



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Military and  
Veterans Affairs**

Division of Homeland Security and  
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April 22, 2024

Willie G. Nunn, Regional Administrator  
Federal Emergency Management Agency, Region X  
130 228<sup>th</sup> Street SW  
Bothell, WA 98021-8627

RE: Recipient Recommendation to Applicant Appeal  
Disaster: DR-4585-AK, 2020 December Southeast Storm  
Subrecipient: Haines Borough  
PA ID: 100-99100-00  
Project Worksheet(s): 0013

Mr. Nunn:

We are forwarding Haines Borough's appeal of the determination made by the Federal Emergency Management Agency (FEMA) regarding Project Worksheet (PW) 0013 under DR-4585-AK, 2020 December Southeast Storm.

FEMA's determination of project ineligibility was based on the following reasons:

- 1) Work completed by a third party in conjunction with Phase I repairs was found to not be compliant with the National Environmental Policy Act (NEPA), specifically not meeting provisions of NEPA Categorical Exclusions (CATEXs), rendering the project ineligible for reimbursement.
- 2) The Applicant failed to allow FEMA the required opportunity to coordinate and consult with the affected Chilkat Alaska Native Village, leading to non-compliance with Section 106 of the National Historic Preservation Act (NHPA).
- 3) Lack of clarity among stakeholders over the cause and timing of the damages, resulting in insufficient documentation to demonstrate that all damages are the result of the declared event.

Haines Borough received the Determination Memo (DM) on January 4, 2024, and submitted a timely appeal to the Recipient with attached documentation that supports their request for an appeal.

In addition to the information provided by Haines Borough, the State offers additional insights for reconsideration:

- 1) Historical comments in the Grants Manager/Portal (GM/GP) indicate ongoing efforts by Haines Borough to maintain the road and prioritize repairs to prevent further damage, including coordination with FEMA Environmental and Historic Preservation (EHP) being included in ongoing project formulation meetings from the project's inception.

Based on these meetings, Haines considered the work done by third party Constantine to be part of their ongoing efforts to keep the road open and protected from additional damage while the permanent repair Scope of Work (SOW) was under review. The intent was not to avoid connected action EHP review. It was simply never discussed as a requirement in previous FEMA meetings.

Contrary to FEMA's assertion of work being performed outside of the approved SOW for Phase I, the project documentation and correspondence indicate alignment with the SOW and proper consideration of cultural and historic preservation. See Haines Borough Appeal Attachment O, FEMA SHPO Correspondence dated August 5, 2022.

EHP was involved from the beginning of this project and it is unreasonable to say EHP reviews were not done solely because it wasn't in their GM queue when History in GM/GP indicate EHP reviews were taking place from January 2022 to August 21, 2023, Consolidated Resource Center (CRC) EHP Comment – Version (3) of Project was created to capture changes to the original SOW. Version 3 is to capture costs for Phases 1 through 3, including a least cost alternative for Phase 2 – bypass road. Project is ready for Field EHP Compliance Review”.

- 2) The State does not believe Haines Borough completed work outside the approved SOW as stated in the DM SOW based on the width of Porcupine Trail Road being 22-feet wide. During the initial damage site inspection on August 26, 2021, it was determined road widths varied along the entire road length, and agreement in the field was reached to use the average of 22-feet rather than measure every damaged site along the 7.5-mile road. In addition, the engineering plans provide specific measurements, to include actual width w/shoulders and ditches, requiring repair. And, the August 5, 2022, correspondence between FEMA and the State Historic Preservation Officer stated, “The project will repair the Porcupine Trail Road surface, base, ditches, and embankments back to pre-disaster conditions in-kind and in-place with the possibility for some minor improvements for armoring of ditches and slope stabilization.” Further showing on page 1 “Repair for the Undertaking consists of: .... Cleaning out of, and minor expansion of, existing ditch segments along the side of the road....”

In the DM it states work outside the approved SOW prevented FEMA the required opportunity to coordinate and consult with the affected Chilkat Alaska Native Village. However, the August 5, 2022 correspondence between FEMA and the State Historic Preservation Officer reads “that based on the nature and location of the undertaking along Porcupine Trail Road in an area previously disturbed by the construction and subsequent improvements to the road, FEMA has determined the likely presence of intact cultural resources is low. Thus, we have determined no further identification and evaluation efforts are warranted.” FEMA determined the undertaking would result in no adverse effect to Historic properties.

- 3) During the August 26, 2021, site inspection with Haines Borough, State, and FEMA representatives it was identified that winter thaw caused high-volume surface water flooding for which emergency protective measures had to be taken. Notes were made on the Site Inspection Report and the Site Inspection Team reached concurrence on the disaster related damages.

Comments entered in GM/GP 1/13/22 refer to Document for Current Understanding which was an email between FEMA, Recipient, and Applicant where agreement was made on the damages that would be considered disaster related. Haines Borough did not claim damages for work outside of the declared event.

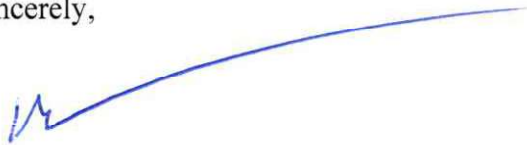
Haines Borough followed 4 C.F.R. § 206.204(e) and submitted their request for a change in SOW providing detailed engineering plans and the Recipient forwarded the request to FEMA on February 14, 2023, in compliance with 2 C.F.R. § 200.308. 44 C.F.R. § 206.204(e). The SOW Change had a \$5,988,653.75 cost estimate and validation completed on August 16, 2023. Haines Borough was awaiting approval so they could finalize the design and engineering for the 406 Mitigation plan suggested by FEMA as the least cost alternative.

Having reviewed Haines Borough’s appeal submittal, we concur with their appeal and respectfully request that FEMA reconsider the eligibility for the entire Porcupine Trail Road Project. If any portions are deemed ineligible due to connected actions or subsequent damage, we urge FEMA to consider only those specific sections as ineligible.

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Your assistance and careful consideration in this matter is greatly appreciated by the State of Alaska and Haines Borough. If you have any questions, please contact Jenny Belanger, your assigned Division representative at (907) 428-7036 or by email at [jenny.belanger@alaska.gov](mailto:jenny.belanger@alaska.gov).

Sincerely,



Bryan Fisher  
Director

Enclosure(s): Applicant Determination Memorandum Package  
Applicant Appeal Letter dated March 4, 2024

cc: [FEMA-R10-AK.State.Pod@fema.dhs.gov](mailto:FEMA-R10-AK.State.Pod@fema.dhs.gov)