



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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June 5, 2019

CBCA 6409-FEMA, 6411-FEMA

In the Matters of  
OCEAN HAMMOCK PROPERTY OWNERS ASSOCIATION, INC.  
and  
HAMMOCK DUNES OWNERS' ASSOCIATION, INC.

James J. Roche of McCabe & Ronsman, Ponte Vedra Beach, FL, counsel for Applicant in CBCA 6409-FEMA, Ocean Hammock Property Owners Association, Inc.

Robyn M. Severs of Becker & Poliakoff, P.A., St. Augustine, FL; and Karen C. Bennett and Jane C. Luxton of Clark Hill, PLC, Washington, DC, counsel for Applicant in CBCA 6411-FEMA, Hammock Dunes Owners' Association, Inc.

Amanda Campen and Allison McLeary, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Brock Pierson, Maureen Dimino, and Ramoncito J. deBorja, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Charles Schexnaildre, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **SOMERS** (Chair), **VERGILIO**, and **SHERIDAN**.

Ocean Hammock Property Owners Association, Inc. and Hammock Dunes Owners' Association, Inc., the applicants, are private nonprofit (PNP) organizations. After reviewing the evidence presented and listening to the testimony of the witnesses and the arguments

presented by their counsel, we find that the dunes and berms for which the applicants seek public assistance do not represent PNP facilities for which public assistance is available.

For public facilities owned by a state or local government, dunes, berms, and other engineered and maintained flood control facilities, public assistance is available pursuant to the Stafford Act, 42 U.S.C. § 5122(10); FEMA regulations, 44 CFR 206.221(h); and FEMA Public Assistance Program and Policy Guide (PAPPG) at 16.

However, the Stafford Act does not explicitly provide for public assistance for PNPs for similarly situated engineered flood control properties or facilities. 42 U.S.C. § 5122. The regulations do not enumerate flood control measures as eligible facilities for a PNP. 44 CFR 206.221(c), .221(e)(2), (4), (7). The PAPPG is similarly silent. The applicants do not benefit by the definition of a public facility. 44 CFR 206.221(h).

The panel finds that the dune and berm system does not fit within the categories of utilities, emergency facilities, or other essential governmental services for the purposes of a PNP obtaining public assistance. The assertions of the applicants to the contrary have not convinced the panel of a different result.

The FEMA determination in the Ocean Grove Camp Meeting Assoc., second appeal (Dec. 19, 2013), does not assist these applicants. In that matter, the boardwalk was designated by the State as a public highway that supports the execution of mutual aid agreements, and provides health and safety services, meeting the FEMA definition of an eligible PNP facility. The engineered dunes and berms at issue here are different from the boardwalk—they have not been designated as a public highway by the state and do not support the execution of mutual aid agreements, nor is there evidence to suggest that they provide health and safety services of a governmental nature.

In conclusion, the applications from Ocean Hammock Property Owners Association, Inc. and Hammock Dunes Owners' Association, Inc., are hereby denied.

*Jeri Kaylene Somers*  
JERI KAYLENE SOMERS  
Board Judge

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge

*Patricia J. Sheridan*  
PATRICIA J. SHERIDAN  
Board Judge