June 7, 2013

John Benson
Legislative Liaison/Alternate State Coordinating Officer
Iowa Homeland Security & Emergency Management
7105 NW 70th Ave.
Camp Dodge, Bldg. W-4
Johnston, IA 50131

VIA EMAIL

RE: Flood Mitigation Program

Dear Mr. Benson,

The cities of Cedar Rapids and Dubuque join together to recommend the board approve the calculation of Local Match Funding described herein. We understand that the intent of the funding program outlined in this legislation is for the state to provide cities with up to 50% of a flood mitigation project cost. Our interpretation is supported by the City Attorney of Dubuque and also by the bond attorney for the cities of Cedar Rapids and Dubuque. Their letters are attached outlining justification.

Calculation of Local Match Funding

A calculation used in the Draft Application does not appear to be consistent with the legislation language. The legislation dictates that the Flood Mitigation Program funding cannot be more than 50% of the total project cost, and that the remaining funds must be a combination of federal and local funds. In contrast, the Draft Application outlines that the Flood Mitigation Program funding cannot exceed local funding.

Section 418.9(2)d states: “The board shall not approve a project unless at least fifty percent of the total cost of the project, less any federal assistance for the project, is funded using local matching funds”.

This language establishes that the maximum state flood mitigation funding that the board can approve for a project is 50% of the total project cost. The remaining 50% must be a combination of federal and local funds.

The legislation requires that the *combination* of local and federal funds must equal the state flood mitigation funding. The Budget Detail (Tab C-2) of the Draft Application requires that the local match must equal the state flood mitigation funding. Please see

the enclosed ***Appendix A*** for additional information comparing the calculation of local match in the legislation and in the Draft Application.

The calculation of local match is critically important for communities. We strongly recommend revision of the Draft Application to match the legislation requiring that the *combination* of federal and local funding be at least 50% of the total project cost.

Project Definitions and Assumptions

The City of Cedar Rapids and the City of Dubuque would also like to recommend that the board clarify the definition of project so it remains consistent with the legislative language as it relates to federal funding.

According to legislative language, flood mitigation projects do not require that all aspects of the project be federally approved or part of a federal undertaking.

Section 418.1(5) of the Flood Mitigation Legislation states:

“”*Project”* means the construction or reconstruction of levees, embankments, impounding reservoirs, or conduits that are necessary for the protection of property from the effect of floodwaters and may include deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one of more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of this subsection.”

This establishes that a project can consist of multiple phases and various types of improvements for the purpose of protecting property from the effects of floodwaters. It does not mention anything about whether or not all phases or of the project must be federally funded or part of a federal undertaking.

In terms of federal funding, Section 418.4(3)b of the Flood Mitigation Legislation requires that:

“The project, ***or an earlier phase of the project***, has been approved to receive financial assistance in an amount equal to at least twenty percent of the total project cost or thirty million dollars, whichever is less, under a financial assistance program.”

This requires that at least one phase of the project has been approved for federal financial assistance and clearly implies that there may be additional phases of a project for which federal assistance may not have been provided. The Flood Mitigation Legislation does not require all phases/elements of a project to be approved for federal assistance. The flood mitigation legislation allows for additional phases/elements not specifically approved by a federal agency to be part of a communities flood mitigation project.

While Cedar Rapids and Dubuque are both grappling with flooding and how to minimize or eliminate repetitive flood losses, the nature of the flooding is specific to the respective community. Therefore, the flood mitigation projects will be different; they will be crafted to meet the specific needs of each community. Federal financial programs rarely have the time and flexibility to allow for the consideration of sustainability based on a

community's needs. However, the flood mitigation legislation has allowed for that flexibility in Section 418.1(5) and Section 418.4(3).

We request that applications are reviewed with the legislation in mind, and that the assumption of the project being entirely a federal project be eliminated.

The clarification of these issues is essential for cities to move forward with an application. We urge your assistance in accomplishing this clarity.

Sincerely,

Ron J. Corbett
Mayor, City of Cedar Rapids

Roy D. Buol
Mayor, City of Dubuque

Attachments

CC Jeff Pomeranz, City Manager
Mike Van Milligen, City Manager

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May 8, 2013

Mr. Michael C. Van Milligen
City Manager
City of Dubuque
50 W. 13th Street
Dubuque, Iowa 52001

RE: Interpretation of "local match" funding required under Flood Mitigation Program

Dear Mr. Van Milligen:

Alexis Steger from the Engineering Department has forwarded me a copy of your letter of April 29, 2013 to John Benson, and asked whether we agree with the interpretation of Iowa Code Section 418.9(2)(d) you describe in that letter.

The applicable rules are easily stated. In construing statutes, Iowa courts generally look to what the legislature said, not what it might or should have said. Courts also try to interpret statutory language fairly and sensibly in accordance with the plain meaning of the words used by the legislature.

On that basis, we agree that your interpretation of Section 418.9(2)(d) is the most reasonable one, and the one a reviewing court likely would adopt. If the interpretation described in the Draft Application for the Flood Mitigation Program was intended, we think the legislature would have described the requirement much differently; something along the lines of: "The board shall not approve a project unless local matching funds are equal to at least 50% of the cost of the project remaining after taking into account the amount of federal assistance received for the project." As it is, the actual language used in the relevant sentence is very different than that, and we think it should be interpreted as your letter describes.

I hope this is useful. Please let me know if you have any questions or would like to discuss this matter further.

Very truly yours,

William J. Noth

WJN:dc

cc: Barry Lindahl

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THE CITY OF
DUBUQUE
Masterpiece on the Mississippi

MEMORANDUM

BARRY LINDAHL
CITY ATTORNEY

TO: Michael C. Van Milligen
City Manager

DATE: May 6, 2013

RE: Flood Mitigation Program

You have asked me for an opinion concerning the interpretation of Iowa Code §418.9(2)(d), the highlighted material attached to this memo.

In my opinion, the phrase "less any federal financial assistance for the project" modifies the phrase "fifty percent of the total cost of the project," rather than modifying only "the total cost of the project." For example, if the total cost of the project was $10 Million, 50% of that total cost would be $5 Million. The federal financial assistance of say $2 Million would be deducted from the $5 Million, which would make the minimum local match $3 Million.

BAL:tls
Attachment
cc: Deron Muehring, Civil Engineer II

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undertaking projects approved under this chapter. The flood mitigation program shall include projects approved by the board to utilize either financial assistance from the flood mitigation fund created under section 418.10 or sales tax revenues remitted to the governmental entity under section 418.12. A governmental entity shall not be approved by the board to utilize both financial assistance from the flood mitigation fund and sales tax revenues remitted to the governmental entity.

2. The board shall, by rules adopted under section 418.7, prescribe application instructions, forms, and other requirements deemed necessary to operate the flood mitigation program.

3. The board may contract with or otherwise consult with the Iowa flood center, established under section 466C.1, to assist the board in administering the flood mitigation program.

4. The board shall submit a written report to the governor and the general assembly on or before January 15 of each year. The report shall include information relating to all projects approved by the board for inclusion in the flood mitigation program, the status of such projects, summaries of each report submitted to the board under section 418.4, subsection 6, information relating to the types of funding being used for each approved project, including all indebtedness incurred by the applicable governmental entities, and any recommendations for legislative action to modify the provisions of this chapter.

2012 Acts, ch 1094, §9, 18
[T] NEW section

418.9 Project application review.

1. *a.* A governmental entity shall submit an application to the board for approval of a project plan. The board shall not approve a project for inclusion in the program if the application is submitted after January 1, 2016.

b. The application shall specify whether the governmental entity is requesting financial assistance from the flood mitigation fund or approval for the use of sales tax revenues. Applications for financial assistance from the flood mitigation fund shall describe the type and amount of assistance requested. Applications for the use of sales tax revenues shall state the amount of sales tax revenues necessary for completion of the project.

2. Each application shall include or have attached to the application, the governmental entity's project plan adopted under section 418.4, subsection 2. When reviewing applications, in addition to the project plan, the board shall consider, at a minimum, all of the following:

a. Whether the project is designed to mitigate future flooding of property that has sustained significant flood damage and is likely to sustain significant flood damage in the future.

b. Whether the project plan addresses the impact of flooding both upstream and downstream from the area where the project is to be undertaken and whether the project conforms to any applicable floodplain ordinance.

c. Whether the area that would benefit from the project's flood mitigation efforts is sufficiently valuable to the economic viability of the state or is of sufficient historic value to the state to justify the cost of the project.

d. The extent to which the project would utilize local matching funds. The board shall not approve a project unless at least fifty percent of the total cost of the project, less any federal financial assistance for the project, is funded using local matching funds, and unless the project will result in nonpublic investment in the governmental entity's area as defined in section 418.11, subsection 3, of an amount equal to fifty percent of the total cost of the project. For purposes of this paragraph, "*nonpublic investment*" means investment by nonpublic entities consisting of capital investment or infrastructure improvements occurring in anticipation of or as a result of the project during the period of time between July 1, 2008, and ten years after the board approved the project.

e. The extent of nonfinancial support committed to the project from public and nonpublic sources.

f. Whether the project is designed in coordination with other watershed management

APPENDIX A

Calculation of Local Match Funding

Pertinent Legislation:

Section 418.9(2)d: "The board shall not approve a project unless at least fifty percent of the total cost of the project, less any federal assistance for the project, is funded using local matching funds"

Legislation Section 418.9(2)(d): .50*Total Project Cost – Federal Assistance = Local Match

Total Estimated Cost		300,000,000

Federal Funds (at least 20% of total)	$ 60,000,000 (20.0%)	
Local Funds	$ 90,000,000	
Total Federal and Local Funds (at least 50% of total)	$ 150,000,000 (50.0%) →	$ 150,000,000
Tax Increment Share (max 50% of total)		$ 150,000,000

Draft Application Tab C-2 (Budget Detail): (Total Project Cost – Federal Assistance) *.50 = Local Match

Total Estimated Cost		$ 300,000,000
Federal Funds (at least 20% of total)	20.0% of total	$ 60,000,000
Non-Federal total		$ 240,000,000
50% Tax Increment Share of Non-Federal total		$ 120,000,000
50% Local Share of Non-Federal total		$ 120,000,000

Legislation:

Local Match = $90,000,000

Draft Application:

Local Match = $120,000,000

Comparison of Local Burden:

The governmental entity will have to locally fund $30,000,000 more of the project due to the draft applications incorrect interpretation.

Recommendation:

Change Application Tab C-2 to match the legislation requiring that the *combination* of federal and local funding be at least 50% of the total project cost.