



September 28, 2017

Tim Morga  
Manager  
Vista Tassajara Homeowner's Association  
563 Leisure Street  
Livermore, CA 94551

Subject: Determination of Request for Public Assistance  
FEMA-4308-DR-CA February 2017 Storms  
Cal OES ID:013-90008 FEMA ID: 013-USUJS-00  
Applicant: Vista Tassajara Homeowner's Association  
Cal OES Log: 633939.1 FEMA Log: None

Dear Tim Morga:

The California Governor's Office of Emergency Services (Cal OES) received the enclosed electronic correspondence (e-mail) from the Federal Emergency Management Agency (FEMA) in response to the Request for Public Assistance from the Tassajara Homeowner's Association.

FEMA has determined that the Tassajara Homeowner's Association (Association) is not eligible for PA funding because the Association does not own or operate an eligible facility. Please refer to the enclosed FEMA Public Assistance Determination Memo for additional information.

If you do not agree with FEMA's determination, please be informed that in accordance with Title 44 of the Code of Federal Regulations, Section 206.206, you have the right to appeal FEMA's decision. This appeal must be submitted to Cal OES within sixty (60) days from the date of this letter. Federal regulations also require that appeals contain documented justification to support your position, including the monetary figure in dispute and an explanation of how FEMA's action was in conflict with federal laws, regulations, or policy.

If you have any questions related to this correspondence, please contact me at (916) 845-8224.

Sincerely,

DAVID GILLINGS  
State Public Assistance Officer

Enclosure

Subject: Determination of Request for Public Assistance  
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Cal OES ID:013-90008 FEMA ID: 013-USUJS-00  
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Cal OES Log: 633939.1 FEMA Log: None

bc: File Room/Enclosure  
Grants Processing Unit/Enclosure

**Fredericks, Judith@CalOES**

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**From:** FEMA-EMMIE@dhs.gov  
**Sent:** Tuesday, September 26, 2017 11:57 AM  
**To:** Fredericks, Judith@CalOES  
**Cc:** Joanne.Jordan@fema.dhs.gov; thadd.stone@fema.dhs.gov; Tim.Barnett@fema.dhs.gov; Melendez, John@CalOES; Gillings, David@CalOES; Catching, John@CalOES; joanne.jordan@fema.dhs.gov  
**Subject:** PA-09-CA-4308-RPA-0418, VISTA TASSAJARA HOMEOWNERS ASSOCIATION, FIPS# 013-USUJS-00  
**Attachments:** ATT00001

This is in response to a Request for Public Assistance (RPA) submitted by VISTA TASSAJARA HOMEOWNERS ASSOCIATION, located in Contra Costa County, dated 04-29-2017, requesting disaster assistance as an Applicant for FEMA's Public Assistance program.

FEMA staff reviewed the RPA and its attachments. As explained in the attached

Determination Memo, the applicant is not eligible for Public Assistance.

Please inform the Applicant of this determination. In addition, Please advise the Applicant that an appeal of this determination may be made in accordance with 44 CFR § 206.206.

If you have any questions or concerns please contact Tim Barnett, Infrastructure Branch Director, at 617-595-7386.

## FEMA Public Assistance Determination Memo

**Date:** 9/12/2017

<b>Applicant Name:</b>	Vista Tassajara Homeowners Association	<b>Applicant Type:</b>	<input type="checkbox"/> State Agency <input type="checkbox"/> Local Government <input type="checkbox"/> Tribe <input checked="" type="checkbox"/> Private Nonprofit
<b>Disaster Number:</b>	FEMA-4308-DR		
<b>PW #(s):</b>	N/A	<b>Category</b>	<b>PW Facility / Title</b>
<b>Amount Requested</b>		<b>Amount Approved:</b>	\$ 0

**Project Description:**

Between February 1, 2017, and February 23, 2017, severe winter storms, flooding and mudslides caused extensive damage throughout much of the State of California. The widespread damage resulted in a major disaster declaration (FEMA-4308-DR-CA). This major disaster declaration authorized Public Assistance in multiple counties, including Contra Costa County. Vista Tassajara Homeowners Association (Applicant) was formed to provide services and facilities for the general use, benefit and welfare of the owners and occupants of the residences in the Vista Tassajara community in the City of Danville.<sup>1</sup>

The Applicant submitted a Request for Public Assistance (RPA) as a private nonprofit (PNP) organization reflecting its intent to request Public Assistance (PA) funding. The Applicant did not provide any information with its RPA describing the disaster-damaged facilities or work for which it was requesting PA funding. However, review of the Applicant's website leads FEMA to conclude that PA funding was requested for the repair of the hillside above Hillside Drive, which suffered slope failure (see attached).<sup>2</sup>

**Issue:**

Is the Applicant eligible for PA funding?

**Applicable Law, Regulations, and FEMA Policy:**

**Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended**  
 Section 102 (codified as amended at 42 U.S.C. § 5122)

**Title 44 of the Code of Federal Regulations**  
 44 C.F.R. §§ 206.221(e), 206.221(f), 206.222(b), and 206.223(b)

<sup>1</sup> Articles of Incorporation of Vista Tassajara Homeowners Association dated July 11, 1988.

<sup>2</sup> <http://vistatassajarahoa.com/landslide/>.



## FEMA Public Assistance Determination Memo

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### FEMA Policy

*Public Assistance Program and Policy Guide, FP-104-009-02, at 15, 16 (April 2017)*

### Other Federal Statutes, Regulations, and Policy

N/A

### Analysis:

To be eligible to receive assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),<sup>3</sup> a PNP applicant must (1) meet the definition of a "private nonprofit organization" set forth in Title 44 of the Code of Federal Regulations (44 C.F.R.) § 206.221(f),<sup>4</sup> and (2) own or operate an eligible "private nonprofit facility" as defined in Section 102(11) of the Stafford Act and its implementing regulation, 44 C.F.R. § 206.221."<sup>5</sup>

### PNP Organization

An eligible private nonprofit organization must have (1) an effective ruling letter from the U.S. Internal Revenue Service, granting it tax exempt status under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954 (IRC); or (2) documentation from the State substantiating that it is a nonrevenue producing, nonprofit organized or doing business under State law.<sup>6</sup>

We were unable to verify whether the Applicant is tax exempt under the IRC. However, the CA Secretary of State's website, <https://businesssearch.sos.ca.gov/> identifies the Applicant as a domestic nonprofit corporation that is currently authorized to carry out its business activities in the State of California. FEMA regulations require that a PNP organization satisfy only one of the two criteria set forth in 44 C.F.R. § 206.221(f) to meet the definition of a PNP organization.

### PNP Facility

In addition to being an eligible PNP organization, a PNP applicant must own or operate an eligible PNP facility. Section 102(11)(A) of the Stafford Act defines an eligible PNP facility as any educational, utility, irrigation, emergency, medical, rehabilitation or custodial care facility.<sup>7</sup> Additionally, Section 102(11)(B) of the Stafford Act defines an eligible PNP facility as one that provides other essential governmental-type services to the general public.<sup>8</sup>

Section 406 of the Stafford Act and applicable implementing regulation, 44 C.F.R. § 206.226, authorize FEMA to fund the repair or restoration of disaster-damaged *facilities*. As defined in 44 C.F.R. § 206.201(c), a "facility" is a building, works, system or equipment, built of manufactured, or *an improved and maintained* natural feature. Unimproved property such as a

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<sup>3</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (codified as amended at 42 U.S.C. § 5121 et seq.) (Stafford Act).

<sup>4</sup> 44 C.F.R. § 206.223(b).

<sup>5</sup> 44 C.F.R. § 206.222(b).

<sup>6</sup> 44 C.F.R. § 206.221(f).

<sup>7</sup> See also 44 C.F.R. § 206.221(e)(1) – (6).

<sup>8</sup> See also 44 C.F.R. § 206.221(e)(7).

## FEMA Public Assistance Determination Memo

hillside or slope is not an eligible facility.<sup>9</sup> Further, if owned or operated by a property owners or homeowners owners association, only those facilities used to provide utility and emergency services are considered by FEMA to be eligible PNP facilities.<sup>10</sup>

Based upon our review of the documentation submitted by the Applicant and publicly available information,<sup>11</sup> FEMA has determined the Applicant is not eligible for PA funding because the Applicant does not own or operate an eligible facility.

PA Determination: Approved Partial Denied

Prepared by: Dana Waller

Concurrence-PA Senior Leadership: Tim Barnett, IBD

Date: 9/13/2017

Signature: 

### Documents Considered (attached except as noted):

- FEMA Form 90-49 Request for Public Assistance
- Current Corporate Status per <https://businesssearch.sos.ca.gov/> (not attached)
- Bylaws of Vista Tassajara Homeowners Association
- Articles of Incorporation of Vista Tassajara Homeowners Association
- Vista Tassajara Homeowners Association Insurance Summary Disclosure
- <http://vistatassajarahoa.com/> (not attached)
- Construction Access Routes and Fencing Map





<sup>9</sup> FP-104-009-02, *Public Assistance Program and Policy Guide (PAPPG)*, at 15-16 (April 2017).

<sup>10</sup> PAPPG, at 15.

<sup>11</sup> <http://vistatassajarahoa.com/> under the heading "Quicklinks."



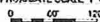
**KEY**

-  Construction Access Routes  
(Install Continuous Orange Construction Fencing at Edges of Routes)
-  Approximate Over-Excavation Boundary
-  Temporary Chain Link Construction Fence With Locked Entrance
-  Stabilized Construction Entrance/Exit at Least 50 Feet Long Per California Stormwater BMP Handbook Construction Detail TC-1

**NOTES:** All locations shown are approximate; actual locations to be determined by the Engineer during construction. All disturbed areas shall be repaired to original grades and stabilized per the General Notes, Erosion Control Notes, and Sediment Control Notes shown on Sheet 10.

BASE MAP: Aerial Photograph from Google Earth image dated 3/11/17 Topographic Survey Shown on Sheet 3

REVISION NO	DATE	BY	DESCRIPTION

APPROXIMATE SCALE 1" = 60'  


DATE  
June 2017  
PROJECT NO.  
708-1

**Stevens**  
**Errone &**  
**Bailey**  
ENGINEERS

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 Concord, CA 94520  
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SITE ACCESS AND STAGING AREA PLAN  
**HILLVIEW DRIVE SLOPE REPAIR**  
 Vista Tassajara, Danville, California

30-K-E-1  
**2**  
 of 13 Sheets