



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.8

I. TITLE: Eligibility for Permanent Repair and Replacement of Roads on Tribal Lands

II. DATE: JUL 24 2007

III. PURPOSE:

This policy provides guidance on eligibility for the permanent repair and replacement of roads on American Indian and Alaska Native Tribal lands under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after August 30, 2006. It is intended for Federal Emergency Management Agency (FEMA) personnel involved in making eligibility determinations under the Public Assistance program. This policy applies only to Federally-recognized Indian Tribal Governments. It does not apply to other Tribal Governments, e.g., State-recognized Tribes or Alaska Native Corporations.

V. AUTHORITY:

Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172; 44 CFR §206.223 and 206.226; and Federal Register: January 12, 1999 (Vol. 64, No. 7), Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments.

VI. BACKGROUND:

Many road systems on American Indian and Alaska Native Tribal lands are owned and/or maintained by the Department of the Interior, Bureau of Indian Affairs (BIA). However, BIA has no authority to provide for the permanent repair and replacement of roads damaged by a major disaster. This policy enables FEMA to provide Public Assistance funding for the permanent repair and replacement of all roads on American Indian and Alaska Native Tribal lands, regardless of their status with BIA, that meet the eligibility criteria in 44 CFR §206.223 and 206.226. This policy also clarifies the legal responsibility criteria under 44 CFR §206.223(a)(3) as it relates to Tribal governments.



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VII. POLICY:

A. Definitions. For the purposes of this policy, the following definitions apply:

1. Indian Tribe means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally-Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
2. Indian Tribal Government is the recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* The shortened name, Tribal Government, is used throughout this policy.
3. "Trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in land, title to which is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation. Collectively referred to as "trust lands," for the purposes of this policy.¹

B. Eligibility.

1. Due to the sovereign status of American Indian and Alaska Native Tribes, Tribal Governments meet the legal responsibility criteria under 44 CFR §206.223(a)(3) for all public roads on Tribally-owned land. Roads on U.S. Government "trust lands" are the sole responsibility of BIA absent other agreement.
2. BIA has no specific authority to provide for the permanent repair and replacement of roads damaged by a major disaster. Therefore, the restrictions in 44 CFR §206.226(a) relating to other Federal agency programs do not apply.
3. This policy only applies to programs related to BIA because of the requirement under Federal case law that Federal agencies interpret their regulations for the benefit of Indian Tribes.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate, Public Assistance Division.

¹25 U.S.C. Sec. 2201(4), as amended.



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IX. SUPERSESSION: This policy supersedes all previous policy and guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

A handwritten signature in blue ink, appearing to read "Carlos J. Castillo".

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate