




Homeland Security

March 11, 2008

MEMORANDUM FOR: Nancy Ward
Regional Administrator
FEMA Region IX

FROM: 
Robert J. Lastrico
Director
Western Regional Office

SUBJECT: *Management Advisory Report
City of Malibu, California
Public Assistance Identification Number: 037-45246-00
FEMA Disaster Number: 1577-DR-CA
Report Number: DS-08-02*

This advisory report provides the results of our review of a complaint we received in which a complainant alleges that the City of Malibu, California (City) used Federal Emergency Management Agency (FEMA) disaster funding to replace a debris retaining wall located on private property. The winter storms of 2004-2005 (federally-declared disaster 1577-DR-CA) damaged the wall and FEMA's Public Assistance (PA) Grant Program funded the costs of replacing the wall under Project Worksheet 1497. The 2004-2005 winter storms caused the wall to fail and caused additional damage to the adjacent road due to run-off mud and debris.

We performed this review under the authority of the Inspector General Act of 1978, as amended, and according to Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency. We reviewed project records maintained by FEMA, the California Governor's Office of Emergency Services, and the City, held meetings with responsible officials, and toured the project site. We verified that the project involved the replacement of a damaged debris wall and the construction of an additional retaining wall. The City asserted that the additional retaining wall was required because the new debris wall height was insufficient to prevent sloughing and debris material from overtopping it.

City records identified that in the late 1920s and early 1930s, the general vicinity of the original wall location was developed under the jurisdiction of the County of Los Angeles, California. Those records showed that a wall at this location was not evident until 1939 and the records we reviewed did not identify who had built the wall. The property owner contended that either the land developer or the County of Los Angeles installed the wall. The City said that its own investigation indicated that the developer, property owner at the time, or the County of Los Angeles road department

installed the wall. In 1991, the City incorporated and assumed responsibility of all public land and infrastructure. There is no dispute that the original wall was within the City's right-of-way at the time of the disaster or that City obtained an easement from the property owner for construction and maintenance of the new wall within this right-of-way after the disaster.

While the City is an eligible applicant, the records we reviewed did not show pre-disaster City ownership or legal responsibility for maintenance of the damaged debris wall, as required by Title 44, Code of Federal Regulations (CFR), Section 206.223(a)(3). Since the original wall was within the City's right-of-way when the disaster occurred, it could be argued that inherent with this right-of-way was the City's legal responsibility for the wall. Therefore, we agree with the City's request for PA funding to replace the wall to protect the public welfare and mitigate future damage to the City's infrastructure. However, we are concerned that the installation of "debris fencing" and construction of an additional retaining wall may not meet the 44 CFR §206.226 requirement that the work performed restored the eligible facility to its pre-disaster condition. As discussed below, the additional new retaining wall constructed during this project appears to benefit only the property owner.

As of May 26, 2005, FEMA had obligated \$289,424 for this project, and the City informed us on September 11, 2007, that it planned to request reimbursement for an additional \$497,540 in supplemental funding. Within this supplemental funding request, we identified \$4,736 in fencing costs that may not be eligible because a "debris fence" was not in place before the disaster, and \$54,000 in costs that appeared to benefit only the private property owner, including \$21,000 for 50 lineal feet of concrete masonry unit retaining wall, \$2,800 for the installation of 50 lineal feet of french drain, and \$30,000 for backfill behind the new wall. We noted that the backfill material mitigated the original slope and brought the level of the ground to the approximate level of the backyard of the private property.

We ask that you have your staff review the potentially questionable costs that may be claimed by the City in its supplemental funding request, and either confirm our conclusion that the work is not eligible for reimbursement or provide us with the criteria upon which the work is deemed eligible. We request that you notify us within 60 days of the date of this memorandum of any actions taken or planned.

Should you have any questions regarding this memorandum, please contact me at (510) 637-1461. Key contributors to this report were Humberto Melara, Ravinder Anand, and Jeff Flynn.