



**Special Board Meeting
of the
Captiva Erosion Prevention District**

'Tween Waters Inn, 15951 Captiva Drive
Captiva, Florida 33924

Thursday, September 8, 2016
5:15 P.M.

September 8, 2016 CEPD Special Board Meeting
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Agenda

Special Meeting of the
Captiva Erosion Prevention District

Tween Waters Inn, Wakefield Room
15951 Captiva Drive, Captiva, Florida 33924
September 8, 2016 @ 5:15 PM

1. Call to Order
2. Roll Call
3. Public Comments
4. FEMA Insurance Requirements Discussion
5. Adjourn



Kathleen Rooker <mycepd8@gmail.com>

RESPONSE REQUIRED - #OIG DA-15-19 Audit Requirement

1 message

FEMA-PA-F9-REQUEST <fema-pa-f9-request@fema.dhs.gov>

Mon, Aug 22, 2016 at 10:37 AM

To: "FDEM.PAActionitem@em.myflorida.com" <FDEM.PAActionitem@em.myflorida.com>

Dear FEMA Subgrantee:

You are being contacted by the Federal Emergency Management Agency (FEMA), in partnership with the Florida Division of Emergency Management (Grantee), in relation to the U.S. Department of Homeland Security (DHS) Office of the Inspector General (OIG) Audit #OIG-15-19. We are contacting your office to request certain documentation to ensure that the insurance requirement to obtain and maintain as a condition of the Public Assistance grant has been met.

For your awareness, the OIG's audit found that FEMA did not adequately verify that the Subgrantees complied with insurance requirements after receiving grant funds following the 2004/2005 Florida declared disasters (1539-DR, 1545-DR, 1551-DR, 1561-DR, 1595-DR, 1602-DR and 1609-DR). Pursuant to 44 CFR §§ 206.252-253, as a condition of receiving FEMA funding for a damaged facility, a Subgrantee is required to obtain and maintain insurance to cover the risk of future losses to that facility. FEMA, in partnership with the Grantee, is working to ensure that the concerns raised in the audit are addressed. The #OIG 15-19 Audit report and the FEMA policy on insurance are attached for your reference.

Although comments entered into some Project Worksheets indicated that insurance requirements were waived, the Audit found these comments to be erroneous. The wording from #OIG-DA-15-19 states:

"If the State Insurance Commissioner certifies that the type and extent of insurance is not reasonably available, the Regional Director may waive the requirement in conformity with the certification.' Consequently, FEMA insurance specialists do not have the authority to waive the insurance requirement without being instructed to do so by the FEMA Regional Director."

The Regional Director has not received any requests for an insurance waiver for any of the Subgrantees designated in the 2004 and 2005 events in the State of Florida. At present, FEMA does not have records of any properly approved insurance waivers for any of the Subgrantees in the State of Florida. FEMA is requesting your confirmation that your office understands the requirement to obtain and maintain insurance by reviewing and signing the attached Insurance Commitment letter.

For your awareness, the dollar amount of the requirement to obtain and maintain is calculated before any reductions. For example, a facility that incurred \$1,000,000 in total PA-eligible windstorm damage which received \$400,000 in windstorm insurance proceeds and \$600,000 in PA funding would be required to obtain an additional \$600,000 in windstorm insurance and maintain the original \$400,000 in windstorm insurance, for a total of \$1,000,000 in coverage. Otherwise the facility would be ineligible for any future PA funding, regardless of what peril (fire, flood, windstorm, etc.) causes the future damage.

There are three attached documents included in this email:

- The first attached document is an Insurance Commitment letter template for you, as the Subgrantee, to sign acknowledging your obligation to obtain and maintain insurance as a condition of having received FEMA grant funding. It also documents your acknowledgement, that FEMA Region IV has no insurance waivers on file for any of the approved Project Worksheets in the State of Florida.
- The second attached document is OIG-15-19-D Audit for your reference.
- The third attached document is FP 206.086-1 FEMA Insurance Policy for your reference.

Please perform the following actions within thirty (30) days:

- 1) Review the attached insurance commitment letter.
- 2) Utilize the fillable boxes to complete the required fields.
- 3) Print the letter on your letterhead stationery.
- 4) Sign and scan the letter.
- 5) Email the signed letter to both FEMA and the Grantee at the below email addresses:

FEMA-PA-F9-REQUEST@fema.dhs.gov and FDEM.PAActionitem@em.myflorida.com .

It is important to note that a response needs to be received within thirty (30) days from the date of this email. Failure to adhere to the obtain and maintain grant conditions may result in FEMA denying or de-obligating assistance in the current disaster(s) (referenced above) and will result in FEMA denying future assistance for that facility in any subsequent Presidentially declared major disasters. "When a facility that received assistance is damaged by the same hazard in a subsequent disaster and the applicant failed to maintain the required insurance from the previous disaster, then the facility is not eligible for assistance in any subsequent disaster" (Section H of FP 206.086-1 Policy).


For your reference, the following provide further details on FEMA's insurance requirements:

- Stafford Act Section 311, Insurance (42 U.S.C. 5154)
- Title 44 Code of Federal Regulations §206.252-253


Please REPLY ALL to this email if you have any questions. This will ensure that your concerns are captured and responded to in writing for your records.

Thank you for your prompt attention to this matter.

3 attachments

 **Commitment No Policy Request.pdf**
44K

 **OIG_15-19-D_Dec14.pdf**
681K

 **FP206-086-1_PublicAssistancePolicyInsurance_062915.pdf**
296K

Ms. Gracia Szczech,
Regional Administrator, FEMA Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341

Re: Commitment to Obtain and Maintain Insurance
FEMA Disaster numbers DR-1539, 1545, 1551, 1561, 1595, 1602 & 1609

Dear Ms. Szczech,

Name of Subgrantee _____ received funding under FEMA's Public Assistance (PA) grant program for one or more facilities damaged by one or more of the federally declared disaster(s) listed above. This letter, submitted in relation to the U.S. Department of Homeland Security (DHS) Office of the Inspector General (OIG) Audit #OIG-15-19, documents our commitment to comply with FEMA's grant requirements for insuring our building, contents and/or other subject property.

We recognize that we must obtain and maintain insurance to protect against future loss to any damaged facility/facilities and its contents as a condition of receiving PA grant funding, as required by Section 311 of the Stafford Act as amended (42 U.S.C. § 5154), 44 C.F.R §§ 206.252-253, FEMA Recovery Policy FP 206-086-I. This condition also appears in the Disaster Funding Agreement(s) signed by us and on file with the State of Florida.

We have been provided a copy of Audit #OIG-15-19 by FEMA via email which states "If the State Insurance Commissioner certifies that the type and extent of insurance is not reasonably available, the Regional Director may waive the requirement in conformity with the certification." FEMA has notified us that the Regional Director has not received any requests for an insurance waiver for any of the Subgrantees designated in the 2004 and 2005 events in the State of Florida. For building, contents and/or other subject property that currently lack the required insurance coverage, we accordingly agree to procure insurance in an amount that is at least equal to the amount of damage that was eligible arising from these storm events.

We acknowledge that we have reviewed the above-referenced Recovery Policies and we understand that we must maintain insurance for the anticipated life of the building, contents and/or other subject property. We acknowledge that a failure to provide evidence of insurance coverage on the subject insurable items may result in future de-obligations of previously awarded funding. As a result, we further acknowledge that a failure to adhere to the "obtain and maintain" grant condition will result in our insurable items being ineligible for FEMA PA funding in any future major disaster.

Sincerely,

(Signature) (Date)

Name of Subgrantee
(Name of Subgrantee)

cc: FDEM

[Note: This template has been drafted for use solely in relation to DHS OIG Audit Report OIG-15-19-D and should not be used for any other purposes, including unrelated disasters.]

FEMA Insurance Reviews of Applicants Receiving Public Assistance Grant Funds for 2004 and 2005 Florida Hurricanes Were Not Adequate



December 18, 2014
OIG-15-19-D



HIGHLIGHTS

FEMA Insurance Reviews of Applicants Receiving Public Assistance Grant Funds for 2004 and 2005 Florida Hurricanes Were Not Adequate

December 18, 2014

What We Found

Why We Did This

We received two Office of Inspector General (OIG) Hotline complaints about insurance reviews of Florida disaster assistance applicants. In addition, three OIG audits of Florida grant recipients raised similar concerns.

What We Recommend

Federal Emergency Management Agency (FEMA) needs to perform a comprehensive insurance review of \$177 million awarded to 154 applicants to ensure that duplication of benefits does not exist, and avoid potentially up to a billion dollars in future costs by ensuring that Florida applicants obtained and maintained adequate amounts of insurance.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

The quality of FEMA's insurance reviews in Florida was not adequate to maximize insurance available under applicants' policies and to ensure that duplication of benefits did not occur. FEMA's Florida Recovery Office knew about these deficiencies in its insurance review process but did not correct them. As a result, FEMA may have funded up to \$177 million that insurance should have covered.

Furthermore, FEMA's insurance specialists routinely waived the requirement to obtain and maintain insurance for future disasters, even though they did not have the authority to take such action. FEMA's Florida Recovery Office did not detect and correct this deficiency. As a result, FEMA potentially stands to lose up to a billion dollars in future Florida disasters because many Florida communities may not have adequate insurance coverage for future disasters such as those that occurred in 2004 and 2005.

FEMA Response

FEMA chose to withhold comments until after we issue our final report. FEMA's written response is due within 90 days of report issuance.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

December 18, 2014

MEMORANDUM FOR: Andrew Velasquez III
Regional Administrator-Acting, Region IV
Federal Emergency Management Agency

FROM: John V. Kelly
Assistant Inspector General
Office of Emergency Management Oversight

SUBJECT: *FEMA Insurance Reviews of Applicants Receiving Public Assistance Grant Funds for 2004 and 2005 Florida Hurricanes Were Not Adequate*
FEMA Disaster Numbers DR-1539, DR-1545,
DR-1551, DR-1561, DR-1595, DR-1602, and DR-1609
Report Number OIG-15-19-D

We audited the insurance adjustments applied against Federal Emergency Management Agency (FEMA) Public Assistance funds awarded to applicants who had insurance coverage with a specific insurance provider during the 2004 and 2005 hurricane seasons in Florida. The Florida Department of Emergency Management (Florida), a FEMA grantee, awarded these funds to applicants for disaster recovery work related to hurricanes that occurred in Florida during this time. This audit is a follow-up to two complaints we received through our Hotline and three previous audits we conducted of Public Assistance grant recipients in Florida.¹

The first complaint, received in January 2011, identified concerns with duplication of benefits and damages that insurance should have covered in the state of Florida. The second complaint, received in February 2011, indicated that, since 2010, FEMA management had been aware of potentially significant issues with insurance adjustments relating to disaster assistance in 2004 and 2005. In addition, our three previous audits of Florida grant recipients raised similar concerns.²

¹ *City of Vero Beach, Florida – Disaster Activities Related to Hurricane Jeanne*, DA-11-18, May 12, 2011; *City of Vero Beach, Florida – Disaster Activities Related to Hurricane Frances*, DA-11-19, May 12, 2011; and *FEMA Public Assistance Grant Funds Awarded to City of Coral Springs, Florida – Hurricane Wilma*, DA-12-15, April 1, 2012.

² Appendix B provides additional information about the three previous audits.



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We judgmentally selected nine applicants from a list of applicants that carried insurance through the Insurance Company. The FEMA Florida Recovery Office provided this list to us in 2012. For these nine applicants, we judgmentally selected 78 projects, based on dollar values, from 2,088 projects that FEMA approved. FEMA Region IV provided a more comprehensive list in March 2014, and we used this information to update the data for our audit universe. Table 1 presents the gross and net award amounts for the 154 applicants in our audit universe and the gross and net award amounts for the 78 projects we selected for review.

Table 1 - Gross and Net Award Amounts

	Applicants	Projects	Gross Award Amounts	Insurance Reductions	Net Award Amounts
Audit Universe	154	2,088	\$244,196,468	(\$67,017,518)	\$177,178,950
Audit Scope	9	78	\$66,022,261	(\$14,895,437)	\$51,126,824

Source: Department of Homeland Security (DHS) Office of Inspector General (OIG) prepared with information obtained from the FEMA Florida Recovery Office, FEMA Region IV Office, and FEMA's National Emergency Management Information System (NEMIS).

Background

The State of Florida experienced historic weather events during its 2004 and 2005 hurricane seasons with seven hurricanes and two tropical storms. Four hurricanes hit the state in 2004 over a span of 44 days, causing an estimated \$45 billion in damages and resulting in Public Assistance funding totaling almost \$2.5 billion. The three hurricanes that passed through Florida in 2005 resulted in Public Assistance funding totaling almost \$1.9 billion. Table 2 summarizes the Federal assistance FEMA provided to Florida for the seven hurricanes. Five of the seven hurricanes that hit Florida during this time rank in the top ten costliest hurricanes in the United States, according to the Insurance Information Institute.³

³ Appendix B provides additional background information.



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Table 2 – Federal Assistance for Florida Disasters

Florida Disaster Declarations 2004 and 2005 Hurricanes				
Year	Disaster number	Incident	Public Assistance Funding	Permanent Work
2004	1539	Hurricane Charley	\$ 612,562,547	\$ 174,624,913
	1545	Hurricane Francis	666,626,360	276,740,261
	1551	Hurricane Ivan	697,541,112	347,468,706
	1561	Hurricane Jeanne	521,496,152	133,641,815
Subtotals			\$2,498,226,171	\$ 932,475,695
2005	1595	Hurricane Dennis	\$ 200,000,891	\$ 75,320,688
	1602	Hurricane Katrina	194,445,713	37,115,273
	1609	Hurricane Wilma	1,482,028,525	483,277,214
Subtotals			\$1,876,475,129	\$ 595,713,175
Grand Totals			\$4,374,701,300	\$1,528,188,870

Source: DHS OIG prepared with information from FEMA.gov.

Results of Audit

The quality of FEMA’s insurance reviews in Florida was inadequate to maximize insurance available under applicants’ policies with the Insurance Company and to ensure that duplication of benefits did not occur. FEMA’s Florida Recovery Office knew about these deficiencies in its insurance review process but did not correct them. As a result, FEMA may have funded up to \$177.2 million that insurance should have covered. To resolve these problems, FEMA needs to:

- (1) conduct a detailed insurance review of all projects associated with applicants that have insurance with the Insurance Company to determine the correct amount of available insurance benefits that the applicants received or should have received for the projects FEMA approved;
- (2) recover the additional insurance proceeds identified in the reconciliation recommended in the first step above; and
- (3) direct Florida, as grantee, to work with applicants, the State Insurance Commissioner, and the Insurance Company to ensure that applicants receive or have received the maximum insurance benefits available under their policies for the projects FEMA approved.

Furthermore, FEMA’s insurance specialists routinely waived the requirement to obtain and maintain insurance for future disasters, even though they did not have the authority to take such action. FEMA’s Florida Recovery Office did not detect and correct this deficiency. As a result, FEMA potentially stands to lose



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up to a billion dollars in future Florida disasters because many Florida communities may not have adequate insurance coverage for future disasters such as those that occurred in 2004 and 2005. Therefore, FEMA also needs to:

- (1) determine the final gross eligible project costs for each project and in turn rewrite the project worksheets to identify the correct amount of insurance that each applicant must obtain and maintain as a condition of receiving disaster assistance; and
- (2) Direct Florida to review all Florida applicants and determine whether they have either obtained the required insurance, or obtained an insurance waiver from the State Insurance Commissioner to avoid potentially paying up to a billion dollars in future costs.

Finally, FEMA told us that, due to the nature of disaster recovery response, some of the insurance specialists who worked on the Florida disasters transitioned to other disasters, including Hurricane Sandy. While this report contains no recommendations specific to Hurricane Sandy, given that we received the Hotline complaints in 2011 for 2004 and 2005 hurricanes, we are concerned that the conditions we identified in this report continue to exist and may be ongoing in some active disasters.

Finding A: FEMA's Insurance Reviews Were Inadequate

FEMA's insurance reviews were inadequate to ensure that approved project costs included required reductions for the maximum amount of available insurance and did not include duplicate benefits. As a result, FEMA funded \$177.2 million that insurance may have covered. This occurred because, after FEMA's Florida Recovery Office insurance staff alerted its management to deficiencies in its own insurance review process, the Florida Recovery Office management did not correct the deficiencies. Instead, FEMA's Florida Recovery Office management chose to accept the Insurance Company's assertion that the policy between the Insurance Company and the applicants did not cover the \$177.2 million in damages.

Section 312(a) of the *Stafford Act*, Duplication of Benefits, states that no entity will receive assistance for any loss for which they have received financial assistance from any other program, from insurance, or from any other source. In addition, Federal regulations at 44 Code of Federal Regulations (CFR) 206.250(c) stipulate that "actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs."



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FEMA Insurance Specialists Did Not Identify Available Insurance

In some cases, the specialists determined that insurance was not available, even when the applicant had a policy covering the damaged facilities. As table 3 shows, of the 78 project worksheets we reviewed, 38 (49 percent) included a comment that no insurance was available or that insurance did not cover the damages.

Table 3 - Project Worksheets with “No Insurance” Determination

Applicant	Disaster Number	# of Projects Selected for Review	Gross Project Amounts for Selected Projects	# of Projects with “No Insurance” Comment	Gross Award Amounts for Projects with “No Insurance” Comment
Everglades City	1609	8	\$ 3,902,431	5	\$ 1,366,567
Fort Pierce	1545	7	34,284,701	4	2,127,041
Islamorada	1609	6	5,263,038	3	553,924
Marathon	1609	3	2,171,668	2	182,759
Monroe County	1609	5	682,689	1	344,597
Pembroke Pines	1609	19	10,619,759	10	2,557,146
Plantation	1609	15	4,522,237	8	1,532,687
Vero Beach	1545	5	610,145	0	0
Wellington	1609	10	3,965,593	5	3,096,958
Totals		78	\$66,022,261	38	\$11,761,679

Source: DHS OIG prepared with information obtained from the FEMA Florida Recovery Office, FEMA Region IV Office, and FEMA’s NEMIS.

Our review showed that FEMA insurance specialists adequately supported only 4 of their 38 “no insurance” decisions; FEMA expects these 4 projects to total \$662,085. As for the remaining 34 projects totaling \$11.1 million, FEMA insurance specialists either incorrectly arrived at that decision, or could not support that decision. Specifically, FEMA insurance specialists incorrectly arrived at a no-insurance determination for 23 projects totaling \$8.6 million, and had no support to justify their determinations for 11 projects totaling \$2.5 million.



Significant Duplication of Benefits Potentially Exists for Damages Funded by FEMA

We reviewed the 9 applicants' insurance policies for the 78 selected projects. In particular, we compared the Schedule of Properties and the Statements of Loss, when available, to the project scope of work. Critical documentation was often incomplete, such as the following:

- Insurance policies were incomplete and missing pages.
- Statements of Loss were not available.
- The Schedule of Properties was not available in two cases.
- Summaries supporting and tracking deductible calculations were not available.

Based on the frequency and range of these issues, we concluded that FEMA could not have completed a valid insurance assessment with the documentation available. Comparing the available insurance documentation to the scopes of work FEMA authorized in the project worksheets, we identified \$46,477,751 of project costs that insurance policies potentially covered. This amount represents about 91 percent of the \$51,126,825 FEMA approved (obligated) for the 78 projects we reviewed. It is important to note that our audit covered only 9 applicants out of the total 154 applicants who had policies with the Insurance Company. For the 154 applicants, FEMA approved \$177.2 million for 2,088 projects. Because our audit shows that these projects are at high risk, we conclude that FEMA has little assurance that its insurance specialists properly reduced the \$177.2 million in FEMA-approved damages.

FEMA's Florida Recovery Office Was Aware of Problems with Insurance Reviews

Insurance specialists performing closeout activities in the FEMA Florida Recovery Office identified potentially serious problems with insurance in late summer of 2010. They said that they immediately notified management of their concerns. Specifically, the problems they identified were caused by FEMA applying insufficient reductions to the funding of 2004 and 2005 hurricane project worksheets for the amounts of anticipated or actual insurance proceeds applicants expected or received from the Insurance Company.

FEMA's Lead Insurance Specialist initially estimated that between \$80 million and \$120 million of disaster assistance might include duplicate benefits that insurance covered or should have covered. The Lead Insurance Specialist said these problems occurred because of (1) insufficient and inaccurate insurance



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reviews at the time of project development, and (2) understated claims adjustments and insurance settlements from the Insurance Company. In March 2014, FEMA provided a comprehensive dataset for applicants with insurance through the Insurance Company. This updated information identified 154 applicants with 2,088 projects totaling a gross award amount of \$244,196,468 (see audit scope paragraph on page 2).

Insurance Company Established a \$25 Million Reserve Fund for Anticipated Claims of Five Applicants

In October 2010, FEMA initiated a project to review all projects for five cities (applicants) with insurance through the Insurance Company.⁴ In early November 2010, the Insurance Company notified the five cities that their claims relating to the 2004 and 2005 hurricanes may be under review. At the end of December 2010, a representative of the Insurance Company reported to Florida that the Board of Trustees of the Insurance Company had:

- contacted its re-insurers to notify them of the issues;⁵ and
- approved a reserve fund of \$25 million for use in the event the Insurance Company was responsible for additional claims for the five initial cities.

FEMA Accepted the Insurance Company's Position on "Listed Properties" Despite Differing Opinions

In February 2011, an attorney representing the Insurance Company sent FEMA's Florida Recovery Office Public Assistance Infrastructure Branch Director a letter concerning potential Insurance Company's responsibilities. The letter clearly stated the Insurance Company's position that "any property damage claims pertaining to items of property not included on the members Property Schedule were not covered under the [Insurance Company's] agreements with those members."

A Florida Recovery Office official and some applicants disagreed with the Insurance Company's position. For example, the Lead Insurance Specialist believed the insurance contract was a standard contract, readily available and obtained from a provider of insurance products and services. The Lead Insurance Specialist also contended that the Insurance Company's position

⁴ The gross awards for the five initial cities totaled \$33.4 million, as of March 2014.

⁵ "Reinsurance is a transaction in which one insurance company indemnifies, for a premium, another insurance company against all or part of the loss that it may sustain under its policy or policies of insurance." *Source: Reinsurance Association of America.*



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was not consistent with industry interpretations or other cities' interpretations. For example, City of Coral Springs officials stated they obtained insurance on assets listed on the City's property schedule, and challenged the Insurance Company's position that assets not described in detail would not be covered. Despite these opposing viewpoints, the FEMA's Public Assistance Infrastructure Branch Director decided to accept the Insurance Company's position.

Rather than simply accepting the Insurance Company's position, FEMA should have asked the State Insurance Commissioner for advice. The Florida Office of Insurance Regulation "regulates the insurance industry and maintains expertise related to life and health, property and casualty, specialty lines, and other regulated insurance entities. It protects the public through oversight of insurance company solvency and market conduct performance."⁶

Florida Recovery Office Re-Evaluation of All Open Claims Did Not Result in Additional Insurance Company Payments

Subsequently, the Florida Recovery Office insurance staff re-evaluated all the open project worksheets and classified them based on the perceived level of effort to resolve the insurance issues. Representatives from FEMA, Florida, and the Insurance Company met on March 3, 2011. In April 2011, the Insurance Company issued a summary of understanding that documented a "baseline" interpretation of the insurance contract for further review and analysis of projects. However, not one applicant participated in this discussion concerning the interpretation and intent of the Insurance Company's policy. This is also highly unusual because FEMA did not participate in any of the meetings that the applicants had with the Insurance Company. Therefore, FEMA would have no knowledge of what the applicants anticipated they would have received from the insurance company if this had not been a FEMA covered disaster.

Further Progress to Resolve the Insurance Issues Did Not Occur Until 2013

Further progress towards resolution of these insurance issues appears to have stalled at this point. In our audits of Vero Beach, we questioned \$2.9 million for ineligible costs for damages covered by insurance. In its response to that audit, FEMA stated that it deobligated \$2.9 million for these costs pending additional documentation from the applicant. As of the report date, neither the

⁶ Source: Website for the Florida Office of Insurance Regulation.



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applicant nor FEMA has taken any further action. In our audit of Coral Springs, we questioned \$1.6 million for ineligible costs claimed for damages covered by insurance. In its response to that audit, FEMA used an analysis from the Insurance Company to deobligate \$525,577—about one-third of the amount we questioned in the audit. FEMA has not responded to our requests to explain the differences.

In November 2013, Florida provided FEMA documentation that the insurance company paid six applicants a total of \$4.5 million. The \$4.5 million included payments for Coral Springs and Vero Beach totaling only \$2.2 million. However, we questioned almost \$4.5 million in the three audit reports for these two cities (see footnote 1). Despite our requests, neither FEMA nor Florida attempted to reconcile these payments to (1) the scopes of work, (2) the insurance policies, or (3) the findings in our audit reports.

Status of the Insurance Company's \$25 Million Reserve Fund

FEMA has taken no significant actions to address and correct these insurance problems. For example, despite the Insurance Company establishing the \$25 million reserve fund, FEMA has not actively pursued the resolution of these insurance settlements or applied appropriate deductions to project worksheets to avoid any duplication of benefits.

In response to our inquiries about the status of the \$25 million reserve fund, the Insurance Company told us that it eliminated the fund because it no longer expects FEMA to deobligate any of the grant funds. The Insurance Company added that, if FEMA officials had identified specific project worksheets, it would examine them on a case-by-case basis, but currently it was not actively assigning resources to project worksheets for examination. The Insurance Company also clarified that the re-insurance partners were foreign and domestic partners and were no longer actively involved with (the Insurance Company) on these project worksheets.

Finding B: FEMA Insurance Specialists Improperly Waived the Obtain and Maintain Insurance Requirement

FEMA's insurance specialists routinely waived the requirement to obtain and maintain insurance, even though they did not have the authority to take such action. This occurred because FEMA's Florida Recovery Office did not detect and correct this deficiency. As a result, FEMA potentially stands to lose up to a



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billion dollars in future Florida disasters because many Florida communities may not have adequate insurance coverage for future disasters such as those that occurred in 2004 and 2005. As table 4 shows, 32 of the 78 projects we reviewed included an insurance requirement waiver comment. The FEMA approved gross value of the projects with the waiver comments totaled \$41,519,255, or 62.9 percent of the gross award amount of \$66,022,261 FEMA estimated for the 78 projects (see scope paragraph on page 2).⁷

Table 4 - Project Worksheets with Insurance Requirement Waived

Applicant	Disaster Number	# of Projects Selected for Review	Gross Project Amounts for Selected Projects	Projects with Insurance Rqmt Waived	Gross Value of Damages with Waiver Comment
Everglades City	1609	8	\$ 3,902,431	3	\$ 912,476
Fort Pierce	1545	7	34,284,701	6	33,219,622
Islamorada	1609	6	5,263,038	3	553,924
Marathon	1609	3	2,171,668	1	82,600
Monroe County	1609	5	682,689	2	250,147
Pembroke Pines	1609	19	10,619,759	3	1,748,124
Plantation	1609	15	4,522,237	8	1,532,688
Vero Beach	1545	5	610,145	0	0
Wellington	1609	10	3,965,593	6	3,219,674
Totals		78	\$66,022,261	32	\$41,519,255

Source: DHS OIG prepared with information obtained from the FEMA Florida Recovery Office, FEMA Region IV Office, and FEMA's NEMIS.

Federal regulations at 44 CFR 206.253(b)(1) require that, as a condition of receiving public assistance for a facility, an applicant must obtain and maintain insurance to cover that facility for the hazard that caused the damage. Such coverage must, at a minimum, be in the amount of the estimated eligible project costs for that structure before any reduction. FEMA guidance directs that an applicant is exempt from this requirement (the obtain-and-maintain requirement) for:

- projects where the eligible damage is less than \$5,000; or

⁷ We used the gross award amounts to show the effect of the waivers because Federal regulations require applicants to obtain insurance coverage for the eligible damages (before reductions for insurance).



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- facilities for which, in the determination of the State Insurance Commissioner, insurance is not reasonably available.

FEMA guidance 9580.3 (August 23, 2000), Public Assistance Program Fact Sheet, *Insurance Considerations for Applicants*, explains the process for an insurance waiver: “If the State Insurance Commissioner certifies that the type and extent of insurance is not reasonably available, the Regional Director may waive the requirement in conformity with the certification.” Consequently, FEMA insurance specialists do not have the authority to waive the insurance requirement without being instructed to do so by the FEMA Regional Director. We asked FEMA officials why the insurance specialists would take these actions. FEMA did not provide an explanation for why the insurance specialists were initiating these waivers.

As stated, FEMA insurance specialists waived insurance requirements for 62.9 percent of the \$66,022,261 gross awards for the 78 projects we reviewed. We cannot statistically project this percentage to Florida’s future disasters because we did not randomly select the projects or applicants. However, given the high failure rate for the selected projects, FEMA has little assurance that its insurance specialists required applicants to obtain and maintain insurance for a significant portion of the \$1.5 billion awarded for permanent work from the \$4.4 billion in awards FEMA approved for the seven 2004 and 2005 Florida hurricanes (see table 2). Permanent work, such as the repair, replacement, or restoration of disaster-damaged facilities, is the most likely type of work to be insurable. Without auditing all of the projects that make up the \$1.5 billion in permanent work awards, we cannot determine the amount of the gross awards before insurance reductions. However, the high noncompliance rate demonstrates that FEMA needs to conduct additional work to determine the extent to which its insurance specialists improperly waived the insurance requirements.

Conclusion

FEMA awarded \$4.4 billion of Public Assistance funding to the State of Florida during the 2004 and 2005 hurricane seasons. To ensure that payments are properly supported, and free from fraud, waste, and abuse, FEMA should have policies and procedures in place that provide reasonable assurance that all



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processes are operating as designed. FEMA's insurance review is only one step in the Public Assistance process. However, it is a crucial step.

Clearly, FEMA's insurance review process failed to achieve the intended objectives for the 2004 and 2005 Florida hurricanes. FEMA insurance specialists' work was not reliable, and FEMA may have paid up to \$177.2 million that insurance policies covered. To correct this condition, FEMA needs to review all the project worksheets associated with the applicants insured through the Insurance Company to identify the maximum insurance benefits available and to ensure that duplication of benefits did not occur.

FEMA also needs to take steps to address the requirement to obtain and maintain insurance for future disasters. This is a requirement to receive FEMA disaster assistance and reduces the risk that the Federal Government, and ultimately the American taxpayer, will have to pay for similar damages a second time because of a future disaster. By waiving the insurance requirement, FEMA's insurance specialists have created a potential liability for the applicants and Florida, and possibly for the Federal government in the event of a significant future disaster. To correct this condition, FEMA needs to identify the gross eligible project costs for each project to determine the insurance requirement. Following this, FEMA needs to direct Florida to confirm that each applicant has obtained and maintained the required amount of insurance or obtained an insurance waiver in accordance with regulations and FEMA policies.

Finally, due to the nature of FEMA's disaster recovery response, some of the insurance specialists who worked on the disasters in Florida transitioned to other disasters, including Hurricane Sandy. FEMA needs to take steps to prevent similar problems from occurring on Hurricane Sandy and future disasters. While this report does not make recommendations for more recent disasters, we will discuss the implication of this issue with FEMA Headquarters Response and Recovery officials.



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Recommendations

We recommend that the Regional Administrator, FEMA Region IV:

Recommendation 1: Conduct a full, detailed insurance review of all projects (large and small) associated with applicants that have insurance with the Insurance Company to determine the correct amount of available insurance benefits that the applicants received or should have received for the projects FEMA approved.

Recommendation 2: Recover all additional insurance amounts (potentially up to \$177.2 million) identified in the review in recommendation 1 for the 154 applicants that carried insurance with the Insurance Company because these costs represent duplicate benefits if insurance covered them.

Recommendation 3: Work with Florida, as grantee, the applicants, the State Insurance Commissioner, and the Insurance Company to ensure that all applicants that carried insurance with the Insurance Company receive or have received the maximum insurance benefits available under their policies for the projects FEMA approved, and adjust obligations according to the results of these efforts.

Recommendation 4: Determine the final gross eligible project costs for each project and in turn rewrite the project worksheets to identify the correct amount of insurance that each applicant (who had insurance with the Insurance Company) must obtain and maintain as a condition of receiving disaster assistance.

Recommendation 5: To avoid potentially up to a billion dollars in future costs, direct Florida to review all applicants who received Federal disaster assistance because of Presidential Disaster Declarations in Florida in 2004 and 2005, and determine whether they either obtained and maintained the required insurance or obtained an insurance waiver from the State Insurance Commissioner.



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Discussion with Management and Audit Follow-up

We discussed the results of our audit with FEMA during our audit. We provided a draft report in advance to FEMA and Florida officials and discussed it at exit conferences with FEMA officials on August 26, 2014, and with Florida officials on September 16, 2014. FEMA chose to withhold comments until after we issue the report. Florida officials expressed concerns with the benefit of Recommendation 3.

Within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include the contact information for responsible parties and any other supporting documentation necessary to inform us about the status of the recommendations. Please email a signed pdf copy of all responses and closeout request to OIGEMOFollowup@oig.dhs.gov. Until we receive and evaluate your response, we will consider the recommendations open and unresolved.

Major contributors to this report are Kaye McTighe, Director; Trudi Powell, Audit Manager; John McPhail, Supervisory Program Analyst; and Carlos Aviles, Senior Auditor.

Please call me with any questions, or your staff may contact Kaye McTighe, Director, National Capital Regional Office, Office of Emergency Management Oversight, at (202) 254-4100.



Appendix A

Objective, Scope and Methodology

We conducted this performance audit pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

The objectives of the audit were to determine whether (1) FEMA's insurance reviews in Florida were adequate to ensure that duplication of benefits did not occur, and (2) Insurance Company settlement payments to Florida subgrantees that received public assistance funding for property damage during the 2004 and 2005 hurricane seasons were appropriate and in accordance with the subgrantees' insurance policies.

The scope of this audit included all applicants who maintained insurance with a specific insurance company during the 2004 and 2005 hurricane seasons in Florida (see page 2 for additional information on our audit scope).

We interviewed FEMA and Florida officials; reviewed judgmentally selected project worksheets (generally based on dollar value); and performed other procedures considered necessary to accomplish our objective. We did not assess the adequacy of FEMA's internal controls applicable to insurance reviews because it was not necessary to accomplish our audit objectives. We did, however, gain an understanding of the process the insurance specialists followed in completing the insurance reviews.



Appendix B

Additional Background Information

Under the authority of the *Stafford Act* and its implementing regulations, FEMA provides aid to states and communities to recover from presidentially declared disasters as quickly as possible.⁸ The primary mechanism that FEMA uses to deliver this aid is the Public Assistance Program.

The Public Assistance Program

The mission of FEMA's Public Assistance Grant Program is to provide assistance to state, tribal, and local governments, and certain types of private nonprofit organizations so that communities can quickly respond to and recover from major disasters or emergencies the President declares. Through the Public Assistance Program, FEMA provides supplemental Federal disaster assistance for debris removal, emergency protective measures, and permanent work. Permanent work is the most likely type of work to be insurable and includes the repair, replacement, or restoration of disaster-damaged facilities. Federal legislation and regulations encourage states and local governments to obtain insurance to supplement or replace Federal assistance. Regulations also require that an applicant seeking a Public Assistance grant to repair a damaged facility commit to obtain and maintain insurance to protect against future damage, in the amount of the eligible damage that the applicant incurred as a result of the disaster. Applicants that fail to obtain and maintain insurance are not eligible to receive disaster assistance.

Prior DHS OIG Audits of Florida Applicants Revealed Problems with Insurance

Three of our previous audits of two separate applicants revealed potential problems with FEMA's insurance reviews. The Insurance Company provided insurance to both applicants.

We performed two audits of the City of Vero Beach, Florida—one on the \$10.1 million award it received for Hurricane Jeanne and another on the \$9.6 million award it received for Hurricane Frances (see footnote 1). Both audit reports revealed that Vero Beach claimed losses that its insurance policy

⁸ *Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act)*, 42 U.S.C. 5121, et seq.



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should have covered—\$762,012 for Hurricane Jeanne and \$2,141,652 for Hurricane Frances. At the time of the audits, FEMA had not completed insurance reviews to determine insured losses because the City did not have statements of loss to identify disaster damages.

The City also did not have an adequate accounting of insurance proceeds it received or paid directly to contractors performing disaster work. According to City officials, the insurance carrier had been unresponsive since 2005 to many requests for schedules of insurance settlement.

The third audit was of the City of Coral Springs, Florida's \$24.7 million award for Hurricane Wilma (see footnote 1). Similar to Vero Beach, Coral Springs claimed \$1,573,592 for losses that its insurance policy should have covered. At the time of the audit, FEMA had not completed an insurance review to determine insured losses because the City did not have a final settlement of claims from its insurance carrier.



Appendix C

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Office of Inspector General, Mail Stop 0305
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RECOVERY POLICY

- I. **TITLE:** *Public Assistance Policy on Insurance*
- II. **DATE OF ISSUANCE:** June 29, 2015
- III. **PURPOSE:** This policy guides decision making and interprets statutes and regulations related to insurance requirements under FEMA's Public Assistance program.
- IV. **SCOPE AND EXTERNAL AUDIENCE:** This policy applies to major disasters declared on or after the date of publication of this policy. The policy is intended for personnel administering the Public Assistance program, as well as Public Assistance applicants.
- V. **AUTHORITY:** Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Section 102, **Definitions**, Section 311, **Insurance**, Section 312, **Duplication of Benefits**, Section 406, **Repair, Restoration, and Replacement of Damaged Facilities**, Section 422, **Simplified Procedure**, and Section 428, **Public Assistance Program Alternative Procedures**; 42 U.S.C. §§ 5154, 5155, 5172, 5189, and 5189f, respectively; Flood Disaster Protection Act of 1973, Section 102, **Flood Insurance Purchase and Compliance Requirements and Escrow Accounts**, and Section 202, **Nonparticipation in Flood Insurance Program**, 42 U.S.C. §§ 4012a and 4106, respectively, and 44 C.F.R. § 206.250, **General**, § 206.251, **Definitions**, § 206.252, **Insurance Requirements for Facilities Damaged by Flood**, § 206.253, **Insurance Requirements for Facilities Damaged by Disasters Other Than Flood**.
- VI. **DEFINITIONS:**
 - A. **Applicant:** A State agency, local government, tribal government, or eligible private nonprofit organization that submits an application for assistance. In this guidance, FEMA also applies the term "applicant" to "recipient" or "subrecipient," which is the entity receiving assistance. (See 44 C.F.R. §§ 206.201(a) and (o) and 2 C.F.R. §200.93.)
 - B. **Blanket Policy:** A single insurance policy that provides multiple types of coverage and/or covers multiple properties.
 - C. **Building:** A walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. (See 44 C.F.R. § 206.251(b).)
 - D. **Contents:** Generally, portable property located within a building. Contents may include items that are otherwise defined as "equipment and furnishings" or "library books and publications." (See 44 C.F.R. §§ 206.226(h) and (i); and 2 C.F.R. §§ 200.313 and 314. See also definition of "contents coverage" in 44 C.F.R. § 59.1 related to National Flood Insurance Program.)
 - E. **Coverage:** The amount of risk or liability covered by insurance.
 - F. **Deductible:** A type of retained risk whereby the policyholder assumes the risk for a specified amount and the insurer deducts this amount from the loss before it pays up to the policy limit. Generally, either a specified dollar amount or a percentage of the insured amount.

- G. **Equipment:** Tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. (See 2 C.F.R. § 200.33.)
- H. **Facility:** Any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature, (44 C.F.R. § 206.201(c)), and used synonymously in this policy with "property."
- I. **Hazard:** For the purpose of this policy, FEMA uses the term "hazard" as a synonym for peril, meaning the cause of the loss.
- J. **Insurance:** Risk transfer from the insured to an insurer, where the insured agrees to pay a premium to the insurer, and in return the insurer agrees to reimburse the insured for covered losses to a property or properties if the losses are caused by designated hazards or perils. Insurance may also generally refer to this system of risk transfer.
- K. **Insurance Pools:** Two or more entities which agree to share their risks under a contractual agreement. A pool is not under the control of a single pool member and is governed by a board or similar organizational entity comprised of participating members.
- L. **National Flood Insurance Program (NFIP):** The program of flood insurance coverage and floodplain management administered under the National Flood Insurance Act of 1968, as amended, and applicable Federal regulations promulgated in 44 C.F.R., Subchapter B (Parts 50-149).
- M. **Policy Limit:** The maximum amount provided for a type of loss under an insurance policy.
- N. **Recipient:** The recipient is the government to which FEMA awards a grant. The recipient is accountable for the use of funds provided. Generally, the recipient refers to the government of the State where the President declares a major disaster. However, the term may also refer to an Indian Tribal government when the Chief Executive requests the declaration or when it chooses to act as recipient. The recipient is also considered a "pass-through entity" if it provides subawards to applicants. (2 C.F.R. §§ 200.74 and 200.86, and 44 C.F.R. § 206.201(e).)
- O. **Self-Insurance Plan:** A formal means to manage risk through dedicated self-funding rather than through commercially available insurance. FEMA distinguishes a self-insurance plan from non-insurance, "rainy-day funds," or other forms of risk retention through evidence of fixed contributions and a formalized plan or system to pay losses as they occur.
- P. **Self-Insured Retention:** A type of retained risk whereby the policyholder retains an amount of loss before an additional layer (or layers) of coverage become available. With a self-insured retention, the insured retains responsibility for paying covered claims up to a set threshold. Upon meeting the threshold, the insurer offering the additional layer(s) (i.e., the excess insurer) assumes liability. FEMA does not consider self-insured retentions to constitute self-insurance plans.
- Q. **Special Flood Hazard Area (SFHA):** An area identified by FEMA as having special flood, mudflow, or flood-related erosion hazards. (See 44 C.F.R. § 59.1.)
- R. **Standard Flood Insurance Policy (SFIP):** The flood insurance policy issued by the Federal Insurance Administrator or an insurer pursuant to an arrangement with the Federal Insurance Administrator pursuant to Federal statutes and regulations. (See 44 C.F.R. § 59.1.)

- S. **State Insurance Commissioner:** A state official designated with regulating and overseeing the business of insurance within their state. May also be referred to by another title.
- T. **Temporary Facility:** A facility that houses an essential community service while the facility where the essential service is normally performed is repaired, restored, or replaced.
- U. **Vehicle:** For the purpose of this policy, FEMA uses the term "vehicle" to mean a mechanized device used for carrying passengers, goods, or equipment.

VII. POLICY:

PART 1: Insurance Requirements Relating to Repair, Restoration, and Replacement of Damaged Facilities (Section 311 of the Stafford Act)

- A. **The Requirement to Obtain and Maintain Insurance.** When FEMA provides an applicant assistance for permanent work to replace, restore, repair, reconstruct, or construct a facility, the applicant must insure that facility against future loss.¹ FEMA refers to this as the requirement to "obtain and maintain" insurance, or, the "insurance requirement."
 - 1. By law, applicants must comply with this requirement as a condition of FEMA assistance.²
 - 2. FEMA applies this requirement to buildings, contents, equipment, and vehicles.
 - 3. FEMA does not require applicants to obtain and maintain insurance for temporary facilities.
- B. **Types and Extent of Insurance Required.** The Stafford Act requires that applicants insure facilities and their contents with the "types and extent" of insurance that is reasonably available, adequate, and necessary to protect against future loss to the property.³ Types refers to the hazard(s) that caused the disaster-related damage and extent refers to the amount of insurance required.⁴
 - 1. FEMA will calculate the amount of insurance the applicant is required to obtain and maintain using estimated or actual eligible costs prior to any reductions (for example, reductions by insurance proceeds or based on a previous insurance requirement) and including both the Federal and non-Federal cost share.
 - a. If FEMA provides assistance that covers costs related to replacing, restoring, repairing, reconstructing, or constructing items that are not buildings, contents, equipment, and vehicles, FEMA will subtract costs related to these items from the amount of required insurance.

¹ 42 U.S.C. § 5154; 44 C.F.R. §§ 206.251(a), 206.252(d), and 206.253(b)(1).

² 42 U.S.C. § 5154; 44 C.F.R. §§ 206.251(a), 206.252(d), and 206.253(b)(1). Assistance is any form of Federal grant under sections 406, 422, and 428 of the Stafford Act to replace, restore, repair, reconstruct, or construct a facility and/or its contents as a result of a major disaster.

³ 42 U.S.C. § 5154.

⁴ 42 U.S.C. § 5154(a); 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

- b. FEMA does not require applicants to obtain and maintain insurance when the eligible costs (prior to reductions) provided to replace, restore, repair, reconstruct, or construct an insurable facility are less than \$5,000.⁵
 2. Applicants must insure against future losses from the hazard(s) that caused the damage to the property.⁶
 - a. When multiple hazards cause damage to a property, the applicant must insure against each hazard in an amount based on the damage caused by each hazard.
 - b. FEMA requires insurance against the hazard(s) that caused the damage, even if that means the applicant must purchase additional or broader coverage. For example, if wind caused the damage to the property, the FEMA-required wind coverage may in some circumstances be available only if the applicant obtains an all-risk policy.
 - c. If an applicant relocates a facility outside of a Special Flood Hazard Area (SFHA), FEMA may not require the applicant to obtain and maintain flood insurance (depending on the risk), but will require an all-hazards or other appropriate policy to protect against future loss.⁷
 3. Prior to project approval, FEMA will notify applicants of their initial insurance requirement(s) and identify the types and extent of insurance the applicant is required to obtain and maintain.
 4. The type and extent of insurance required may be modified based on the provisions of Sections D or E of this Part.
- C. **Complying with the Insurance Requirement.** Applicants may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket policies; standard flood insurance policies; insurance pools; or a combination of these sources. In some cases, and with FEMA approval, applicants may comply with the insurance requirement using a self-insurance plan.
 1. **Retained Risk:** Applicants will usually retain some reasonable amount of risk, for example through a deductible or self-insured retention, because generally no insurer will accept 100 percent risk transfer. FEMA does not prescribe a reasonable amount of retained risk.
 2. **Self-Insurance:** An applicant may request using a self-insurance plan to comply with the insurance requirement. The request must be made in writing to FEMA through the recipient, and include a self-insurance plan for FEMA's approval at the time the applicant accepts assistance or subsequently as described in this policy (see Section VII, Part 1(F)).⁸

⁵ 44 C.F.R. §§ 206.252(d) and 206.253(d)

⁶ 42 U.S.C. § 5154(a); 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

⁷ FEMA will reduce assistance for the facility in the SFHA pursuant to Section 406(d)(1) of the Stafford Act, as appropriate. See Section VII, Part 2(B) of this policy.

⁸ 42 U.S.C. § 5154(c).

- a. The applicant's self-insurance plan must be deemed acceptable by FEMA in order to comply with the insurance requirement. The applicant's self-insurance plan should specify:
 - i. The authority for developing, implementing, and enforcing the plan;
 - ii. The financial arrangement used to fund the plan and pay for losses, which includes a system for fixed contributions and a formalized plan to pay losses as they occur;
 - iii. How funds will be distributed;
 - iv. The hazards/perils covered;
 - v. Commercial property insurance and/ or reinsurance, including blanket policies; standard flood insurance policies; insurance pools; or a combination of these sources that provide additional coverage; and
 - vi. An inventory of property covered by the plan, which includes the location of individual properties and an estimate of the current replacement costs of the properties.
- b. For properties located in an SFHA:
 - i. For the purposes of complying with the requirements of Section 311 of the Stafford Act and this policy, FEMA will only consider approving a self-insurance plan for any property located in an SFHA once the applicant has otherwise met the flood insurance purchase requirements of the National Flood Insurance Act.
 - ii. Only the Federal Insurance Administrator has the authority to approve self-insurance plans to meet the statutory requirement to purchase flood insurance up to the maximum limit of coverage provided by the NFIP for State-owned structures and their contents in an SFHA.
 - iii. Determinations from the Federal Insurance Administrator that a State's plan of self-insurance exempts it from the flood insurance purchase requirement of the National Flood Insurance Act do not constitute approval of a self-insurance plan:
 - 1) For any other hazard; or
 - 2) That meets the requirements of Section 311 of the Stafford Act and this policy.
3. As part of its grant approval procedures, FEMA will determine whether an applicant's insurance coverage complies with the requirement.

D. Modifying the Insurance Requirement. An applicant may request that FEMA modify the insurance requirement if the applicant attempts to comply with the requirement and believes that the required insurance is not reasonably available; an alternative to the insurance requirement provides adequate protection against future loss to the property; or the required insurance is not necessary to protect against future losses to the property.

1. The applicant should submit its written request to modify the insurance requirement to FEMA through the recipient. The request should include supporting documentation.
2. In its supporting documentation, the applicant should identify and provide relevant evidence, such as:

- a. Whether insurance coverage for the hazard or category of property exists, the conditions under which insurers offer coverage, or whether like-situated parties have substantially similar coverage;
 - b. Whether the applicant can obtain the amount of insurance coverage, and if not, why (for example, if the amount of insurance FEMA requires exceeds the value of the property);
 - c. The likelihood of repetitive damage;
 - d. Whether hazard mitigation measures reduce future risk to the property⁹;
 - e. Information describing the alternative to insurance and an explanation as to why it provides adequate protection against future loss;
 - f. The affordability of the types and extent of insurance, including the amount of retained risk required as part of available insurance policies, and the cost of insurance in relation to the applicant's operating budget; and
 - g. The possibility of renewing an existing insurance policy.
3. In its request, the applicant should also specify the types and extent of insurance it suggests are reasonably available, adequate, and necessary to protect against future loss, based on the supporting documentation provided.
 4. FEMA will consider the request provided by the applicant and work with the applicant and recipient to determine whether it is appropriate to modify the insurance requirement.
- E. State Insurance Commissioner Certifications.** FEMA will not require greater types and amounts of insurance than are certified as reasonably available, adequate, or necessary by the appropriate State insurance commissioner.¹⁰ The State insurance commissioner cannot waive Federal insurance requirements, but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.¹¹
1. In a certification, a State insurance commissioner should identify the facility or facilities that the certification applies to and certify the types and extent of insurance reasonable to protect against future loss to the property or properties.
 2. The certification should include supporting information regarding the availability, adequacy, and necessity of insurance such as:
 - a. Insurance market conditions, including market competition and the relative size of voluntary and residual markets within the State and declared area;
 - b. Reasonable risk management practices based on the applicant's function, size, and operating budget; and

⁹ 44 C.F.R. § 206.253(d).

¹⁰ When the applicant is a Indian Tribal government, the State insurance commissioner should consult with the Indian Tribal government representative designated to regulate and oversee insurance within their jurisdiction, if such a position exists.

¹¹ 42 U.S.C. § 5154(a)(2); 44 C.F.R. §§ 206.252(d) and 206.253(c).

- c. Additional information related to the hazard(s) and class(es) of property for which the applicant must obtain insurance, the extent of policy limits for each insured property, and related premium costs.
 3. FEMA will not accept a State insurance commissioner certification that purports to certify that flood insurance—up to the maximum amount of coverage available through an SFIP—is not reasonably available for properties insurable under the NFIP.
 4. FEMA will use the type and amount of insurance certified as reasonably available, adequate, or necessary by the State insurance commissioner to modify the applicant's insurance requirement.
 5. A State insurance commissioner certification regarding an applicant's property only applies to the current declared event. FEMA does not consider prior certifications when establishing insurance requirements in a subsequent disaster.
- F. **Timeframes for Obtaining Insurance.** FEMA will only approve assistance under the condition that an applicant obtains and maintains the required insurance.¹²
 1. The applicant must document its commitment to comply with the insurance requirement with proof of insurance.
 2. If an applicant cannot insure a facility prior to grant approval (for example, if a building is being reconstructed), the applicant may provide a letter of commitment stating that they agree to the insurance requirement and will obtain the types and extent of insurance required, followed at a later date by proof of insurance once it is obtained. In these cases, the applicant should insure the property:
 - a. When the applicant resumes use of or legal responsibility for the property (for example, per terms of construction contract or at beneficial use of the property); or
 - b. When the scope of work is complete.
 3. FEMA and the recipient will verify proof of insurance prior to grant closeout to ensure the applicant has complied with the insurance requirement.¹³
 4. An applicant should notify FEMA—in writing through the recipient—of changes to their insurance which impact their ability to satisfy the insurance requirement after it provides proof of insurance to FEMA. This includes changes related to self-insurance. If an applicant fails to do this, FEMA may de-obligate assistance and not provide assistance in a future disaster.¹⁴
- G. **Consequences of Non-Compliance (Failure to Obtain and Maintain Insurance).** If an applicant does not comply with the insurance requirement in accordance with this policy and

¹² 42 U.S.C. § 5154(a)(1); 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

¹³ 2 C.F.R. § 200.343.

¹⁴ 42 U.S.C. §§ 5154(a)(1) and (b); 2 C.F.R. § 200.338.

applicable legal authorities,¹⁵ FEMA will deny or de-obligate assistance in the current disaster and deny future assistance for that facility.¹⁶

H. Subsequent Assistance. When a facility that received assistance is damaged by the same hazard in a subsequent disaster:

1. If the applicant failed to maintain the required insurance from the previous disaster, then the facility is not eligible for assistance in any subsequent disaster (see Section G of this part).¹⁷
2. Upon proof that the applicant maintained its required insurance, FEMA will reduce assistance in the subsequent disaster by the amount of insurance required in the previous disaster regardless of:
 - a. The amount of any deductible or self-insured retention the applicant assumed (i.e., "retained risk");
 - b. The method of coverage the applicant chose in order to comply with the requirement (for example, commercial property insurance, which may include blanket policies; standard flood insurance policies; insurance pools; an approved self-insurance plan; or a combination thereof);¹⁸ or
 - c. Whether the policy provides coverage for ineligible losses also incurred as a result of the disaster (for example, business interruption).
3. If FEMA modified the applicant's insurance requirement pursuant to Sections D or E of this Part, assistance will be reduced by the modified insurance requirement.
4. If the applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster, FEMA will reduce assistance by that amount in accordance with Section VII, Part 2(A) of this policy.

PART 2: Other Insurance-Related Provisions. (Sections 312 and 406(d) of the Stafford Act)

A. Duplication of Benefits. FEMA cannot provide assistance for disaster-related losses that duplicate benefits available to an applicant from another source, including insurance.¹⁹

1. Before FEMA approves assistance for a property, an applicant must provide FEMA with information about any actual or anticipated insurance settlement or recovery it is entitled to for that property.²⁰
2. FEMA will reduce assistance to an applicant by the amount of its actual or anticipated insurance proceeds.²¹

¹⁵ See Section V, Authorities.

¹⁶ 42 U.S.C. §§ 5154(a) and (b); 44 C.F.R. §§ 206.250(a), 206.252(d), and 206.253(e) and (f).

¹⁷ 42 U.S.C. § 5154(b).

¹⁸ 42 U.S.C. §§ 5154(b) and (c); 44 C.F.R. §§ 206.250(a) and 206.253(b)(2).

¹⁹ 42 U.S.C. § 5155.

²⁰ 44 C.F.R. §§ 206.252(c) and 206.253(a).

- a. FEMA will reduce assistance by actual proceeds unless the amount is unavailable, in which case the anticipated proceeds will be used to estimate the reduction until the actual amount of insurance proceeds is determined.
 - b. FEMA will not reduce assistance for any retained risk, such as a deductible, where there is no previous insurance purchase requirement. However, as explained in Section VII, Part 1(H)(2), if the facility is damaged in a subsequent disaster, FEMA will reduce assistance in the subsequent disaster by the amount of the previous requirement, regardless of the amount of retained risk.
3. Applicants must take reasonable efforts to recover insurance proceeds that they are entitled to receive from their insurer(s).
- a. *Insolvent Insurer:* If an applicant is unable to recover insurance proceeds owed by an insurer because the insurer is found to be legally insolvent due to the disaster event, FEMA will not reduce assistance by the amount of insurance proceeds the applicant was entitled to receive from the insurer.²²
 - b. *Legal Fees:* If an applicant incurs legal fees in an effort to recover insurance proceeds from an insurer, FEMA will subtract the cost of reasonable legal fees from the insurance proceeds before reducing assistance.
4. When an applicant receives proceeds for losses that are ineligible for FEMA assistance (for example, business interruption), FEMA will calculate a relative apportionment of insurance proceeds before reducing assistance. FEMA will apportion insurance proceeds as follows:
- a. Based on the proceeds per type of loss as specified by the applicant's policy or settlement documentation;
 - b. Based on policy limits for categories of loss as specified in the applicant's policy; or
 - c. Based on the ratio of total eligible losses compared to total ineligible losses.
5. If an applicant has an insurance requirement from a previous event:
- a. FEMA will reduce assistance by the actual or anticipated insurance proceeds or the amount of insurance required in the previous disaster, whichever is greater.
 - b. FEMA will only consider insolvent insurers, legal fees, or apportionment of proceeds as described in Section VII, Part 2(A)(3) and (4) when the applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster.
 - c. If an applicant failed to obtain or maintain insurance for a facility as required in the previous disaster, that facility is not eligible for disaster assistance, as discussed in Section VII, Part 1(G) and (H)(1).

²¹ 44 C.F.R. §§ 206.250(c), 206.252(c), and 206.253(a).

²² If the insurer is found to be legally insolvent for any other reason, FEMA will make a determination regarding reductions on a case-by-case basis.

B. Properties Located within Special Flood Hazard Areas. For properties located in a Special Flood Hazard Area (SFHA), applicable law may require FEMA to reduce assistance.

1. The reduction of assistance applies to NFIP-insurable properties that meet each of the following criteria:
 - a. Located in an SFHA where FEMA has identified the area as an SFHA for more than one year;
 - b. Damaged by flooding; and
 - c. Uninsured for flood loss.²³
2. FEMA will reduce assistance by the lesser of:
 - a. The value of the property at the time of the disaster; or
 - b. The maximum amount of insurance proceeds that an SFIP would provide for a building and its contents.²⁴
3. Exception: For private nonprofit applicants in communities that do not participate in the NFIP, FEMA will not reduce assistance as described in Section VII, Part 2(B). However, in order for FEMA to approve assistance for the private nonprofit applicant, the community must agree to participate in the NFIP within six months of the declaration, or the private nonprofit must obtain and maintain flood insurance from another source.²⁵
4. For property located in an SFHA that is covered by flood insurance:
 - a. FEMA will reduce assistance by the amount of actual or anticipated insurance proceeds.²⁶
 - b. If the property is not insured through an SFIP and the amount of actual or anticipated proceeds is less than what would be provided through an SFIP, then FEMA will reduce assistance by the maximum amount of insurance proceeds that an SFIP would provide.
5. If an applicant believes that a property is not located in the identified SFHA, as indicated by the current Flood Insurance Rate Map (FIRM), the applicant may request a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to FEMA within six months of the disaster declaration.
 - a. It is the sole responsibility of an applicant to request a LOMA or LOMR if it believes that its property is not located in the identified SFHA as indicated on the current FIRM.²⁷
 - b. FEMA will not reimburse costs incurred in pursuit of a LOMA or LOMR.²⁸
 - c. FEMA will reduce assistance as described above (Section VII, Part 2(B)) until and unless the applicant obtains a LOMA or LOMR.

²³ 42 U.S.C. § 5172(d)(1).

²⁴ 42 U.S.C. § 5172(d)(2); 44 C.F.R. §§ 206.250(d) and 206.252(b).

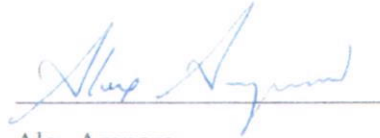
²⁵ 42 U.S.C. § 5172(d)(3); 44 C.F.R. § 206.252(b).

²⁶ 42 U.S.C. § 5155.

²⁷ 44 C.F.R. §§ 65.4, 70.3, and 70.5.

²⁸ 44 C.F.R. § 206.223.

- VIII. **RESPONSIBLE OFFICE:** Recovery Directorate, Public Assistance Division.
- IX. **SUPERSESION:** This policy supersedes all previous guidance on this subject, including Disaster Assistance Policy (DAP) 9530.1, *Retroactive Application of a Letter of Map Amendment (LOMA) or a Letter of Map Revision (LOMR) to Infrastructure Grants*, dated January 2, 2009.
- X. **REVIEW DATE:** This policy will be reviewed 3 years from the date of issuance in accordance with FEMA Directive 112-12.



Alex Amparo
Assistant Administrator
Recovery Directorate



September 8, 2016

Ms. Gracia Szczech
Regional Administrator, FEMA Region IV
3003 Chamblee Tucker Rd
Atlanta, GA 303 41

Re: Commitment to Obtain and Maintain Insurance
FEMA Disaster numbers DR-1539, 1545, 1551, 1561, 1595 1602 & 1609

Dear Ms. Szczech,

The Captiva Erosion Prevention District (District) received funding under FEMA's Public Assistance (PA) grant program for its engineered beach and beach groin damaged by one or more of the federally declared disaster(s) listed above. This letter, submitted in relation to the U.S. Department of Homeland Security (DHS) Office of the Inspector General (OIG) Audit #OIG-15-19, documents our commitment to comply with FEMA's grant requirements for insuring our building, contents and/or other subject property as those requirements apply to our property. In our case, we understand that the FEMA insurance requirements do not apply to the engineered beach and beach groins for which the District received the FEMA grant(s). Our understanding is based on Section VII of the FEMA Recovery Policy FP 206-08-1, sent to us by email on August 22, 2016 by FEMA PA-F9-REQUEST, as follows:

VII. POLICY:

A. The Requirement to Obtain and Maintain Insurance. When FEMA provides an applicant assistance for permanent work to replace, restore, repair, reconstruct, or construct a facility, the applicant must insure that facility against future loss. FEMA refers to this as the requirement to "obtain and maintain" insurance, or, the "insurance requirement.

B. Types and Extent of Insurance Required. The Stafford Act requires that applicants insure facilities and their contents with the "types and extent" of insurance that is reasonable available, adequate, and necessary to protect against future storm loss to the property. Types refers to the hazards that caused the disaster related damage and extent refers to the amount of insurance.

1. FEMA will calculate the amount of insurance the applicant is required to obtain and maintain using estimated or actual eligible costs prior to any reduction (for example reductions by insurance proceeds or based on a previous insurance requirement) and including both the Federal and non-Federal cost share.

a. If FEMA provides assistance that covers costs related to replacing, restoring, repairing, reconstructing, or constructing items that are not buildings, contents, equipment, and vehicles, FEMA will subtract the costs related to these items from the amount of required insurance.

The District property that receives FEMA grant funds does not include building, contents, equipment and vehicles, but only an engineered beach and beach groin. FEMA's assistance covers costs related to repairing, restoring, replacing, and reconstructing the engineered beach and beach groin. It thus appears that the costs related to the engineered beach and beach groin are not required to be insured. Furthermore, while the District maintains standard liability insurance through the Florida Municipal Insurance Trust, we have been advised that there is no insurance reasonable and available to insure against losses from storms to the engineered beach and beach groin. For these reasons, we believe that according to the FEMA Recovery Policy we are in compliance with the grant requirements.

Should you have a different opinion, or if you need further information, we would appreciate an opportunity to discuss our property and insurance with you. The email the District received from FEMA did not include a reference to any Project Worksheets at issue or Gross Eligible amounts though we understand that pursuant to federal regulations, the District should receive from FEMA notification of the type and amount of any insurance required as it pertains to the Project Worksheet. Please advise if there are processes applicable in this situation that should be followed to ensure that the District maintains its compliance with the FEMA requirements.

Sincerely,

Dave Jensen
Chairman
Captiva Erosion Prevention District