoring slide stabilization measures after construction.
- (u) **Total Repair Costs** of a damaged site (emergency and permanent repairs) less than \$5,000. Damages at two or more sites shall NOT be combined to meet the threshold.
- (v) **Trails and Trailheads** other than those designated by the U.S. Congress under the National Trail System Act of 1968 (as amended), or similar will NOT be approved unless they are an integral part of a eligible damaged roadway cross section.

4.5 Betterments – The ERFO Program is intended to assist the applicant in repairing damaged highway facilities to their pre-disaster condition. In-kind restoration is the predominate type of repair. Added features (betterments) that help protect highway facilities from possible future damage and are economically justified through a benefit/cost analysis may be approved. Requests for funding betterments must be submitted by the applicant to the Federal Lands Highway Division Engineer for approval. A justification and economic analysis should be provided at the time the Damage Site Survey Team prepares the Damage Survey Report.

- (a) **Benefit/Cost Analysis.** Betterments must be economically justified to the ERFO Program through a benefit/cost analysis. The analysis must be based solely on the benefit of the projected savings in recurring eligible ERFO repair costs should future disasters occur and the cost of the betterment. When calculating the projected savings (benefits) subtract the estimated cost of repairing the site with the betterment from the estimated cost of repairing the site again without the betterment. The analysis cannot include other factors typically included in highway benefit/cost evaluations, such as traffic delay costs, added user costs, motorist safety, and economic impacts.

Betterments that fail to meet the test of being economically justified for ERFO funding should not necessarily be excluded from the ERFO repair project. If a

betterment provides considerable benefit when other factors are considered, the Applicant is encouraged to use other Federal Lands Highway Program funds, agency funds, or local funds, as appropriate, to fund the betterment.

(b) **Examples of Betterments** that help protect highway facilities from possible future damage and as a result may be approved are as follows:

- (1) Raising roadway grades.
- (2) Relocating roadways to higher ground or away from slide-prone areas.
- (3) Stabilizing slide areas.
- (4) Stabilizing slopes.
- (5) Installing riprap.
- (6) Lengthening or raising bridges to increase waterway openings.
- (7) Deepening channels.
- (8) Increasing the size or number of drainage structures.
- (9) Replacing culverts with bridges.
- (10) Installing seismic retrofits on bridges.
- (11) Adding scour protection at bridges.
- (12) Adding spur dikes.

4.6 Replacement Facilities. Replacement highway facilities are appropriate when it is not practical and economically feasible *from an engineering standpoint* to repair or restore a damaged element to its pre-existing condition.

(a) **Design Standards.** Replacement facilities may be built to current standards as described below. (Reference CFR § 668.209(d) Eligibility of work.)

Roads - ERFO funds are limited to the cost of a new facility constructed to current design standards of comparable capacity and character to the destroyed facility.

Bridges - ERFO funds are limited to the cost of a comparable facility that meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

- (b) **Justification Requirements.** Because the ERFO Program is intended to fund the repair of a facility to its pre-disaster condition, all proposed replacement facilities must be submitted to the Federal Lands Highway Division Engineer for approval. As a minimum, the Applicant must address the following in its justification submittal:
- (1) Primary road use and ADT.
 - (2) Additional cost of the replacement facility.
 - (3) Socio/economic/environmental considerations. Describe road condition and list deferred maintenance and capitol investment needs.
 - (4) Evaluate likelihood of future damage.
 - (5) Describe Agency and ERFO work completed on the road within the past 10 years.
 - (6) Availability of other funding sources.
- (c) **Environmental Considerations** - Features added as a result of required environmental mitigation can be included in the approved overall cost of the project only if the replacement facility is justified to and approved by the Federal Lands Highway Division Engineer. These features are not viewed as betterments but rather as integral parts of the replacement project needed to comply with NEPA.
- (d) **Examples.** The extent of eligible funding varies depending on the circumstances involved, as illustrated in the following examples:
- (1) A highway has been seriously damaged; however, inspection verifies that it is practical and economically feasible to repair the existing highway. After considering environmental constraints or transportation related needs, the applicant decides through the NEPA process they want to replace the existing highway with a new one. In this case, ERFO funds can be applied towards a new or alternative replacement; however, ERFO funds are limited to the estimated cost to repair the existing highway. This practice is commonly referred to as capping the amount of eligible ERFO funds. Other non-ERFO funds must used to fund project costs above the eligible amount.
 - (i) A long embankment, although seriously damaged by an earthquake, does not collapse. An inspection confirms that the embankment is repairable at an estimated cost of \$2,000,000. The applicant does not want to repair the embankment, but instead wants to replace it with a bridge. ERFO funds may participate in

the Federal share of the replacement facility up to the estimated amount of \$2,000,000.

- (ii) A bridge approach is eroded so there is a large gap between the road and the end of the bridge. An inspection confirms that the embankment is repairable, however due to environmental constraints and permitting issues, the applicant is not able to repair the embankment to preexisting conditions. As a result, the applicant decides to extend the bridge. ERFO funds may participate in the bridge extension project up to the estimated cost to repair the embankment.
- (2) A highway has been seriously damaged and the inspection confirms that it is not practical or economically feasible to repair the damage. In this case, ERFO funds may participate in the total cost of the replacement highway.
- (i) A bridge crossing a river is heavily damaged and collapses during flooding. The inspection confirms that the bridge cannot be repaired but must be replaced. The applicant decides to replace the bridge at the existing site. The replacement structure built to current standards costs \$1,000,000. ERFO funds may participate in 100% of the incurred costs.
 - (ii) A roadway embankment fails and an inspection confirms the embankment cannot be repaired to preexisting conditions because the ground at the failure is too steep. The applicant decides to build a retaining wall on the original alignment. ERFO funds may participate in 100% of the incurred costs.
 - (iii) A roadway culvert fails and an inspection confirms that the culvert is not salvageable. The culvert may be replaced with one meeting current engineering standards with ERFO funds participating at 100%. During the design phase, the applicant requests the culvert be replaced with a structure that accommodates fish passage. In this case, justification must be provided by the applicant and approved by the Federal Lands Highway Division Engineer in order to have ERFO funds participate at 100%. If justification is not approved, ERFO funding will be capped at the cost of replacing the culvert to current engineering standards.
- (3) A highway has been seriously damaged and it is not practical or economically feasible to repair the damage. It is practical or economically feasible to build a replacement highway at the existing location. However, due to environmental constraints or transportation related needs, the applicant chooses to replace the existing damaged highway with one at a new location. In this case, ERFO funds for the relocated highway are

capped at the estimated cost to replace the damaged highway at its original location. Other funds must be used to cover costs above the capped amount.

(i) A bridge crossing a river is heavily damaged and collapses during flooding. The inspection confirms that the bridge cannot be repaired but must be replaced. It is practical and economical to build a new bridge at the existing site for \$1,000,000. However, the applicant wants to replace the bridge at a new site requiring a longer structure and additional approach work. The result is a bridge at the new site costs an additional \$2,000,000. For this project, ERFO funds are capped at the original \$1,000,000.

(ii) A roadway embankment along a river is eroded causing serious damage. It is not practical or economically feasible to rebuild an embankment because of stream degradation and impingement of the river. It is determined that a retaining wall can be built at the damaged site. Because of environmental constraints, the applicant decides to relocate the road to a new alignment. In this example ERFO funds are capped at the cost of the retaining wall replacement facility.

(4) A highway has been seriously damaged and the inspection confirms that it is not practical or economically feasible to repair the damage or replace the highway at its existing location. Consequently, an alternative replacement highway on a new location is developed. Provided this alternative highway is of comparable function and character to the destroyed facility, it is eligible for ERFO funds. This scenario rarely arises under the ERFO Program. In almost all cases, it is practical or economically feasible, from an engineering standpoint, to replace a damaged highway on its existing location.

4.7 Resolving Eligibility Issues - These shall be handled between the Federal Lands Highway and applicant ERFO Coordinators.

(a) **Unresolved Disputes** may be forwarded to the Federal Lands Highway Division Engineer.

(b) **Appeals** may be elevated to the Federal Lands Highway Associate Administrator with copies to the following:

(1) Director, Office of Program Development.

(2) ERFO Program Manager.