



FEMA

R8-Mit/EA

June 12, 2020

The Honorable Mike Rounds
U.S. Senate
Hart Senate Office Bldg., Suite 502
Washington, DC 20510

Re: FEMA HMGP Funding Eligibility for Hideaway Hills

Dear Senator Rounds,

Thank you for your concern and advocacy on behalf of the citizens of South Dakota and particularly those impacted by the devastating sink hole near Black Hawk. We appreciate your efforts to convey accurate and timely information to those who are affected.

We also appreciate that FEMA has been considered a possible source for assistance. Our regional staff have taken part in numerous discussions about whether there are any FEMA programs that might be available to the community under the circumstances. Those discussions, along with additional information, have provided clarity that FEMA, unfortunately, will not be a source of assistance.

To help clarify, early discussions were focused on the possibility that Meade County, in collaboration with the State of South Dakota, could apply for a mitigation grant through the Hazard Mitigation Grant Program (HMGP). The purpose of the program is to reduce the loss of life and property due to natural disasters. Under this program, the State of South Dakota receives a lump sum of grant money from FEMA (the amount is based on a percentage of grant funding from a previously declared disaster, in this case DR-4440 from 2019). The state then selects and prioritizes projects based on project viability, as well as the state's mitigation priorities.

Since those early discussions, there have been several developments that indicate an HMGP application in this matter is not appropriate and would not be eligible. The factors include:

- An unresolved determination about whether the circumstances can be considered a 'natural event'
 - Information has come to light that this is not a natural event, and therefore the project would be ineligible for HMGP funding
- FEMA regulation requires that "funds are not available where an applicant, sub-applicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated." 44 C.F.R. § 80.9(d)

- The pending lawsuit makes a legal assertion that the sinkhole was the result of negligence.
- FEMA funding an acquisition project would be contrary to the Stafford Act § 312 and federal regulation where negligence contributed to the conditions necessitating the project, so even though the State and Meade County are no longer named in the lawsuit, regulations are clear that funding is not available if any negligence contributed to the conditions to be mitigated.
- 44 C.F.R. 80.9(d) requires project participants suspecting negligence or other tortious conduct to take all reasonable steps to pursue recovery. Accordingly, FEMA must consider whether there are benefits available, to include legal awards, for the same purpose as the acquisition grant for all homeowners. Under the present circumstances, FEMA would consider amounts available under the litigation from any party (County, State, and/or third party)—settlement or judgment, to be benefits available to all homeowners for the same purpose as the grant, and therefore must not only be pursued, but cannot be duplicated.
- Federal funds cannot be used to duplicate benefits from insurance or any other source available for the same purpose. Stafford Act § 312 and 44 C.F.R. § 80.9(c).
- There has been a question about whether an HMGP application could proceed simultaneously with the lawsuit. This approach would undermine the application and intent of 44 C.F.R. § 80.9.

In light of the unresolved issues regarding whether this is a natural event, the likelihood of negligence, and the duplication of federal benefits, FEMA cannot give consideration to an HMGP application for an acquisition project from the State and Meade County at this time.

Sincerely,

Lee K. dePalo
Regional Administrator, FEMA Region VIII