



**South Carolina Bar**

Continuing Legal Education Division

## **2018 SC BAR CONVENTION**

### **Government Law Section**

“The Only Constant is Change for  
Government Attorneys”

**Friday, January 19**

*SC Supreme Court Commission on CLE Course No. 180805*



**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Government Law Section**

**Friday, January 19**

Building Resilience: Practical Tools for  
Navigating a Changing World

*John “Jack” J. Pringle*

No Materials Available



**South Carolina Bar**

Continuing Legal Education Division

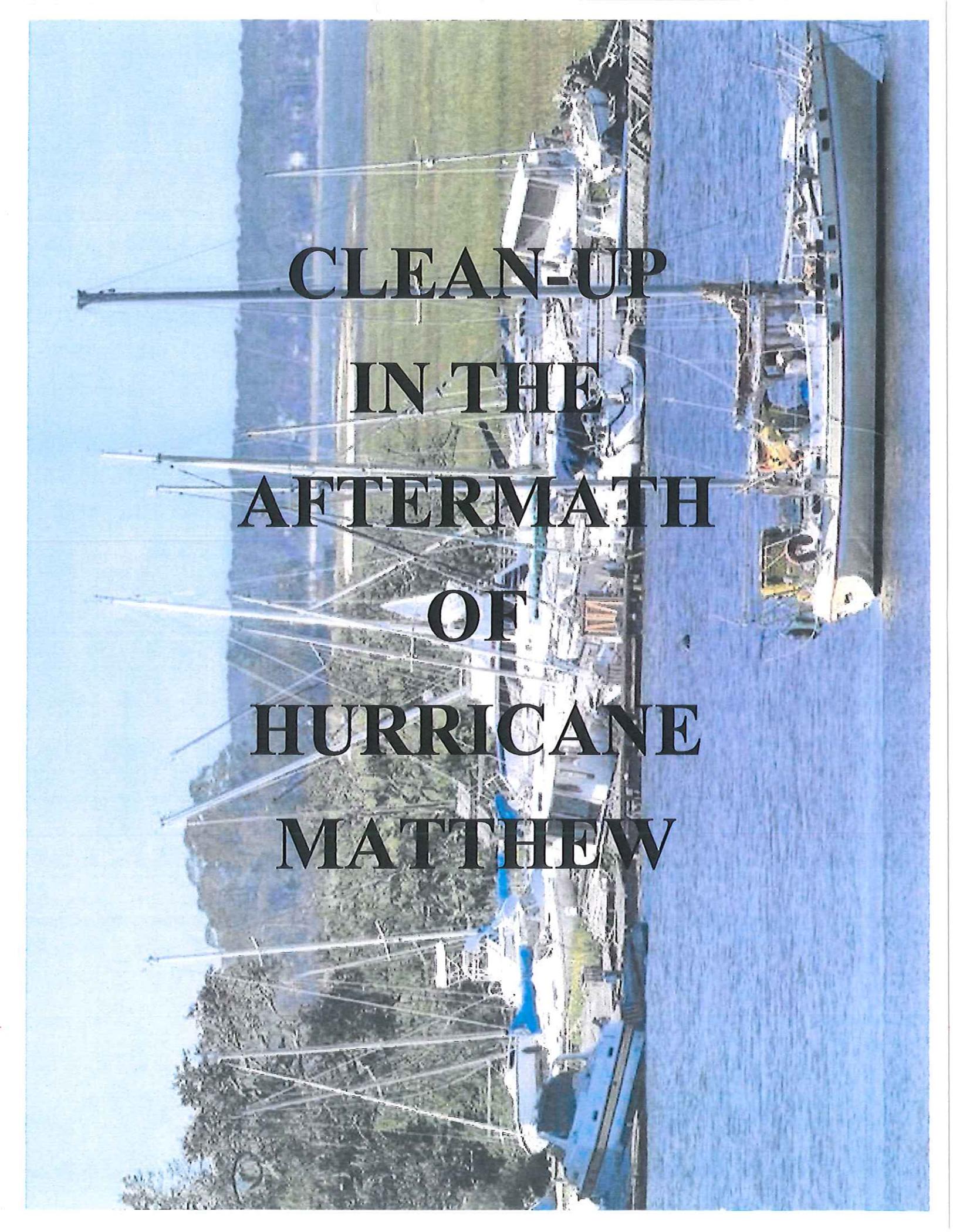
**2018 SC BAR CONVENTION**

**Government Law Section**

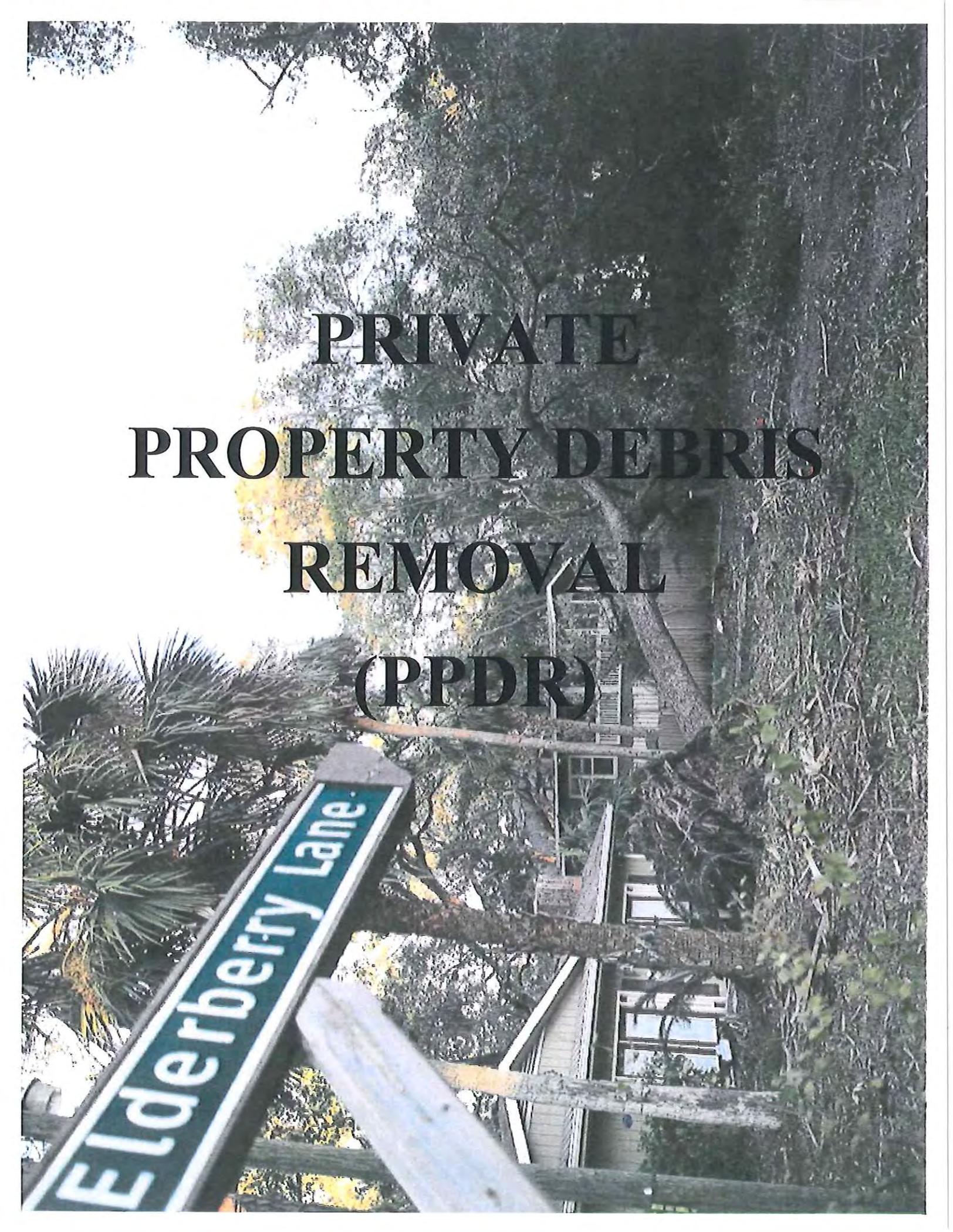
**Friday, January 19**

Beaufort County Case Study: The Clean-Up  
from Hurricane Matthew

*Thomas J. Keaveny II*



**CLEAN-UP  
IN THE  
AFTERMATH  
OF  
HURRICANE  
MATTHEW**

A photograph of a residential property. In the foreground, a green street sign with white lettering reads "Elderberry Lane". The sign is mounted on a wooden post. Behind the sign, a house is partially visible, surrounded by dense trees and foliage. The house has light-colored siding and several windows. The trees are mostly green, with some yellowing leaves visible, suggesting an autumn setting. The overall scene is a residential street with a house and a sign.

**PRIVATE  
PROPERTY DEBRIS  
REMOVAL  
(PPDR)**



COUNTY COUNCIL OF BEAUFORT COUNTY  
OFFICE OF THE COUNTY ADMINISTRATOR

GARY KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING  
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2056  
FAX: (843) 255-9403  
[www.bcgov.net](http://www.bcgov.net)

JOSHUA A. GRUBER  
DEPUTY COUNTY ADMINISTRATOR/  
SPECIAL COUNSEL

THOMAS J. KEAVENY, II  
COUNTY ATTORNEY

October 12, 2016

Mr. Kim Stenson, Director  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, SC 29172

Dear Mr. Stenson:

Hurricane Matthew's high winds, storm surge, and riverline flooding have led to massive quantities of vegetative and construction and demolition debris throughout the State of South Carolina, and particularly in the state's coastal counties. In response to the widespread public health and safety threats that the debris poses in our whole community, we have activated our Debris Management Plan which calls for countywide debris removal operations to begin immediately in an effort to expedite recovery and eliminate these health and safety threats.

Due to the current rules in place under the Federal Emergency Management Agency (FEMA) Public Assistance Program and Procedures Guide (January 2016), we are unable to receive federal reimbursement for providing debris removal along rights-of-way in gated communities and private roads with multiple residents. We respectfully request the South Carolina Emergency Management Division (SCEMD) support the County's request for a waiver of this regulation for the Hurricane Matthew debris removal operations in Beaufort County and statewide.

We request SCEMD and FEMA to immediately approve this waiver due to the following reasons:

- We believe that because it is our legal responsibility to provide essential services to protect the life, health and safety – such as law enforcement, fire protection and emergency medical services for all county residents, the debris that accumulates or has been deposited on these rights-of-way impedes our ability to effectively provide these services equally to all our residents. There should be no difference in our ability to receive reimbursement for these efforts.
- We are beginning debris removal operations immediately thus expediting recovery in our community. However, because of this rule, the removal of debris on these rights-

OFFICE OF THE COUNTY ADMINISTRATOR

Mr. Kim Stenson  
October 12, 2016  
Page 2

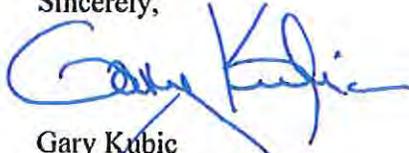
of-way could be delayed, and our ability to serve the whole community is inhibited. By approving this request, we will be able to execute our debris management plan more efficiently and accelerate recovery.

- Recently, in August 2016, due to the State of Louisiana following DR-4277-LA, FEMA's Federal Coordinating Officer (FCO) granted this waiver for communities to be reimbursed for debris removal along rights-of-way in gated communities and private roads. We believe that the debris quantities that have been generated by Hurricane Matthew statewide are comparable to that following the Louisiana flood and our state would benefit from this waiver.

It is for these reasons, we respectfully request that the State support our request for a waiver from FEMA and provide federal reimbursement for debris removal operations.

Should you have any questions about this request, please contact either Eric Larson, Director of Environmental Engineering at (843) 255-2812, or James Minor, Solid Waste Manager at (843) 255-2735.

Sincerely,



Gary Kubic  
County Administrator

cc: Members of Beaufort County Council  
Members of Beaufort County Legislative Delegation  
Joshua Gruber, Deputy County Administrator  
Eric Larson, Director, Environmental Engineering  
James Minor, Solid Waste Manager  
Billy Keyserling, Mayor, City of Beaufort  
William Prokop, City Manager, City of Beaufort  
David Bennett, Mayor, Town of Hilton Head Island  
Stephen Riley, Town Manager, Town of Hilton Head Island  
Samuel Murray, Mayor, Town of Port Royal  
Van Willis, Town Manager, Town of Port Royal  
Lisa Sulka, Mayor, Town of Bluffton  
Marc Orlando, Town Manager, Town of Bluffton  
Jerry Cook, Mayor, Town of Yemassee  
Robert Clark, SCDOT District 6 Engineering Administrator



U.S Department of Homeland Security  
FEMA Initial Operating Facility  
FEMA-4286-DR-SC  
2779 Fish Hatchery Road  
West Columbia, SC 29172



**FEMA**

October 17, 2016

Mr. Kim Stenson, Director  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, SC 29172

County Council of Beaufort County  
Office of the County Administrator  
Administration Building  
Beaufort County Government-Robert Smalls Complex  
Attn: Gary Kubic, County Administrator  
100 Ribaut Road  
Post Office Drawer 1228  
Beaufort, SC 29901-1228

Reference: Gary Kubic, Beaufort County Administrator, Request for Approval of Private Property Debris Removal (PPRD) under FEMA-4286-DR-SC.

Dear Mr. Stenson and Mr. Kubic:

This letter is in response to your letter of October 12, 2016 requesting Private Property Debris Removal (PPDR) from gated communities and private roads under FEMA's Public Assistance program for Beaufort County.

Having reviewed the request from Beaufort County, FEMA requires additional information before approving Private Property Debris Removal for this areas declared under FEMA-4286-DR-SC.

In general, the cost of debris removal on private property, including gated communities and private roads, is ineligible for FEMA assistance because it is the responsibility of the individual property owners or the home owners association and not in the public interest, as defined by Stafford Act § 407, 42 U.S.C. § 5173, and 44 CFR § 206.224(b). However, when a large-scale disaster deposits such massive amounts of debris within gated communities and private roads that life, public health, safety, improved property, or the community's economic recovery is threatened, the costs of debris removal from gated communities and private roads may be eligible by FEMA under its Public Assistance Program.

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 17, 2016  
Page 2

In order for FEMA to approve the removal of debris placed on the right-of-ways (ROWs) in gated communities or private roads under FEMA regulations and the PPDR policy, it is the potential applicant's responsibility to justify that PPDR is in the public interest. The justification must meet the criteria as set forth in 44 CFR § 206.224(a).

*"Such removal is in the public interest when it is necessary to (1) Eliminate immediate threats to life, public health, and safety; or (2) Eliminate immediate threats of significant damage to improved public or private property; or (3) Ensure economic recovery of the affected community to the benefit of the community-at-large... "*

\* In this case, FEMA is unaware if any formal Declaration of Public Health Emergency has occurred. This includes from either the State or local community. If available, please forward any such documentation.

FEMA will also need the following information in order to review the pending request for PPDR.

- A detailed explanation documenting the State or local government's legal responsibility and authority to enter private property. It must specifically address the authority and responsibility to remove debris from any gated community or private road and confirmation that all legal processes such as rights-of-entry will be satisfied. The documentation must include the specific adopted code or ordinance that gives the jurisdiction authority to enter private property to remove an immediate threat (44 CFR 206.223(a)(3); 4 CFR 206.221(c); and 44 CFR 206.225(a)(3)).
- All involved parties must indemnify the Federal government and its employees, agents and contractors from any claims arising from removal of debris from private property. (44 CFR 206.9). FEMA can provide acceptable language examples.
- The potential applicant must identify all neighborhoods and the road names located in the communities it believes would qualify for PPDR.
- Where applicable, potential applicants should also identify the distance that the rights of way extend beyond the center of each identified road.

Before approval of this PPDR request, FEMA may require a validation of each road identified by the potential applicants. Additionally, the potential applicant must develop detailed documentation and recordkeeping procedures of each property owner's or Home Owners Association insurance coverage to ensure that FEMA's funding does not constitute a duplication of benefits.

Sincerely,



W. Michael Moore  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4286-DR-SC



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Wednesday, October 19, 2016 1:26 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Hurricane Matthew and Private Property Debris Removal (PPDR)  
**Attachments:** SKM\_C224e16101913200.pdf

Randy:

Attached is a copy of the State of Public Health Emergency which the State of Louisiana declared and which has been forwarded to us as an example of actions the State of Louisiana took (I understand) in an order to get FEMA assistance to private communities. Also attached is SC Code §25-1-440(d) and (e) which I think may allow Governor Haley to declare a public health emergency in order to satisfy FEMA's requirements so we can get FEMA assistance in our private communities.

I plan to attend the telephone conference which is to take place later this afternoon.

Tom

**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



---

**From:** Keaveny, Thomas  
**Sent:** Wednesday, October 19, 2016 11:31 AM  
**To:** [REDACTED]  
**Subject:** Hurricane Matthew and Private Property Debris Removal (PPDR)

Randy:



**Executive Department**

**PROCLAMATION NUMBER 116 JBE 2016**

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***STATE OF PUBLIC HEALTH EMERGENCY***

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- WHEREAS,** pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 *et seq.*, the Governor declared a state of emergency in Proclamation No. 111 JBE 2016, which is currently in effect;
- WHEREAS,** during this emergency, some areas of the state received tremendous amounts of rainfall, causing rivers to rise rapidly and significant localized flooding;
- WHEREAS,** tens of thousands of homes and businesses were inundated within hours, with more than a half-dozen river gauges registering record highs, in some cases by as much as six feet;
- WHEREAS,** this flooding is a public health threat to citizens and communities across southern Louisiana and creates conditions which place lives and property in the State of Louisiana in jeopardy;
- WHEREAS,** in homes and businesses that are flooded or otherwise affected by the floodwaters, mold can begin to grow within forty-eight hours from when flooding first occurs;
- WHEREAS,** exposure to mold can lead to both immediate and potentially long term health issues, and there is a need to remove mold before a home can be re-inhabited; and
- WHEREAS,** Louisiana Revised Statute 29:766 authorizes a declaration of a state of public health emergency if the conditions found in La. R.S. 29:762 have occurred or the threat thereof is imminent.

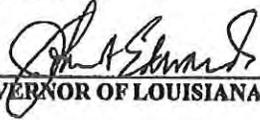
**NOW THEREFORE, I, JOHN BEL EDWARDS,** Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

**SECTION 1:** Pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, and more specifically La. R.S. 29:724, and the Louisiana Health Emergency Powers Act, La. R.S. 29:760 *et seq.*, and more specifically, La. R.S. 29:766, a state of public health emergency is hereby declared for the following parishes affected by the historic flooding: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge and West Feliciana.

**SECTION 2:** This state of emergency extends from Monday, August 22, 2016 through Saturday, September 10, 2016, unless terminated sooner.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22<sup>nd</sup> day of August, 2016.



  
\_\_\_\_\_  
GOVERNOR OF LOUISIANA

ATTEST BY  
THE GOVERNOR

  
\_\_\_\_\_  
SECRETARY OF STATE

# PUBLIC HEALTH EMERGENCY

*See 25-1-440(d) & (e)  
"Public Health Emergency  
Plan Committee"*

## ARTICLE 4

### South Carolina Emergency Management Division

**SECTION 25-1-420.** South Carolina Emergency Management Division of Office of Adjutant General; administration; duties.

There is established within the office of the Adjutant General the South Carolina Emergency Management Division.

The division must be administered by a director appointed by the Adjutant General, to serve at his pleasure, and such additional staff as may be employed or appointed by the Adjutant General.

The division is responsible for the implementation of the following:

- (a) coordinating the efforts of all state, county, and municipal agencies and departments in developing a State Emergency Plan;
- (b) conducting a statewide preparedness program to assure the capability of state, county, and municipal governments to execute the State Emergency Plan;
- (c) establishing and maintaining a State Emergency Operations Center and providing support of the state emergency staff and work force;
- (d) establishing an effective system for reporting, analyzing, displaying, and disseminating emergency information; and
- (e) establishing an incident management system incorporating the principles of the National Incident Management System (NIMS) that provides for mitigation, preparedness, response to, and recovery from all man-made and natural hazards.

HISTORY: 1979 Act No. 199, Part II, Section 21; 2002 Act No. 190, Section 1; 2002 Act No. 339, Section 15; 2002 Act No. 348, Section 2; 2008 Act No. 296, Section 2, eff June 11, 2008.

#### Effect of Amendment

The 2008 amendment added item (e) and made nonsubstantive changes.

**SECTION 25-1-430.** Definitions.

As used in this article:

- (a) "Emergency preparedness" shall mean the extraordinary actions of government in preparing for and carrying out all functions and operations, other than those for which the military is primarily responsible, when concerted, coordinated action by several agencies or departments of government and private sector organizations are required to prevent, minimize, and repair injury and damage resulting from a disaster of any origin.
- (b) "Emergency" shall mean actual or threatened enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot, or other public calamity.
- (c) "South Carolina Emergency Management (Civil Defense) Organization" shall mean all officers and employees of state government, county government, and municipal government, together with those volunteer forces enrolled to aid them in an emergency and persons who may by agreement or operation of law be charged with duties incident to protection of life and property of this State during emergencies.

HISTORY: 1979 Act No. 199, Part II, Section 21; 2002 Act No. 190, Section 2; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

## Governor – State of Emergency, Public Health Emergency

### SECTION 25-1-440. Additional powers and duties of Governor during declared emergency.

(a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

- (1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists;
- (2) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly;
- (3) suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- (4) utilize all available resources of state government as reasonably necessary to cope with the emergency;
- (5) transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable;
- (6) compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order;
- (7) direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein;
- (8) within the limits of any applicable constitutional requirements and when a major disaster or emergency has been declared by the President to exist in this State:
  - (i) request and accept a grant by the federal government to fund financial assistance to individuals and families adversely affected by a major disaster, subject to terms and conditions as may be imposed upon the grant but only upon his determination that the financial assistance is essential to meet disaster-related expenses or serious needs that may not be met otherwise from other means of assistance;
  - (ii) enter into an agreement with the federal government, through an officer or agency thereof, pledging the State to participate in the funding of the financial assistance authorized in subitem (i) of this item, under a ratio not to exceed twenty-five percent of the assistance;
  - (iii) make financial grants to meet disaster-related, necessary expenses or serious needs of individuals or families adversely affected by a major disaster which may not otherwise be adequately met from other means of assistance. No individual or family may receive grants aggregating more than ten thousand dollars with respect to any single major disaster subject to the limitations contained in subitem (ii) of this item. The ten thousand-dollar limit annually must be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; and

(iv) promulgate necessary regulations for carrying out the purposes of this item;

(9) authorize, by executive order, a party to exceed the terms of a curfew if:

(i) the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official; and

(ii) exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public. As defined in this section, an emergency commodity means a commodity needed to sustain public health and well-being as determined by a local authority. Nothing in this section may be construed to supersede the authority of the Governor under Section 25-1-440;

(10) by executive order, authorize operators of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.

(b) The Governor is responsible for the development and coordination of a system of Comprehensive Emergency Management that includes:

(1) provisions for mitigation, preparedness, response, and recovery in anticipated and actual emergency situations;

(2) an incident management system that establishes procedures for response and recovery operations at all levels of government from the municipality, special purpose district, through the county to the State, according to the incident scene location.

(c)(1) Any person who fraudulently or wilfully makes a misstatement of fact in connection with an application for financial assistance made available pursuant to item (8) of subsection (a) upon conviction of each offense, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

(2) Any person who knowingly violates any regulation promulgated pursuant to item (8) of subsection (a) is subject to a civil penalty of not more than two thousand dollars for each violation.

(3) A grant recipient who misapplies financial assistance made available by item (8) of subsection (a) is subject to a civil penalty in an amount equal to one hundred fifty percent of the original grant amount.

(d)(1) The Governor must appoint the Public Health Emergency Plan Committee, consisting of representatives of all state agencies relevant to public health emergency preparedness, and, in addition, a licensed physician from the private sector specializing in infectious diseases, a hospital infection control practitioner, a medical examiner, a coroner from an urban county or the coroner's designee, a member of the judiciary, and other members as may be considered appropriate.

(2) Prior to the declaration of a public health emergency, the Governor must consult with the Public Health Planning Committee and may consult with any public health agency and other experts as necessary. Nothing herein shall be construed to limit the Governor's authority to act without such consultation when the situation calls for prompt and timely action.

(e) The state of public health emergency must be declared by an executive order that indicates the nature of the public health emergency, the areas that are or may be threatened, and the conditions that have brought about the public health emergency. In addition to the powers and duties provided in this article and in Article 7, Chapter 3 of Title 1, the declaration of a state of public health emergency authorizes implementation of the provisions of Chapter 4 of Title 44, the Emergency Health Powers Act. The declaration authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act.

HISTORY: 1979 Act No. 199, Part II, Section 21; 1985 Act No. 110, Sections 2, 3; 1989 Act No. 189, Part II, Section 38A; 2002 Act No. 339, Section 16; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

## **DHEC – Authority Following Declaration of Emergency**

**SECTION 44-1-110. Duties of Department in regard to public health, in general.**

The Department of Health and Environmental Control is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.

**SECTION 44-4-130. Definitions.**

As used in the chapter:

(P) "Public health emergency" means the occurrence or imminent risk of a qualifying health condition.

(R) "Qualifying health condition" means:

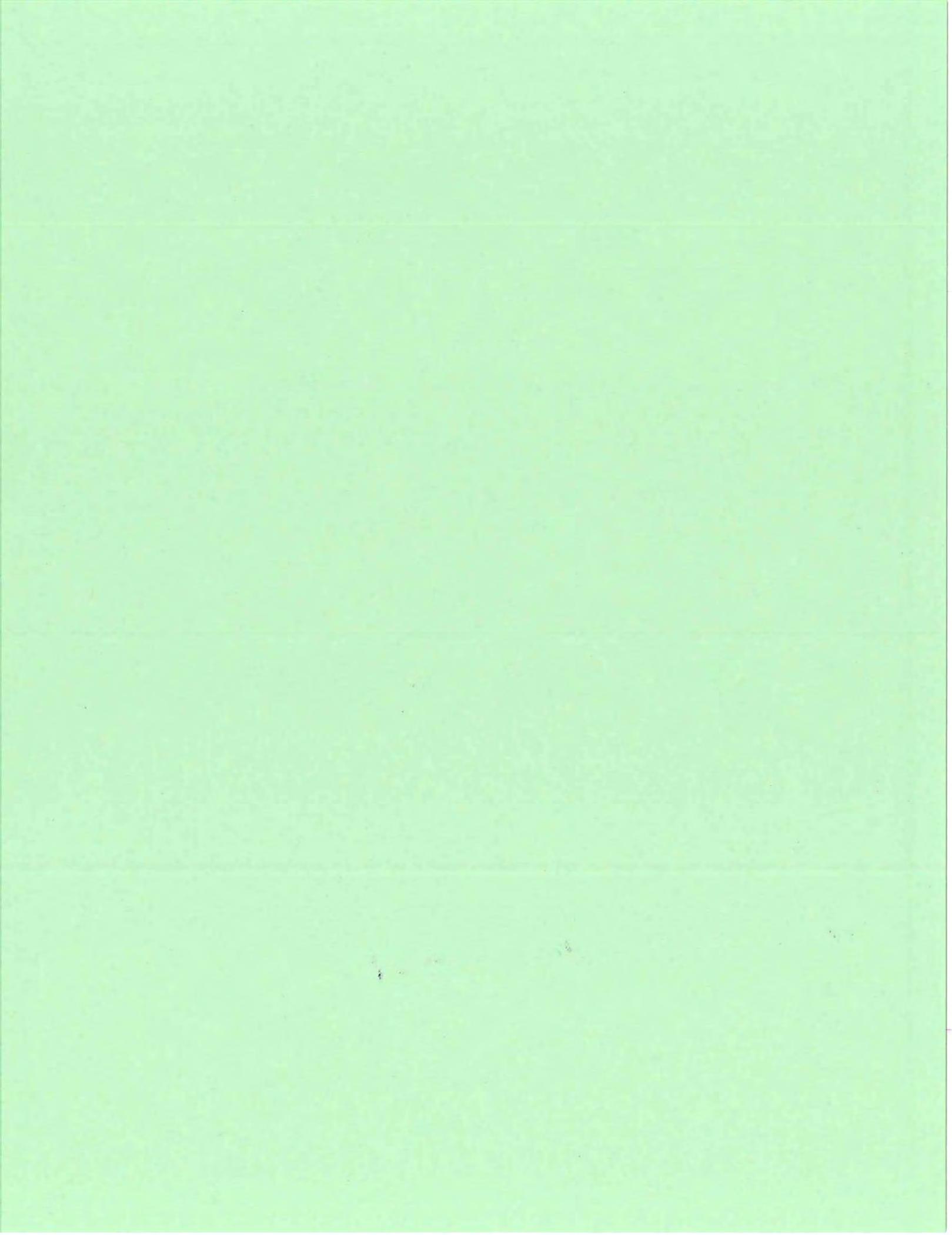
(1) a natural disaster;

**SECTION 44-4-300. Powers over dangerous facilities and materials.**

After the declaration of a state of public health emergency, DHEC may exercise, in coordination with state agencies, local governments, and other organizations responsible for implementation of the emergency support functions in the State Emergency Operations Plan for handling dangerous facilities and materials, for such period as the state of public health emergency exists, the following powers over dangerous facilities or materials:

(1) to close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health; and

(2) to decontaminate or cause to be decontaminated, any material of which there is reasonable cause to believe that it may endanger the public health.



**Keaveny, Thomas**

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**From:** Keaveny, Thomas  
**Sent:** Wednesday, October 19, 2016 4:21 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Hurricane Matthew and Private Property Debris Removal (PPDR)

Randy and Arrigo:

I spoke to Elizabeth Ryan (State EMD) a few minutes ago. Apparently, Elizabeth's office followed up with the information which I sent Randy (and copied Elizabeth on) earlier today. 1. She has been in touch with the governor's office about declaring a public health emergency. The governor's office is exploring it. In the meantime, Elizabeth suggested I start a parallel path 2. with DHEC under Title 44. I am waiting for Elizabeth to email me the contact info for a member of DHEC who can help. If you guys have one, please send it asap.

I'm not sure which office will declare the emergency (Governor Haley or DHEC) but once we get that done, I think the next thing will be either for Paul Sommerville to issue a Proclamation of Public Health Emergency under Code of Ordinance 22-28 or CC to pass a Resolution declaring the same during Monday's meeting. The idea being this will give us (County government) the basis to enter private property to eradicate public health emergencies because such emergencies transcend public/private boundaries. Elizabeth seemed ~~A~~ receptive to the idea.

I'll keep you posted.

Tom

**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414





**Keaveny, Thomas**

---

**From:** Ryan, Elizabeth [REDACTED]  
**Sent:** Wednesday, October 19, 2016 5:08 PM  
**To:** Keaveny, Thomas  
**Cc:** [REDACTED]  
**Subject:** Public Health Preparedness Contact

Thomas,

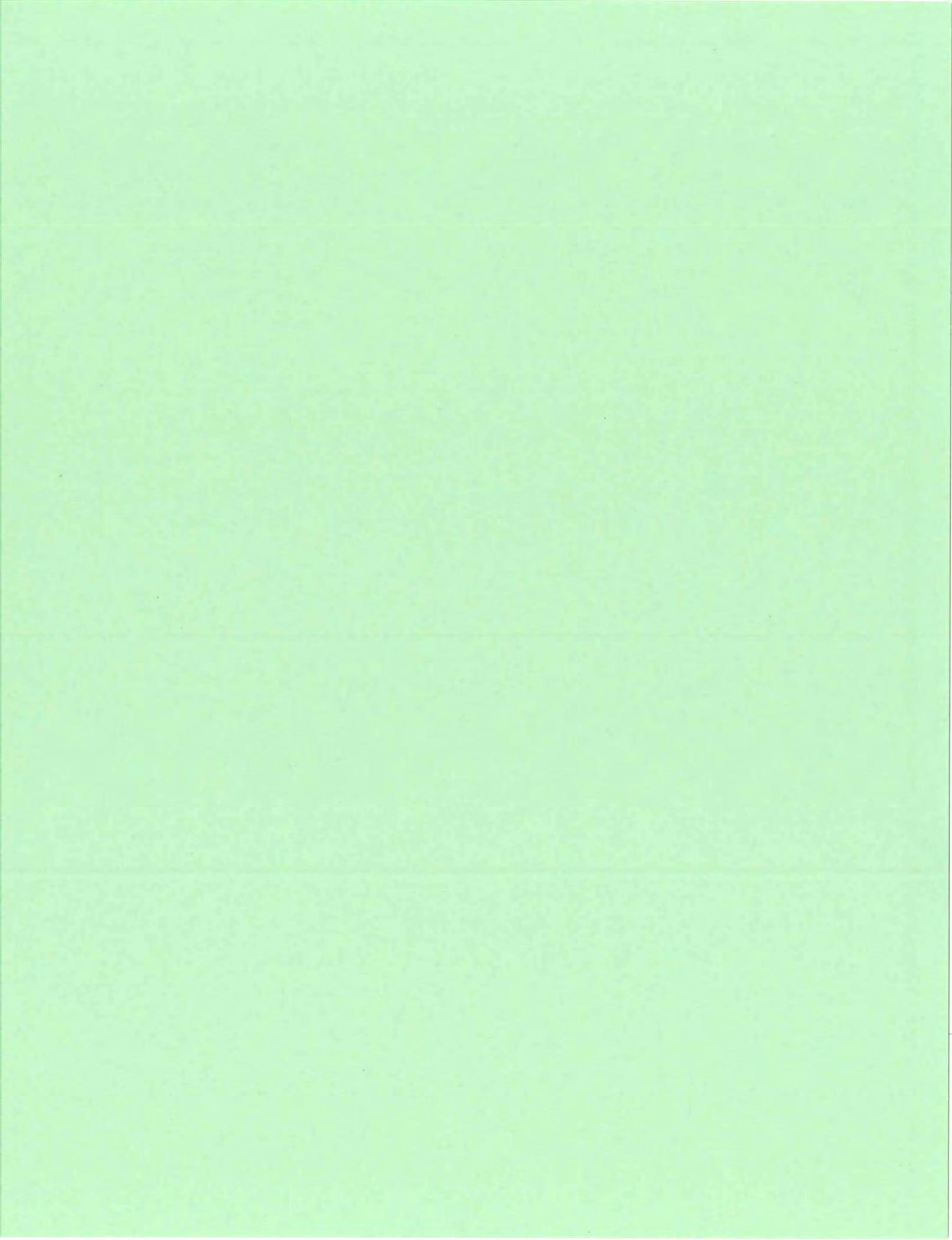
It was nice to speak with you this afternoon. After our conversation it occurred to me that the correct point of contact may be DHEC's Office of Public Health Preparedness. They may have the most visibility on the parameters of issuance of a declaration of a Public Health Emergency. Mike Elieff is the Director of the Office and I have listed his contact information below and copied him on this email. I have also copied the Office's Deputy Director on this email and provided his contact information below. As we continue to navigate this process, please don't hesitate to contact me.

Michael A. Elieff  
Director  
Office of Public Health Preparedness  
S.C. Dept. of Health & Environmental Control  
Office: (803) 898-3266  
Executive Assistant: Sharon Lynch (803) 898-3370

Jamie Blair, CEM  
Deputy Director  
Office of Public Health Preparedness  
S.C. Dept. of Health & Environmental Control  
Office: (803) 898-1746  
[REDACTED]

Thanks,  
Elizabeth

Elizabeth M. Ryan  
Chief of Recovery and Mitigation  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road, West Columbia, SC 29172  
Office - 803-737-8774  
[REDACTED]



Keaveny, Thomas

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**From:** Keaveny, Thomas  
**Sent:** Wednesday, October 19, 2016 7:08 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Public Health Preparedness Contact

Elizabeth:

Thank you.

Mike and/or Jamie, Beaufort County (and other counties) were hit hard by wind and water in Hurricane Matthew which led to such an enormous amount of vegetative debris on both public and private roads, rights-of-way and property that it has created a public safety emergency and will create an even greater threat to public safety as time goes on. By way of example, just this morning we learned of a man (in a private community) who was attacked by bees which had nested in a debris pile. The man's reaction was so severe he required immediate medical attention.

In an effort to receive assistance from FEMA in the removal of debris from private property (termed Private Property Debris Removal or PPDR by FEMA) it is our "responsibility to justify that PPDR is in the public interest". In a recent letter we received from W. Michael Moore, Federal Coordinating Officer, Disaster Recovery Manager for FEMA, the justification must meet criteria as set forth in 44 CFR §206.224(a) which provides:

*"Such removal is in the public interest when it is necessary to (1) eliminate immediate threats to life, public health, and safety; or (2) eliminate immediate threats of significant damage to improved public and private property; or (3) ensure economic recovery of the affected community to the benefit of the community at large..."*

FEMA has indicated "it is unaware of any formal Declaration of Public Health Emergency" at either the state or local level. We would like the state to declare a public health emergency so we can start satisfying FEMA's requirements. We believe the governor has the authority to make the declaration under SC Code Ann §25-1-440(d) and (e). We believe DHEC has the authority to make the declaration under SC Code Ann §44-4-130. We need your assistance in having the declaration issued.

On the local level, we believe the Beaufort County Code of Ordinances gives the Chairman of County Council and County Council authority to make such a declaration. We are pursuing such a declaration at this level. We need to coordinate such a declaration at the state level.

I look forward to talking to you in the morning.

Tom

**Thomas J. Keaveny II**

Beaufort County Attorney

P. O. Drawer 1228

Beaufort, SC 29901-1228

Tel: (843) 255-2025

Fax: (843) 255-9414



---

**From:** Ryan, Elizabeth [REDACTED]  
**Sent:** Wednesday, October 19, 2016 5:08 PM [REDACTED]  
**To:** Keaveny, Thomas [REDACTED]  
**Subject:** Public Health Preparedness Contact

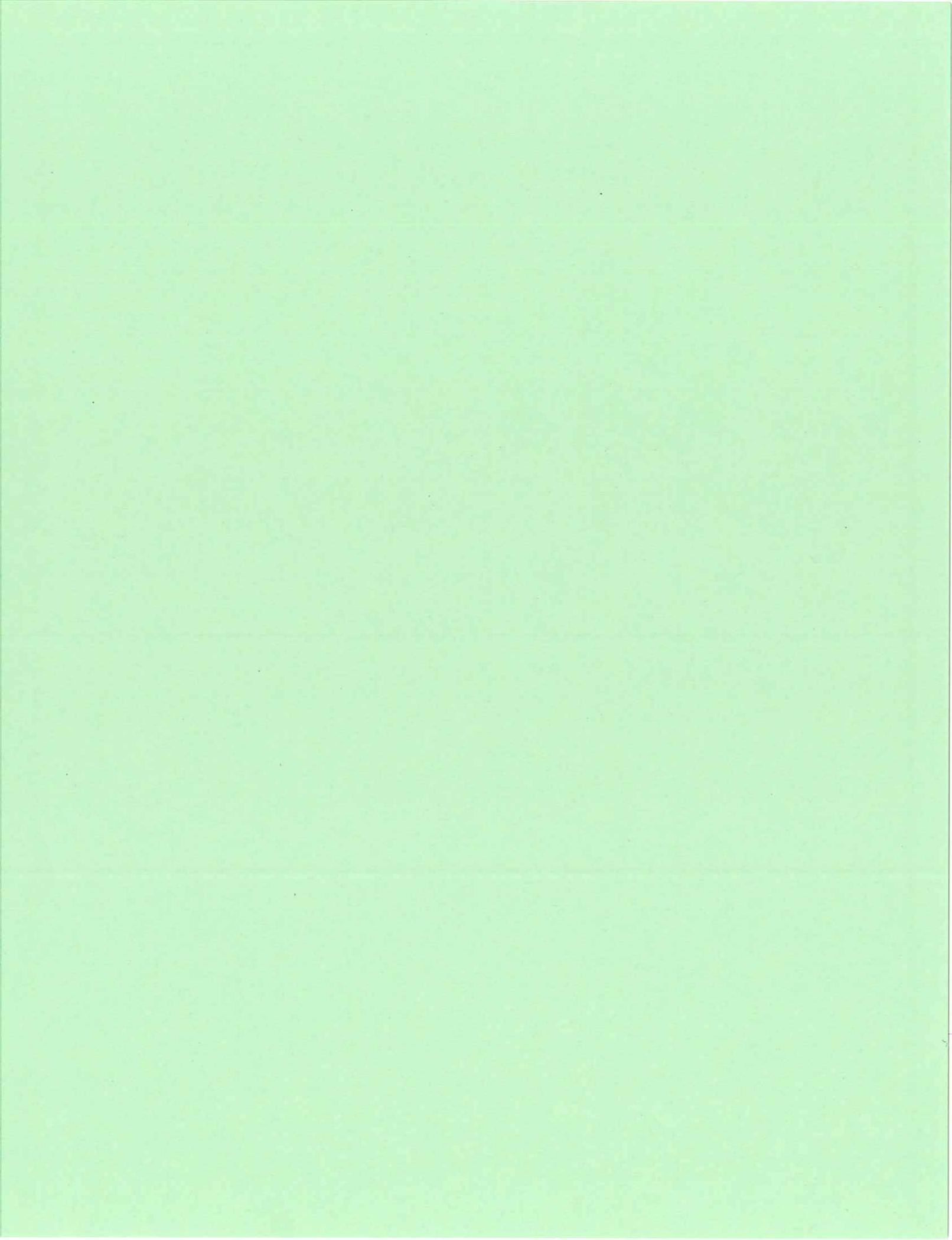
Thomas,

It was nice to speak with you this afternoon. After our conversation it occurred to me that the correct point of contact may be DHEC's Office of Public Health Preparedness. They may have the most visibility on the parameters of issuance of a declaration of a Public Health Emergency. Mike Elieff is the Director of the Office and I have listed his contact information below and copied him on this email. I have also copied the Office's Deputy Director on this email and provided his contact information below. As we continue to navigate this process, please don't hesitate to contact me.

Michael A. Elieff  
Director  
Office of Public Health Preparedness  
S.C. Dept. of Health & Environmental Control  
Office: (803) 898-3266  
Executive Assistant: Sharon Lynch (803) 898-3370

Jamie Blair, CEM  
Deputy Director  
Office of Public Health Preparedness  
S.C. Dept. of Health & Environmental Control  
Office: (803) 898-1746  
[REDACTED]

Thanks,  
Elizabeth



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Thursday, October 20, 2016 8:40 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Public Health Emergency Order

Mike:

Thank you for replying to my email so quickly. As I indicated, the situation is urgent and getting more urgent daily.

I look forward to talking to you.

Tom

**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



---

**From:** Elieff, Mike A. [REDACTED]  
**Sent:** Thursday, October 20, 2016 8:15 AM  
**To:** Keaveny, Thomas  
**Cc:** Lake, Susan; Finklea, Sam  
**Subject:** Public Health Emergency Order

Good Morning Mr. Keaveny,

We have received your request. We will get back with you as soon as we can.

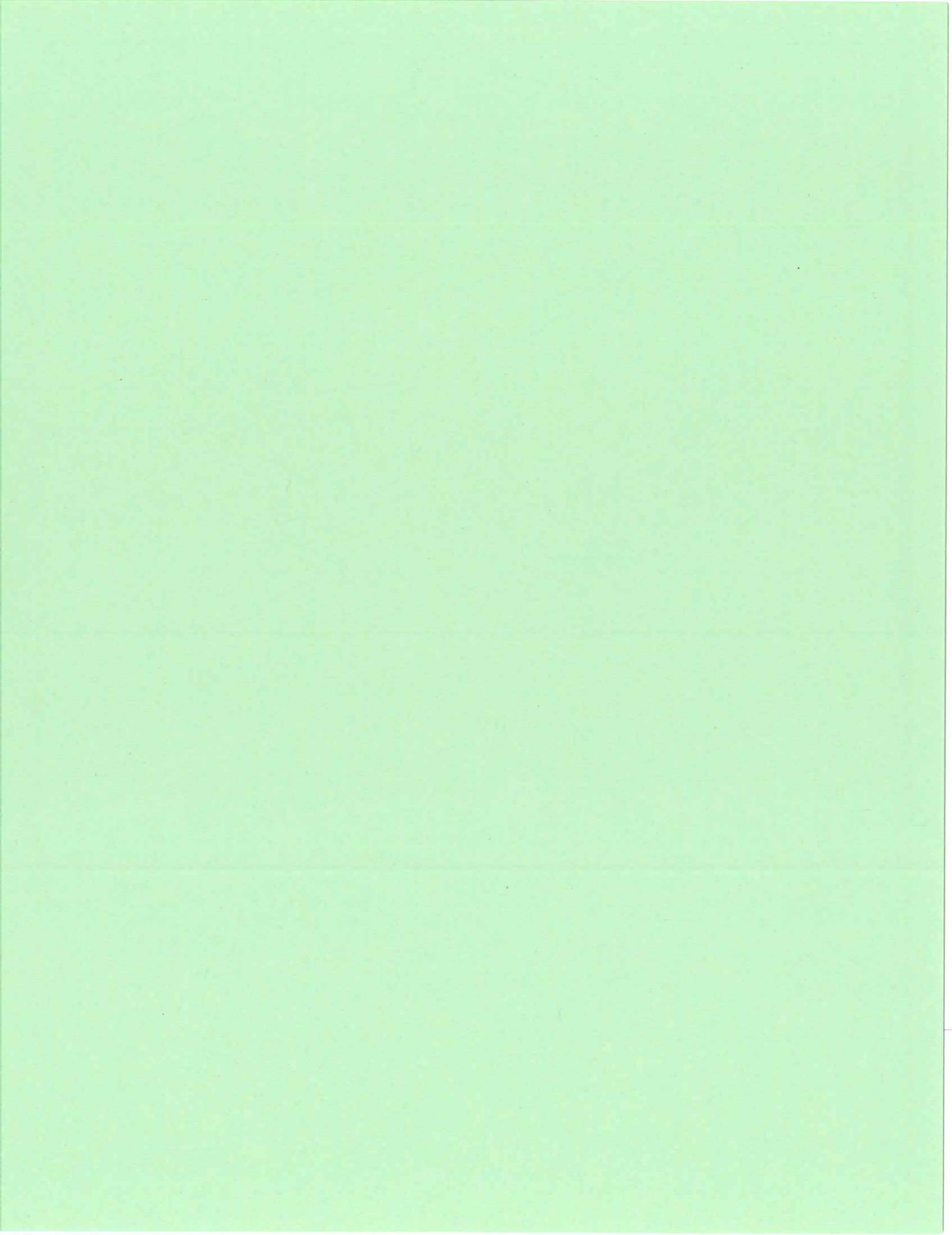
Regards,

Mike

Michael A. Elieff  
Director  
Office of Public Health Preparedness  
S.C. Dept. of Health & Environmental Control  
Office: (803) 898-3266  
Executive Assistant: Sharon Lynch (803) 898-3370  
Connect: [www.scdhec.gov](http://www.scdhec.gov) [Facebook](#) [Twitter](#)



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**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Thursday, October 20, 2016 12:00 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: FEMA fact sheets  
**Attachments:** SKM\_C224e16102011530.pdf  
  
**Importance:** High

Gail:

Thank you very much for the two fact sheets. We have already started distributing them.

I spoke a few minutes ago with counsel for our Department of Health and Environmental Concern (DHEC). In an effort to avoid further delay by putting together a presentation for her director or one together for the governor, she asks me if the attached Executive Order, which Governor Haley issued Tuesday, will satisfy FEMA's requirements for a declaration at the state level (in order to move forward on the (PPDR)). If it does, then we won't keep pushing for an additional declaration from the state, we can focus our attention on our local County Council.

I look forward to hearing from you soon.

Tom

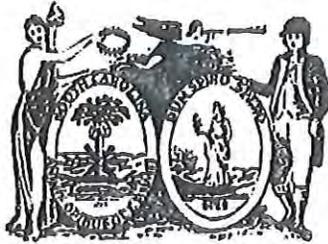
**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



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**From:** Hoopes, Gayle [<mailto:Gayle.Hoopes@fema.dhs.gov>]  
**Sent:** Thursday, October 20, 2016 11:24 AM

State of South Carolina  
Executive Department



FILED

OCT 18 2016

Mark Hammond  
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2016-39

WHEREAS, on October 11, 2016, the President of the United States of America issued a Major Disaster Declaration for the State of South Carolina due to the effects of Hurricane Matthew, which included in certain parts of the state 6.2 feet of storm surge, 10 to 15 inches of rain, 60 to 88 miles per hour wind gusts, and river levels 1.85 to 3.89 feet above major flood stage; and

WHEREAS, damage from downed trees, other debris, and flooding has caused more than 481 road and bridge closures, more than 861,000 power outages, and damage to more than 1,800 homes, approximately 675 of which are uninhabitable; and

WHEREAS, the State continues to support counties or local governments in response and recovery operations, fulfilling more than 790 requests for additional resources or assistance to address infrastructure, public safety, and public health concerns; and

WHEREAS, while local, state, and federal officials continue to conduct damage assessments throughout the central and coastal areas, there are parts of the state still conducting limited evacuations and life safety operations, especially within the river basins of the Pee Dee region; and

WHEREAS, it is necessary to maintain the activation of the National Guard and other state emergency operations to support the health, safety, and welfare of the public.

NOW THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of the State of South Carolina, effective at 12:01 a.m. on Wednesday, October 19, 2016, I hereby declare that a State of Emergency exists in South Carolina. I direct that the South Carolina Emergency Operations Plan be placed into effect. I further direct that all prudent measures be taken at the individual, local, and state levels to protect against the ongoing effects of Hurricane Matthew.

Executive Order 2016-39  
October 18, 2016

**FURTHER**, I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty pursuant to my authority under Section 25-1-1840 of the South Carolina Code of Laws, and I will do so by directing the Adjutant General to issue supplemental orders. I further order the activation of the South Carolina National Guard personnel and utilization of appropriate equipment at the discretion of the Adjutant General and in coordination with the Director of the South Carolina Emergency Management Division, to take necessary and prudent actions to assist the citizens of this state.

I also order Dual Status Command to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status) as necessary.

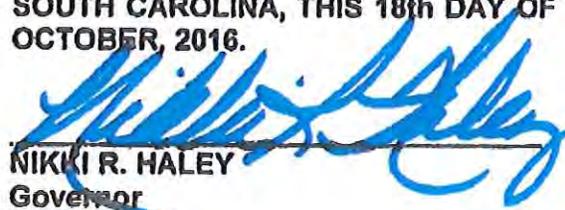
I further order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina be suspended, and State Law Enforcement Division (SLED) shall initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

I also note that the prohibitions against price gouging stated in Section 39-5-145 of the South Carolina Code of Laws are in effect due to the State of Emergency.

Further proclamations and regulations deemed necessary to insure the fullest protection of life and property during this state of emergency shall be issued orally by me and thereafter reduced to writing within the succeeding 24-hour period.



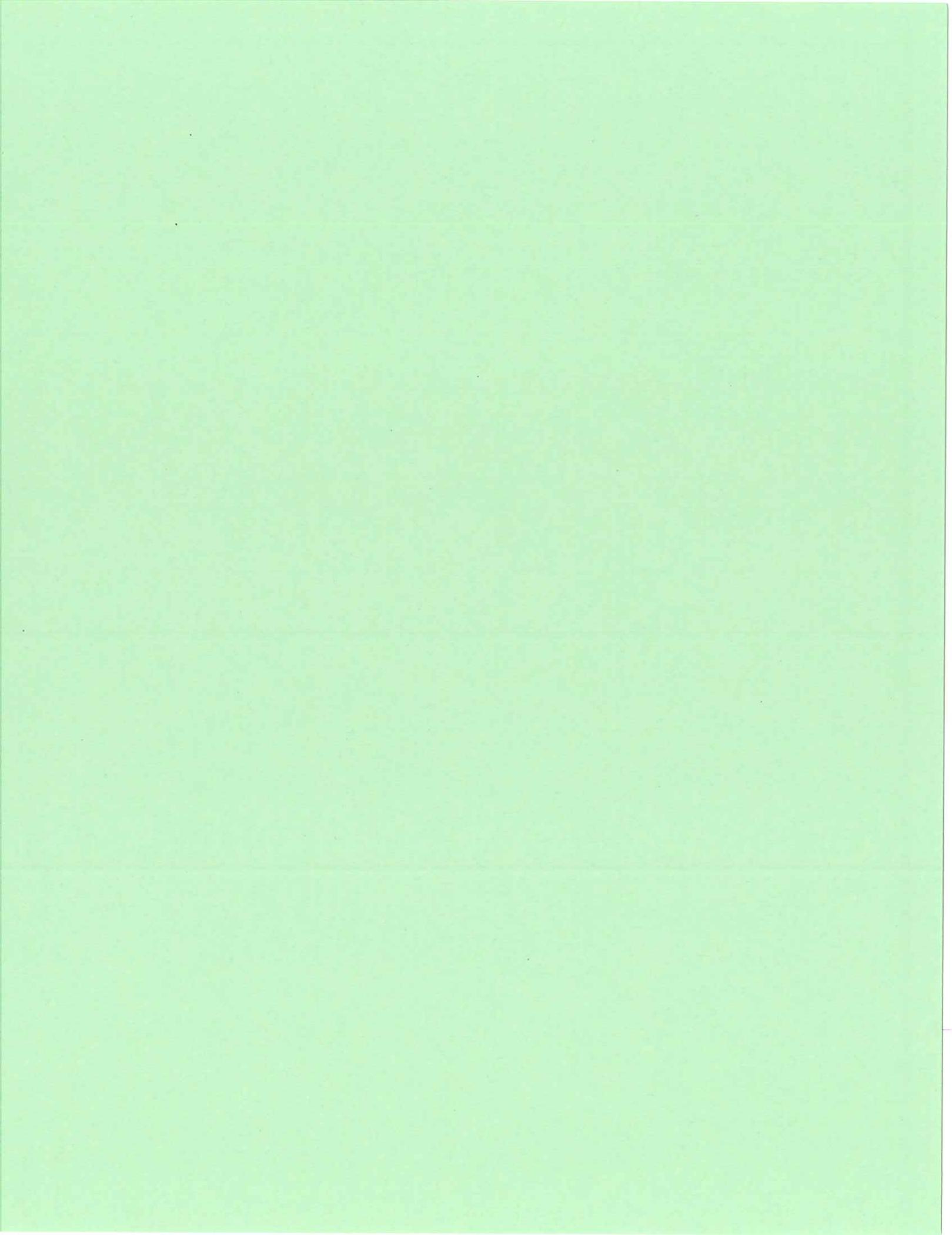
GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 18th DAY OF  
OCTOBER, 2016.

  
NIKKI R. HALEY  
Governor

ATTEST:



MARK HAMMOND  
Secretary of State



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Friday, October 21, 2016 8:56 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: FEMA fact sheets  
**Attachments:** RE: FEMA fact sheets

Elizabeth and Susan:

I am forwarding to both of you a disappointing email I received from FEMA late yesterday afternoon. (I have attached a copy of my email to her which led to the email below.) I will be writing to Gail in a few minutes asking FEMA to reconsider its decision. I don't know if FEMA will reconsider its decision based on the information I provide, nor do I know that the result will be any different even if it does reconsider its decision.

The purpose of sending you Ms. Hoopes email is several-fold. First, I want you to know the steps we are taking to get PPDR approved. Second, I want you to know FEMA has rejected our argument that Governor Haley's latest Executive Order is insufficient in its eyes. Third, I am concerned with Mr. Hoopes statement: "I forwarded it to FEMA's headquarters *and through the state.* According to the feedback I received, apparently this EO was not meant to declare a public health emergency. "

Did the state tell her "this EO was not meant to declare a public health emergency"? If so, that seems to be in conflict with what we're trying to do down here. And we don't know why the state doesn't want to declare a public health emergency given the problems we are having down here. Perhaps it is because there are consequences we're not aware of. Regardless, it concerns us.

I will copy you on my email to Ms. Hoopes but I think we should assume FEMA will stand by the position it staked out yesterday and that we will need the governor or DHEC to declare a public health emergency. We ask that you begin such efforts on your end. In addition to our efforts as stated above, we are currently preparing a Resolution for our County Council to declare a public health emergency in Beaufort County. We expect County Council to pass it during its meeting Monday night.

We appreciate your efforts on our behalf. I look forward to talking to you soon.

Tom

**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228

Tel: (843) 255-2025  
Fax: (843) 255-9414



**From:** Hoopes, Gayle [REDACTED]  
**Sent:** Thursday, October 20, 2016 3:41 PM  
**To:** Keaveny, Thomas  
**Cc:** [REDACTED]  
**Subject:** RE: FEMA fact sheets

Tom,

I had not seen this Executive Order (EO) before you sent it to me. I forwarded it to FEMA's headquarters and through the state. According to the feedback I received, apparently this EO was not meant to declare a public health emergency. Beaufort County should continue to work with DHEC.

Let me know if you have additional questions.

Gayle Hoopes  
Attorney Advisor / Deployable Field Counsel/ Office of Chief Counsel  
DR 4286-SC / EM-3378-SC / Region IV  
[REDACTED]

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**From:** Keaveny, Thomas [<mailto:tkeaveny@bcgov.net>]  
**Sent:** Thursday, October 20, 2016 12:00 PM  
**To:** Hoopes, Gayle [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: FEMA fact sheets  
**Importance:** High

Gail:

Thank you very much for the two fact sheets. We have already started distributing them.



This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Keaveny, Thomas [mailto:tkeaveny@bcgov.net]

Sent: Friday, October 21, 2016 10:26 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: FEMA fact sheets

Gayle:

As I indicated late yesterday afternoon after receiving the email below we are understandably disappointed in FEMA's decision after its initial review of Governor Haley's latest EO regarding Hurricane Matthew. Your statement that "this EO was not meant to declare a public health emergency" puzzles me. I would like to know where you got that information or impression.

I have forwarded your email to the governor's office through our state EMD. I have also forwarded it to SC DHEC. We have asked them to move forward on our request that one of them clearly and unequivocally declare a state of emergency assuming such a declaration is, in fact, what FEMA needs to see.

In the meantime, we respectfully ask FEMA to reconsider its decision. Arguably, FEMA regulations do not require a "public health emergency," They require only an "emergency declaration," a requirement which Governor Haley's EO satisfies. There is a difference and FEMA regulations appear to require only the latter. According to the code, state and local governments are among the entities which are eligible to apply for assistance under the State public assistance grant. See 44 CFR 206.222(a). To be eligible for financial assistance, an item of work must, among other things, "[b]e required as a result of the emergency or major disaster" Id. At 206.223(a) (1) "[b]e located within the *designated area of a major disaster or emergency declaration* . . . ." Id. 206.223(a)(2). FEMA may provide assistance for removal of debris and wreckage from publicly *and privately* owned lands and waters upon determining such removal is in the public interest. See id. 206.224(a).

Removal is in the public interest when it is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety; or
- (2) Eliminate immediate threats to significant damage to improved public or private property;
- (3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or ....

Id. 206.224(1) – (3).

In anticipation of Hurricane Matthew, Governor Haley first declared that a State of Emergency existed in SC on October 4, 2016 at 7:30 a.m. Because emergency declarations last for 15 days unless consented to by the General Assembly, Governor Haley again issued a second declaration. She declared a State of Emergency existed in SC effective 12:01 a.m. on October 19, 2016. That is Executive Order No. 2016-39, the one I sent you yesterday. Executive Order 2016-39 specifically notes "damage from downed trees, other debris, and flooding has caused more than 481 road and bridge closures, more than 861,000 power outages, and damage to more than 1,800 homes, approximately 675 of which are uninhabitable;". Further, the Order reiterates the State's efforts in the responsive and recovery operations in order to support and assist the "**public safety and public health concerns.**" We see think EO 2016-39 meets the requirements of the code.

Additionally, on October 6, 2016, President Obama declared an emergency existed in SC and ordered federal aid to supplement efforts due to emergency conditions resulting from Hurricane Matthew. See <https://www.whitehouse.gov/the-press-office/2016/10/06/president-obama-signs-south-carolina-emergency-declaration>

President Obama's action authorized FEMA to coordinate disaster relief efforts and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act. A FEMA news release acknowledges that several counties, including Beaufort, are designated for assistance for debris removal. See <https://www.fema.gov/news-release/2016/10/18/15-more-south-carolina-counties-eligible-individual-federal-assistance>

Based upon the above, it appears Beaufort County should be eligible to receive public assistance from FEMA for debris removal. First, as a local government, Beaufort County is an eligible recipient. Secondly, the Governor issued an emergency declaration that covers Beaufort County. Finally, debris removal appears to be in the public interest because it is necessary to (1) eliminate immediate threats to life, public health, and safety; (2) eliminate immediate threats of significant damage to improved public or private property; and/or (3) ensure economic recovery of Beaufort to the benefit of the community.

We ask FEMA to reconsider yesterday's decision. We expect Beaufort County Council to declare a public health emergency in the County during its upcoming meeting on Monday night.

Thank you, Gayle.

Tom  
**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025



Keaveny, Thomas

---

**From:** Hoopes, Gayle [REDACTED]  
**Sent:** Saturday, October 22, 2016 6:56 PM  
**To:** Keaveny, Thomas  
**Cc:** [REDACTED]  
**Subject:** Private Property Debris Removal (PPDR) in Beaufort County  
**Attachments:** example DEBRIS ROE 10082016.docx

Tom,

I do apologize if we have had a miscommunication. You are correct, neither FEMA's regulations nor our policy require a declaration of a "public health emergency". As we indicated in our letter dated October 17, 2016, from Mr. W. Michael Moore:

In order for FEMA to approve the removal of debris placed on the right-of-ways (ROWs) in gated communities or private roads under FEMA regulations and the PPDR policy, it is the **potential applicant's responsibility** to justify that PPDR is in the public interest. The justification must meet the criteria as set forth in 44 CFR § 206.224(a).

*"Such removal is in the public interest when it is necessary to (1) Eliminate immediate threats to life, public health, and safety; or (2) Eliminate immediate threats of significant damage to improved public or private property; or (3) Ensure economic recovery of the affected community to the benefit of the community-at-large..." (emphasis added)*

FEMA does not require either the Governor's or SC DHEC to issue such a "Declaration of Public Health Emergency". Some local communities require such a finding in order to activate their local authority to enter and remove debris on private roads and/or gated communities. Some do not. This is completely dependent upon your own local regulations.

1. Some jurisdictions have the authority to issue a local state of emergency, and do so. They have then used this local state of emergency as part of their justification to FEMA that PPDR is in the "public interest". Other jurisdictions have relied on the state's Declaration of Public Health Emergency as part of their justification that PPDR is in the public interest.

2. Note however, that the regulations under 44 CFR § 206.224(a) set forth several different criteria that a local community might choose to justify that PPDR is in the "public interest" in order to qualify for FEMA's assistance. It is up to the local community to demonstrate that PPDR is in the "public interest" as one of the elements in seeking FEMA's approval for PPDR.

3. As described in our letter, in order for private property debris removal (PPDR) to be approved for federal funding, FEMA also requires local communities to collect Right of Entry (ROE), indemnification of the federal government and our employees, and a process for preventing duplication of benefits. Attached is an example of a ROE that contains the indemnification and the information necessary to prevent duplication of benefits. Note that this is an example of a form that has been used by other communities. FEMA does not specify the format and/or language. This is an example to facilitate your process.

Gayle Hoopes  
Attorney Advisor / Deployable Field Counsel/ Office of Chief Counsel  
DR 4286-SC / EM-3378-SC / Region IV  
[REDACTED]

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 17, 2016  
Page 2

In order for FEMA to approve the removal of debris placed on the right-of-ways (ROWs) in gated communities or private roads under FEMA regulations and the PPDR policy, it is the potential applicant's responsibility to justify that PPDR is in the public interest. The justification must meet the criteria as set forth in 44 CFR § 206.224(a).

*"Such removal is in the public interest when it is necessary to (1) Eliminate immediate threats to life, public health, and safety; or (2) Eliminate immediate threats of significant damage to improved public or private property; or (3) Ensure economic recovery of the affected community to the benefit of the community-at-large..."*

\* In this case, FEMA is unaware if any formal Declaration of Public Health Emergency has occurred. This includes from either the State or local community. If available, please forward any such documentation.

FEMA will also need the following information in order to review the pending request for PPDR.

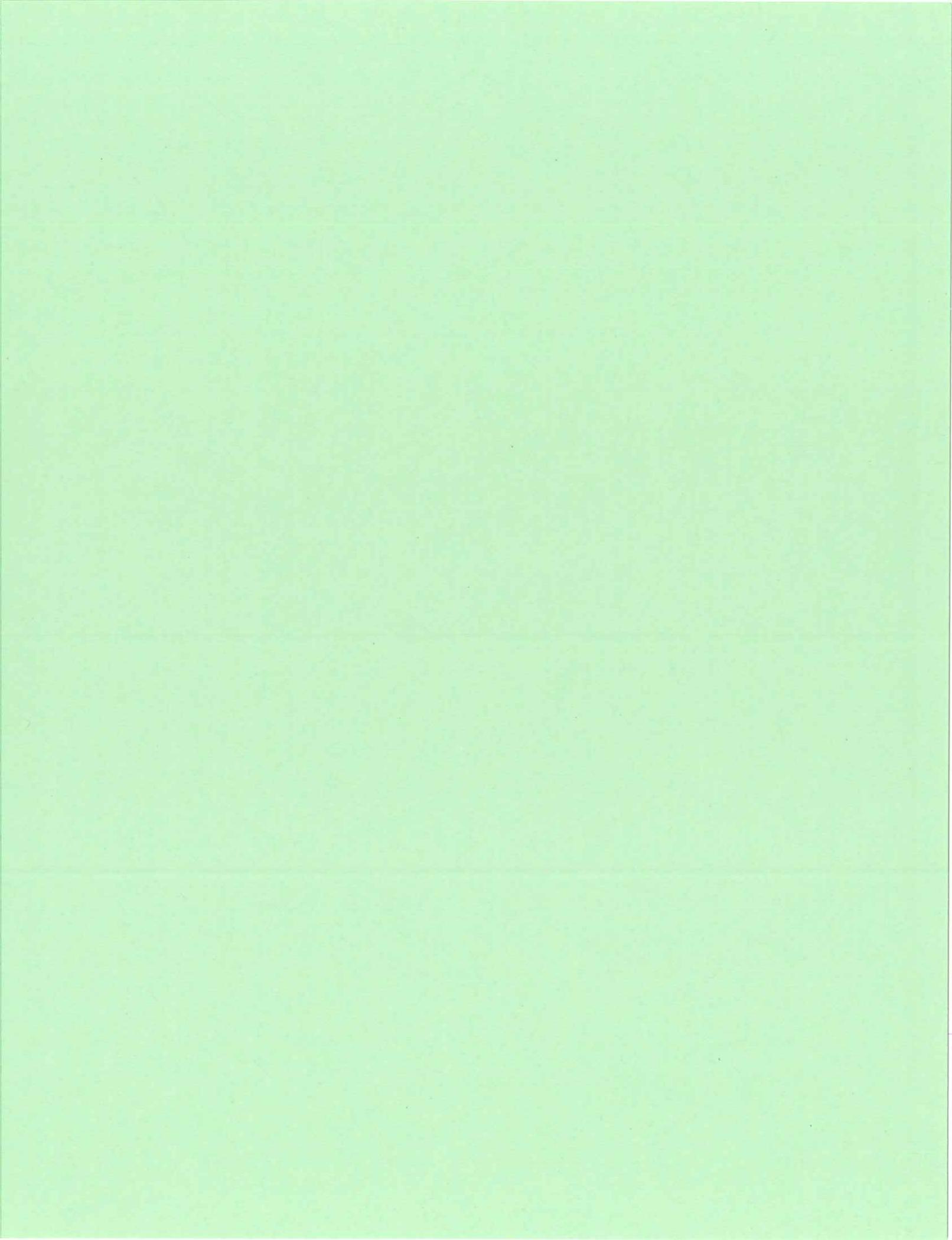
- A detailed explanation documenting the State or local government's legal responsibility and authority to enter private property. It must specifically address the authority and responsibility to remove debris from any gated community or private road and confirmation that all legal processes such as rights-of-entry will be satisfied. The documentation must include the specific adopted code or ordinance that gives the jurisdiction authority to enter private property to remove an immediate threat (44 CFR 206.223(a)(3); 4 CFR 206.221(c); and 44 CFR 206.225(a)(3)).
- All involved parties must indemnify the Federal government and its employees, agents and contractors from any claims arising from removal of debris from private property. (44 CFR 206.9). FEMA can provide acceptable language examples.
- The potential applicant must identify all neighborhoods and the road names located in the communities it believes would qualify for PPDR.
- Where applicable, potential applicants should also identify the distance that the rights of way extend beyond the center of each identified road.

Before approval of this PPDR request, FEMA may require a validation of each road identified by the potential applicants. Additionally, the potential applicant must develop detailed documentation and recordkeeping procedures of each property owner's or Home Owners Association insurance coverage to ensure that FEMA's funding does not constitute a duplication of benefits.

Sincerely,



W. Michael Moore  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4286-DR-SC



## Keaveny, Thomas

---

**From:** Keaveny, Thomas  
**Sent:** Monday, October 24, 2016 12:14 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: Private Property Debris Removal (PPDR) in Beaufort County  
**Attachments:** SKM\_C224e16102411050.pdf; Resolution Hurricane Matthew Public Health Emergency. Draft II.docx; RE: State of Emergency Ordinance

**Importance:** High

Gary and Josh:

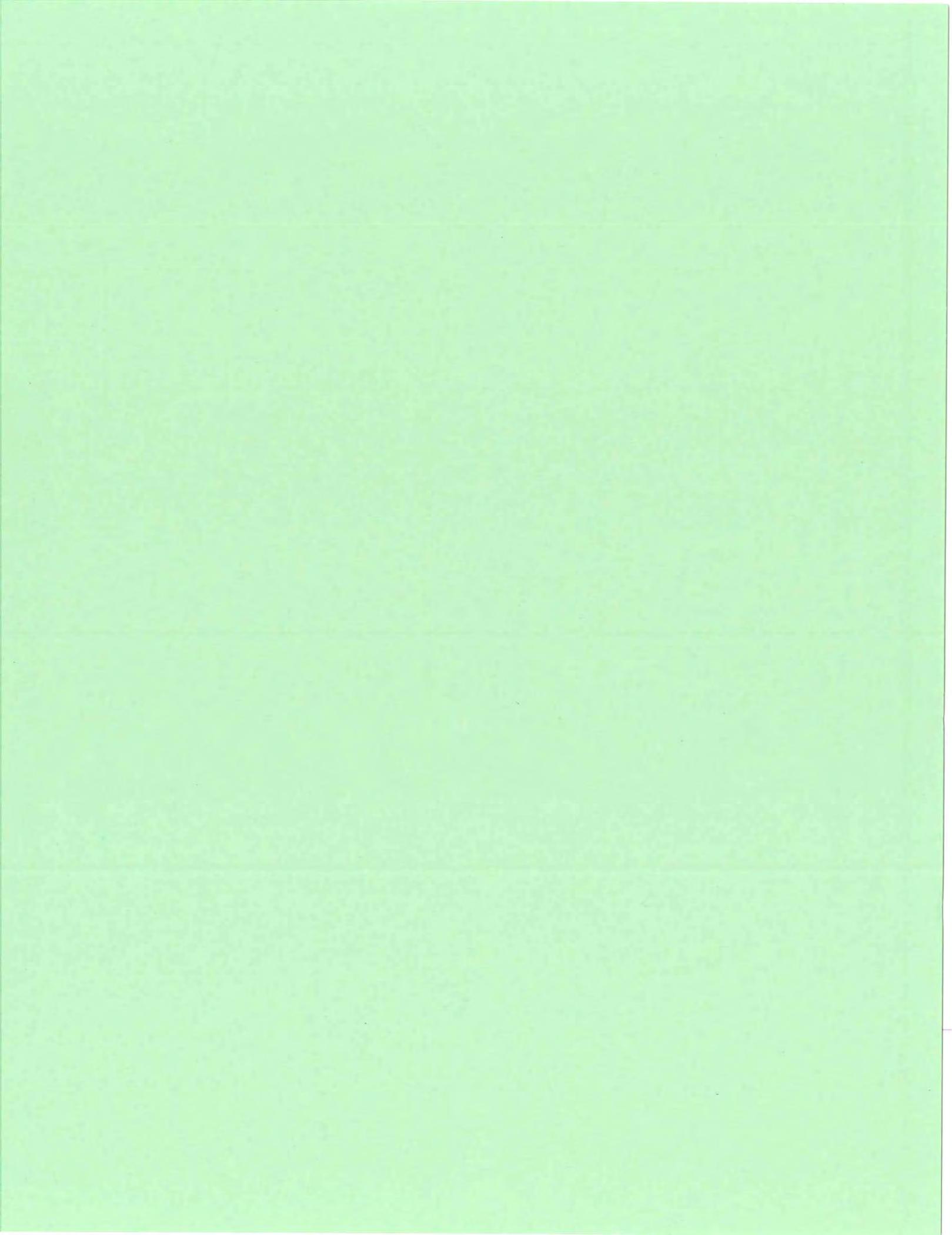
We had a productive 30 minute conversation this morning with Gayle Hoopes. On the line were several people from Congressman Sanford's office, FEMA, the Governor's office and EMD. I (and representatives of Congressman Sanford's office) confronted Gayle with our understanding that Louisiana submitted only the Public Health Emergency Declaration and four days later its application was approved. She categorically denied that is what happened. She said Louisiana had to follow the procedures we are being required to follow.

Moving on to the procedures we are being required to follow, she said state action is not required. She emphasized the fourth paragraph of her email below:

Some jurisdictions have the authority to issue a local state of emergency, and do so. They have then used this local state of emergency as part of their justification to FEMA that PPDR is in the "public interest". Other jurisdictions have relied on the state's Declaration of Public Health Emergency as part of their justification that PPDR is in the public interest.

The chairman of county council has the authority to issue a local state of emergency (See Beaufort County Code of Ordinances, Chapter 22, Section 22-28(b), attached). The state of emergency shall not exist for more than 15 days without approval of county council (See Section 22-28(e)) which seems clearly to indicate it can last longer than 15 days if approved by county council. The Ordinance refers to "Proclamations" so I suggest we change Resolution to Proclamation, that we add another paragraph to the end (see attached highlighted paragraph) and that after Paul issues it, county council approve it and allow it to stand "until the threat is abated or the state of emergency is rescinded by county council". The reason we need to add the highlighted paragraph is, in my mind, that without it, the County isn't required or authorized to enter private property to remove the debris.

We can also accomplish this by way of an Emergency Ordinance like we did with exotic animals in May/June 2015. Allison has drafted up such an Ordinance in case council chooses to go that route (see attached).



**Keaveny, Thomas**

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**From:** Keaveny, Thomas  
**Sent:** Tuesday, October 25, 2016 9:23 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Personal Property Debris Removal  
**Attachments:** Proclamation II Post Hurricane Matthew Public Health Emergency. Draft III.docx

Richele Danielle and Elizabeth:

Last night the Chairman of Beaufort County Council declared a Public Health Emergency/State of Emergency pursuant to the authority vested in him by Beaufort Code of Ordinance Section 22-28(a) and (b). (An unsigned copy is attached. I will forward a signed copy when I receive it.) Thereafter, County Council ratified and adopted the Proclamation pursuant to Beaufort Code of Ordinance 22-28(e). The Public Health Emergency/State of Emergency is in effect until rescinded by County Council.

As I anticipated, there was some anxiety regarding the affect this Proclamation will have on the County's financial situation. However, Council felt that the need to address the life, health and safety issues and the need to restore our tourism based communities to a presentable condition outweighed financial uncertainties.

Thank you for your help. Elizabeth, I will probably be calling you later this morning.

Thanks again.

Tom

Thomas J. Keaveny II  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



**Proclamation No: 2016 / 14**

**Proclamation Declaring Public Health Emergency/State of Emergency  
As A Result of Hurricane Matthew**

**WHEREAS**, on October 4, 2016 the Governor of the State of South Carolina issued Executive Order No: 2016-26 declaring a State of Emergency in South Carolina due to the threats posed to the state and to Beaufort County by Hurricane Matthew as it approached the state; and

**WHEREAS**, between October 4, 2016 and October 6, 2016 the Governor of the State of South Carolina issued seven more Executive Orders all related to Hurricane Matthew and calling for, among other things, medical evacuations of health care facilities, school closings, and mandatory evacuations of several Counties including Beaufort County, as Hurricane Matthew drew closer to the state; and

**WHEREAS**, on October 11, 2016 the President of the United States of America issued a Major Disaster Declaration for the State of South Carolina due to the effects of Hurricane Matthew on the state which included high storm surges, 10 to 15 inches of rain, 60 to 88 miles per hour wind gusts and major flooding; and

**WHEREAS**, damage from downed trees, other vegetative debris, and flooding has caused damage to residences, to surrounding properties, to bridges and to roads, both public and private; and

**WHEREAS**, there are more private road miles than public road miles in Beaufort County; and

**WHEREAS**, the continued presence of widespread vegetative debris fields from one end of the County to the other (estimated to be approximately half a million cubic yards on public roads and one million cubic yards or more on both public and private roads combined) constitute an immediate threat to the public at large by: (1) preventing and hindering emergency services (for which the County is responsible) including law enforcement, emergency medical services and fire protection; and (2) exposing the population to an increase in the risk of mosquito-borne illnesses. According to Dr. John Vena, Professor and Founding Chair of the Department of Public Health Sciences at the Medical University of South Carolina, "a lack of debris clearance on *private roads* leads to an increased risk of pooling water, which leads to a risk of an increased mosquito population, leading to an increase in the transmission risk of a host of mosquito-borne diseases including the Zika virus" (emphasis added) all of which threaten the life and property of our citizens and communities; and

**WHEREAS**, the Governor of South Carolina recognizes the continuing nature of the threat to the public health of our citizens and on October 18, 2016 issued Executive Order No: 2016-39 declaring an ongoing State of Emergency to support the health, safety and welfare of the public.

**NOW, THEREFORE**, I proclaim a public health emergency/state of emergency exists in Beaufort County due to the continuing effects of Hurricane Matthew which, include, downed trees and widespread vegetative debris fields on public and private rights-of-way throughout the County which constitute an immediate threat to life, public health and safety.

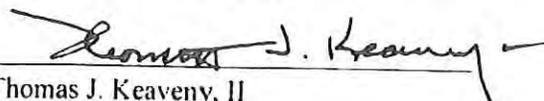
**I PROCLAIM THAT** immediate debris removal from both public and private rights-of-way is in the public interest because it is necessary to: (1) eliminate immediate threats to life, public health and safety; (2) eliminate immediate threats of significant damage to improved public and private property; and (3) ensure the economic recovery and viability of the County whose economy is based largely on vacation rentals and tourism which is drawn to Beaufort County by the amenities and services offered by private communities.

**FURTHER** the County Administrator is hereby authorized and required to remove, as quickly and efficiently as possible, debris fields from private rights of way in Beaufort County in order to eliminate the threats to life, public health and safety and which threaten the economic recovery and viability of our tourism dependent communities and the community-at-large.

BEAUFORT COUNTY, SOUTH CAROLINA

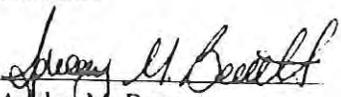
  
\_\_\_\_\_  
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas J. Keaveny, II  
Beaufort County Attorney

*Proclamation issued: 10/24/2016*  
*Resitified by Council: 10/24/2016*

ATTEST

  
\_\_\_\_\_  
Ashley M. Bennett  
Clerk to County Council

**Keaveny, Thomas**

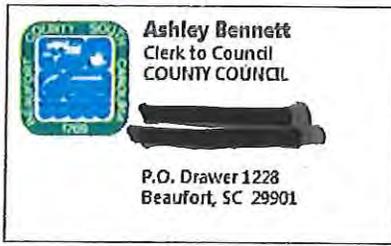
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**From:** Bennett, Ashley  
**Sent:** Thursday, October 27, 2016 9:05 AM  
**To:** [REDACTED]  
**Cc:** Keaveny, Thomas  
**Subject:** Resolution 2016/19  
**Attachments:** Ashley Bennett.vcf; 19.Action of Council 102416 Public Health Emergency.pdf

Attached is the Certificate of Resolution certifying the action taken by County Council on October 24, 2016 as it relates to the ratification and endorsement of a Proclamation declaring a public health emergency as a result of Hurricane Matthew.

If you need the original copy with the seal, please let me know and I can deliver.

Thanks  
Ashley



RESOLUTION 2016 / 19

CERTIFICATE OF RESOLUTION  
OF  
BEAUFORT COUNTY COUNCIL

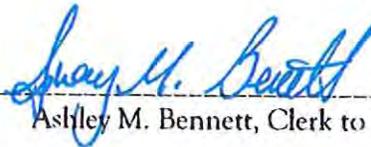
An Excerpt from the Minutes of the County Council Regular Session Held October 24, 2016

Proclamation Declaring Public Health Emergency as a Result of Hurricane Matthew

It was moved by Mr. Rodman, seconded by Mr. Flewelling, that Council ratify and endorse a Proclamation declaring a public health emergency as a result of Hurricane Matthew. The vote: YEAS - Mrs. Bensch, Mr. Caporale, Mr. Dawson, Mr. Flewelling, Mr. Fobes, Mrs. Howard, Mr. Rodman, Mr. Sommerville, Mr. Stewart, and Mr. Vaux. NAYS - Mr. McBride. The motion passed.

I, Ashley M. Bennett, Clerk to Council, do hereby certify that this motion is taken from the official proceedings of the Beaufort County Council Regular Session.

BY: \_\_\_\_\_



Ashley M. Bennett, Clerk to Council

October 27, 2016  
Beaufort County, South Carolina

**Chapter 22 - CIVIL EMERGENCIES<sup>[1]</sup>***Footnotes:*

--- (1) ---

*Cross reference— Administration, ch. 2; emergency services, ch. 34; fire prevention and protection, ch. 42.***ARTICLE I. - IN GENERAL****Secs. 22-1—22-25. - Reserved.****ARTICLE II. - EMERGENCY MANAGEMENT DEPARTMENT<sup>[2]</sup>***Footnotes:*

--- (2) ---

*Cross reference— Departments, § 2-136 et seq.***Sec. 22-26. - Purpose.**

This article is adopted by the county council to best establish, develop and coordinate an emergency management department and provide for civil defense and emergency management in the county.

(Code 1982, § 6-35)

**Sec. 22-27. - Established; purpose.**

- (a) The county emergency management department is created to establish, develop, coordinate and provide for civil defense and emergency management in the county.
- (b) This article will be the instrument through which the county council and other organizations of the county will seek to coordinate their authority under the laws of this state after enemy attack or during natural or man-caused disasters affecting the county.

(Code 1982, § 6-36)

**Sec. 22-28. - Responsibilities and duties of county council.**

- (a) The chairman of the county council shall have the power to issue proclamations and regulations concerning public safety, disaster relief and related matters which shall have the full force and effect of law during an emergency.
- (b) The chairman of the county council may declare a state of emergency, if the chairman finds a disaster has occurred or that the threat thereof is imminent and emergency measures are deemed necessary to cope with the existing or anticipated situation.

- (c) Once declared, the state of emergency shall continue until terminated by proclamation of the chairman of the county council.
- (d) All proclamations issued pursuant to this article shall indicate the nature of the disaster, the area affected by the proclamation, the conditions which require the proclamation of the disaster emergency and the conditions under which it will be terminated.
- (e) A state of disaster emergency proclamation shall not exist for more than 15 days without approval of the county council.
- (f) In addition to any powers conferred by law, the county council may, under this article, suspend existing ordinances and regulations prescribing the procedures for conduct of county business if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.
- (g) In the absence of the chairman of the county council, the vice-chairman of the county council shall carry out the duties of the chairman as outlined in this article.

(Code 1982, § 6-37)

Sec. 22-29. - Emergency management director.

- (a) The county administrator shall select and employ the county emergency management director.
- (b) The county emergency management director shall be considered as a county department head.
- (c) The director shall be responsible for executing the instructions of the county administrator under the direction of the county council. The director is, within designated authority, responsible for the administration of the emergency management plan.
- (d) The county emergency operations plan as formulated and approved by the county council and municipalities within the county shall be the document under which coordinated emergency operations are carried out after the declaration of a state of emergency by the chairman of the county council.

(Code 1982, § 6-38)

Cross reference— Officers and employees, § 2-56 et seq.

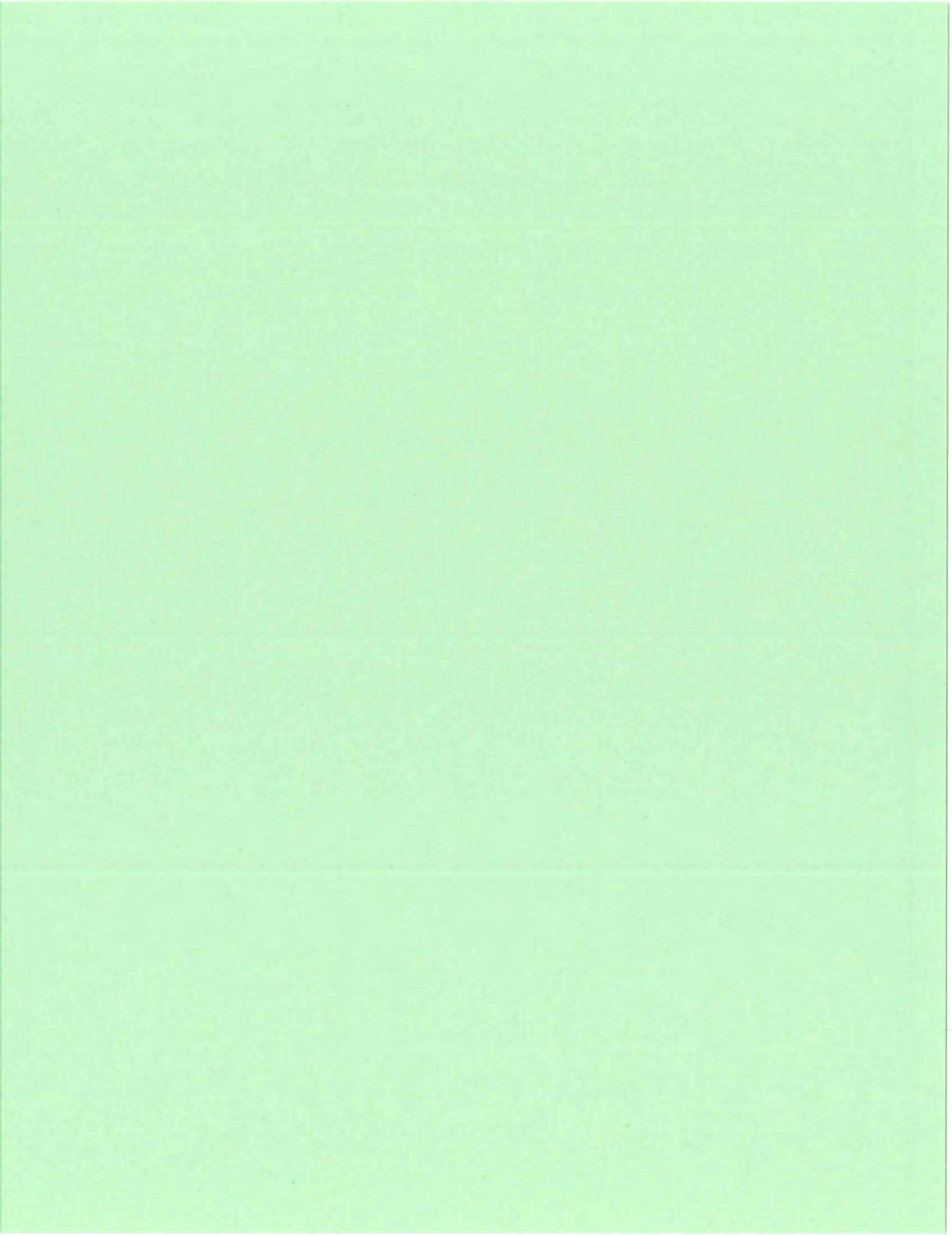
Sec. 22-30. - Violation and penalty.

- (a) It shall be unlawful for any person to violate any of the sections of this article or regulations which may be issued pursuant to the authority contained in this article or to willfully obstruct, hinder, or delay any member of the civil emergency organization in the enforcement of this article or any regulations issued therein.
- (b) Any person violating this article shall be guilty of a misdemeanor and upon conviction thereof shall pay such penalties as the court may decide, not to exceed \$500.00 or not to exceed 30 days' imprisonment for each violation. Each day during which such conduct shall continue shall constitute a separate

violation, which shall subject the offender to liability prescribed in this subsection.

(Code 1982, § 6-39)

Secs. 22-31—22-55. - Reserved.



Keaveny, Thomas

---

**From:** Keaveny, Thomas  
**Sent:** Wednesday, October 26, 2016 1:02 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Documentation in Support of PPDR Application  
**Attachments:** RE: Beaufort County Ordinance and Proclamation; Message from KM\_C224e

Elizabeth:

In further support of the materials Beaufort County submitted yesterday (Beaufort County Code of Ordinance Section 22-28 and Council Chairman Sommerville's Proclamation which was approved by County Council -- also attached) Beaufort County forwards the attached materials (second attachment). These materials clearly demonstrate that the public health, safety and welfare are at risk in Beaufort County, that we have a public health emergency which constitutes a state of emergency and that it is in the public interest for the County to take immediate action (countywide) to eliminate the conditions giving rise to this emergency.

The first set of material is from Mosquito Control. I have included a statement from Gregg Hunt, Director of Mosquito Control for Beaufort County. Gregg documents the dramatic increase in calls to his department complaining of mosquitos and requesting service. As you will see, in the 2.5 weeks before Hurricane Matthew Mosquito Control received only 42 calls for service. In the 2.5 weeks after Hurricane Matthew Mosquito Control received 689 calls for service. Beaufort County has 57 species of mosquitos throughout the county. The County tailors its abatement program to control those species which carry certain viruses. The species we target carry the West Nile Virus, the Eastern Equine Encephalitis Virus and the Zika Virus. I have also included an email from Mr. Hunt to Beaufort County's Director of Purchasing (Dave Thomas) in which Mr. Hunt indicates he needs to proceed with an emergency purchase of 275 gallons Anvil Insecticide at a cost of \$56,000 in order to "reduce the high levels of adult mosquitos and reduce the risk of several mosquito borne diseases". This purchase is being authorized under Beaufort County's Emergency Procurement ordinance.

The second set of material is from the Beaufort Gazette. I have included two articles. The first article documents a car fire as a boat landing which set a debris field on fire. Firefighters battled the blaze for almost two hours before bringing it under control. This is the kind of danger our citizens face throughout the county (especially on private roads and rights-of-way) due to the presence of these debris fields. The purpose of including the second article is to further document the fact that private roads and rights-of-way vastly exceed public roads and rights-of-way in our County.

The third set of material is affidavits from three Fire Chiefs, each from different jurisdictions in the County. All three Fire Chiefs allege the debris fields threaten the safety and security of the public at large because these fields: allow water to pool which create breeding ground for mosquitos; provide refuge for rodents, snakes and other vermin; block access to residences and inhibit their ability to respond to emergencies properly, safely and efficiently; block fire hydrants; constitute an attractive nuisance for children and others; and have become tinder boxes.

Finally, I have attached two photographs taken on Spanish Wells Road, a private road on Hilton Head. I will provide more photographs from different areas of the County soon, but these photographs illustrate the overwhelming amount of debris on the shoulders of the road and the danger it presents to the public.

I will continue to forward additional information as it becomes available to us. We are moving forward with efforts to obtain the necessary ROEs and indemnification agreements. We look forward to hearing from you soon.

Tom

Thomas J. Keaveny II  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



**From:** Ryan, Elizabeth [REDACTED]  
**Sent:** Tuesday, October 25, 2016 1:36 PM  
**To:** Keaveny, Thomas  
**Subject:** RE: Conference Call tomorrow...

Thanks! And feel free to send the documentation you have whenever you are ready!  
Thanks,  
Elizabeth

Elizabeth Ryan  
[REDACTED]

# **MOSQUITO CONTROL**

## Mosquito Control Status Report

### (Post Hurricane Matthew)

**Background:** Hurricane Matthew impacted Beaufort County on October 7, 2016. NHC Miami and NWS Charleston reported the highest rainfall of 16.6 inches at Northern Hilton Head, at least a 6-foot storm surge, maximum sustained winds at 61.0 mph, and peak gusts at 87.4 mph. The subsequent fallen trees, additional debris, and clogged stormwater drainage systems created new mosquito breeding sites throughout most of coastal Beaufort County. Within 10 days, these conditions produced a significant increase in the biting mosquito populations.

Coincidentally, Beaufort County Mosquito Control (BCMC) received an unusually large number of requests for service (complaints) directly related to the severe mosquito infestations. Overall, the number of requests received after Hurricane Matthew was significantly greater than those before the storm impact. For example, BCMC recorded 42 requests up to 2 ½ weeks before the storm arrival whereas 689 complaints were received during the 2 ½ weeks after impact. The requests for service originated from phone apps, telephone calls, emails, and faxes.

Even though 57 mosquito species occur throughout the County, BCMC develops most of the abatement strategies annually to control several disease vectors [*Culex pipiens* Complex (West Nile Virus), a few mosquito species among *Aedes*, *Coquillettidia*, *Culex*, and *Culiseta* (Eastern Equine Encephalitis virus), and *Aedes albopictus* (Zika virus)] as well as a limited number of primary pest mosquitoes [*Aedes taeniorhynchus* (No. 1 pest), *Aedes vexans*, and several *Psorophora* species].

The fallen trees, other debris, and flooding throughout many neighborhoods, especially on Hilton Head Island, prohibited the use of the BCMC spray trucks during the initial phase of recovery. Further, BCMC evacuated both aircraft (fixed wing and rotary wing) to Columbia, SC before the hurricane and were not used until 12 days after the storm for limited aerial spray missions (larviciding and adulticiding). The BCMC hangar at Lady's Island Airport suffered 15 ½ inches of flooding with saltwater contamination among many supporting equipment. Also, the environmental conditions impeded our access to many of the 69 strategically located mosquito traps (CDC traps, catch basin traps, gravid traps, and ovitraps) during the post-storm surveillance analysis.

**Summary.** The excessive rainfall and flooding created a variety of prolific mosquito breeding areas throughout Beaufort County. The ensuing mobile adult mosquitoes represented a serious health hazard for the recovery workers (removal of debris along with re-establishment of electric, water, sewer, and communication) and law enforcement. Pest mosquitoes hampered most of the recovery activities. However, the aforementioned conditions may have increased the public health risk for several vector-borne diseases (West Nile virus and Zika virus). BCMC will continue to collect various vector mosquitoes whereas SC Department of Health and Environmental Control will test these mosquitoes for any pathogens.

**Keaveny, Thomas**

---

**From:** Thomas, Dave  
**Sent:** Wednesday, October 26, 2016 8:47 AM  
**To:** Hunt, Gregg; Gruber, Joshua; Kubic, Gary  
**Cc:** Foot, Philip; Holland, Alicia; Keaveny, Thomas; Maietta, Linda  
**Subject:** Emergency Purchase of Anvil Public Health Insecticide

**Importance:** High

Gregg,

*Thank you for your request to proceed with the emergency purchase of Anvil Insecticide at a cost of \$56,000, which includes tax. This purchase definitely meets the requirements of the code below concerning public safety and health. For everyone's information the purchase includes delivery of a 275 gallons container of Anvil insecticide and will be purchase from Clark Mosquito Control, a State contract vendor. As you noted this will reduce the current high levels of adult mosquitos and reduce the risk of several mosquito born diseases. According to Alicia Holland this purchase will be paid by emergency funding org code 10001211. I am forwarding this to Josh and Gary for final approval.*

*For everyone's information I have included the current Beaufort County Code covering Emergency Procurements:*

**Sec. 2-519. - Emergency procurements.**

Notwithstanding any other section of this division, the purchasing director may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to the functioning of county government; for the preservation or protection of property; or for the health, welfare or safety of any person, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file.

*Respectfully,*

**Dave Thomas**  
**Dave Thomas, CPPO, CPPB**  
**Purchasing Director**  
**Beaufort County**  
**phone: 843-255-2353**  
**Fax: 843-255-9437**  
**email: [dthomas@bcgov.net](mailto:dthomas@bcgov.net)**



**NEWSPAPER  
ARTICLES**

BEAUFORT NEWS OCTOBER 21, 2016 9:32 AM

## Car fire sets Hurricane Matthew debris ablaze on St. Helena



< 1 of 2 >



BY STEPHEN FASTENAU  
[sfastenau@beaufortgazette.com](mailto:sfastenau@beaufortgazette.com)

A car fire at a St. Helena boat landing sparked a brush fire that firefighters battled for almost two hours early Friday morning.

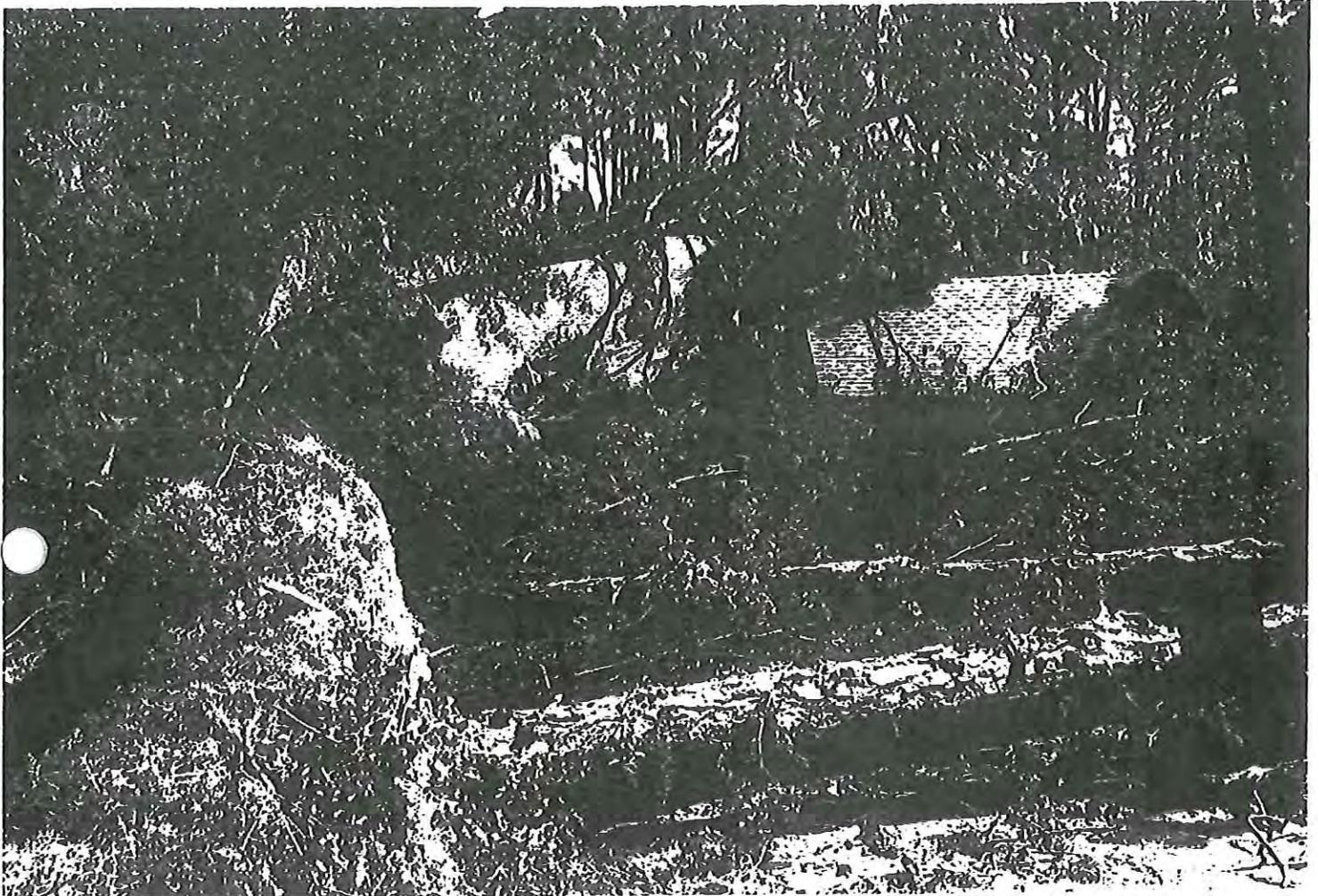
Firefighters arrived about 1 a.m. to find a car on fire at Station Creek Landing off Seaside Road, Lady's Island-St. Helena Fire District spokesman Scott Harris said. The fire spread to nearby brush piled up after Hurricane Matthew.

Crews worked about two hours to extinguish the fire. Other cars and a boat were in the area, but no one was hurt.

ADVERTISING

**HURRICANE**    OCTOBER 21, 2016 5:36 PM

# Debris piles rise as feds decide if they'll pay for private road cleanup



◀ 1 of 4 ▶



BY KELLY MEYERHOFER  
[kmeyerhofer@islandpacket.com](mailto:kmeyerhofer@islandpacket.com)

Hurricane Matthew did not discriminate in its battering of Beaufort County, but the federal government's disaster-relief policy often does when it comes to roads.

Local officials say they are addressing the problem.

The Federal Emergency Management Agency's public assistance program typically covers debris removal only on county, city and state roads, posing a problem for Beaufort County where more than 70 percent of roads are private.

#### Breakdown of Beaufort County Roads



Source: Estimates provided by Beaufort County Engineering Dept.

Beaufort County requested an exemption from the rule last week.

However, FEMA spokesman Victor Inge said in an email Friday, "Right now, we have not received any requests."

Local officials insist that's not true and remain hopeful FEMA will pick up a portion of the cost of debris removal from private roads, private communities and gated properties.

Deputy county administrator Josh Gruber broke down the percentage of federal reimbursement rate for debris removal:

- For the first 30 days, FEMA would cover 87 percent of the cost.
- For the next 60 days, FEMA would cover 82 percent of the cost.
- After 90 days, FEMA would cover 77 percent of the cost.

The remaining costs would be covered by either the county, municipality or individual plantations, depending on how documentation was submitted, Gruber said.

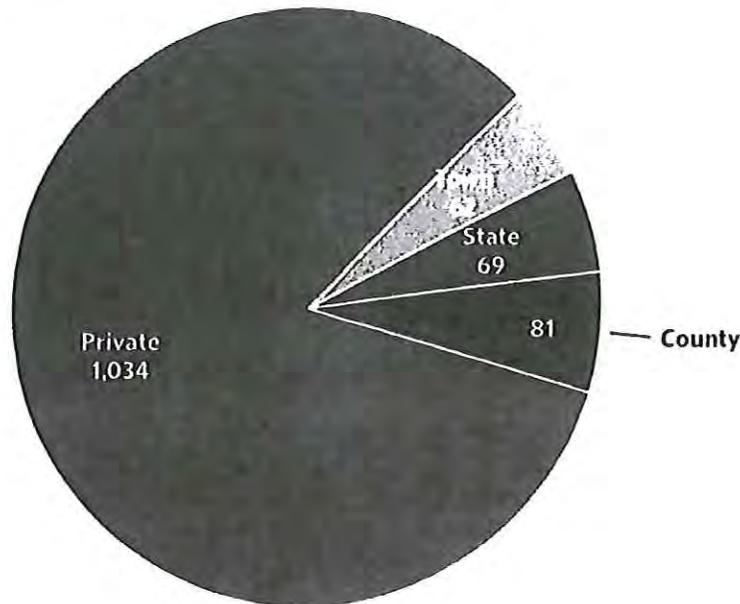
### Hilton Head most affected

Of anywhere in the county, private roads are most abundant on Hilton Head Island.

County data shows 83 percent of the island's roads are private, positioning Hilton Head to reap the most benefit from the waiver request.

Long before Hurricane Matthew hammered Hilton Head, the town anticipated the private-road problem and tried to prevent it.

### BREAKDOWN OF HILTON HEAD ROADS



Source: Beaufort County Sheriff's Office ([Get the data](#))

"We've asked FEMA over the years if there's a way to get preapproved on this," town manager Steve Riley said. "And they said if the day comes, we'll talk then."

That day has come — and two weeks have since passed.

"(FEMA) is rather noncommittal on a timeline," Riley said.

FEMA's turnaround for a waiver can be much quicker.

As an example, rain dumped more than 20 inches of water onto portions of Louisiana from Aug. 8-15 this year, prompting 26 counties to ask for the same waiver Beaufort County is seeking.

FEMA approved private-property debris removal on Sept. 3, just four days after the Aug. 31 request, according to a letter from FEMA to the Louisiana Governor's Office.

Number of Private Roads by Municipality

1,034

Hilton Head

583

Bluffton

67

Beaufort

109

Port Royal

Source: Estimates provided by Beaufort County Engineering Dept.

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“We can’t compare Louisiana to South Carolina,” said Inge, of FEMA.

But the agency does grant the exception fairly often.

“Too many times to mention,” he said.

The town filed paperwork to FEMA on Friday, but the application must go up several chains of command after that, Riley said.

“We’re trying to jump through the hoops,” he said.

And part of the hoop-jumping means the town cannot assist plantations with cleanup right now, Riley said. FEMA warned it could jeopardize the chance for reimbursement.

### **Fairness, public safety concerns**

Should FEMA decide not to grant an exception, individual plantations may shoulder the cost of removal.

More than 90 gated communities have contacted the county to coordinate FEMA assistance, Gruber said.

For residents of these communities, it’s an issue of fairness.

“Our tax money goes to FEMA,” said Dataw Island resident Susan Dickson. “This is the time it would be nice to have some of it back.”

Two of the four debris piles in the yard are taller than Dickson, who is 5-foot-6.

“It seems so inordinately unfair,” she said. “We pay the same amount of taxes as everyone else does, but we can’t take advantage of the FEMA policy for debris removal.”

For leaders of gated communities, it’s an issue of public safety.

In Sea Pines, some property owners stacked debris too high, sending it toppling into the street, said security director Toby McSwain.

In the club course neighborhood, where roads are already fairly narrow, some debris blocks road signs, he added.

Piles of debris lining streets are clogging road rights-of-way, as well as blocking access to fire hydrants, said Hilton Head Plantation general manager Peter Kristian.

Earlier this week, the fire department was forced to cut through debris to access the hydrant, he said.

And in some cases, debris piles block tree removal crews from accessing additional trees that should be cleared, Kristian said.

## Sanford’s solution

It’s not just local officials working to rectify the private vs. public road problem of federal disaster policy.

U.S. Rep. Mark Sanford, R-Charleston, addressed his constituents’ immediate needs by submitting a waiver to FEMA earlier this week.

Looking for a long-term solution, he introduced legislation last December that would allow residents of gated communities to be eligible for the same FEMA assistance available to other homeowners without seeking a waiver. It is still working its way through the legislative process.

“FEMA shouldn’t discriminate the way Mother Nature does,” Sanford told The Island Packet and The Beaufort Gazette when contacted Friday. “The bill treats taxpayers the same irregardless of how they choose to live.”

*Kelly Meyerhofer: 843-706-8136, @KellyMeyerhofer*



## MORE HURRICANE

**FIRE  
CHIEF  
AFFIDAVITS**

**STATE OF SOUTH CAROLINA**

**AFFIDAVIT**

**BEAUFORT COUNTY**

**JOHN WILLIAM THOMPSON, JR.**

**Personally appeared before me John William Thompson, Jr. who, first being duly sworn, did state the following:**

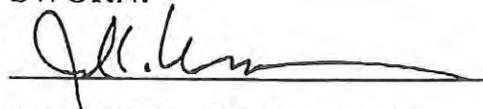
- 1. My name is John William Thompson, Jr. I am the Fire Chief of Bluffton Township Fire District ("The District"), Bluffton, SC. I have served as Fire Chief for The District continuously since December 7, 2013.**
- 2. I am over the age of 18.**
- 3. In the aftermath of Hurricane Matthew Beaufort County and more specifically my Fire District is faced with large quantities of storm debris as a result of the damage caused by the hurricane.**
- 4. This debris in many instances has been pulled to the curbs of both the public and private roadways. These piles are now creating a public safety and health hazard.**
- 5. The debris piles are creating a health hazard because they afford standing water puddles in some instances which is creating a breeding ground for mosquitos. This is creating a much greater than normal quantity of mosquitos which spread disease and illness through the general public.**
- 6. The debris piles are not creating a health hazard by giving rodents, snakes, and other vermin a safe place of refuge. This in turn spreads disease and the potential for poisonous bites to the public.**
- 7. Due to the amount of debris most residents are attempting to deal with they are creating large piles which are blocking access for emergency response vehicles to their residences and places of business. This inhibits the fire department's ability to properly respond, access and**

mitigate emergencies in a timely and safe manner and as such is a threat to overall public safety.

8. In some instances debris piles are covering and blocking fire hydrants and other fire protection features of buildings and properties. This creates a delay to fire department operations and a risk to public safety.
9. The debris piles are attracting children as potential places to play and explore. Large logs, construction debris, and other hazards as already identified this is a threat to the safety of those who climb on or through them.
10. The debris piles are now dry and becoming more volatile each day, especially with the onset of cooler fall temperatures and lower humidities. The potential for fires in the debris piles is elevated. Fire spread to adjacent wildland areas, vehicles, and structures is likely. This will rapidly tax available firefighting resources and is a direct threat to public safety.

Further the affiant sayeth not.

SWORN:

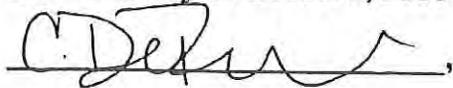


John William Thompson, Jr.

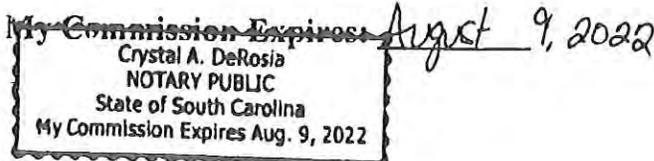
Fire Chief, Bluffton Township Fire  
District

NOTARY SEAL:

This 24th day of October, 2016



Notary, State of South Carolina



**STATE OF SOUTH CAROLINA**

**AFFIDAVIT**

**BEAUFORT COUNTY**

**EDWARD A. BOYS**

**Personally appeared before me Edward A. Boys who, first being duly sworn, did state the following:**

- 1. My name is Edward A. Boys. I am the Fire Chief of the Daufuskie Island Fire District ("The District"). I have served as Fire Chief for The District continuously since September 1, 1994.**
- 2. I am over the age of 18.**
- 3. In the aftermath of Hurricane Matthew, Beaufort County and more specifically my Fire District is faced with large quantities of storm debris as a result of the damage caused by the hurricane.**
- 4. This debris in many instances has been pulled to the curbs of both the public and private roadways. These piles are now creating a public safety and health hazard.**
- 5. Traversing over private roads is the sole means of the Daufuskie Island Fire District and Beaufort County EMS emergency personnel to transport 911 emergency patients to the dock for further medivac to Hilton Head Island.**
- 6. The debris is encroaching on the private roads' surfaces limiting full access for emergency vehicles.**
- 7. The debris piles are often blocking residences' driveways that will prohibit the entrance/egress of emergency responders to 911 calls.**
- 8. The debris piles are creating a health hazard because they afford standing water in some instances which is creating a breeding ground for mosquitos.**

- 9. The debris piles are creating a health hazard by giving rodents, snakes, and other vermin a safe place of refuge. This in turn spreads disease and the potential for poisonous bites to the public.**
  
- 10. Due to the amount of debris most residents are attempting to deal with they are creating large piles which are blocking access for emergency response vehicles to residences and places of business. This inhibits the fire department's ability to properly respond, access and mitigate emergencies in a timely and safe manner and as such is a threat to overall public safety.**
  
- 11. In some instances debris piles are covering and blocking fire hydrants and other fire protection features of buildings and properties. This creates a delay to fire department operations and a risk to public safety.**
  
- 12. The debris piles are attracting children as potential places to play and explore. Large logs, construction debris, and other hazards as already identified is a threat to the safety of those who climb on or through them.**
  
- 13. The debris piles are now dry and becoming more volatile each day, especially with the onset of cooler fall temperatures and lower humidities. The potential for fires in the debris piles is elevated. Fire spread to adjacent wildland areas, vehicles, and structures is likely. This will rapidly tax available firefighting resources and is a direct threat to public safety.**

**Further the affiant sayeth not.**

**SWORN:**

E. A. Boys

**Edward A. Boys**

**Fire Chief, Daufuskie Island Fire  
District**

**NOTARY SEAL:**

This 24 day of October, 2016

Virginia Teerlink,

Notary, State of South Carolina

My Commission Expires: 10/25/20

**STATE OF SOUTH CAROLINA**

**BEAUFORT COUNTY**

**AFFIDAVIT**

**HARRY G. ROUNTREE**

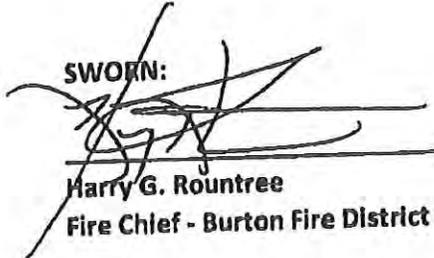
Personally appeared before me Harry G. Rountree who, first being duly sworn, did state the following;

1. My name is Harry G. Rountree. I am the Fire Chief for Burton Fire District ("The District"), Beaufort, SC.
2. I am over the age of 18.
3. In the aftermath of Hurricane Matthew Beaufort County and more specifically my Fire District is faced with large quantities of storm debris as a result of the damage caused by the hurricane.
4. This debris in many instances has been pulled to the curbs of both the public and private roadways. These piles are now creating a public safety and health hazard.
5. The debris pile are creating a health hazard because they afford standing water puddles in some instances which is creating a breeding ground for mosquitos. This is creating a much greater than normal quantity of mosquitos which spread disease and illness through the general public.
6. The debris piles are now creating a health hazard by giving rodents, snakes and other vermin a safe place of refuge. This in turn spreads disease and the potential for poisonous bites to the public.
7. Due to the amount of debris residents are attempting to deal with, they are creating large piles which are blocking access for emergency response vehicles to their residences and places of business. This inhibits the fire department's ability to properly respond, access and mitigate emergencies in a timely and safe manner and as such is a threat to overall public safety.
8. In some instances, debris piles are covering and blocking fire hydrants and other fire protection features of buildings and properties. This creates a delay to fire department operations and a risk to public safety.

9. The debris piles are attracting children as potential places to play and explore. Large logs, construction debris and other hazards, as already identified, are a threat to the safety of those who climb on or through them.
10. The debris piles are now dry and becoming more volatile each day, especially with the onset of cooler fall temperatures and lower humidity levels. The potential for fires in and around the debris is elevated. Fires spreading to adjacent wildland areas, vehicles and structures is likely. This will rapidly tax available firefighting resources and is a direct threat to public safety.

Further the affiant sayeth not.

SWORN:



Harry G. Rountree

Fire Chief - Burton Fire District

NOTARY SEAL:

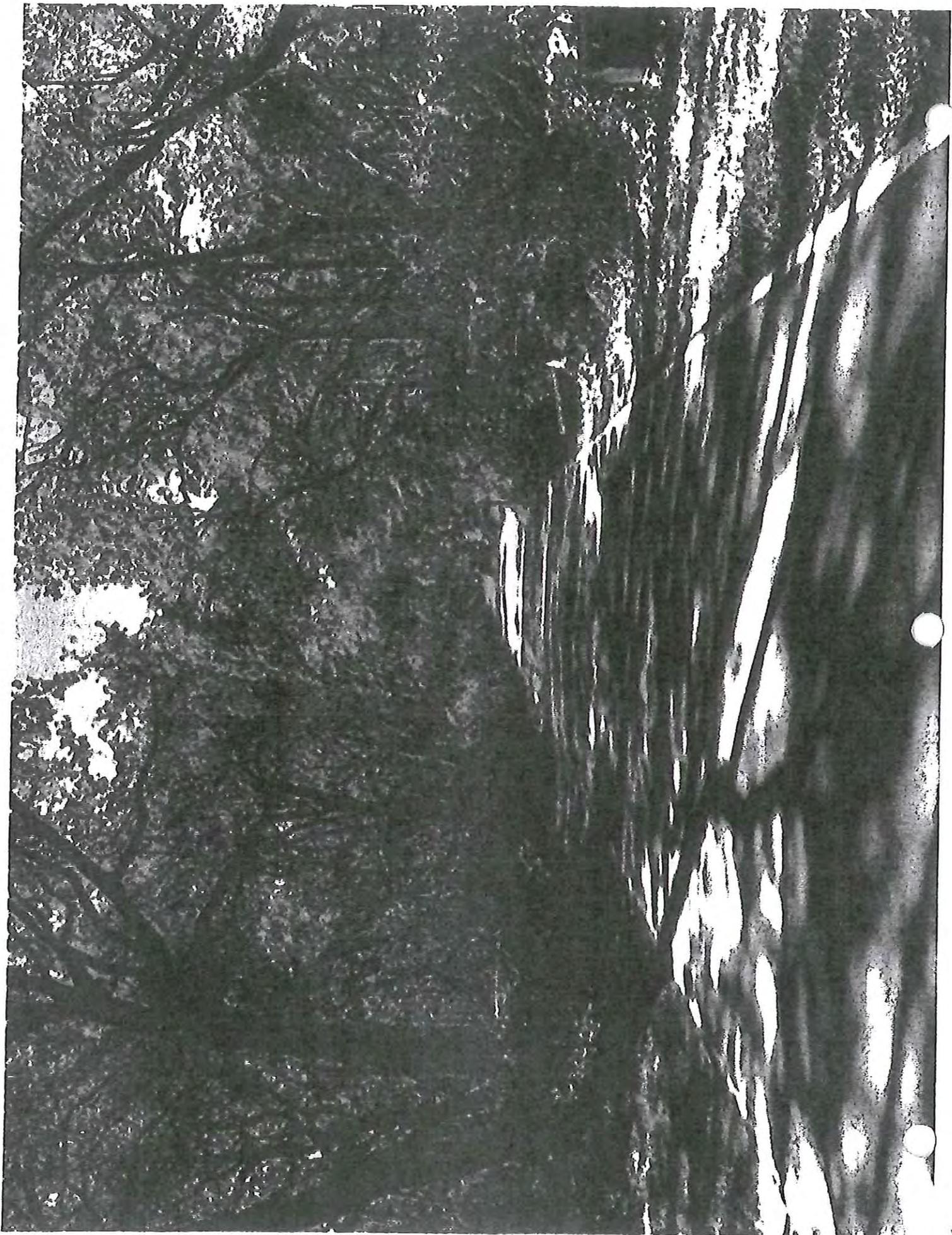
This 24<sup>th</sup> day of October, 2016

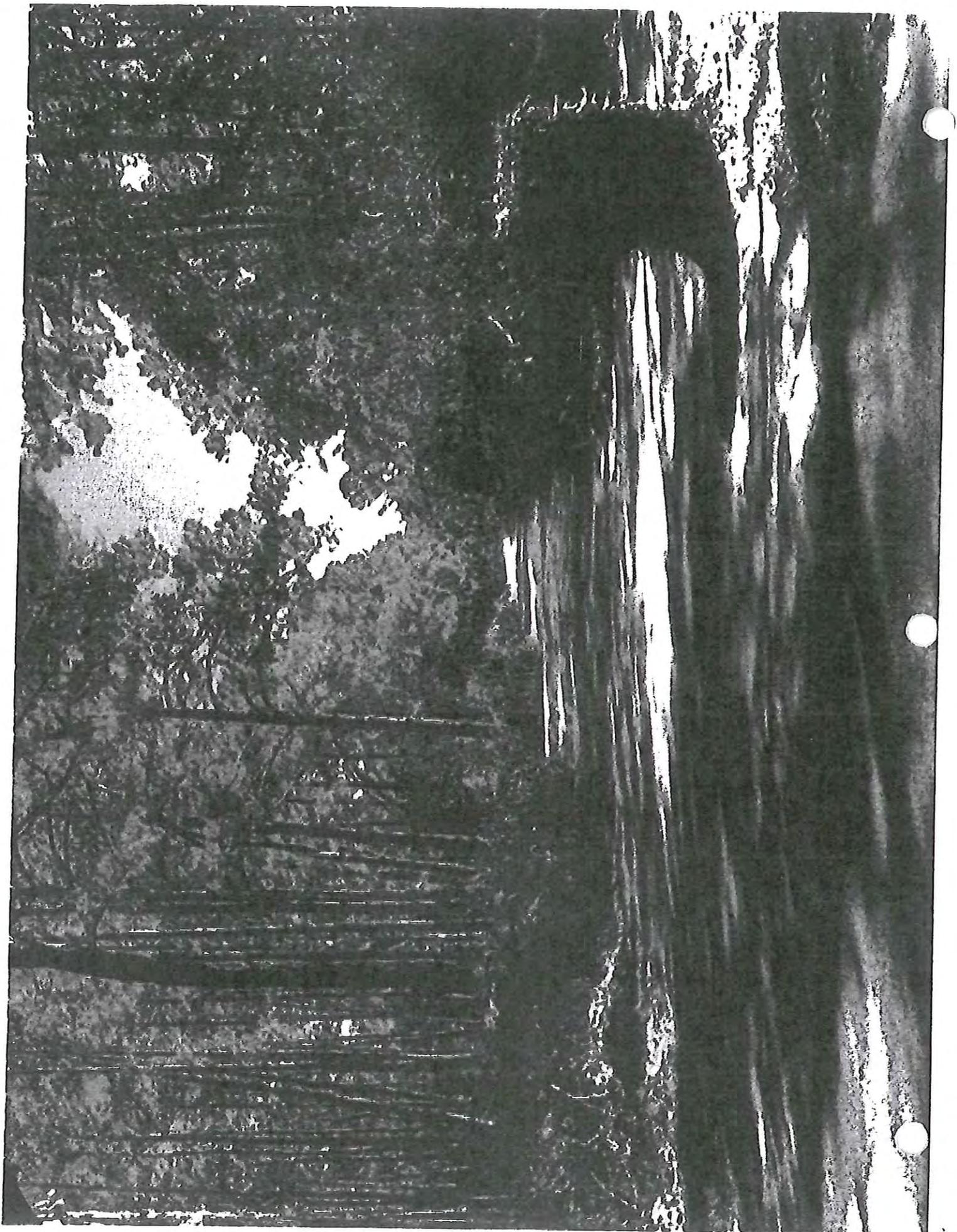
Robert D. Britton

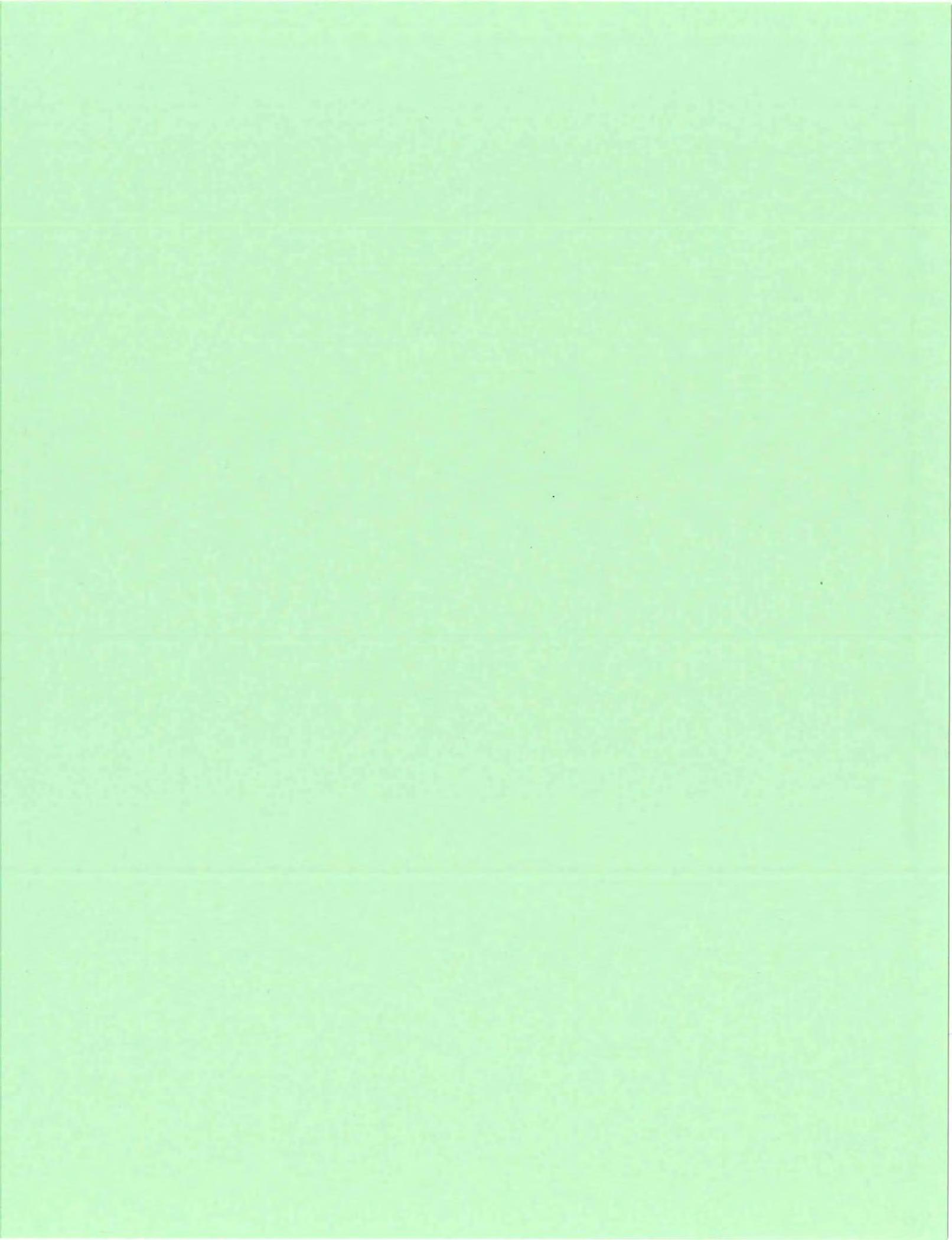
Notary, State of South Carolina

My commission expires: FEBRUARY 1, 2020.

# PHOTOGRAPHS







U.S Department of Homeland Security  
FEMA Joint Field Office  
FEMA 4286-DR-SC  
10301 Wilson Blvd  
Blythewood, SC 29016



**FEMA**

October 29, 2016

Mr. Kim Stenson, Director  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, SC 29172

County Council of Beaufort County  
Office of the County Administrator  
Administration Building  
Beaufort County Government-Robert Smalls Complex  
Attn: Gary Kubic, County Administrator  
100 Ribaut Road  
Post Office Drawer 1228  
Beaufort, SC 29901-1228

Reference: Beaufort County Request for Approval of Private Property Debris Removal (PPRD) under FEMA-4286-DR-SC.

Dear Mr. Stenson and Mr. Gary Kubic:

This letter is in response to your letter of October 12, 2016 and the additional supporting documentation submitted by Beaufort County through October 28, 2016. The letter requested Private Property Debris Removal (PPDR) from private roads and right-of-ways under FEMA's Public Assistance program for Beaufort County.

FEMA has reviewed the following submitted documents: the Governor's Executive Order No 2016-39 declaring a State of Emergency for South Carolina; Proclamation No. 2016/14 proclaiming a local public health emergency/state of emergency by the Chairman of the County Council of Beaufort County; Beaufort County, South Carolina Ordinance §22-28; and Resolution 2016/19, a Certificate of Resolution of Beaufort County. Subject to the terms and conditions as set out below, I approve the hurricane-generated private property debris removal (PPRD) under FEMA-4286-DR-SC from private roads and right-of-ways specifically requested by Beaufort County.

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 29, 2016  
Page 2

As the Governor has made clear in Executive Order No 2016-39, the debris generated by Hurricane Matthew created a state of emergency for South Carolina. Beaufort County declared a local public health emergency/state of emergency and indicated that the resulting debris was an immediate threat to the public at large and authorized and required the County Administrator to immediately remove debris from private roads and rights-of-way. Beaufort County also submitted their local Ordinance §2228-5-211 which establishes its authority to issue proclamations and regulations during an emergency. Beaufort County also submitted their Resolution 2016/19, a Certificate of Resolution of Beaufort County which ratifies and endorses the Proclamation No. 2016/14 authorizing and requiring immediate debris removal from private roads and rights-of-way. (In satisfaction of 44 CFR 206.221(c); 44 CFR 206.223(a)(3); 44 CFR § 206.224(a) and 44 CFR 206 .225(a)(3)).

**Terms and conditions of this approval:**

1. This approval is limited to the removal of hurricane-caused debris from private roads and rights-of-way.
2. This approval requires that Beaufort County provide a full and complete roster of all private roads onto which it enters to remove debris under this authority as a mandatory inclusion with its project worksheet (PW). All PPDR will be pursuant to a separate project worksheet (PW) (not included with other Cat A projects). This necessitates tracking debris accordingly and so noted on load tickets and other documentation.
3. This approval requires that Beaufort County utilize, and cause to be completed, the submitted Right of Entry (ROE) before it enters upon any private roads and right-of-ways where ownership can be ascertained. This ROE form requires: the signature of the property owner; the documentation relating to insurance coverage, proceeds and settlements; and the property owner's indemnification of the Federal Government. This approval requires the completion of the ROE and the ROE submitted to FEMA for approval, prior to debris removal.
4. Where ownership of the private roads and right of way cannot be timely ascertained through reasonable efforts, Beaufort County has provided a hold harmless agreement by a supplement to its PPDR request, dated October 28, 2016.
5. To avoid potential duplication of benefits under Section 312 of the Stafford Act (42 U.S.C. §5155), I further require Beaufort County to assist the federal government in recovering any insurance proceeds after a reasonable search of records and a reasonable effort to ascertain from the property owners any insurance proceeds that they may have been paid for such debris removal under this program.

Confirmation that these additional documentation requirements have been met will be provided by the Infrastructure Branch Director for FEMA-4286-DR-SC and will constitute approval for PPDR on these specifically listed private roads and right-of-ways. Any areas where private property debris removal is in the public interest will be considered on a case-by-case basis. Any

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 29, 2016  
Page 3

such request for PPDR must be submitted for consideration within 90 days of the date of this letter.

Please note that the following items are **not approved** for private property debris removal under the Public Assistance Program:

- Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas;
- Debris on agricultural lands used for crops or livestock;
- Concrete slabs or foundations-on-grade;
- Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property; and
- Debris from commercial properties such as hotels, apartments, condos, and their parking lots.

Please note that any contracts entered into for debris removal must comply with the requirements of 2 C.F.R. § 200.317 et seq. If there is a failure to comply with any required Federal, State and local laws, regulations and permits required for debris removal activities, FEMA funding will be jeopardized.

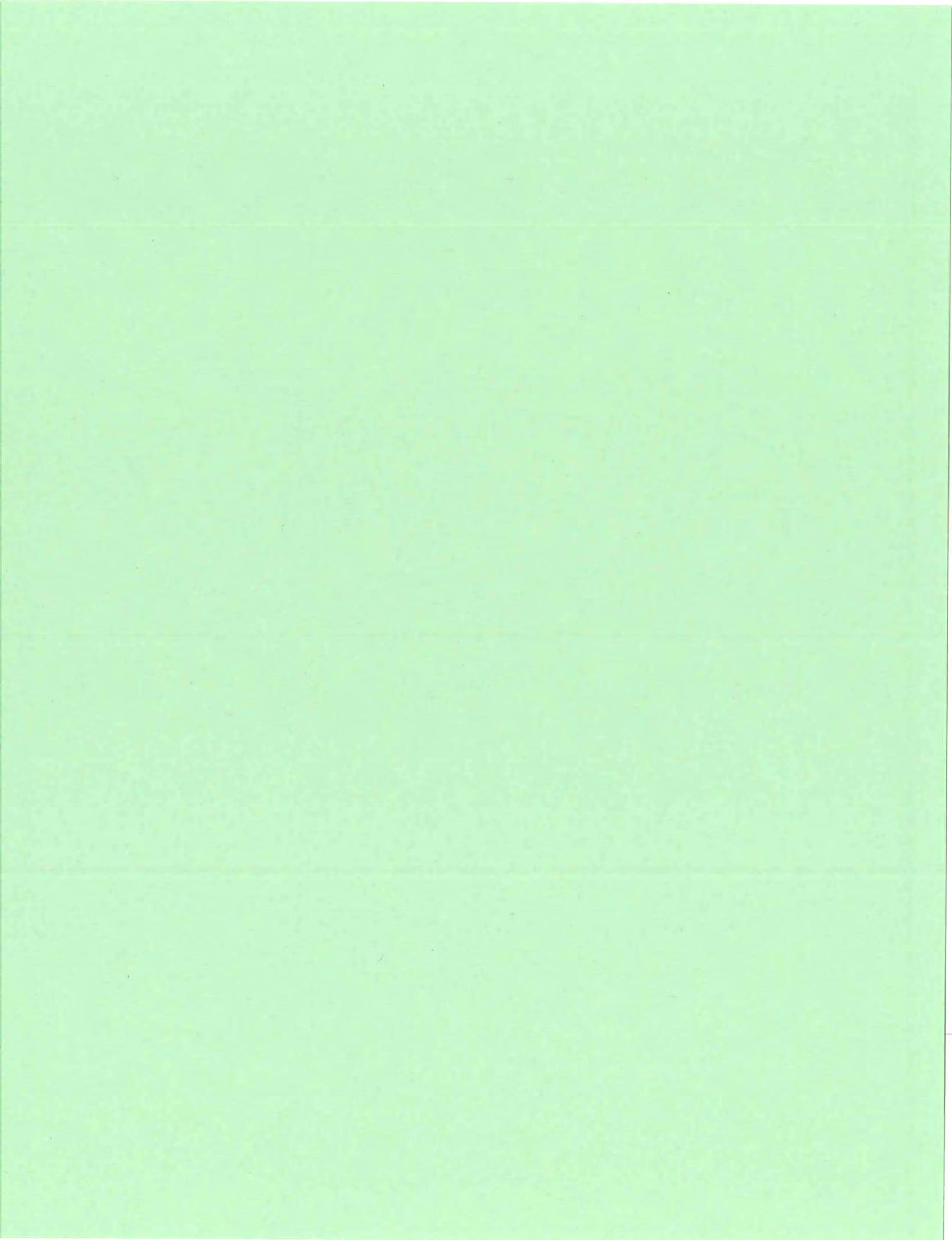
Finally, as you work to remove the debris caused by the October 2016, Hurricane Matthew, I trust you will remain mindful of any environmentally sensitive areas and any historic properties affected and consult the appropriate state and federal authorities if you need assistance.

Should you have any questions or require additional information, please contact Timothy Etson, Infrastructure Branch Director for FEMA-4286-DR-SC at (832) 851-4497.

Sincerely,



W. Michael Moore  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4286-DR-SC



ROE No. \_\_\_\_\_

Property Owner's Association:  
\_\_\_\_\_

**PRIVATE CONTRACTOR/  
DEBRIS REMOVAL/DEMOLITION**

South Carolina

Address: \_\_\_\_\_

Tax ID Block/Lot: \_\_\_\_\_

**RIGHT OF ENTRY ONTO PRIVATE PROPERTY FOR DEBRIS REMOVAL AND/OR  
DEMOLITION DISASTER ASSISTANCE (FEMA-DR-\_\_ -SC)**

Ownership Interest and Grant of Right of Entry for Debris Removal and/or Demolition Activities

The undersigned hereby certifies they/he/she are/is (check):

\_\_\_\_\_ The owner(s) with authority to grant access to the property at (address) \_\_\_\_\_, or

\_\_\_\_\_ The authorized agent of the Property Owner or the Property Owner's Association. (Must Provide Documentation Confirming Authorization)

The Property Owner(s)/agent authorize(s) Beaufort County, the State of South Carolina, and the United States of America, their respective agents, successors and assigns, contractors and subcontractors (collectively, the "Governments/Contractors") to have the right of access and to enter the property above specified for purposes of performing debris removal as it is a public health and safety threat or for demolishing structures local authorities have determined to be unsafe due to the declared major disaster (FEMA-DR-\_\_\_\_\_ -SC).

Governments/Contractors will perform the following work (check):

1. \_\_\_\_\_ Remove debris from the private rights of way.

2. \_\_\_\_\_ Demolish the unsafe structure on the Property and remove the demolition debris.

Mortgage and Insurance Adjuster Information if for Demolition

\_\_\_\_\_ The Property Owner/agent certifies that no mortgage exists on said property.

\_\_\_\_\_ The Property Owner/agent certifies that a mortgage does exist on said property.

\_\_\_\_\_ The Property Owner/agent certifies that an adjuster for any insurance policy has inspected the property.

Other Liens/Encumbrances on the Property if for Demolition

\_\_\_\_\_ The Property Owner/agent certifies that no other liens or encumbrances exist on said property.

\_\_\_\_\_ The Property Owner/agent certifies that (type lien[s]) \_\_\_\_\_ does/do exist on said property.

Governments Not Obligated; No Expense Except For Insurance Proceeds

The Property Owner/agent understands that this Right-of-Entry does not obligate the Governments/Contractors to perform debris removal or demolition. Governments/Contractors will access the property under this ROE if the work has been determined necessary in accordance with Federal, State, or local regulations. The Property Owner(s) will not be charged for the work conducted by Governments/Contractors. However, if the Property Owner receives insurance proceeds or compensation from other sources for debris removal or demolition, the Property Owner's obligation is set out in the section below, entitled "Avoidance of Duplication of Benefits: Reporting Debris Removal/Demotion Money Received."

Government Indemnified and Held Harmless

The Property Owner(s)/agent agree(s) to indemnify and hold harmless the Governments/Contractors for any damage of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the Property Owners(s) has/have, or ever might or may have, by reason of any action taken by Governments/Contractors to remove debris or demolish unsafe structures.

Avoidance of Duplication of Benefits: Reporting Debris Removal/Demolition Money Received

Property Owner/agent has an obligation to file an insurance claim if coverage is available. Property Owner/agent understands and acknowledges that receipt of compensation or reimbursement for performance of the aforementioned activities from any source, including Small Business Administration, private insurance, an individual and family grant program or any other public or private assistance program could constitute a duplication of benefits prohibited by federal law. If the Property Owner/agent receives any compensation from any source for debris removal or demolition activities on this Property, the Property Owner/agent will report it to the Beaufort County Solid Waste Manager at 120 Shanklin Road, Beaufort, SC 29906, (843)255-2800.

Release of Insurance Information

If insured, the Property Owner/agent authorizes its insurer, (Company) \_\_\_\_\_, to release information relating to coverage and payments for debris removal/demolition activities (Claim # \_\_\_\_\_, Policy # \_\_\_\_\_) to the Beaufort County and/or to the State of South Carolina.

Acknowledgment of Prohibition on Fraud, Intentional Misstatements

The Property Owner/agent understands that an individual who fraudulently or willfully misstates any fact in connection with this agreement may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 USC 1001.

Time Period

This ROE shall expire 360 days after signature, unless cancelled sooner in writing to the Entity listed above at the request of the Property Owner.

Signature(s) and Witnesses Property Owner(s) or Authorized Agent and/or Mortgage/Lien Holder(s)

Privacy Act Statement: The Property Owner/ Owner's Authorized Agent acknowledge(s) that information submitted will be shared with other government agencies, federal and non-federal, and contractors, their subcontractors and employees but solely for purposes of disaster relief management to meet the objectives of this Right-of-Entry. This form is signed to allow access to perform debris removal and/or demolition operations on the above-mentioned property, to authorize the release of insurance policy/claim information and to notify any lien-holder of demolition.

For the considerations and purposes set forth herein, my signature confirms that I have read this form, that if signed on behalf of a Property Owner's Association, I am authorized to sign this form and to bind the association that I will abide by its terms and agree to all terms stated herein. I certify under the laws of the State of South Carolina and the United States that my answers are truthful.

**Property Owner/ Authorized Agent (if Authorized Agent, attach Supporting Documentation)**

\_\_\_\_\_  
(Print Name) (Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
Current Address and Telephone:

\_\_\_\_\_  
Witness 1: Address & Telephone

\_\_\_\_\_  
Witness 2: Address & Telephone

**For Demolition Only**

\_\_\_\_\_  
(Print Mortgage Holder Name) (Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
Current Address and Telephone:

|  |   |
|--|---|
| ROE No. <u>6</u><br>Property Owner's Association:<br><u>Datan Island</u> | <b>PRIVATE CONTRACTOR/<br/>         DEBRIS REMOVAL/DEMOLITION</b><br>South Carolina<br>Address: <u>100 Datan Club Road.</u><br>Tax ID Block/Lot: <u>R300 010 00C 0144 0000</u><br><u>R300 016 00C 0143 0000</u> |
|--|---|

**RIGHT OF ENTRY ONTO PRIVATE PROPERTY FOR DEBRIS REMOVAL AND/OR  
 DEMOLITION DISASTER ASSISTANCE (FEMA-4286-DR-SC)**

Ownership Interest and Grant of Right of Entry for Debris Removal and/or Demolition Activities

The undersigned hereby certifies they/he/she are/is (check):

- The owner(s) with authority to grant access to the property at (address) \_\_\_\_\_, or  
 The authorized agent of the Property Owner or the Property Owner's Association. (Must Provide Documentation Confirming Authorization)

The Property Owner(s)/agent authorize(s) Beaufort County, the State of South Carolina, and the United States of America, their respective agents, successors and assigns, contractors and subcontractors (collectively, the "Governments/Contractors") to have the right of access and to enter the property above specified for purposes of performing debris removal as it is a public health and safety threat or for demolishing structures local authorities have determined to be unsafe due to the declared major disaster (FEMA-4286-DR -SC).

Governments/Contractors will perform the following work (check):

1.  Remove debris from the private rights of way.  
 2.  Demolish the unsafe structure on the Property and remove the demolition debris.

Mortgage and Insurance Adjuster Information if for Demolition

- The Property Owner/agent certifies that no mortgage exists on said property.  
 The Property Owner/agent certifies that a mortgage does exist on said property.  
 The Property Owner/agent certifies that an adjuster for any insurance policy has inspected the property.

Other Liens/Encumbrances on the Property if for Demolition

The Property Owner/agent certifies that no other liens or encumbrances exist on said property.  
 The Property Owner/agent certifies that (type lien[s]) \_\_\_\_\_ does/do exist on said property.

Governments Not Obligated; No Expense Except For Insurance Proceeds

The Property Owner agent understands that this Right-of-Entry does not obligate the Governments/Contractors to perform debris removal or demolition. Governments/Contractors will access the property under this ROE if the work has been determined necessary in accordance with Federal, State, or local regulations. The Property Owner(s) will not be charged for the work conducted by Governments/Contractors. However, if the Property Owner receives insurance proceeds or compensation from other sources for debris removal or demolition, the Property Owner's obligation is set out in the section below, entitled "Avoidance of Duplication of Benefits: Reporting Debris Removal/Demotion Money Received."

Government Indemnified and Held Harmless

The Property Owner(s) agent agree(s) to indemnify and hold harmless the Governments/Contractors for any damage of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the Property Owners(s) has/have, or ever might or may have, by reason of any action taken by Governments/Contractors to remove debris or demolish unsafe structures.

law. If the Property Owner/agent receives any compensation from any source for debris removal or demolition activities on this Property, the Property Owner/agent will report it to the Beaufort County Solid Waste Manager at 120 Shanklin Road, Beaufort, SC 29906, (843)255-2800.

Release of Insurance Information

If insured, the Property Owner/agent authorizes its insurer, (Company) Lloyd's of London, to release information relating to coverage and payments for debris removal/demolition activities (Claim # none yet, Policy # [redacted]) to the Beaufort County and/or to the State of South Carolina. (policy covers the Dataw Island Owners Association & Distans Club)

Acknowledgment of Prohibition on Fraud, Intentional Misstatements

The Property Owner/agent understands that an individual who fraudulently or willfully misstates any fact in connection with this agreement may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 USC 1001.

Time Period

This ROE shall expire 360 days after signature, unless cancelled sooner in writing to the Entity listed above at the request of the Property Owner.

Signature(s) and Witnesses Property Owner(s) or Authorized Agent and/or Mortgage/Lien Holder(s)

Privacy Act Statement: The Property Owner/ Owner's Authorized Agent acknowledge(s) that information submitted will be shared with other government agencies, federal and non-federal, and contractors, their subcontractors and employees but solely for purposes of disaster relief management to meet the objectives of this Right-of-Entry. This form is signed to allow access to perform debris removal and/or demolition operations on the above-mentioned property, to authorize the release of insurance policy/claim information and to notify any lien-holder of demolition.

For the considerations and purposes set forth herein, my signature confirms that I have read this form, that if signed on behalf of a Property Owner's Association, I am authorized to sign this form and to bind the association that I will abide by its terms and agree to all terms stated herein. I certify under the laws of the State of South Carolina and the United States that my answers are truthful.

Property Owner/ Authorized Agent (if Authorized Agent, attach Supporting Documentation)

Ted Bartlett (Print Name) [Signature] (Signature)

Date: 10-28-16  
Current Address and Telephone: 160 Dataw Club Road, Dataw Island, SC 29920 843-838-8203

Witness 1: Jim Brown Address & Telephone 100 Dataw Club Rd 843-838-8241  
Witness 2: Paul Garrison Address & Telephone 100 Dataw Club Rd 843-838-2716

**For Demolition Only**

N/A (Print Mortgage Holder Name) [Signature] (Signature)

Date: \_\_\_\_\_  
Current Address and Telephone: \_\_\_\_\_



October 28, 2016

Re: Private Contractor Debris Removal Authorization

Please accept this documentation that Ted Bartlett, General Manager and COO of the Dataw Island Club and Dataw Island Owners Association is hereby authorized to act as the Authorized Agent for the Dataw Island Owners Association with regard to all matters of debris removal from the aftermath of Hurricane Matthew.

A handwritten signature in cursive script, reading "Perry H. Gesell", is written over a horizontal line.

Perry Gesell

Secretary for

Dataw Island Club Board of Directors

**BYLAWS DATAW ISLAND OWNERS ASSOCIATION, INC.**

Amended and Restated as of November 1, 1997, with Technical and Corrective changes of January 12, 1998, and amendments dated September 16, 2003, July 21, 2008, February 20, 2009, July 18, 2011, and July 18, 2016.

**PREAMBLE**

These Bylaws provide the basis for the organizational structure necessary to administer the Dataw Island Owners Association, Inc. affairs; to maintain the Common Areas; to enhance the safety, health and welfare of Dataw Island residents, visitors and employees; and to help provide for the security of property at Dataw Island.

**ARTICLE I - DEFINITIONS**

**Section 1.1 Covenants**

"Covenants" shall mean and refer to the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DATAW ISLAND, dated October 1, 1996, as recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 892 at Pages 1038 to 1102, inclusive; and any duly recorded subsequent amendments to these Covenants.

**Section 1.2 Association**

"Association" shall mean and refer to the Dataw Island Owners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.

**Section 1.3 Property**

"Property" shall mean and refer to all property which shall be subject to the jurisdiction of the Association pursuant to the Covenants.

**Section 1.4 Common Areas**

"Common Areas" shall mean and refer to those areas of land together with any improvements thereon, if any, which are deeded to the Association and designated in said deed as "Common Areas". The term "Common Areas" shall include any personal property acquired by the Association if said property is designated as "Common Areas". All Common Areas are to be devoted to and for the common use and enjoyment of the owners of the Property.

**Section 1.5 Owner**

"Owner" shall mean and refer (i) to one or more persons but not more than four (4) persons, (ii) to a corporation, partnership, association, trust or other legal entity, or (iii) any combination thereof, who or which shall own fee simple title to a lot or dwelling unit on Dataw Island; provided however that any person or legal entity, which shall own or possess a security interest in such lot or dwelling unit, shall not be an Owner thereof for purposes of these Bylaws.

**Section 1.6 Board**

"Board" shall mean and refer to the Board of Directors of the Association as constituted pursuant to the provisions of these Bylaws.

**Section 6.5 The General Manager**

The Board shall employ a General Manager, who shall be the Association's chief operating officer, shall report to the Board, and shall employ, supervise, and terminate, when necessary, Association employees, professional consultants, contractors and agents.

The General Manager shall administer Association affairs through the implementation of policy directives and shall administer and enforce the Covenants, Dataw Island Design Guidelines and the rules and regulations adopted by the Board, so as to accomplish Association goals and objectives.

The General Manager shall develop for Board approval an organizational plan including the programs, procedures, personnel, systems, specifications and equipment necessary to provide the services required. The General Manager shall have the authority to implement the approved plans but must request Board approval for any major changes.

The General Manager shall prepare for Board approval an operational plan and budget for the ensuing year and shall have the authority to implement such approved plans and budget. The General Manager shall review the operational activities at each regular meeting of the Board and at the Annual Meeting of Members.

The General Manager shall prepare an annual report for the Board of existing and anticipated requirements with a forecast of expenses and income for periods defined by the Board.

The General Manager shall consult with the appropriate committees of the Board on the development of programs or procedures. The General Manager may utilize the services of Members as needed. The General Manager, and/or his designee, shall be an ex-officio member of all Board Committees, except the Nominating and Executive Committees.

**ARTICLE VII - OFFICERS OF THE ASSOCIATION**

**Section 7.1 Designation and Election**

The officers of the Association shall be the President, the Vice-President and the Secretary, each of whom shall be a Director, and the Treasurer, who may, but is not required to be a Director. The Board may appoint such assistant secretaries and assistant treasurers as it shall deem appropriate for a term which shall expire at the next Annual Meeting. No such assistant officer may be the spouse of, or be one of the multiple owners of a lot or dwelling unit owned by, any Director or officer.

7.1.1 As soon as practicable after the installation of the newly elected Directors at the Annual Meeting, the Board shall meet to elect the officers to serve until their successors are elected at the meeting of the Board held after the next succeeding Annual Meeting.

7.1.2 The President shall preside at all meetings of the Board and the Members, shall assure that all policies and directives of the Board are carried out, sign notes, leases, mortgages, deeds and other written instruments for the Association and perform all of the duties incident to his office which may be delegated to him from time to time by the Board. The President shall be an ex-officio member of all committees established under the provisions hereof, except the Nominating Committee and the Executive Committee.

7.1.3 The Vice President shall perform all the duties of the President in his/her absence, and

|   |   |
|---|---|
| ROE No. <u>83</u><br><br>Property Owner's Association:<br><u>Colleton River</u> | <b>PRIVATE CONTRACTOR/<br/>DEBRIS REMOVAL/DEMOLITION</b><br>South Carolina<br>Address: <u>See Attachment</u><br>Tax ID Block/Lot: <u>See Attachment</u> |
|---|---|

**RIGHT OF ENTRY ONTO PRIVATE PROPERTY FOR DEBRIS REMOVAL AND/OR  
DEMOLITION DISASTER ASSISTANCE (FEMA-4286-DR-SC)**

Ownership Interest and Grant of Right of Entry for Debris Removal and/or Demolition Activities

The undersigned hereby certifies they/he/she are/is (check):

- The owner(s) with authority to grant access to the property at (address) \_\_\_\_\_, or  
 The authorized agent of the Property Owner or the Property Owner's Association. (Must Provide Documentation Confirming Authorization)

The Property Owner(s)/agent authorize(s) Beaufort County, the State of South Carolina, and the United States of America, their respective agents, successors and assigns, contractors and subcontractors (collectively, the "Governments/Contractors") to have the right of access and to enter the property above specified for purposes of performing debris removal as it is a public health and safety threat or for demolishing structures local authorities have determined to be unsafe due to the declared major disaster (FEMA-4286-DR -SC).

Governments/Contractors will perform the following work (check):

1.  Remove debris from the private rights of way.
2.  Demolish the unsafe structure on the Property and remove the demolition debris.

Mortgage and Insurance Adjuster Information if for Demolition

- The Property Owner/agent certifies that no mortgage exists on said property.  
 The Property Owner/agent certifies that a mortgage does exist on said property.  
 The Property Owner/agent certifies that an adjuster for any insurance policy has inspected the property.

Other Liens/Encumbrances on the Property if for Demolition

- The Property Owner/agent certifies that no other liens or encumbrances exist on said property.  
 The Property Owner/agent certifies that (type lien[s]) \_\_\_\_\_ does/do exist on said property.

Governments Not Obligated; No Expense Except For Insurance Proceeds

The Property Owner/agent understands that this Right-of-Entry does not obligate the Governments/Contractors to perform debris removal or demolition. Governments/Contractors will access the property under this ROE if the work has been determined necessary in accordance with Federal, State, or local regulations. The Property Owner(s) will not be charged for the work conducted by Governments/Contractors. However, if the Property Owner receives insurance proceeds or compensation from other sources for debris removal or demolition, the Property Owner's obligation is set out in the section below, entitled "Avoidance of Duplication of Benefits: Reporting Debris Removal/Demotion Money Received."

Government Indemnified and Held Harmless

The Property Owner(s)/agent agree(s) to indemnify and hold harmless the Governments/Contractors for any damage of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the Property Owners(s) has/have, or ever might or may have, by reason of any action taken by Governments/Contractors to remove debris or demolish unsafe structures.

Avoidance of Duplication of Benefits: Reporting Debris Removal/Demolition Money Received

Property Owner/agent has an obligation to file an insurance claim if coverage is available. Property Owner/agent understands and acknowledges that receipt of compensation or reimbursement for performance of the aforementioned activities from any source, including Small Business Administration, private insurance, an individual and family grant program or any other public or private assistance program could constitute a duplication of benefits prohibited by federal law. If the Property Owner/agent receives any compensation from any source for debris removal or demolition activities on this Property, the Property Owner/agent will report it to the Beaufort County Solid Waste Manager at 120 Shanklin Road, Beaufort, SC 29906, (843)255-2800.

Release of Insurance Information

If insured, the Property Owner/agent authorizes its insurer, (Company) WELLS FARGO INSURANCE/2URIES release information relating to coverage and payments for debris removal/demolition activities (Claim # \_\_\_\_\_, Policy # \_\_\_\_\_) to the Beaufort County and/or to the State of South Carolina.

Acknowledgment of Prohibition on Fraud, Intentional Misstatements

The Property Owner/agent understands that an individual who fraudulently or willfully misstates any fact in connection with this agreement may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 USC 1001.

Time Period

This ROE shall expire 360 days after signature, unless cancelled sooner in writing to the Entity listed above at the request of the Property Owner.

Signature(s) and Witnesses Property Owner(s) or Authorized Agent and/or Mortgage/Lien Holder(s)

Privacy Act Statement: The Property Owner/ Owner's Authorized Agent acknowledge(s) that informat on submitted will be shared with other government agencies, federal and non-federal, and contractors, their subcontractors and employees but solely for purposes of disaster relief management to meet the objectives of this Right-of-Entry. This form is signed to allow access to perform debris removal and/or demolition operations on the above-mentioned property, to authorize the release of insurance policy/claim information and to notify any lien-holder of demolition.

For the considerations and purposes set forth herein, my signature confirms that I have read this form, that if signed on behalf of a Property Owner's Association, I am authorized to sign this form and to bind the association that I will abide by its terms and agree to all terms stated herein. I certify under the laws of the State of South Carolina and the United States that my answers are truthful.

Property Owner/ Authorized Agent (if Authorized Agent, attach Supporting Documentation)

TIMOTHY M. BAKER  
(Print Name)

[Signature]  
(Signature)

Date: 11/29/2016

Current Address and Telephone: 6 BRIDGE LANE, BEAUFORT, SC 29910

(843) 8364429

Witness 1: [Signature]

Address & Telephone 37 DISTER REEF DRIVE, MHI, SC 29926

Witness 2: [Signature]

Address & Telephone 494 1ST AVE RIDGELAND SC 29936  
843 2269602

For Demolition Only

\_\_\_\_\_  
(Print Mortgage Holder Name)

\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

Current Address and Telephone: \_\_\_\_\_



**COLLETON RIVER PLANTATION CLUB, INC.**

*Note: This online database was last updated on 12/22/2016 3:06:10 AM.  
See our Disclaimer.*

DOMESTIC / FOREIGN: Domestic  
 STATUS: Good Standing  
 STATE OF INCORPORATION: SOUTH CAROLINA  
 / ORGANIZATION: Non Profit

**REGISTERED AGENT INFORMATION**

REGISTERED AGENT NAME: TIMOTHY M. BAKELS  
 ADDRESS: 80 COLLETON RIVER DRIVE  
 CITY: BLUFFTON  
 STATE: SC  
 ZIP: 29910  
 SECOND ADDRESS:

FILE DATE: 08/17/1990  
 EFFECTIVE DATE: 08/17/1990  
 DISSOLVED DATE: //

**Corporation History Records**

| CODE                   | FILE DATE  | COMMENT   | Document |
|------------------------|------------|---|----------|
| Agent                  | 08/24/2013 | CHANGED REGISTERED AGENT FROM--TIMOTHY D SNYDER |          |
| Agent                  | 02/11/2013 | SCOTT E JACCARD                                 |          |
| Agent                  | 07/13/2009 | CHANGED AGT/ADD FROM-WILLIAM E LANGLEY          |          |
| Eleemosynary Amendment | 11/20/1995 | AMD-ADD AGT/ADD                                 | Image    |
| Amendment              | 08/27/1991 | NM CH AMD BK 89 PG 423                          | Film     |
| Incorporation          | 08/17/1990 | Chtr [ 28839 ] ELEE                             | Film     |

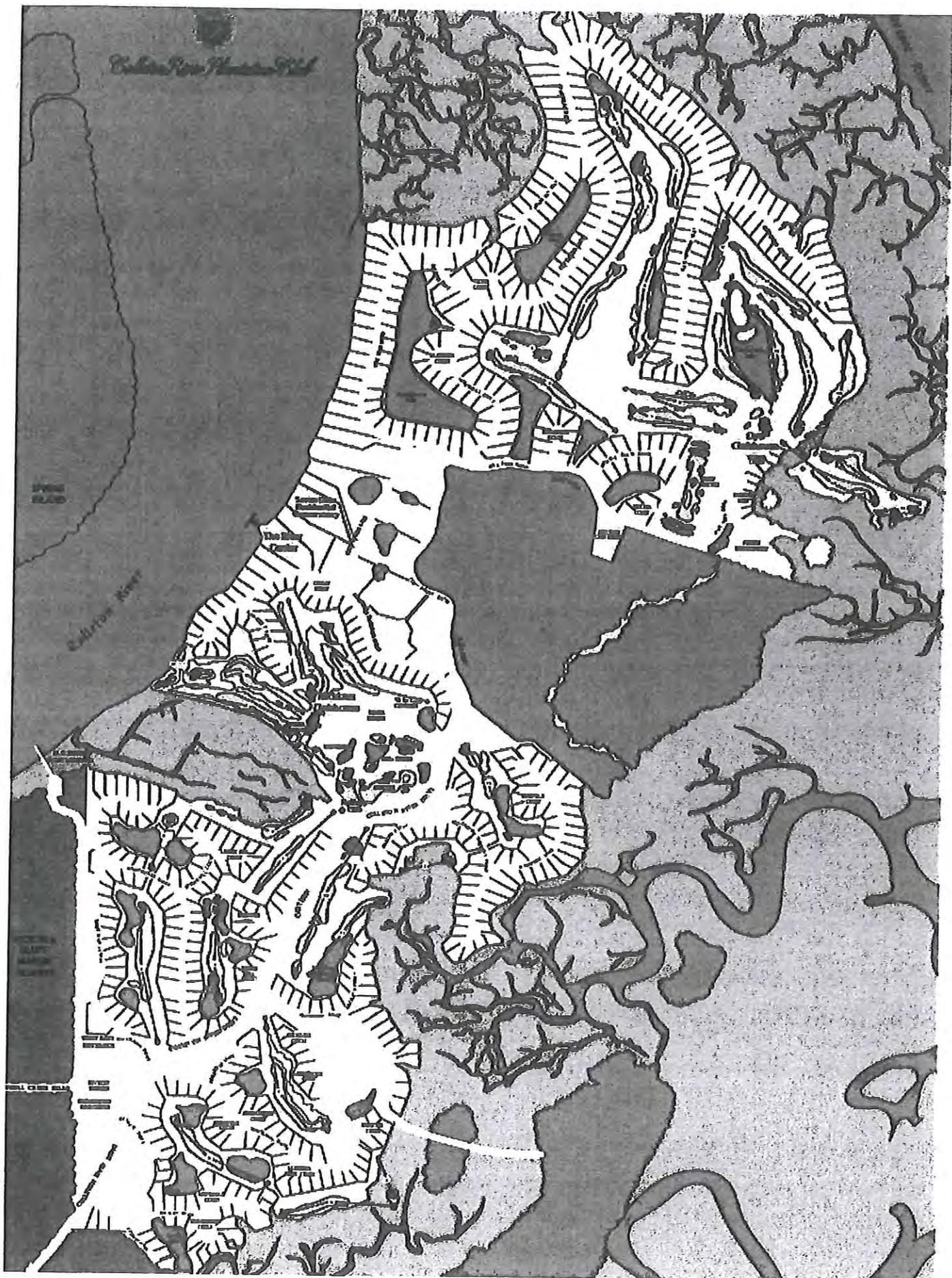
**Disclaimer:** The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

## Road Inventory for Colleton River Club, Bluffton, SC 29910

- Archdale Circle
- Ashley Hall Drive
- Bayley Road
- Boone Hall Court
- Brenton Court
- Colleton River Drive
- Drayton Hall
- Edgefield Lane
- Fairfield Court
- Hampton Lane
- Hanover Way
- Hawthorne Road
- High Ponds Lane
- Laurel Hill Court
- Lawsons Pond Court
- Lewisfield Court
- Mackays Point Drive
- Magnolia Blossom Drive
- Mansfield Circle
- Middleton Gardens Place
- Middleberg Court
- Millbrook Court
- Mulberry Road
- Oakley Court
- Retreat Drive
- Somerset Point
- Seven Oaks Drive
- Spring Hill Court
- Stoney Park Lane
- Wedgewood Circle
- Whitehall Drive
- Ballybunion Way
- Baltusrol Court
- Double Eagle Drive
- Honors Court
- Honors Row
- Inverness Drive
- Kittansett Court
- Merion Way
- Oak Hill Court
- Oak Tree Road
- Troon Lane
- Turnberry Way

## Tax ID Numbers

- R600 025 000 001C 0000
- R600 025 00B 0153 0000
- R600 033 000 0054 0000
- R600 025 000 0264 0000
- R600 025 000 0255 0000
- R600 025 000 0253 0000
- R600 025 000 0200 0000
- R600 025 000 0171 0000
- R600 025 000 0166 0000
- R600 025 000 001C 0000



|                                |   |                                |
|--------------------------------|---|--------------------------------|
| <b>STATE OF SOUTH CAROLINA</b> | ) | <b>HOLD HARMLESS AGREEMENT</b> |
|                                | ) | <b>FOR DEBRIS REMOVAL</b>      |
|                                | ) | <b>FROM ORPHAN ROADS</b>       |
| <b>BEAUFORT COUNTY</b>         | ) | <b>AND RIGHTS-OF-WAY</b>       |
|                                | ) |                                |

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By letter dated October 29, 2016 FEMA approved, subject to the terms and conditions set forth therein, Beaufort County's request Private Property Debris Removal (PPDR) from private roads and rights-of-way under FEMA's Public Assistance program (FEMA 4286-DR-SC).

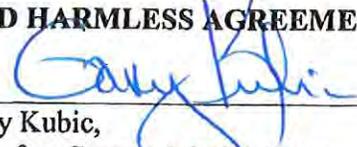
Beaufort County has numerous private roads and rights-of-way that either have no identifiable owner or are owned as heirs' property (hereinafter "Orphan Roads"). Due to the imminent threat to life, public health and safety Beaufort County must clear debris from these roads and rights of way. They are identified on "Exhibit A" attached hereto.

Term and Condition Number four in FEMA's October 29, 2016 letter authorizing debris removal from private roads and rights of way provides:

*Where ownership of the private roads and right of way cannot be timely ascertained through reasonable efforts, Beaufort County has provided a hold harmless agreement by a supplement to its PPDR request dated October 29, 2016.*

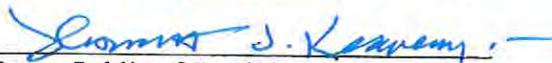
Therefore, as required by section 407(b) of the Stafford Act (42 U.S.C. 5173(b)), Beaufort County hereby agrees that it will hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. Beaufort County hereby acknowledges that in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

**I HAVE READ AND APPROVE THIS HOLD HARMLESS AGREEMENT**

  
 \_\_\_\_\_  
 Gary Kubic,  
 Beaufort County Administrator  
 P.O. Drawer 1228  
 Beaufort, SC 29901

Sworn to and subscribed before me this

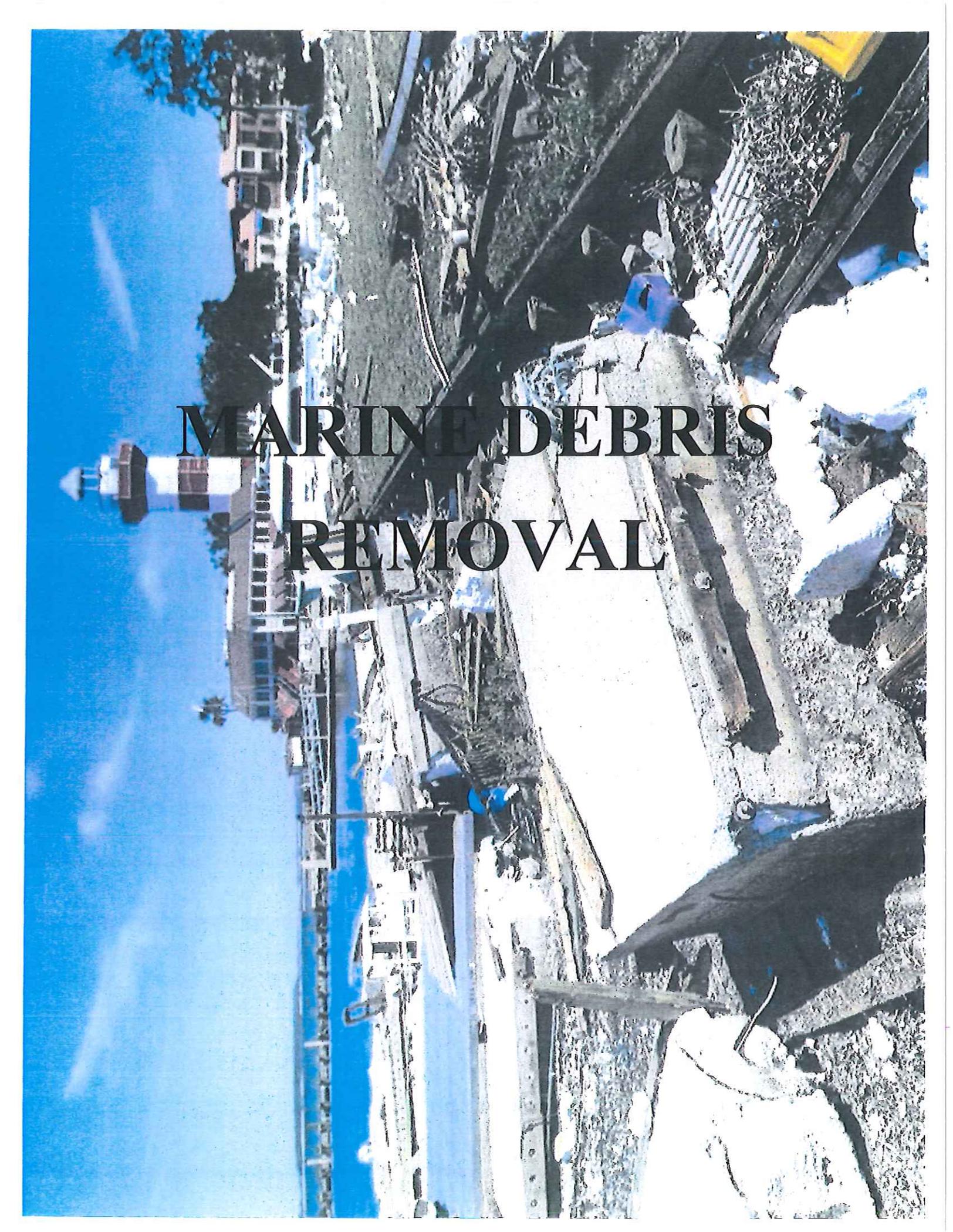
1<sup>st</sup> day of November, 2006

  
 \_\_\_\_\_  
 Notary Public of South Carolina  
 My Commission Expires: 10/13/2025

**ORPHAN/POTENTIAL ORPHAN ROADS  
IN BEAUFORT COUNTY**

|                          |                       |                            |
|--------------------------|-----------------------|----------------------------|
| A FARM RD                | AMBLEWOOD AVE         | ASHBOURNE CT               |
| ABALONE LANE             | AMBROSE RUN           | ASHLEY CROSSING DR         |
| ABBEY ROW                | AMELIA COMMON         | ASHTON COVE DRIVE          |
| ABBIE SMITH LN           | AMELIA COURT          | ASHTON DR                  |
| ABBOTSBURY PL            | AMELIA DRIVE          | ASHTON OVERLOOK<br>DR      |
| ABIGAIL LANE             | AMELLE DR             | ASHTON POINTE BLVD         |
| ABINGDON LN              | AMERICAN AVE          | ASPEN HALL CT              |
| ABNER LN                 | AMERICAN AVOCET<br>CT | ASPEN HALL RD              |
| ABRAHAM JONES<br>LANE    | ANCHORAGE DR          | ASSEMBLY ROW               |
| ACHURCH PL               | ANCHORAGE POINT       | ATHENS LN                  |
| ADAMS PL                 | ANDERSON LN           | ATKINS BLF                 |
| ADAMS WAY                | ANDREW & JULIA DR     | AUDUBON PLACE              |
| ADDISON DR               | ANGEL LN              | AULD BRASS COURT           |
| ADDISON ST               | ANGEL OAK LN          | AULDBRASS<br>PLANTATION DR |
| ADELL LANE               | ANGEL WING DRIVE      | AUTUMN CIR                 |
| ADHEMAR RD               | ANGLERS POND<br>COURT | AUTUMN PARK CT             |
| ADMIRATION AVE           | ANGLERS POND LANE     | AVALON DR                  |
| ADVENTURE GALLEY<br>LANE | ANIYIKA AYE LN        | AVE OF OAKS                |
| AFTON CIR                | ANNA COURT            | AVE OF OAKS CT             |
| AGGIE DR                 | ANNA ESTATE LN        | B GLOVER LN                |
| AIKEN PLACE              | ANNABELLA LANE        | B WILSON DR                |
| AIRY HALL COURT          | ANNS POINT RD         | BACK GATE RD               |
| ALBANY DR                | ANOLYN CT             | BACKACHE ACRES             |
| ALBEMARLE PLACE          | ANSLEY COURT          | BAITERS LN                 |
| ALBERT GREEN LN          | ANTLEYS LN            | BAITERS WALK               |
| ALBERT LN                | APPALOOSA CT          | BAKERS CT                  |
| ALDER LANE 1             | APPLEBY LN            | BALLPARK RD                |
| ALEXANDER WAY            | APPLETON RD           | BANK SWALLOW<br>LAGOON     |
| ALEXANDRA LOOP           | APRIL WAY             | BARBARA LN                 |
| ALEXIS DR                | ARANDAS WAY           | BARCELONA DRIVE            |
| ALFRED ALSTON CT         | ARBOR LN              | BAREFOOT ALY               |
| ALFRED LANE              | ARBOR VICTORY RD      | BARGE LANDING RD           |
| ALLEN ROAD               | ARCADIA PL            | BARKSDALE COURT            |
| ALLENS COR               | ARCHER FIELDS LN      | BARKSDALE LN               |
| ALLIGATOR ALY            | ARD RD                | BARLEYS GRV                |
| ALLY CT                  | ARGO CIR              | BARNACLE CUT LN            |
| ALLY LN                  | ARGO LN               | BARNACLE ROAD              |
| ALLY OOP LN              | ARMADA                | BARNWELL BLF               |
| ALLYAN CT                | ARNOLD LN             | BARNWELL DR                |
| ALSTON PARK DR           | ARROW WOOD ROAD       | BARON CIR                  |
| AMAZING GRACE LN         | ARROWHEAD TRL         | BARONY CIRCLE              |
| AMBER LN                 | ARTHUR BLUE DR        | BARONY LANE                |
| AMBERLY LN               | ARTHUR HILLS COURT    |                            |

**EXHIBIT "A"**



# MARINE DEBRIS REMOVAL

## CHAPTER 6

### Coastal Zone Management

Amy E. Armstrong  
Mary D. Shahid

#### A. Introduction

In South Carolina, the state owns the property below the high water mark of a navigable stream.<sup>1</sup> The state holds this property in trust for its citizens under the common law Public Trust Doctrine.<sup>2</sup>

The underlying premise of the Public Trust Doctrine is that some things<sup>3</sup> are considered too important to society to be owned by one person. Traditionally, these things have included natural resources such as air, water (including waterborne activities such as navigation and fishing), and land (including but not limited to seabed and riverbed soils). Under this Doctrine, everyone has the inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks.<sup>4</sup>

The South Carolina Coastal Zone Management Act ("CZMA") is rooted in the Public Trust Doctrine and generally prohibits alterations to the tidelands except when the public interest requires otherwise.

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<sup>1</sup> *State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972).

<sup>2</sup> *Id.*

<sup>3</sup> *Kiawah Dev. Partners, II v. S. Carolina Dep't of Health & Env'tl. Control*, 411 S.C. 16, 766 S.E.2d 707 (S.C. 2014).

<sup>4</sup> *Sierra Club v. Kiawah Resort Associates*, 318 S.C. 119, 128, 456 S.E.2d 397, 402 (1995) (citing Syridon and LeBlanc, *The Overriding Public Interest in Privately Owned Natural Resources: Fashioning a Cause of Action*, 6 Tul.Env'tl.L.J. 287 (1993)).



**Keaveny, Thomas**

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**From:** Keaveny, Thomas  
**Sent:** Thursday, November 10, 2016 3:52 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Marine Debris

Eric and Chip:

Rob and I look forward to hearing from you regarding the correct process/appropriate organizations we need to work with in order to remove storm related debris (docks, vessels, trees, etc.) from the waters and shorelines of Beaufort County.

My email address appears above. My telephone numbers are:  
(843) 255-2025 (DD), [REDACTED]

Thank you.

Thomas J Keaveny, II  
Beaufort County Attorney

Sent from my iPhone



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Tuesday, November 15, 2016 4:20 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Marine Debris

**Follow Up Flag:** Follow up  
**Due By:** Wednesday, November 16, 2016 1:00 PM  
**Flag Status:** Flagged

Eric and Chip:

I am writing to follow-up the email below which I sent out last week. Can you give us guidance on how to address remediation of the storm related debris which is in our waterways?

Thank you.

Tom

Thomas J. Keaveny II  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414

-----Original Message-----

**From:** Keaveny, Thomas  
**Sent:** Thursday, November 10, 2016 3:52 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Marine Debris

Eric and Chip:

Rob and I look forward to hearing from you regarding the correct process/appropriate organizations we need to work with in order to remove storm related debris (docks, vessels, trees, etc.) from the waters and shorelines of Beaufort County.



On Nov 22, 2016, at 4:52 PM, Spanski, Iris [REDACTED] wrote:

Hi all,

All debris that is the responsibility of the applicant to remove in the public ROW is eligible under the PAAP Cat A Sliding Scale.

The marina debris is under the DNR authority and responsibility, per State EMD. My team will not be writing up the marina or any waterway debris removal.

The private property debris pickup in the designated areas are under the PPDR program that is under Chevelle Campbell. She has a team that will be writing those PWs, separate from our local entity debris removal.

I'm not sure of the ownership and responsibility of the storm water ROW that you are asking of? Definitely not waterways on our part.

The PAAP Sliding Scale is an incentive to complete all debris pickup and disposal by 180days. Unless there is an extension, which I do not know of any, I would say, any costs after that is not eligible.

I hope this helps clarify the responsible parties for the different debris removal programs.

Thanks so much!  
Iris

*Iris J. Spanski*

<image003.jpg>

**DHS Federal Emergency Management Agency (FEMA)**

**FEMA-4286-DR-SC**

**Public Assistance Crew Lead (PACL)**

**Beaufort County**  
[REDACTED]



**Keaveny, Thomas**

---

**From:** Larson, Eric  
**Sent:** Wednesday, November 23, 2016 8:37 AM  
**To:** [REDACTED]  
**Cc:** Keaveny, Thomas; Gruber, Joshua  
**Subject:** Marine debris update - 11/22/16

I wanted to give you an update.

Yesterday, we had a meeting with DNR representatives with Coast Guard, SCEMD, and NRCS on the phone. We discussed how to accomplish this task.

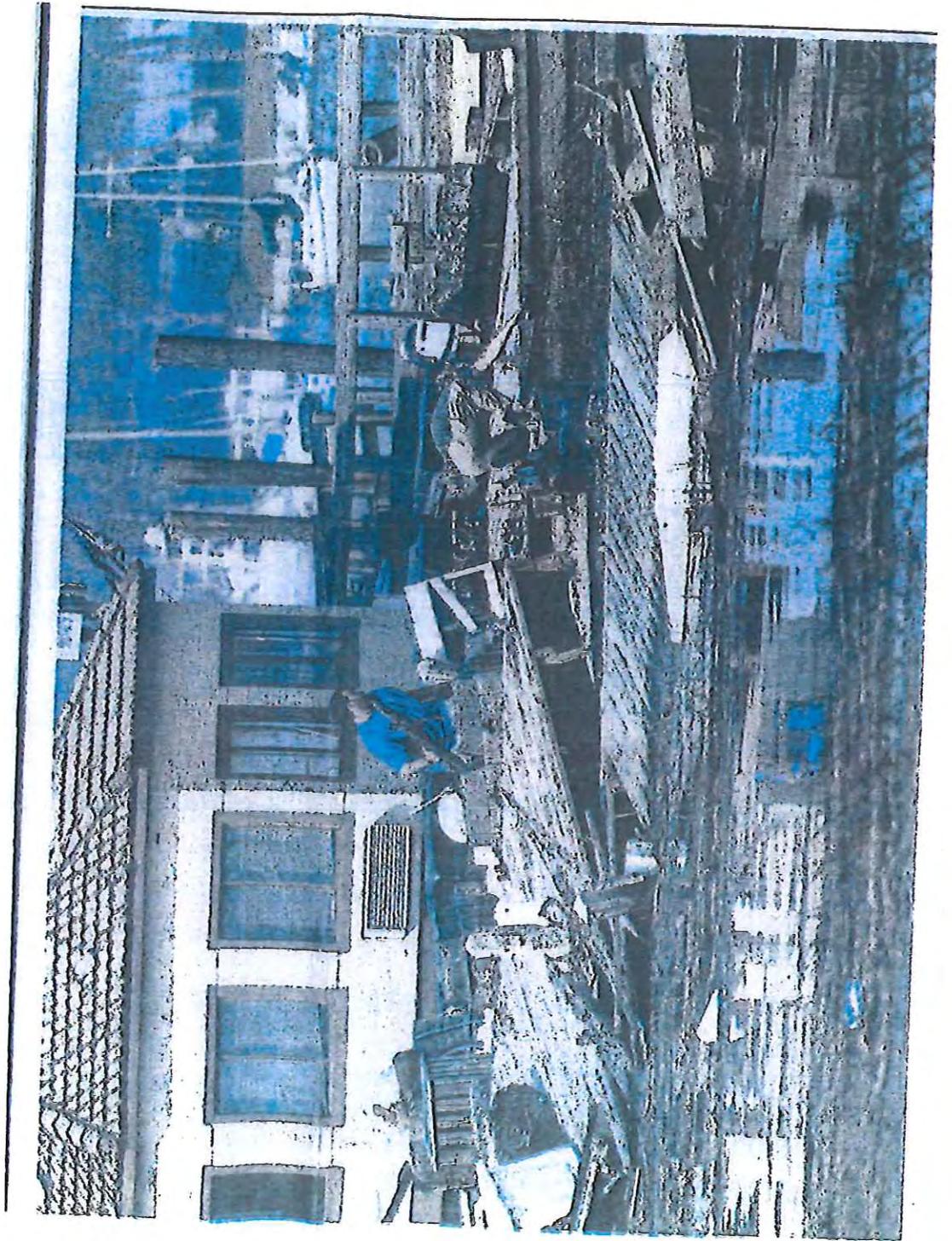
- 1) DNR is willing to take the lead to locate boat owners and facilitate owners removing the boat and/or going through the abandonment process. County to ask the Sheriff's department for help with tagging boats. DNR will do a flight next week to inventory the debris.
- 2) County is working through either a change order to our contract with CERES or bidding marine debris services. We can do county-wide if that is what the ToHHI wants.
- 3) County is working to find funding sources. It is still unclear how much FEMA will reimburse and where the 25% match will come from. NRCS has a grant program for infrastructure but after a brief discussion, we do not think this is a possible source. Admin. is pursuing the State delegation for assistance as well as the normal funding channels. County is contacting NOAA, who apparently has guidance documents on funding and process for marine debris removal.
- 4) DNR, DHEC, USACE, nor the Coast Guard are willing to actually do the clean-up and removal of debris, so this will likely fall onto the County.
- 5) County (Eric Larson) is going to be talking to the FEMA RPA team today to get clarification on Category A funding and timeframes.

Eric W Larson  
Director, Environmental Engineering & Land Management  
Director, Disaster Recovery  
120 Shanklin Road  
Beaufort, S.C. 29906  
(843) 255-2805 Office

[REDACTED]  
[REDACTED]  
[REDACTED]  
bcgov.net  
beaufortcountydisasterrecovery.net









Workers were busy cleaning up the wrecked docks at Palmetto Bay Marina on Hilton Head Island on Wednesday. The docks were destroyed by Hurricane Matthew, which hit the island on Oct. 8. Underwater debris such as sunken docks can pose a danger to boaters.

JAY KARR [jkarr@islandpacket.com](mailto:jkarr@islandpacket.com)

## HURRICANE AFTERMATH

# Hurricane Matthew debris clogs some Beaufort County waterways

BY LUCAS HIGH  
[lhig@islandpacket.com](mailto:lhig@islandpacket.com)

More than a month after Hurricane Matthew's winds and waves sunk boats and destroyed docks and marinas, questions remain as to who is responsible for cleaning up debris in local waterways and marshland areas.

While Beaufort County is partnering with local municipalities and state agencies on efforts to remove storm debris from roadways, that's not yet the case for debris in the water.

"For marine debris, we are not as far along in the removal process as we are with debris along the roads," county storm-water manager Eric Larson said earlier this week. "We are working with state agencies trying to determine who is going to take the lead on this."

In the days following Hurricane Matthew, crews with the S.C. Department of Natural Resources "removed debris from the navigable channel (of local waterways) and set it aside in the marsh."

But the state, rather than the county, has "jurisdictional control over the marshes," Larson

said.

And while the county is "doing some inventory of the debris so we have some idea what the magnitude is," much of that debris remains in marshy areas near waterways, he said.

"We don't have a time frame. We don't have a cost. We don't know whether (removing the debris is the county's) responsibility or not," Larson said. "We are working through the process (of making those determinations) now."

Both the Federal Emergency Management Agency and the S.C. Emergency Management Division are involved in con-

district-level job, and the public outcry that resulted — it said the matter was resolved.

"However, concerning the ethics case involving the superintendent, the board, of course, is pleased that the matter was resolved in early August and is now behind us," board member and secretary Evva Anderson said, reading Moss' evaluation into the record during the special-called meeting.

"The board did not take specific disciplinary action regarding the ethics matter but did

communicate to the superintendent its feelings, expectations and dissatisfaction with the way the matter unfolded," Anderson continued. "The board also acknowledges a shared responsibility with what took place."

In August, Moss pleaded guilty to two ethics violations related to the hiring of his wife to a job paying \$90,000 per year.

Specifically, he admitted to signing his wife's contract for consulting work with the district, and presenting his wife's candidacy for hire before the school board. A third charge — that he altered the administrative rule regarding language about the hiring of a superintendent's family member — was dismissed by the South Carolina

SEE MOSS, 7A

versations with the county on these issues.

Regarding debris removal — whether on land or in the water — Hilton Head Island town manager Steve Riley said earlier this week that "patience is the keyword."

But underwater debris such as sunken docks can pose a danger to boaters.

In fact, SCDNR recently installed signs on local boat landings warning boaters to slow down and be aware of damaged docks and debris in the water.

"Try to stay in a safe chan-

SEE DEBRIS, 7A



There is no old age. There is, as there always was, just you.

Carol Matthews

Business Classified Comics/Puzzles 5-6C  
Opinion Sports TV  
In Depth Lottery Obituaries  
11-12C  
7B  
1C 2A 4A

6B 1B 4C



7 68663500014 4

FROM PAGE 1A

## DEBRIS

nel," Lt. Michael Thomas with SCDNR's law enforcement division said when the signs went up earlier this month. "Stay as far away from structures as you can."

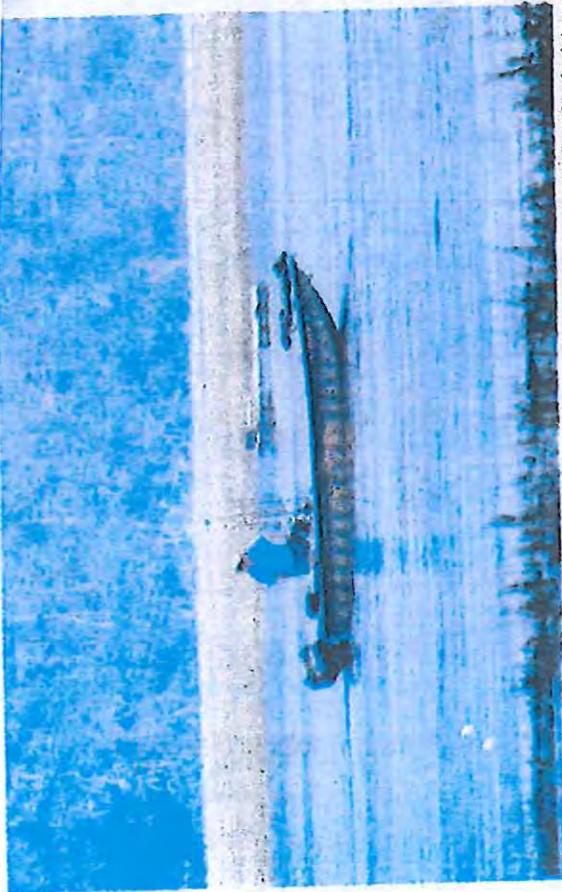
SCDNR personnel have been patrolling local waterways to ensure boaters are being safe.

"Be courteous of the folks who are still recovering from this (hurricane) event," Thomas advised boaters.

Debris left floating in a marshy area or sunk at the bottom of a river can also have an environmental impact.

"It's essential for our waterways to get cleaned up as soon as possible," Kate Schaefer with the Coastal Conservation League said Wednesday.

Because the storm blew



JAY KARR | jkarr@sismdpacket.com

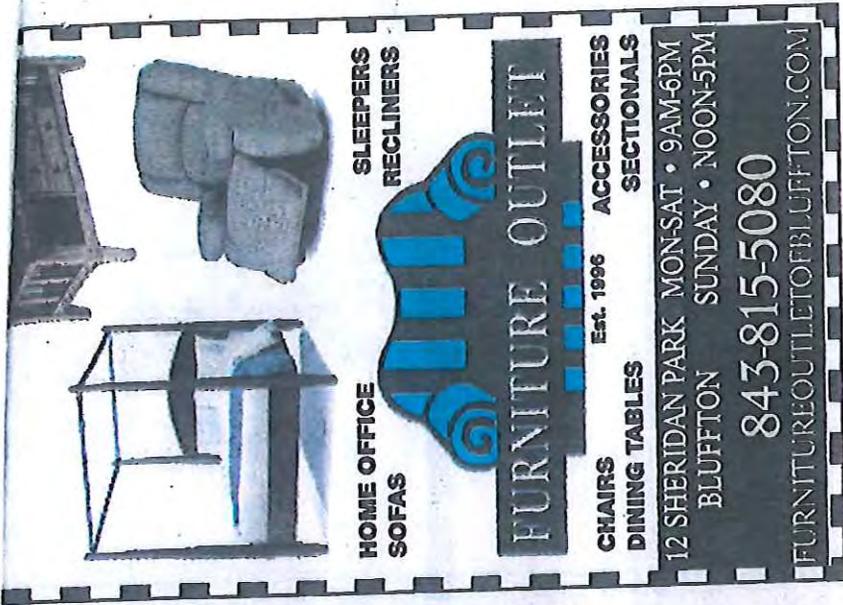
A boater floats past some storm debris, a piece of a floating dock, in Broad Creek Wednesday. Destroyed docks makes up a large portion of the debris in local waters.

that can leach toxins."

Marne debris cleanup is "is definitely a broad, multi-agency effort, and that can take time to coordinate," Schaefer said,

"but the faster the debris is cleaned up, the better."

Lucas High: 843-706-8128,  
@JPBG\_Lucas



**HOME OFFICE SOFAS**      **SLEEPERS RECLINERS**

# FURNITURE OUTLET

**CHAIRS**      **Est. 1996**      **ACCESSORIES**  
**DINING TABLES**      **SECTIONALS**

12 SHERIDAN PARK MON-SAT • 9AM-6PM  
BLUFFTON SUNDAY • NOON-5PM

## 843-815-5080

FURNITUREOUTLETOFBLUFFTON.COM



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Tuesday, December 6, 2016 9:08 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Beaufort Co. SC - PA Debris questions

**Iris:**

Thank you.

I am writing to follow-up on this email. Can you explain in more detail the highlighted statement below? Are you saying there is a risk of loss of ALL funding if ALL debris, including marine debris, is not captured by the 180 days?

This is a critical question because as of today no one has started cleaning up marine debris. Our concern is that cleanup of marine debris will extend beyond 180 days unless Beaufort County steps in immediately, takes on that responsibility itself and doubles down on the effort. If Beaufort County stands to lose ALL funding if ALL debris (including marine debris) is not captured by 180 days, Beaufort County may not have time to continue debating responsibility for it with the state.

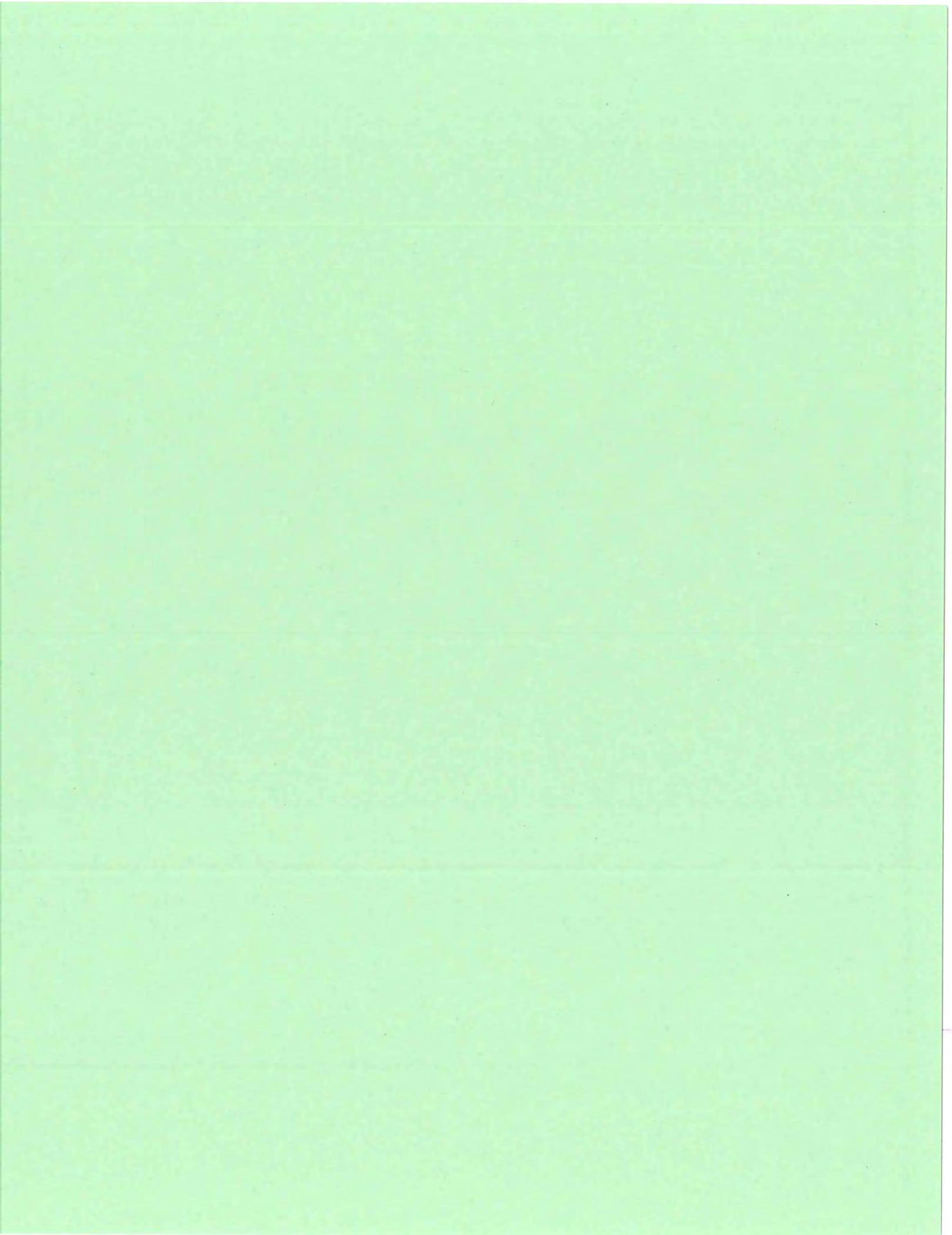
Tom

Thomas J. Keaveny II  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414

-----Original Message-----

**From:** Spanski, Iris [REDACTED]  
**Sent:** Monday, December 5, 2016 5:39 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]

**Subject:** RE: Beaufort Co. SC - PA Debris questions



# The Beaufort Gazette



James Cava watches over the damaged boats at Palmetto Bay Marina on Monday. The boats, which had been docked at the marina when Hurricane Matthew blew through in early October, were blown ashore when the dock gave away during the storm.

PHOTOS BY JAY WARR [jwarr@islandpacket.com](mailto:jwarr@islandpacket.com)

## HURRICANE MATTHEW'S AFTERMATH

# Change of heart brings boat owners new hope

BY TERESA MOSS  
[tmoss@islandpacket.com](mailto:tmoss@islandpacket.com)

Hopes rise again for beached boat owners at Palmetto Bay Marina, who say an adjacent property owner has changed his mind and will allow a crane to remove their stranded vessels.

Weeks of setbacks have been a frustration for the owners, many of whom lived on their boats before Hurricane Matthew pushed their floating homes onto the muddy marsh surrounding the Hilton Head Island marina, where they have been stuck.

"It has been a roller coaster," said Matthew Leitner, a boat owner who camped for about a month at the site, when contacted Monday. "At one point we think they are coming out; then we think something else is going to happen."

The most recent holdup came when an adjacent property owner, Keith Miller, refused access for a crane on his vacant lot.

But boat owners and a contractor who offered to donate the cost of removing the boats are now saying Miller recently



Matthew Leitner's sailboat "Pocahontas" remains firmly aground on the banks of Broad Creek on Monday.

SEE CHANGE, BA

## BURTON

# Couple reports scam, burglary

BY JOAN MCDONOUGH  
[jmcdonough@islandpacket.com](mailto:jmcdonough@islandpacket.com)

A Burton couple was burglarized while a woman allegedly distracted them in the backyard of their Elderberry Drive home on Friday, according to a Beaufort County Sheriff's Office report.

The husband and wife told deputies that a blond woman, dressed nicely and driving a small white sedan, came to their home and claimed to work for a contracting company that was making plans to add lights in the park behind their home, according to the report.

The three walked to the backyard and spoke for about 20 minutes while the woman asked, among other things, if they had a dog in the house and if anyone else lived there. Throughout the visit, the woman was holding a walkie-talkie, according to the report.

Then the woman said she was going to get a brochure from her car for them and then immediately drove off, according to the report.

The couple later found what appeared to be pry marks on their front door and some open drawers throughout the home, and a bag was reported missing, according to the report.

A Bluffton homeowner reported a similar incident at her Pinckney Colony Road home on Friday, Capt. Bob Bromage of the Sheriff's Office said Monday afternoon. In this incident, a blond woman in a white car claimed to be from Palmetto Electric and wanted to show the homeowner where a line would be going up behind her house, he said. The homeowner left her front door unlocked as she led the woman to the backyard. The homeowner later discovered that gold rings worth about \$3,000 and \$20 in cash had been stolen from her bedroom.

If anyone should encounter this situation, call law enforcement, Bromage said.

Joan McDonough: 843-706-8125,  
@IPBG\_Joan



**Keaveny, Thomas**

---

**From:** Spanski, Iris [REDACTED]  
**Sent:** Tuesday, December 6, 2016 12:52 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Beaufort Co. SC - PA Debris questions

Hello Tom,

My team is not addressing marine debris. Please refer to the State to assist you and guide you on that clean up.

As a Participant in the PAAP Accelerated debris removal:

"FEMA will not provide PA funding for costs associated with debris removal activities conducted after the 180 days from the start of the incident period.."  
The risk is losing funding AFTER the 180 days or 181+.

To participate in the Accelerated Debris Removal Procedure, the Applicant must apply the procedure to all of its debris removal projects.

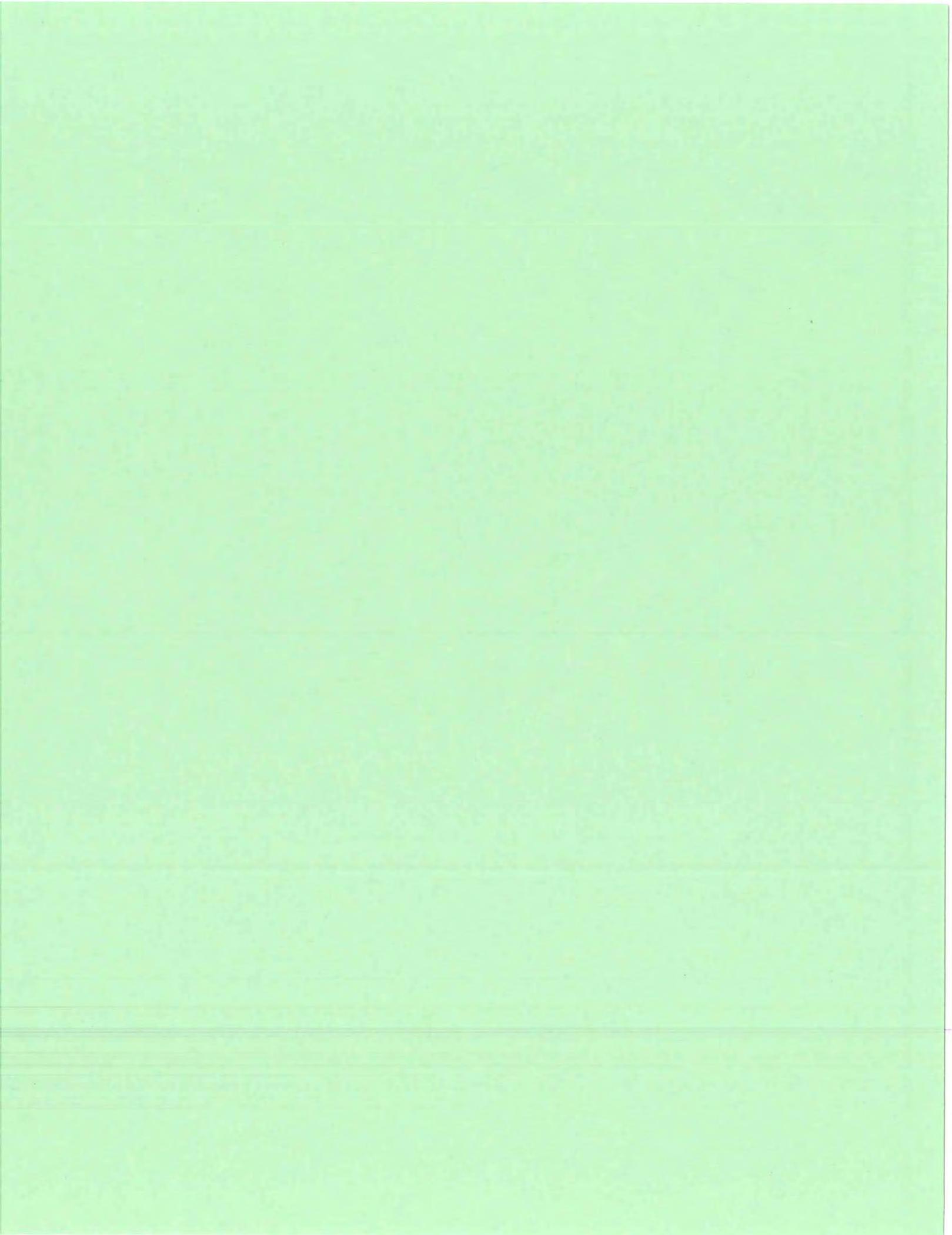
The benefit is the federal cost share.

If the County chooses not to participate, the cost share is 75%, timeline 6 months. If the debris removal is not completed by month 5, please request a Time Extension of an additional 6 months to the State.

Hope this helps.  
Iris

-----Original Message-----

**From:** Keaveny, Thomas [mailto:tkeaveny@bcgov.net]  
**Sent:** Tuesday, December 06, 2016 9:08 AM  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Subject:** RE: Beaufort Co. SC - PA Debris questions



**Keaveny, Thomas**

---

**From:** Keaveny, Thomas  
**Sent:** Monday, December 12, 2016 2:47 PM  
**To:** 'Taylor, Richele'  
**Cc:** [REDACTED]  
**Subject:** FW: Marine Debris Removal in Beaufort County

**Importance:** High

Richele:

I am forwarding an email I sent out a few minutes ago to EMD. FEMA says removal of marine debris isn't covered under its program. The state says marine debris removal isn't its responsibility even though the debris is clearly on the public tidelands.

We are at our wits end. Any help you can provide will be greatly appreciated.

Tom

**Thomas J. Keaveny II**  
Beaufort County Attorney  
P. O. Drawer 1228  
Beaufort, SC 29901-1228  
Tel: (843) 255-2025  
Fax: (843) 255-9414



**From:** Keaveny, Thomas  
**Sent:** Monday, December 12, 2016 2:13 PM  
**To:** [REDACTED]

**Subject:** RE: Marine Debris Removal in Beaufort County  
**Importance:** High



**Keaveny, Thomas**

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**From:** Maynard, Danielle [REDACTED]  
**Sent:** Tuesday, December 20, 2016 8:49 AM  
**To:** Keaveny, Thomas  
**Cc:** [REDACTED]  
**Subject:** Beaufort County Marine Debris  
**Attachments:** Fw: S.C. Code Ann. Regs. 30-11(E) General Guidelines for All Critical Areas; Marine Debris and Beaufort County

**Importance:** High

Tom:  
Attached are DHEC and DNR's final opinions in response to the removal of marine debris in Beaufort County. While DHEC and DNR do not feel that they have the responsibility or ability remove the debris, they remain committed to assisting Beaufort County within their existing authorities. Should Beaufort County choose to remove the debris under its own authority, SCEMD is committed to helping the County understand FEMA's eligibility criteria and the public assistance reimbursement process. If you have any questions, please do not hesitate to contact me. Thank you.

*Danielle*

Danielle W. Maynard, Esquire  
Legal Counsel  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, South Carolina 29172  
Email: [REDACTED]  
Office: 803-737-8584  
[REDACTED]

**Keaveny, Thomas**

---

**From:** Lake, Susan [REDACTED]  
**Sent:** Monday, December 12, 2016 2:57 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fw: S.C. Code Ann. Regs. 30-11(E) General Guidelines for All Critical Areas

Danielle,

I am forwarding an e-mail in which Brad Churdar sets forth the OCRM regulation regarding abandoned vessels and structures. Please consider this DHEC's written response.

Thanks,  
Susan

Susan A. Lake  
Chief Counsel, Compliance and Environmental Health Services  
SC Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
[REDACTED]

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**From:** Churdar, Bradley  
**Sent:** Friday, December 9, 2016 10:55 AM  
**To:** Lake, Susan  
**Subject:** S.C. Code Ann. Regs. 30-11(E) General Guidelines for All Critical Areas  
Susan:

Here's the section from our Regulations that I was referring to during the conference call:

S.C. Code Ann. Regs. 30-11(E) Abandoned Vessels and Structures.

Abandoned vessels and structures, as defined in R.30-1(D) have the potential to harm critical area environments through their physical presence and the release of contaminants that may be associated with them. In addition, they may also be a hazard to navigation, public access and sources of unsightly and dangerous floating debris as they deteriorate and break apart.

Specific standards for abandoned vessels and structures are as follows:

- (1) Vessels or structures determined to be abandoned by OCRM may be required to be removed from the critical area.
- (2) Upon notification by OCRM, the owner of the abandoned vessel or structure will have 30 days from date of notification to remove it from the critical area at his or her expense.
- (3) Abandoned boats, barges, or other watercraft whose ownership cannot be established may be removed from the critical area by any person, at their expense, and in accordance with Section 50-23-135 of the SC Code of Laws, 1976.
- (4) Structures, other than watercraft, whose ownership cannot be established may be removed by any person, at their expense, provided notification is provided to OCRM prior to removal. Such notification shall include date and method of removal.

(5) OCRM may require a Department permit for removal of any vessel or structure if it is deemed that the removal process will significantly impact the surrounding marsh environment.

Plainly, the Regulation does not contemplate that OCRM is responsible for the removal of these vessels and/or marine debris.

I am available to talk if you want to.

Thanks,  
Brad

**Bradley D. Churdar**  
Associate General Counsel  
**SC Department of Health and Environmental Control**  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Connect: [www.scdhec.gov](http://www.scdhec.gov)



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**Keaveny, Thomas**

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**From:** Shannon Bobertz [REDACTED]  
**Sent:** Wednesday, December 14, 2016 1:53 PM  
**To:** Maynard, Danielle  
**Cc:** [REDACTED]  
**Subject:** Marine Debris and Beaufort County

Dear Danielle:

S.C. Code Ann. Section 50-21-190 governs DNR's statutorily mandated role as the investigating and notifying agency of "abandoned" boats, but does not fund or enable further action related to marine debris. Generally, DNR is contacted by local agencies to investigate and tag abandoned boats. If we can locate an owner, DNR staff will do so as prescribed under the statute. If not, we will begin the public notification process. At the conclusion of this process, once the boat has been legally deemed "abandoned" pursuant to Code Section 50-21-190 DNR will notify the requesting body, generally a county or town, and arrangements will be made to remove and dispose of the vessel outside of the agency.

While DNR is ready to assist Beaufort County, DNR does not have an enabling statute, funding, or specialized equipment to undertake the physical removal of marine debris. The only funding that is related to DNR that may be available to assist Beaufort County with this project are Beaufort County's Water Recreation funds. It is our understanding that these funds have been earmarked and committed for other projects by the local county delegation, but the delegation could postpone those projects and utilize these funds for marine debris removal, as that certainly fits within the Water Recreation statute of S.C. Code Ann. 12-28-2730.

Again, DNR is here to assist and support Beaufort County however we can, but DNR is not able to take responsibility for the cleanup of marine debris in Beaufort County.

Please let me know if you have any questions.  
Shannon Bobertz

**Shannon Furr Bobertz**  
Chief Counsel  
S. C. Department of Natural Resources  
P.O. Box 167  
Columbia, SC 29202

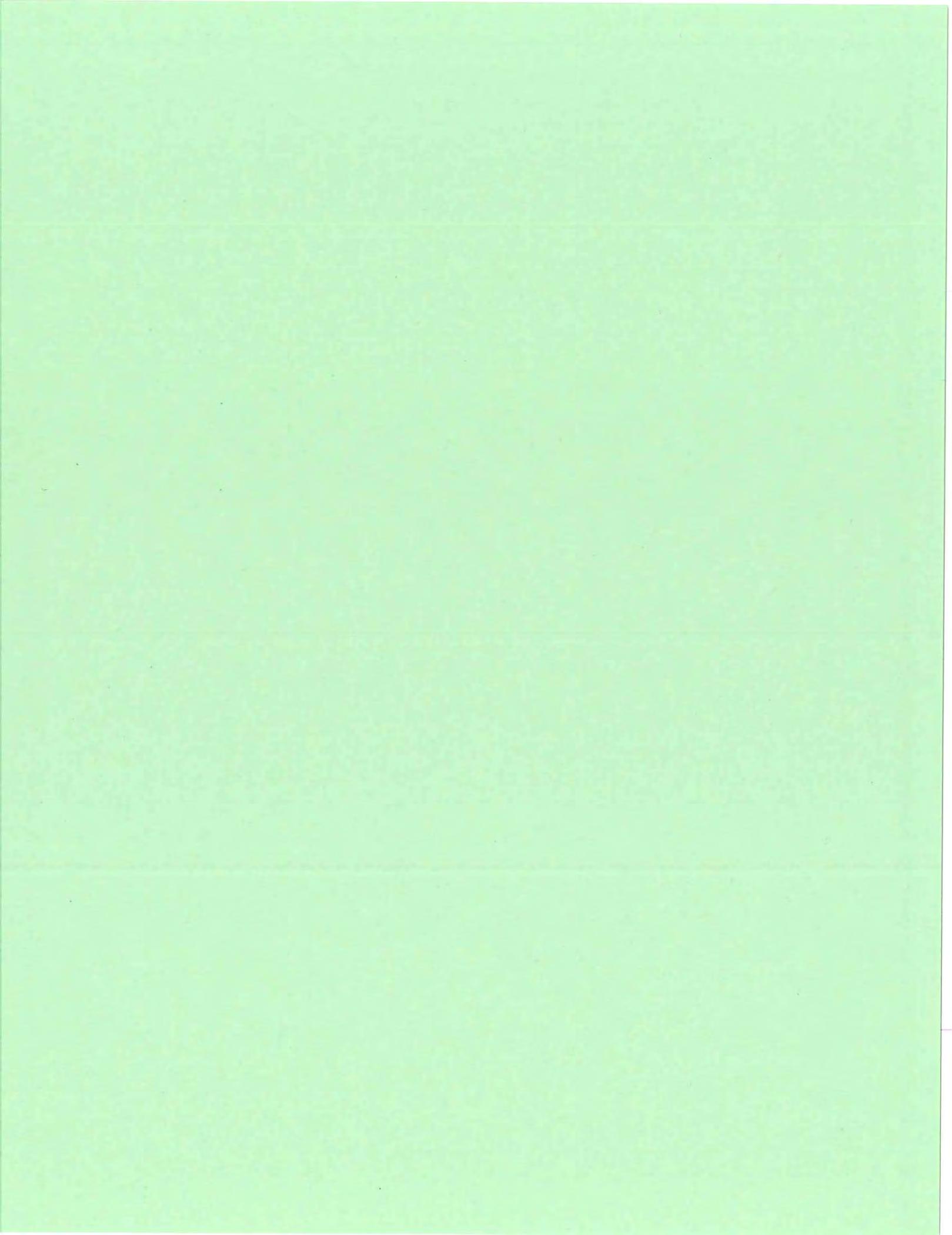
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**DNR**

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COUNTY COUNCIL OF BEAUFORT COUNTY  
OFFICE OF THE COUNTY ADMINISTRATOR

GARY KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING  
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JOSHUA A. GRUBER  
DEPUTY COUNTY ADMINISTRATOR/  
SPECIAL COUNSEL

THOMAS J. KEAVENY, II  
COUNTY ATTORNEY

December 22, 2016

**Via Email and First Class Mail**

The Honorable Alan M. Wilson  
South Carolina Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Attention: Robert D. Cook, Esquire

Re: Legal Responsibility to Clear Tidelands

Dear Mr. Wilson:

On October 8, 2016, Hurricane Matthew's high winds, storm surge and riverline flooding led to large amounts of vegetative, construction and demolition debris, and marine debris in Beaufort County. In response to the widespread public health and safety threats that the debris posed, Beaufort County activated its Debris Management plan which calls for countywide land debris removal operations. The County is completing the land debris removal; however, marine debris still remains within the tidelands and pose significant threat to the navigability of the waterways, public health and safety of Beaufort County citizens.

As background, it is well established that the State owns the tidelands. For the purposes of this issue tidelands are defined in S.C. Code Ann. 48-39-10(G) as "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine system involved." The State holds this property in trust for its citizens under the common law Public Trust Doctrine. The underlying premise of the Public Trust Doctrine is that some things are considered too important to society to be owned by one person.<sup>1</sup> Additionally, the State has taken significant steps to regulate the tidelands through the enactment of the Coastal Zone Management Act ("CZMA"), establishment of the Emergency Environmental Fund, and the designation of South Carolina Department of Natural Resources ("DNR") as the supporting enforcement mechanism. The State exercises exclusive control over the tidelands through its agencies. The County considers the

<sup>1</sup> Finklea, Samuel L., et al. *Environmental Law in South Carolina, 4<sup>th</sup> Edition* South Carolina Bar. South Carolina Bar CLE Division, 2016.

Honorable Alan M. Wilson  
December 22, 2016  
Page Two

tidelands to be outside its jurisdiction and authority as it has been pre-empted by the State. Therefore, the question is: does Beaufort County have the legal responsibility to clear marine debris from property located with the tidelands?

We greatly appreciate your time and consideration of this issue. As I noted earlier, time is of the essence on this matter as we are in the middle of the high traffic season and the marine debris poses a serious public safety threat. Further, if removal of marine debris is Beaufort County's legal responsibility, FEMA regulations require us to remove all debris (including marine debris) by April 3, 2017 in order to qualify for reimbursement for expenses incurred in removing any debris (including land based debris on which the County has already expended several million dollars).

If there is any additional information that would assist your office please feel free to contact us and we will be happy to provide it.

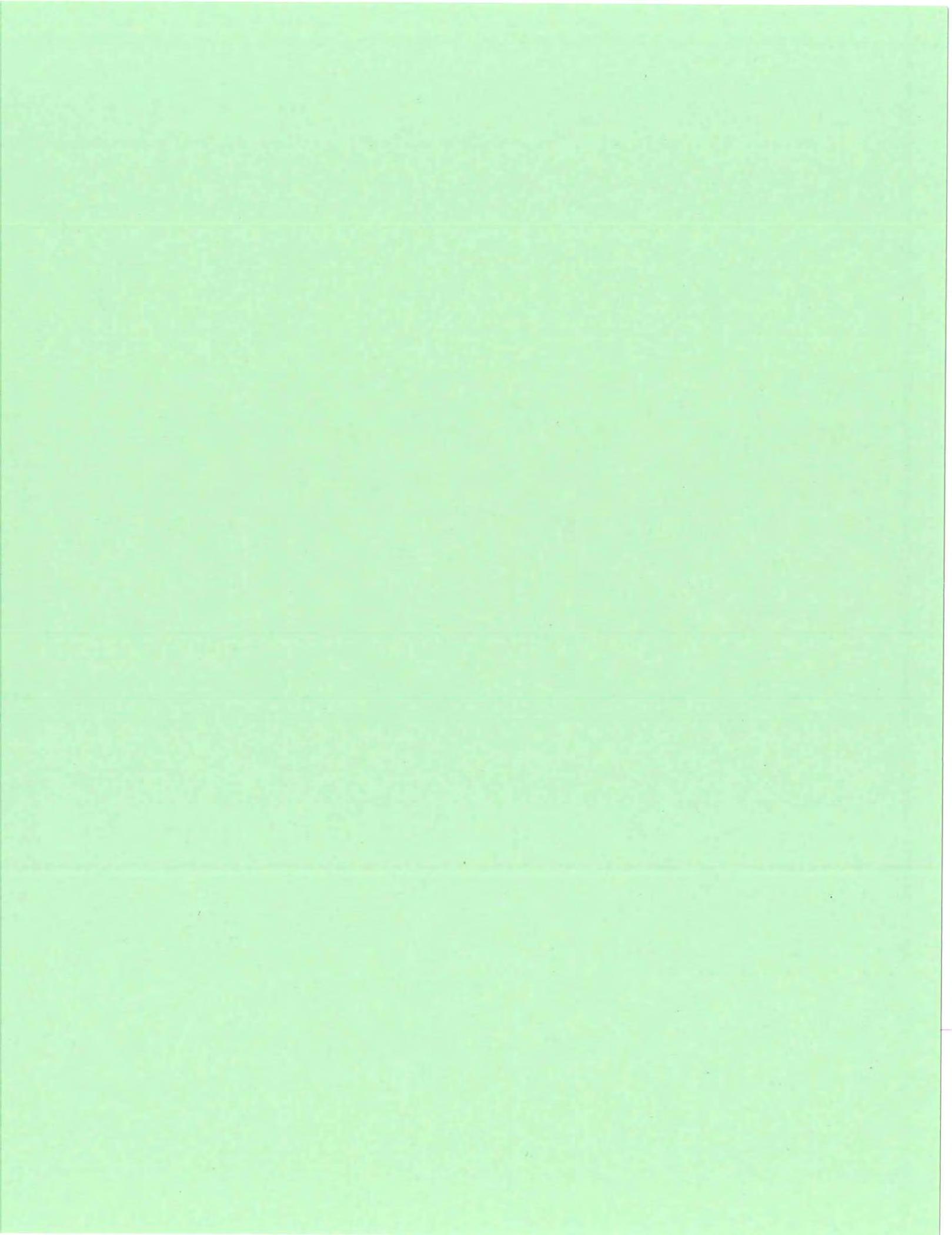
Sincerely,



Thomas J. Keaveny, II

cc:







ALAN WILSON  
ATTORNEY GENERAL

January 31, 2017

Thomas J. Keaveny, II, County Attorney  
Beaufort County Government  
Administrative Building  
Post Office Drawer 1228  
Beaufort SC 29901-1228

Dear Mr. Keaveny:

Attorney General Alan Wilson has referred your opinion request dated December 22, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Question** (as quoted from your letter):

*"On October 8, 2016, Hurricane Matthew's high winds, storm surge and riverline flooding led to large amounts of vegetative, construction and demolition debris, and marine debris in Beaufort County. In response to the widespread public health and safety threats that the debris posed, Beaufort County activated its Debris Management plan which calls for countywide land debris removal operations. The County is completing the land debris removal; however, marine debris still remains within the tidelands and pose significant threat to the navigability of the waterways, public health and safety of Beaufort County citizens.*

*As background, it is well established that the State owns the tidelands. For the purposes of this issue tidelands are defined in S.C. Code Ann. 48-39-10(G) as "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine system involved." The State holds this property in trust for its citizens under the common law Public Trust Doctrine. The underlying premise of the Public Trust Doctrine is that some things are considered too important to society to be owned by one person."<sup>1</sup> Additionally, the State has taken significant steps to regulate the tidelands through the enactment of the Coastal Zone Management Act ("CZMA"), establishment of the Emergency Environmental Fund, and the designation of South Carolina Department of Natural Resources ("DNR") as the supporting enforcement mechanism. The State exercises exclusive control over the tidelands through its agencies. The County considers the tidelands to be outside its jurisdiction and authority as it has been pre-empted by the State. Therefore, the question is: does Beaufort County have the legal responsibility to clear marine debris from property located with the tidelands?*

*We greatly appreciate your time and consideration of this issue. As I noted earlier, time is of the essence on this matter as we are in the middle of the high traffic season and the marine debris poses a serious public safety threat. Further, if removal of marine debris is Beaufort County's legal responsibility, FEMA*

Thomas J. Keaveny, II  
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*regulations require us to remove all debris (including marine debris) by April 3, 2017 in order to qualify for reimbursement for expenses incurred in removing any debris (including land based debris on which the County has already expended several million dollars).*

*1 Finklea, Samuel L., et al. Environmental Law in South Carolina, 4th Edition South Carolina Bar. South Carolina Bar CLE Division, 2016."*

**Law/Analysis:**

As you are aware, Beaufort County's boundaries are delineated in South Carolina Code § 4-3-70. Thus, we begin and end with the answer whether Beaufort County has the legal responsibility to clear debris depends on what the debris is, where it is located and pursuant to what authority it is being removed. Moreover, we distinguish the ability to maintain from the responsibility to remove debris and will answer your question accordingly. Furthermore, you ask whether Beaufort County has the "legal responsibility" as listed in 44 CFR § 206.223(a)(3). In answering your question this Office is not attempting to define or opine on the federal law in this opinion but merely assist you in determining where "legal responsibility" may apply to your County.<sup>1</sup> By way of background, the following summarizes the federal law in this area:

[a]mong other things, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides authority to make PA disaster grants to a state or local government to meet immediate threats to life and property, to clear debris and wreckage when it is in the public interest, and to provide grants to state or local government for repair, reconstruction or replacement of public facilities on the basis of the design of the facility as it existed immediately before the major disaster. 42 U.S.C. §§ 5170b, 5172, 5173 (2006). . . . The rules by which FEMA administers public assistance grants through the Stafford Act are found at 44 C.F.R. subparts G and H (2004).

To obtain a PA grant, an applicant must establish that it meets the eligibility requirements set forth in FEMA regulations. Those regulations require that the entity seeking PA be an eligible applicant. 44 C.F.R. 206.222. The work sought must be required as the result of the major disaster event, be located in the designated disaster area, and be the legal responsibility of the eligible applicant. 44 C.F.R. 206.223 a(1) – (3). Also, the type of work must be eligible. . . .

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<sup>1</sup> We note there are numerous federal statutes and case law not listed in this opinion that could apply to your question. For purposes of this opinion we are limiting our answer to the applicable law cited herein. However, if you have a follow-up question or need interpretation regarding the applicability of a specific statute, we are glad to address any such questions in a follow-up opinion. As we again note, the applicable Federal and State laws are too numerous to list in this opinion. We merely attempt to guide you in how we believe a court will make such a determination in answering your question. Moreover, we refer you to FEMA for any questions regarding its rules for reimbursement. See 44 CFR § 1.1 et seq. (Federal Emergency Management Act).

Thomas J. Keaveny, II  
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In The Matter of St. Tammany Parish, 10-1 BCAP 34457 (civilian B.C.A.), CBCA 1778-FEMA, 2010 WL 2975319 (May 12, 2010). The focus of your inquiry is whether "Beaufort County [has] . . . the legal responsibility to clear marine debris from property located within the tidelands?" You focus upon the fact that "[t]he State exercises exclusive control over the tidelands through its agencies."

We have also consulted with DHEC's General Counsel regarding your question. At our invitation to DHEC for its analysis of the law, that agency has submitted the following to us:

[t]he Department points out that S.C. Code Ann. Regs. 30-11(E)(3) allows any party, which would include Beaufort County, to remove marine debris and abandoned vessels when ownership of such is unknown. Accordingly, Beaufort County is not pre-empted from undertaking such activity. (For your convenience, the Department is attaching a copy of S.C. Code Ann. Regs. 30-11(E) Abandoned Vessels and Structures.)

The point that is important to the Department is that, while the agency does have broad regulatory authority (pursuant to the S.C. Coastal Tidelands and Wetlands Act) the agency is not tasked with the obligations beyond the intent of the statute or regulation. The Regulation does not contemplate that the Department is responsible for the removal of marine debris, but rather regulates such removal by third parties. Pursuant to S.C. Ann. Regs. 30-11(E)(5) if the removal process chooses "significant impact" so as to require a permit, the Department will work expeditiously to act upon such permit application.

Thus we interpret DHEC's response as claiming regulatory responsibility only for permitting the removal and cleanup of debris for the counties and municipalities boarding the State waters for cleanup of debris within the tidelands based on its claim to "regulate[] such removal by third parties" and its requirement of a permit to clean up the debris pursuant to Regulation 30-11(E)(3). We turn now to an analysis of the general law regarding the State's tidelands and navigable waters.

This Office has previously opined regarding DHEC that:

DHEC also possesses broad regulatory authority pursuant to statutes other than the Coastal Zone Management Act, further buttressing this conclusion. Such regulatory authority extends far beyond the "critical areas" of the State, to include all lands of South Carolina. See e.g. § 48-1-10 *et seq.* (Pollution Control Act); § 48-14-10 *et seq.* (Stormwater Management and Sediment Reduction Act). Furthermore, as referenced above, and as recognized in *Brown v. S.C. DHEC*, *supra*, in compliance with the federal Coastal Zone Management Act (16 U.S.C.A. §§ 1451-1465), the General Assembly and Governor approved South Carolina's Coastal Management Program in order to define and manage activities which have a direct and significant impact on coastal waters. DHEC has defined such activities as follows:

Thomas J. Keaveny, II

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[a]n activity is considered to have direct and significant impact on coastal waters and is therefore subject to management in the coastal zone if it entails one or more of the following criteria:

- 1) located in a critical area;
- 2) *detrimental environmental impact upon a critical area* (for example, water pollution upstream from an inland source which would then reach and result in degradation of the estuarine system);
- 3) adverse effects on the quality of coastal resources - natural, economic, social or historical;
- 4) disruption of access to a public coastal resource.

*S.C. Coastal Management Program*, p. III - 12. (emphasis added).

Op. S.C. Att'y Gen., 2006 WL 1207263 (S.C.A.G. Apr. 3, 2006). See also S.C. Code § 48-39-50 regarding Coastal Tidelands and Wetlands (DHEC shall have the powers and duties: ... (J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary. ... (O) To exercise all incidental powers necessary to carry out the provisions of this chapter). As you mention in your letter, 48-39-10(G) defines tidelands as:

(G) "Tidelands" means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.

S.C. Code § 48-39-10(G).

As you are also likely aware, the South Carolina Constitution states that "the health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern" and that "[t]he General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. South Carolina's sovereignty and jurisdiction includes all places within its boundaries, as delineated in South Carolina Code § 1-1-10. As you mention in your letter, this Office has consistently opined that lands below the high tide water mark (including marshlands) belong presumptively to the State of South Carolina in trust for the public and that the State has jurisdiction over "territorial waters" within three geographical miles distance from the low water mark of the coastline. See, e.g., Op. S.C. Att'y Gen., 2012 WL 5376055 (S.C.A.G. Oct. 19, 2012); 2012 WL 3540453 (S.C.A.G. August 3, 2012) (citing Cunard S.C. Co. v. Mellon, 262 U.S. 100, 122 (1923), City of Charleston, S.C. v. A Fiserman's Best Inc., 310 F.3d 155, 160 (4<sup>th</sup> Cir. 2002), the U.S. Submerged Lands Act, S.C. Code 54-7-620(47), Geneva Convention, Art. 11, etc.); 2003 WL 21790888 (S.C.A.G. July 10,

2003) (citing the Submerged Lands Act); 1995 WL 805820 (S.C.A.G. October 20, 1995) (citing the Submerged Lands Act, S.C. Code § 54-7-620(47)); 1964 WL 11075 (S.C.A.G. February 4, 1964) (citing the U.S. Submerged Lands Act).<sup>2</sup> Specifically, this Office previously opined in a 2012 opinion regarding tidelands and boundary lines that:

[H]istorically, the State holds presumptive title in land below the high water mark. In McQueen v. South Carolina Coastal Council, et al., 354 S.C. 142, 580 S.E.2d 116 (2003), the South Carolina Supreme Court reaffirmed the State's ownership interest. The Court stated that:

[a]s a coastal state, South Carolina has a long line of cases regarding the public trust doctrine in the context of land bordering navigable waters. Historically, the State holds presumptive title to land below the high water mark. As stated by this Court in 1884, not only does the State hold title to this land in *jus privatum*, it holds it in *jus publicum*, in trust for the benefit of all the citizens of this State. State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); see also State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972); Rice Hope Plantation v. South Carolina Public Serv. Auth., 216 S.C. 500, 59 S.E.2d 132 (1950), *overruled on other grounds*, McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)....

The State has the exclusive right to control land below the high water mark for the public benefit, Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889), and cannot permit activity that substantially impairs the public interest in marine life, water quality or public access. Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995); see also Heyward v. Farmers' Min. Co., 42 S.C. 138, 19 S.E.2d 963 (1884) public trust land cannot be placed entirely beyond direction and control of the State); Cape Romain Land and Improvement Co. v. Georgia - Carolina Canning Co., 148 S.E. 428, 146 S.E. 434 (1928) (protected public purposes of trust include navigation and fishery).

McQueen, 580 S.E.2d at 149-50; accord Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133, 135 (1979) ("This Court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes"); Op. S.C. Atty. Gen., July 2, 1962 (1962 WL 8961) ["The strand area of a beach is state property and the other portion is private property"]; see also Borax Consolidated v. City of Los Angeles, 296 U.S. 10, 22 (1935) [when the sea, or a bay, is named as a boundary, line of ordinary high-water mark is always intended where common law prevails]; Sotomura v. County of Hawaii, 460 F. Supp. 473, 480 (D. Haw. 1978) [holding the "'mean high water mark' is the line of division between private and public property" along the beach]; Secure Heritage.

<sup>2</sup> See also the U.S. Submerged Lands Act, 43 U.S.C. § 1301, et seq., as cited in the opinions. These cites are some of the ones mentioned. Please read the full opinions and cases for further information and sources.

Inc. v. City of Cape May, 361 N.J. Super. 281, 825 A.2d 534, 547 (2003) [“The public trust doctrine, which is premised on the common rights of all citizens to use and enjoy tidal land seaward of the mean high water mark, dictates that the beach and the ocean must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible”]; City of New York v. Feltman, 230 A.D. 299, 243 N.Y.S. 625, 626 (1930) (holding “a grant of land lapped by the open sea carried title at common law to the high-water mark if the grant contained no reference to either the low or high water mark,” and that “[t]his doctrine is too long recognized and is too thoroughly established as the law... be questioned or disturbed now”); Brower v. Wakeman, 88 Conn. 8, 89 A. 913, 914 (1914) [title to beach below high-water mark held to be in the state]; Johnson v. State, 114 Ga. 790, 40 S.E. 807, 807 (1902) (holding “the boundary of landowners abutting on the sea [or] where there was a regular rise and fall of the tide, extended only to high-water mark... This rule, so far as the boundary of the abutting landowner is concerned, has been almost universally followed in the United States”); cf. State v. Yelsen Land Company Inc., 265 S.C. 78, 216 S.E.2d 876, 878 (1975) [holding that the “State was presumptively the owner of tidelands”].

Op. S.C. Att’y Gen., 2012 WL 5376055, (S.C.A.G. Oct. 19, 2012). Moreover, regarding waters of this State, our Constitution states that:

All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

SC Const. Art. XIV § 4. Furthermore, our General Assembly has prohibited the obstruction of navigable waters in stating that:

All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free, as well to the inhabitants of this State as to citizens of the United States, without any tax or impost therefor, unless such tax or impost be expressly provided for by the General Assembly. If any person shall obstruct any such stream, otherwise than as in Chapters 1 to 9 of this Title provided, such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

S.C. Code § 49-1-10. This Office has previously opined regarding navigable waters of this State that:

4. That the South Carolina constitutional, statutory, and common law give the South Carolina public the right of free and unobstructed navigation on the navigable waters of South Carolina. The South Carolina public is entitled to

navigate all streams that are navigable in fact. A stream is navigable in fact if a person can float any vessel, of any size or construction, for any purpose whatsoever (pleasure or commerce), at any stage of tide (or water level), and for any length of stream, regardless of the ease or difficulty of propulsion.

5. That navigable waters of South Carolina are tidewater and fresh water streams, of any depth or width, with the capacity to float anything (logs, rafts, etc.), having a channel free either from obstruction or interrupted by obstructions, floatable at any time period of the normal high tide or normal water level and accessible at one public place (*terminus*).

6. That water is navigable when in its ordinary state it forms by itself or its connection with other waters a highway for vessels. Navigability does not depend on actual navigation but on capacity for use by pleasure boats or by boats of commerce. Navigable water is a public highway which the public is entitled to use. The State holds the property right of unobstructed navigation in trust for the public.

7. That no one has the authority to waive the right of free navigation on the navigable waters of the State. The State has the authority to enforce the trespass laws whether the trespassers approach by land or water. The trespass laws are enforced on fastlands adjacent to a dead-end land highway and are enforced on fastlands adjacent to a dead-end water highway (of navigable waters).

Op. S.C. Att'y Gen., 1964 WL 11075 (S.C.A.G. Feb. 4, 1964). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984).

Since we have documented our longstanding opinion that the State owns in trust for the public the tidelands (lands below the high tide line)<sup>3</sup> and has jurisdiction three geographical miles in "territorial waters" of this State, let us further review some sections of the South Carolina Constitution and the Code of Laws that we believe may be applicable in answering your question. Thus, there is no doubt that ownership of the State's tidelands and marshlands is in the State on behalf of the people of South Carolina. However, ownership of the property in question does not necessarily answer the question of "legal responsibility" for purposes of the foregoing FEMA regulations or for purposes of State law, for that matter. The State owns the tidelands as trustee for the public. However, the State, has the authority to delegate certain functions and responsibilities to its agencies and political subdivisions. See, e.g., S.C. Code §§ 48-39-70 ("All other state and local agencies and commissions shall cooperate with the department [DHEC] in the administration of enforcement [of the Coastal Tidelands and Wetlands chapter]"); 50-1-80 ("It shall be the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State."); S.C. Code Regs 44-312 (regarding S.C. Emergency Management Division).<sup>4</sup> For example, in St. Tamanny's Parish, supra, the Federal Arbitration Panel noted that the Parish "has not represented that it owns the roads, drainage ditches, culverts, and canals in the CDL

<sup>3</sup> Except as where granted otherwise. As we note, the State's title to tidelands is presumptive.

<sup>4</sup> While there may be other relevant statutes and case law to this opinion, we are merely demonstrating here that there are statutory means for the handling of abandoned boats and motors. See also S.C. Code § 54-7-10 et seq. (requiring the local magistrate to turn over the salvageable goods from any unclaimed stranded ship, vessel, goods or effects to the county treasurer). Moreover, Regulation 30-11(E) covers more than just abandoned boats.

subdivision although it has legal responsibility for their maintenance.” Moreover, In The Matter of Livingston Parish, 14-1 BCAP 35645 (civilian BCA), CBCA 3608-FEMA, 2014 WL 2993629 (June 30, 2014), the Panel made clear that the fact that the property in question may be “public property” does not preclude an agency or political subdivision from applying for FEMA relief. The Panel quoted from FEMA’s Public Assistance Guide 322 as follows:

[i]n general, debris on public property that must be removed to allow continued safe operation of governmental functions or to alleviate an immediate threat is eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a natural stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, removal of the disaster-related debris only to extent necessary to protect against an immediate threat would be eligible.

In Livingston Parish, the Panel went on to document that local parishes could receive financial assistance from FEMA for clearing debris from waterways:

[m]uch of Louisiana is low-lying and contains many waterways, and hurricane Gustave was declared a disaster area for the entire State. Despite these facts, as a result of the hurricane, only three parishes in Louisiana requested public assistance grants for removing debris from waterways. The amounts sought and received were \$300,000 for one parish, \$5,000,000 for another and more than \$44,000,000 for Livingston Parish. We also know that Gravity Drainage District 1, a taxing authority which maintains waterways within about 8% of Livingston Parish, sought and received \$231,000 for removing Gustav-generated debris from its waterways. The relatively high figure claimed by Livingston Parish caused FEMA to carefully review this parish’s request.

Id.<sup>5</sup>

Recently, our Supreme court concluded in Estate of Tenney v. S.C. DHEC, 393 S.C. 100, 712 S.E.2d 395 (2011), that the State does not have presumptive ownership in marsh islands based upon the prior rule that “[t]itle to islands situate in the marshland follows title to marshland.” 393 S.C. at 111, 712 S.E.2d at 401 (overruling Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995) (“Coburg II”). Thus, the current status of the “public trust” doctrine is as follows:

[i]n sum, the jurisprudence of this State is consistent that “presumption of title to marshland rests in the State of South Carolina to be held in trust for the benefit of the public.” Coburg I, 309 S.C. at 253, 422 S.E.2d at 97. However, the proposition that the State is the presumed owner of land that remains above the high watermark is at odds with coastal property jurisprudence that predated Coburg, and expands the public trust doctrine beyond its historic bounds. Of the 3,467 coastal islands in South Carolina, the DNR estimates that 72% of these are privately

<sup>5</sup> Louisiana, like South Carolina, recognizes the “public trust” doctrine. Louisiana Seafood Mgmt. Council v. Louisiana Wildlife and Fisheries Comm., 719 So.2d 119 (La. Ct. App. 1999).

owned. We do not see a practical and uniform way to narrow the scope of Coburg without clouding the title of potentially thousands of marsh islands. . . . We do not underestimate the importance of these islands as the vestiges of our State's most fragile ecosystem, and we recognize the State's interest in protecting and preserving these lands for the enjoyment of all citizens. DHEC and other agencies of this State have the regulatory authority to prevent or limit the development of our State's pristine coastal areas, and our opinion today leaves them at liberty of continue those efforts. Current and potential marsh island owners should be keenly aware of this regulatory risk. However, we do not believe the protection and preservation of these islands should be effected through the unprecedented expansion of the public trust doctrine. Therefore, we overrule the specific principle in the Coburg cases that "ownership of islands situate within marshland follows ownership of the marshland." Coburg I, 309 S.C. at 253, 422 S.E.2d at 97.

Estate of Tenney, 393 S.C. at 110-111, 712 S.E.2d at 400 (emphasis added). Thus, the Tenney Court distinguished between the State's ownership of lands below mean high water, which the Court reaffirmed that such ownership is in the State (as the State) in trust for its citizens, and the regulation of tidal areas, for the protection and preservation of such areas, which the State has delegated to its agencies, such as DHEC and the Department of Natural Resources.

The General Assembly has also delegated certain authority regarding tidal areas to counties and municipalities. In Op. S.C. Att'y Gen., 1985 WL 259150 (March 27, 1985), for example, we addressed "whether a municipality and a county bordering on the Atlantic Ocean may close the beach or regulate the period during the year when traffic may be allowed in the public beach between high and low tide." We concluded:

Section 5-7-140 and 4-9-45, 1976 Code of Laws, as amended, pertaining to cities and counties respectively, provides that those entities do have the authority to exercise their police jurisdiction between the high tide line and low tide line within their borders.

Moreover, even prior to the enactment of § 4-9-45, we addressed the question concerning "[t]he power of a county council to regulate uses of the foreshore (the area between mean high and low water mark on tidal beaches) as well as the water below mean low water." In Op. S.C. Att'y Gen., 1978 WL 35270 (December 18, 1978), we reasoned:

[t]he South Carolina Code does not expressly grant police power over these areas (which are State-owned lands) to counties. It does, however, in § 4-9-30 make a general grant of police power to counties. The question is whether this general grant carries with it, in the case of coastal counties, any authority over the foreshore and areas oceanward. There are relatively few cases on this subject. Perhaps the leading case is Ross v. Edgewater, 115 N.J.L. 477, 180A 866 (1935). That case, in holding that a city's police power extended to the low water mark, states:

[i]t is not to be presumed that the Legislature intended to withhold from this municipal corporation, designed to serve the needs, convenience, and

comforts of its residents, powers necessary to attain those ends. Such a construction is an entire harmony with our scheme of government which employs the municipal corporation to supply the local needs of its residents. 180 A. at 871.

It is the opinion of this Office that this is the soundest view to take. This exercise of the police power would not operate to “zone out” the State from any proposed activity, as had always been prohibited prior to recent statutory change. Instead, it would merely provide [ ] regulation over those areas abutting the county which are vacant lands of the State and which the State itself had not sought to regulate. The opinion of this Office, therefore, is that as a general rule counties may regulate conduct at least down to the low water mark as a necessary adjunct to the general grant to them of police power.

We noted also in the 1978 Opinion that “the best way to handle this problem would be by the enactment of State legislation which expressly grants to the counties some specific quantum of police power over the above areas.”

That is precisely what the General Assembly did, shortly after our 1978 Opinion (by 1980 Act No. 300), with the enactment of § 4-9-45. Section 4-9-45 provides as follows:

[f]or the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates’ courts shall have jurisdiction to punish individuals violating the provisions of county ordinances where such misdemeanor occurred in the area defined in this section.

(emphasis added). Thus, the General Assembly confirmed by express legislation, as we had suggested, our earlier opinion that the Home Rule Act (specifically, § 4-9-30) delegated police powers to the county over the property lying between high and low tide. As noted above, we construed § 4-9-45 to authorize a county to “close the beach or regulate the period during the year when traffic may be allowed in the beach between high and low tide.” Op. S.C. Att’y Gen., March 27, 1985, supra. Further, § 4-9-45 authorizes the county to “abate nuisances in the area between mean high and mean low water.” See 23 S.C. Jurisprudence § 30 (Public Nuisance) [“In coastal counties, the police jurisdiction for abating nuisances extends to the high tide line of the Atlantic Ocean.”]<sup>6</sup> Thus, there can be no doubt that the State has delegated police powers to counties over tidelands areas.<sup>7</sup>

<sup>6</sup> Moreover, the County would have responsibility to maintain its easements, including those in tidelands. See S.C. Code § 1-11-80.

<sup>7</sup> However, we would be remiss not to mention the South Carolina Department of Natural Resources (“DNR”). Regarding the South Carolina Department of Natural Resources (“DNR”), State law grants DNR jurisdiction over “all saltwater fish, fishing, fisheries, and marine resources within the salt waters of this State, including the territorial sea.” S.C. Code § 50-5-20. Additionally, DNR officers have statewide authority for the enforcement of all laws “relating to wildlife, marine, and natural resources.” S.C. Code § 50-3-340. Moreover, State law requires that it is

**Conclusion:**

At the end of the day, it is the unambiguous Constitutional duty of the South Carolina General Assembly to "provide appropriate agencies to function in" the areas of the "health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources" and to "determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. The answer to your specific question is that a coastal county, such as Beaufort County, possesses "legal responsibility" with respect to debris cleanup in the tidelands areas between mean high and low water.<sup>8</sup> This responsibility has been delegated to the county, first pursuant to the general police powers of the Home Rule Act (§ 4-9-30), then, more expressly, pursuant to § 4-9-45, and thirdly implicitly by DHEC pursuant to its interpretation of Regulation 30-11. The fact that the State is the presumptive titleholder of such areas is not controlling because the State may still delegate regulatory power over these areas to state agencies and to its political subdivisions. This it has done, particularly by delegating the power to abate nuisances in tidelands areas to the counties and to provide that the county's ordinances and regulations apply to tidelands properties as they do other parts of the county. We do not address herein the specific powers of state agencies, such as DHEC.<sup>9</sup> However, as DHEC argues, these appear to be particularly in a regulatory capacity. Clearly, however, a county possesses general police powers over these lands, as delegated to it by the General Assembly.

Therefore, in summary, while FEMA will have to apply federal law in this area to determine whether or not the county meets eligibility criteria under the Stafford Act and regulations promulgated pursuant thereto, we conclude that as a matter of State law, Beaufort County possess the "legal responsibility" for maintenance of the tidelands areas that it has police power over<sup>10</sup>, including debris cleanup

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"the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State." S.C. Code § 50-1-80. Furthermore, State law authorizes but does not require county and municipal law enforcement officers to enforce all laws relating to boating.<sup>7</sup> S.C. Code § 50-21-80. Nevertheless, when the General Assembly requires use of county personnel, facilities or equipment, the county must be reimbursed by the department implementing the use. S.C. Code § 4-9-50. South Carolina Code § 4-9-55 further outlines the limitations regarding laws requiring a county's expenditures. The statutory procedure for removal of abandoned boats and motors includes the Department of Natural Resources attempting to notify the owner(s). S.C. Code §§ 50-21-190, 50-21-10(9), 50-23-205. However, the statute requires that the Department "must conduct investigations... to determine the status of watercraft as abandoned... must send written notice... must post a notice." S.C. Code § 50-21-190(D). Moreover, any person may claim the abandoned watercraft after ninety days, or the Department of Natural Resources or "any governmental agency that has jurisdiction over the area where the abandoned watercraft is located" may remove and dispose of abandoned watercraft. S.C. Code § 50-21-190 (emphasis added). Clearly, even if the County has jurisdiction over the area where watercraft has been abandoned, the statute's use of the word "may" allows for but does not require the watercraft's removal. *Id.*; *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement."); *State v. Hill*, 314 S.C. 330, 332, 444 S.E.2d 255, 256 (1994) ("The word 'may' ordinarily signifies permission and generally means the action spoken of is optional or discretionary.") (quoting *Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981)); *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 463, 790 S.E.2d 763, 777 (2016), *reh'g denied* (Dec. 7, 2016). Thus, the County is not required to act when "may" is used in the statute.

<sup>8</sup> Other than those duties delegated otherwise. (e.g. S.C. Code § 50-21-190(D)).

<sup>9</sup> See, e.g., S.C. Code Regs. 61-68(E)(5)(b).

<sup>10</sup> Please note South Carolina law authorizes a municipality bordering the Atlantic Ocean to have jurisdiction beyond the high-tide line one mile seaward and any municipality bordering any other navigable water to have jurisdiction between the high and low-water marks. S.C. Code §§ 5-7-140; 5-7-150; see also *Barnhill v. City of*

pretation that would render such property subject to the library tax necessarily results in the statute's being unconstitutional. 1981 Op Att'y-Gen, No 81-63, p 89.

**§ 4-9-40. Power of county to contract for services within municipalities.**

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. *Provided*, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

**HISTORY:** 1962 Code § 14-3703.1; 1975 (59) 692.

**Cross references—**

As to constitutional authority for joint administration of functions and exercise of powers, see SC Const, Art 8, § 13.

As to municipal corporations generally, see Title 5.

**ATTORNEY GENERAL'S OPINIONS**

The "home rule" legislation is not retroactive so as to affect contracts entered into prior to the effective date of the legislation. 1975-76 Op Atty Gen, No 4470, p 333.

A county or municipal law enforcement agency may, upon request, pro-

vide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op Att'y Gen, No 78-39, p 63.

**§ 4-9-45. Police jurisdiction of coastal counties.**

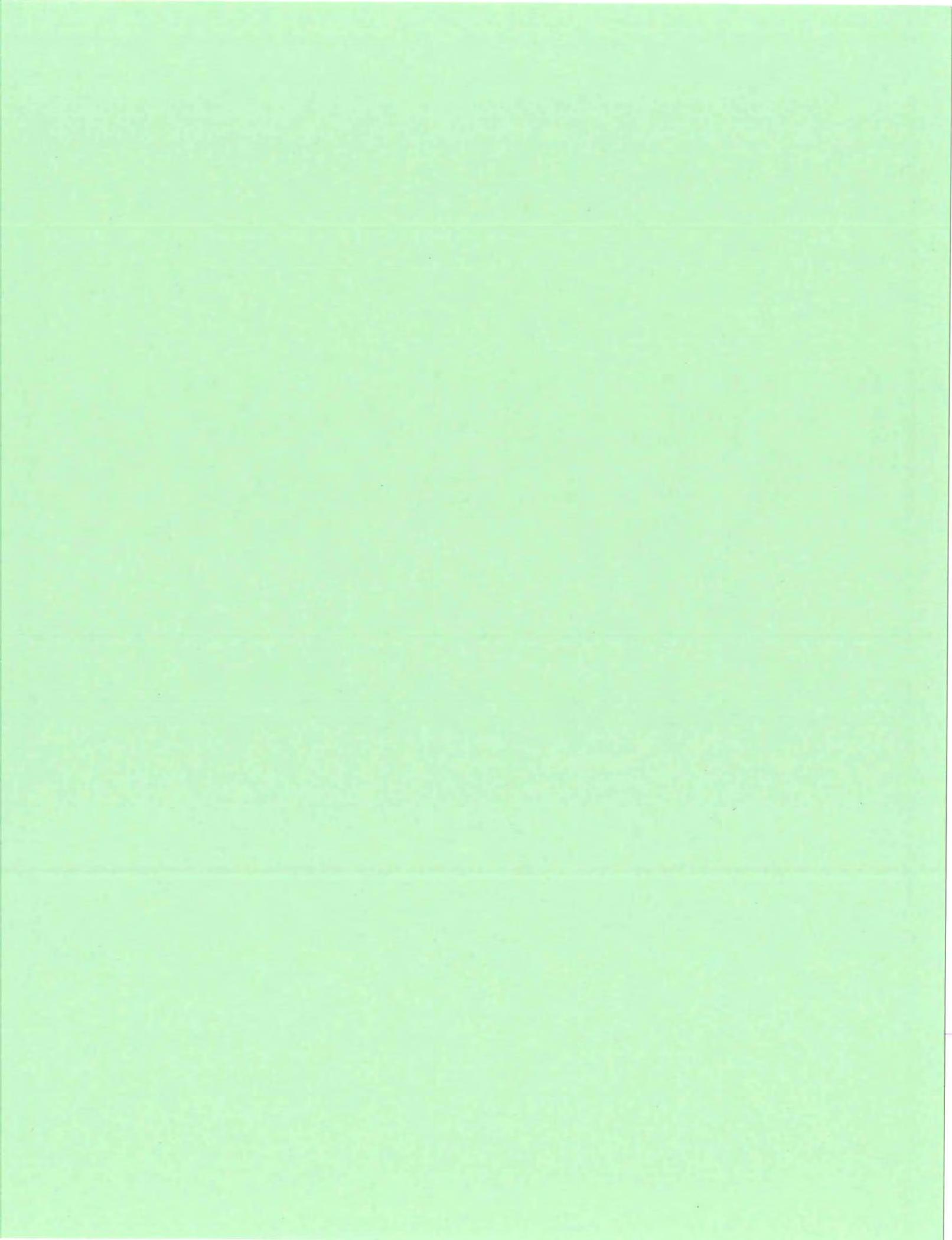
For the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all the ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates' courts shall have jurisdiction to punish individuals violating the provisions of the county ordinances where such misdemeanor occurred in the area defined in this section.

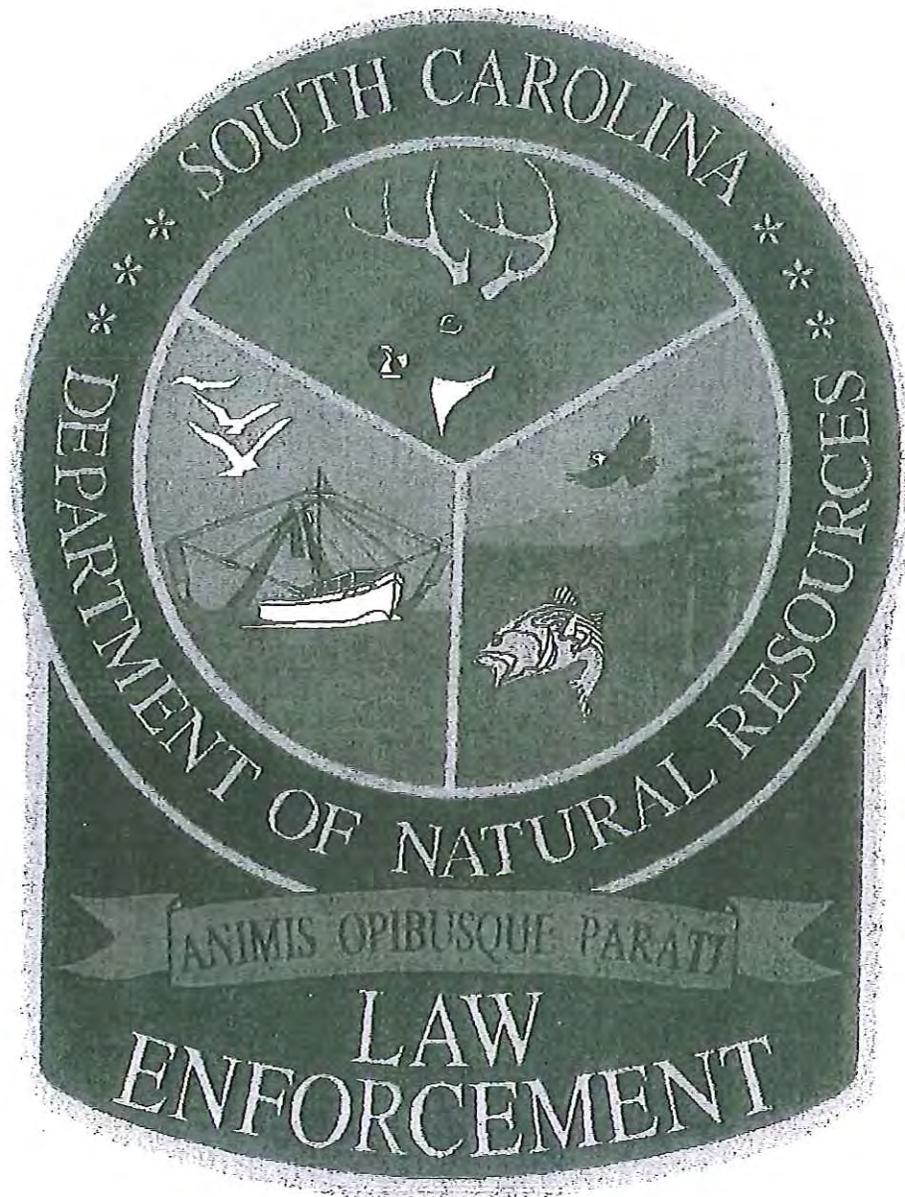
**HISTORY:** 1980 Act No. 300, § 3.

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 193-195.

20 CJS, Counties § 49.





**Abandoned Vessel  
Palmetto Bay  
Case Number- 2017 [REDACTED]  
Investigator Michael L. Brock**



## Abandoned Boat Request for Clear Title Form

Pursuant to S.C. Code 50-21-190(E), the applicant moves to make claim to the below vessel, (and motor, if applicable). Said vessel has been identified as "abandoned" by the S.C. Department of Natural Resources.

### Applicant Information

Last name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

Driver's License No: \_\_\_\_\_ State Issued: \_\_\_\_\_

Telephone No: \_\_\_\_\_

### Watercraft Description

Reg. Number: N/A Expiration Date on Decal: N/A

Title Number: N/A Length: Unknown Year: Unknown

Make: Unknown Construction: Fiberglass

Hull ID Number: N/A Model: Cabin

Boat Name (If no numbers) Font-A-Seg

### Outboard Motor Description

Title Number: N/A Make: N/A HP: N/A

Year: N/A Model Number: N/A Serial Number: N/A

\_\_\_\_\_  
Applicant Signature Date

The above applicant has met all requirements and conditions and has been approved to make claim and receive clear title to the above referenced vessel.

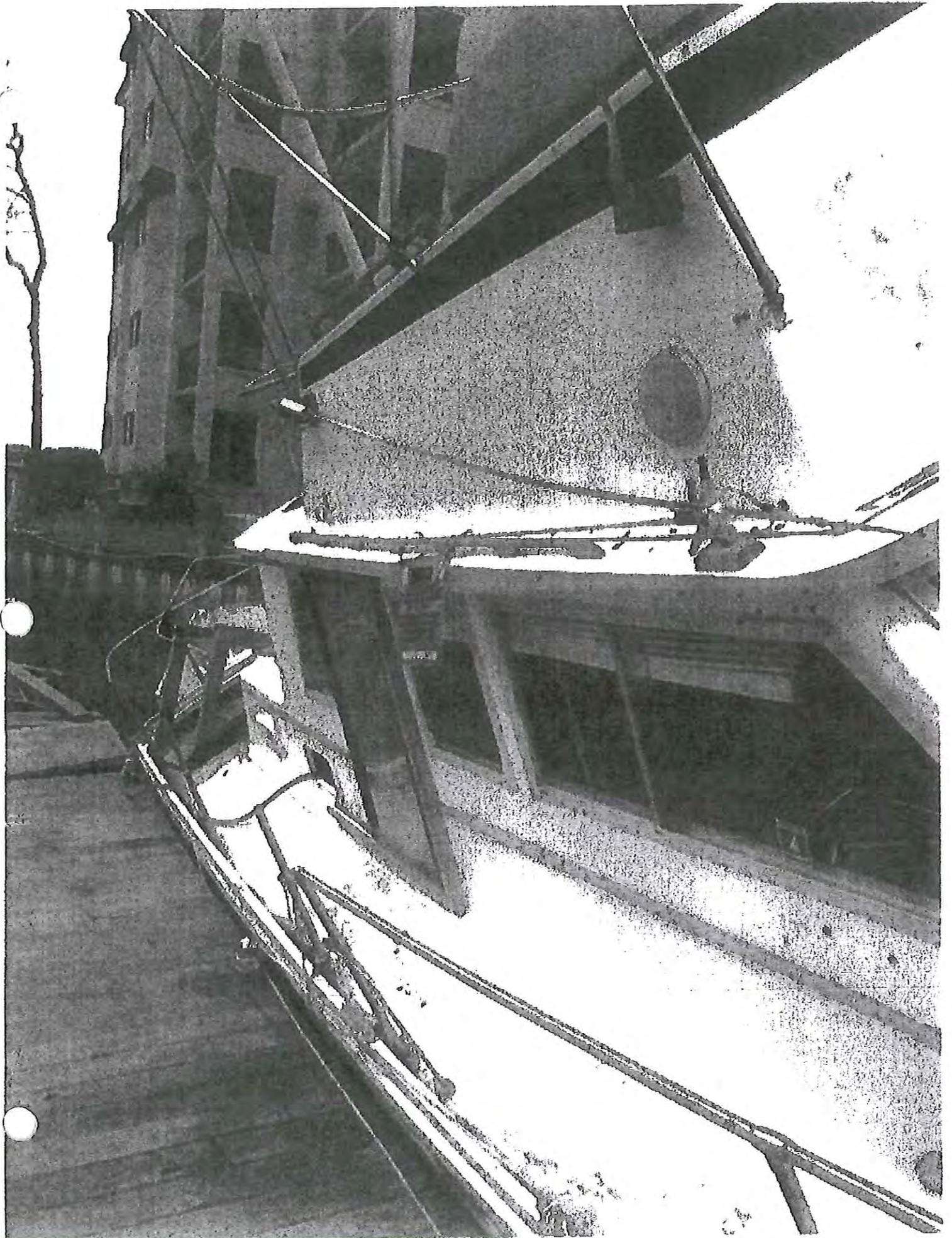
\_\_\_\_\_  
County Representative Name (print)

\_\_\_\_\_  
Position

\_\_\_\_\_  
County Representative Signature

\_\_\_\_\_  
Date

FAMILY A S E N  
BRUNSWICK





1032964

Not For Sale  
(Bill of Sale, Family  
Tax Exemption &  
Co-Owner Forms on Back)

DNR

# WATERCRAFT/OUTBOARD MOTOR APPLICATION

CHECK THE APPLICABLE BOXES

- New SC Watercraft Title & Registration \$40.00
- Renew Expired Watercraft Registration or any Registration Expiring in the Current Calendar Year \$30.00
- Transfer SC Watercraft Title & Registration \$16.00
- Watercraft Title (unpowered vessels & sailboats only) \$10.00
- New SC Outboard Motor Title \$10.00
- Transfer SC Outboard Motor Title \$10.00
- Duplicate or Corrected Watercraft Title \$5.00
- Duplicate or Corrected Outboard Motor Title \$5.00
- Duplicate Watercraft Registration Card \$5.00
- Duplicate Watercraft or  Motor Decal (ea.) \$5.00
- Late Fee (due 31<sup>st</sup> - 60<sup>th</sup> days after purchase or registration expires) \$15.00
- Late Fee (due 61<sup>st</sup> day after purchase or registration expires) \$30.00
- Casual Excise Tax Fee Sales Price \$ \_\_\_\_\_ X (Tax Rate) % = \$ \_\_\_\_\_

MAKE CHECK OR MONEY ORDER PAYA  
P.O. Box 167, Columbia, SC 29202. Attn: T&A  
Assembly St., Dennis Bldg., Rm. 104 Colu

## COUNTY CODES

- |                 |                 |
|-----------------|-----------------|
| 1 Abbeville     | 24 Greenwood    |
| 2 Aiken         | 25 Hampton      |
| 3 Allendale     | 26 Horry        |
| 4 Anderson      | 27 Jasper       |
| 5 Bamberg       | 28 Kershaw      |
| 6 Barnwell      | 29 Lancaster    |
| 7 Beaufort      | 30 Laurens      |
| 8 Berkeley      | 31 Lee          |
| 9 Calhoun       | 32 Lexington    |
| 10 Charleston   | 33 McCormick    |
| 11 Cherokee     | 34 Marion       |
| 12 Chester      | 35 Marlboro     |
| 13 Chesterfield | 36 Newberry     |
| 14 Clarendon    | 37 Oconee       |
| 15 Colleton     | 38 Orangeburg   |
| 16 Darlington   | 39 Pickens      |
| 17 Dillon       | 40 Richland     |
| 18 Dorchester   | 41 Saluda       |
| 19 Edgefield    | 42 Spartanburg  |
| 20 Fairfield    | 43 Sumter       |
| 21 Florence     | 44 Union        |
| 22 Georgetown   | 45 Williamsburg |
| 23 Greenville   | 46 York         |

\*If out-of-state address, check county of primary use.

|                          |  |                         |       |              |               |
|--------------------------|--|-------------------------|-------|--------------|---------------|
| <input type="checkbox"/> | APPLICANT'S LEGAL or BUSINESS NAME (PRINT) | LAST                    | FIRST | M.I.         | DATE OF BIRTH |
|                          |  |                         |       |              | M D YR.       |
| <input type="checkbox"/> | CO-APPL. LEGAL (see back) (Sec. 1)         | LAST                    | FIRST | M.I.         | DATE OF BIRTH |
|                          |  |                         |       |              | M D YR.       |
| MAILING ADDRESS          |  | STREET, R UTE, R BO NO. |       | CELL PHONE # | HOME PHONE #  |
|                          |  |                         |       | ( )          | ( )           |
| ADDRESS                  |  | CITY                    | STATE | ZIP          | WORK PHONE #  |
|                          |  |                         |       |              | ( )           |

| WATERCRAFT AND/OR OUTBOARD MOTOR PURCHASED FROM |                |                                     |                  |
|---|----------------|-------------------------------------|------------------|
| WATERCRAFT PURCHASED FROM                       | DATE PURCHASED | MOTOR PURCHASED FROM (if different) | DATE PURCHASED   |
| ADDRESS   |                | ADDRESS                             |                  |
| CITY, STATE, ZIP                                |                | TELEPHONE #                         | CITY, STATE, ZIP |
|   |                | ( )                                 | ( )              |

| COMPLETE THIS SECTION TO REGISTER/TITLE WATERCRAFT  |                         |  |  |   |              |
|---|-------------------------|--|--|---|--------------|
| SC REGISTRATION NUMBER<br>SC-   | BOAT TITLE NUMBER<br>WA | EXP. DATE  | YEAR   | MODEL   | MAKE OF BOAT |
| HULL ID NUMBER (ONE LETTER/NUMBER PER SPACE)  |                         |  | CHECK ONE: <input type="checkbox"/> HOMEMADE <input type="checkbox"/> REBUILT <input type="checkbox"/> FACTORY BUILT |   |              |
| LENGTH  |                         |  | OUT OF STATE REGISTRATION NUMBER, IF ANY   |   |              |
| CONSTRUCTION (✓)  |                         | PROPULSION (✓)   |  | FUEL (✓)  |              |
| <input type="checkbox"/> 1. WOOD<br><input type="checkbox"/> 2. STEEL<br><input type="checkbox"/> 3. ALUMINUM<br><input type="checkbox"/> 4. FIBERGLASS<br><input type="checkbox"/> 5. PLASTIC<br><input type="checkbox"/> 6. INFLATABLE<br><input type="checkbox"/> 9. OTHER |                         | <input type="checkbox"/> 1. OUTBOARD<br><input type="checkbox"/> 2. INBOARD SINGLE ENGINE # _____<br>PORT/LEFT ENGINE # _____<br>STARBOARD/RIGHT ENGINE # _____<br>MAKE _____<br><input type="checkbox"/> 3. I/O SINGLE ENGINE # _____<br>PORT/LEFT ENGINE # _____<br>STARBOARD/RIGHT ENGINE # _____<br>MAKE _____<br><input type="checkbox"/> 4. ELECTRIC MOTOR OR TROLLING MOTOR<br><input type="checkbox"/> 5. WIND <input type="checkbox"/> 6. JET DRIVE <input type="checkbox"/> 9. OTHER |  | <input type="checkbox"/> 1. GASOLINE<br><input type="checkbox"/> 2. DIESEL<br><input type="checkbox"/> 9. OTHER |              |
| TYPE USE (✓)  |                         | TYPE VESSEL (✓)  |  |   |              |
| <input type="checkbox"/> 1. COMMERCIAL PASSENGER<br><input type="checkbox"/> 2. COMMERCIAL FISHING<br><input type="checkbox"/> 3. PERSONAL PLEASURE<br><input type="checkbox"/> 4. RENTAL/LEASE<br><input type="checkbox"/> 5. DEMO<br><input type="checkbox"/> 9. OTHER      |                         | <input type="checkbox"/> 1. OPEN<br><input type="checkbox"/> 2. CABIN POWERED<br><input type="checkbox"/> 3. HOUSEBOAT *SEE BELOW<br><input type="checkbox"/> 4. CABIN SAIL<br><input type="checkbox"/> 5. SAIL<br><input type="checkbox"/> 6. PONTOON<br><input type="checkbox"/> 7. JET SKI / PERSONAL WATERCRAFT<br><input type="checkbox"/> 9. OTHER   |  |   |              |
| *MUST ANSWER IS THIS WATERCRAFT EQUIPPED WITH A MARINE TOILET?<br><input type="checkbox"/> YES <input type="checkbox"/> NO  |                         |  |  |   |              |

| COMPLETE THIS SECTION TO TITLE OUTBOARD MOTOR - 1 MOTOR PER FORM (YEAR OF MFG OR MODEL YR) |               |      |                                  |            |       |
|--|---------------|------|----------------------------------|------------|-------|
| MOTOR TITLE NUMBER<br>MA   | SERIAL NUMBER | MAKE | YEAR<br>Yr. of Mfg.<br>Model Yr. | HORSEPOWER | MODEL |

| COMPLETE THIS SECTION IF WATERCRAFT AND/OR OUTBOARD MOTOR IS SUBJECT TO LIENS                                       |      |             |
|---|------|-------------|
| <input type="checkbox"/> Check if there is a 2 <sup>nd</sup> lien & attach second lien information on separate page |      |             |
| FIRST LIEN  | DATE | AMOUNT      |
| ADDRESS   |      | TELEPHONE # |
|   |      | ( )         |

I certify that the information contained on this application and all attached documents is true and correct and that no other liens or encumbrances except those noted exist. I agree to have an examination of the above by the South Carolina Department of Natural Resources. (False statements within applications and bills of sale are punishable pursuant to Section 50-23-270.) State ID and State of Issue is mandatory, per SC Code of Laws, 1976, Section 1976 50-23-60 (a) (1).

|                       |                |
|-----------------------|----------------|
| APPLICANT'S SIGNATURE | DATE           |
| DRIVER'S LICENSE NO.  | STATE OF ISSUE |
| DRIVER'S LICENSE NO.  | STATE OF ISSUE |
| PERMIT NO.            |                |

| SC DEPARTMENT OF NATURAL RESOURCES<br>TEMPORARY WATERCRAFT CERTIFICATE OF NUMBER |   |         |              |
|--|---|---------|--------------|
| OWNER'S NAME   | CHECK ONE   |         |              |
|  | <input type="checkbox"/> New Registration<br><input type="checkbox"/> Valid Transfer--Current Decal<br><input type="checkbox"/> Valid Transfer--Expired Decal |         |              |
| OWNER'S SIGNATURE  | ADDRESS   |         |              |
|  | CITY  | STATE   | ZIP          |
| HULL IDENTIFICATION NO.  | MAKE  | LENGTH  | STATE OF USE |
| PROPULSION TYPE  | DATE OF ISSUE   | 1032964 |              |

Any personal information collected by SCDNR for licenses, watercraft titles and registrations, EXCEPT social security number, driver's license number, gender, and race, are subject to disclosure under the Freedom of Information Act. However, if released, state law prohibits the use of this information for solicitation or commercial purposes.

**CERTIFIED TRUE BILL OF SALE FOR WATERCRAFT AND OUTBOARD MOTORS**  
**ERASURES OR ALTERATIONS VOID THIS BILL OF SALE**

**DESCRIPTION OF WATERCRAFT:** Registration Number: SC \_\_\_\_\_ Title Number: WA \_\_\_\_\_

Hull I.D. Number: \_\_\_\_\_ Make: \_\_\_\_\_ Year: \_\_\_\_\_ Length: \_\_\_\_\_ Const: \_\_\_\_\_

**DESCRIPTION OF OUTBOARD MOTOR:** Title Number: MA \_\_\_\_\_ Serial Number: \_\_\_\_\_

Model: \_\_\_\_\_ Make: \_\_\_\_\_ Year: \_\_\_\_\_ H.P.: \_\_\_\_\_

(Check if this applies to you) I did not register/title watercraft because I used it without propulsion.

I, \_\_\_\_\_ of \_\_\_\_\_ hereby sell  
Seller (S) Address of Seller

on \_\_\_\_\_ of \_\_\_\_\_ to \_\_\_\_\_  
Month Day Year Name of Purchaser  
 the above Watercraft and Outboard Motor.  
Address of Purchaser

I certify this property is free of any liens or adverse claims and all personal property taxes have been paid to date. I understand that all current year personal property taxes are the responsibility of the seller(s), unless an otherwise enforceable agreement has been reached between the seller and buyer. Failure to notify SCDNR of sale/transaction can result in continued personal property tax assessments to owner of record. I authorize SCDNR to issue duplicate titles, if necessary. (\$5 fee per duplicate)

X \_\_\_\_\_  
Signature of Seller Driver's License #

X \_\_\_\_\_  
Signature of Co-Owner Driver's License #

X \_\_\_\_\_  
Signature of Co-Owner Driver's License #

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_  
Month Year

X \_\_\_\_\_ My commission expires \_\_\_\_\_  
Notary Signature Print Notary's Name Date Month Year

**SELLER MUST NOTIFY**  
 S.C. DEPT. OF NATURAL RESOURCES  
 WATERCRAFT DIVISION  
 P.O. BOX 167  
 COLUMBIA, S.C. 29202-0167  
 (803) 734-3447 - office or (803) 734-4138 - fax  
 IN WRITING WITHIN 30 DAYS OF ANY CHANGE OF OWNERSHIP OF WATERCRAFT AND OUTBOARD MOTOR, FURNISHING FULL INFORMATION. SELLER SHOULD KEEP COPY FOR TAX RECORDS.

|                               | Boat |   | Outboard Motor |   | Total |
|-------------------------------|------|---|----------------|---|-------|
| Purchase Price                | \$   | + | \$             | = | \$    |
| Less Trade In                 | \$   | + | \$             | = | \$    |
| Balance Subject to Casual Tax | \$   | + | \$             | = | \$    |

**TAX EXEMPT FORM FOR IMMEDIATE FAMILY FOR WATERCRAFT AND OUTBOARD MOTORS**

**IMMEDIATE FAMILY: PARENT, CHILD, SISTER, BROTHER, GRANDPARENT, GRANDCHILD & SPOUSE**

Date \_\_\_\_\_

I hereby certify that I, \_\_\_\_\_, am EXEMPT from Casual Excise Tax for the watercraft/  
(Purchaser)  
 outboard motor described above or attached on the Bill of Sale.

ACQUIRED FROM \_\_\_\_\_  
(Name) (Relationship)

**Caution:** In accordance with S.C. Code of Laws, 1976, Sections 12-36-1710 and 12-36-1730, this is to advise any person who willfully or knowingly makes a false statement for the purpose of avoiding all or a part of the excise tax levied by this article or who assists any other person to avoid all or a part of the excise tax levied by this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred dollars or be imprisoned for not more than thirty days, or both. A person may be liable for civil penalties under Section 12-36-1740.

X \_\_\_\_\_  
**Purchaser's Signature**

**CO-OWNER FORM FOR WATERCRAFT AND OUTBOARD MOTORS**

I, \_\_\_\_\_, wish to add \_\_\_\_\_  
(OWNER - Please Print) (CO-OWNER - Please Print)

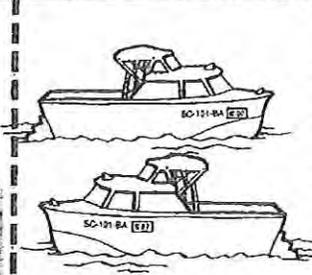
as co-owner of watercraft and outboard motor described above. X \_\_\_\_\_  
**Owner's Signature**

If co-owner's name is not shown on the Bill of Sale but needs to be added, this section and co-owner section on front of watercraft/ motor application must be completed. Application must also be signed (on front) by applicant and co-owner.

**TEMPORARY CERTIFICATE OF NUMBER IS NOT TO BE DISPLAYED.**

Carry this certificate and copy of bill of sale on board during operation up to sixty (60) days from date of purchase as proof of a recent application being submitted. This copy is a temporary certificate valid up to (60) days. Your registration card and/or title will be mailed at a later date. A temporary certificate of number is not valid for rental boats or a boat without a hull id number.

This temporary certificate is only valid for a new watercraft or a watercraft with registration (decals) and may not be honored in other states. SC Code of Laws, 1976, Section 50-23-345 (d) prohibits duplicating or updating temporary certificates or updating bills of sale.



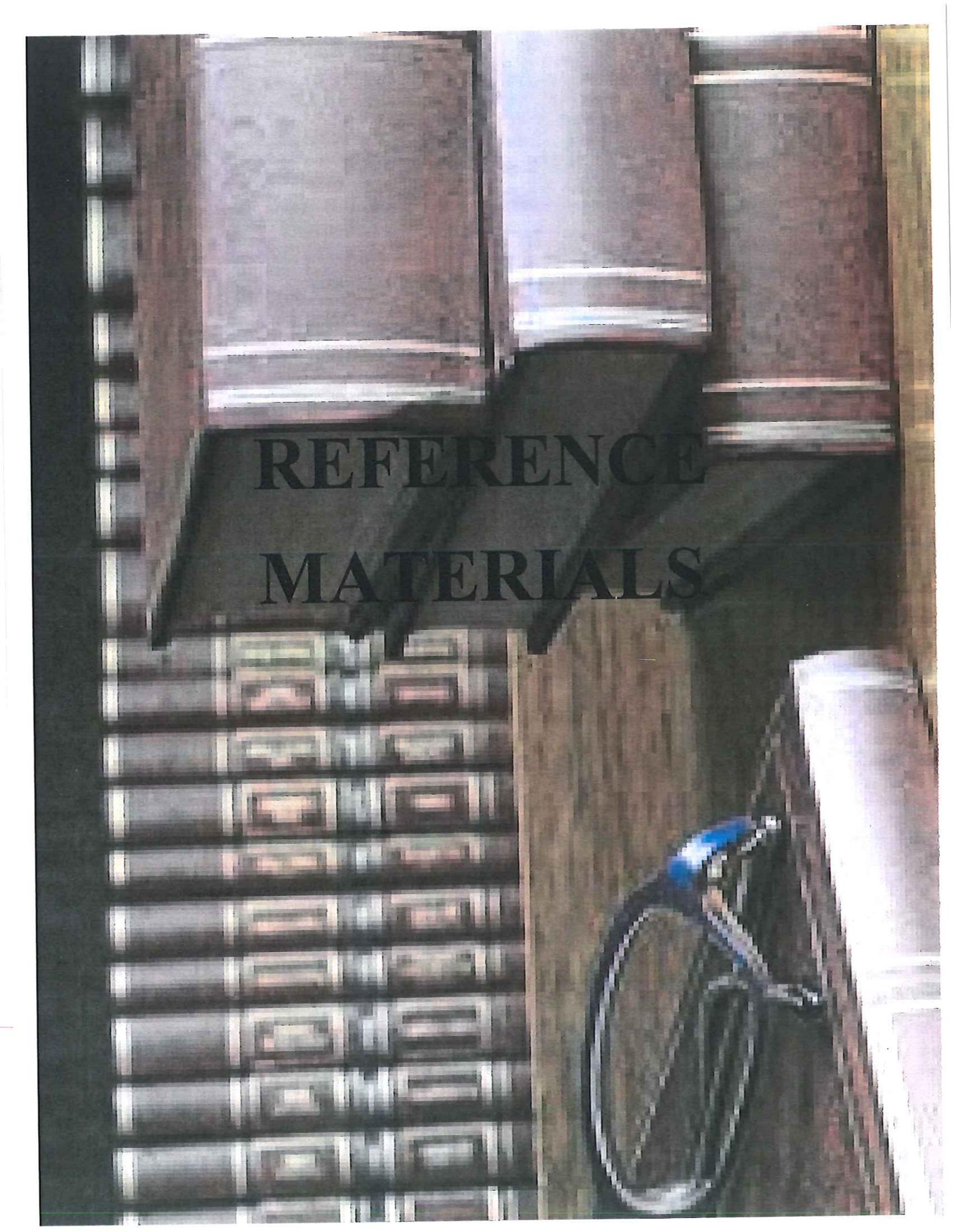
**DISPLAY OF NUMBER AND DECALS**

The number awarded shall be painted or attached to the forward half of each side of the watercraft in a position distinctly visible to other vessels. Letters and numerals must be of a block design not less than three (3) inches high and of a color which clearly contrasts with the color of the watercraft hull. Numbers must be read from left to right as they appear on the certificate of number. Letter groups must be separated from the numerals by hyphens or equivalent spaces, and the year decals must be attached to each side of the watercraft's bow immediately following the number, within six (6) inches (see illustration).



**Marine Debris Removal RFP and Contract**

**Debris Removal RFP and Contract**

The image is a collage of three distinct scenes. The top portion shows a close-up of several large, dark brown leather-bound books with gold-leaf lettering on their spines, arranged on a wooden shelf. The bottom-left portion shows a perspective view of a long, narrow aisle in a library, with rows of bookshelves filled with books on both sides, receding into the distance. The bottom-right portion shows a blue bicycle leaning against a wooden wall, with a large, rolled-up document or scroll resting on the floor next to it.

# REFERENCE MATERIALS

FEMA Authorities:

**The Stafford Act, as amended**  
*and*  
Emergency Management-related Provisions of the  
**Homeland Security Act, as amended**

FEMA 592, August 2016



**FEMA**

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**Robert T. Stafford Disaster Relief and Emergency Assistance Act,  
Public Law 93-288, as amended,  
42 U.S.C. 5121 et seq., and Related Authorities**

*United States Code, Title 42. The Public Health and Welfare, Chapter 68. Disaster Relief*

NOTE: Non-Stafford Act sections appear in U.S. Code sequence for convenience.

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- (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

\* **Sec. 403. Essential Assistance (42 U.S.C. 5170b)**

- (a) IN GENERAL - Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:
- (1) FEDERAL RESOURCES, GENERALLY - Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.
  - (2) MEDICINE, FOOD, AND OTHER CONSUMABLES - Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine durable medical equipment,<sup>17</sup> food, and other consumable supplies, and other services and assistance to disaster victims.
  - (3) WORK AND SERVICES TO SAVE LIVES AND PROTECT PROPERTY - Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including -
    - (A) debris removal;
    - (B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine durable medical equipment,<sup>18</sup> and other essential needs, including movement of supplies or persons;
    - (C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;
    - (D) provision of temporary facilities for schools and other essential community services;
    - (E) demolition of unsafe structures which endanger the public;
    - (F) warning of further risks and hazards;
    - (G) dissemination of public information and assistance regarding health and safety measures;
    - (H) provision of technical advice to State and local governments on disaster management and control;
    - (I) reduction of immediate threats to life, property, and public health and safety; and

17. Typographical error in original; the extra comma should probably follow "medicine."

18. Typographical error in original; the extra comma should probably follow "medicine."

- (J) provision of rescue, care, shelter, and essential needs -
  - (i) to individuals with household pets and service animals; and
  - (ii) to such pets and animals.
- (4) CONTRIBUTIONS - Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.
- (b) FEDERAL SHARE - The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.
- (c) UTILIZATION OF DOD RESOURCES -
  - (1) GENERAL RULE - During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.
  - (2) RULES APPLICABLE TO DEBRIS REMOVAL - Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title [Section 407(b)], relating to unconditional authorization and indemnification for debris removal.
  - (3) EXPENDITURES OUT OF DISASTER RELIEF FUNDS - The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.
  - (4) FEDERAL SHARE - The Federal share of assistance under this subsection shall be not less than 75 percent.
  - (5) GUIDELINES - Not later than 180 days after November 23, 1988,<sup>19</sup> the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.
  - (6) DEFINITIONS - For purposes of this section—
    - (A) DEPARTMENT OF DEFENSE - The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10.
    - (B) EMERGENCY WORK - The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

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19. The date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988.

## (d) SALARIES AND BENEFITS -

- (1) IN GENERAL - If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to -
  - (A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—
    - (i) the work is not typically performed by the employees; and
    - (ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals;<sup>20</sup> or
  - (B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section.
- (2) OVERTIME - The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).
- (3) NO EFFECT ON MUTUAL AID PACTS - Nothing in this subsection shall affect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.

**Sec. 404.** Hazard Mitigation (42 U.S.C. 5170c)<sup>21</sup>

- (a) IN GENERAL - The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title [Section 322] and shall be subject to approval by the President. Subject to section 5165 of this title [Section 322], the total of contributions under this section for a major disaster shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act with respect to the major disaster.

20. *Typographical error (two punctuation marks) in original.*

21. *Pub. L. 113-2, div. B, § 1104(c), Jan. 29, 2013, 127 Stat. 43, provides that, "The authority under the amendments made by this section [amending this section] shall apply to— (1) any major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after the date of enactment of this division [Jan. 29, 2013]; and (2) a major disaster or emergency declared under that Act before the date of enactment of this division for which the period for processing requests for assistance has not ended as of the date of enactment of this division."*

which shall include representatives from the construction industry and State and local government.

- (B) DUTIES - The expert panel shall develop recommendations concerning
    - (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and
    - (ii) the ceiling and floor percentages referred to in paragraph (2).
  - (C) REGULATIONS - Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish -
    - (i) cost estimation procedures described in subparagraph (B)(i); and
    - (ii) the ceiling and floor percentages referred to in paragraph (2).
  - (D) REVIEW BY PRESIDENT - Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.
  - (E) REPORT TO CONGRESS - Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.
- (4) SPECIAL RULE - In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

**\* Sec. 407. Debris Removal (42 U.S.C. 5173)**

- (a) PRESIDENTIAL AUTHORITY - 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) AUTHORIZATION BY STATE OR LOCAL GOVERNMENT; INDEMNIFICATION AGREEMENT - 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.
- (e) **EXPEDITED PAYMENTS** -
  - (1) **GRANT ASSISTANCE** - In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President's initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).
  - (2) **DATE OF PAYMENT** - Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

**Sec. 408.** Federal Assistance to Individuals and Households (42 U.S.C. 5174)

- (a) **IN GENERAL** -
  - (1) **PROVISION OF ASSISTANCE** - In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.
  - (2) **RELATIONSHIP TO OTHER ASSISTANCE** - Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) of this section solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.
- (b) **HOUSING ASSISTANCE** -
  - (1) **ELIGIBILITY** - The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences

\* **Sec. 502.** Federal Emergency Assistance (42 U.S.C. 5192)

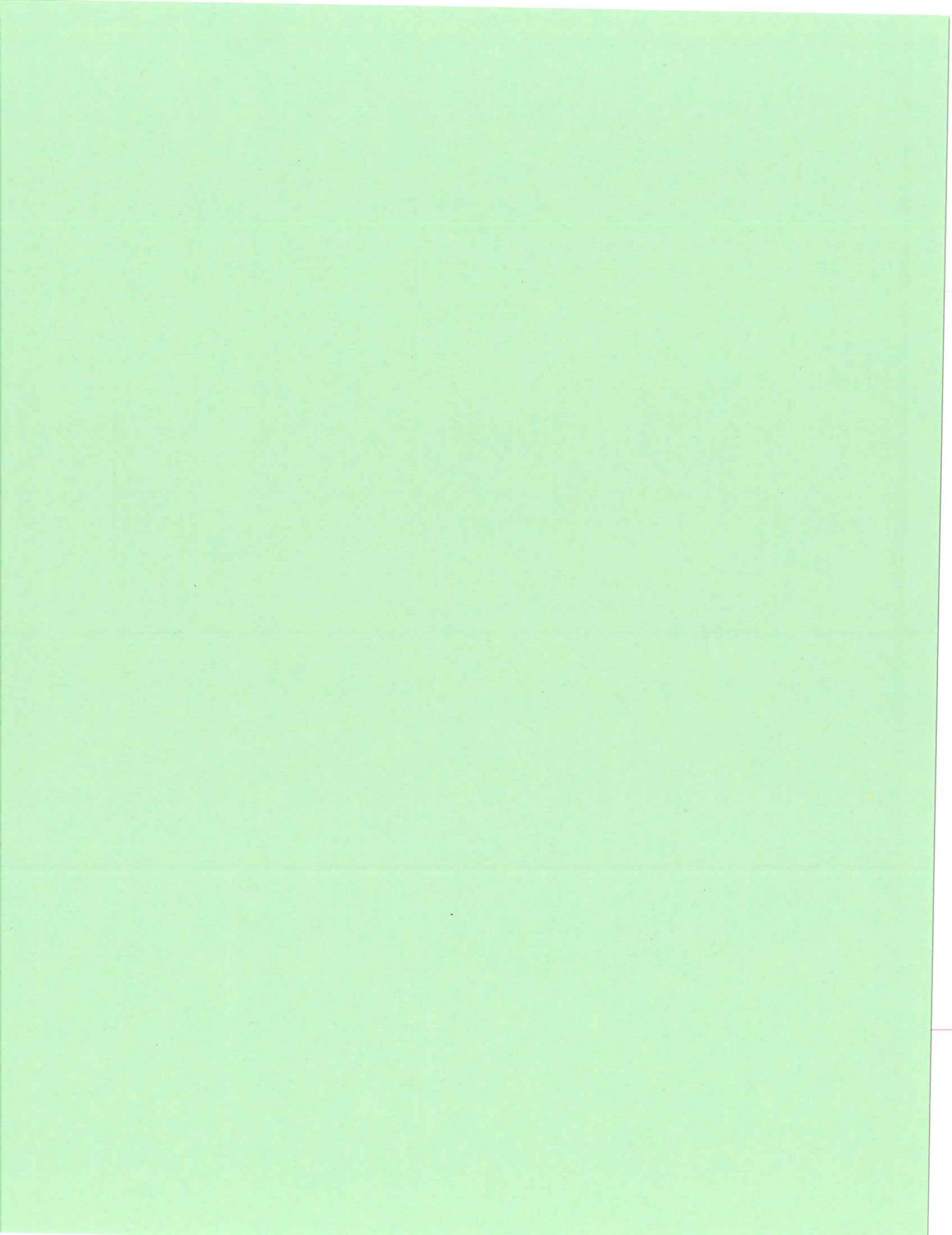
- (a) SPECIFIED - In any emergency, the President may -
- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;
  - (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
  - (3) provide technical and advisory assistance to affected State and local governments for -
    - (A) the performance of essential community services;
    - (B) issuance of warnings of risks or hazards;
    - (C) public health and safety information, including dissemination of such information;
    - (D) provision of health and safety measures; and
    - (E) management, control, and reduction of immediate threats to public health and safety;
  - (4) provide emergency assistance through Federal agencies;
  - (5) remove debris in accordance with the terms and conditions of section 5173 of this title [Section 407];
  - (6) provide assistance in accordance with section 5174 of this title [Section 408];
  - (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and
  - (8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President -
    - (A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and
    - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.
- (b) GENERAL - Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and

public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations.

- (c) **GUIDELINES** - The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.

**Sec. 503. Amount of Assistance (42 U.S.C. 5193)**

- (a) **FEDERAL SHARE** - The Federal share for assistance provided under this title shall be equal to not less than 75 percent of the eligible costs.
- (b) **LIMIT ON AMOUNT OF ASSISTANCE** -
- (1) **IN GENERAL** - Except as provided in paragraph (2), total assistance provided under this title for a single emergency shall not exceed \$5,000,000.
  - (2) **ADDITIONAL ASSISTANCE** - The limitation described in paragraph (1) may be exceeded when the President determines that -
    - (A) continued emergency assistance is immediately required;
    - (B) there is a continuing and immediate risk to lives, property, public health or safety; and
    - (C) necessary assistance will not otherwise be provided on a timely basis.
  - (3) **REPORT** - Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.



# ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of May 8, 2017**

Title 44 → Chapter I → Subchapter D → Part 206

Title 44: Emergency Management and Assistance

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## **PART 206—FEDERAL DISASTER ASSISTANCE**

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AUTHORITY: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

SOURCE: 54 FR 11615, Mar. 21, 1989, unless otherwise noted.

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## Subpart A—General

SOURCE: 55 FR 2288, Jan. 23, 1990, unless otherwise noted.

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### §206.1 Purpose.

(a) *Purpose.* The purpose of this subpart is to prescribe the policies and procedures to be followed in implementing those sections of Public Law 93-288, as amended, delegated to the Administrator, Federal Emergency Management Agency (FEMA). The rules in this subpart apply to major disasters and emergencies declared by the President on or after November 23, 1988, the date of enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) *Prior regulations.* Prior regulations relating to major disasters and emergencies declared by the President before November 23, 1988 were published in 44 CFR part 205 (see 44 CFR part 205 as contained in the CFR edition revised as of October 1, 1994).

[59 FR 53363, Oct. 24, 1994]

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### §206.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Stafford Act:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended.

(2) *Applicant:* Individuals, families, States and local governments, or private nonprofit organizations who apply for assistance as a result of a declaration of a major disaster or emergency.

(3) [Reserved]

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters which occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

(5) *Contractor:* Any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.

(7) *Administrator:* The Administrator, FEMA.

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## Subpart H—Public Assistance Eligibility

SOURCE: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

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### §206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards, 44 CFR part 9—Floodplain Management, and other applicable environmental and historic preservation laws, regulations, Executive Orders, and agency policy.

[81 FR 56533, Aug. 22, 2016]

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### §206.221 Definitions.

(a) *Educational institution* means:

- (1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or
- (2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
- (3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant's own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(4) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(5) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(6) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

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#### **§206.222 Applicant eligibility.**

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in §206.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

[55 FR 2307, Jan. 23, 1990, as amended at 82 FR 44, Jan. 3, 2017]

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#### **§206.223 General work eligibility.**

(a) *General*. To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the emergency or major disaster event;

(2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and

(3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities*. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see §206.221(f)].

(c) *Public entities*. Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village*. To be eligible for assistance, a facility not owned by an eligible applicant, as defined in §206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence*. No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

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#### §206.224 Debris removal.

\* (a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Administrator may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

- (1) Eliminate immediate threats to life, public health, and safety; or
- (2) Eliminate immediate threats of significant damage to improved public or private property; or
- (3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Assistant Administrator for the Disaster Assistance Directorate extends this period.

\* (b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

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#### §206.225 Emergency work.

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Administrator may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

- (i) Eliminate or lessen immediate threats to live, public health or safety; or
- (ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

## **§206.226 Restoration of damaged facilities.**

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and recipients shall accept applications from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a recipient must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(c) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of §206.226(c)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(d) *Standards.* For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(Standards may be different for new construction and repair work)

(2) Be appropriate to the predisaster use of the facility;

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (d) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

(e) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Administrator may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(f) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (f)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(g) *Relocation.* (1) The Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when:

- (i) The facility is and will be subject to repetitive heavy damage;
- (ii) The approval is not barred by other provisions of title 44 CFR; and
- (iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project [see §206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

(h) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(i) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(j) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(k) *Restrictions—(1) Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998; 66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004; 74 FR 15350, Apr. 3, 2009; 74 FR 47482, Sept. 16, 2009; 82 FR 44, Jan. 3, 2017]

## §206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

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## §206.228 Allowable costs.

General policies for determining allowable costs are established in 2 CFR 200, subpart E. Exceptions to those policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 are explained below.

(a) *Eligible direct costs*—(1) *Applicant-owned equipment*. Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines*. In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines*. Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates*. The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(2) *Force Account Labor Costs*. The straight- or regular-time salaries and benefits of a recipient's or subrecipient's permanently employed personnel are:

(i) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(ii) Eligible, at the Administrator's discretion, in calculating the cost of eligible debris removal work under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act for a period not to exceed 30 consecutive calendar days, provided the recipient's or subrecipient's permanently employed personnel are dedicated solely to eligible debris removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy; and

(iii) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in §206.202.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999; 72 FR 57875, Oct. 11, 2007; 77 FR 67290, Nov. 9, 2012; 82 FR 44, Jan. 3, 2017]

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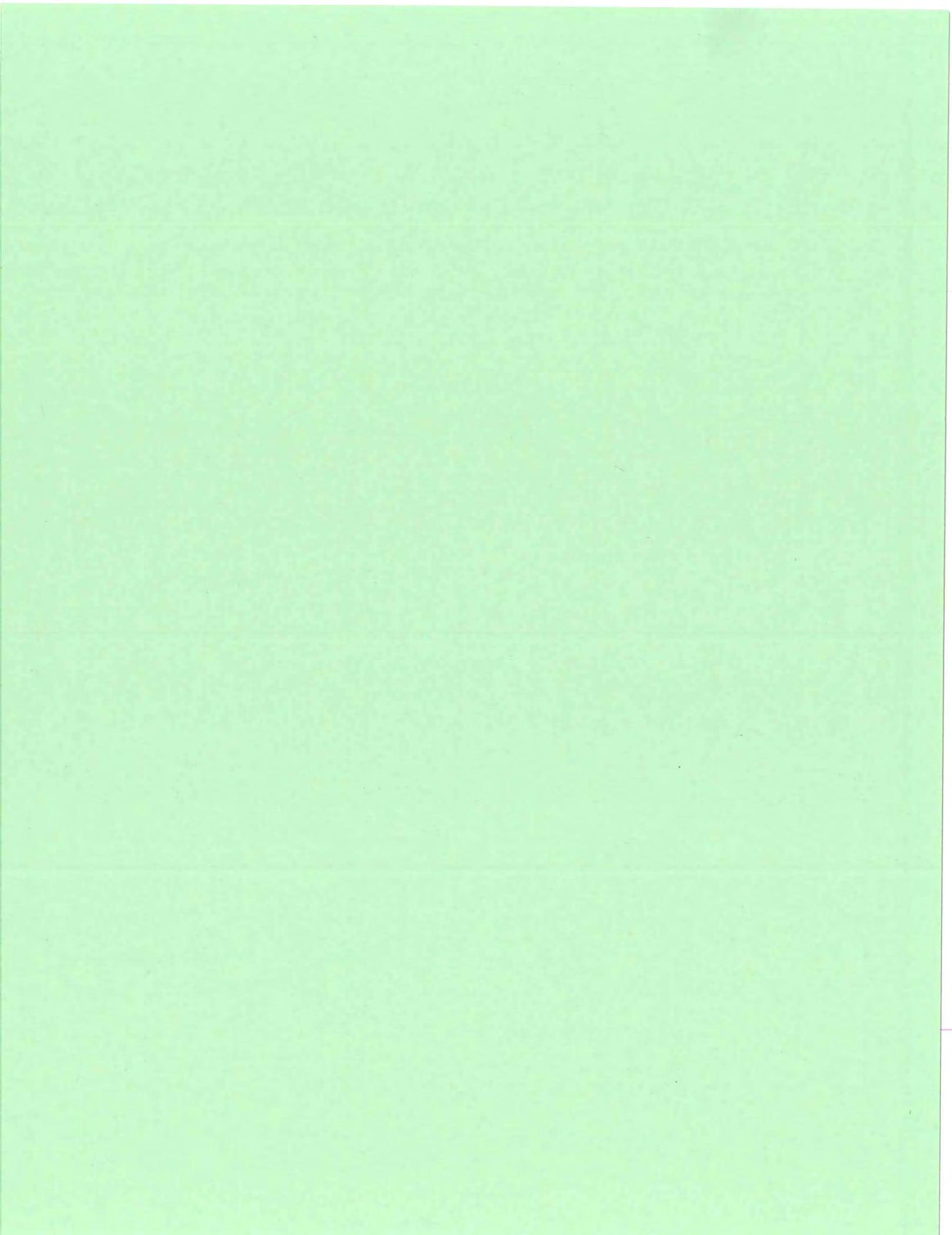
## §§206.229-206.249 [Reserved]

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## Subpart I—Public Assistance Insurance Requirements

SOURCE: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

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## South Carolina Code of Laws

**SECTION 4-9-120.** Procedures for adoption of ordinances; proceedings and all ordinances shall be recorded.

The council shall take legislative action by ordinance which may be introduced by any member. With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third readings. All proceedings of council shall be recorded and all ordinances adopted by council shall be compiled, indexed, codified, published by title and made available to public inspection at the office of the clerk of council. The clerk of council shall maintain a permanent record of all ordinances adopted and shall furnish a copy of such record to the clerk of court for filing in that office.

**HISTORY:** 1962 Code Section 14-3709; 1975 (59) 692.

**SECTION 4-9-130.** Public hearings on notice must be held in certain instances; adoption of standard codes or technical regulations and furnishing copies thereof; emergency ordinances.

**Public hearings, after reasonable public notice, must be held before final council action is taken to:**

- (1) adopt annual operational and capital budgets;
- (2) make appropriations, including supplemental appropriations;
- (3) adopt building, housing, electrical, plumbing, gas and all other regulatory codes involving penalties;
- (4) adopt zoning and subdivision regulations;
- (5) levy taxes;
- (6) sell, lease or contract to sell or lease real property owned by the county.

The council may adopt any standard code or technical regulations authorized under Section 6-9-60 by reference thereto in the adopting ordinance. The procedure and requirements governing the ordinances shall be as prescribed for ordinances listed in (1) through (6) above.

Copies of any adopted code of technical regulations shall be made available by the clerk of council for distribution or for purchase at a reasonable price.

Not less than fifteen days' notice of the time and place of such hearings shall be published in at least one newspaper of general circulation in the county.

**To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be designated as such and shall contain a declaration that an emergency exists and describe the emergency. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.**

**HISTORY:** 1962 Code Section 14-3710; 1975 (59) 692; 1982 Act No. 351, Section 1.

**SECTION 4-9-140.** Designation of fiscal and budget years; annual fiscal reports; adoption of budgets; levying and collection of taxes; supplemental appropriations; obtaining reports, estimates, and statistics.

The fiscal year of the county government shall begin on the first day of July of each year and shall end on the thirtieth day of June next following, and the fiscal year shall constitute the budget year of the county government. All county offices, departments, boards, commissions or institutions receiving county funds shall make a full, detailed annual fiscal report to the county council at the end of the fiscal year.

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

## Beaufort County Code of Ordinances

- 
- **Sec. 22-28. - Responsibilities and duties of county council.**

(a)

The chairman of the county council shall have the power to issue proclamations and regulations concerning public safety, disaster relief and related matters which shall have the full force and effect of law during an emergency.

(b)

The chairman of the county council may declare a state of emergency, if the chairman finds a disaster has occurred or that the threat thereof is imminent and emergency measures are deemed necessary to cope with the existing or anticipated situation.

(c)

Once declared, the state of emergency shall continue until terminated by proclamation of the chairman of the county council.

(d)

All proclamations issued pursuant to this article shall indicate the nature of the disaster, the area affected by the proclamation, the conditions which require the proclamation of the disaster emergency and the conditions under which it will be terminated.

(e)

A state of disaster emergency proclamation shall not exist for more than 15 days without approval of the county council.

(f)

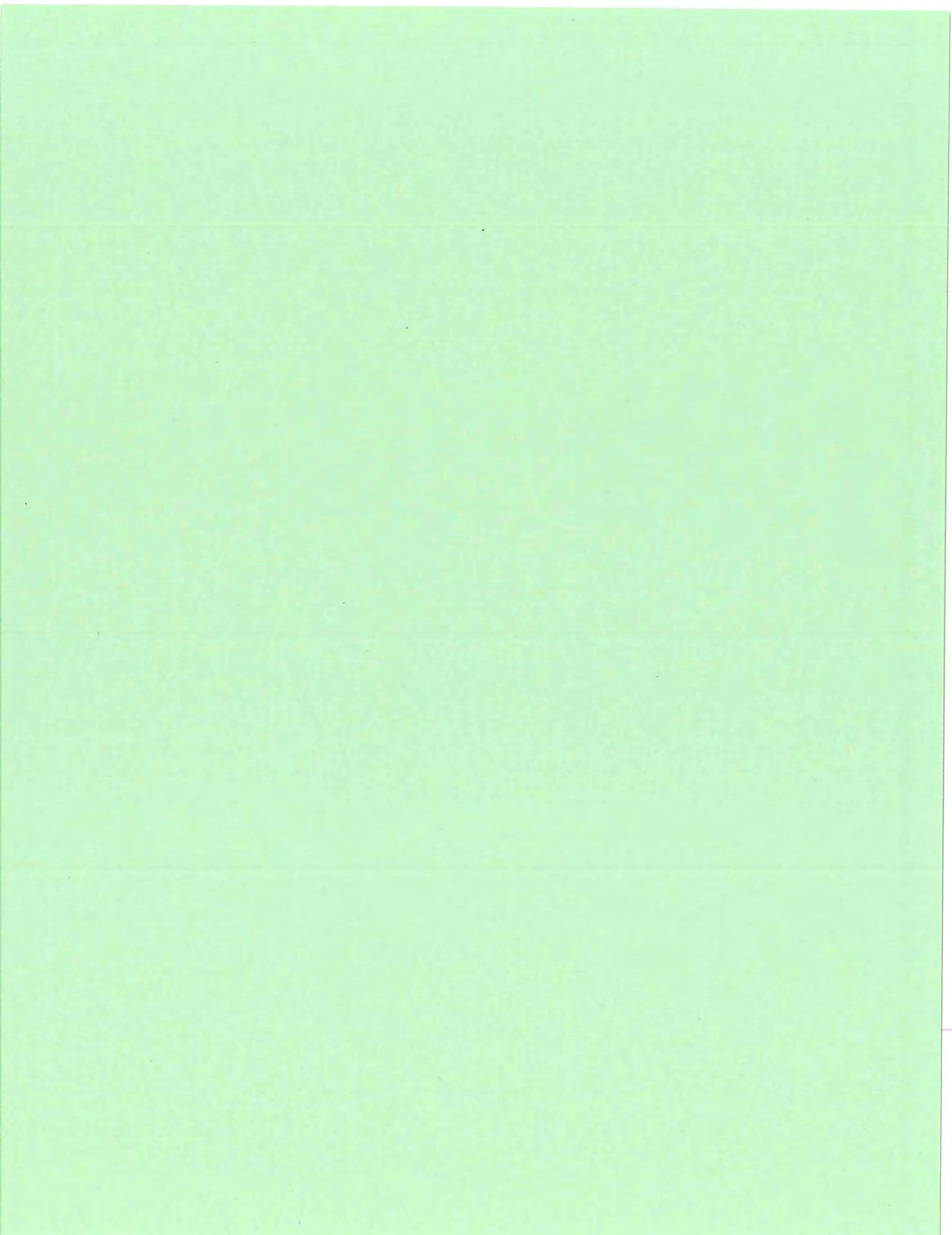
In addition to any powers conferred by law, the county council may, under this article, suspend existing ordinances and regulations prescribing the procedures for conduct of county business if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.

(g)

In the absence of the chairman of the county council, the vice-chairman of the county council shall carry out the duties of the chairman as outlined in this article.

(Code 1982, § 6-37)

-



**Proclamation No: 2016 / 14**

**Proclamation Declaring Public Health Emergency/State of Emergency  
As A Result of Hurricane Matthew**

**WHEREAS**, on October 4, 2016 the Governor of the State of South Carolina issued Executive Order No: 2016-26 declaring a State of Emergency in South Carolina due to the threats posed to the state and to Beaufort County by Hurricane Matthew as it approached the state; and

**WHEREAS**, between October 4, 2016 and October 6, 2016 the Governor of the State of South Carolina issued seven more Executive Orders all related to Hurricane Matthew and calling for, among other things, medical evacuations of health care facilities, school closings, and mandatory evacuations of several Counties including Beaufort County, as Hurricane Matthew drew closer to the state; and

**WHEREAS**, on October 11, 2016 the President of the United States of America issued a Major Disaster Declaration for the State of South Carolina due to the effects of Hurricane Matthew on the state which included high storm surges, 10 to 15 inches of rain, 60 to 88 miles per hour wind gusts and major flooding; and

**WHEREAS**, damage from downed trees, other vegetative debris, and flooding has caused damage to residences, to surrounding properties, to bridges and to roads, both public and private; and

**WHEREAS**, there are more private road miles than public road miles in Beaufort County; and

**WHEREAS**, the continued presence of widespread vegetative debris fields from one end of the County to the other (estimated to be approximately half a million cubic yards on public roads and one million cubic yards or more on both public and private roads combined) constitute an immediate threat to the public at large by: (1) preventing and hindering emergency services (for which the County is responsible) including law enforcement, emergency medical services and fire protection; and (2) exposing the population to an increase in the risk of mosquito-borne illnesses. According to Dr. John Vena, Professor and Founding Chair of the Department of Public Health Sciences at the Medical University of South Carolina, "a lack of debris clearance on *private roads* leads to an increased risk of pooling water, which leads to a risk of an increased mosquito population, leading to an increase in the transmission risk of a host of mosquito-borne diseases including the Zika virus" (emphasis added) all of which threaten the life and property of our citizens and communities; and

**WHEREAS**, the Governor of South Carolina recognizes the continuing nature of the threat to the public health of our citizens and on October 18, 2016 issued Executive Order No: 2016-39 declaring an ongoing State of Emergency to support the health, safety and welfare of the public.

**NOW, THEREFORE**, I proclaim a public health emergency/state of emergency exists in Beaufort County due to the continuing effects of Hurricane Matthew which, include, downed trees and widespread vegetative debris fields on public and private rights-of-way throughout the County which constitute an immediate threat to life, public health and safety.

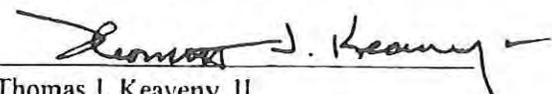
**I PROCLAIM THAT** immediate debris removal from both public and private rights-of-way is in the public interest because it is necessary to: (1) eliminate immediate threats to life, public health and safety; (2) eliminate immediate threats of significant damage to improved public and private property; and (3) ensure the economic recovery and viability of the County whose economy is based largely on vacation rentals and tourism which is drawn to Beaufort County by the amenities and services offered by private communities.

**FURTHER** the County Administrator is hereby authorized and required to remove, as quickly and efficiently as possible, debris fields from private rights of way in Beaufort County in order to eliminate the threats to life, public health and safety and which threaten the economic recovery and viability of our tourism dependent communities and the community-at-large.

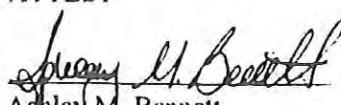
BEAUFORT COUNTY, SOUTH CAROLINA

  
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

  
Thomas J. Keaveny, II  
Beaufort County Attorney

ATTEST

  
Ashley M. Bennett  
Clerk to County Council

*Proclamation issued: 10/24/2016  
Ratified by Council: 10/24/2016*

**Keaveny, Thomas**

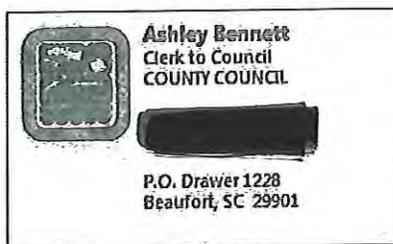
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**From:** Bennett, Ashley  
**Sent:** Thursday, October 27, 2016 9:05 AM  
**To:** [REDACTED]  
**Cc:** Keaveny, Thomas  
**Subject:** Resolution 2016/19  
**Attachments:** Ashley Bennett.vcf; 19.Action of Council 102416 Public Health Emergency.pdf

Attached is the Certificate of Resolution certifying the action taken by County Council on October 24, 2016 as it relates to the ratification and endorsement of a Proclamation declaring a public health emergency as a result of Hurricane Matthew.

If you need the original copy with the seal, please let me know and I can deliver.

Thanks  
Ashley



RESOLUTION 2016 / 19

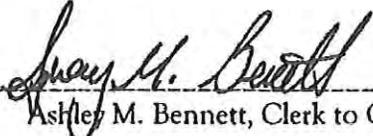
CERTIFICATE OF RESOLUTION  
OF  
BEAUFORT COUNTY COUNCIL

An Excerpt from the Minutes of the County Council Regular Session Held October 24, 2016

Proclamation Declaring Public Health Emergency as a Result of Hurricane Matthew

It was moved by Mr. Rodman, seconded by Mr. Flewelling, that Council ratify and endorse a Proclamation declaring a public health emergency as a result of Hurricane Matthew. The vote: YEAS – Mrs. Bensch, Mr. Caporale, Mr. Dawson, Mr. Flewelling, Mr. Fobes, Mrs. Howard, Mr. Rodman, Mr. Sommerville, Mr. Stewart, and Mr. Vaux. NAYS – Mr. McBride. The motion passed.

I, Ashley M. Bennett, Clerk to Council, do hereby certify that this motion is taken from the official proceedings of the Beaufort County Council Regular Session.

BY:  \_\_\_\_\_  
Ashley M. Bennett, Clerk to Council

October 27, 2016  
Beaufort County, South Carolina

**Chapter 22 - CIVIL EMERGENCIES<sup>[1]</sup>***Footnotes:**--- (1) ---**Cross reference— Administration, ch. 2; emergency services, ch. 34; fire prevention and protection, ch. 42.***ARTICLE I. - IN GENERAL**

Secs. 22-1—22-25. - Reserved.

**ARTICLE II. - EMERGENCY MANAGEMENT DEPARTMENT<sup>[2]</sup>***Footnotes:**--- (2) ---**Cross reference— Departments, § 2-136 et seq.*

Sec. 22-26. - Purpose.

This article is adopted by the county council to best establish, develop and coordinate an emergency management department and provide for civil defense and emergency management in the county.

(Code 1982, § 6-35)

Sec. 22-27. - Established; purpose.

- (a) The county emergency management department is created to establish, develop, coordinate and provide for civil defense and emergency management in the county.
- (b) This article will be the instrument through which the county council and other organizations of the county will seek to coordinate their authority under the laws of this state after enemy attack or during natural or man-caused disasters affecting the county.

(Code 1982, § 6-36)

Sec. 22-28. - Responsibilities and duties of county council.

- (a) The chairman of the county council shall have the power to issue proclamations and regulations concerning public safety, disaster relief and related matters which shall have the full force and effect of law during an emergency.
- (b) The chairman of the county council may declare a state of emergency, if the chairman finds a disaster has occurred or that the threat thereof is imminent and emergency measures are deemed necessary to cope with the existing or anticipated situation.

- (c) Once declared, the state of emergency shall continue until terminated by proclamation of the chairman of the county council.
- (d) All proclamations issued pursuant to this article shall indicate the nature of the disaster, the area affected by the proclamation, the conditions which require the proclamation of the disaster emergency and the conditions under which it will be terminated.
- (e) A state of disaster emergency proclamation shall not exist for more than 15 days without approval of the county council.
- (f) In addition to any powers conferred by law, the county council may, under this article, suspend existing ordinances and regulations prescribing the procedures for conduct of county business if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.
- (g) In the absence of the chairman of the county council, the vice-chairman of the county council shall carry out the duties of the chairman as outlined in this article.

(Code 1982, § 6-37)

Sec. 22-29. - Emergency management director.

- (a) The county administrator shall select and employ the county emergency management director.
- (b) The county emergency management director shall be considered as a county department head.
- (c) The director shall be responsible for executing the instructions of the county administrator under the direction of the county council. The director is, within designated authority, responsible for the administration of the emergency management plan.
- (d) The county emergency operations plan as formulated and approved by the county council and municipalities within the county shall be the document under which coordinated emergency operations are carried out after the declaration of a state of emergency by the chairman of the county council.

(Code 1982, § 6-38)

Cross reference— Officers and employees, § 2-56 et seq.

Sec. 22-30. - Violation and penalty.

- (a) It shall be unlawful for any person to violate any of the sections of this article or regulations which may be issued pursuant to the authority contained in this article or to willfully obstruct, hinder, or delay any member of the civil emergency organization in the enforcement of this article or any regulations issued therein.
- (b) Any person violating this article shall be guilty of a misdemeanor and upon conviction thereof shall pay such penalties as the court may decide, not to exceed \$500.00 or not to exceed 30 days' imprisonment for each violation. Each day during which such conduct shall continue shall constitute a separate

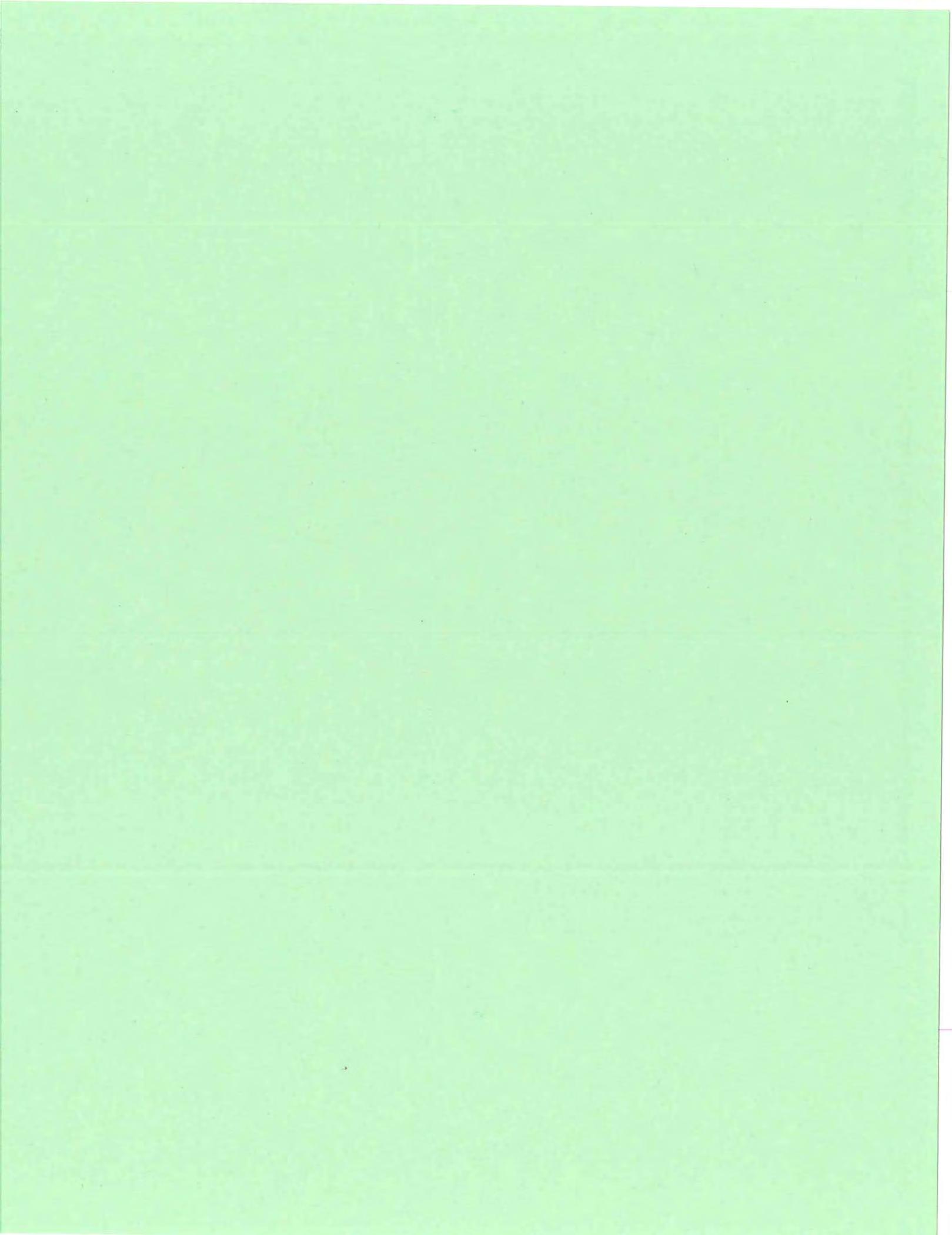
10/24/2016

Beaufort County, SC Code of Ordinances

violation, which shall subject the offender to liability prescribed in this subsection.

(Code 1982, § 6-39)

Secs. 22-31—22-55. - Reserved.



U.S Department of Homeland Security  
FEMA Joint Field Office  
FEMA 4286-DR-SC  
10301 Wilson Blvd  
Blythewood, SC 29016



**FEMA**

October 29, 2016

Mr. Kim Stenson, Director  
South Carolina Emergency Management Division  
2779 Fish Hatchery Road  
West Columbia, SC 29172

County Council of Beaufort County  
Office of the County Administrator  
Administration Building  
Beaufort County Government-Robert Smalls Complex  
Attn: Gary Kubic, County Administrator  
100 Ribaut Road  
Post Office Drawer 1228  
Beaufort, SC 29901-1228

Reference: Beaufort County Request for Approval of Private Property Debris Removal (PPRD)  
under FEMA-4286-DR-SC.

Dear Mr. Stenson and Mr. Gary Kubic:

This letter is in response to your letter of October 12, 2016 and the additional supporting documentation submitted by Beaufort County through October 28, 2016. The letter requested Private Property Debris Removal (PPDR) from private roads and right-of-ways under FEMA's Public Assistance program for Beaufort County.

FEMA has reviewed the following submitted documents: the Governor's Executive Order No 2016-39 declaring a State of Emergency for South Carolina; Proclamation No. 2016/14 proclaiming a local public health emergency/state of emergency by the Chairman of the County Council of Beaufort County; Beaufort County, South Carolina Ordinance §22-28; and Resolution 2016/19, a Certificate of Resolution of Beaufort County. Subject to the terms and conditions as set out below, I approve the hurricane-generated private property debris removal (PPRD) under FEMA-4286-DR-SC from private roads and right-of-ways specifically requested by Beaufort County.

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 29, 2016  
Page 2

As the Governor has made clear in Executive Order No 2016-39, the debris generated by Hurricane Matthew created a state of emergency for South Carolina. Beaufort County declared a local public health emergency/state of emergency and indicated that the resulting debris was an immediate threat to the public at large and authorized and required the County Administrator to immediately remove debris from private roads and rights-of-way. Beaufort County also submitted their local Ordinance §2228-5-211 which establishes its authority to issue proclamations and regulations during an emergency. Beaufort County also submitted their Resolution 2016/19, a Certificate of Resolution of Beaufort County which ratifies and endorses the Proclamation No. 2016/14 authorizing and requiring immediate debris removal from private roads and rights-of-way. (In satisfaction of 44 CFR 206.221(c); 44 CFR 206.223(a)(3); 44 CFR § 206.224(a) and 44 CFR 206 .225(a)(3)).

**Terms and conditions of this approval:**

1. This approval is limited to the removal of hurricane-caused debris from private roads and rights-of-way.
2. This approval requires that Beaufort County provide a full and complete roster of all private roads onto which it enters to remove debris under this authority as a mandatory inclusion with its project worksheet (PW). All PPDR will be pursuant to a separate project worksheet (PW) (not included with other Cat A projects). This necessitates tracking debris accordingly and so noted on load tickets and other documentation.
3. This approval requires that Beaufort County utilize, and cause to be completed, the submitted Right of Entry (ROE) before it enters upon any private roads and right-of-ways where ownership can be ascertained. This ROE form requires: the signature of the property owner; the documentation relating to insurance coverage, proceeds and settlements; and the property owner's indemnification of the Federal Government. This approval requires the completion of the ROE and the ROE submitted to FEMA for approval, prior to debris removal.
4. Where ownership of the private roads and right of way cannot be timely ascertained through reasonable efforts, Beaufort County has provided a hold harmless agreement by a supplement to its PPDR request, dated October 28, 2016.
5. To avoid potential duplication of benefits under Section 312 of the Stafford Act (42 U.S.C. §5155), I further require Beaufort County to assist the federal government in recovering any insurance proceeds after a reasonable search of records and a reasonable effort to ascertain from the property owners any insurance proceeds that they may have been paid for such debris removal under this program.

Confirmation that these additional documentation requirements have been met will be provided by the Infrastructure Branch Director for FEMA-4286-DR-SC and will constitute approval for PPDR on these specifically listed private roads and right-of-ways. Any areas where private property debris removal is in the public interest will be considered on a case-by-case basis. Any

Mr. Kim Stenson, Director  
Mr. Gary Kubic, County Administrator  
October 29, 2016  
Page 3

such request for PPDR must be submitted for consideration within 90 days of the date of this letter.

Please note that the following items are **not approved** for private property debris removal under the Public Assistance Program:

- Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas;
- Debris on agricultural lands used for crops or livestock;
- Concrete slabs or foundations-on-grade;
- Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property; and
- Debris from commercial properties such as hotels, apartments, condos, and their parking lots.

Please note that any contracts entered into for debris removal must comply with the requirements of 2 C.F.R. § 200.317 et seq. If there is a failure to comply with any required Federal, State and local laws, regulations and permits required for debris removal activities, FEMA funding will be jeopardized.

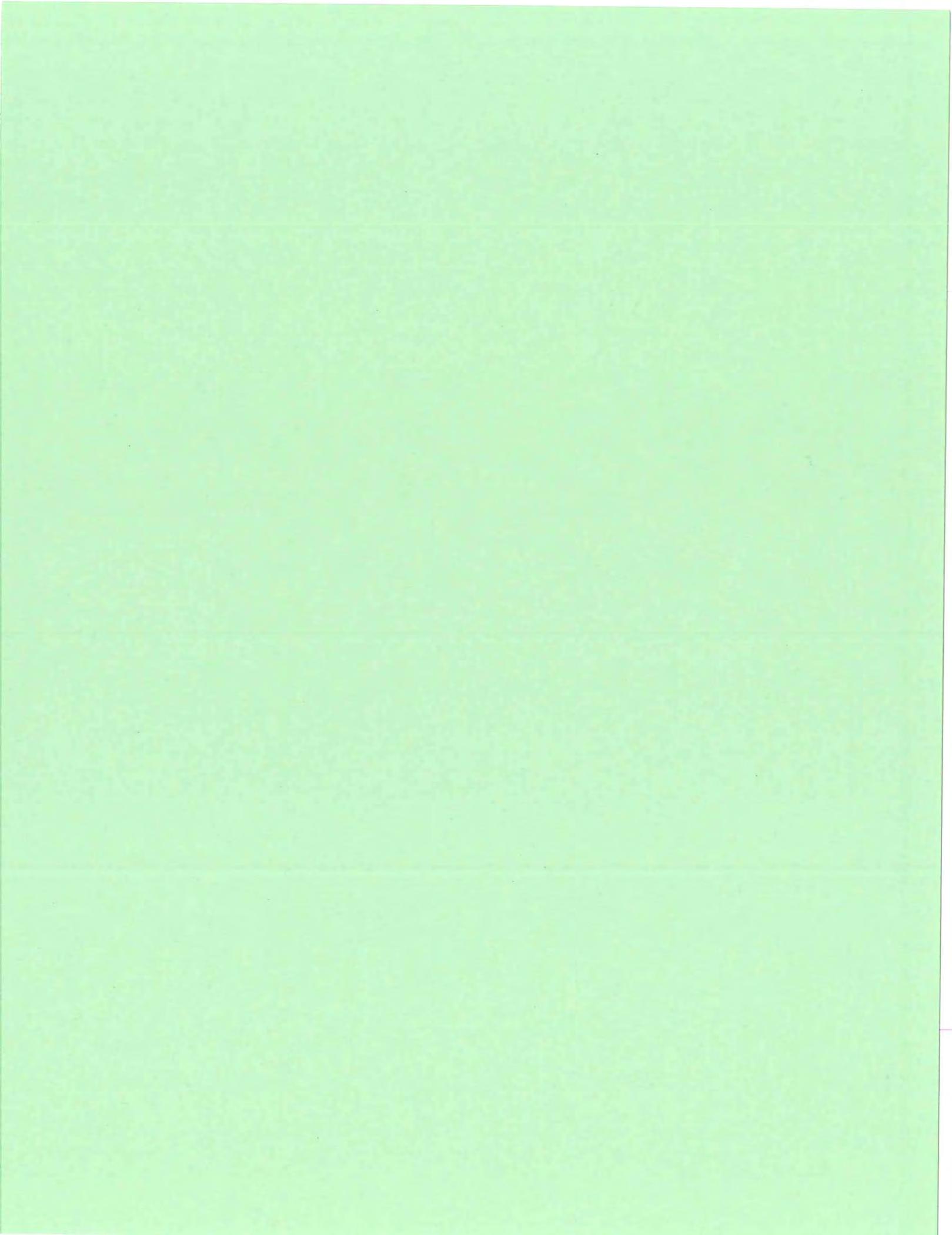
Finally, as you work to remove the debris caused by the October 2016, Hurricane Matthew, I trust you will remain mindful of any environmentally sensitive areas and any historic properties affected and consult the appropriate state and federal authorities if you need assistance.

Should you have any questions or require additional information, please contact Timothy Etson, Infrastructure Branch Director for FEMA-4286-DR-SC at (832) 851-4497.

Sincerely,



W. Michael Moore  
Federal Coordinating Officer  
Disaster Recovery Manager  
FEMA-4286-DR-SC



|   |  |
|---|--|
| ROE No. _____<br><br>Property Owner's Association:<br>_____ | <b>PRIVATE CONTRACTOR/<br/>DEBRIS REMOVAL/DEMOLITION</b><br><b>South Carolina</b><br>Address: _____<br>Tax ID Block/Lot: _____ |
|---|--|

**RIGHT OF ENTRY ONTO PRIVATE PROPERTY FOR DEBRIS REMOVAL AND/OR  
DEMOLITION DISASTER ASSISTANCE (FEMA-DR-\_\_ -SC)**

Ownership Interest and Grant of Right of Entry for Debris Removal and/or Demolition Activities

The undersigned hereby certifies they/he/she are/is (check):

- The owner(s) with authority to grant access to the property at (address) \_\_\_\_\_, or
- The authorized agent of the Property Owner or the Property Owner's Association. (Must Provide Documentation Confirming Authorization)

The Property Owner(s)/agent authorize(s) Beaufort County, the State of South Carolina, and the United States of America, their respective agents, successors and assigns, contractors and subcontractors (collectively, the "Governments/Contractors") to have the right of access and to enter the property above specified for purposes of performing debris removal as it is a public health and safety threat or for demolishing structures local authorities have determined to be unsafe due to the declared major disaster (FEMA-DR-\_\_\_\_\_ -SC).

Governments/Contractors will perform the following work (check):

- Remove debris from the private rights of way.
- Demolish the unsafe structure on the Property and remove the demolition debris.

Mortgage and Insurance Adjuster Information if for Demolition

- The Property Owner/agent certifies that no mortgage exists on said property.
- The Property Owner/agent certifies that a mortgage does exist on said property.
- The Property Owner/agent certifies that an adjuster for any insurance policy has inspected the property.

Other Liens/Encumbrances on the Property if for Demolition

- The Property Owner/agent certifies that no other liens or encumbrances exist on said property.
- The Property Owner/agent certifies that (type lien[s]) \_\_\_\_\_ does/do exist on said property.

Governments Not Obligated; No Expense Except For Insurance Proceeds

The Property Owner/agent understands that this Right-of-Entry does not obligate the Governments/Contractors to perform debris removal or demolition. Governments/Contractors will access the property under this ROE if the work has been determined necessary in accordance with Federal, State, or local regulations. The Property Owner(s) will not be charged for the work conducted by Governments/Contractors. However, if the Property Owner receives insurance proceeds or compensation from other sources for debris removal or demolition, the Property Owner's obligation is set out in the section below, entitled "Avoidance of Duplication of Benefits: Reporting Debris Removal/Demolition Money Received."

Government Indemnified and Held Harmless

The Property Owner(s)/agent agree(s) to indemnify and hold harmless the Governments/Contractors for any damage of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the Property Owners(s) has/have, or ever might or may have, by reason of any action taken by Governments/Contractors to remove debris or demolish unsafe structures.

**Avoidance of Duplication of Benefits: Reporting Debris Removal/Demolition Money Received**

Property Owner/agent has an obligation to file an insurance claim if coverage is available. Property Owner/agent understands and acknowledges that receipt of compensation or reimbursement for performance of the aforementioned activities from any source, including Small Business Administration, private insurance, an individual and family grant program or any other public or private assistance program could constitute a duplication of benefits prohibited by federal law. If the Property Owner/agent receives any compensation from any source for debris removal or demolition activities on this Property, the Property Owner/agent will report it to the Beaufort County Solid Waste Manager at 120 Shanklin Road, Beaufort, SC 29906, (843)255-2800.

**Release of Insurance Information**

If insured, the Property Owner/agent authorizes its insurer, (Company) \_\_\_\_\_, to release information relating to coverage and payments for debris removal/demolition activities (Claim # \_\_\_\_\_, Policy # \_\_\_\_\_) to the Beaufort County and/or to the State of South Carolina.

**Acknowledgment of Prohibition on Fraud, Intentional Misstatements**

The Property Owner/agent understands that an individual who fraudulently or willfully misstates any fact in connection with this agreement may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 USC 1001.

**Time Period**

This ROE shall expire 360 days after signature, unless cancelled sooner in writing to the Entity listed above at the request of the Property Owner.

**Signature(s) and Witnesses Property Owner(s) or Authorized Agent and/or Mortgage/Lien Holder(s)**

Property Act Statement: The Property Owner/ Owner's Authorized Agent acknowledge(s) that information submitted will be shared with other government agencies, federal and non-federal, and contractors, their subcontractors and employees but solely for purposes of disaster relief management to meet the objectives of this Right-of-Entry. This form is signed to allow access to perform debris removal and/or demolition operations on the above-mentioned property, to authorize the release of insurance policy/claim information and to notify any lien-holder of demolition.

For the considerations and purposes set forth herein, my signature confirms that I have read this form, that if signed on behalf of a Property Owner's Association, I am authorized to sign this form and to bind the association that I will abide by its terms and agree to all terms stated herein. I certify under the laws of the State of South Carolina and the United States that my answers are truthful.

**Property Owner/ Authorized Agent (if Authorized Agent, attach Supporting Documentation)**

\_\_\_\_\_  
(Print Name) (Signature)

Date: \_\_\_\_\_

Current Address and Telephone: \_\_\_\_\_

Witness 1: \_\_\_\_\_ Address & Telephone \_\_\_\_\_

Witness 2: \_\_\_\_\_ Address & Telephone \_\_\_\_\_

**For Demolition Only**

\_\_\_\_\_  
(Print Mortgage Holder Name) (Signature)

Date: \_\_\_\_\_

Current Address and Telephone: \_\_\_\_\_

|                         |   |                         |
|-------------------------|---|-------------------------|
| STATE OF SOUTH CAROLINA | ) | HOLD HARMLESS AGREEMENT |
|                         | ) | FOR DEBRIS REMOVAL      |
|                         | ) | FROM ORPHAN ROADS       |
| BEAUFORT COUNTY         | ) | AND RIGHTS-OF-WAY       |
|                         | ) |                         |

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By letter dated October 29, 2016 FEMA approved, subject to the terms and conditions set forth therein, Beaufort County's request Private Property Debris Removal (PPDR) from private roads and rights-of-way under FEMA's Public Assistance program (FEMA 4286-DR-SC).

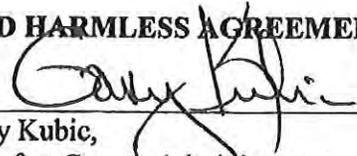
Beaufort County has numerous private roads and rights-of-way that either have no identifiable owner or are owned as heirs' property (hereinafter "Orphan Roads"). Due to the imminent threat to life, public health and safety Beaufort County must clear debris from these roads and rights of way. They are identified on "Exhibit A" attached hereto.

Term and Condition Number four in FEMA's October 29, 2016 letter authorizing debris removal from private roads and rights of way provides:

*Where ownership of the private roads and right of way cannot be timely ascertained through reasonable efforts, Beaufort County has provided a hold harmless agreement by a supplement to its PPDR request dated October 29, 2016.*

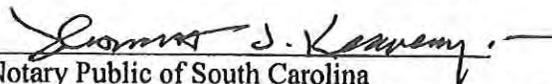
Therefore, as required by section 407(b) of the Stafford Act (42 U.S.C. 5173(b)), Beaufort County hereby agrees that it will hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. Beaufort County hereby acknowledges that in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

**I HAVE READ AND APPROVE THIS HOLD HARMLESS AGREEMENT**

  
 \_\_\_\_\_  
 Gary Kubic,  
 Beaufort County Administrator  
 P.O. Drawer 1228  
 Beaufort, SC 29901

Sworn to and subscribed before me this

1<sup>st</sup> day of November, 2006

  
 \_\_\_\_\_  
 Notary Public of South Carolina  
 My Commission Expires: 10/13/2025

**ORPHAN/POTENTIAL ORPHAN ROADS  
IN BEAUFORT COUNTY**

|                          |                       |                            |
|--------------------------|-----------------------|----------------------------|
| A FARM RD                | AMBLEWOOD AVE         | ASHBOURNE CT               |
| ABALONE LANE             | AMBROSE RUN           | ASHLEY CROSSING DR         |
| ABBEY ROW                | AMELIA COMMON         | ASHTON COVE DRIVE          |
| ABBIE SMITH LN           | AMELIA COURT          | ASHTON DR                  |
| ABBOTSBURY PL            | AMELIA DRIVE          | ASHTON OVERLOOK<br>DR      |
| ABIGAIL LANE             | AMELLE DR             | ASHTON POINTE BLVD         |
| ABINGDON LN              | AMERICAN AVE          | ASPEN HALL CT              |
| ABNER LN                 | AMERICAN AVOCET<br>CT | ASPEN HALL RD              |
| ABRAHAM JONES<br>LANE    | ANCHORAGE DR          | ASSEMBLY ROW               |
| ACHURCH PL               | ANCHORAGE POINT       | ATHENS LN                  |
| ADAMS PL                 | ANDERSON LN           | ATKINS BLF                 |
| ADAMS WAY                | ANDREW & JULIA DR     | AUDUBON PLACE              |
| ADDISON DR               | ANGEL LN              | AULD BRASS COURT           |
| ADDISON ST               | ANGEL OAK LN          | AULDBRASS<br>PLANTATION DR |
| ADELL LANE               | ANGEL WING DRIVE      | AUTUMN CIR                 |
| ADHEMAR RD               | ANGLERS POND<br>COURT | AUTUMN PARK CT             |
| ADMIRATION AVE           | ANGLERS POND LANE     | AVALON DR                  |
| ADVENTURE GALLEY<br>LANE | ANIYIKA AYE LN        | AVE OF OAKS                |
| AFTON CIR                | ANNA COURT            | AVE OF OAKS CT             |
| AGGIE DR                 | ANNA ESTATE LN        | B GLOVER LN                |
| AIKEN PLACE              | ANNABELLA LANE        | B WILSON DR                |
| AIRY HALL COURT          | ANNS POINT RD         | BACK GATE RD               |
| ALBANY DR                | ANOLYN CT             | BACKACHE ACRES             |
| ALBEMARLE PLACE          | ANSLEY COURT          | BAITERS LN                 |
| ALBERT GREEN LN          | ANTLEYS LN            | BAITERS WALK               |
| ALBERT LN                | APPALOOSA CT          | BAKERS CT                  |
| ALDER LANE I             | APPLEBY LN            | BALLPARK RD                |
| ALEXANDER WAY            | APPLETON RD           | BANK SWALLOW<br>LAGOON     |
| ALEXANDRA LOOP           | APRIL WAY             | BARBARA LN                 |
| ALEXIS DR                | ARANDAS WAY           | BARCELONA DRIVE            |
| ALFRED ALSTON CT         | ARBOR LN              | BAREFOOT ALY               |
| ALFRED LANE              | ARBOR VICTORY RD      | BARGE LANDING RD           |
| ALLEN ROAD               | ARCADIA PL            | BARKSDALE COURT            |
| ALLENS COR               | ARCHER FIELDS LN      | BARKSDALE LN               |
| ALLIGATOR ALY            | ARD RD                | BARLEYS GRV                |
| ALLY CT                  | ARGO CIR              | BARNACLE CUT LN            |
| ALLY LN                  | ARGO LN               | BARNACLE ROAD              |
| ALLY OOP LN              | ARMADA                | BARNWELL BLF               |
| ALLYAN CT                | ARNOLD LN             | BARNWELL DR                |
| ALSTON PARK DR           | ARROW WOOD ROAD       | BARON CIR                  |
| AMAZING GRACE LN         | ARROWHEAD TRL         | BARONY CIRCLE              |
| AMBER LN                 | ARTHUR BLUE DR        | BARONY LANE                |
| AMBERLY LN               | ARTHUR HILLS COURT    |                            |

**EXHIBIT "A"**



## CHAPTER 6

# Coastal Zone Management

Amy E. Armstrong  
Mary D. Shahid

### A. Introduction

In South Carolina, the state owns the property below the high water mark of a navigable stream.<sup>1</sup> The state holds this property in trust for its citizens under the common law Public Trust Doctrine.<sup>2</sup>

The underlying premise of the Public Trust Doctrine is that some things<sup>3</sup> are considered too important to society to be owned by one person. Traditionally, these things have included natural resources such as air, water (including waterborne activities such as navigation and fishing), and land (including but not limited to seabed and riverbed soils). Under this Doctrine, everyone has the inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks.<sup>4</sup>

The South Carolina Coastal Zone Management Act ("CZMA") is rooted in the Public Trust Doctrine and generally prohibits alterations to the tidelands except when the public interest requires otherwise.

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<sup>1</sup> *State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972).

<sup>2</sup> *Id.*

<sup>3</sup> *Kiawah Dev. Partners, II v. S. Carolina Dep't of Health & Envtl. Control*, 411 S.C. 16, 766 S.E.2d 707 (S.C. 2014).

<sup>4</sup> *Sierra Club v. Kiawah Resort Associates*, 318 S.C. 119, 128, 456 S.E.2d 397, 402 (1995) (citing Syridon and LeBlanc, *The Overriding Public Interest in Privately Owned Natural Resources: Fashioning a Cause of Action*, 6 Tul.Envtl.L.J. 287 (1993)).



ALAN WILSON  
ATTORNEY GENERAL

January 31, 2017

Thomas J. Keaveny, II, County Attorney  
Beaufort County Government  
Administrative Building  
Post Office Drawer 1228  
Beaufort SC 29901-1228

Dear Mr. Keaveny:

Attorney General Alan Wilson has referred your opinion request dated December 22, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Question (as quoted from your letter):**

*"On October 8, 2016, Hurricane Matthew's high winds, storm surge and riverline flooding led to large amounts of vegetative, construction and demolition debris, and marine debris in Beaufort County. In response to the widespread public health and safety threats that the debris posed, Beaufort County activated its Debris Management plan which calls for countywide land debris removal operations. The County is completing the land debris removal; however, marine debris still remains within the tidelands and pose significant threat to the navigability of the waterways, public health and safety of Beaufort County citizens.*

*As background, it is well established that the State owns the tidelands. For the purposes of this issue tidelands are defined in S.C. Code Ann. 48-39-10(G) as "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine system involved." The State holds this property in trust for its citizens under the common law Public Trust Doctrine. The underlying premise of the Public Trust Doctrine is that some things are considered too important to society to be owned by one person."<sup>1</sup> Additionally, the State has taken significant steps to regulate the tidelands through the enactment of the Coastal Zone Management Act ("CZMA"), establishment of the Emergency Environmental Fund, and the designation of South Carolina Department of Natural Resources ("DNR") as the supporting enforcement mechanism. The State exercises exclusive control over the tidelands through its agencies. The County considers the tidelands to be outside its jurisdiction and authority as it has been pre-empted by the State. Therefore, the question is: does Beaufort County have the legal responsibility to clear marine debris from property located with the tidelands?*

*We greatly appreciate your time and consideration of this issue. As I noted earlier, time is of the essence on this matter as we are in the middle of the high traffic season and the marine debris poses a serious public safety threat. Further, if removal of marine debris is Beaufort County's legal responsibility, FEMA*

Thomas J. Keaveny, II  
Page 2  
January 31, 2017

*regulations require us to remove all debris (including marine debris) by April 3, 2017 in order to qualify for reimbursement for expenses incurred in removing any debris (including land based debris on which the County has already expended several million dollars).*

*1 Finklea, Samuel L., et al. Environmental Law in South Carolina, 4th Edition South Carolina Bar. South Carolina Bar CLE Division, 2016."*

**Law/Analysis:**

As you are aware, Beaufort County's boundaries are delineated in South Carolina Code § 4-3-70. Thus, we begin and end with the answer whether Beaufort County has the legal responsibility to clear debris depends on what the debris is, where it is located and pursuant to what authority it is being removed. Moreover, we distinguish the ability to maintain from the responsibility to remove debris and will answer your question accordingly. Furthermore, you ask whether Beaufort County has the "legal responsibility" as listed in 44 CFR § 206.223(a)(3). In answering your question this Office is not attempting to define or opine on the federal law in this opinion but merely assist you in determining where "legal responsibility" may apply to your County.<sup>1</sup> By way of background, the following summarizes the federal law in this area:

[a]mong other things, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides authority to make PA disaster grants to a state or local government to meet immediate threats to life and property, to clear debris and wreckage when it is in the public interest, and to provide grants to state or local government for repair, reconstruction or replacement of public facilities on the basis of the design of the facility as it existed immediately before the major disaster. 42 U.S.C. §§ 5170b, 5172, 5173 (2006). . . . The rules by which FEMA administers public assistance grants through the Stafford Act are found at 44 C.F.R. subparts G and H (2004).

To obtain a PA grant, an applicant must establish that it meets the eligibility requirements set forth in FEMA regulations. Those regulations require that the entity seeking PA be an eligible applicant. 44 C.F.R. 206.222. The work sought must be required as the result of the major disaster event, be located in the designated disaster area, and be the legal responsibility of the eligible applicant. 44 C.F.R. 206.223 a(1) – (3). Also, the type of work must be eligible. . . .

---

<sup>1</sup> We note there are numerous federal statutes and case law not listed in this opinion that could apply to your question. For purposes of this opinion we are limiting our answer to the applicable law cited herein. However, if you have a follow-up question or need interpretation regarding the applicability of a specific statute, we are glad to address any such questions in a follow-up opinion. As we again note, the applicable Federal and State laws are too numerous to list in this opinion. We merely attempt to guide you in how we believe a court will make such a determination in answering your question. Moreover, we refer you to FEMA for any questions regarding its rules for reimbursement. See 44 CFR § 1.1 et seq. (Federal Emergency Management Act).

Thomas J. Keaveny, II  
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In The Matter of St. Tammany Parish, 10-1 BCAP 34457 (civilian B.C.A.), CBCA 1778-FEMA, 2010 WL 2975319 (May 12, 2010). The focus of your inquiry is whether “Beaufort County [has] . . . the legal responsibility to clear marine debris from property located within the tidelands?” You focus upon the fact that “[t]he State exercises exclusive control over the tidelands through its agencies.”

We have also consulted with DHEC’s General Counsel regarding your question. At our invitation to DHEC for its analysis of the law, that agency has submitted the following to us:

[t]he Department points out that S.C. Code Ann. Regs. 30-11(E)(3) allows any party, which would include Beaufort County, to remove marine debris and abandoned vessels when ownership of such is unknown. Accordingly, Beaufort County is not pre-empted from undertaking such activity. (For your convenience, the Department is attaching a copy of S.C. Code Ann. Regs. 30-11(E) Abandoned Vessels and Structures.)

The point that is important to the Department is that, while the agency does have broad regulatory authority (pursuant to the S.C. Coastal Tidelands and Wetlands Act) the agency is not tasked with the obligations beyond the intent of the statute or regulation. The Regulation does not contemplate that the Department is responsible for the removal of marine debris, but rather regulates such removal by third parties. Pursuant to S.C. Ann. Regs. 30-11(E)(5) if the removal process chooses “significant impact” so as to require a permit, the Department will work expeditiously to act upon such permit application.

Thus we interpret DHEC’s response as claiming regulatory responsibility only for permitting the removal and cleanup of debris for the counties and municipalities boarding the State waters for cleanup of debris within the tidelands based on its claim to “regulate[] such removal by third parties” and its requirement of a permit to clean up the debris pursuant to Regulation 30-11(E)(3). We turn now to an analysis of the general law regarding the State’s tidelands and navigable waters.

This Office has previously opined regarding DHEC that:

DHEC also possesses broad regulatory authority pursuant to statutes other than the Coastal Zone Management Act, further buttressing this conclusion. Such regulatory authority extends far beyond the “critical areas” of the State, to include all lands of South Carolina. See e.g. § 48-1-10 *et seq.* (Pollution Control Act); § 48-14-10 *et seq.* (Stormwater Management and Sediment Reduction Act). Furthermore, as referenced above, and as recognized in *Brown v. S.C. DHEC, supra*, in compliance with the federal Coastal Zone Management Act (16 U.S.C.A. §§ 1451-1465), the General Assembly and Governor approved South Carolina’s Coastal Management Program in order to define and manage activities which have a direct and significant impact on coastal waters. DHEC has defined such activities as follows:

Thomas J. Keaveny, II  
Page 4  
January 31, 2017

[a]n activity is considered to have direct and significant impact on coastal waters and is therefore subject to management in the coastal zone if it entails one or more of the following criteria:

- 1) located in a critical area;
- 2) *detrimental environmental impact upon a critical area* (for example, water pollution upstream from an inland source which would then reach and result in degradation of the estuarine system);
- 3) adverse effects on the quality of coastal resources - natural, economic, social or historical;
- 4) disruption of access to a public coastal resource.

*S.C. Coastal Management Program*, p. III - 12. (emphasis added).

Op. S.C. Att'y Gen., 2006 WL 1207263 (S.C.A.G. Apr. 3, 2006). See also S.C. Code § 48-39-50 regarding Coastal Tidelands and Wetlands (DHEC shall have the powers and duties: ... (J) To manage estuarine and marine sanctuaries and regulate all activities therein, including the regulation of the use of the coastal waters located within the boundary of such sanctuary. ... (O) To exercise all incidental powers necessary to carry out the provisions of this chapter). As you mention in your letter, 48-39-10(G) defines tidelands as:

(G) "Tidelands" means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the department shall have the authority to designate its approximate geographic extent.

S.C. Code § 48-39-10(G).

As you are also likely aware, the South Carolina Constitution states that "the health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern" and that "[t]he General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. South Carolina's sovereignty and jurisdiction includes all places within its boundaries, as delineated in South Carolina Code § 1-1-10. As you mention in your letter, this Office has consistently opined that lands below the high tide water mark (including marshlands) belong presumptively to the State of South Carolina in trust for the public and that the State has jurisdiction over "territorial waters" within three geographical miles distance from the low water mark of the coastline. See, e.g., Op. S.C. Att'y Gen., 2012 WL 5376055 (S.C.A.G. Oct. 19, 2012); 2012 WL 3540453 (S.C.A.G. August 3, 2012) (citing Cunard S.C. Co. v. Mellon, 262 U.S. 100, 122 (1923), City of Charleston, S.C. v. A Fiserman's Best Inc., 310 F.3d 155, 160 (4<sup>th</sup> Cir. 2002), the U.S. Submerged Lands Act, S.C. Code 54-7-620(47), Geneva Convention, Art. 11, etc.); 2003 WL 21790888 (S.C.A.G. July 10,

2003) (citing the Submerged Lands Act); 1995 WL 805820 (S.C.A.G. October 20, 1995) (citing the Submerged Lands Act, S.C. Code § 54-7-620(47)); 1964 WL 11075 (S.C.A.G. February 4, 1964) (citing the U.S. Submerged Lands Act).<sup>2</sup> Specifically, this Office previously opined in a 2012 opinion regarding tidelands and boundary lines that:

[H]istorically, the State holds presumptive title in land below the high water mark. In McQueen v. South Carolina Coastal Council, et al., 354 S.C. 142, 580 S.E.2d 116 (2003), the South Carolina Supreme Court reaffirmed the State's ownership interest. The Court stated that:

[a]s a coastal state, South Carolina has a long line of cases regarding the public trust doctrine in the context of land bordering navigable waters. Historically, the State holds presumptive title to land below the high water mark. As stated by this Court in 1884, not only does the State hold title to this land in *jus privatum*, it holds it in *jus publicum*, in trust for the benefit of all the citizens of this State. State v. Pacific Guano Co., 22 S.C. 50, 84 (1884); see also State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972); Rice Hope Plantation v. South Carolina Public Serv. Auth., 216 S.C. 500, 59 S.E.2d 132 (1950), *overruled on other grounds*, McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)....

The State has the exclusive right to control land below the high water mark for the public benefit, Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889), and cannot permit activity that substantially impairs the public interest in marine life, water quality or public access. Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995); see also Heyward v. Farmers' Min. Co., 42 S.C. 138, 19 S.E.2d 963 (1884) public trust land cannot be placed entirely beyond direction and control of the State); Cape Romain Land and Improvement Co. v. Georgia - Carolina Canning Co., 148 S.E. 428, 146 S.E. 434 (1928) (protected public purposes of trust include navigation and fishery).

McQueen, 580 S.E.2d at 149-50; accord Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133, 135 (1979) ("This Court has held that lands lying between the usual high water line and the usual low water line on tidal navigable watercourses enjoy a special or unique status, being held by the State in trust for public purposes"); Op. S.C. Atty. Gen., July 2, 1962 (1962 WL 8961) ["The strand area of a beach is state property and the other portion is private property"]; see also Borax Consolidated v. City of Los Angeles, 296 U.S. 10, 22 (1935) [when the sea, or a bay, is named as a boundary, line of ordinary high-water mark is always intended where common law prevails]; Sotomura v. County of Hawaii, 460 F. Supp. 473, 480 (D. Haw. 1978) [holding the "'mean high water mark' is the line of division between private and public property" along the beach]; Secure Heritage.

<sup>2</sup> See also the U.S. Submerged Lands Act, 43 U.S.C. § 1301, et seq., as cited in the opinions. These cites are some of the ones mentioned. Please read the full opinions and cases for further information and sources.

Inc. v. City of Cape May, 361 N.J. Super. 281, 825 A.2d 534, 547 (2003) ["The public trust doctrine, which is premised on the common rights of all citizens to use and enjoy tidal land seaward of the mean high water mark, dictates that the beach and the ocean must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible"]; City of New York v. Feltman, 230 A.D. 299, 243 N.Y.S. 625, 626 (1930) (holding "a grant of land lapped by the open sea carried title at common law to the high-water mark if the grant contained no reference to either the low or high water mark," and that "[t]his doctrine is too long recognized and is too thoroughly established as the law... be questioned or disturbed now"); Brower v. Wakeman, 88 Conn. 8, 89 A. 913, 914 (1914) [title to beach below high-water mark held to be in the state]; Johnson v. State, 114 Ga. 790, 40 S.E. 807, 807 (1902) (holding "the boundary of landowners abutting on the sea [or] where there was a regular rise and fall of the tide, extended only to high-water mark... This rule, so far as the boundary of the abutting landowner is concerned, has been almost universally followed in the United States"); cf. State v. Yelsen Land Company Inc., 265 S.C. 78, 216 S.E.2d 876, 878 (1975) [holding that the "State was presumptively the owner of tidelands"].

Op. S.C. Att'y Gen., 2012 WL 5376055, (S.C.A.G. Oct. 19, 2012). Moreover, regarding waters of this State, our Constitution states that:

All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

SC Const. Art. XIV § 4. Furthermore, our General Assembly has prohibited the obstruction of navigable waters in stating that:

All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free, as well to the inhabitants of this State as to citizens of the United States, without any tax or impost therefor, unless such tax or impost be expressly provided for by the General Assembly. If any person shall obstruct any such stream, otherwise than as in Chapters 1 to 9 of this Title provided, such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

S.C. Code § 49-1-10. This Office has previously opined regarding navigable waters of this State that:

4. That the South Carolina constitutional, statutory, and common law give the South Carolina public the right of free and unobstructed navigation on the navigable waters of South Carolina. The South Carolina public is entitled to

navigate all streams that are navigable in fact. A stream is navigable in fact if a person can float any vessel, of any size or construction, for any purpose whatsoever (pleasure or commerce), at any stage of tide (or water level), and for any length of stream, regardless of the ease or difficulty of propulsion.

5. That navigable waters of South Carolina are tidewater and fresh water streams, of any depth or width, with the capacity to float anything (logs, rafts, etc.), having a channel free either from obstruction or interrupted by obstructions, floatable at any time period of the normal high tide or normal water level and accessible at one public place (terminus).

6. That water is navigable when in its ordinary state it forms by itself or its connection with other waters a highway for vessels. Navigability does not depend on actual navigation but on capacity for use by pleasure boats or by boats of commerce. Navigable water is a public highway which the public is entitled to use. The State holds the property right of unobstructed navigation in trust for the public.

7. That no one has the authority to waive the right of free navigation on the navigable waters of the State. The State has the authority to enforce the trespass laws whether the trespassers approach by land or water. The trespass laws are enforced on fastlands adjacent to a deed-end land highway and are enforced on fastlands adjacent to a dead-end water highway (of navigable waters).

Op. S.C. Att'y Gen., 1964 WL 11075 (S.C.A.G. Feb. 4, 1964). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984).

Since we have documented our longstanding opinion that the State owns in trust for the public the tidelands (lands below the high tide line)<sup>3</sup> and has jurisdiction three geographical miles in "territorial waters" of this State, let us further review some sections of the South Carolina Constitution and the Code of Laws that we believe may be applicable in answering your question. Thus, there is no doubt that ownership of the State's tidelands and marshlands is in the State on behalf of the people of South Carolina. However, ownership of the property in question does not necessarily answer the question of "legal responsibility" for purposes of the foregoing FEMA regulations or for purposes of State law, for that matter. The State owns the tidelands as trustee for the public. However, the State, has the authority to delegate certain functions and responsibilities to its agencies and political subdivisions. See, e.g., S.C. Code §§ 48-39-70 ("All other state and local agencies and commissions shall cooperate with the department [DHEC] in the administration of enforcement [of the Coastal Tidelands and Wetlands chapter]"); 50-1-80 ("It shall be the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State."); S.C. Code Regs 44-312 (regarding S.C. Emergency Management Division).<sup>4</sup> For example, in St. Tamanny's Parish, supra, the Federal Arbitration Panel noted that the Parish "has not represented that it owns the roads, drainage ditches, culverts, and canals in the CDL

<sup>3</sup> Except as where granted otherwise. As we note, the State's title to tidelands is presumptive.

<sup>4</sup> While there may be other relevant statutes and case law to this opinion, we are merely demonstrating here that there are statutory means for the handling of abandoned boats and motors. See also S.C. Code § 54-7-10 et seq. (requiring the local magistrate to turn over the salvageable goods from any unclaimed stranded ship, vessel, goods or effects to the county treasurer). Moreover, Regulation 30-11(E) covers more than just abandoned boats.

subdivision although it has legal responsibility for their maintenance.” Moreover, In The Matter of Livingston Parish, 14-1 BCAP 35645 (civilian BCA), CBCA 3608-FEMA, 2014 WL 2993629 (June 30, 2014), the Panel made clear that the fact that the property in question may be “public property” does not preclude an agency or political subdivision from applying for FEMA relief. The Panel quoted from FEMA’s Public Assistance Guide 322 as follows:

[i]n general, debris on public property that must be removed to allow continued safe operation of governmental functions or to alleviate an immediate threat is eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a natural stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, removal of the disaster-related debris only to extent necessary to protect against an immediate threat would be eligible.

In Livingston Parish, the Panel went on to document that local parishes could receive financial assistance from FEMA for clearing debris from waterways:

[m]uch of Louisiana is low-lying and contains many waterways, and hurricane Gustave was declared a disaster area for the entire State. Despite these facts, as a result of the hurricane, only three parishes in Louisiana requested public assistance grants for removing debris from waterways. The amounts sought and received were \$300,000 for one parish, \$5,000,000 for another and more than \$44,000,000 for Livingston Parish. We also know that Gravity Drainage District 1, a taxing authority which maintains waterways within about 8% of Livingston Parish, sought and received \$231,000 for removing Gustav-generated debris from its waterways. The relatively high figure claimed by Livingston Parish caused FEMA to carefully review this parish’s request.

Id.<sup>5</sup>

Recently, our Supreme court concluded in Estate of Tenney v. S.C. DHEC, 393 S.C. 100, 712 S.E.2d 395 (2011), that the State does not have presumptive ownership in marsh islands based upon the prior rule that “[t]itle to islands situate in the marshland follows title to marshland.” 393 S.C. at 111, 712 S.E.2d at 401 (overruling Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995) (“Coburg II”). Thus, the current status of the “public trust” doctrine is as follows:

[i]n sum, the jurisprudence of this State is consistent that “presumption of title to marshland rests in the State of South Carolina to be held in trust for the benefit of the public.” Coburg I, 309 S.C. at 253, 422 S.E.2d at 97. However, the proposition that the State is the presumed owner of last that remains above the high watermark is at odds with coastal property jurisprudence that predated Coburg, and expands the public trust doctrine beyond its historic bounds. Of the 3,467 coastal islands in South Carolina, the DNR estimates that 72% of these are privately

<sup>5</sup> Louisiana, like South Carolina, recognizes the “public trust” doctrine. Louisiana Seafood Mgmt. Council v. Louisiana Wildlife and Fisheries Comm., 719 So.2d 119 (La. Ct. App. 1999).

owned. We do not see a practical and uniform way to narrow the scope of Coburg without clouding the title of potentially thousands of marsh islands. . . . We do not underestimate the importance of these islands as the vestiges of our State's most fragile ecosystem, and we recognize the State's interest in protecting and preserving these lands for the enjoyment of all citizens. DHEC and other agencies of this State have the regulatory authority to prevent or limit the development of our State's pristine coastal areas, and our opinion today leaves them at liberty of continue those efforts. Current and potential marsh island owners should be keenly aware of this regulatory risk. However, we do not believe the protection and preservation of these islands should be effected through the unprecedented expansion of the public trust doctrine. Therefore, we overrule the specific principle in the Coburg cases that "ownership of islands situate within marshland follows ownership of the marshland." Coburg I, 309 S.C. at 253, 422 S.E.2d at 97.

Estate of Tenney, 393 S.C. at 110-111, 712 S.E.2d at 400 (emphasis added). Thus, the Tenney Court distinguished between the State's ownership of lands below mean high water, which the Court reaffirmed that such ownership is in the State (as the State) in trust for its citizens, and the regulation of tidal areas, for the protection and preservation of such areas, which the State has delegated to its agencies, such as DHEC and the Department of Natural Resources.

The General Assembly has also delegated certain authority regarding tidal areas to counties and municipalities. In Op. S.C. Att'y Gen., 1985 WL 259150 (March 27, 1985), for example, we addressed "whether a municipality and a county bordering on the Atlantic Ocean may close the beach or regulate the period during the year when traffic may be allowed in the public beach between high and low tide." We concluded:

Section 5-7-140 and 4-9-45, 1976 Code of Laws, as amended, pertaining to cities and counties respectively, provides that those entities do have the authority to exercise their police jurisdiction between the high tide line and low tide line within their borders.

Moreover, even prior to the enactment of § 4-9-45, we addressed the question concerning "[t]he power of a county council to regulate uses of the foreshore (the area between mean high and low water mark on tidal beaches) as well as the water below mean low water." In Op. S.C. Att'y Gen., 1978 WL 35270 (December 18, 1978), we reasoned:

[t]he South Carolina Code does not expressly grant police power over these areas (which are State-owned lands) to counties. It does, however, in § 4-9-30 make a general grant of police power to counties. The question is whether this general grant carries with it, in the case of coastal counties, any authority over the foreshore and areas oceanward. There are relatively few cases on this subject. Perhaps the leading case is Ross v. Edgewater, 115 N.J.L. 477, 180A 866 (1935). That case, in holding that a city's police power extended to the low water mark, states:

[i]t is not to be presumed that the Legislature intended to withhold from this municipal corporation, designed to serve the needs, convenience, and

comforts of its residents, powers necessary to attain those ends. Such a construction is an entire harmony with our scheme of government which employs the municipal corporation to supply the local needs of its residents. 180 A. at 871.

It is the opinion of this Office that this is the soundest view to take. This exercise of the police power would not operate to "zone out" the State from any proposed activity, as had always been prohibited prior to recent statutory change. Instead, it would merely provide [ ] regulation over those areas abutting the county which are vacant lands of the State and which the State itself had not sought to regulate. The opinion of this Office, therefore, is that as a general rule counties may regulate conduct at least down to the low water mark as a necessary adjunct to the general grant to them of police power.

We noted also in the 1978 Opinion that "the best way to handle this problem would be by the enactment of State legislation which expressly grants to the counties some specific quantum of police power over the above areas."

That is precisely what the General Assembly did, shortly after our 1978 Opinion (by 1980 Act No. 300), with the enactment of § 4-9-45. Section 4-9-45 provides as follows:

[f]or the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates' courts shall have jurisdiction to punish individuals violating the provisions of county ordinances where such misdemeanor occurred in the area defined in this section.

(emphasis added). Thus, the General Assembly confirmed by express legislation, as we had suggested, our earlier opinion that the Home Rule Act (specifically, § 4-9-30) delegated police powers to the county over the property lying between high and low tide. As noted above, we construed § 4-9-45 to authorize a county to "close the beach or regulate the period during the year when traffic may be allowed in the beach between high and low tide." Op. S.C. Att'y Gen., March 27, 1985, supra. Further, § 4-9-45 authorizes the county to "abate nuisances in the area between mean high and mean low water." See 23 S.C. Jurisprudence § 30 (Public Nuisance) ["In coastal counties, the police jurisdiction for abating nuisances extends to the high tide line of the Atlantic Ocean."] <sup>6</sup> Thus, there can be no doubt that the State has delegated police powers to counties over tidelands areas. <sup>7</sup>

<sup>6</sup> Moreover, the County would have responsibility to maintain its easements, including those in tidelands. See S.C. Code § 1-11-80.

<sup>7</sup> However, we would be remiss not to mention the South Carolina Department of Natural Resources ("DNR"). Regarding the South Carolina Department of Natural Resources ("DNR"), State law grants DNR jurisdiction over "all saltwater fish, fishing, fisheries, and marine resources within the salt waters of this State, including the territorial sea." S.C. Code § 50-5-20. Additionally, DNR officers have statewide authority for the enforcement of all laws "relating to wildlife, marine, and natural resources." S.C. Code § 50-3-340. Moreover, State law requires that it is

**Conclusion:**

At the end of the day, it is the unambiguous Constitutional duty of the South Carolina General Assembly to "provide appropriate agencies to function in" the areas of the "health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources" and to "determine the activities, powers, and duties of such agencies." S.C. Const. Art. XII § 1. The answer to your specific question is that a coastal county, such as Beaufort County, possesses "legal responsibility" with respect to debris cleanup in the tidelands areas between mean high and low water.<sup>8</sup> This responsibility has been delegated to the county, first pursuant to the general police powers of the Home Rule Act (§ 4-9-30), then, more expressly, pursuant to § 4-9-45, and thirdly implicitly by DHEC pursuant to its interpretation of Regulation 30-11. The fact that the State is the presumptive titleholder of such areas is not controlling because the State may still delegate regulatory power over these areas to state agencies and to its political subdivisions. This it has done, particularly by delegating the power to abate nuisances in tidelands areas to the counties and to provide that the county's ordinances and regulations apply to tidelands properties as they do other parts of the county. We do not address herein the specific powers of state agencies, such as DHEC.<sup>9</sup> However, as DHEC argues, these appear to be particularly in a regulatory capacity. Clearly, however, a county possesses general police powers over these lands, as delegated to it by the General Assembly.

Therefore, in summary, while FEMA will have to apply federal law in this area to determine whether or not the county meets eligibility criteria under the Stafford Act and regulations promulgated pursuant thereto, we conclude that as a matter of State law, Beaufort County possess the "legal responsibility" for maintenance of the tidelands areas that it has police power over<sup>10</sup>, including debris cleanup

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"the positive duty of all sheriffs, deputy sheriffs, constables, rural policemen and special officers to actively cooperate with the department [DNR] in the enforcement of the game and fish laws of the State." S.C. Code § 50-1-80. Furthermore, State law authorizes but does not require county and municipal law enforcement officers to enforce all laws relating to boating.<sup>7</sup> S.C. Code § 50-21-80. Nevertheless, when the General Assembly requires use of county personnel, facilities or equipment, the county must be reimbursed by the department implementing the use. S.C. Code § 4-9-50. South Carolina Code § 4-9-55 further outlines the limitations regarding laws requiring a county's expenditures. The statutory procedure for removal of abandoned boats and motors includes the Department of Natural Resources attempting to notify the owner(s). S.C. Code §§ 50-21-190, 50-21-10(9), 50-23-205. However, the statute requires that the Department "must conduct investigations... to determine the status of watercraft as abandoned... must send written notice... must post a notice." S.C. Code § 50-21-190(D). Moreover, any person may claim the abandoned watercraft after ninety days, or the Department of Natural Resources or "any governmental agency that has jurisdiction over the area where the abandoned watercraft is located" may remove and dispose of abandoned watercraft. S.C. Code § 50-21-190 (emphasis added). Clearly, even if the County has jurisdiction over the area where watercraft has been abandoned, the statute's use of the word "may" allows for but does not require the watercraft's removal. *Id.*; *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement."); *State v. Hill*, 314 S.C. 330, 332, 444 S.E.2d 255, 256 (1994) ("The word 'may' ordinarily signifies permission and generally means the action spoken of is optional or discretionary.") (quoting *Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981)); *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 463, 790 S.E.2d 763, 777 (2016), *reh'g denied* (Dec. 7, 2016). Thus, the County is not required to act when "may" is used in the statute.

<sup>8</sup> Other than those duties delegated otherwise. (e.g. S.C. Code § 50-21-190(D)).

<sup>9</sup> See, e.g., S.C. Code Regs. 61-68(E)(5)(b).

<sup>10</sup> Please note South Carolina law authorizes a municipality bordering the Atlantic Ocean to have jurisdiction beyond the high-tide line one mile seaward and any municipality bordering any other navigable water to have jurisdiction between the high and low-water marks. S.C. Code §§ 5-7-140; 5-7-150; see also *Barnhill v. City of*

pretation that would render such property subject to the library tax necessarily results in the statute's being unconstitutional. 1981 Op Att'y-Gen, No 81-63, p 89.

**§ 4-9-40. Power of county to contract for services within municipalities.**

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. *Provided*, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

**HISTORY:** 1962 Code § 14-3703.1; 1975 (59) 692.

**Cross references—**

As to constitutional authority for joint administration of functions and exercise of powers, see SC Const, Art 8, § 13.

As to municipal corporations generally, see Title 5.

**ATTORNEY GENERAL'S OPINIONS**

The "home rule" legislation is not retroactive so as to affect contracts entered into prior to the effective date of the legislation. 1975-76 Op Atty Gen, No 4470, p 333.

A county or municipal law enforcement agency may, upon request, provide special police services in addition to those regularly provided to private business concerns, charge a fee, and utilize regular police equipment and personnel desiring to work overtime. 1978 Op Att'y Gen, No 78-39, p 63.

**§ 4-9-45. Police jurisdiction of coastal counties.**

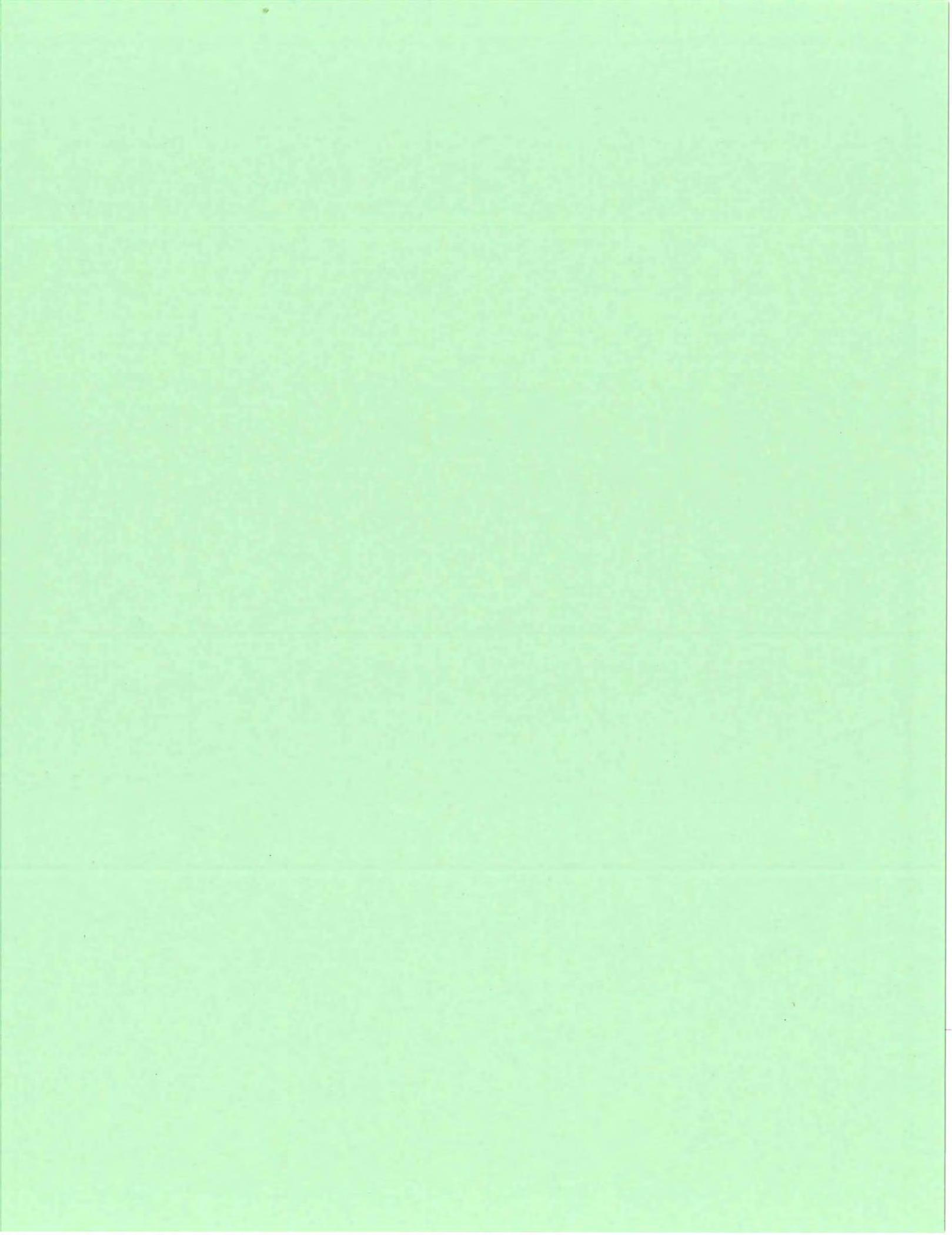
For the purpose of maintaining proper policing, to provide proper sanitation and to abate nuisances, the police jurisdiction and authority of any county bordering on the high tide line of the Atlantic Ocean is extended to include all that area lying between the high tide line and the low tide line not within the corporate limits of any municipality. Such area shall be subject to all the ordinances and regulations that may be applicable to the area lying within the boundary limits of the county, and the magistrates' courts shall have jurisdiction to punish individuals violating the provisions of the county ordinances where such misdemeanor occurred in the area defined in this section.

**HISTORY:** 1980 Act No. 300, § 3.

**Research and Practice References—**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 193-195.

20 CJS, Counties § 49.



## South Carolina Code Re Abandoned Vessels

**SECTION 50-21-190.** Abandoning watercraft or outboard motor; penalty; removal.

(A) It is unlawful to abandon a watercraft or outboard motor on the public lands or waters of this State or on private property without permission of the property owner. This section does not apply to persons who abandon a watercraft in an emergency for the safety of the persons onboard; however, after the emergency is over, the owner and operator of the abandoned watercraft shall make a bona fide attempt to recover the watercraft.

(B) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned up to thirty days, or both. In addition, the owner must remove the abandoned watercraft within fourteen days of conviction. The magistrates and municipal courts are vested with jurisdiction for cases arising under this section.

(C) An abandoned watercraft as identified by the department may be removed at the risk and expense of the owner and disposed of by any governmental agency that has jurisdiction over the area where the abandoned watercraft is located.

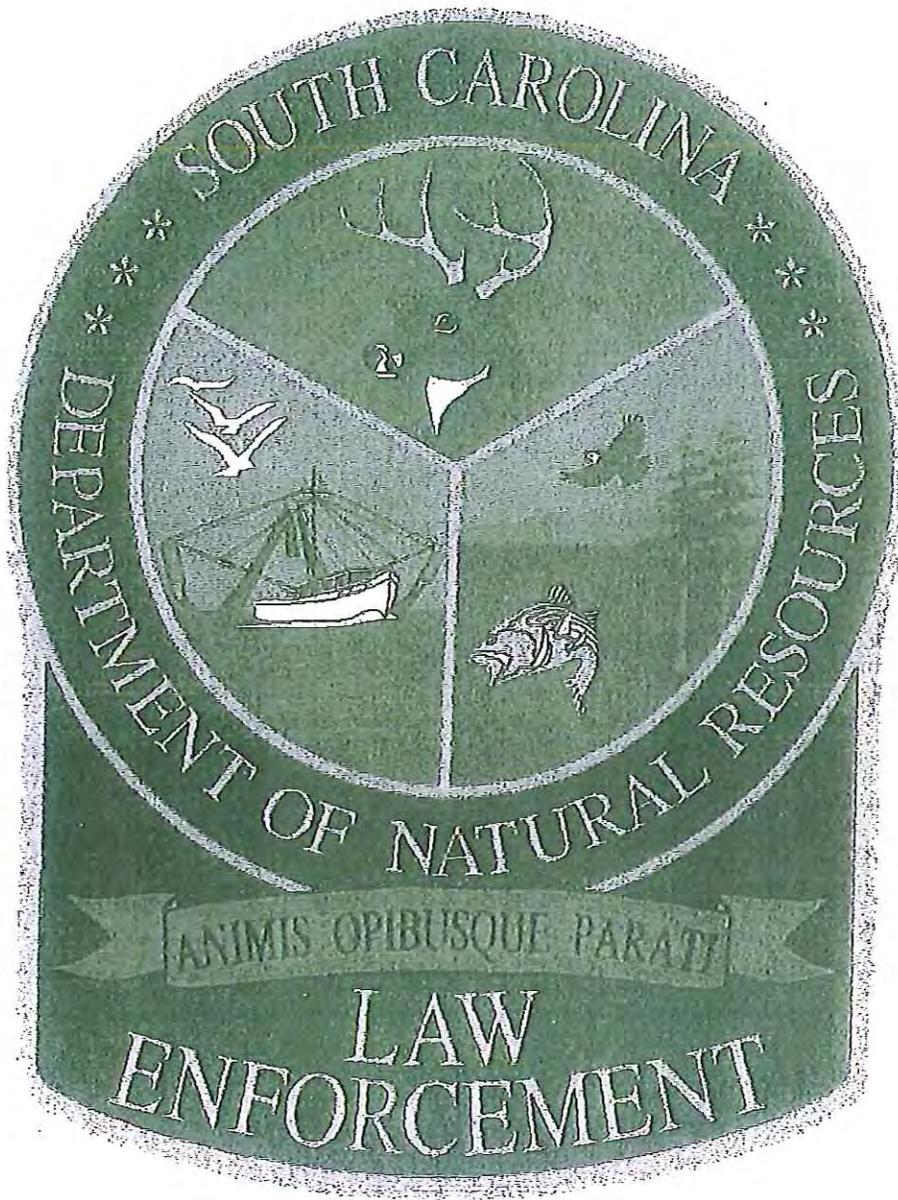
(D) The department must conduct investigations of any watercraft subject to the provisions of this section to determine the status of the watercraft as abandoned. The department must send written notice and make additional reasonable efforts to notify the last known owner, if any, of the status of the watercraft. If efforts to notify fail, then the department must post a notice on the watercraft advising that the watercraft is abandoned. If the owner claims the watercraft within forty-five days of the date the notice is posted, the watercraft is not considered abandoned.

(E) A watercraft identified by the department as abandoned for at least ninety days may be claimed by any person or entity as abandoned property.

HISTORY: 2008 Act No. 321, Section 4, eff 6 months after approval (approved June 16, 2008); 2011 Act No. 21, Section 1, eff May 9, 2011.

Effect of Amendment

The 2011 amendment rewrote subsection (C); and added subsections (D) and (E).



Abandoned Vessel  
Palmetto Bay

Case Number- 2017 [REDACTED]

Investigator Michael L. Brock



DNR

## Abandoned Boat Request for Clear Title Form

Pursuant to S.C. Code 50-21-190(E), the applicant moves to make claim to the below vessel, (and motor, if applicable). Said vessel has been identified as "abandoned" by the S.C. Department of Natural Resources.

### Applicant Information

Last name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

Driver's License No: \_\_\_\_\_ State Issued: \_\_\_\_\_

Telephone No: \_\_\_\_\_

### Watercraft Description

Reg. Number: N/A Expiration Date on Decal: N/A

Title Number: N/A Length: Unknown Year: Unknown

Make: Unknown Construction: Fiberglass

Hull ID Number: N/A Model: Cabin

Boat Name (If no numbers) Foot-A-Sea

### Outboard Motor Description

Title Number: N/A Make: N/A HP: N/A

Year: N/A Model Number: N/A Serial Number: N/A

\_\_\_\_\_  
Applicant Signature Date

The above applicant has met all requirements and conditions and has been approved to make claim and receive clear title to the above referenced vessel.

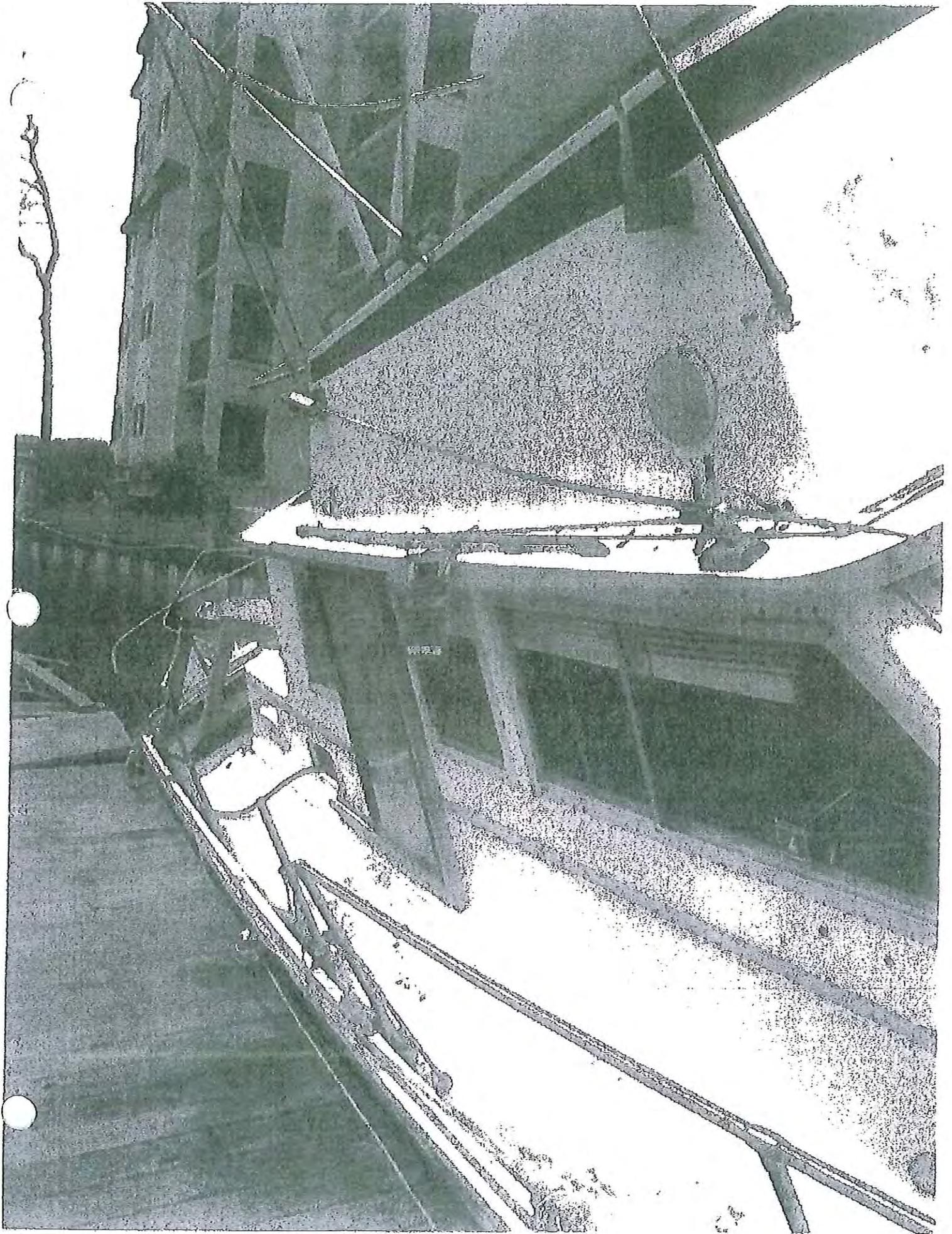
\_\_\_\_\_  
County Representative Name (print)

\_\_\_\_\_  
Position

\_\_\_\_\_  
County Representative Signature

\_\_\_\_\_  
Date

FAMILY A SEA  
BRUNNEN



# WATERCRAFT/OUTBOARD MOTOR APPLICATION



1032964

Not For Sale  
(Bill of Sale, Family Tax Exemption & Co-Owner Forms on Back)

CHECK THE APPLICABLE BOXES

|  |  |  |
|--|--|--|
| <input type="checkbox"/> New SC Watercraft Title & Registration  | \$40.00  | MAKE CHECK OR MONEY ORDER PAYABLE TO:<br>P.O. Box 167, Columbia, SC 29202. Attn: T&A<br>Assembly St., Dennis Bldg., Rm. 104 Colu |
| <input type="checkbox"/> Renew Expired Watercraft Registration or any Registration Expiring in the Current Calendar Year | \$30.00  |  |
| <input type="checkbox"/> Transfer SC Watercraft Title & Registration   | \$16.00  |  |
| <input type="checkbox"/> Watercraft Title (unpowered vessels & sailboats only)   | \$10.00  |  |
| <input type="checkbox"/> New SC Outboard Motor Title   | \$10.00  |  |
| <input type="checkbox"/> Transfer SC Outboard Motor Title  | \$10.00  |  |
| <input type="checkbox"/> Duplicate or Corrected Watercraft Title   | \$5.00   |  |
| <input type="checkbox"/> Duplicate or Corrected Outboard Motor Title   | \$5.00   |  |
| <input type="checkbox"/> Duplicate Watercraft Registration Card  | \$5.00   |  |
| <input type="checkbox"/> Duplicate Watercraft or <input type="checkbox"/> Motor Decal (ea.)                              | \$5.00   |  |
| <input type="checkbox"/> Late Fee (due 31 <sup>st</sup> - 60 <sup>th</sup> days after purchase or registration expires)  | \$15.00  |  |
| <input type="checkbox"/> Late Fee (due 61 <sup>st</sup> day after purchase or registration expires)                      | \$30.00  |  |
| <input type="checkbox"/> Casual Excise Tax Fee   | Sales Price \$ _____ X (Tax Rate) _____ % = \$ _____ |  |

## COUNTY CODES

|                 |                 |
|-----------------|-----------------|
| 1 Abbeville     | 24 Greenwood    |
| 2 Aiken         | 25 Hampton      |
| 3 Allendale     | 26 Horry        |
| 4 Anderson      | 27 Jasper       |
| 5 Bamberg       | 28 Kershaw      |
| 6 Barnwell      | 29 Lancaster    |
| 7 Beaufort      | 30 Laurens      |
| 8 Berkeley      | 31 Lee          |
| 9 Calhoun       | 32 Lexington    |
| 10 Charleston   | 33 McCormick    |
| 11 Cherokee     | 34 Marion       |
| 12 Chester      | 35 Marlboro     |
| 13 Chesterfield | 36 Newberry     |
| 14 Clarendon    | 37 Oconee       |
| 15 Colleton     | 38 Orangeburg   |
| 16 Darlington   | 39 Pickens      |
| 17 Dillon       | 40 Richland     |
| 18 Dorchester   | 41 Saluda       |
| 19 Edgefield    | 42 Spartanburg  |
| 20 Fairfield    | 43 Sumter       |
| 21 Florence     | 44 Union        |
| 22 Georgetown   | 45 Williamsburg |
| 23 Greenville   | 46 York         |

\*If out-of-state address, choose county of primary use.

|                          |  |                            |       |              |                         |
|--------------------------|--|----------------------------|-------|--------------|-------------------------|
| <input type="checkbox"/> | APPLICANT'S LEGAL or BUSINESS NAME (PRINT) | LAST                       | FIRST | M.I.         | DATE OF BIRTH           |
| <input type="checkbox"/> | CO-APPL. LEGAL (see back) (Sec. 1)         | LAST                       | FIRST | M.I.         | DATE OF BIRTH           |
| MAILING                  |  | STREET, R. UTE, R. BO. NO. |       | CELL PHONE # | HOME PHONE #            |
| ADDRESS                  |  | CITY                       | STATE | ZIP          | COUNTY CODE (see above) |
|                          |  |                            |       |              | WORK PHONE #            |

| WATERCRAFT AND/OR OUTBOARD MOTOR PURCHASED FROM |                |                                     |                  |
|---|----------------|-------------------------------------|------------------|
| WATERCRAFT PURCHASED FROM                       | DATE PURCHASED | MOTOR PURCHASED FROM (if different) | DATE PURCHASED   |
| ADDRESS   |                | ADDRESS                             |                  |
| CITY, STATE, ZIP                                |                | TELEPHONE #                         | CITY, STATE, ZIP |
|   |                |                                     | TELEPHONE #      |

| COMPLETE THIS SECTION TO REGISTER/TITLE WATERCRAFT  |                   |  |  |   |              |  |  |
|---|-------------------|--|--|---|--------------|--|--|
| SC REGISTRATION NUMBER  | BOAT TITLE NUMBER | EXP. DATE  | YEAR   | MODEL   | MAKE OF BOAT |  |  |
| SC-   | WA                |  |  |   |              |  |  |
| HULL ID NUMBER (ONE LETTER/NUMBER PER SPACE)  |                   |  | CHECK ONE: <input type="checkbox"/> HOMEMADE <input type="checkbox"/> REBUILT <input type="checkbox"/> FACTORY BUILT |   |              |  |  |
| LENGTH  |                   |  | OUT OF STATE REGISTRATION NUMBER, IF ANY   |   |              |  |  |
| CONSTRUCTION (✓)  |                   | PROPULSION (✓)   |  | FUEL (✓)  |              | TYPE USE (✓)   |  |
| <input type="checkbox"/> 1. WOOD<br><input type="checkbox"/> 2. STEEL<br><input type="checkbox"/> 3. ALUMINUM<br><input type="checkbox"/> 4. FIBERGLASS<br><input type="checkbox"/> 5. PLASTIC<br><input type="checkbox"/> 6. INFLATABLE<br><input type="checkbox"/> 9. OTHER |                   | <input type="checkbox"/> 1. OUTBOARD<br><input type="checkbox"/> 2. INBOARD SINGLE ENGINE # _____<br>PORT/LEFT ENGINE # _____<br>STARBOARD/RIGHT ENGINE # _____<br>MAKE _____<br><input type="checkbox"/> 3. I/O SINGLE ENGINE # _____<br>PORT/LEFT ENGINE # _____<br>STARBOARD/RIGHT ENGINE # _____<br>MAKE _____<br><input type="checkbox"/> 4. ELECTRIC MOTOR OR TROLLING MOTOR<br><input type="checkbox"/> 5. WIND <input type="checkbox"/> 6. JET DRIVE <input type="checkbox"/> 9. OTHER |  | <input type="checkbox"/> 1. GASOLINE<br><input type="checkbox"/> 2. DIESEL<br><input type="checkbox"/> 9. OTHER |              | <input type="checkbox"/> 1. COMMERCIAL PASSENGER<br><input type="checkbox"/> 2. COMMERCIAL FISHING<br><input type="checkbox"/> 3. PERSONAL PLEASURE<br><input type="checkbox"/> 4. RENTAL/LEASE<br><input type="checkbox"/> 5. DEMO<br><input type="checkbox"/> 9. OTHER   |  |
|   |                   |  |  |   |              | TYPE VESSEL (✓)<br><input type="checkbox"/> 1. OPEN<br><input type="checkbox"/> 2. CABIN POWERED<br><input type="checkbox"/> 3. HOUSEBOAT *SEE BELOW<br><input type="checkbox"/> 4. CABIN SAIL<br><input type="checkbox"/> 5. SAIL<br><input type="checkbox"/> 8. PONTOON<br><input type="checkbox"/> 7. JET SKI /<br>PERSONAL WATERCRAFT<br><input type="checkbox"/> 9. OTHER<br>*MUST ANSWER IS THIS WATERCRAFT EQUIPPED WITH A MARINE TOILET?<br><input type="checkbox"/> YES <input type="checkbox"/> NO |  |

| COMPLETE THIS SECTION TO TITLE OUTBOARD MOTOR - 1 MOTOR PER FORM (YEAR OF MFG OR MODEL YR) |               |      |                          |            |       |
|--|---------------|------|--------------------------|------------|-------|
| MOTOR TITLE NUMBER   | SERIAL NUMBER | MAKE | YEAR                     | HORSEPOWER | MODEL |
| MA   |               |      | Yr. of Mfg.<br>Model Yr. |            |       |

| COMPLETE THIS SECTION IF WATERCRAFT AND/OR OUTBOARD MOTOR IS SUBJECT TO LIENS                                       |                  |             |
|---|------------------|-------------|
| <input type="checkbox"/> Check if there is a 2 <sup>nd</sup> lien & attach second lien information on separate page |                  |             |
| FIRST LIEN  | DATE             | AMOUNT      |
| ADDRESS   | CITY, STATE, ZIP | TELEPHONE # |

I certify that the information contained on this application and all attached documents is true and correct and that no other liens or encumbrances except those noted exist. I agree to have an examination of the above by the South Carolina Department of Natural Resources. (False statements within applications and bills of sale are punishable pursuant to Section 50-23-270.) State ID and State of Issue is mandatory, per SC Code of Laws, 1976, Section 1976 50-23-60 (a) (1).

| SC DEPARTMENT OF NATURAL RESOURCES<br>TEMPORARY WATERCRAFT CERTIFICATE OF NUMBER |   |         |              |
|--|---|---------|--------------|
| OWNER'S NAME   | CHECK ONE   |         |              |
| OWNER'S SIGNATURE  | <input type="checkbox"/> New Registration<br><input type="checkbox"/> Valid Transfer--Current Decal<br><input type="checkbox"/> Valid Transfer--Expired Decal |         |              |
| ADDRESS  | CITY  | STATE   | ZIP          |
| HULL IDENTIFICATION NO.  | MAKE  | LENGTH  | STATE OF USE |
| PROPULSION TYPE  | DATE OF ISSUE   | 1032964 |              |

|                                    |      |                      |
|------------------------------------|------|----------------------|
| APPLICANT'S SIGNATURE              | DATE | DRIVER'S LICENSE NO. |
| CO-OWNER'S SIGNATURE               | DATE | STATE OF ISSUE       |
| DEALER'S SIGNATURE (if applicable) |      | DRIVER'S LICENSE NO. |
|                                    |      | STATE OF ISSUE       |
|                                    |      | PERMIT NO.           |

Any personal information collected by SCDNR for licenses, watercraft titles and registrations, EXCEPT social security number, driver's license number, gender, and race, are subject to disclosure under the Freedom of Information Act. However, if released, state law prohibits the use of this information for solicitation or commercial purposes.

**CERTIFIED TRUE BILL OF SALE FOR WATERCRAFT AND OUTBOARD MOTORS**  
**ERASURES OR ALTERATIONS VOID THIS BILL OF SALE**

**DESCRIPTION OF WATERCRAFT:** Registration Number: SC \_\_\_\_\_ Title Number: WA \_\_\_\_\_  
Hull I.D. Number: \_\_\_\_\_ Make: \_\_\_\_\_ Year: \_\_\_\_\_ Length: \_\_\_\_\_ Const: \_\_\_\_\_

**DESCRIPTION OF OUTBOARD MOTOR:** Title Number: MA \_\_\_\_\_ Serial Number: \_\_\_\_\_  
Model: \_\_\_\_\_ Make: \_\_\_\_\_ Year: \_\_\_\_\_ H.P.: \_\_\_\_\_

(Check if this applies to you) I did not register/use watercraft because I used it without propulsion.  
I, \_\_\_\_\_ of \_\_\_\_\_ hereby sell  
Seller (S) Address of Seller  
on \_\_\_\_\_ to \_\_\_\_\_  
Month Day Year Name of Purchaser  
of \_\_\_\_\_ the above Watercraft and Outboard Motor.  
Address of Purchaser

I certify this property is free of any liens or adverse claims and all personal property taxes have been paid to date. I understand that all current year personal property taxes are the responsibility of the seller(s), unless an otherwise enforceable agreement has been reached between the seller and buyer. Failure to notify SCDNR of sale/transaction can result in continued personal property tax assessments to owner of record. I authorize SCDNR to issue duplicate titles, if necessary. (\$5 fee per duplicate)

X \_\_\_\_\_ Signature of Seller Driver's License #  
X \_\_\_\_\_ Signature of Co-Owner Driver's License #  
X \_\_\_\_\_ Signature of Co-Owner Driver's License #

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ Month Year  
X \_\_\_\_\_ My commission expires \_\_\_\_\_  
Notary Signature Print Notary's Name Date Month Year

**SELLER MUST NOTIFY**  
S.C. DEPT. OF NATURAL RESOURCES  
WATERCRAFT DIVISION  
P.O. BOX 167  
COLUMBIA, S.C. 29202-0167  
(803) 734-3447 - office or (803) 734-4138 - fax  
IN WRITING WITHIN 30 DAYS OF ANY CHANGE OF OWNERSHIP OF WATERCRAFT AND OUTBOARD MOTOR, FURNISHING FULL INFORMATION. SELLER SHOULD KEEP COPY FOR TAX RECORDS.

|                               | Boat |   | Outboard Motor |   | Total |
|-------------------------------|------|---|----------------|---|-------|
| Purchase Price                | \$   | + | \$             | = | \$    |
| Less Trade In                 | \$   | + | \$             | = | \$    |
| Balance Subject to Casual Tax | \$   | + | \$             | = | \$    |

**TAX EXEMPT FORM FOR IMMEDIATE FAMILY FOR WATERCRAFT AND OUTBOARD MOTORS**  
**IMMEDIATE FAMILY: PARENT, CHILD, SISTER, BROTHER, GRANDPARENT, GRANDCHILD & SPOUSE**

Date \_\_\_\_\_  
I hereby certify that I, \_\_\_\_\_, am EXEMPT from Casual Excise Tax for the watercraft/  
(Purchaser)  
outboard motor described above or attached on the Bill of Sale.  
ACQUIRED FROM \_\_\_\_\_ (Name) \_\_\_\_\_ (Relationship)

**Caution:** In accordance with S.C. Code of Laws, 1976, Sections 12-36-1710 and 12-36-1730, this is to advise any person who willfully or knowingly makes a false statement for the purpose of avoiding all or a part of the excise tax levied by this article or who assists any other person to avoid all or a part of the excise tax levied by this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred dollars or be imprisoned for not more than thirty days, or both. A person may be liable for civil penalties under Section 12-36-1740.

X \_\_\_\_\_  
Purchaser's Signature

**CO-OWNER FORM FOR WATERCRAFT AND OUTBOARD MOTORS**

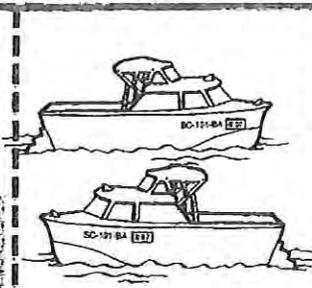
I, \_\_\_\_\_, wish to add \_\_\_\_\_  
(OWNER - Please Print) (CO-OWNER - Please Print)  
as co-owner of watercraft and outboard motor described above. X \_\_\_\_\_  
Owner's Signature

If co-owner's name is not shown on the Bill of Sale but needs to be added, this section and co-owner section on front of watercraft/ motor application must be completed. Application must also be signed (on front) by applicant and co-owner.

**TEMPORARY CERTIFICATE OF NUMBER IS NOT TO BE DISPLAYED.**

Carry this certificate and copy of bill of sale on board during operation up to sixty (60) days from date of purchase as proof of a recent application being submitted. This copy is a temporary certificate valid up to (60) days. Your registration card and/or title will be mailed at a later date. A temporary certificate of number is not valid for rental boats or a boat without a hull id number.

This temporary certificate is only valid for a new watercraft or a watercraft with registration decal(s) and may not be honored in other states. S.C. Code of Laws, 1976, Section 50-23-346 (a) prohibits duplicating or updating temporary certificates or updating bills of sale.



**DISPLAY OF NUMBER AND DECALS**

The number awarded shall be painted or attached to the forward half of each side of the watercraft in a position distinctly visible to other vessels. Letters and numerals must be of a block design not less than three (3) inches high and of a color which clearly contrasts with the color of the watercraft hull. Numbers must be read from left to right as they appear on the certificate of number. Letter groups must be separated from the numerals by hyphens or equivalent spaces, and the year decals must be attached to each side of the watercraft's bow immediately following the number, within six (6) inches (see illustration).

**COMPLETE DOCUMENTS AVAILABLE UPON REQUEST**

**STATE OF SOUTH CAROLINA PRIMARY CONTRACT FOR STORM DEBRIS  
REMOVAL & DEBRIS MANAGEMENT SITE OPERATION & DISPOSAL  
SERVICES FOR COUNTY OF BEAUFORT**

**THIS PRIMARY AGREEMENT** (the "Agreement") is made this 15th day of September 1, 2015, by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter referred to as "County") and Ceres Environmental Services, Inc. (hereinafter referred to as "Contractor"). This Agreement shall consist of all the terms, conditions, specifications and provisions contained herein and all the terms, conditions, specifications and provisions contained in RFP #030415 dated February 2, 2015, and all Addendums. The Contractor's Proposal submitted on March 6, 2015, is incorporated by reference into this Contract Agreement in its entirety.

**WITNESSETH:**

**WHEREAS**, the Contractor and the County desire to enter into a primary agreement relating to Storm Debris Removal, Debris Management Site Operations and Disposal Services for Beaufort County, subject to the terms, specifications, conditions and provisions of the request for proposal as heretofore mentioned.

**NOW, THEREFORE**, the Contractor and the County agree to all of these terms, conditions, specifications, provisions and the special provisions as listed below:

- A. This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of South Carolina.
- B. Any litigation arising out of this Agreement shall be held only in a circuit court of Beaufort County, Beaufort, South Carolina, in the Fourteenth Judicial Circuit.
- C. The Contractor shall not sublet, assign, nor by means of a stock transfer sale of its business, assign or transfer this Agreement without the written consent of the County.
- D. This Agreement, including the terms, conditions, specifications and provisions listed herein makes up the entire agreement between the Contractor and County. No other Agreement or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either party hereto.
- E. It is understood that this Agreement shall be considered exclusive between the parties.
- F. Any provisions of this Agreement found to be prohibited by law shall be ineffective, to the extent of such prohibition, without invalidating the remainder of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:



COUNTY COUNCIL OF BEAUFORT COUNTY  
PURCHASING DEPARTMENT  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2350 FAX: (843) 255-943-9437

PROPOSAL NOTICE NO. 030415

Page 1 of 60

CLOSING DATE AND TIME: March 4, 2015, 3:00 P.M.

PROPOSAL TITLE: Storm, Debris Removal, Debris Management Site Operations & Disposal for  
Beaufort County

You are invited to submit proposals in accordance with the requirements of this solicitation which are contained herein.

A pre-proposal conference will be held at 1:00 p.m. in the BIV # 2 Conference Room, 106 Industrial Village Road, Building # 2, Beaufort, SC 29906-4291, on February 12, 2015. All Proposers are strongly encouraged to attend.

In order for your proposal to be considered, it must be submitted to the Purchasing Office not later than the date and time as listed above, at which time Proposers to this request will be recorded in the presence of one or more witnesses. Proposals received by the Purchasing Office after the time specified will be returned to the Proposer unopened. Due to the possibility of negotiation with all Proposers, the identity of any Proposer or the contents of any proposal shall not be public information until after the contract award is made; therefore, the public is not invited to the proposal closing.

The proposals must be signed by an official authorized to bind the Proposer, and it shall contain a statement to the effect that the proposal is firm for a period of at least 90 days from the closing date for submission of proposals. **Proposals must be submitted in a sealed opaque envelope/container showing the above proposal number, closing date, and title.**

All submittals received in response to this Request for Proposals will be rated by County Evaluation Committee, based upon the Evaluation Criteria as listed herein. If the best Proposer is clearly identified from the point summary, there will not be a need for oral presentations. If not, then an oral presentation from a minimum of the top two rated firms shall be required.

This solicitation does not commit Beaufort County to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified Proposers, or to cancel in part or in its entirety this proposal, if it is in the best interests of the County to do so.

BEAUFORT COUNTY

"Original Signed"

David L. Thomas, CPPO  
Purchasing Director



Proposal  
in Response to

Beaufort County

RFP # [REDACTED]

Storm, Debris Removal, Debris  
Management Site Operations & Disposal  
for Beaufort County

106 Industrial Village Road, Building # 2  
Beaufort, South Carolina 29906

Contact Person: Gail Hanscom  
[REDACTED]

Alternate Contact Person: David Preus  
[REDACTED]

March 6, 2015



6960 Professional Parkway East  
Sarasota, Florida 34240  
Tel. (800) 218-4424  
Fax (866) 228-5636

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**Storm, Debris Removal, Debris Management Site Operations & Disposal for  
Beaufort County**

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**COMPLETE DOCUMENTS AVAILABLE UPON REQUEST**



**CONTRACT FOR SERVICES FOR BEAUFORT COUNTY**

**THIS AGREEMENT** (the "Agreement") is made this 27<sup>th</sup> day of February 2017, by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter referred to as "County") and AshBritt, Inc. (hereinafter referred to as "Contractor"). This Agreement shall consist of all the terms, conditions, specifications and provisions contained in RFP # 021517 dated January 13, 2017 Exhibit #A , Addendum #1 dated January 31, 2017, the Contractor's Proposal dated February 13, 2017 and attached as Exhibit "B", the Beaufort County Debris Removal Project Side-Scan Sonar Protocol dated January 31, 2017 and attached as Appendix "A", and Final Opinion dated January 31, 2017 as Appendix "B".

**WITNESSETH:**

**WHEREAS**, the Contractor and the County desire to enter into an agreement relating to Marine Debris Removal Services for BC, subject to the terms, specifications, conditions and provisions of the request for proposal as heretofore mentioned.

**NOW, THEREFORE**, the Contractor and the County agree to all of these terms, conditions, specifications, provisions and the special provisions as listed below:

- A. This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of South Carolina.
- B. Any litigation arising out of the Agreement shall be held only in a Circuit Court of Beaufort County, Beaufort, South Carolina, in the Fourteenth Judicial Circuit.
- C. The Contractor shall not sublet, assign, nor by means of a stock transfer sale of its business, assign or transfer this Agreement without the written consent of the County.
- D. This Agreement, including the terms, conditions, specifications and provisions listed herein makes up the entire contract between the Contractor and County. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either party hereto.
- E. It is understood that this Agreement shall be considered exclusive between the parties.
- F. Any provisions of this Agreement found to be prohibited by law shall be ineffective, to the extent of such prohibition, without invalidating the remainder of the Agreement.

**NOW, THEREFORE**, in consideration of mutual covenants contained herein, the parties agree as follows:



COUNTY COUNCIL OF BEAUFORT COUNTY  
PURCHASING DEPARTMENT  
POST OFFICE DRAWER 1228 ♦ BEAUFORT, SOUTH CAROLINA 29901-1228

PROPOSAL NOTICE NO. [REDACTED]

Page 1 of 31

CLOSING DATE AND TIME: **February 15, 2017, 3:00 p.m.**

**PROPOSAL TITLE: Marine Debris Removal Services for Beaufort County**

You are invited to submit proposals in accordance with the requirements of this solicitation which are contained herein.

**There will be a Pre-Proposal meeting on January 24, 2017 at 2:00 p.m. at the Finance conference room located at 106 Industrial Village Road, Building #2, Beaufort, SC 29906. All vendors are encouraged to attend.**

In order for your proposal to be considered, it must be submitted to the Purchasing Office no later than the date and time as listed above, at which time respondents to this request will be recorded in the presence of one or more witnesses. Proposals received by the Purchasing Office after the time specified will be returned to the offeror unopened. Due to the possibility of negotiation with all offerors, the identity of any offeror or the contents of any proposal shall not be public information until after the contract award is made; therefore, the public is not invited to the proposal closing.

The proposals must be signed by an official authorized to bind the Offeror, and it shall contain a statement to the effect that the proposal is firm for a period of at least 90 days from the closing date for submission of proposals. **Proposals must be submitted in a sealed opaque envelope/container showing the above proposal number, closing date, and title.**

All submittals (see Part VII, Submission Requirements) received in response to this Request for Proposals will be rated by County Selection Committee, based upon the Evaluation Criteria as listed in Part IV. If the best offeror is clearly identified from the point summary, there will not be a need for oral presentations. If not, then an oral presentation from a minimum of the top two rated firms shall be required.

This solicitation does not commit Beaufort County to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified offerors, or to cancel in part or in its entirety this proposal, if it is in the best interests of the County to do so.

BEAUFORT COUNTY

"Original Signed"

David L. Thomas, CPPO  
Purchasing Director

[REDACTED]



OUR PROMISE

Your dedicated partner in response & recovery.  
There when you need us.

***Project Understanding and Technical Approach***

**TAB 2. Project Understanding and Technical Approach**

**Brief Company Overview**

AshBritt, Inc. (AshBritt) is a national leader in disaster response and recovery services in terms of experience, quality of service, technological and operational innovation, and financial strength. AshBritt is exclusively a disaster response and recovery contractor. This is our sole business function and we bring the best recovery solutions to Beaufort County as we are focused on preparation and response 365 days per year. Below is a summary of our experience, current capacity and expertise in debris removal, solid waste and hazardous waste management and disposal.

We maintain the highest levels of safety, quality and integrity in conducting all of our services and operations while adhering to all guidance set forth by the *OSHA*, *EPA* and *FEMA* on working environments. In support of past events, we have always met or exceeded small business requirements. AshBritt strives to hire local subcontractors and business in accordance with 2 CFR 215.44b procurement procedures which asks for positive efforts be made to utilize *small businesses, minority-owned firms, and women's business enterprises* whenever possible. While achieving our small business goals, we have always maintained a disciplined subcontractor management process which includes the hiring of not only minority, women-owned business enterprises, but all Historically Underutilized Businesses (HUB). These processes and values translate into superior solutions, cost savings, timely performance and tremendous value for our clients.

AshBritt has been successfully serving our clients' debris removal and processing needs since 1992.

Since our inception in 1992, we have conducted 217 disaster projects and 29 special environmental projects of various sizes, successfully serving more than 500 clients. We have been directly involved in the debris recovery efforts of 44 federally declared disasters in 18 states, beginning with Hurricane Andrew in South Florida. Our diverse experience and capabilities have propelled us to become the leader in the disaster response and recovery industry.

*All told; AshBritt has collected over 51,000,000 cubic yards of disaster generated debris and handled more than 131,000,000 cubic yards of disaster generated debris. In the last 5 years, no firm has collected more disaster generated debris than AshBritt.*

AshBritt understands that while operating and maintaining some of the largest and most recent debris missions in the U.S., it is of the utmost importance to hold annual planning and training activities with our clients regardless of the current workload. We will dedicate planning personnel and project managers to conduct annual training in accordance with the requirements of this RFP.

Our *Past Performance* section in Tab (1) clearly illustrates our broad and extensive past performance record in the past 5 years. The table includes project summaries for each disaster-related contract, as well as all relevant project data, performance periods and contract information. AshBritt has successfully responded to a myriad of event types - hurricanes, tornados, tropical storms, floods, snowstorms, earthquakes, wildfires, and severe ice storms. AshBritt has responded to and become proficient in responding to and managing debris removal, solid waste, hazardous waste, and disposal projects. In order to summarize our past 5 years of experience, capacity, and expertise, we have summarized our missions and lessons learned in the following paragraphs.

AshBritt was recently activated in February of 2015 for the City of Atlanta, GA, for a salt and sand spreading mission in response to Winter Storm Octavia. A year earlier, AshBritt was activated in 8 municipalities after Winter Storm Pax impacted Georgia and South Carolina in February of 2014. In South Carolina, AshBritt collected, processed, and disposed of more than 350,000 cubic yards of vegetative debris and mitigated more than 50,000 hazardous trees and limbs from public property. Operations included the deployment of more than 40





**South Carolina Bar**

Continuing Legal Education Division

**2018 SC BAR CONVENTION**

**Government Law Section**

**Friday, January 19**

**Tax Sales: Hot Topics and Case Studies**

*A. Parker Barnes III*

*John H. Harris*

## SOUTH CAROLINA TAX SALES

### I. TAXES

- A. Generally, real property, personal property used in business, and certain other personal property (*i.e.* cars, boats, airplanes) located in South Carolina are subject to ad valorem taxation (commonly referred to as property taxes). S.C. Code § 12-37-210; *see also* S.C. Code § 12-37-220 (listing most exemptions).
- B. Except in the limited case of certain property assessed by the South Carolina Department of Revenue, property taxes are usually assessed and collected by counties. However, some municipalities collect property taxes separately from counties.
- C. For most real property and some personal property, the tax liability is fixed on December 31<sup>st</sup> of the preceding year. *See* S.C. Code § 12-49-20 (“As of December thirty-first a first lien shall attach to all real and personal property for taxes to be paid during the ensuing year . . . .”); S.C. Code § 12-37-905. For example, liability for 2018 real property taxes attaches on December 31, 2017, based on ownership as of that date. A tax lien attaches as of the date the tax liability is fixed. *Von Elbrecht v. Jacobs*, 286 S.C. 240, 242, 332 S.E.2d 568, 569 (Ct. App. 1985).
- D. Property taxes are generally due and payable in arrears between September 30<sup>th</sup> and January 15<sup>th</sup> after their yearly assessment. S.C. Code § 12-45-70; *see also* S.C. Code § 12-39-150. For example, an owner will receive the property tax bill for the 2017 property taxes in the fall of 2017, with payment due by January 15, 2018.
- E. A lien for unpaid property taxes has super priority. “All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the county by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied.” S.C. Code § 12-49-10 (emphasis added).
- F. If the taxes are not paid, a tax execution is issued by the county treasurer directing the tax collector to collect the taxes by distress. S.C. Code § 12-45-180.

- G. “A tax execution is not issued against the property, it is issued against the defaulting tax payer.” *Rives v. Balsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996); *Aldridge v. Rutledge*, 269 S.C. 475, 238 S.E.2d 165 (1977).
- H. The postmark is the determining date for mailed payments. S.C. Code § 12-45-180.
- I. Penalties are added to tax bill by the county auditor if the bill remains unpaid. S.C. Code § 12-45-180.
  - 1. January 16: 3% penalty
  - 2. February 2: additional 7% penalty
  - 3. March 17: additional 5% penalty (results in a total penalty of 15%)
- J. Penalties waived by the treasurer in certain instances. S.C. Code § 12-45-180(B).
  - 1. Title to real property is transferred during tax year;
  - 2. County records indicate tax notice was mailed to prior owner
  - 3. Current owner received no timely notice of tax due on property
- J. Order of Payment of Taxes: Any taxes paid must be applied to the oldest chronological delinquency on the property. S.C. Code § 12-45-410.

## II. TAX SALES

- A. After receiving the execution from the treasurer, the tax collector proceeds with the tax sale process.
- B. The South Carolina Supreme Court has “consistently held that tax sales must be conducted in strict compliance with statutory requirements.” *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115-16 (2003).
- C. Pre-Tax Sale Notices: The required pre-tax sale notices are set forth in S.C. Code §§ 12-51-40(a) to (d).
  - 1. Notice of Delinquent Property Taxes: The first pre-tax sale notice is a notice of delinquent taxes, which must be mailed to the defaulting taxpayer’s best address on “April first or as soon thereafter as practicable.” S.C. Code § 12-51-40(a).  
  
When the treasurer received back the envelope marked “Forwarding Order Expired,” it was quite apparent that the taxpayer had a better address than the one to which the treasurer had sent the notice. *Benton v. Logan*, 323

S.C. 338 (Ct. App. 1996). *See also Good v. Kennedy*, 291 S.C. 204 (1987) regarding best available address for notice.

2. Notice of Levy: If, after 30 days, the taxes remain unpaid, the taxing authority must mail a notice of levy to the defaulting taxpayer at its best address, via certified mail, return receipt requested, restricted delivery, when notice is being provided to an individual. If notice is being provided to an entity, the notice is not sent restricted delivery. *See* S.C. Code § 12-51-40(b). If the defaulting taxpayer receives the notice of levy (as evidenced by the signed receipt card), the taxing authority takes “exclusive possession” of the property. *Id.*
3. Posting: If the notice of levy is returned, the taxing authority may take “exclusive possession” of the property by posting notice of the delinquent taxes at one or more conspicuous places upon the property. S.C. Code § 12-51-40(c).
4. Newspaper Advertisements: After taking “exclusive possession” of the property, the taxing authority must advertise the property for sale at public auction in a newspaper that has general circulation within the county or municipality where the property is located. The advertisement must run for three consecutive weeks prior to the tax sale. *See* S.C. Code § 12-51-40(d). The reference to county auditor’s map-block-parcel number is a sufficient description of realty. *Hawkins v. Bruno Yacht Sales, Inc.* 342 S.C. 352, 536 (2003).
5. Notice when true owner is unknown: When the true owner of property is unknown because of the death of the owner of record and the absence of probate administration of decedent’s estate, the property must be advertised and sold in the name of the deceased owner of record. S.C. Code § 12-51-40(f).

D. The Tax Sale:

1. The property must be sold at public auction at the county courthouse or other convenient place within the county on the advertised date. S.C. Code § 12-51-50.
2. If a defaulting taxpayer has more than one parcel of property advertised for sale, the taxing authority is limited to selling only so much of the defaulting taxpayer's property as will generate sufficient revenues to cover the delinquent taxes, assessments, penalties, and costs. *Id.*
3. Unless the property is contaminated, a government officer selling real property for nonpayment of property taxes must submit a bid on behalf of the Forfeited Land Commission in the amount of all unpaid property taxes, penalties, assessments and costs, including taxes levied for the year in which the redemption period begins. S.C. Code § 12-51-55. (*Note: title is voidable at commission's election if contamination later becomes known.*) A 2012 amendment added the following provision. After the bid by the Forfeited Land Commission but before it is deeded, the FLC can refuse to accept title to the property if the commission determines that to accept title would be against the interest of the public. S.C. Code Ann. § 12-59-85.
4. The successful bidder must pay by cash, cashier's check, certified check, or money order, on the day of the sale. S.C. Code §§ 12-51-50, -60. If not, the bidder must pay a \$500 penalty. S.C. Code § 12-51-70.
5. The tax collector must issue a tax sale receipt upon payment. S.C. Code § 12-51-60.
6. The tax sale bidder may assign the tax sale bid at any time during the redemption period. S.C. Code § 12-51-90.

E. Post-Tax Sale Notices:

1. After the property is sold at the tax sale, the real property may be redeemed during the twelve months following the date of the tax sale. S.C. Code § 12-51-90.
2. The taxing authority must provide notice of the approaching end of redemption period to the defaulting taxpayer and to any grantee,

mortgagee, or lessee of the property of record neither more than 45 nor less than 20 days prior to the expiration of the redemption period. S.C. Code § 12-51-120.

3. The notice of approaching end of redemption period must be sent certified mail, return receipt requested, restricted delivery to “the best address of the owner [that is] available to the person officially charged with the collection of delinquent taxes . . .”, when notice is being provided to an individual. S.C. Code § 12-51-120. If notice is being provided to an entity, the notice is not sent restricted delivery.
4. The return of the certified mail “undelivered” is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record. S.C. Code § 12-51-120.
5. Where the co-tenants are spouses with the same address, then separate redemption notices are not required. *Johnson v. Arbabi*, 355 S.C. 64 (2003).
6. See also Notice of Overage covered in Subsection K(2) below.

F. Notice to Lien Holders:

1. Mortgagees are entitled to the post-tax sale notice of approaching end of redemption period pursuant to S.C. Code § 12-51-120.
2. However, if a mortgagee files a “mortgagee list” with the county prior to the tax sale in accordance with S.C. Code §§ 12-49-1110 to -1290, the mortgagee is entitled to notice at least 45 days prior to the tax sale of any property listed on the “mortgagee list.” S.C. Code § 12-49-1120.
3. The “mortgagee list” identifies all mortgage liens that the mortgagee holds in a particular county. The mortgagee must file its list before March 15<sup>th</sup> of each year with the tax collector in any county in which the mortgagee holds any mortgages. S.C. Code § 12-49-1150.

G. Redemption:

1. A defaulting taxpayer whose property has been sold for taxes has title, defeasible upon failure to redeem within twelve months after the tax sale.”

*Von Elbrecht v. Jacobs*, 286 S.C. 240, 243-44, 332 S.E.2d 568, 570 (Ct. App. 1985).

2. If the property is redeemed, the redeeming party must pay the delinquent taxes, assessments, penalties, costs and the redemption interest. S.C. Code § 12-51-90.
3. The interest due from the redeeming party (the “Redemption Interest”) is determined as follows:

| <u>Property redeemed in:</u>            | <u>Amount of interest imposed:</u> |
|---|------------------------------------|
| First three months after date of sale - | 3% of bid amount                   |
| Months four, five and six -             | 6% of bid amount                   |
| Months seven, eight and nine -          | 9% of the bid amount               |
| Last three months -                     | 12% of the bid amount              |
4. Interest Cap: In no circumstance can the amount of interest imposed exceed the amount of the bid submitted on behalf of the Forfeited Land Commission. S.C. Code § 12-51-90.
5. Upon redemption, the officer in charge of collecting the delinquent taxes must cancel the sale in the tax sale book, and notify the successful bidder by mail to return the tax sale receipt in order to be refunded the purchase price plus the redemption interest. S.C. Code § 12-51-100.
6. If the property is not redeemed, the excess above the amount of taxes, penalties, assessments, charges, and costs for the year in which the property was sold must be applied first to the taxes becoming due during the redemption period. S.C. Code § 12-51-55.
7. Even though a mobile or manufactured home is personal property, the owner or lienholder may redeem the property. S.C. Code § 12-51-95. The owner of the mobile home must also pay rent to the purchaser at the time of redemption. S.C. Code § 12-51-96.

H. IRS Liens:

1. Notice to the IRS is required by 26 U.S.C. § 7425(c)(1). The notice requirements are set forth in IRS Publication 786. The address for the notice is set forth in IRS Publication 4235.

2. While the federal government is not entitled to notice of the tax sale, a federal tax lien survives when the federal lien attached before the county lien and the federal government was not given notice. *See Fox v. Moultrie*, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008).

I. Tax Deed:

1. If the real property is not redeemed within the time allowed for redemption, the official in charge of collecting the delinquent taxes shall make a tax title to the purchaser or to purchaser's assignee within 30 days of the redemption period's expiration, or as soon thereafter as possible. S.C. Code § 12-51-130.
  - (a) Usually takes much longer
  - (b) Reasons for delay
2. Delivery of the tax title to the register of deeds puts the purchaser or the purchaser's assignee, "in possession." *Id.* The tax title must include, "the name of the defaulting taxpayer, the name of any grantee of record of the property, the date of execution, the date the realty was posted and by whom, and the dates each certified notice was mailed to the party or parties of interest, to whom mailed and whether or not received by the addressee." *Id.*
3. The successful purchaser is responsible for the actual cost of preparing the tax title, as well as for the deed recording fees. These expenses must be paid to the person in charge of collecting the delinquent taxes before delivery of the tax title to the register of deeds. *Id.*
4. The tax deed is presumed valid. S.C. Code § 12-51-160 ("In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with.")
5. The commonly accepted definitions of marketable title generally preclude a tax title from being deemed "marketable." *See Edisto Island Historical Pres. Soc'y, Inc. v. Gregory*, 354 S.C. 198, 202, 580 S.E.2d 141, 143 (S.C.

2003) (“marketable title is that which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept”). Therefore, the grantee of the tax title will have to take steps to make the title marketable, generally by pursuing a quiet title action.

6. The successful bidder may also assign its bid prior to the expiration of the redemption period by providing the tax collector with a conveyance that is witnessed and notarized. S.C. Code § 12-51-90(A).

J. Voiding the Tax Deed:

1. If, before the tax title is issued, the taxing authority realizes there has been a procedural defect, the official can void the tax sale and refund the amount paid and any interest actually earned (NOT redemption interest) while the purchase money was held. S.C. Code § 12-51-150.
2. Otherwise, actions to set aside a tax sale must be filed within two years of the tax sale date. *See* S.C. Code §§ 12-51-90(C), 12-51-160.
3. South Carolina courts construe receipt of the notice of approaching end of redemption period as a jurisdictional requirement; consequently, if the required party does not receive this notice, the two-year limitation period does not begin to run as to that party. *See Benton v. Logan*, 323 S.C. 338, 474 S.E.2d 446 (Ct. App. 1996); *Good v. Kennedy*, 291 S.C. 204, 352 S.E.2d 708 (Ct. App. 1987).
4. In 2006, the South Carolina Code was amended to add the following provision to § 12-51-90(C):

If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds.

5. Strict compliance with all the legal requirements is mandatory:
  - (a) All requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or sacrifice of his property are to be regarded mandatory, and are to

be strictly enforced. *Dibble v. Bryant*, 274 S.C. 481 (1980). See also *Aldridge v. Rutledge*, 269 S.C. 475 (1980).

- (b) The fact that the defaulting taxpayer has actual notice of the impending tax sale “is insufficient to uphold a tax sale absent strict compliance with statutory requirements.” *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31 (2003).
- (c) The notice provided by the levy, advertisement and sale in the owner’s name as required by the tax sale statutes is constructive rather than actual. Therefore, the court requires strict compliance with the statutes. *Osborne v. Vallentine*, 196 S.C. 90 (1941).
- (d) Where the advertisement of the property by tax map number listed the incorrect tax map number for the property, the tax collector did not strictly comply with the statutory requirement that the advertisement specify the property to be sold. *Rose v. Bradwell*, 295 S.C. 147 (Ct. App. 1988).

- 6. The burden is upon the party attacking the tax deed to show any defect or irregularity therein. *Walker v. Williams*, 212 S.C. 32 (1948)
- 7. “It is not a great leap to think that if mortgage payments are not being made, then taxes are not being paid either. As a sophisticated mortgage lender and/or servicer, [it] should have been aware that annual property taxes were an issue.” *In re Howard*, 391 B.R. 511 (N.D. Ga. 2008).

K. Overage:

- 1. If the tax sale generates an overage, instead of filing an action to set aside the tax sale, the defaulting taxpayer may elect to claim the overage.
- 2. After the tax deed is issued, the defaulting taxpayer and the owner of record immediately before the end of the redemption must be notified in writing of any excess due by certified mail, return receipt requested [as per S.C. Code § 12-51-40(b)].
- 3. The overage is the amount of the tax sale bid less the amount of delinquent taxes for which the property was sold, the costs of the tax sale, and any outstanding taxes coming due during the redemption period. S.C. Code §§ 12-51-130, -55.
- 4. The overage may be “claimed or assigned according to law.” S.C. Code § 12-51-130.

5. The taxing authority holds the overage for the defaulting taxpayer or current owner for five years after the tax sale date. S.C. Code § 12-51-130. After this five-year period lapses, the overage amount escheats to the government entity that conducted the sale. *Id.*

### **III. ACTION TO QUIET TAX TITLE**

1. The purpose is to provide the tax sale purchaser with marketable title, to bar all adverse claims to the property, and to obtain a final and complete adjudication of the nature and extent of the title to the property. S.C. Code §§ 12-61-10, -60.
2. Need to review the tax deed and review the tax collector's records for the tax sale and a title search. The purpose of the title search is to identify all parties with an interest of record and the nature of each interest.
  - (a) Mortgagee(s)
  - (b) Judgment Creditor(s), IRS liens, DOR liens
  - (c) Other title issues (interest conveyed, % of ownership, etc.)
3. File initial pleadings.
4. Serve defendants.
5. Refer to the Master In Equity or Special Referee, but consider referring the case at the outset.
6. Final Hearing.

### **IV. OTHER RELEVANT TOPICS**

- A. Federal Tax Liens: Treasurer/Tax Collector should at least provide the IRS with a redemption notice.
  1. Under federal law, if any person fails to pay any kind of tax after the IRS makes a demand, a federal tax lien will attach upon the person's real and personal property and will last until the debt is either extinguished or discharged.
  2. Federal tax liens last for 10 years after demand is made, unless the IRS re-files notice of the lien

(a) Exceptions—there are a number of situations where a federal tax lien will not continue to encumber an asset

(i) Most commonly relied upon exception—until the government has filed an appropriate notice of the lien, federal tax liens aren't valid against purchasers who

a. Enter into bona-fide transactions with the taxpayer **and**

b. Do not have actual knowledge of the tax lien

(b) Most of the other exceptions have highly specific applications and will not arise during an ordinary tax sale

3. The general rule is that if notice of the federal tax lien is filed in the county real estate records and the federal government **is not given notice** of the tax sale, the sale is **subject to the federal tax lien**.
4. This means that the tax lien will continue even after the property is sold.
5. This general rule is based on a case called *Fox v. Moultrie*—deals with a situation where the federal tax lien attached prior to the county tax lien.

B. Bankruptcy: The filing of bankruptcy by a defaulting taxpayer should not stay the issuance of the tax deed, but the automatic stay does stay the sale of property at a tax sale. 11 U.S.C. § 362. However, the statutory lien for taxes continues to attach to the property. An unpublished opinion from the United States Bankruptcy Court for the District of South Carolina, *In re Cottage Farm, Inc.*, Case No. 87-01714 (Bankr. D.S.C. 1988) (C.J. Davis) holds:

1. The one-year redemption period is not tolled by the automatic stay in a bankruptcy case.
2. The automatic stay does not prevent the issuance of a tax deed because once the sale occurs the only property interest of the owner is the right to redeem, not the property itself so the property is not “property of the estate” to which the bankruptcy stay applies.

*See also, In re Gibson*, 450 B.R. 585 (2011). The court, in *In re Howard*, declined to accept the contention of the mortgage holder that the County or tax sale purchaser were under a general duty to search the records in the bankruptcy court to determine whether the property subject to tax sale was property of a bankruptcy estate. *In re Howard*, 391 B.R. 511 (N.D. Ga. 2008)

C. Self-Redemptions:

1. Who may redeem
2. What is the harm in allowing the tax sale purchaser to redeem
  - (a) Analogy to \$500 penalty
3. The defaulting taxpayer should not benefit from failing to pay taxes

D. Issues with Claims for Overage:

1. Multiple Claims
2. No Protection under S.C. Tort Claims Act
3. Outstanding Mortgages



**South Carolina Bar**

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**Government Law Section**

**Friday, January 19**

**Economic Development: Hot Topics and Case  
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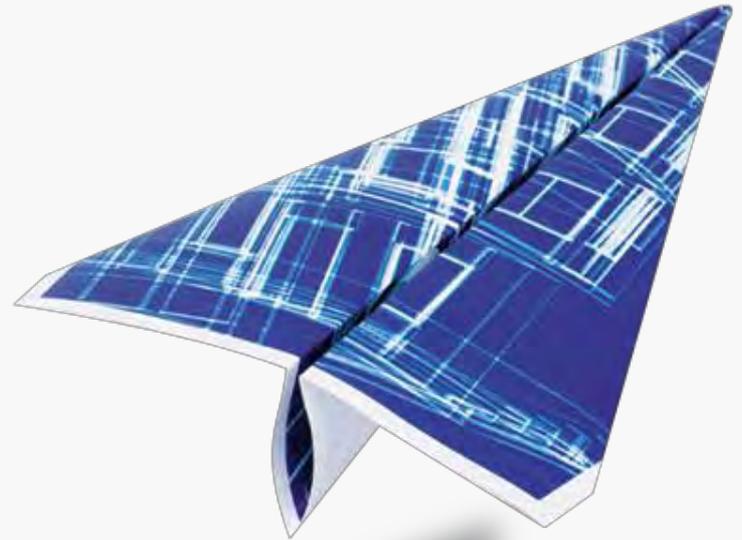
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# State Tax and Business Climate Rankings

## Site Selection's 2017 Top State Business Climate Rankings

|                | State | Executive Survey Rank | Competitiveness Rank | 2016 New Plant Rank | 2016 New Plant Per Capita Rank | 2017 New Plant Rank (Jan. – Aug.) |
|----------------|-------|-----------------------|----------------------|---------------------|--------------------------------|-----------------------------------|
| South Carolina | 2     | 11                    | 18                   | 13                  | 14                             | 8                                 |

|                | Mature Firm Tax Index Rank | New Firm Tax Index Rank | Final Total Points |
|----------------|----------------------------|-------------------------|--------------------|
| South Carolina | 32                         | 34                      | 85                 |

# Site Selection's 2017 Top State Business Climate Rankings

Survey measuring the best business climate came from U.S. corporate executives and was conducted by the International Economic Development Council in Toronto

## Best states for business

The following states received the highest percentage of high marks from executives attending an international economic development conference.

|                       |            |
|-----------------------|------------|
| <b>Texas</b>          | <b>42%</b> |
| <b>Florida</b>        | <b>22%</b> |
| <b>Georgia</b>        | <b>20%</b> |
| <b>South Carolina</b> | <b>16%</b> |
| <b>North Carolina</b> | <b>15%</b> |

# TAX FOUNDATION

## 2018 State Business Tax Climate Index Ranks and Component Tax Ranks

|                | Overall Rank | Corporate Tax Returns | Individual Income Tax Returns | Sales Tax Rank | Property Tax Rank | Unemployment Insurance Tax Rank |
|----------------|--------------|-----------------------|-------------------------------|----------------|-------------------|---------------------------------|
| North Carolina | 11           | 3                     | 13                            | 20             | 32                | 6                               |
| South Carolina | 37           | 15                    | 41                            | 32             | 24                | 29                              |

# COMMERCIAL PROPERTY TAXES IN SOUTH CAROLINA - URBAN

|  | 2017 Ranking | 2016 Ranking | 2015 Ranking |
|--|--------------|--------------|--------------|
| Land and Building Value = \$100,000    | 7th          | 7th          | 6th          |
| Land and Building Value = \$1,000,000  | 7th          | 8th          | 6th          |
| Land and Building Value = \$25,000,000 | 8th          | 9th          | 8th          |

- ▶ Based upon the largest city in each state – Columbia, SC

Source: Lincoln Institute (2017); Ranking of 1<sup>st</sup> denotes highest tax rate, 53<sup>rd</sup> denotes lowest tax rate

# COMMERCIAL PROPERTY TAXES IN THE SOUTHEAST - URBAN

| State                      | Ranking          |
|----------------------------|------------------|
| Michigan (Detroit)         | 1 <sup>st</sup>  |
| South Carolina (Columbia)  | 7 <sup>th</sup>  |
| Tennessee (Memphis)        | 12 <sup>th</sup> |
| Georgia (Atlanta)          | 32 <sup>nd</sup> |
| Alabama (Birmingham)       | 36 <sup>th</sup> |
| North Carolina (Charlotte) | 45 <sup>th</sup> |

- ▶ Effective Tax Rate for \$1 Million Valued Property (plus \$200k in fixtures) for the largest city in each state

Source: Lincoln Institute (2017); Ranking of 1<sup>st</sup> denotes highest tax rate, 53<sup>rd</sup> denotes lowest tax rate

# RETAIL TAX RANKINGS – NEW FACILITIES

| State          | Rank             |
|----------------|------------------|
| Alaska         | 1 <sup>st</sup>  |
| North Carolina | 10 <sup>th</sup> |
| Alabama        | 19 <sup>th</sup> |
| Georgia        | 23 <sup>rd</sup> |
| Tennessee      | 34 <sup>th</sup> |
| South Carolina | 49 <sup>th</sup> |
| Rhode Island   | 50 <sup>th</sup> |

Source: KPMG 'Location Matters' (2015); Ranking of 1<sup>st</sup> denotes lowest tax rates

# DISTRIBUTION CENTER TAX RANKINGS– MATURE FACILITIES

| State          | Rank             |
|----------------|------------------|
| Wyoming        | 1 <sup>st</sup>  |
| Alabama        | 3 <sup>rd</sup>  |
| Georgia        | 4 <sup>th</sup>  |
| North Carolina | 8 <sup>th</sup>  |
| Tennessee      | 27 <sup>th</sup> |
| South Carolina | 49 <sup>th</sup> |
| New Jersey     | 50 <sup>th</sup> |

Source: KPMG 'Location Matters' (2015); Ranking of 1<sup>st</sup> denotes lowest tax rates

# DISTRIBUTION CENTER TAX RANKINGS – NEW FACILITIES

| State          | Rank             |
|----------------|------------------|
| Georgia        | 1 <sup>st</sup>  |
| Alabama        | 7 <sup>th</sup>  |
| North Carolina | 11 <sup>th</sup> |
| Tennessee      | 18 <sup>th</sup> |
| South Carolina | 50 <sup>th</sup> |

Source: KPMG 'Location Matters' (2015); Ranking of 1<sup>st</sup> denotes lowest tax rates

# INDUSTRIAL PROPERTY TAXES IN THE SOUTHEAST - URBAN

| State                      | Ranking          |
|----------------------------|------------------|
| South Carolina (Columbia)  | 1 <sup>st</sup>  |
| Tennessee (Memphis)        | 4 <sup>th</sup>  |
| Georgia (Atlanta)          | 24 <sup>th</sup> |
| Alabama (Birmingham)       | 40 <sup>th</sup> |
| North Carolina (Charlotte) | 43 <sup>rd</sup> |

- ▶ Effective Tax Rate for \$1 Million Valued Property (plus \$200k in fixtures) for the largest city in each state
- ▶ Lincoln Study has six classifications (depending upon real estate and M&E Cap X) for manufacturers – Columbia is number 1 in all six!

Source: Lincoln Institute (2017); Ranking of 1<sup>st</sup> indicates the highest tax rate, 53<sup>rd</sup> indicates lowest

# INDUSTRIAL PROPERTY TAXES IN THE SOUTHEAST - RURAL

| State                    | Ranking          |
|--------------------------|------------------|
| South Carolina (Mullins) | 1 <sup>st</sup>  |
| Tennessee (Savannah)     | 37 <sup>th</sup> |
| Georgia (Fitzgerald)     | 14 <sup>th</sup> |
| Alabama (Monroeville)    | 47 <sup>th</sup> |
| North Carolina (Edenton) | 39 <sup>th</sup> |

- ▶ Effective Tax Rate for \$1 Million Valued Property (plus \$200k in fixtures) for the largest city in each state

Source: Lincoln Institute (2017); Ranking of 1<sup>st</sup> indicates the highest tax rate, 53<sup>rd</sup> indicates lowest

# HOMESTEAD PROPERTY TAXES IN THE SOUTHEAST - URBAN

| State                      | Tax Rank         | Bill Rank        |
|----------------------------|------------------|------------------|
| Tennessee (Memphis)        | 15 <sup>th</sup> | 42 <sup>nd</sup> |
| Georgia (Atlanta)          | 35 <sup>th</sup> | 22 <sup>nd</sup> |
| North Carolina (Charlotte) | 36 <sup>th</sup> | 32 <sup>nd</sup> |
| South Carolina (Columbia)  | 46 <sup>th</sup> | 51 <sup>st</sup> |
| Alabama (Birmingham)       | 49 <sup>th</sup> | 53 <sup>rd</sup> |

- ▶ Homestead property taxes for the largest city in each state based on median valued homes; rankings out of 53 (including Washington, DC and two cities in NY and IL)

Source: Lincoln Institute (2017); Ranking of 1<sup>st</sup> indicates highest tax rate, 53<sup>rd</sup> indicates lowest rate

# GASB-77

# OBJECTIVES OF STATEMENT NO. 77 DISCLOSURE REQUIREMENT

- Provide citizens and taxpayers, legislative and oversight bodies, municipal bond analysts, and other information needed to evaluate the financial health of governments, make decisions, and assess accountability
- Disclose information allowing these entities to accurately assess:
  - Whether a government's current-year revenues were sufficient to pay for current-year services ("interperiod equity");
  - Whether a government complied with finance-related legal and contractual obligations;
  - Where a government's financial resources come from and how it uses them; and
  - A government's financial position and economic condition and how they have changed over time

# TO WHOM THE DISCLOSURE REQUIREMENTS APPLY

- All State and Local Gov't Entities (including general purpose gov't)
  - Including gov't component units (separate entity established to for deploying economic development strategies) if the gov't, using its own professional judgment, determines it's disclosure is essential to fair presentation IAW Statement No. 14
- Public Benefit Corporations and Authorities
- Public Employee Retirement Systems
- Public Utilities
- Hospitals and Healthcare Providers
- Colleges and Universities

# GENERAL

## GASB 77

- Statement No. 77 of the Governmental Accounting Standards Board – Tax Abatement Disclosures
- Governmental entities will have to report “tax abatements” granted to individuals and other taxpayers in notes to financial statements
- Even if governmental entity was not the party granting the “tax abatement”, they will be required to report it
- Effective for Periods Beginning after December 15, 2015

# WHEN THE DISCLOSURE REQUIREMENTS APPLY

- Tax Abatement Agreement is entered into
- by the reporting entity (or by other gov't entity) that reduce the reporting entity's tax revenues
- for all reporting periods beginning after 12/15/2015

# WHEN THE DISCLOSURE REQUIREMENTS APPLY

Tax Abatement is determined by substance (not title) and even if called a tax abatement these disclosure requirements will not apply if any of the following 3 features of the agreement are not present:

1. Agreement between gov't and individual or entity (but no requirement for the agreement to be in writing or legally enforceable in order for Statement No. 77 disclosure requirements to apply);
2. Which reduces the individual's or entity's taxes in consideration for the individual/entity to *subsequently perform* a certain beneficial action; and
3. That *precedes the reduction of taxes* and fulfillment by the individual or entity of the promise to act. (Emp. added.)

# WHEN THE DISCLOSURE REQUIREMENTS APPLY TAXES MUST BE REDUCED FIRST

Implicit in the notion that tax abatements are based on an agreement is the expectation that the agreement proceeds the reduction of taxes and the fulfillment by the individual or entity of the promise to act. Certain tax expenditure programs that exhibit the features of a tax abatement – they reduce taxes, encourage beneficial actions by individuals or entities, and may be based on an agreement – are, nevertheless, excluded from the scope of this Statement because the government does not commit to abate taxes until *after* the individual or entity has already performed the activity for which the government is providing the tax abatement. Most often, such programs do not involve an agreement; an individual or entity performs the required activity (such as installing energy-efficient home features), applies for the tax reduction, and is approved by the government. However, even when an agreement exists, such programs more closely resemble broad tax exemptions and deductions rather than individual tax abatement agreements.

# WHEN THE DISCLOSURE REQUIREMENTS APPLY

- applies to previous agreements that last through reporting periods after 12/15/15
- disclosures continue until the tax abatement agreement expires or if the gov't made commitments other than to reduce taxes then required to disclose until the gov't has fulfilled its commitment

# REQUIRED INFORMATION DISCLOSURES FOR GOVERNMENTS ENTERING INTO TAX ABATEMENT AGREEMENTS

- Brief Descriptive Info
  - Names, if applicable, and purposes for tax abatement program
  - Specific taxes being abated
  - Authority under which agreement was entered into
  - Criteria that make a recipient eligible to receive a tax abatement
  - Mechanism by which the taxes are abated, including:
    - How recipient's taxes are reduced (i.e. through a reduction of assessed value)
    - How amount of tax abatement is determined (i.e. specific dollar amount, specific percentage of taxes owed, etc.)
  - Provisions for Recapturing abated taxes, if any (including conditions under which abated taxes become eligible for recapture)
  - Types of commitments made by the recipients of the tax abatements
- Gross Dollar Amount, on an accrual basis, that tax revenues reduced during reporting period as a result of all tax abatement agreements

# REQUIRED INFORMATION DISCLOSURES FOR GOVERNMENTS ENTERING INTO TAX ABATEMENT AGREEMENTS (CONT'D)

- If applicable, amounts received or receivable from other governments in association with the forgone tax revenue with:
  - Names of the governments
  - Authority under which amounts were or will be paid
  - Dollar Amount received or receivable from other governments

# REQUIRED INFORMATION DISCLOSURES FOR GOVERNMENTS ENTERING INTO TAX ABATEMENT AGREEMENTS (CONT'D)

- If gov't made other commitments, other than to reduce taxes, in agreement disclose:
  - Description of types of commitments made
  - Description of the most significant individual commitments made

# REQUIRED INFORMATION DISCLOSURES FOR GOVERNMENTS ENTERING INTO TAX ABATEMENT AGREEMENTS (CONT'D)

- If gov't omits specific info required by Statement No. 77 because it's legally prohibited from being disclosed, must describe general nature of info omitted and the specific source of the legal prohibition

# HOW IS INFORMATION REPORTED?

- Organize reporting by major tax abatement program
  - For example, FILOT, SSRCs, abandoned building property tax credits
- Gov't entity can decide whether to report on individual basis or on an aggregate basis – GASB 77 seems to suggest depends on number of tax abatements granted in particular category
- Gov't can establish a base number of tax abatements which will report about – can establish a quantitative number and above that they will report (percentage of total amounts abated or dollar amount)
- Disclosure begins in year agreement entered into and each year for which benefit is received

# SPECIFICALLY EXCLUDED FROM DISCLOSURE REQUIREMENTS

- Info about benefits of tax abatement agreements
- Name of recipient of tax abatement
- Number of tax abatement agreements
- Amount of remaining taxes to be abated in future years
- How much longer gov't will be reducing taxes of recipients
- Amount recaptured during the year (“they are accounted for and reported in the financial statements”)
- Confidential Information

# GASB

## South Carolina Issues

# PROPERTY TAX INCENTIVES WHICH LIKELY MUST BE REPORTED BY SC LOCAL GOVERNMENTS

- ✓ Fee-in-Lieu
- ✓ MCBP (when there is a special source credit)
- ✓ Manufacturer's abatement for unrelated purchasers
- ✓ Abandoned Buildings/Retail Revitalization/Textile Revitalization Property Tax Credits
- ✓ Bailey Bill for Historic Preservation
- ✓ Fire Sprinkler System Credit
- ✓ Environmental Cleanup Exemption

# PROPERTY TAX INCENTIVES WHICH MUST BE REPORTED BY COUNTY BUT NOT CITY OR SCHOOL DISTRICT

- ✓ Manufacturers Abatement for Unrelated Purchasers
- ✓ Environmental Cleanup Exemption

# GASB and Fee-in-Lieu

What has to be reported?

# GASB 77

GASB 77 became effective in 2017; it requires state and local governments to report – on a cumulative basis - the cost of discretionary economic development incentives.

This principally includes fee-in-lieu, and not, for example, manufacturer's sales tax exemptions.

Local Government's Annual Financial Reports for FY16-17 will disclose the value of fee-in-lieu exemptions granted for the past 25 years.

These reports started being issued in December 2017 / January 2018.

# ILLUSTRATION OF REPORTING REQUIREMENTS FOR FILOTS POST GASB-77 (PAST & NEW)

- General consensus is GASB-77 applies to FILOTs but will mainly but up to each individual county to determine what info to disclose
- DOR has contemplated establishing a standardize reporting form for the counties to use as a guide but there is currently not one single form or an estimated time of when such form would be produced
- DOR anticipates each county will have their own information disclosure requirements based on the guidance of the county's attorney
- while most of this information can be found on Form PT-443 each county should not simply disclose the entire form because it contains information specifically excluded under the new GASB-77 Disclosure Requirements

# FILOT & GASB NEW FEES

## Special Source Credits

If the manufacturing or warehouse/distribution received a Special Source Credit these savings have to be reported.

# FILOT & GASB NEW FEES

If the manufacturing or warehouse/distribution facility locates on property taxed as ag-use, have to calculate the foregone rollback taxes

# FILOT & GASB NEW FEES

For a manufacturer, does the county net out the manufacturer's abatement? The county gets no property taxes on manufacturers for the first five years unless fee is executed. Fee-in-lieu increases – not decreases – property tax revenue for counties in the first five years of the fee, usually longer as property frequently not placed into service until second year.

Different for cities and school districts, which receive less property tax revenue in year one.

# FILOT & GASB NEW FEES

When do you report? Property is not subject to taxation until it is placed in service – when can be a year or two after the fee is executed.

Some projects never move forward.

Sometimes the SSRC kicks in the first year and sometimes not until the year the property is placed in service.

# FILOT & GASB NEW FEES

When does County report?

- ✓ The year the fee executed;
- ✓ The year the facility is placed in service; or
- ✓ The year the entity files first property tax return? (Government doesn't know true value of abatement until the property tax return is filed.)

# GASB AND FEE EXISTING FEES

## Period When Disclosure Should Occur

The Board considered whether disclosures about tax abatement agreements should be made in each year that the agreement is in effect or only in the initial year of the agreement. The Board concluded that the disclosures required by this Statement continue to be equally or nearly equally as important in subsequent years as in the first year they are presented. Furthermore, the Board believes that the cost of implementing the requirements of this Statement will diminish in subsequent years. Therefore, it is the Board's view that as long as a tax abatement agreement remains in effect – and, therefore, continues to affect a government's finances – the disclosure is necessary.

# GASB AND FEE EXISTING FEES

Fee-in-lieu's last 20-30 rolling years.

Presumably the County has to aggregate all existing fee-in-lieu's and calculate (1) millage differential (taxes using today's millage versus millage when fee was executed (if 20-30 year locked in millage); or when last reset for 5 year millage locks; and (2) savings from assessment ratio differential.

# GASB AND FEE EXISTING FEES

Need to examine each existing fee-in-lieu every year to see if new investment has been added to the fee. The property tax return shows this.

# EXEMPT PROPERTY AND GASB

What if a hospital buys an existing commercial building subject to taxes and files an Exemption Application with the DOR which grants it. The building will not be subject to taxes the following year.

# EXEMPT PROPERTY AND GASB

1. There is an agreement (DOR Application signed by both parties) between the Government (DOR) and an individual or entity (hospital).
2. Which reduces the individual's or entities' taxes in consideration for the individual entity to subsequently perform a beneficial action (hospital functions); and
3. That precedes the reduction in taxes and fulfillment by the individual or entity of the promises to act (hospital functions).

## Reportable?

Does it matter that the entity granting the exemption (DOR) isn't receiving the tax dollars?

Same analysis with social clubs, charities, etc.

# CASE STUDY

You can do a FILOT for:

- New project;
- Expansion of existing project not in a FILOT (new FILOT and perhaps naked MCBP);
- \$45MM expansion of manufacturer not in a FILOT; and
- New commercial project with residential component.

# CASE STUDY

You can do a FILOT for:

- New project

Statutes require minimum \$2.5 million capital investment for qualifying project. A qualifying project includes commercial and industrial but not residential.

# CASE STUDY

You can do a FILOT for:

- Expansion of existing project not in a FILOT
- The addition of \$2.5 million of M&E in a building not in a fee makes the M&E eligible for a fee

# CASE STUDY

You cannot do a FILOT for:

- Existing manufacturer that never got around to doing FILOT (unless the manufacturer adds an additional \$45 million)
- County can do a “naked” MCBP with a SSRC equivalent to a fee-in-lieu

# CASE STUDY

You can do a FILOT for:

- \$45MM expansion of a manufacturer not in a FILOT
- This is an exception to the rule that you cannot include a property previously subject to property taxation in a fee

# CASE STUDY

You can do a FILOT for:

- New commercial project with residential component
- The residential (primary residences/condos) should not be included in the fee
- Apartments are considered residential and can be included (but see slides below)

## South Carolina Public Interest Foundation and William B. DePass, Jr. vs. City of Columbia and Richland County

# CASE STUDY

Litigation involves the constitutionality of  
MCBP/SSRC for Student Housing Projects in  
Richland County/City of Columbia

# CASE STUDY

In order to slow down the building of tax exempt dorms at USC and other colleges, Richland County and the City of Columbia passed Ordinances granting a 50% SSRC to a student housing project.

# CASE STUDY

In order to qualify, a project had to have:

1. A minimum private investment of \$40 million;
2. A minimum investment of \$5 million per usable acre;
3. Owe a minimum of \$750,000 in property taxes prior to the application of the Special Source Credit; and
4. Structured parking and infrastructure with no use of public funds.

# CASE STUDY

The Resolution was amended twice and sunsetted on December 31, 2015. Section 2 of the Multi-County Business Park Agreements required the developers to “operate the facility as a private dormitory pursuant to the terms of and in compliance with section 17-321 of the Code of Ordinances of the City of Columbia.” Failure to qualify as a private dormitory is an act of default under the agreement.

# CASE STUDY

Plaintiff brought a lawsuit in the Court of Common Pleas challenging the constitutionality of four Ordinances establishing a MCBP and granting SSRCs to four student housing projects.

# CASE STUDY

Plaintiffs allege that:

- Eligible projects are those defined in sections 4-29-67 and 4-29-68, which include residential and mixed-use developments of 2,500 acres or more; and
- Student housing is “residential” and MCBPs may not include residential.

# CASE STUDY

Defendants City of Columbia and Richland County allege:

1. MCBPs are not limited to the projects listed in 4-29-67 and 4-29-68;
2. Student housing is commercial and not residential; and
3. MCBPs in both the SC Constitution and the statute include an “industrial or *business park*.”

# CASE STUDY

Plaintiffs and both Defendants filed cross motions for Summary Judgment and Circuit Court granted City and County's Motion. Case currently on appeal to Court of Appeals.

# MORE CASE STUDIES – AG OPINIONS

# DECEMBER 20, 2016

- ▶ Q: May the South Carolina Department of Revenue cancel permits that have been authorized at referendums previously held in General Elections?
- ▶ A: The legislature intended to make the options in the statute available equally to all counties and municipalities, regardless of the “poor choice” of wording. The voters have a free choice in using a referendum. Additionally, the AG knows of no authority that the Department of Revenue has for setting aside or invalidating past elections or referenda by the voters, and even the court is hesitant to do so, thereby “disenfranchising” the voters. The AG cautions the DOR that it should not set aside an election due to mere irregularities or illegalities unless the result is changed or rendered doubtful.



# JANUARY 4, 2017

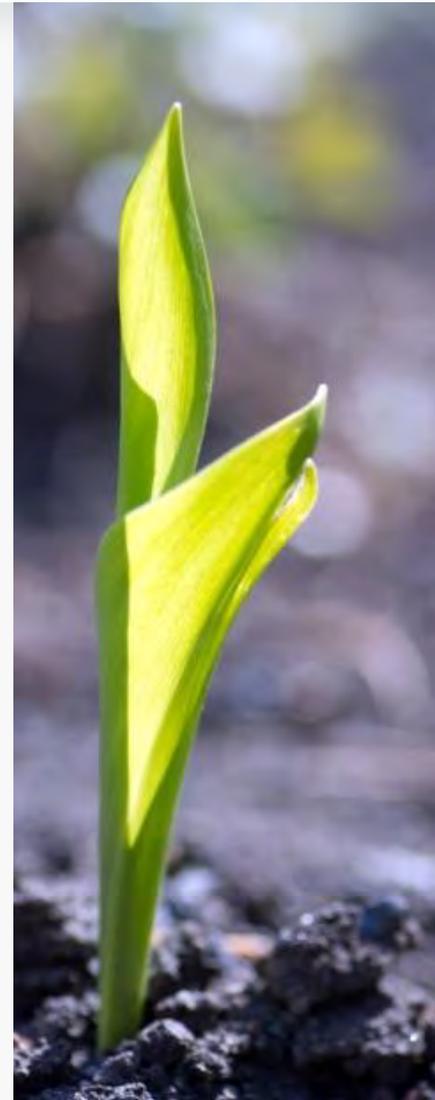
- ▶ Q: Does the Bailey Bill violate the SC Constitution? If not, where a City awards Bailey Bill treatment of a property, should the special assessment should the special assessment also be used to calculate the property taxes levied by all taxing entities (e.g., County, school districts)?
- ▶ A: Legislation passed by the General Assembly is presumed constitutional and its powers are plenary, therefore a court would likely uphold the legislation. A municipality has the statutory authority to use the county's assessment and then to approve a special property tax discount for "rehabilitated historic property" or "low and moderate income rental property." However, it will also likely find that if a county grants a "special assessment," or discount, pursuant to § 4-9-195, then the municipality is not required to use that discount for the portion of its taxes. In contrast, if a municipality offers a "special discount" pursuant to § 5-21-140, a court will likely find the special assessment will apply only to the portion of the taxes belonging to the municipality.



|   |       |       |
|---|-------|-------|
| 9 | 5,918 | 109   |
| 8 | 3,478 | 413   |
| 2 | 1,293 | 41    |
| 8 | 2,487 | 115   |
| 8 | 2,384 | 112   |
| 1 | 1,429 | 63    |
| 6 | 1,203 | 44    |
|   | 3,094 | 123   |
|   | 2,094 | 75    |
|   | 3,027 | 131   |
|   | 7,115 | 1,391 |
|   |       | 110   |
|   |       | 263   |
|   |       | 460   |
|   |       | 243   |
|   |       | 1,076 |
|   |       | 32    |
|   |       | 107   |
|   |       | 131   |
|   |       | 134   |
|   | 368   | 372   |

# JANUARY 20, 2017

- ▶ Q: What is the authority of a newly incorporated municipality to levy a new tax or increase a property tax in accord with S.C. Code §§ 6-1-310?
- ▶ A: A court will likely determine that § 6-1-320 limits increases in taxation by all local governing bodies, but does not prohibit a municipality with a zero millage to increase its millage pursuant to the limitations in the statute where it previously imposed a tax millage. The AG believes it was the clear intent of the General Assembly to limit increases in property taxes by local governing bodies through § 6-1-320. Further, the General Assembly offered a reprieve to the limitations on increases in millage rates through this section by granting exceptions in certain cases (where there is a deficiency, catastrophic events, etc.) if the governing body approves an increase by a two-thirds vote. Furthermore, in the case of a new local government, the AG believes that this section prohibits a new tax levy imposed without specifically statutory authorization. Importantly, tax increases and new taxes are generally disfavored, as evidenced by clear intent by the General Assembly.



# FEBRUARY 7, 2017

- ▶ Q: S.C. Code § 6-4-25(A) prescribes how members are to be chosen for an Accommodations Tax Advisory Committee, and the purposes for which local accommodations tax revenue may be spent. In the section, it states that "...members shall represent the geographic area where the majority of the revenue is derived." Does this absolutely require residency, or may a member represent the interests of the geographic area? Is it sufficient if a member of the commission has a business located in that geographic area?
- ▶ A: It is of the AG's opinion that there is no express residency requirement for the members of an accommodations tax advisory committee. § 6-4-25 does not require residency for membership on the advisory committee, but rather that members who have ownership or experience in the industries within the political subdivision which benefit the accommodations tax revenue are sufficient to comply with the representation requirements.



# FEBRUARY 14, 2017

- ▶ Q: Is it constitutional to delegate the authority to establish business license tax rate classes to the Municipal Association of South Carolina (MASC)? Additionally, is it constitutionally permissible to delegate MASC to be the filing body and collector for business license taxes owed by businesses in South Carolina?
- ▶ A: The Court has concluded that the General Assembly possesses no authority to delegate the power to legislate to the voters. In addition, the AG addressed the issue of “taxation without representation” under Article X, § 5. For example, the South Carolina Supreme Court has stated that an act which permitted a county board of education to establish school millage taxes is unconstitutional because of its unrestricted power of taxation to an appointive body. Under H. 5109, not yet enacted into law, a municipality is mandated every year to adopt by ordinance “the latest Standardized Business Schedule” as provided by the MASC.” Additionally, every even year, the MASC shall determine and revise the Standardized Business License Class schedule.” The AG is concerned that these provisions may be deemed by a court to unlawfully delegate sovereign functions to organizations or agencies outside South Carolina government. A constitutional problem will exist when there is no provision directing the agencies involved to consider future changes to the codes as they are enacted and then amend their regulations accordingly. The AG noted, however, that if H. 5109 was enacted into law, it would carry a strong presumption of constitutionality, like all other legislation (note – not yet enacted).



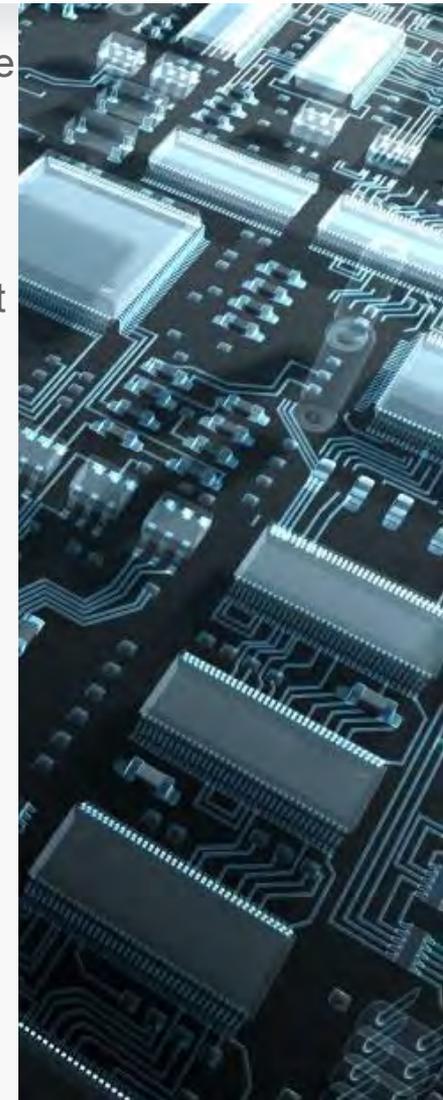
# MARCH 14, 2017

- ▶ Q: A Greenville County pending ordinance provides for (1) a fee to pay service charge for a new communications system and the radios associated with it, and (2) provides for increase in current road maintenance fee but with no specified use for the revenue. Is it appropriate to require a “super-majority” vote, or is this prohibited by S.C. Code § 6-1-330?
- ▶ A: In *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355 (2008), the court described a 2-step process to decide whether a local ordinance is valid. The first step is to consider whether the county had the power to enact the ordinance, and the second is to determine whether the ordinance is consistent with the Constitution and the general law of the state. The AG opined that under this test, a county is not prohibited from requiring a three-fourths “super majority” vote to implement a service fee. Under the first step of the *Foothills Brewing* test, the Greenville County Council is authorized to take legislative action by ordinance. The second step of the Foothills Brewing test requires the AG to opine on whether the Greenville County ordinance is consistent with the Constitution and the general law of the state. Because S.C. Code § 6-1-330 does not expressly prohibit a “super-majority” vote requirement for a local governing body to increase a fee assessment or implementing a new fee, and there is a presumption in favor of a county ordinance’s validity, a court is likely to find the Greenville County Ordinance is valid.



# MARCH 28, 2017

- ▶ Q: May a municipality provide for a public percent for art programs applicable to public facilities as part of its building permit program? Are there any restrictions, limits, or procedures applicable to such a program?
- ▶ A: Any such program would have to be implemented pursuant to a municipality's express or implied statutory authority. The AG believes a court would find the program would have to comply with all other aspects of the law, such as providing due process and equal protection. Regarding equal protection of the laws, an ordinance conferring upon officials "unrestricted discretion in the granting or refusal of building permits" is a violation of both equal protection and due process of law. Generally, the AG's office has consistently interpreted fees regarding building permits as "fees" rather than "taxes." Additionally, the office has not interpreted art as an "inherent corporation function" of a municipality" but instead has opined that the undertaking must be for a public purpose. As long as a public purpose is being served and a public function is being carried out by a private entity, there is no violation of the Constitution if the project is financed by service or user fees from the public. S.C. Code § 6-1-330. Therefore, the Office believes that a court would determine that a building permit fee is a fee and as such may only be used "to finance the provision of public services...to pay costs related to the provision of the service or program for which the fee was paid" under the above statute.



# MAY 1, 2017

- ▶ Q: Is it appropriate for the SCDOR to charge sales tax for certain business transactions, particularly those involving catering at weddings and other events? The caterer is hired by hosts who pay him a per-guest fee for food and/or bartending services, and he purchases alcohol and pays sales tax as part of that service. Beyond the per-head fee, are such “services” subject to a sales tax above and beyond the sales tax paid by the host?
- ▶ A: No opinion given, but Opinion notes in two prior cases, the ALC found that the sales tax was applicable to labor or service fees charged by a subject catering company. S.C. Code Ann. § 12-36-90 provides that the value proceeding or accruing from the sale is the tax base. In those cases, the value of the sale of the catered meals included service, labor, and room charges. Those charges were incidental to and merely enhanced the value of the catered meal. The statute makes clear that the tax base must include the entire value of the sale, and cannot be reduced by demarcating discrete aspects of the sale.



# JULY 13, 2017

- ▶ Q: The Dillon County Council for the past 21 years has divided the county's portion of funds from its use of proceeds from the local option sales tax equally between the County and the County School Board, but has now terminated this practice. Is this appropriate?
- ▶ A: A court is likely to find that this termination is not lawfully appropriate. A prior agreement had been reached between the County Council and the County Board of Education to share evenly the County's portion of the local option sales tax proceeds, and a court would likely conclude that this agreement is legally binding and enforceable. Education is a county purpose. The agreement between the County and Board of Education was widely known and understood prior to the Referendum held in 1995 which approved the local option sales tax. The AG therefore believes voters approved the tax with the understanding of this agreement in mind. Further, the 1997 Dillon County Audit for the 1997 fiscal year mentions and affirms the agreement, which has now been performed for more than 20 years. Based on this, the AG believes that the County Council has no authority to divert the School Board's portion of the funds reached under the agreement to other purposes.



# AUGUST 10, 2017

- ▶ Q: The opinion asked the Office of the Attorney General to clarify a July 28, 2017 opinion solely as it relates to the *validity* of recording deeds for the benefit of all county officials.
- ▶ A: Prior opinion concluded that deeds are invalid without strict compliance to statutes at issue. The AG opined that the statutes at issue are substantially complied with as long as the auditor receives a copy of the deed from the recording officer within a reasonable amount of time being recorded. The statute requiring the auditor to endorse a deed prior to it being recorded is essentially antiquated as it was drafted “over a century ago” without anticipating electronic recording of documents. The AG also stated that it would defer to the DOR administrative determinations for the “accurate and timely recording of sales, transfers, and other conveyances of real property” with the understanding that they approve of such a process.



- ▶ Q: Beaufort County has ratified certain local ordinances regarding A-Tax and Hospitality tax., essentially adopting the same language of the state statutes.
  - ▶ (1) May County Council spend A-Tax funds for the construction of a culinary art institute as part of the Technical College of the Lowcountry's vocational programs?
  - ▶ (2) May County Council spend Hospitality tax funds for the construction of a culinary art instate as part of the Technical College of the Lowcountry's vocational programs?
  - ▶ (3) May County Council spend A-Tax funds, or Hospitality tax funds for the construction of a culinary tourism center in which the primary function is to provide an international culinary experience wherein a culinary art degree program of the Technical College of the Lowcountry is the administrative office of the culinary tourism center?



# AUGUST 30, 2017, CONTINUED

- ▶ (1) Any expenditure of Local A-Tax funds would need to comply with SC Rev Rul No. 98-22. It prohibits the use of A-Tax funds for a “purely local function or benefit” and limited “tourism-related expenditure[s]” to those that are “used to attract or provide for tourists...[and not] for an item that would normally be provided by the county or municipality.” Thus, this use of the A-Tax funds to construct a culinary art institute as part of the Technical College does not appear to be supported by the Revenue Ruling. Also, consider TRAC oversight.
- ▶ (2) AG believes there must be a “direct and casual connection” between tourism and the promotion thereof in order for Local Hospitality funds to be used in whole or in part to pay for a recreational facility like this. The Office believes there is a legal argument for using Local Hospitality Tax funds for a culinary art institute if the county can show a “nexus between the institute and tourism sufficient to overcome the purely local benefit it would provide” to the culinary school.
- ▶ (3) AG believes Local Hospitality Tax funds could be used for a tourism facility, and they believe that the same thing could be done for Local A-Tax funds under the right circumstances. A culinary tourism center could serve as a purpose listed within the statutes for use of A-Tax funds. It would probably strengthen the argument for the county to show an “implicit nexus” between the A-Tax revenues and “transients” spending the night in fulfilling the purposes in S.C. Code Ann. § 6-1-530. Likewise, it would strengthen their argument for there to be at least an implicit nexus between Hospitality Tax revenues and tourists dining in order to fulfill the purposes in S.C. Code Ann. § 6-1-730.



# QUESTIONS?



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