

# LIVINGSTON PARISH

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August 10, 2010

Mark DeBosier  
Deputy Director – Disaster Recovery Division  
Governor's Office of Homeland Security &  
Emergency Preparedness  
7667 Independence Boulevard  
Baton Rouge, LA 70806

Re: Livingston Parish Appeal

FEMA Project Worksheet #5590-0 (FEMA-1786-DR-LA)  
GV2-188 – Waterway Debris Removal  
Zero Obligated Project  
FEMA Project Worksheet #5591-0 (FEMA-1786-DR-LA)  
GV2-187 – Waterway Debris Removal Monitoring  
Zero Obligated Project  
FEMA Project Worksheet #5593-0 (FEMA-1786-DR-LA)  
GV2-186 – Waterway Debris Removal Monitoring  
Zero Obligated Project  
FEMA Project Worksheet #5594-0 (FEMA-1786-DR-LA)  
GV2-185 – Waterway Debris Removal  
Zero Obligated Project

CLERK OF COURTS  
PARISH OF LIVINGSTON

2011 FEB 24 PM 4: 15

*J. Bendix*  
DEPUTY CLERK

Dear Mr. DeBosier:

Livingston Parish, in its June 14, 2010 appeal letter, gave limited treatment to one issue that the Parish here addresses in greater depth. Livingston Parish now responds to erroneous comments that FEMA entered into EMMIE after the Project Specialist wrote the Project Worksheets at issue. According to those comments, an apparent failure by FEMA to sufficiently involve its Environmental and Historic Preservation (“EHP”) personnel in this project should preclude funding for Livingston Parish.

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**SCANNED**

**Exhibit  
17 (C)**

The Project Worksheets themselves do not mention EHP review as an eligibility issue. However, Livingston Parish has learned that, after FEMA prepared these PWs, reviewers made entries on EMMIE to the effect that the project should be ineligible because FEMA did not conduct an EHP review.<sup>1</sup>

According to FEMA's EHP reviewer, "[t]hese actions have foreclosed upon (sic) FEMA's opportunity to consult with the SHPO under Section 106 of the National Historic Preservation Act (NHPA) and FEMA's ability to evaluate and comply with the provision of the National Environmental Policy Act (NEPA)."<sup>2</sup> The comments continued: "As the work was completed prior to environmental review and submission of documentation as required and outlined in 44 CFR Part 10, this project is ineligible for FEMA assistance."<sup>3</sup>

The EHP reviewer got it wrong. NEPA review and 44 C.F.R. Part 10 do not apply to debris removal. Moreover, while FEMA may have an obligation to comply with other environmental laws, nothing Livingston Parish did "foreclosed upon" FEMA's opportunity to do anything. FEMA had ample opportunity to conduct whatever review it thought necessary. Simply put, it is not Livingston Parish's job to make sure that FEMA does its job.

Livingston Parish in its June 14, 2010 appeal letter correctly noted that the Stafford Act exempts debris removal from NEPA review.<sup>4</sup> 44 C.F.R. Part 10 contains the regulations that FEMA has adopted to comply with NEPA.<sup>5</sup> These regulations recognize that debris removal

<sup>1</sup> The comments from EMMIE for PWs 5590, 5591, 5593, and 5594 accompany this letter as Exhibits 51, 52, 53 and 54, respectively.

<sup>2</sup> See comments of Adam Borden, EHP reviewer, on each of the exhibits.  
<sup>3</sup> *Id.*

<sup>4</sup> Section 316 of the Stafford Act, 42 U.S.C. § 5159, says that "An action which is taken or assistance which is provided pursuant to section . . . 407 [which authorizes debris removal], including such assistance provided pursuant to the procedures provided for in . . . which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. §§ 4321 et seq.]. . . ."

Essentially, this means that Congress has decided that debris removal, not being a "major Federal action significantly affecting the quality of the human environment," does not require an Environmental Impact Statement. Because Congress already has decided there is no need for an Environmental Impact Statement, there also is therefore no need for an Environmental Assessment to determine the need for an Environmental Impact Statement.

<sup>5</sup> 44 C.F.R. § 10.1(a): "This part implements the Council on Environmental Quality (CEQ) regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and provides policy and procedures to enable Federal Emergency Management Agency (FEMA) officials to be informed of and take into account environmental considerations when authorizing or approving major FEMA actions that significantly affect the environment in the United States. The Council on Environmental Quality Regulations implement the procedural provisions, section 102(2), of the National Environmental Policy Act of 1969, as amended (hereinafter NEPA) (Pub. L. 91-190, 42 U.S.C. 4321 et seq. ), and Executive Order 11991, 42 FR 26967 (1977)."

carries a statutory exemption from NEPA review,<sup>6</sup> and they also provide a categorical exclusion from NEPA review for debris removal.<sup>7</sup> The “environmental review and submission of documentation as required and outlined in 44 CFR Part 10” therefore do not apply to debris removal projects.

It is true that FEMA and Livingston Parish both remained bound to comply with environmental and historical preservation laws, regardless of whether NEPA review applied.<sup>8</sup> However, no evidence exists that infractions of any such laws occurred because Livingston Parish somehow prevented FEMA reviewers from doing their jobs. FEMA had every opportunity to perform whatever review it needed, and Livingston Parish had no reason to think that FEMA needed anything else from the Parish in that regard. Most ironically, FEMA’s reviewers now complain that “the work was completed prior to environmental review,” when, back in 2008, FEMA was telling the Parish to get the work done “immediately.”<sup>9</sup> The reviewers now imply that Livingston Parish should have waited to do what FEMA back then urged the Parish to do “immediately.”

FEMA’s own training literature makes it clear that “FEMA . . . [h]as legal responsibility for the Federal environmental/historic preservation review process.”<sup>10</sup> By contrast, the applicant “[p]rovides basic environmental/historic information by answering the Special Considerations Questions,” obtains permits, obeys the law, and does what FEMA tells it to do.<sup>11</sup> According to FEMA’s training literature:

<sup>6</sup> 44 C.F.R. § 10.8(c): “*Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159: . . . (1) Action taken or assistance provided under sections 402, 403, 407, or 502 of the Stafford Act. . . .”

<sup>7</sup> 44 C.F.R. § 10.8(d)(2): “*List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in §316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE]. . . (ix) The following emergency and disaster response, recovery and hazard mitigation activities under the Stafford Act: . . . (C) Debris Removal (§407) [SE].”

<sup>8</sup> FEMA P-325, *Debris Management Guide*, July 2007, p. 7 (“It should be noted that compliance with other individual laws such as the Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, and the Clean Water Act is still required, even when a project is statutorily excluded from NEPA review.”)

<sup>9</sup> Exhibit 55, November 26, 2008 email from FEMA Debris Lead Jeffery Jones to Livingston OEP Director Brian Fairburn. (“If there exist (sic) an immediate threat of flooding caused by blockages in any of the canals by storm generated debris, removal of the debris is eligible for FEMA funding, and should be removed immediately.”)

<sup>10</sup> IS-253 Coordinating Environmental and Historic Preservation Compliance -- <http://training.fema.gov/EMITWeb/IS/is253.asp>, Module 1, Lesson 3: Recovery Programs, p. 3. A copy of this page accompanies this letter as Exhibit 6.

<sup>11</sup> *Id.*

*FEMA* has overall responsibility for oversight of the environmental/historic preservation review process. As *FEMA* is the entity that is held legally responsible for ensuring compliance with Federal historic preservation laws and many Federal environmental laws, *FEMA* cannot delegate this responsibility.<sup>12</sup>

Shortly after Hurricane Gustav, the Environmental Liaison Officer for FEMA's Louisiana Transitional Recovery Office issued to Livingston Parish and other applicants a bulletin on EHP issues.<sup>13</sup> In that bulletin, FEMA informed Livingston Parish that debris removal projects could "proceed *without* detailed review."<sup>14</sup> That, combined with the admonition from FEMA's debris lead to proceed "*immediately*," sent the message – correctly – that Livingston Parish should not wait around for FEMA EHP to do whatever it needed to do.

In fact, FEMA EHP attended the October 8, 2008 Public Assistance Kickoff meeting for Livingston Parish.<sup>15</sup> FEMA's agenda for that meeting started with and was dominated by debris removal.<sup>16</sup> If FEMA EHP intended to be more involved in the Livingston Parish debris removal effort, October 2008 was the time and the reviewers had their opportunity.

Livingston Parish has already described in great detail how, over the eight months that followed the kickoff meeting, FEMA representatives repeatedly urged Livingston Parish to proceed rapidly with waterway debris removal, personally visited and viewed clogged waterways to make eligibility pronouncements, and made sure that FEMA monitors were constantly on the project. Anywhere along the way, FEMA EHP could have done whatever it now thinks it should have done. Moreover, those at FEMA responsible for seeing to it that EHP does its job certainly had the chance to do so.

FEMA's training literature advises that it is up to FEMA's Public Assistance Coordinator (the "PAC") to work with the FEMA EHP personnel "to determine which projects require environmental and historic preservation review."<sup>17</sup> FEMA's Standard Operating Procedures advise that: "The PAC is responsible for both the initial and final review of projects and is responsible for forwarding projects requiring historic review to the EHP Specialist. The PAC

<sup>12</sup> IS-253 Coordinating Environmental and Historic Preservation Compliance -- <http://training.fema.gov/EMITWeb/IS/is253.asp>, Module 1, Lesson 6: Responsibilities, p. 2. A copy of this page accompanies this letter as Exhibit 57.

<sup>13</sup> Exhibit 58.

<sup>14</sup> *Id.*

"Some Projects proceed without detailed review

- Emergency Protective Actions and Debris Removal

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<sup>15</sup> Exhibit 59, Sign in Sheet for Kickoff meeting, erroneously dated 10/8/07, with signature by Carey Cox, EHP Lead, FEMA EHP.

<sup>16</sup> Exhibit 60.

<sup>17</sup> IS-253 Coordinating Environmental and Historic Preservation Compliance -- <http://training.fema.gov/EMITWeb/IS/is253.asp>, Module 1, Lesson 3: Recovery Programs, p. 3. A copy of this page accompanies this letter as Exhibit 56.

then ensures that the historic review process is complete and documented prior to project approval."<sup>18</sup> They go on to say that "[t]he PAC is responsible for . . . the resolution of all historic issues and ensuring their completion in a timely manner."<sup>19</sup>

FEMA assigned Delwanda Snyder to serve as PAC for Livingston Parish.<sup>20</sup> Ms. Snyder had ample opportunity to insure EHP involvement if it was needed:

- Ms. Snyder received a copy of the Livingston Parish debris removal contract on October 7, 2008.<sup>21</sup> She could have involved EHP at that time – and she probably did, given EHP's attendance at the kickoff meeting the next day.
- FEMA debris lead Jeffery Jones copied Ms. Snyder on his November 26, 2008 email urging Livingston Parish to undertake drainage cleanup "immediately."<sup>22</sup> At that point Ms. Snyder knew drainage cleanup was about to begin in earnest.
- Mr. Jones likewise copied Ms. Snyder on his January 2, 2009 email in which he admonished Livingston Parish that "*FEMA wants the parish to remove any debris in any canal or ditch that is going to prevent flooding of neighborhoods.*"<sup>23</sup> If Ms. Snyder did not know before, at this point she knew waterway debris removal was occurring.
- In February, 2009, Ms. Snyder discussed developments in the waterway debris project with Mr. Jones and noted that FEMA was working on a project worksheet to pick up the cost.<sup>24</sup> Ms. Snyder not only knew about the debris removal, she was taking steps to have it funded.
- On February 18, 2009, Ms. Snyder attended a meeting with Livingston Parish officials, FEMA's Debris Lead Jeffery Jones, representatives of the Parish's drainage cleanup monitoring firms, and debris removal contractor IED, to discuss the canal cleanup.<sup>25</sup> Ms. Snyder remained very much aware and very much involved in the project.
- Starting in February, 2009 and continuing through the end of April, 2009, the Parish monitors regularly reported to Ms. Snyder the daily totals of debris hauled from parish waterways.<sup>26</sup> For months, Ms. Snyder received regular reports on the details of this project.

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<sup>18</sup> FEMA Standard Operating Procedure 9570.9, *Historic Review*, p. 37. Exhibit 61.

<sup>19</sup> *Id.*

<sup>20</sup> Exhibit 62, Applicant Information Sheet from PW 5590. A copy accompanies this letter as

<sup>21</sup> Exhibit 63, John Shires 10/7/08 email to Delwanda Snyder and FEMA's Dwight Butler.

<sup>22</sup> Exhibit 55.

<sup>23</sup> Exhibit 64, email string including January 2, 2009 Jeffery Jones email.

<sup>24</sup> Exhibit 65, email string including February 2009 emails between Ms. Snyder and Jeffery Jones.

<sup>25</sup> Exhibit 66, February 18, 2009 Sign In Sheet.

<sup>26</sup> Exhibits 67(A), 67(B), 67(C), 67(D), 67(E), 67(F), 67(G), 67(H), 67(I), 67(J), and 67(K), John Shires emails to Delwanda Snyder transmitting daily totals of debris removed from Livingston Parish waterways.

- From March, 2009 through April 2009, Ms. Snyder was regularly included in communications with Parish monitors concerning the development of the project worksheet that was intended to pay for both roadside and drainage debris removal – the draft PW that the Parish President ultimately rejected in May, 2009.<sup>27</sup>
- Ms. Snyder handled the assignment and tasking of FEMA monitors on the drainage cleanup.<sup>28</sup>
- Ms. Snyder was apprised in May 2009 when the PWs to pay for the debris removal and the monitoring had been completed.<sup>29</sup>

For eight months, from before the work started until the Parish President shut it down, the PAC FEMA assigned to Livingston Parish followed every step that Livingston Parish took. At some point along the way, Ms. Snyder surely could have facilitated FEMA EHP review if it was needed. To conclude that *Livingston Parish* somehow “foreclosed upon FEMA’s opportunity” to conduct a review is preposterous.

The truth is, no evidence exists that anything done in the drainage cleanup implicated historical preservation considerations in any way – and no one at FEMA has suggested otherwise. It also appears that the vast majority of the work performed complied with all environmental laws. In a handful of instances, the Parish apparently should have obtained wetland permits, its monitors erroneously thinking that notification to the United States Army Corps of Engineers sufficed. Those omissions are being rectified, and they should not affect funding, even for the small amount of work they involved.

Assuming greater EHP involvement would have prevented the few environmental oversights that occurred, Livingston Parish certainly would have welcomed that involvement. However, speculation as to what EHP personnel might have contributed is pointless now. EHP review should be a non-issue with respect to these PWs. The comments added on EMMIE appear to be unjustified post-hoc rationalizations for a predetermined and incorrect decision to withhold all funding for Livingston Parish. They should be rejected.

#### CONCLUSION

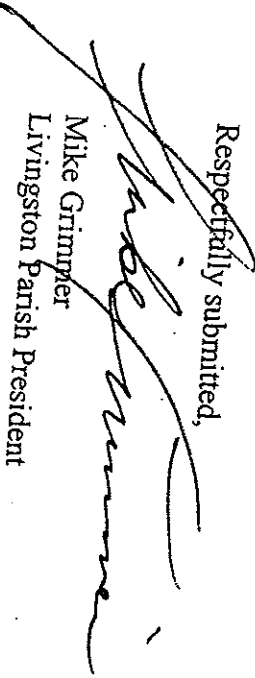
Through the initial Appeal submission, Supplement No. 1, and this Supplement No. 2, Livingston Parish has proved the eligibility of the entirety of its drainage debris removal effort, that FEMA was constantly encouraging and supporting Livingston’s efforts, and nothing done by Livingston implicated historical preservation considerations nor precluded any EHP review by FEMA – FEMA’s non-delegable duty. The public assistance appeal of Livingston Parish is due to be granted in full.

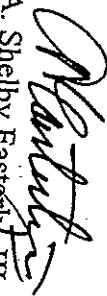
<sup>27</sup> Exhibits 68(A), 68(B), and 68 (C), email strings including March and April 2009 emails involving Parish monitoring firm representative Craig Comeaux, FEMA Project Specialist Shannon Duplessis, and Ms. Snyder, among others, concerning writing of project worksheets for drainage and roadside cleanup.

<sup>28</sup> Exhibit 69, April 18, 2009 Delwanda Snyder email to FEMA monitor Carolyn Smith concerning assignment to Livingston Parish waterway debris cleanup.

<sup>29</sup> Exhibit 70, May 11, 2009 Jeffery Jones email to Jeff Bonura, copied to Delwanda Snyder.

Respectfully submitted,

  
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