



STATE OF IOWA

TERRY E. BRANSTAD
GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

DEPARTMENT OF PUBLIC DEFENSE
IOWA HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DIVISION
MARK SCHOUTEN, HOMELAND SECURITY ADVISOR
AND EMERGENCY MANAGEMENT ADMINISTRATOR

July 3, 2012

Mr. Duane Wittstock
Lakewood Benefited Recreational Lake District
P.O. Box 158
Norwalk, IA 50211

Disaster #: 1763
PA ID #: 181-U1PSG-00
Project Worksheet #(s): 10057
Appeal Response

Dear Mr. Wittstock:

After review of project documentation, Deborah Ingram, FEMA Assistant Administrator, determined that the District provided sufficient documentation to demonstrate that it is an eligible applicant and has legal responsibility to perform the work on the facility (Lake Colchester). Based on this determination your appeal has been granted.

In accordance with 44 CFR 206.206 this determination represents the final decision on this matter. Please contact Dan Egnor, Deputy State Public Assistance Officer, with any additional questions regarding this matter at (515) 979-3734, dan.egnor@iowa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Hall", written over a horizontal line.

Patrick J. Hall

PJH/kae

Enclosure



FEMA

JUN 28 2012

Mark Schouten
Administrator
Iowa Homeland Security and Emergency Management Division
7105 NW 70th Avenue
Camp Dodge, Bldg W-4
Johnston, Iowa 50131-1824

Re: Second Appeal--Lakewood Benefited Recreational Lake District, PA ID 181-U1PSG-00,
Applicant Eligibility, FEMA-1763-DR-IA, Project Worksheet (PW) 10057

Dear Mr. Schouten:

This letter is in response to a letter from your office dated July 6, 2011, which transmitted the referenced second appeal on behalf of the Lakewood Benefited Recreational Lake District (District). The District is appealing the Department of Homeland Security's Federal Emergency Management Agency's (FEMA) decision to deobligate funding for silt removal and mitigation costs for Lake Colchester and requests that FEMA reinstate funding in the amount of \$9,213,410.

Background

The District is a benefited recreational lake district that is located in Warren County, Iowa. The District consists of hundreds of homes in the Lakewood Village surrounding Lake Colchester. The District was established in 1988 as a Warren County taxing entity in order to operate and maintain a recreational lake for the benefit of Lakewood residents, and to collect tax revenues in support of that function. In addition to the District's tax revenues, yearly homeowners' association fees are paid to the Lakewood Village Association (Association). The Association is a private nonprofit organization that owns the dam and other recreational facilities in the area. The Lakewood development is managed by the trustees of the District and the board members of the Association. Warren County residents living outside the District do not pay the lake district taxes, or the association fees and are therefore not members of the Association; however, they may pay a \$380 yearly membership fee to the Association that allows them complete use of the Lakewood facilities.

During the period of May 28 through August 13, 2008 (FEMA-1763-DR-IA), runoff from heavy rain and flooding carried large amounts of sand and silt into Lake Colchester. FEMA prepared PW 10057 for silt removal and hazard mitigation costs totaling \$8,123,671. An additional \$1,089,739 for hazard mitigation costs were not included in Version 0, but were later approved in PW 10057 Version 1, resulting in total funding of \$9,213,410.

In July 2010, FEMA conducted an analysis and an eligibility review of the District and the damaged facility. That analysis determined that the District was not formed for a public purpose, did not provide essential governmental services to the general public, and did not have legal responsibility for Lake Colchester as required by 44 CFR § 206.223, **General work eligibility**.

The analysis further determined that the Association, a private nonprofit organization, had legal responsibility for operation and maintenance of Lake Colchester, and concluded that neither the District nor the Association were eligible applicants. As a result of the analysis, on August 23, 2010, PW 10057 Version 2 was written to deobligate \$8,922,694, leaving \$290,716 in funding previously drawn by the District.

First Appeal

The District's October 4, 2010, first appeal, which was forwarded by the Iowa Homeland Security and Emergency Management Division (State) to FEMA on October 15, 2010, requested that FEMA reinstate funds for silt removal and for the mitigation project. The District stated that it is an eligible applicant because it is a public entity as defined in Title 44 of the Code of Federal Regulations (44 CFR) §206.221, that it is legally responsible for Lake Colchester, and that FEMA's decision was unfair because the District relied on FEMA funding to its detriment. The District submitted supporting documents that included a copy of a Warren County Board of Supervisors' Resolution to create the Lakewood Benefited Recreational Lake District, a copy of a National Pollutant Discharge Elimination System Permit, and copies of sworn affidavits from Lakewood officials attesting to the District's involvement with activities at and/or linked to Lake Colchester.

In a letter dated March 10, 2011, the Regional Administrator denied the first appeal, stating that, "the District and the Association are both ineligible for Public Assistance" and that "because the District is not an eligible applicant, the matter as to whether the District's facility is eligible is irrelevant."

Second Appeal

The District submitted a second appeal on May 9, 2011, which the State forwarded to FEMA on July 6, 2011. In the appeal letter, the District reiterated the claim that it is a public entity and is legally responsible for the damaged facility. Additionally, the District requested the opportunity to provide an oral presentation. On November 14, 2011, the Director of FEMA's Public Assistance Division held a conference call with District and State representatives to discuss the appeal.

Discussion

The Stafford Act defines local governments to include, "a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments... regional or interstate government entity, or agency or instrumentality of a local government" (42 U.S.C. § 5122(7), see also 44 CFR § 206.2(a)(16)). FEMA's regulations at

44 CFR § 206.223(a), **General work eligibility**, *General*, describe the basic criteria that must be met in order to be eligible for Public Assistance funding, including the requirement that the work in question must be the legal responsibility of an eligible applicant.

Section 357E of Iowa Code allows for the creation of benefited lake districts. That section establishes that the purpose of a benefited recreational lake district is to maintain and operate water quality facilities for the residents of the district that will be conducive to the public health, comfort, convenience, water quality or welfare. Lake districts are controlled by elected officials that have the authority to tax and issue bonds for the purpose of spending money to maintain and repair district property and facilities that include lakes and other recreational facilities. Within the Iowa Code, section 357E is located under Title IX Local Governments and under Subtitle 2 Special Districts.

Additional documentation provided by the District following the November 14, 2011, conference call includes a copy of a Memorandum of Understanding (MOU) between the District and the Association, with accompanying meeting minutes showing that the District adopted the MOU. The MOU establishes, among other responsibilities, that the District is responsible for “the capital improvement needs of the community” through “dredging projects,” the provision of “rip-rap for shoreline erosion control,” and “watershed protection and investments to prevent siltation and water pollution.” In addition, the District provided numerous copies of service contracts between the District and various companies for lake silt and debris removal from 1989 through 2010, as well as copies of the District’s board meeting minutes approving bonds and levying taxes for maintenance and operation of the lake. In addition, the District submitted affidavits from members of both District’s board of trustees and the Association’s board declaring that the District had the legal responsibility for the work in question. Finally, the District submitted Project Completion and Certification Reports showing that it had received Public Assistance funding as a result of a flooding major disaster in 1993 (FEMA-0996-DR-IA).¹

Upon further review of Iowa Statute 357E and of documentation establishing the creation of the District under that provision, FEMA has determined that the District meets the definition of a “local government” under 42 U.S.C. § 5122(7) and 44 CFR § 206.2(a)(16). After review of the additional documentation submitted by the District; particularly the MOU establishing the District’s responsibility for dredging projects, silt removal, and erosion control, as well as the documentation establishing that the District has consistently exercised its authority to perform such work; FEMA has also determined that the District is legally responsible for the work in question.

Conclusion

I have reviewed the information submitted with the appeal and have determined that the District provided sufficient documentation to demonstrate that it is an eligible applicant and has legal

¹ While previous eligibility decisions are not binding on future actions, as FEMA may determine the previous decision was incorrect or there may have been law or policy changes, it is worth noting that FEMA approved benefited lake districts as eligible applicants even before Congress expanded the definition of “local government” to include “special districts.” (see the Disaster Mitigation Act of 2000 (PL 106-390))

Mark Schouten

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responsibility to perform the work on the facility (Lake Colchester). Therefore, I am approving the appeal to re-obligate funding for the project. By this letter, I am requesting the Regional Administrator take appropriate actions to implement my decision.

Please inform the District of my decision. This determination is the final decision on this matter pursuant to 44 CFR § 206.206, Appeals.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Ingram", is written over the typed name.

Deborah Ingram
Assistant Administrator
Recovery Directorate

cc: Beth Freeman
Regional Administrator
FEMA Region VII