



LAKE COUNTY

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MEMORANDUM

TO: Kristian Swenson, Road Operations Director

FROM: Melanie Marsh, Deputy County Attorney *mm*

DATE: February 21, 2007

RE: Demonstration of Legal Responsibility

Attached are copies of the relevant portions of the Lake County Code, Florida Statutes, Attorney General Opinions, and case law regarding the County's authority to conduct post-disaster cleanup operations on private property. A summary is included below.

Summary of Relevant Legal Authority

1) Article III, Chapter 14, Lake County Code, a/k/a Lake County Nuisance Abatement Ordinance, declares as a public nuisance the existence of excessive accumulation of dead or living plant material on a parcel of property to the extent that such property may reasonably become infected/inhabited by rodents, snakes, pests, wild animals, or furnish a breeding place for insects, or threatens the health, safety or welfare of abutting property. It also declares as a nuisance the excessive accumulation of junk, trash and debris on a property. The Code authorizes the County or its contractors to enter upon the property and take whatever steps are reasonable and necessary to abate the nuisance.

2) Chapter 6, Lake County Code, adopts the Standard Unsafe Building Abatement Code, 1985 Edition. The Standard Unsafe Building Abatement Code grants the building official the right of entry to inspect the property and to enforce the code when there is reasonable cause to believe there is an unsafe structure on the property. The Standard Unsafe Building Abatement Code also grants the County the right to enter the property to repair and/or demolish the unsafe structure and to remove all debris from the premises.

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February 21, 2007

Page 2

- 3) Chapter 8, Lake County Code, establishes the County's Code Enforcement Special Master who has the authority to enforce any provision of the County Code.
- 4) Article II, Chapter 21, Lake County Code, prohibits the accumulation of abandoned property on a parcel unless such property is properly stored in an enclosed structure. It also includes a provision that a violation of this Article constitutes a nuisance, which could then be abated under the Nuisance Abatement Ordinance.
- 5) Chapter 60, Florida Statutes, grants to the county attorney the authority to prosecute nuisance abatement actions in the circuit court, and to seek an injunction which could allow the County to enter the property to abate the nuisance.
- 6) Chapter 823, Florida Statutes, declares all nuisances that injure the health of the citizens to be a misdemeanor, and authorizes the abatement of such nuisances through Chapter 60, F.S.
- 7) Section 252.38, Florida Statutes, known as the State Emergency Management Act, states that a political subdivision has the power and authority to waive the procedures and formalities otherwise required by law pertaining to the performance of public work and taking whatever prudent action is necessary to ensure the health, safety and welfare of the community. The Attorney General has opined in AGO 98-22, that under this Act, the County may use county funds to keep private roadways passable.
- 8) *City of Jacksonville v. Sohn*, 616 So.2d 1173 (Fla. 1st DCA 1993), held that the general rule is that local governments may, under their police powers, regulate, restrain, and abate activities or conditions which are dangerous to the public health, safety or welfare.

Please let me know if you have any questions.