



**EXAMINATION OF THE
DISASTER RELIEF FUNDS PROVIDED
TO THE CITY OF SHEPHERDSVILLE
RESULTING FROM THE 1997 FLOOD**

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Auditor of Public Accounts

September 20, 2000

Joseph G. Sohm, Mayor
City of Shepherdsville
170 Frank E. Simon Avenue
P.O. Box 400
Shepherdsville, Kentucky 40165

RE: 1997 Shepherdsville Flood Disaster Relief Funds

Dear Mayor Sohm:

Our office received information questioning the administration of federal and state disaster relief funds provided to the City of Shepherdsville (City) as a result of the 1997 flood. In addition, other allegations of possible waste and loss of funds in the City's flood project were brought to our attention. We initiated an examination to determine whether any disaster relief funds were administered in violation of applicable state and federal guidelines, and to determine whether any funds were wasted or lost.

Our examination was directed by the following objectives:

- To analyze the background information, sequence of events, and pertinent facts associated with the flood project.
- To identify applicable federal and state laws, regulations, and administrative policies and procedures governing the following disaster relief funding sources: Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program; Housing and Urban Development (HUD) Disaster Recovery Initiative; and the Kentucky Department of Military Affairs, Disaster Emergency Services (DES).
- To ascertain whether the City, its agents, contractors, and sub-contractors complied with applicable federal and state laws, regulations, and administrative policies and procedures during the administration of the flood project.
- To determine whether any eligible participants were denied participation in the flood project.

Our examination included, but was not limited to, the following procedures:

- We conducted interviews with the staff of the Kentucky DES and others to gain an understanding of any relevant background information.
- We reviewed the applicable federal and state laws, regulations, and administrative policies and procedures for each funding source.
- We examined the files of a sample of participants to ensure compliance with federal and state laws, regulations, and administrative policies and procedures.
- We conducted interviews with and obtained documents from the staff of Will Linder & Associates, Inc. The City contracted with this firm to administer the flow of funds to eligible participants.
- We examined the documents made available to our office concerning the allegations surrounding the flood project.
- We examined the eligibility attributes for certain individuals who were denied participation in the disaster relief program.

We wish to express our appreciation for the cooperation of the City during this examination.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ed Hatchett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Edward B. Hatchett, Jr.
Auditor of Public Accounts

EBHJr:kct

Background

The City is located along the Salt River in Bullitt County. During March 1997, 11 inches of rain fell in less than 24 hours causing flooding along the Salt River, Floyds Fork, and Rolling Fork River. The American Red Cross identified 916 flood damaged structures throughout Bullitt County. The 1997 flood was the sixth major flood in Bullitt County since 1936.

The City applied for and received disaster relief funding from FEMA Hazard Mitigation Grant Program, HUD Disaster Recovery Initiative, and the Kentucky DES.

The primary objective of the disaster relief funding was to provide funding for the City to purchase properties located in the 100-year flood plain that were damaged in excess of 50 percent of the assessed property value and to restrict, (as indicated in the deed of each property purchased), any future development within the acquired areas. The FEMA Hazard Mitigation Grant Program provided 75 percent of the cost to acquire property. Of the remaining 25 percent FEMA-imposed matching amount, the Kentucky DES was to fund 12 percent and the City was to provide the remaining 13 percent. However, because of financial inability, the City received approval to use HUD funds for the remaining 13 percent matching requirement.

In order for a property to be eligible for acquisition, it must meet three criteria:

- Property must be located in the flood plain.
- Property must be damaged in an amount equal to 51 percent or greater of its fair market value by the March 1997 flood.
- Property must be located within the three existing target areas (see exhibit).

The hazard mitigation program was strictly a voluntary program; thus, the City could not use its power of eminent domain to force property owners to sell their property.

Finding and Recommendation

The grant application submitted to FEMA by the City requested disaster relief funding for the demolition of each structure acquired. FEMA subsequently approved the grant application, including a funding request to demolish all structures purchased, and compliance with the terms of the grant agreement required that every structure acquired with FEMA funds be demolished.

The Shepherdsville Urban Renewal and Community Development Agency (URCDA), acting on its authority as agent of the City, entered into contracts with vendors for demolition services. Each demolition contract included the following language: “The Contractor shall demolish and/or remove all buildings, structures, and trees...unless otherwise specified, no dwelling structure shall be removed from the premises in a whole or substantially whole condition; but all such buildings shall be demolished on the premises.”

During July 1999, a portion of a structure (top plate, studs, and bottom plate) purchased with FEMA funds was relocated to a different property to be used as an addition to a separate home. Since the structure was relocated in a “substantially whole condition,” the terms of the vendor’s contract with the URCDA appear to have been violated. Additionally, the action also appears to violate the City’s agreed upon requirements as specified in the grant application approved by FEMA.

In order to remedy the violation, the City had to use HUD grant funds available to it to reimburse \$51,104.44 to FEMA/DES for the 87 percent share of the total costs paid for this structure. The City’s grant agreement with HUD did not contain any demolition provisions for property purchases. Thus, the FEMA reimbursement remedied the violation and released the structure and related property from FEMA guidelines and restrictions.

Although the FEMA violation mentioned above was remedied by the HUD reimbursement, our examination focused on the circumstances surrounding the relocation of the structure. Based upon documents obtained by our office, the demolition contractor, the Mayor of Shepherdsville (Mayor), and a third party executed a document on June 24, 1999, memorializing the demolition contractor’s agreement to give the structure to the third party, who was required to move the structure within 30 days. On July 8, 1999, the demolition contractor submitted an

invoice for payment stating that demolition was completed at the original address of the relocated structure. On July 15, 1999, the Mayor signed the invoice attesting to the written statement that the City had inspected the property and demolition was completed.

Shortly before the relocation of the structure, the Mayor consulted with Will Linder & Associates, Inc. to determine whether relocating the structure was allowable under the Hazard Mitigation Program guidelines. According to the Mayor and personnel from Will Linder & Associates, Inc., the demolition contractor obtained ownership and salvage rights once the contract was let, and, although they advised against relocating the structure, neither Will Linder nor the City could prohibit the contractor from giving the structure to the third party. This information does not appear to be in compliance with FEMA's interpretation of the contract language between the demolition contractor and the URCDA. The contract states that the contractor assumes ownership "upon demolition and/or removal" and not upon awarding of the contract. FEMA/DES subsequently disallowed the relocation because the structure was relocated in a "substantially whole condition."

The invoice submitted by the demolition contractor and signed by the Mayor stated that demolition and grade work was completed at the original address of the relocated structure. The Mayor stated that he believed the structure was considered to be demolished due to the physical state and appearance of the structure.

Recommendation

We recommend that City officials gain a thorough understanding of all program requirements at the inception of each federal and/or state program administered by the City. Furthermore, the City and/or its agents should also consult with the applicable governing authority when questions arise about what actions are allowable under the policies and procedures for federal and state grant programs.

We recommend that the City and its agents ensure that future contracts are strictly adhered to and contain language that is clear, concise, and not conflicting.

Related Matters

In addition to the finding previously addressed, our office received other allegations concerning the flood project that warranted examination. An examination into each of the following concerns did not reveal a violation of federal and state laws, regulations, or policies and procedures.

- *Allegation: A participant was denied program funding even though eligibility requirements were met.*

Homeowners meeting the eligibility requirements previously described were eligible for participation in the flood project. FEMA Hazard Mitigation guidelines state, “If the...property owner purchased the flood-damaged property after the disaster declaration, then the community cannot offer the owner more than the post-flood fair market value, i.e. the amount paid by the current owner for the damaged property.” Ownership of a property at the time of the flood declaration is to be determined through the use of a legal, recorded document in the county courthouse. On March 4, 1997, President Clinton declared Bullitt County a federal disaster area under Presidential Disaster Declaration (FEMA-DR-1163-KY).

On December 7, 1996, a program participant entered into a contract for deed with the property owner. This document was neither notarized nor recorded in the county courthouse. Furthermore, the resulting deed of conveyance with the previous owner was dated October 2, 1997. Based upon these facts, the participant does not appear to be the legal owner of record as of the disaster declaration date. The City offered the participant the \$85,000 that she paid to purchase the property, however, the participant refused to participate in the project for this amount.

- *Allegation: A participant was approved for participation by the City’s Agent (URCDA) but denied funding.*

The City contracted with the URCDA to serve as its agent in transactions related to the flood project. This agent was charged with various responsibilities, including the approval to acquire each participant’s property. After each participant’s property was approved for acquisition by the agency, the participant’s file was then forwarded to FEMA/DES for final approval.

We received information regarding a participant who was approved by the URCDCA but denied by FEMA/DES. Although the flood had damaged the participant's home, the participant did not initially sign up for participation in the flood project. During this time, the participant built a new home using the damaged home as collateral and put the damaged home up for sale. However, the participant was not able to sell the flood damaged home. The participant approached the Mayor to ask if the City could purchase the flood damaged home. The participant was placed on a list of interested participants and was ultimately approved by the URCDCA for acquisition. However, FEMA/DES denied funding for the participant because the participant's property was located outside of the three existing target areas.

According to FEMA/DES personnel, the most important criteria used for approving properties was the clustering of properties. In other words, FEMA/DES wanted to help the City purchase properties located together in groups, instead of purchasing individual lots scattered throughout its jurisdiction. It appears this policy was consistently applied to similar properties denied acquisition in several other disaster relief projects. Based upon these facts, it appears that FEMA regulations and procedures were properly applied.

- *Allegation: A participant is entitled to have the disaster relief program acquire his/her property because the property was purchased more than 180 days prior to the flood.*

When a governmental entity commences a program involving the involuntary acquisition of property for a public purpose, the entity is using its power of eminent domain. Under this scenario, homeowners are entitled to relocation benefits defined by the Uniform Relocation and Real Property Acquisition Act. The amount of relocation benefits for a homeowner occupant is contingent upon the number of days the homeowner resided in the residence. For instance, a certain amount of relocation assistance is provided if a homeowner has resided in the residence for more than 180 days.

The City's flood project was a voluntary program. All participants were informed in writing that they were not required to sell their property. Furthermore, the City informed each participant that it would not use its power of eminent domain in the event that the participant decided not to sell his/her property.

The 180-day homeowner clause provided for under the Uniform Relocation and Real Property Acquisition Act is only applicable to involuntary acquisitions of property. Since the City's flood project was a totally voluntary program and the power of eminent domain was not exercised by the City, the participant does not appear to be entitled to acquisition benefits based solely on the 180-day homeowner clause.

- Allegation: Demolition contractors and homeowner participants were not paid in a timely manner.

Before a participant in the flood project can receive any funding for acquisition of his/her property, a Duplication of Benefits (DOB) review is performed. In order to prevent the duplication of benefits to a participant, several types of primary benefits paid to participants for repairs to damaged property must be deducted from the pre-disaster appraisal value if the primary benefits were not used for their intended purpose. The DOB review process lengthened the amount of time required to pay participants, especially if a participant received multiple types of benefits.

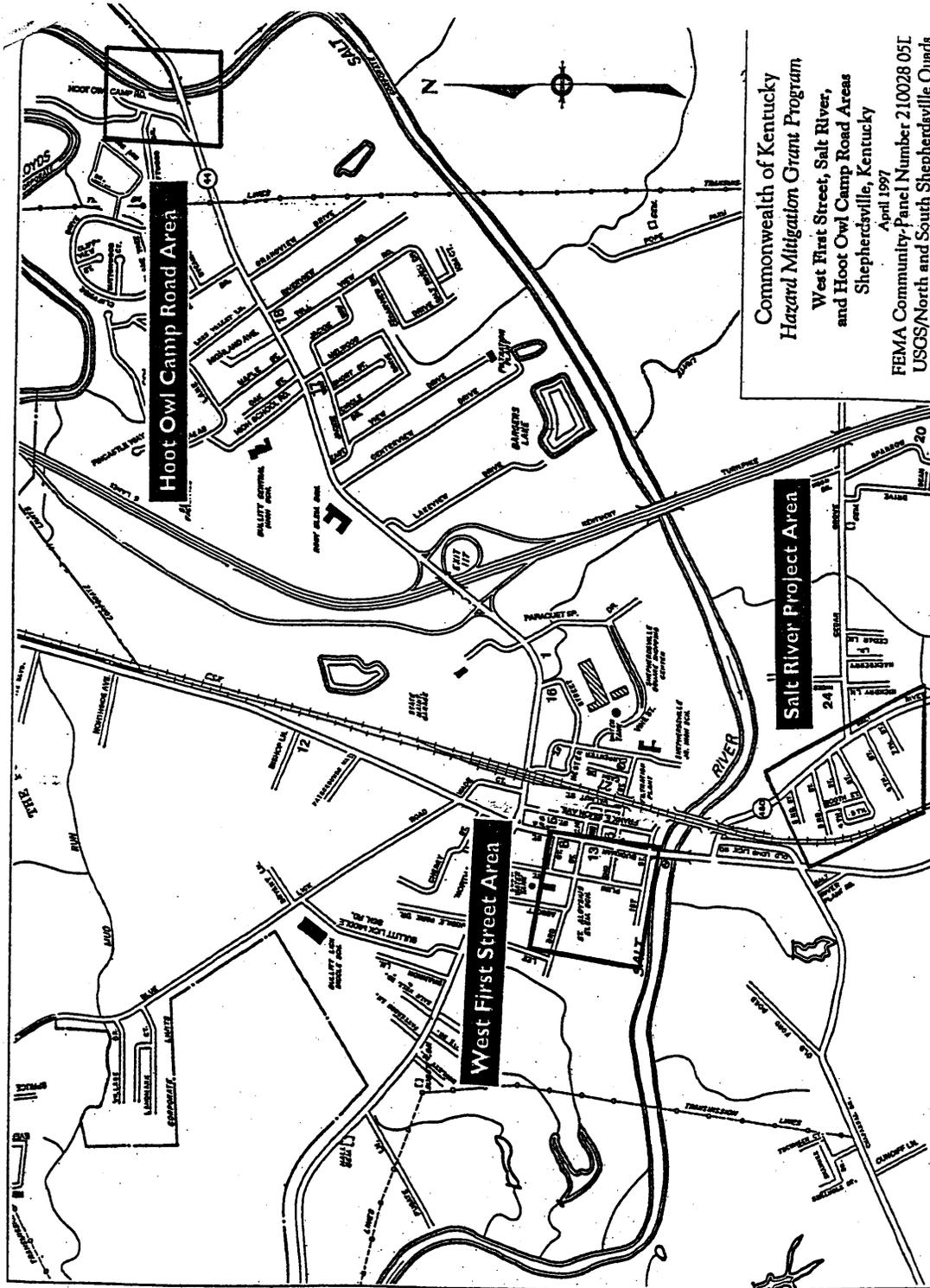
Due to the violation of the FEMA grant agreement described earlier, FEMA/DES froze all FEMA funds until the issue was resolved. During this time, demolition contractors as well as homeowner-participants did not receive any payments. This situation caused an untimely delay in the payments due to demolition contractors and homeowner participants.

- Allegation: Properties were purchased at questionable values.

Any structure meeting the eligibility criteria described earlier was eligible for acquisition in the flood project. Whether the structure was occupied or unoccupied at the time of the flood was not a material factor in approving properties for acquisition. The underlying philosophy of the flood project was to purchase properties clustered within the three existing target areas and not to purchase individual properties scattered throughout the jurisdiction of the City.

Unoccupied structures were purchased during the flood project. Each of these structures met the eligibility criteria for acquisition and was clustered with adjacent properties also purchased during the flood project. An appraisal was performed by an independent, certified appraiser for each structure. An independent appraiser was solicited by Will Linder & Associates, Inc. as required by the firm's contract with the City. Based on the documentation we examined, the pre-flood appraisal values of property subsequently acquired did not appear to be materially overvalued.

EXHIBIT



Commonwealth of Kentucky
Hazard Mitigation Grant Program
West First Street, Salt River,
and Hoot Owl Camp Road Areas
Shepherdsville, Kentucky
April 1997
FEMA Community Panel Number 210028 05L
USGS/North and South Shepherdsville Quads