

APR 11 2013



FEMA

Mr. David A. Stuckey
Deputy Director
Oregon Office of Emergency Management
PO Box 14370
Salem, Oregon 97309-5062

Re: Second Appeal – Port of Tillamook Bay, PA ID 057-U1ZZV-00, Southern Flow Corridor Mitigation, FEMA-1733-DR-OR, Project Worksheet (PW) 936

Dear Mr. Stuckey:

This is in response to your letter dated May 17, 2012, which transmitted the referenced second appeal on behalf of the Port of Tillamook Bay (Applicant). The Applicant is appealing the Department of Homeland Security's Federal Emergency Management Agency (FEMA) denial of funding for the Southern Flow Corridor Mitigation Project as an alternate project under PW 936. The Applicant is requesting \$4,310,000 in FEMA funding toward the project, which is estimated to cost approximately \$8,000,000.

Background

Flooding during December 1-17, 2007, severely damaged the Applicant's historic railroad. FEMA prepared PW 936 for \$49,552,050 to repair the railroad to pre-disaster condition. The Applicant determined that restoring the railroad facilities would not best serve the public welfare and requested a series of alternate projects in lieu of the railroad repairs, including Alternate Project 13- the Southern Flow Corridor Mitigation Project. The mitigation project provides a governmental service and is designed to reduce flood elevations in the project area. FEMA prepared Version 1 for PW 936, reducing funding by 10 percent to \$44,596,845, in response to the Applicant's request to use the funding for various alternate projects.

On March 16, 2011, FEMA determined that the Southern Flow Corridor Mitigation Project was ineligible as an alternate project, because the Applicant failed to clearly demonstrate that the project was cost-effective; the project did not solve the threat independently nor constitute a functional portion of a solution to the threat; and the project did not include sufficient assurances to long-term and ongoing maintenance, repairs, and operations.

In a letter dated March 24, 2011, FEMA provided clarification on the eligibility determination regarding the Benefit Cost Analysis (BCA). FEMA explained that the project did not appear to be cost-effective for the following reasons: the use of modeled data, rather than actual historic data, may result in unrealistic damage; the estimated damage for agricultural and commercial

buildings and contents appeared to be substantially inflated; the avoided damage used in the BCA could not be validated because no actual past damage was included or referenced as a reasonable comparison to the default values in the HAZUS model.

First Appeal

The Applicant submitted its first appeal to the Oregon Office of Emergency Management (State) on May 25, 2011, and the State forwarded the appeal to FEMA by a letter dated June 6, 2011. In its appeal, the Applicant requested that FEMA approve the Southern Flow Corridor Mitigation Project as an alternate project for PW 936. Based on a request from FEMA, the Applicant provided additional information to support its appeal on September 6, 2011. The FEMA Regional Director denied the appeal in a letter dated January 13, 2012, because the Applicant did not provide sufficient data or information to demonstrate that the project was cost-effective. FEMA determined that the assumptions regarding significant agricultural losses in the Applicant's BCA could not be validated without actual historic data.

Second Appeal

The Applicant submitted its second appeal to the State in a letter dated March 23, 2012. The State forwarded the appeal to FEMA and supported the Applicant's appeal in a letter dated May 17, 2012. In the second appeal, the Applicant reiterated its request for approval of the Southern Flow Corridor Mitigation Project as an alternate project and provided a revised BCA (dated March 2012). Based on review of the revised BCA, FEMA requested additional information from the Applicant on August 15, 2012. A video teleconference with the Applicant and FEMA was subsequently held on October 12, 2012. On October 25, 2012, the Applicant submitted additional information to support the second appeal as a follow-up to the video teleconference with FEMA.

Discussion

The Applicant adjusted the BCA for this project as part of the second appeal and again with the additional submittal on October 25, 2012. Changes to the BCA include: removal of benefits for demolished and out-of-service commercial structures; addition of benefits to account for the loss of function of the impacted highway during major floods; clarifications and adjustments to the values used for agricultural contents and inventory; and considerations of additional benefits from recreational fisheries.

The Applicant's adjustments to the BCA, along with supporting documentation, demonstrate that the mitigation project has a benefit cost ratio greater than 1.0. Consequently, the Applicant provided sufficient justification to support that the project is cost-effective and will serve the public-at-large. Accordingly, the Southern Flow Corridor Mitigation Project is approved as an alternate project under PW 936 for \$4,310,000.

David A. Stuckey

Page 3

Conclusion

I have reviewed the information submitted with the appeal and have determined that the Applicant's appeal should be granted in full. By this letter, I am requesting that the Regional Administrator take appropriate action to implement my decision.

Please inform the Applicant of my decision and to not proceed with construction until FEMA completes a review of the alternate project for compliance with all applicable federal environmental laws and regulations. If the Applicant fails to obtain and comply with all appropriate federal, state, and local environmental laws, regulations, and/or permits prior to the start of construction, federal funding could be jeopardized. This determination is the final decision on this matter pursuant to 44 CFR §206.206 **Appeals**.

Sincerely,



Deborah Ingram
Assistant Administrator
Recovery Directorate

cc: Kenneth Murphy
Regional Administrator
FEMA Region X