

AGENDA

“The Check is in the Mail?”: The Role of FEMA, State and Local Governments in Funding Debris Removal Activities

Tuesday, June 12, 2007

Speakers: John Buri, Managing Director – Southwest, Beck Disaster Recovery, Inc.
Nate Counsell, Vice President, Beck Disaster Recovery, Inc.

1:00 – 1:20 Welcome, Introductions and Q&A

- Introduction of instructors and participants
- Question and Answer
- Recent history of disaster events
- Examples of FEMA reimbursement and debris removal

1:20 – 2:20 Overview of Disaster Declaration Process

- Review of FEMA presidential disaster declarations
- FEMA declaration timeline and Project Worksheet development
- Local, state and federal strategies to assist in gaining a disaster declaration
- Overcoming FEMA obstacles

2:20 – 2:30 BREAK

2:30 – 3:20 Reimbursement Issues for Category A: Debris Removal

- Federal laws guiding debris removal reimbursements
- Eligibility determinations
- Issues associated with FEMA reimbursement
- Recommendations to reduce the exposure to non-reimbursement

3:20 – 4:10 Addressing Debris Removal in a Non-Declared Event

- Events that do not meet the threshold
- Cost recovery options for organizations
- Addressing debris while maintaining solid waste operations

4:10 – 4:30 Case Study

- Case Study: Taylormade County, Texas
- Ice Storm Event



“The Check is in the Mail?”

The Role of FEMA, State and Local Governments in Funding Debris Removal Activities



Houston-Galveston
Area Council



Instructor Introductions



John Buri

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- Houston, Texas
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Nate Counsell

- Vice President
- Orlando, Florida
- ncounsell@beckdr.com
- (407) 803-5700

Workshop Format

- Introduction and Warm-up
- Overview of Disaster Declaration Process
- FEMA Reimbursement Issues for Category A: Debris Removal
- Addressing Debris Removal in Non-Declared Events
- Case Study
- Summary

Introduction and Warm-up

Question and Answer Exercise

- What types of debris generating events have occurred over the last 10 years?
- Were they FEMA reimbursed events?
- Was debris removal handled with force account labor or through a contractor?

Question and Answer Exercise (cont'd...)

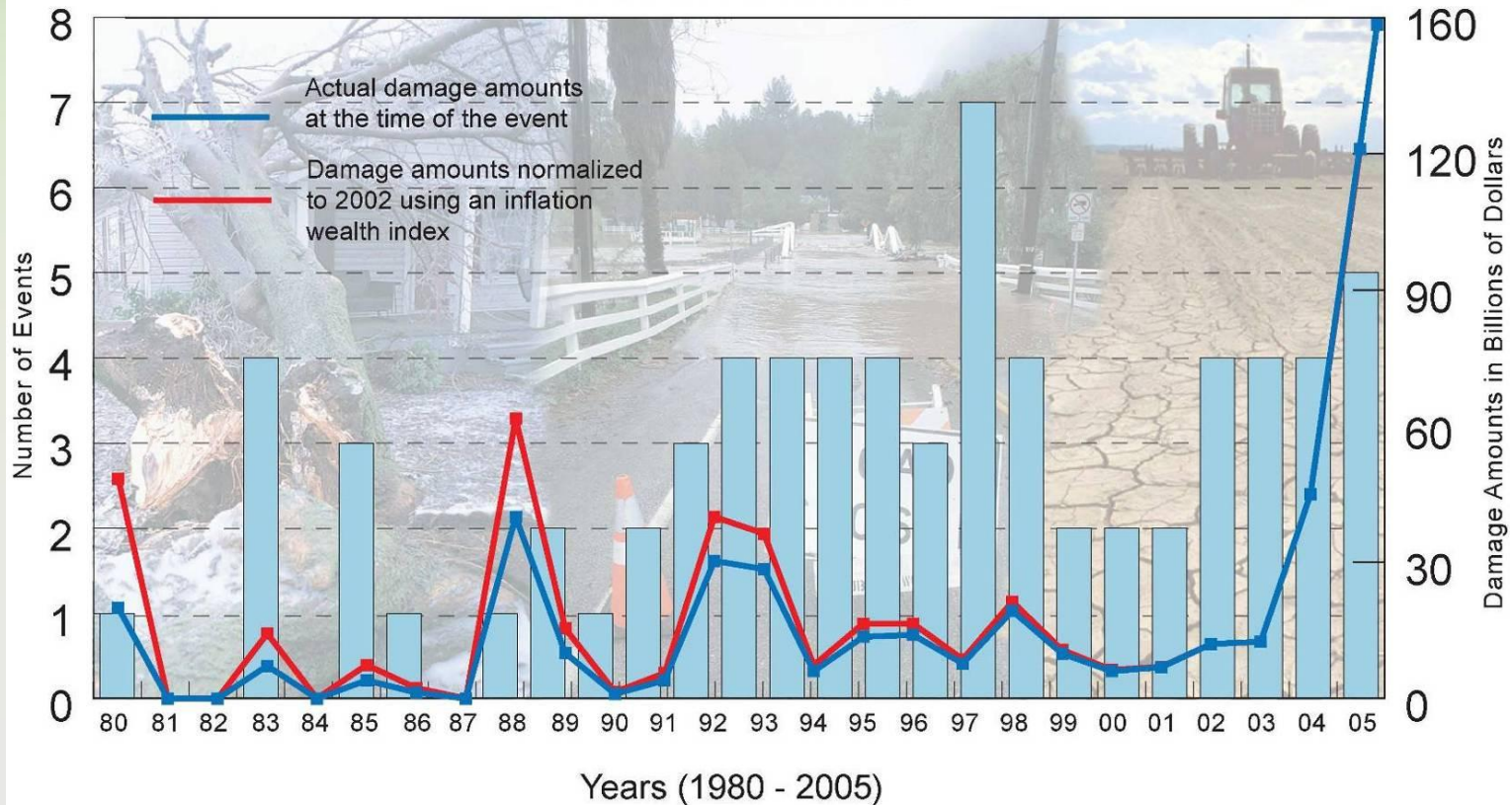
- Were there any issues regarding FEMA reimbursement for debris related costs?
- Describe your experiences with the appeals process?
- Who is identified as the coordinator for FEMA reimbursements?

Disaster Events are on the Climb

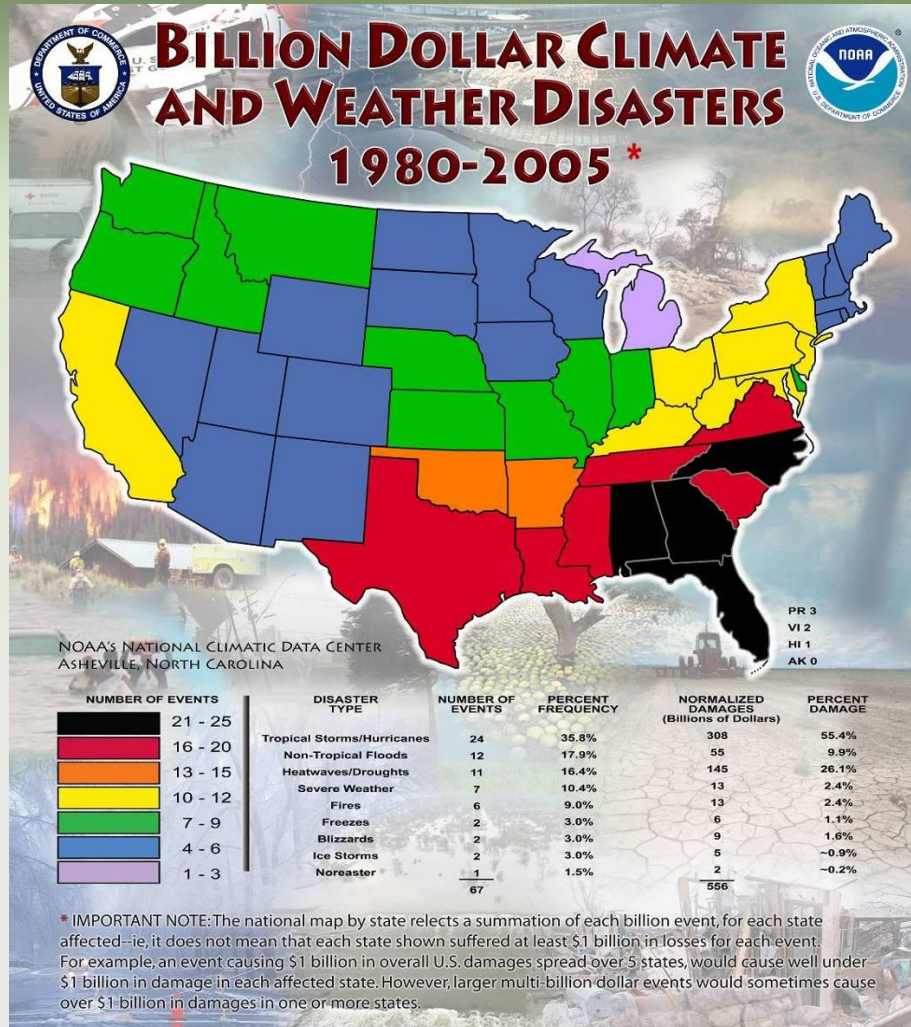


Billion Dollar U.S. Weather Disasters 1980 - 2005

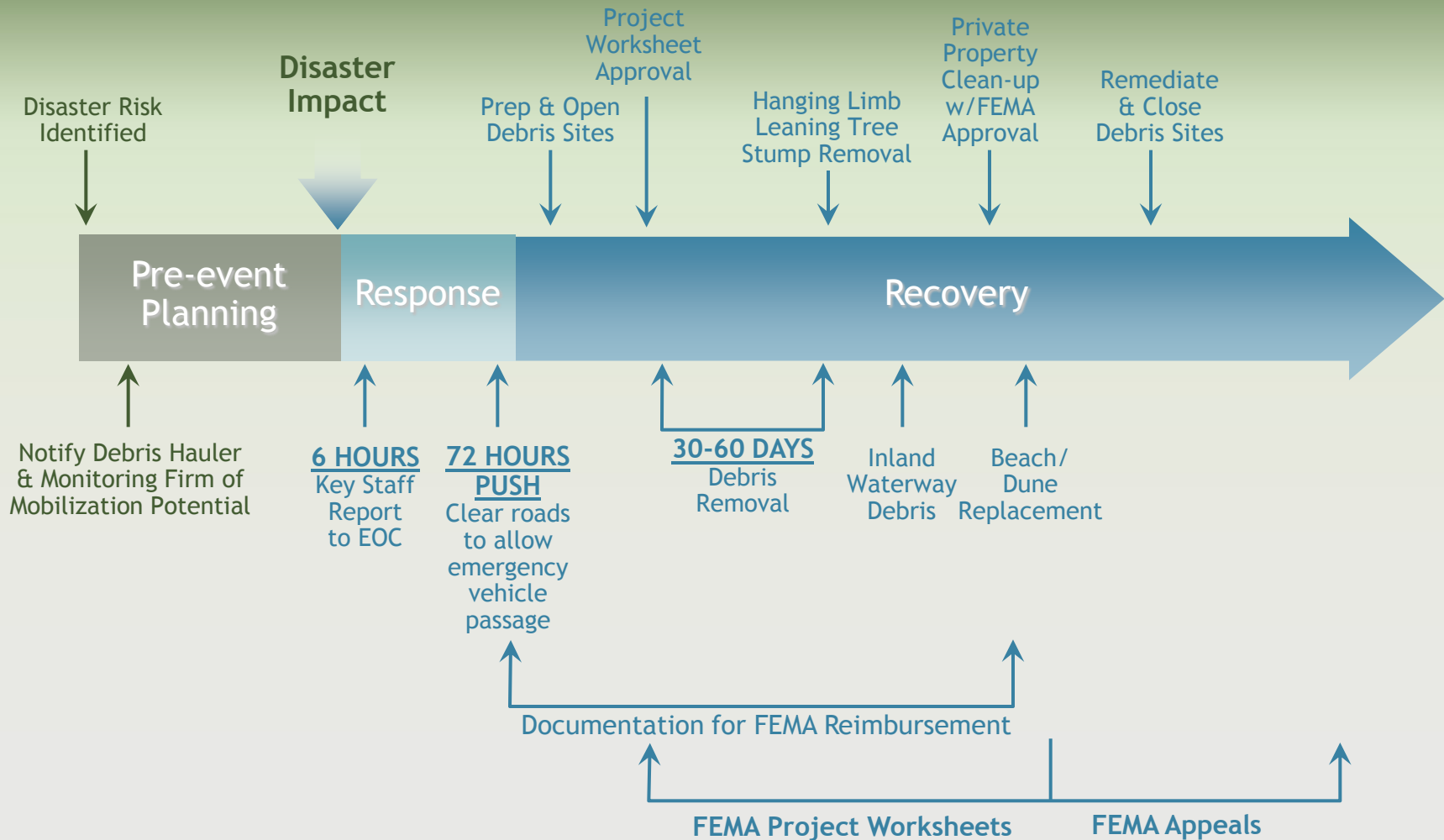
NOAA/NESDIS/NCDC



Disaster Events: Not Limited to Hurricanes



Disaster Recovery Timeline



Impact on Local Governments

- An estimated 40-50% of all disaster related costs are associated with debris management
 - Jefferson County, Texas - Over \$30 million in Debris related expenses
- Impacts landfills in region
 - 3 months post-Rita, Beaumont Landfill Revenue - \$1.4M
 - 12 Months prior to Rita - \$ 1.4M
- Contributes to economic recovery
 - Provision of the Stafford Act



Impact on Local Governments (*cont'd*)

- Wear and tear on roads and bridges
 - Over 800+ trucks certified in Miami-Dade County, FL (Wilma)
- Imminent threat to public health and safety
 - Leaning trees, hanging limbs and uprooted stumps along Right-of-Way and on private property
- Cleanup and documentation additional strain on staff
 - Many debris removal projects require 7 days per week and work during daylight hours

Mississippi Gulf Coast Hurricane Katrina (2005)

Scope of Operations

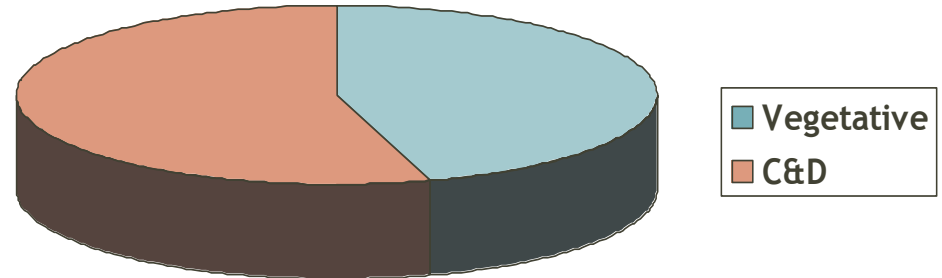
- Security
- Emergency Push
- ROW Debris Removal
- Hazardous Waste Debris Removal
- Beach Sand Screening
- Leaners/Hangers/Stumps
- ROE Program Administration
- Pool Safety Fencing



Mississippi Gulf Coast: Hurricane Katrina (Cont'd)



Total Debris Collected
City of Gulfport



Mississippi Gulf Coast: Hurricane Katrina Key Challenges

- Massive devastation - basic needs
- Procurement - emergency procurement performed 2-3 days after storm
- Pork bellies
- Vehicles and appliances
- FEMA reimbursement deadlines
- After effects - dead pine trees

Disaster Cost Factors: 2006 Ice/Snow Storms: Amherst, NY

Quick Facts

Town of Amherst Population : 111,711

Erie County Population: 968,532

Amherst is one of 25 towns in Erie County

Second largest incorporated municipality by population

Situated on the western border of New York State

Lake Erie encompasses the entire western border of Erie County

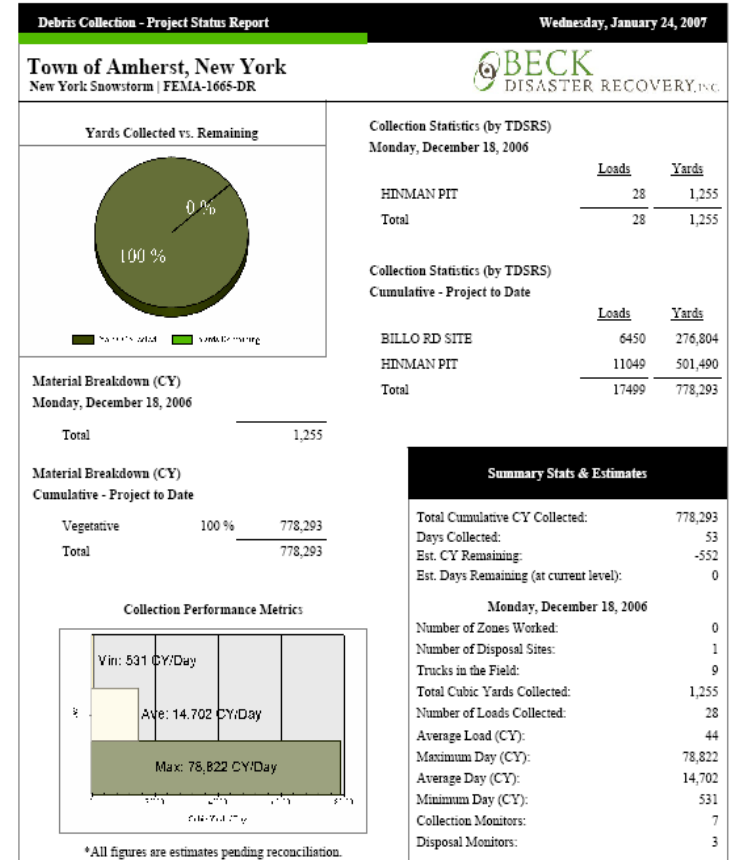
Large amounts of snow fall common due to lake effect



Disaster Cost Factors: 2006 Ice/Snow Storm: Amherst, NY (Cont'd)

Quick Facts

- Approximately 778,293 CY recovered
- 17,499 total loads collected
- Approximately 100 trucks certified
- Recovery process 53 days
- Two TDSRS utilized for staging
- Contracted Debris Recovery Hauler - DRC
- Contracted Monitoring Firm
- All material ground on-site
- Total Recovery Costs: \$10,117,809



Questions



Overview of the Disaster Declaration Process

FEMA Declarations Dictated by Severity and Nature of Event

- Major Disaster Declaration
 - Public, Individual and Direct Federal Assistance
- Emergency Declaration
- Fire Management Assistance Declaration

Types of Declarations

- Individual Assistance (IA)
 - Typical for floods, tornados and hurricanes
 - Individual victims receive direct assistance from FEMA
- Public Assistance (PA)
 - Involves reimbursement for public ROW material recovery
 - Can involve additional general assistance such as ROE or private property clean-up
- Direct Federal Assistance (DFA)
 - U.S. Army Corps of Engineers (USACE)
 - Example: Hurricane Katrina, Rita, 9/11

Public Assistance Categories

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational and others

Key Issues for Disaster Declarations

- FEMA reimbursement is supplemental to state, local and private (insurance) assistance
- Some disasters may only receive PA or IA
- For PA declaration, may only receive reimbursement for some categories
 - i.e. Only Category A and B or only Category A
- Some declarations may allow for DFA
 - Will be reimbursed at same reimbursement rate

Differences Between DFA and PA

- Direct Federal Assistance must be requested by the State
- During a USACE mission, local government relinquishes power to dictate operations
- With DFA may also be need for PA
- Debris Mission
 - Well defined Scope of Work
 - May not address all hazards

6 Primary Factors that Dictate a Declaration

- Estimated cost of the assistance
- Extent of localized impacts
- Amount of insurance coverage in force
- Extent to which hazard mitigation has reduced potential losses
- Occurrence of recent multiple disasters
- Availability of other federal assistance

Stafford Act Provisions - Section 401

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

Determination and Timeline for Declaration

- No specific timeline
- Certain PA events are declared immediately and others after Governor request for federal assistance - often requires a Preliminary Disaster Assessment (PDA)
 - Factors determining timeline for declaration are severity of event and how wide spread is the devastation
- IA is more subjective and timeframe is subject to type of event and economic factors of locality
- No definitive timeline for either a PA or IA declarations

How do you get a Disaster Declaration and Federal Assistance?

- Texas Governor must request federal assistance
 - Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed
- Request first goes to regional FEMA office and is then sent to headquarters then to the White House for a Presidential declaration
 - There are circumstances where this process is circumvented (i.e. Space shuttle crash over five states and 9/11)

How Do You Get A Disaster Declaration and Federal Assistance (cont'd...)

- Typically a Preliminary Disaster Assessment (PDA) is required to evaluate need
- Need is based on a per capita recovery cost, currently at \$1.22 per person for entire State
 - $20,851,820^* \times \$1.22 = \$25,439,220$
- County of the impacted area(s) is based at \$2.94 per capita
- PA declaration may still be subjective based on FEMA factors

** Based on the 2000 Census*

Developing Project Worksheet for Reimbursement

- Costs are reimbursed after Project Worksheet (PW) has been developed and submitted
- Separate PW is required for debris recovery associated costs and monitoring costs
- A PW is typically developed by the applicant with assistance from FEMA

Developing Project Worksheet for Reimbursement (cont'd...)

- Generally funds are awarded weeks after the PW is submitted
- PW can be submitted for anticipated costs, providing funds during the recovery process and putting less of a financial burden on communities

Strategies for Local Governments to Support the Disaster Declaration Process

- Involvement with elected and appointed officials is critical at all levels of government
 - Local
 - State
 - Federal
- Remember debris removal process is long and costly

Local Strategies

- Educate individuals on impact of disaster
- Encourage Mayor, County Judge, Commissioners, Council members to continue to support declaration efforts
 - In all communities - Strength in numbers!

Local Strategies (cont'd...)

- Identify goals
 - State reimbursement match
 - Higher Federal Reimbursement
 - Obligation of funds for Private Property Debris Removal
- Draft official letter(s) to State and Federal Officials
- Ensure that all Private-non-Profits and eligible organizations are accounted
 - Public Schools
 - Water Districts
 - Drainage Districts

State Strategies

- Involve both elected and appointed officials
 - Governor's Division of Emergency Management - local and state office
 - Governor and Lt. Governor's office
 - State representatives - local and state office
- Contact Texas Municipal League (TML) and Texas Association of Counties
- Invite officials to participate in press conferences, tours of the community
- Provide offices with information on debris removal efforts
 - Documentation from debris removal

Federal Strategies

- Constantly communicate with FEMA and federal-elected officials
 - Especially after disaster leaves the national spotlight
- Capitalize on tours by federal officials
- Involve senators and representatives to actively support cause in affected areas
 - Example: Kay Bailey Hutchison - Hurricane Rita

Overcoming FEMA Obstacles

- FEMA field staff interpretation of policies sometimes require local official intervention to ensure consistent reimbursement
- Go after what you are entitled to by understanding eligible costs
- For example, local FEMA representatives have determined certain costs non-reimbursable that have been later determined at the national level as being reimbursable

Overcoming FEMA Obstacles (cont'd...)

- Go after what you believe you deserve
- Understand the Stafford Act and pursue justifiable reimbursements to minimize local contribution
- FEMA funding is available to assist local entities for costs associated with debris generating events
- Review revised FEMA 325 and other FEMA guidance documents
- Seek assistance from GDEM

Issues Associated with Declaration Process

- Rumor mill is very active
 - Do not take contractors word for timing and scope of declaration
- Continue to involve all levels of government to act as advocate for community
- Ensure that PDA process incorporates all organizations
 - Public schools
 - Parks
 - Neighboring jurisdictions

Questions



FEMA Reimbursement Issues for Category A: Debris Removal

Federal Laws Guiding Debris Removal

- Stafford Act - Section 407
 - Authorizes PA program
 - Provisions for rebuilding local economy
- PA Grant Program
 - 9500 Series - policy guidance
- FEMA Debris Management Guide 325
 - Debris removal, monitoring and management are all eligible costs
 - Administration authorized as “Sub-grantee Administrative Expense”

Items Eligible For Reimbursement

- Eligible Field Activities
 - Cut and toss
 - Debris removal
 - TDSRS set-up/restoration
 - Residential drop-off
- Documentation
 - Monitoring
- Essential vs. Non-Essential Staff



Costs to Recover

- TDSRS operations
- Debris recovery operations
- Designate staff for additional debris hauling assistance
- Dedicate adequate staff for PW preparation, invoice review, etc.
- Permanent disposal options with contractors

Potential Issues Associated with FEMA Reimbursement

- Procurement
- Scope of Work
- Disaster Specific Guidance Policy

Procurement

- Contracts must be competitive in nature
- FEMA “discourages” piggy-back contracts
- FEMA can make deductions based upon “reasonable cost” even if scope of work is eligible
- Avoid contract amendments

Scope of Work: Public vs. Private Property Eligibility Determinations are Disaster Specific

- Private roads
- Gated communities
- Demolition programs
- Tree removal from private property

Leaning Trees, Hanging Limbs and Hazardous Stumps

- Leaning trees must:
 - Have over 50% of the crown damaged;
 - Exposed heartwood; or
 - Leaning in excess of 30”
- Hanging limbs must be 2” in diameter or greater
- Stumps must:
 - Be partially uprooted;
 - 24” in diameter or greater; and
 - Pre-approved by FEMA with photographs and GPS coordinates

Was it Storm Generated?

- Reconstruction debris (roof shingles)
- Was it damaged prior to the storm?
- Are residents cleaning their garages?



Document, Document, Document!

- Truck certifications
- Load tickets
- Time and materials
- Catalogue personnel and equipment to specific functions
- Unit rate work (leaners, hangers, stumps)
 - GPS coordinates
 - Photographs attesting to eligibility (before/after)

ROE Documentation

- Ordinance demonstrating legal authority
- ROE agreement
- Hold harmless
- Parcel/tax roll information

Documentation Drives Project Worksheets

- As scope of work is completed and documented, FEMA obligates additional funding through PW versions

U.S. DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT WORKSHEET						OMB No. 1660-0017 Expires October 31, 2008	
<p>PAPERWORK BURDEN DISCLOSURE NOTICE</p> <p>Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the collection, including suggestions for reducing the burden to: Information Collection Management, U.S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1660-0017). You are not required to respond to this collection information unless a valid OMB number appears in the upper right corner of this form. NOTE: Do not send your completed questionnaire to this address.</p>							
Declaration No.	Project No.	FIPS No.	Date	Category			
FEMA- 1676 DR- MO	44 V1	105-41168-00	04/15/07	A			
Damaged Facility:						Date:	Per Cent:
Debris Removal						04/17/2007	100%
Applicant:						County:	
Lebanon, City of						Laclede	
Location:						Latitude:	Longitude:
City Wide							
<p>Damage Description & Dimensions:</p> <p>Project Worksheet 44 V0 covers the applicant's completed force account debris removal costs and also to cover the cost for the applicant's low bid contractor, Cahaba Disaster Recovery, LLC, to pick up and dispose of an estimated 50,000 CY of vegetative debris within the city. A copy of the contract is attached to PW V 44. Summaries of current truck load tickets issued by the applicant's monitoring firm, Beck Disaster Recovery, Inc., indicate that 105,948.02 CY of debris within the city has been picked up and disposed of by the contractor.</p> <p>Scope of Work:</p> <p>This Project Worksheet is written to reflect the applicant's increased volume from the original estimate of 50,000 CY to 105,948.02 CY as indicated on the attached final contractor invoice from Cahaba Disaster Recovery, Inc and load ticket summary provided by the applicant and its monitoring consultant, Beck Disaster Recovery, Inc. The applicant's contractor also picked up and disposed of debris on state routes within the city and this volume has been deducted from the amount that would be eligible for FEMA reimbursement. A paper copy of the applicant's truck load tickets are available at the applicant's office and an electronic copy has been provided to FEMA for validation. Detailed information on each hazardous hanger removed by the contractor is also available at the applicant's office for audit and validation. The debris was burned at the staging site, location given on PW 44 V0, and ash disposal was on site and approved the Missouri DNR. As PW 44 V0 obligated the original estimated 50,000 CY of debris, the cost summary below de-obligates the amount already committed for payment to the applicant.</p>							
Does the Scope of Work change the pre-disaster conditions at the site?						<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Special Considerations issues included?						<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Is there insurance coverage on this facility?						<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Hazard Mitigation proposal included?						<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Project Costs							
Item	Code	Narrative	Quant.	Unit	Unit Price	Cost	
1	9001	CONTRACT	105,948.0	CY	4.76	\$	\$ 504,312.58
2	9999	Deobligate Contract Amount in PW 44 V0	50,000.0	CY	-4.76	\$	\$ (238,000.00)
						\$	\$ -
						\$	\$ -
						\$	\$ -
						\$	\$ -
						\$	\$ -
						\$	\$ -
Total Cost						\$	\$ 266,312.58
PREPARED BY:		Martin L. Shoffner		TITLE:		PAC	
APPLICANT:		DATE: 4/17/07		PHONE: 417 532 2156			
<small>FEMA Form 90-91, FEB 06</small>							

Reasons for FEMA Appeals

- Cost overruns
- Eligibility denial
- Inappropriate application of reasonable cost
- Emergency vs. permanent work

Overview of Appeals

- Appeal 1 - Reviewed by FEMA region
- Appeal 2 - Appealed by FEMA headquarters
 - First time FEMA attorney reviews the appeal
 - 10% of second appeals are overturned in favor of the applicant
 - Policy issues are generally resolved in second appeal

Cost Recovery

- Applicant has 60 days to appeal
- Some issues take years to resolve
 - Northridge Earthquakes
 - Hurricane Andrew
 - Tropical Storm Allison

Office of Inspector General
U.S. Department of Homeland Security
Central Regional Office
Office of Disaster Assistance Oversight
3600 Kansas Street, Room 224
Denton, Texas 76208



January 10, 2007

MEMORANDUM FOR: William E. Peterson,
Regional Director, FEMA Region VI

Tonda L. Hadley

FROM: Tonda L. Hadley, Director
Central Regional Office

SUBJECT: *City of Houston, Houston, Texas*
FEMA Disaster Number 1379-DR-TX
Public Assistance Identification Number 201-35000-00
Audit Report Number DD-07-04

The Office of Inspector General (OIG) audited public assistance funds awarded to the City of Houston, Texas (City). The objective of the audit was to determine whether the City expended and accounted for Federal Emergency Management Directorate (FEMA) funds according to federal regulations and FEMA guidelines.

The City received an award of \$38.68 million from the Texas Governor's Division of Emergency Management (GDEM), a FEMA grantee, for damages resulting from Tropical Storm Allison, beginning on June 5, 2001, and continuing. The award provided 75 percent FEMA funding for 63 large projects and 256 small projects.¹ At the time of our audit, most of the permanent work projects (categories C through G) were not complete; therefore, we focused on emergency work projects (categories A and B). We examined the costs for eight large emergency work projects totaling \$16.04 million, representing 41.5 percent of the total award (see Exhibit A). The audit covered the period of June 5, 2001, to November 30, 2005, during which the City claimed \$17.80 million for the 8 projects and GDEM disbursed \$11.14 million in FEMA funds for direct program costs.

We performed the audit under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. The audit included interviews, tests of the City's accounting records, judgmental samples of project expenditures, and other auditing procedures considered necessary under the circumstances. Exhibit B describes the audit scope and methodology in more detail.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$50,600.



Questions



Addressing Debris Removal for Non-Declared Events

Events that Do Not Meet Threshold for Federal Assistance

- Some debris generating events may take weeks, months or may never receive Presidential disaster declaration
 - Severe windstorm
 - Flooding
- Communities must decide on best method of collection

Cost Recovery for Non-Declared Events

- Community generally absorbs all costs not reimbursed by private insurance or State assistance
- Intent is to minimize costs so generally no public assistance for collection
- Communities often use force account labor in these circumstances
- Costs are typically associated with handling and disposal of additional debris generated by a federal non-declared event

Cost Recovery for Non-Declared Events

(Cont'd)

- Refuse collection and disposal services must continue, so debris management typically is a separate program (system)
- Additional debris is generally beyond the capacity of the existing refuse system
- Outside resources may be required to meet management requirements

Case Study: Snohomish County, WA

Severe Flooding

- Snohomish County Solid Waste District manages a refuse transfer and disposal system for the County municipal waste
- After two separate flooding events, the District used a voucher program to help residents deal with the added burden of flood debris transfer and disposal
- Vouchers were distributed to flood victims by Red Cross and the County's Sheriff Department
- Vouchers enable residents to deliver flood debris to County refuse drop-off locations at no charge
- District absorbed all costs related with the transfer and disposal of this material
- 2001 the cost was \$56,000 and approximately \$80,000 for 2006 flooding
- Alternative funding sources should be evaluated for funding these unanticipated events and added costs

Options for Local Governments to Address Debris

- Voucher Program at Landfill
 - Residents take debris free-of-charge
- Operate Residential Drop-off Sites
 - Residents self-haul to temporary site
 - Generally used for vegetative debris
 - Must involve TCEQ if opening site

Options for Local Governments to Address Debris (cont'd...)

- Amendment to current solid waste collection contract
- Volunteer organizations
 - Assist with debris collection, set-out, removal
 - Hours can be tracked for local match

Critical to Maintain Continuity of Solid Waste Operations

- Following event, community will be eager to resume normal solid waste operations
- Even during small event, increase in solid waste
 - Soured food following break in electricity
 - Flood damage to carpet, drywall, other bulky materials
 - Wind damage to trees and branches
- Will staff be diverted from normal collection?
How long? What strain will this place on the solid waste system?

Steps to Prepare for Event

- Develop call lists to internal and external resources
- Decide what staff is necessary to have at EOC and recalled
- Plan/test for various debris removal scenarios
- Identify individual(s) responsible for documentation of activities

Call Down Lists for Internal and External Resources

- External
 - Solid Waste Hauler
 - Landfill
 - Recycler/Composting Facility
- Internal
 - Solid Waste Management Staff
 - Field staff
 - Legal
 - Finance
 - Elected Officials

Potential Alternative Revenue Sources for Non-Declared Emergency Events

- Reserve Funds
 - Restricted reserve for storm debris
 - Solid waste user fees (preferred)
 - Add to revenue requirement to be recovered through the base fee
 - Special assessment
 - General fund

Issues Associated with Non-Declared Events

- In all circumstances, continue to document all costs internally
 - Declaration for small event may come later
- Utilize event as opportunity to educate public on proper set-out methods
- Identify options for alternative final disposal of vegetative material

Case Study: Taylormade County, TX

Characteristics of Taylormade County, TX

Quick Facts

- Location: Contiguous to major metropolitan County
- County Population: 250,000
- Municipalities (pop.):
 - City of Ping (180,000)
 - City of Ashworth (10,000)
 - Town of Titleist (8,000)
 - Town of Callaway and Dunlop (500 each)
 - Unincorporated population (51,000)



Description of Event

- Widespread ice storm affecting the entire County
- Downed trees and brush
- Hanging branches and leaning trees
- Power outage for five days



Scenes from an Ice Storm

“Worst Ice Storm in 50 Years”



Situation Immediately following the Storm



- Power lines down
- Roads blocked
- Damaged roads
- 750,000 cy in vegetative debris
- No immediate federal disaster declaration
- Shelters set-up, many in town have evacuated or are in hotels

What Would You Do?

- What steps can be taken to achieve a disaster declaration?
- What other means can help keep the event in the spotlight?



Summary

Understand your rights as an applicant

- Review FEMA Guidance Documents
- Involve local, State and Federal elected officials following a disaster
- Communicate with FEMA staff constantly throughout process
- Do not be afraid to ask questions
 - FEMA
 - GDEM
 - Contractors
- Be prepared!

Debris Management Plan: Response Checklist

- Activate Debris Management Center
- Damage assessment
 - Roadways blocked
 - Volume and type of debris
 - Generate information for PDA
- Initiate emergency push
- Activate/mobilize debris contractors
- Document costs (internal and contract) even before any declaration

Summary



- Disasters are **unpredictable**
- Disasters are **inevitable**
- Being prepared takes **planning**
- Planning early = **rapid/effective recovery**
- Make public aware of **procedures and progress**

Questions and Comments





LAKE COUNTY

COUNTY ATTORNEY'S OFFICE

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*Board Certified in City, County, Local Government Law by The Florida Bar

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.

G:\PUBLIC SAFETY\Emergency Management\Swenson_legal authority private prop_mem.doc

P.O. BOX 7800 ♦ 315 W. MAIN ST. ♦ SUITE 335 ♦ TAVARES, FLORIDA 32778-7800 ♦ P 352.343.9787 ♦ F 352.343.9646
Board of County Commissioners ♦ www.lakecountyfl.gov

ELAINE RENICK
District 2

DEBBIE STIVENDER
District 3

LINDA STEWART
District 4

WELTON G. CADWELL
District 5

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.



LAKE COUNTY

COUNTY ATTORNEY'S OFFICE

SANFORD A. MINKOFF*
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sminkoff@lakecountyfl.gov

MELANIE N. MARSH*
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mmarsh@lakecountyfl.gov

LECHEA C. PARSON
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*Board Certified in City, County, Local Government Law by The Florida Bar

February 22, 2007

TO: Jesse F. Munoz,
Federal Coordinating Officer
Disaster Recovery Manager
FEMA, 1679/1680-DR-FL

THROUGH: Mr. W. Craig Fugate
State Coordinating Officer
Governor's Authorized Representative
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399

RE: DR 1679: Ground Hog Day Tornadoes, Lake County Fl.

Dear Mr. Munoz,

In response to your letter of February 13, 2007, the following package will demonstrate Lake County's legal responsibility to protect health and safety of its residents in accordance with its laws, ordinances and codes (Appendix A). In addition, the package will identify health and safety threats, demonstrate the hazard that cannot be reasonably abated by the private property owner or through volunteer efforts, specify locations containing the health and safety threats and document actions taken or proposed by local government.

There are five (5) individual eligibility requests and they are as follows:

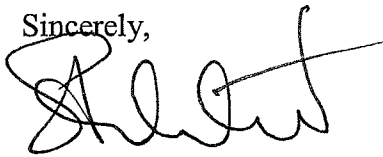
- Request #1: Removal of C&D Debris Placed Curbside within the Lady Lake Mobile Home Park
- Request #2: Removal of Condemned Structures without Insurance located within the Lady Lake Mobile Home Park
- Request #3: Removal of Condemned Structures without Insurance located within the Lake Mack Area of Lake County
- Request #4: Removal of Leaning Trees on Cummer Road
- Request #5: Removal of Loose Storm Debris in Lake Mack Area

P.O. BOX 7800 ♦ 315 W. MAIN ST. ♦ SUITE 335 ♦ TAVARES, FLORIDA 32778-7800 ♦ P 352.343.9787 ♦ F 352.343.9646
Board of County Commissioners ♦ www.lakecountyfl.gov

Jesse F. Munoz,
FEMA, 1679/1680-DR-FL
February 22, 2007
Page Two

Thank you in advance for your consideration of these requests. If you have any questions or need more information, please call Cindy Hall, County Manager, at (352) 343-9888 (or CHall@lakecountyfl.gov).

Sincerely,



Sanford A. Minkoff
County Attorney

Cc: Phil Whorley, Florida Department of Emergency Management
Cindy Hall, County Manager
Kristian Swenson, Road Operations Director
Gary Debo, Solid Waste Operations Director
Jonathan Burgiel, RW Beck

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P.02

U.S. Department of Homeland Security
Region VII
921 Ward Parkway, Suite 300
Kansas City, MO 64114-3372

**FEMA**

May 31, 2007

Ronald M. Reynolds
Director
State Emergency Management Agency
P.O. Box 116
Jefferson City, Missouri 65102-0116

Re: Greene County and City of Springfield
Debris Monitoring Contract
FEMA 1676-DR-MO

Dear Mr. Reynolds:

On May 14, 2007 members of my staff met with representatives from the City of Springfield and Greene County to discuss the eligibility of the following six line items in a monitoring contract with Beck Disaster Recovery Incorporated.

- a. Monitoring recovery contractor operations, and making / implementing recommendations to improve efficiency and speed up recovery work.
- b. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
- c. Entering load tickets into a database application.
- d. Digitization of source documentation, such as load tickets.
- e. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the County for processing.
- f. Other disaster recovery services as requested by the County.

Based on the results of that meeting I find that work performed in accordance with contractual items a, b, c, and e is eligible for FEMA reimbursement. Work associated with item d is also eligible, but covered separately as part of the Applicants' statutory allowances. Actions taken under item f of the contract, in the absence of detailed explanations for specific work, are not eligible for FEMA reimbursement.

Should you have any questions, please do not hesitate to call.

Sincerely,

Robert G. Biswell
Acting Director
Response and Recovery Division

www.fema.gov

Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by Public Law 106-390, October 30, 2000

UNITED STATES CODE

Title 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 68. DISASTER RELIEF

[As amended by Pub. L. 103-181, Pub. L. 103-337, and Pub. L. 106-390]
(Pub. L. 106-390, October 30, 2000, 114 Stat. 1552 - 1575)

Findings, Declarations And Definitions

5121. CONGRESSIONAL FINDINGS AND DECLARATIONS {Sec. 101}

a. The Congress hereby finds and declares that--

1. because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and
2. because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

b. It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by--

1. revising and broadening the scope of existing disaster relief programs;
2. encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;
3. achieving greater coordination and responsiveness of disaster preparedness and relief programs;
4. encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
5. encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
6. providing Federal assistance programs for both public and private losses sustained in disasters [.]

(Pub. L. 93-288, title I, § 101, May 22, 1974, 88 Stat. 143; Nov. 23, 1988, Pub. L. 100-707, title I, § 103(a), 102 Stat. 4689.)

§ 5173. DEBRIS REMOVAL {Sec. 407}

a. Authorization for use of Federal assistance and grants to State or local government

The President, whenever he determines it to be in the public interest, is authorized--

1. through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and
2. to make grants to any State or local government or owner or operator of a private non-profit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

b. State or local government authorization; indemnification of Federal government

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

c. Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

d. Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(Pub. L. 93-288, title IV, § 407, formerly § 403, May 22, 1974, 88 Stat. 154; renumbered § 407 and amended, Pub. L. 100-707, title I, § 106(c), Nov. 23, 1988, 102 Stat. 4701.)

[Note to users: The Disaster Mitigation Act of 2000 repealed § 411 of the Stafford Act, but § 408, which will replace § 411, does not become effective until 18 months after October 30, 2000, or May 1, 2002. Section 411 remains in effect until May 1, 2002, and until May 1, 2002 FEMA officials should not make operational decisions based on the following § 408. FEMA expects to publish implementing regulations for § 408 before May 1, 2002.]

5150. USE OF LOCAL FIRMS AND INDIVIDUALS {Sec. 307}

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may

be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this Act.

(Pub. L. 93-288, title III, § 307, formerly § 310, May 22, 1974, 88 Stat. 150; renumbered § 307 and amended Pub. L. 100-707, title I, § 105(e), Nov. 23, 1988, 102 Stat. 4691.)

§ 5162. ADVANCE OF NON-FEDERAL SHARE {Sec. 319}

a. In general

The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this Act in any case in which--

1. the State is unable to assume its financial responsibility under such cost-sharing provisions--
 - A. with respect to concurrent, multiple major disasters in a jurisdiction, or
 - B. after incurring extraordinary costs as a result of a particular disaster; and
2. the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this Act.

b. Terms of loans and advances

1. In general

Any loan or advance under this section shall be repaid to the United States.

2. Interest

Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

c. Regulations

The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

(Pub. L. 93-288, title III, § 319, as added Pub. L. 100-707, title I, § 105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

§ 5170. PROCEDURE FOR DECLARATION {Sec. 401}

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

(Pub. L. 93-288, title IV, § 401, as added Pub. L. 100-707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4696.)

HEALTH & SAFETY CODE

CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.002. DEFINITIONS. In this chapter:

(1) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

(6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence,

porch, steps, or other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 2, eff. Sept. 1, 1991.

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. PUBLIC NUISANCE. (a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood, or maintaining on any property in a neighborhood in a county with a population of more than 1.1 million, a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining a flea market in a manner that constitutes a fire hazard;

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;

(9) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement; or

(10) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency; or

(B) licensed or permitted under Chapter 361; or

(2) agricultural land.

(e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 2, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 523, Sec. 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 355, Sec. 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1094, Sec. 12, eff. Sept. 1, 2005.

Sec. 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION. (a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, Sec. 3, eff. Aug. 28, 1995.

Amended by Acts 1999, 76th Leg., ch. 752, Sec. 2, eff. Sept. 1, 1999.

Sec. 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 3, eff. Sept. 1, 1999.

Sec. 343.013. INJUNCTION. (a) A county or district court may by injunction prevent or restrain a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a

violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (8), or (9). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Section 343.011(c)(9), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from

accessing the property but may prohibit a continued or future violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2005, 79th Leg., ch. 1050, Sec. 1, eff. Sept. 1, 2005.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. A county may abate a nuisance under this chapter by demolition or removal or, in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access to the premises, if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2005, 79th Leg., ch. 1050, Sec. 2, eff. Sept. 1, 2005.

Sec. 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee, but the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (8), or (9), or the removal or demolition of the nuisance, may be made by a person authorized by the person administering the abatement program.

(b) The abatement procedures must require that written notice be given to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by

Section 343.011(c)(1), (8), or (9); and

(5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) The abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 123, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 5, eff. Aug. 28, 1995; Acts 2005, 79th Leg., ch. 1050, Sec. 3, eff. Sept. 1, 2005.

Sec. 343.023. ASSESSMENT OF COSTS; LIEN. (a) A county may:

(1) assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess the cost of abating the nuisance, the cost of legal notification by publication, and an administrative fee of not more than \$100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to

which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 5, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 6, eff. Aug. 28, 1995.

Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Section 343.011(c)(1), (8), or (9).

Added by Acts 2005, 79th Leg., ch. 1050, Sec. 4, eff. Sept. 1, 2005.

Sec. 343.024. AUTHORITY TO ENTER PREMISES. (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this

chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 6, eff. Sept. 1, 1991.

Sec. 343.025. ENFORCEMENT. A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.