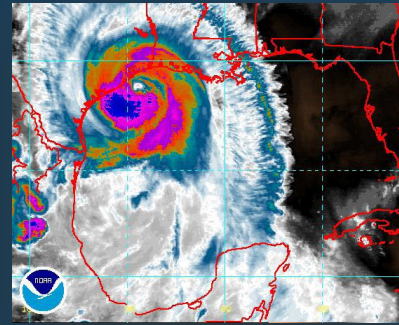


H-GAC 2014 Disaster Debris Workshop Series

May 20, 2015



Workshop 3: Appeal Strategy and Stamina

LOCATION:

H-GAC CONFERENCE ROOM A
3555 TIMMONS LANE
HOUSTON, TX

TIME:

8:30 A.M. TO 12:30 P.M.

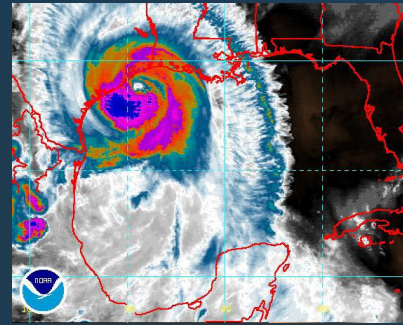
REFRESHMENTS WILL BE
PROVIDED.



AGENDA

- Introductions and Purpose
- How Do Appeals Work?
- Project Pitfalls
- Break
- Audit and Closeout
- Case Studies
- Questions and Answers with Panelists
- Adjourn





Part 1: Introduction and Purpose



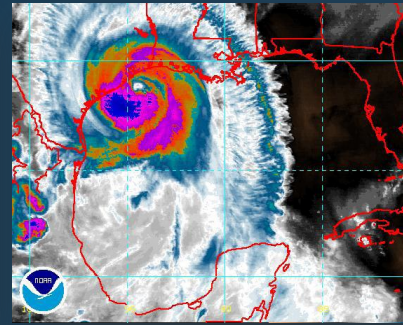
WELCOME

- Introductions
 - Name
 - Agency



PURPOSE

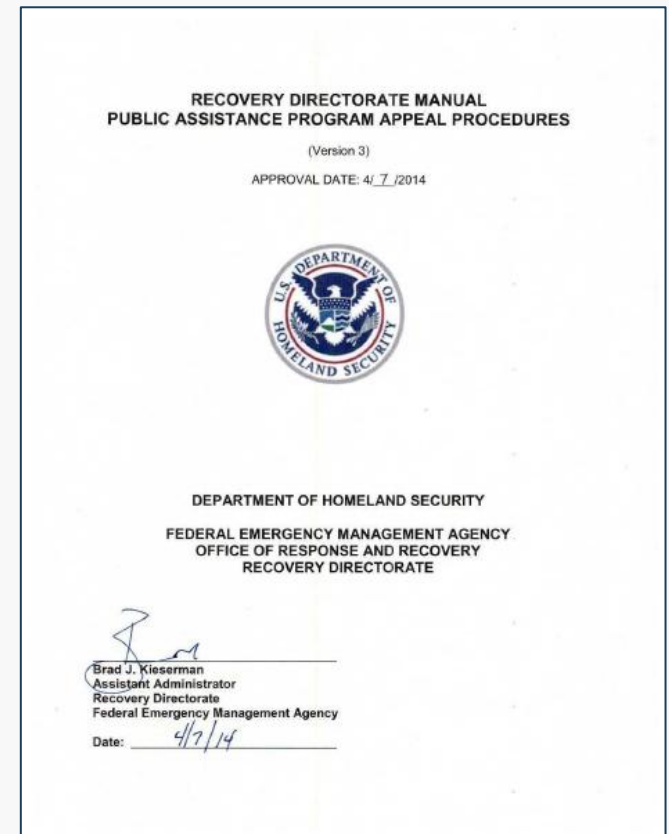
- Provide an overview of the appeal process.
- Identify pitfalls to avoid unfavorable eligibility determinations.
- Discuss duration and tips for maintaining stamina.
- Review appeal case studies and lessons learned.



Part 2: How Do Appeals Work?

PUBLIC ASSISTANCE PROGRAM APPEAL PROCEDURES

- Manual describes policies, procedures and responsibilities for FEMA Public Assistance (PA) appeal process
- Stafford Act
- Sandy Recovery Improvement Act (SRIA)



KEY TERMS AND DEFINITIONS

- Administrative Record
 - All documents and materials directly or indirectly considered by FEMA in making eligibility determination and subsequent first appeal decision

Record may include:

- PWs (all versions)
- Determination memoranda
- Backup documentation
- Correspondence
- Photographs
- Technical reports
- Other relevant information

KEY TERMS AND DEFINITIONS

- Dispute Resolution Pilot Program
 - Program authorized by the SRIA
 - PA Applicant can request alternative dispute resolution
 - Arbitration by independent review panel

KEY TERMS AND DEFINITIONS

- Dispute Resolution Pilot Program
 - Set forth in 44 C.F.R. § 206.210
 - Declarations made after October 30, 2012
 - Dispute \$1M and more
 - Subject to non-federal cost share
 - First appeal filed and received first decision

KEY TERMS AND DEFINITIONS

- Public Assistance Determination Memorandum
 - One page synopsis of an eligibility determination
 - Completed by PA Program staff
 - Intended to concisely and accurately document and explain determination

ROLES AND RESPONSIBILITIES

Public Assistance Appeal Branch (PAAB)

- Overall administration of FEMA appeal system

PA Program staff in FEMA Regional Offices

- Process appeal

PA Program staff in FEMA Joint Field Offices

- NOT directly involved with appeal process

KICKOFF MEETING

- PA Program Staff must provide information on appeal and dispute resolution processes
 - Informally discuss eligibility issues
 - Discuss prior to eligibility determination
 - Timeline for filing appeal
 - Contact for receiving determinations
 - Contents and structure of first appeal
 - Option to pursue arbitration
 - Information and documentation in 1st appeal

DEVELOPING PROJECT WORKSHEETS

- PA Program staff
 - Use Project Worksheet Development Guide
 - Develop administrative record
 - Coordinate with Deployable Field Counsel
 - Categorize documents in EMMIE system

Developing the administrative record will help ensure that project information is robust and complete which will be beneficial in a dispute.

DISCUSSING UNRESOLVED ISSUES

- When discussions with PA Program Staff are at an impasse:
 - Consult with FEMA Alternative Dispute Resolution staff
 - Identify, clarify and attempt to resolve eligibility issues **BEFORE** an official eligibility determination is made

DISCUSSING UNRESOLVED ISSUES

- FEMA staff should offer facilitated discussion when:
 - Appeal would qualify for resolution under Dispute Resolution Pilot Program
 - Dispute amount is greater than \$1M
 - Project is subject to a non-federal cost share

DISCUSSING UNRESOLVED ISSUES

- Document facilitated discussion:
 - Date discussion was offered
 - Date discussion was conducted
 - Outcomes of the discussion

DISCUSSING UNRESOLVED ISSUES

- Following facilitated discussion:
 - FEMA has five business days to issue eligibility determination, OR
 - Provide additional actions to resolve dispute

ELIGIBILITY DETERMINATIONS SUBJECT TO APPEAL

1. Applicant, facility, work, and/or cost is ineligible.
2. Awarding a PW or amendment of a PW.
3. Denying a request for an alternate project.
4. Denying a request for an improved project.
5. Denying a hazard mitigation proposal.

ELIGIBILITY DETERMINATIONS SUBJECT TO APPEAL

6. Denying a request for a time extension.
7. Denying a request for a net small project overrun.
8. Denying a request for additional funding for the closeout of a large project.
9. Acting upon an Office of the Inspector General recommendation.

FIRST APPEAL

- Must contain documented justification supporting the appeal position
- Specify monetary figure in dispute
- Cite provision in federal law or policy with which the determination was inconsistent

FIRST APPEAL

The opportunity to provide documentation and information is at the first appeal stage. FEMA will NOT accept additional materials after it issues a first appeal decision.

APPEAL TIMELINE

60 Applicant has 60 days to submit appeal

90 Administrative officer has 90 days to respond with decision

1 First appeal goes to FEMA Regional Administrator

2 Second appeal goes to FEMA's Assistant Administrator for Recovery

ADMINISTRATIVE RECORD CHECKLIST

- Handout

APPENDIX A: ADMINISTRATIVE RECORD CHECKLIST

The specific materials required to be included in each *administrative record* will be dictated by the issues involved in each individual first appeal. Appendix D (Categorical Checklist) of the Project Worksheet Development Guide (July 2008) should serve as a guide for what materials to include.

Every *administrative record* should contain:

- Disaster Declarations and any additions
- FEMA / State Agreement and amendments
- All versions of all relevant Project Worksheets (PWs), including backup documentation (For example, if the PW has seven versions, please include all seven versions)
- PW Backup Documentation
- Any draft documents (include draft PWs) that help substantiate the Agency's decision-making process if the draft included something that was used in the decision making process
- Documents FEMA found on the internet that were relevant to the decision-making process (include screen captures, webpage printouts, and cites to web addresses)
- Public Assistance Determination Memoranda.
- Applicable Act, Regulations, Policies, and Guidance used in eligibility / ineligibility decisions in the PW and the first appeal (include citations to or copies of the authorities used and disaster specific guidance memoranda)
- Any internal communications upon which FEMA's eligibility determination relied.
- The applicant's *first appeal* correspondence and any supporting documentation.
- The grantee's correspondence to FEMA regarding the *first appeal*.
- Any other correspondence between FEMA and either the applicant or the grantee related to the PW and the *first appeal*.
- All information stored in the Emergency Management Mission Integrated Environment ("EMMIE") related to the eligibility determinations for the project at issue. Such written materials should include, but is not limited to:
 - o Letters
 - o Memos
 - o Call logs
 - o Transcripts
 - o Reports
 - o Meeting notes, including lists of meeting attendees, for the Kickoff Meeting and any other meetings held with the applicant and grantee throughout the PW process
 - o Site visit notes.
 - o Damage assessments.

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APPENDIX A: ADMINISTRATIVE RECORD CHECKLIST

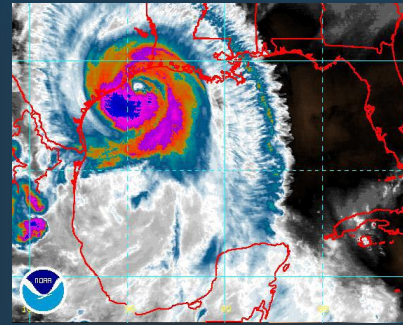
- o Photographs or drawings of damaged sites.
- o Case Management File notes and materials.
- o All substantive emails containing information leading to the agency's decision. Inconsequential email exchanges or emails reflecting personal opinions of employees should not be included.
- A written statement indicating whether a facilitated discussion occurred.
- Depending on the issues involved, additional materials addressed in Appendix D (Categorical Checklist) of the Project Worksheet Development Guide (July 2008).

Items that should never be included in an *administrative record* include:

- Documents containing personally identifiable information (PII)
- Documents that are attorney-client privileged

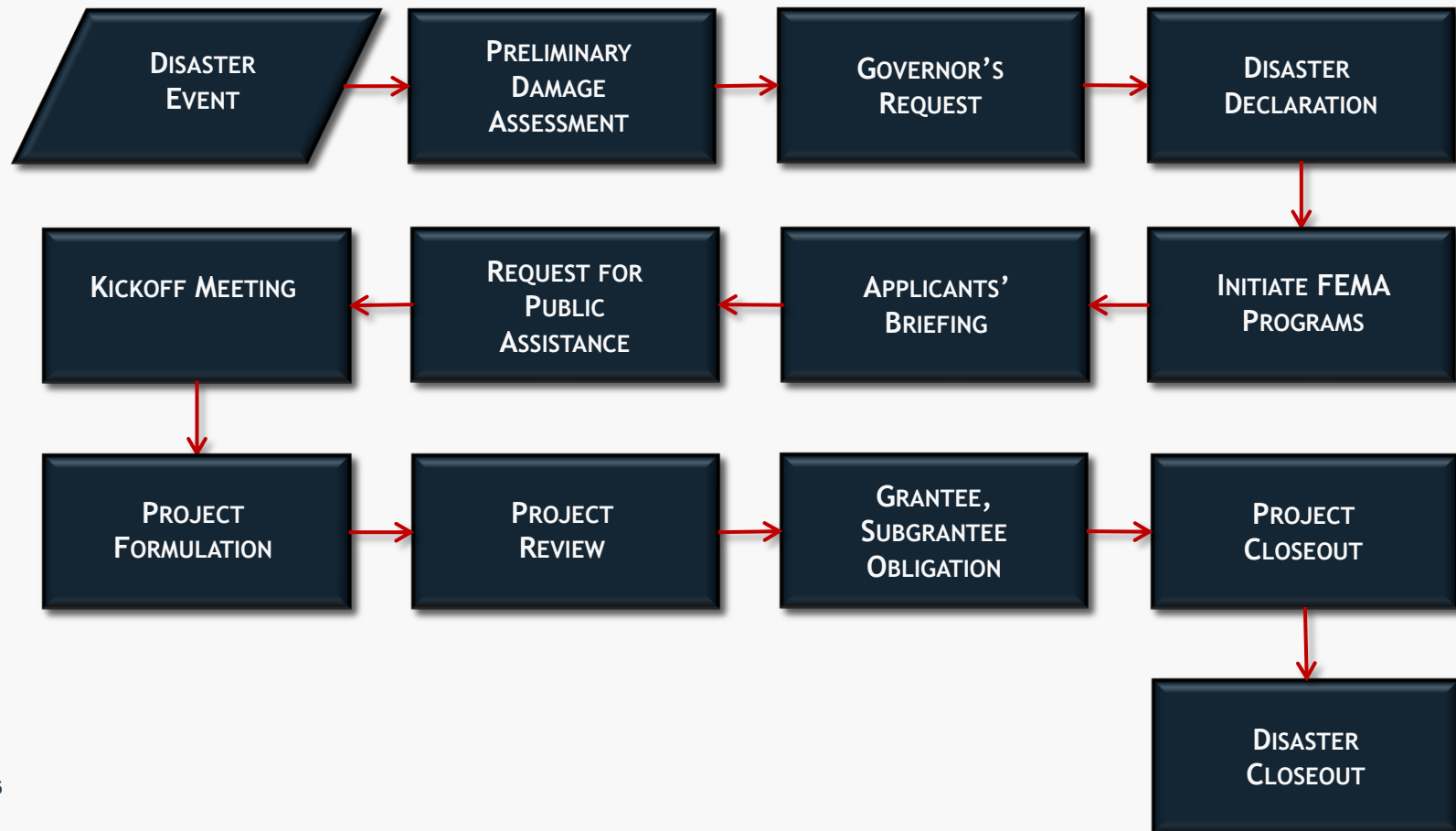
Always consult with OCC when determining what to include in the *administrative record*.

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Part 3: Project Pitfalls

KEY STEPS IN PUBLIC ASSISTANCE PROCESS

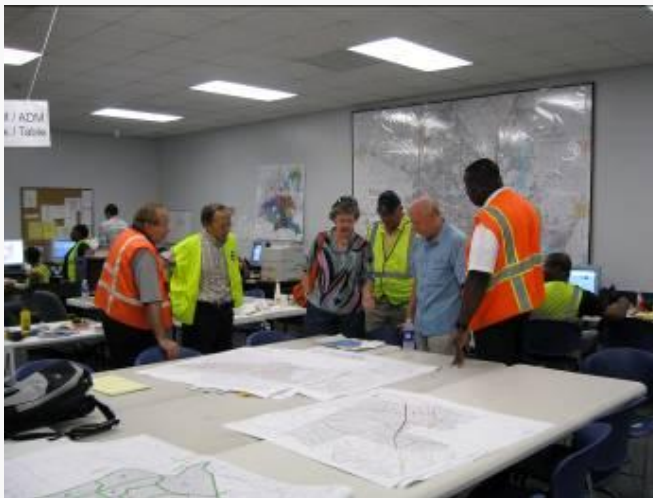


PRELIMINARY DAMAGE ASSESSMENT

- Damage assessment teams
- Information collection
- Correspondence with FEMA
- Plan for audit in advance

Documentation:

- Damage reports
- Photos
- Deployment schedule
- Damage assessment forms
- Disaster summary
- Record of communication



DISASTER DECLARATION

- Pre disaster preparations
- Declaration process
- Correspondence with FEMA



Documentation:

- Chronological summary
- Description of damage
- Background
- Situation
- Special circumstances

OPERATIONS

- Force account labor
- Force account equipment
- Overtime procedures
- Previous implementation



Documentation:

- Timesheets
- Daily logs
- ICS forms
- Position descriptions
- Resource types
- Compensation procedures
- Documentation of implementation in previous events

PROCUREMENT

- Pre qualified vendors
- Disadvantaged business enterprise participation
- Competitive bid process
- Emergency procurement procedures
- Previous implementation

Documentation:

- Procurement procedures for normal and emergency operations
- Bid solicitation and advertisement
- RFP documents
- Documentation of implementation of emergency procedures

EMERGENCY ROAD CLEARING

- Road clearing teams
- Force account documentation
- Contracted services/time and materials contracts

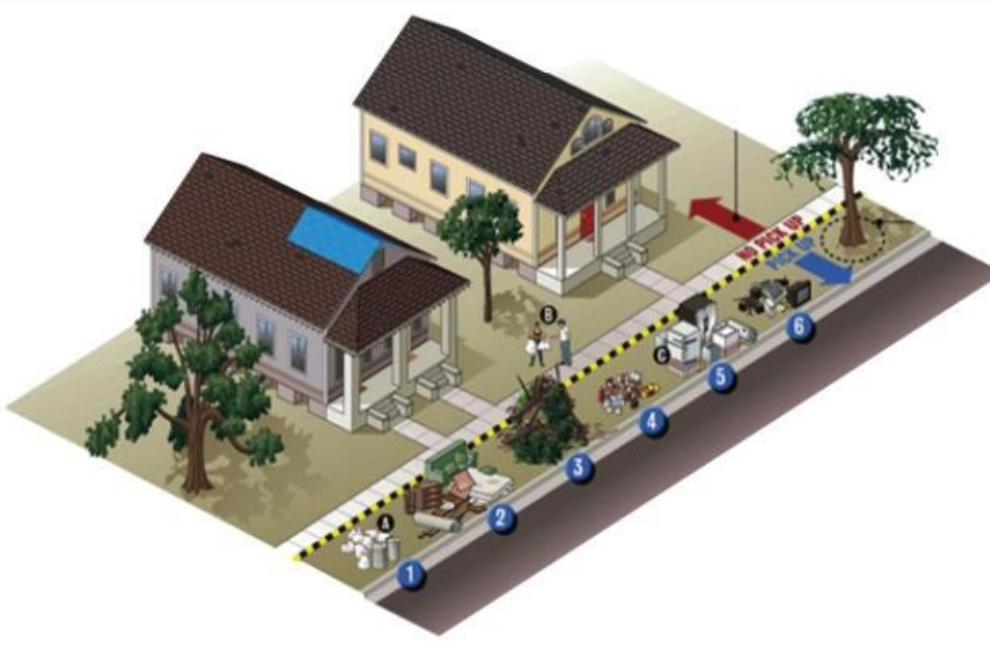
Documentation:

- Priority road lists
- Timesheets, equipment logs
- Contractor invoices
- Procurement scope of work



PUBLIC INFORMATION

- Providing information to the whole community



Documentation:

- Press releases
- Set out procedures
- Call center documentation
- Schedule for pass completion
- Public notices

SPECIAL DEBRIS PROGRAMS

- Right of way collection
- Private property debris removal
- Waterway
- Hazardous limbs and stumps
- Derelict vessels

Documentation:

- Health and safety procedures
- Public notices
- Priority road lists
- Maintenance and jurisdictional records
- Monitoring documentation

PROJECT WORKSHEET COMPONENTS

- Disaster details
- Applicant details
- Project details
- Key staff
- State info
- PW package

Documentation:

- Project worksheet
- DDD-Scope of work continuation
- Scope notes
- Cost continuation
- Special considerations
- Hazard mitigation proposal
- Direct admin costs
- Force account summary
- Payroll data
- Fringe benefits
- Labor
- Equipment inventory
- Narrative
- Exit briefing

APPEAL ANALYST CHECKLIST

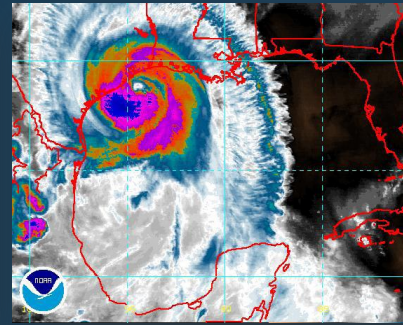
• Handout

APPENDIX B: APPEAL ANALYST CHECKLIST		
TASK	INFORMATION AND INSTRUCTIONS	
REVIEW APPLICABLE STATUTES, REGULATIONS, POLICIES, AND GUIDANCE	<ul style="list-style-type: none"> • Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 • Title 44 of the Code of Federal Regulations • PA Program 9500 series policies and standard operating procedures • Public Assistance Guide (FEMA 322) • Public Assistance Policy Digest (FEMA 321) • Debris Management Guide (FEMA 325) • Public Assistance disaster specific guidance • FEMA Appeal Response Database (www.fema.gov/appeals) • Disaster Operations Legal Reference (DOLR) 	
REVIEW TIMELINE	<ul style="list-style-type: none"> • Applicant must request a first-level appeal in writing to the grantee within 60 days of receipt of FEMA's notification of the eligibility determination • The grantee will review appeal documentation and request additional information if necessary • The grantee will prepare a recommendation on the merits of the appeal and forward its recommendation and the appeal to the FEMA Regional Administrator within 60 days of receiving the applicant's appeal letter • If the applicant submits the appeal after the regulatory deadline, discuss with the appropriate PA Program supervisor before moving forward with the appeal analysis • The Regional Administrator will review the appeal and take action within 90 days of receipt of the first-level appeal package: <ul style="list-style-type: none"> - Provide a decision on the appeal and inform the grantee and applicant of the decision - Request additional information and establish a deadline for submittal, after which FEMA has 90 days to render a determination - Request a technical review, after which FEMA has 90 days to render a determination 	
REVIEW APPEAL PACKAGE AND REQUEST ADDITIONAL DOCUMENTATION	<ul style="list-style-type: none"> • Review appeal package for pertinent information and supporting documents • Complete Administrative Record Index using the Administrative Record Checklist 	<ul style="list-style-type: none"> • Appeal and supporting documentation should include: <ul style="list-style-type: none"> - Appeal correspondence - PWs pertaining to the appeal - Supporting documentation - NEMISEMIE Summary Report - Disaster-specific guidance pertaining to the appeal issue • When required, submit a Request for Information (RFI) to the applicant with a complete list of additional information needed
IDENTIFY APPEAL ISSUES	<ul style="list-style-type: none"> • Identify specific issues in the applicant's appeal letter • What is the applicant appealing and why? • Identify any other issues pertinent to resolution of the appeal not raised by the applicant or grantee 	<ul style="list-style-type: none"> • Identify all issues raised by applicant and the basis for the appeal for each issue • Identify the reasoning behind the applicant's position on the issue(s) • Review the grantee's appeal recommendation for further background on the issue(s) • Address newly identified issues in accordance with Section 3.3 of this Manual • Identify dates, scopes of work, funding amounts, issues, and description of all decisions and correspondence • Obtain a summary of all relevant PWs prepared for the applicant, if necessary
ANALYZE APPEAL	<ul style="list-style-type: none"> • Establish contextual understanding 	<ul style="list-style-type: none"> • Research each issue in detail to establish how and why the decision being appealed was reached • Research all relevant sections of statute, regulation,

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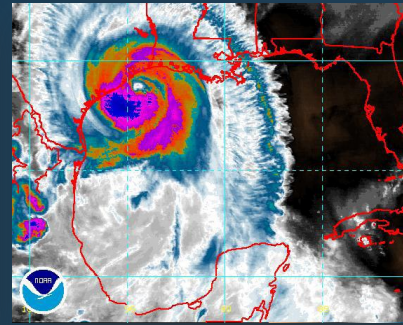
APPENDIX B: APPEAL ANALYST CHECKLIST		
TASK	INFORMATION AND INSTRUCTIONS	
		and policy
	<ul style="list-style-type: none"> • Assess eligibility of appeal 	<ul style="list-style-type: none"> • Based on the review of available documentation, determine whether the appealed FEMA decisions are consistent with FEMA laws, regulations, and policies
	<ul style="list-style-type: none"> • Develop a recommendation for the appeal 	<ul style="list-style-type: none"> • The recommendation must be <ul style="list-style-type: none"> - Logical and defensible - Supported by FEMA law, regulations, and policies - Supported by accepted engineering practices, if appeal includes technical issues
DOCUMENT APPEAL RECOMMENDATION	<ul style="list-style-type: none"> • Prepare an Appeal Analysis, Appeal Response Letter, and Appeal Brief (internal FEMA document) for all appeals (see templates) • An Appeal Analysis is presented in three sections: <ul style="list-style-type: none"> - Background <ul style="list-style-type: none"> • Situation • Issue - Discussion <ul style="list-style-type: none"> • Rule • Analysis - Conclusion 	<ul style="list-style-type: none"> • Background includes: <ul style="list-style-type: none"> - A chronological summary - Description of the damage and the effect of the event, including reported damage - Process involved in determining eligibility of the PWs - Any other relevant disaster events - Eligible scope of work and approved funding amounts - The determination that is being appealed (include dollar amount) - The issues brought up by the applicant relative to the appeal - The applicant's position with respect to the issue(s) - A description of any additional documentation submitted with appeal - A description of any relevant points made by the grantee (but there is no need to summarize the grantee's letter – only include points/issues that were not included by the Applicant, but are relevant to the appeal) • Discussion includes: <ul style="list-style-type: none"> - The substantive discussion of the merits of the request and the documentation - The actions of the statutes, regulations, or policies that apply to each issue - An eligibility analysis of each issue with respect to the appropriate statute, regulation, or policy - The recommendation for each issue - The basis of each recommendation - If multiple issues must be addressed, a subdivision of the Discussion section to allow for a clear discussion of each issue • Conclusion includes: <ul style="list-style-type: none"> - One-paragraph summary of the Discussion - Simple presentation of the issue, recommendation, and associated revised funding • The Appeal Response Letter addressed to the grantee and the subgrantee should be a short letter summarizing issues and determination

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BREAK





Part 4: Audits and Closeout



PROJECT CLOSEOUT/AUDITS





- Increased documentation requirements
- Must use technology to support real time audits

RecoveryTrac Unit Rate AuditReport (Crew: *All) Date: 03/23/2014

Client: BARNWELL COUNTY Project: BARNWELL COUNTY - WINTER STORM PAX - ROW COLLECTION

Total Ticket Count: 79

Ticket No.	Monitor	Date	GPS-Lat	GPS-Lng	Address	Service Code	Unit Count	Meas	Zone	Photo Count
111470414	ANGELA MARTIN (8214262)	03/23/2014 9:39 AM	33.324213	-81.306739	2-22 CRICKET LN	1A	1.00	3.12	20(GIS: 20)	4
111470415	ANGELA MARTIN (8214262)	03/23/2014 9:40 AM	33.324226	-81.306741	2-22 CRICKET LN	1A	1.00	2.38	20(GIS: 20)	4
111470416	ANGELA MARTIN (8214262)	03/23/2014 9:40 AM	33.324217	-81.306724	2-22 CRICKET LN	1A	1.00	2.59	20(GIS: 20)	4
111470417	ANGELA MARTIN (8214262)	03/23/2014 9:41 AM	33.324196	-81.306678	2-22 CRICKET LN	1A	2.00	2.75	20(GIS: 20)	4
111470418	ANGELA MARTIN (8214262)	03/23/2014 9:41 AM	33.324203	-81.306732	2-22 CRICKET LN	1A	2.00	3.25	20(GIS: 20)	4
111470419	ANGELA MARTIN (8214262)	03/23/2014 9:42 AM	33.324248	-81.306773	2-22 CRICKET LN	1A	1.00	3.50	20(GIS: 20)	4

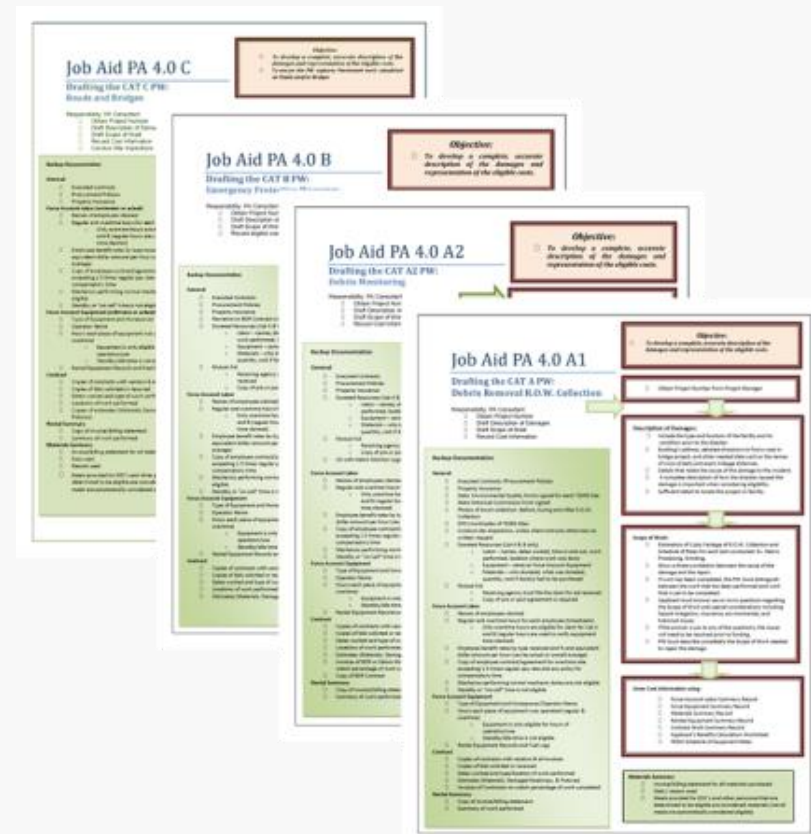
Crew Photo	Pre-Work Photo	Measurement Photo	Post-Work Photo
			

111470420	ANGELA MARTIN (8214262)	03/23/2014 9:42 AM	33.324402	-81.306778	1-21 CRICKET LN	1A	1.00			
111470421	ANGELA MARTIN (8214262)	03/23/2014 9:43 AM	33.324396	-81.306802	1-21 CRICKET LN	1A	1.00			



PROJECT CLOSEOUT/AUDITS

- Purpose is to clarify all recovery work has been completed
- Appeal have been resolved
- Eligible costs can be reimbursed
- Last step in PA Process



PROJECT CLOSEOUT/AUDITS

- FEMA
 - Field audits
 - Project Worksheet review/approval
- State
 - Closeout audits

PROJECT CLOSEOUT/AUDITS

- Department of Homeland Security (DHS) Office of Emergency Management Oversight
 - Immediate
 - Capacity audit - 3 months to 1 year
 - Early warning audit
 - Testimonial audit
 - Program audit

PROJECT CLOSEOUT/AUDITS

- Office of Inspector General (OIG)
 - Final Audits
 - 5 years
 - 10 years
 - 20 years



PROJECT CLOSEOUT/AUDITS

- How does DHS select applicants for audit?
 - Congressionally mandated
 - Current or potential dollar magnitude
 - Congressional, state or FEMA requests
 - Reports of allegations of impropriety

RECENT OIG REPORTS

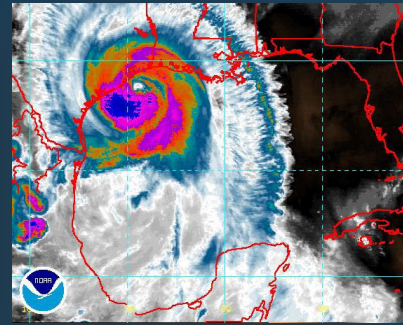
- OIG Report #1
 - Subgrantee had employee timecards and payroll records to support cost but did not have activity logs to indicate what employees were doing
 - Claiming equipment use on Thanksgiving; however, no records of any township employee working on that holiday
 - Township purchased equipment (computer) but had no record of using the computer for debris removal activities

RECENT OIG REPORTS

- OIG Report #2
 - Subgrantee accepted funding for debris removal prior to entering into an agreement with the County to remove debris on Subgrantee maintained roads
 - Subgrantee could not support cost of time and materials contractors (no time sheets or equipment activity logs)
 - For the debris removal work that County did manage, there were no contractor invoices or load tickets to support the claims

RECENT OIG REPORTS

- OIG Report #3
 - FEMA incorrectly told applicants that they needed to follow state law or their own contracting procedures - this was incomplete information
 - Local governments can use their own contracting procedures ONLY if their procedures follow federal guidelines



Part 5: Case Studies

PORT OF GALVESTON

- 705.(c)
 - Gulf Copper final 2nd appeal decision pending, \$1.1M
 - Gulf Copper Plate Shop 1st appeal decision pending, \$674K
 - Pelican Island repair potential, \$4.3M

PORT OF GALVESTON

- Insurance
 - 67 PWs de-obligated for insurance review/duplication of benefits, \$23M
 - Incorrect application of insurance by FEMA

LOCAL SCHOOL DISTRICT

- Overview
 - Large local school district impacted by Hurricane Ike
 - Debris and damage to buildings
 - Urgency to reopen schools
 - Contractor conducted debris removal as part of disaster services



TIMELINE

- 09/13/08 - Hurricane Ike makes landfall
- 09/18/08 - Debris Removal Crews Start Work
- 09/29/08 - School District Reopens
- Fall 2008/Winter 2009 - School District Requests Back-Up from Contractor
- Sept. 2009 - FEMA denies initial claim of \$1.4mm

TIMELINE

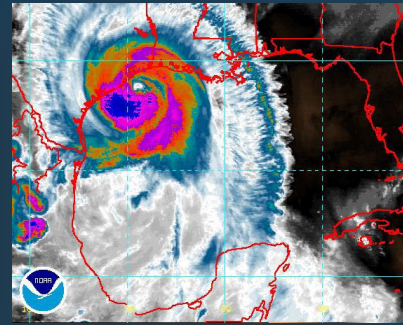
- April 2010 - School District Appeals
- Dec. 2010 - Appeal Accepted - ~\$300k
- Sept. 2012/March 2013 - Audit Performed
- April 2013 - Audit Report
- Sept. 2013 - PW Closeout and Final Payment

FEMA'S ISSUES WITH DEBRIS REMOVAL PROGRAM

- Alleged contractor improprieties
- Applicant failed to monitor debris removal program = no second source of documentation
- No load tickets at loading sites = impossible to determine debris origin
- No certification or individual numbering of debris trucks = no actual capacity verifications or delivery time audits
- Applicant used T&M contract, which is most monitoring intensive, but did not monitor

OUTCOME

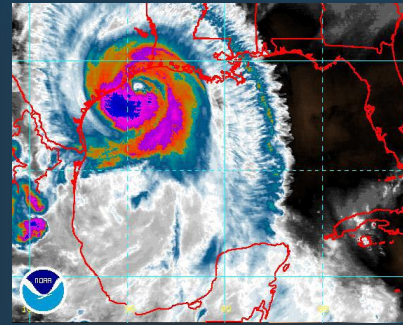
- Debris removed quickly
- School District was one of first to reopen after Hurricane Ike despite direct hit
- School District commended Contractor for quality of work
- School District only reimbursed ~\$300k for \$1.4 mm worth of work



Part 6: Question and Answers with Panelists

QUESTIONS FOR PANELISTS

- Appeal process
- Project pitfalls
- Audit and closeout
- Case studies



Part 7: Next Steps/Adjourn





NEXT STEPS

Workshop	Date
Workshop 4: Advanced Technology in Debris Management	June 23, 2015

ADJOURN

Thank you!

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