



Agenda Date: 2/5/2008
Agenda Placement: 9A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Michael Stoltz for Robert Peterson - Director
Public Works
REPORT BY: Juan Arias, PRINCIPAL PUB WORKS ENGINEER - 259-8374
SUBJECT: 2005/2006 Flood - Remaining Permanent Repair Projects - Status Update

RECOMMENDATION

Director of Public Works to present an update on the status of the remaining permanent repair projects related to the 2005/2006 flood events.

EXECUTIVE SUMMARY

Director of Public Works will present a status report on remaining projects related to the 2005/2006 flood events and on the the Federal Emergency Management Agency (FEMA)/Office of Emergency Services (OES) funding commitments.

There are nine remaining sites on county roads that are in need of permanent repairs caused by the flood events of 2005/2006. Public Works has been working with civil engineering consultants to provide actual engineering solutions based on the FEMA required geotechnical analyses and current market conditions for such work. These studies and designs have been completed, and differ substantially from the initial assumptions approved by FEMA/OES during the field reviews that occurred after the events. Public Works has requested scope change approvals from OES and FEMA for five of the nine remaining sites.

An update is being provided at this time because it is uncertain if FEMA will respond in a timely manner to the scope change, or whether it will agree to provide a funding commitment for the requested scope change. This has potential financial ramifications to the County given that the projects are presently required by FEMA to be completed in 2008.

Based upon the FEMA response, Public Works will return to the Board no later than May with further analysis and recommendations on how to proceed.

Procedural Requirements

1. No Action Required

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Roads Department
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<p>The flood related repairs have been budgeted with the understanding that there would be 100% in offsetting revenues from FEMA/OES. There is potential risk to the County that FEMA <u>may not</u> approve requested scope changes before the County awards contracts for these projects. This scenario increases the potential of higher General Fund contributions needed to operate the Road Fund.</p>
Is the general fund affected?	Yes
Future fiscal impact:	<p>Construction costs are expected to be incurred during fiscal year 2008/2009 for five eligible projects. Construction costs are expected to be incurred during fiscal year 2009/2010 for one eligible eligible project and three noneligible projects presently under review.</p>
Consequences if not approved:	<p>No action is requested at this time. Expenditure commitment will be sought at time of award of contract.</p>
Additional Information:	<p>FEMA has provided a funding commitment of \$1.0 million for five eligible projects scheduled for completion in 2008 based on the original scopes of work. The actual estimate based on the scope changes designed by engineering consultants using the actual engineered solution, which is based on the FEMA required geotechnical analyses and the current market conditions for such work is \$3.2 million.</p> <p>FEMA funding of the revised scope is dependent upon approval of the scope change requests that we have submitted. At risk is not only the difference between these two numbers, which is \$2.2 million, but actually the entire amount given that FEMA could deobligate its previous funding commitment. Although this is unlikely, it is a worst case scenario.</p> <p>FEMA has also provided a funding commitment of \$ 0.4 million for the 4800 Redwood Road project scheduled for completion in 2009 based on the original scope of work. The actual estimate based on the scope changes designed by engineering consultants using the actual engineered solution, which is based on the FEMA required geotechnical analyses and the current market conditions for such work is \$1.7 million, and potentially will increase once design work is completed for the site two repairs.</p> <p>A revised scope for the 4800 Redwood Road Project will be submitted at a later date. Again, FEMA funding of the revised scope will be dependent upon approval of the scope change requests.</p>

Expenditures to date on the eligible projects are \$363,259.

Public Works is also pursuing funding for the three projects originally determined ineligible by FEMA. These projects are estimated to cost \$1,750,000. Expenditures to date on the ineligible projects are \$13,831.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The winter storms of 2005/2006 caused considerable damage to County roads resulting in the Federal Government declaring two disasters (December 17th - January 3rd and March 29th - April 16th). Public Works responded to these disasters throughout the County at various roads by making temporary repairs at slides and slip outs, removing downed trees and debris, and keeping the County's roads open to the traveling public and safety response vehicles. FEMA has agreed to provide reimbursement for these costs following the appeal of its initial denial.

Public Works then moved forward to make permanent repairs to all remaining damaged roads. Repairs were made in 2006 and 2007 to such roads as Circle Oaks Drive, Chiles Pope Valley Road, Redwood Road, Silverado Trail at 3 locations, Westgate Drive and Wooden Valley Road. All projects under Federal Highway Administration (FHWA) cost reimbursement jurisdiction were completed as part of the repairs made in 2006 and 2007. FHWA has also agreed to provide full reimbursement for those repairs.

To date, the County has submitted approximately two hundred claims for disaster related damages and have eleven claims not yet resolved with FEMA/OES. The eleven claims not yet resolved with FEMA can be classified into three categories:

- | Projects Completed under Appeal
- | Ineligible Projects under Review
- | Eligible Projects with Requested Scope Changes

PROJECTS COMPLETED UNDER APPEAL

FEMA has rejected funding commitments for two projects, Circle Oaks and Redwood Road. They are now under appeal. The final fiscal outcome for funding these projects is dependent upon this appeal process. Potential outcomes include:

- | Best Case Scenario - 100% Funding through FEMA/OES (\$1.7 million)
- | Middle Case Scenario - 75% Funding through OES (\$1.3 million) and 25% Funding through County (\$0.4 million)
- | Worst Case Scenario - 100% Funding through County (\$1.7 million)

INELIGIBLE PROJECTS UNDER REVIEW

3 locations, Dry Creek Road, Whitehall Road, and White Sulphur Springs Road, are still under FEMA review.

ELIGIBLE PROJECTS WITH REQUESTED SCOPE CHANGES

FEMA has determined that 6 locations are eligible for reimbursement. The County has been granted time extensions for completion of 5 eligible projects to the autumn of 2008 for the following projects:

- | Diamond Mountain Road
- | 4700 Block Redwood Road
- | Spring Mountain Road
- | Steele Canyon Mile Post Marker 2.00
- | Steele Canyon Mile Post Marker 2.25

The County has been granted time extensions for completion of the 4800 Redwood Road repair until the autumn of 2009 because it is physically impossible to construct it at the same time as the 4700 Redwood Road repair.

FEMA PROCESS FOR SCOPE CHANGES FOR ELIGIBLE PROJECTS

Further extensions of time are not assured unless FEMA's environmental clearance is delayed or if other logistical problems, beyond the County's control, require it. Public Works has advised FEMA that to finish construction by the autumn of 2008, the County must go out to bid with these projects by the beginning of May 2008.

Public Works is approaching these projects very carefully because FEMA's estimate of repair costs is low in comparison to the actual engineered solution, which is based on the FEMA required geotechnical analyses and the current market conditions for such work. FEMA's original estimates were based on visual site visits prior to any engineering work being done and its approvals are based on those early scopes of work and cost estimates.

FEMA's process allows the County to apply for scope changes based on technical data supplied by engineering consultants and other professionals during the design phase of a project. Public Works has been advised that FEMA has a tendency to categorize many of these engineered solutions as improvements, which are not eligible for reimbursement. It is Public Works' position that there are no discretionary improvements in the repair method and materials recommended. Our experience with FEMA's rejection to fund the completed projects of Circle Oaks and Redwood Road cause concern about FEMA's willingness to make funding commitments where professional judgment is concerned.

On May 15, 2007, the Board approved Professional Services Agreements with various civil engineering consultants for surveying, geotechnical, environmental, design and construction administration assistance services related to the remaining FEMA eligible projects. Geo-technical studies and engineering design have been completed on all FEMA eligible projects except 4800 Redwood Road site 2. The consultants have advised that scope change requests would be needed for all of the projects to properly repair the sites.

FEMA is required to take two actions with the scope change requests:

1. Re-evaluate for compliance with National Environmental Protection Act (NEPA)
2. Determine if it will provide a funding commitment for engineered repairs based on a review of regulations

FEMA will have approximately ninety days to respond to our scope change requests before the Board will be requested to authorize bids. However FEMA has been slow to respond and we have no estimate of when the County will receive FEMA's feedback on our requested scope changes.

The County needs to prepare itself for three potential scenarios to how FEMA potentially responds to scope change requests for the projects scheduled for completion in 2008.

- | Lack of Timely Response to Scope Change Request
- | Rejection of Scope Change Requests
- | Approval of Scope Change Requests

LACK OF TIMELY RESPONSE to SCOPE CHANGE REQUEST

In the event that FEMA does not provide a timely response, Public Works is in the process of preparing a request for time extensions for completion of the eligible projects to the autumn of 2009 because FEMA's environmental clearance is delayed through a lack of a timely response for the scope change requests.

REJECTION OF SCOPE CHANGE REQUESTS

In the event that FEMA rejects the scope change, the County will either have to:

1. Award construction contracts, while appealing the FEMA decision - the County's risk is that unless it receives FEMA funding commitment, there will be an impact to either the Road Fund or General Fund.
 - a. Best Case Scenario - 100% Funding through FEMA/OES (\$3.2 million)
 - b. Middle Case Scenario - 75% Funding through OES (\$2.4 million) and 25% Funding through County (\$0.8 million)
 - c. Worst Case Scenario (Modified) - Previous FEMA Funding Commitment (\$1.0 million) and remaining funding through County (\$2.2 million)
 - d. Worst Case Scenario - 100% Funding through County (\$3.2 million)
2. Do not award construction contracts and forgo opportunity to recoup funding from FEMA/OES for these projects. The County also would not receive funding for the approximate \$325,000 spent to date for surveying, geotechnical, environmental, and design services previously authorized by the Board on May 15, 2007.
3. If presented with a technical justification, there may be an opportunity to seek an extension of time for construction while appealing the scope change determination.

APPROVAL OF SCOPE CHANGE REQUESTS

In the event that FEMA approves the scope change requests, the County needs to be in the position to complete the construction of the eligible projects by the autumn of 2008. To accomplish this, the County must go out to bid with these projects by the beginning of May 2008.

COMPREHENSIVE BUDGET STATUS

To date FEMA and OES have approved and provided a funding commitment of approximately \$5.2 million dollars of an estimated total \$12.1 million dollars in claims. This \$5.2 million represents the original amount of \$3.6 million, plus the successful first appeal approval of an additional \$1.6 million. Our expenditures to date on the flood have been \$5.9 million. Of that amount we have been reimbursed \$3.6 million and had \$1.7 million denied on appeal (mostly related to the Circle Oaks and Redwood Road repairs). Staff is continuing to work with our consultant, Maximus, on the second round of appeals for this \$1.7 million. Maximus has been invaluable to us in guiding us through the first, and now the second, appeal process.

As described above, an additional \$5.2 million in project cost estimates have been identified over and above the \$1.4 million that FEMA/OES estimated and approved for the remaining eligible repair projects listed on the

attached spreadsheet.

The following is a simplified visual representation of the status of FEMA related costs and reimbursements for all projects, both already completed and yet to be completed.

<u>Estimated Emergency Repair Costs</u>	<u>Obligated</u>	<u>Rejected Pending 2nd Appeal</u>	<u>Unresolved</u>
\$12.1	\$5.2 (\$3.6 originally approved) (\$1.6 approved 1st appeals)	\$1.7	\$5.2

Public Works is also preparing a report scheduled to be presented to the Board in March 2008 which will address the midyear financial status of the Road Fund, the potential impact of the Governor's budget proposals to the current and proposed 2008-09 Roads budget and a status report on proposition 1 B.

SUPPORTING DOCUMENTS

A . Project Summary

CEO Recommendation: Approve

Reviewed By: Helene Franchi