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TESTIMONY

Association of State Floodplain Managers, Inc.

before the
Senate Committee on Environment and Public Works

The Stafford Act in a Post-Katrina World

Presented by:
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State of Rhode Island

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INTRODUCTION

The Association of State Floodplain Managers is pleased to provide comments and recommendations to the Committee. This testimony is based on our experiences and observations about the functioning of the hazard mitigation planning and grant programs that are authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). We appreciate your recognition of the importance of these programs to the Nation's efforts to improve resistance to natural disasters.

The Association of State Floodplain Managers, Inc. (ASFPM), and its 24 Chapters represent over 9,000 state and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance. Many of our members work with communities impacted by hurricanes Katrina, Rita, and Wilma, or work with organizations that are assisting with the rebuilding efforts. Many of our members are designated by their governors to coordinate the National Flood Insurance Program (NFIP) and many others are involved in the administration of and participation in FEMA's mitigation programs. To learn more about the Association, please visit http://www.floods.org.

A recently released report, "Natural Hazard Mitigation Saves", was prepared in response to a Congressional request that FEMA fund an independent study to assess the future savings of various types of mitigation activities (online at http://www.nibs.org/MMC/mmcactiv5.html). The conclusions state that "a dollar spent on mitigation saves society an average of $4" and "FEMA mitigation grants are cost-effective, often leading to additional non-federally funded mitigation activities, and have the greatest benefits in communities that have institutionalized hazard mitigation programs."

In a post-Katrina world, we logically have a need to reflect on our nation's current policies and programs, make a good faith effort to determine where such policies and programs are deficient, and act on those findings. The four hurricanes in Florida in 2004 and hurricanes Dennis, Katrina, Rita and Wilma in 2005 could very well signal a trend towards increasingly violent weather episodes. Indeed, our nation's climatologists and meteorologists have indicated that we are likely in a cycle of

increased weather activity characterized by more frequent and intense storms. Unfortunately, this comes at a time in our nation's history where there has been a historic migration to our coastlines which are the most likely areas to be impacted from these changes. Before 2004, a number of major coastal storms were considered outliers – freak events of extremely low probability – including Hurricane Camille in 1969 (Mississippi) and Hurricane Andrew 1992 (Florida). However, most people today would hardly see such an event as uncommon and, in fact, many coastal communities and property owners are preparing for such major storms.

Luckily, our nation has a tremendous capability or respond to, recover from, and mitigate against these disaster events, and the Stafford Act is an important part of this system. The Congress and this Committee are at the epicenter of this discussion, with an opportunity to make policy changes that can have importance and relevance far into the future. The ASFPM is encouraged that the Committee has taken the initiative to look at the Robert T. Stafford Act and improve upon it.

Thank you for inviting us to offer ASFPM's views. As requested, this testimony addresses:

A. Whether communities and individuals are doing more to prepare for natural/other disasters, and are they implementing mitigation for the negative long term impacts of such events? Have we made progress on mitigation since the passage of DMA 2000? What changes are needed in DMA 2000 and other areas of the Stafford Act to encourage mitigation actions?
B. Stafford Act authorities and adequacy for catastrophic events such as Katrina, and for response to terrorism - related events such as the use of weapons of mass destruction, bioterrorism
C. Ten general recommendations for improvements to the Stafford Act
D. The Impact of FEMA's Reorganization on the Stafford Act Programs

A. COMMUNITY AND INDIVIDUAL PREPARATION FOR DISASTERS AND IS ENOUGH BEING DONE TO MITIGATE THE EFFECTS, ESPECIALLY AFTER PASSAGE OF THE DISASTER MITIGATION ACT OF 2000

On balance, the amendments to the Stafford Act enacted as the Disaster Mitigation Act of 2000 (DMA 2000) have had a positive effect on encouraging and supporting mitigation at both the state and local levels, although its effectiveness clearly has been impeded by the loss of FEMA's independent status and lack of focus on mitigation within the Department of Homeland Security.

It is important to realize that mitigation plans called for in the Disaster Mitigation Act of 2000 that modified the Stafford Act are not emergency response plans, they are focused on how a community incorporates hazards into its development and permitting process and on other actions that may be taken to reduce future disaster losses. All states have met the requirements of the Disaster Mitigation Act of 2000 and have adopted plans, including seven states that have developed and adopted enhanced plans (qualifying them for a larger amount of post-disaster mitigation funding). Many communities have prepared plans to meet the requirements of DMA 2000, and many are in the planning process. These plans may identify specific mitigation projects, but usually they lay out broader objectives that support identification of specific projects when funding becomes available.

FEMA has adopted regulations that require state mitigation plans to be revised every 3 years (every 5 years for local plans). Given the long-term trends in disaster expenditures (especially for damage to public infrastructure and facilities) and the merits of incorporating data about hazards into long-term plans and programs at the state level, it is appropriate that state mitigation plans explicitly address these issues.

- **The ASFPM recommends that the Committee direct that, as part of the 3-year review of state mitigation plans, states shall:**
  a. **Examine state land use, planning, zoning, and building code requirements (or lack thereof) to identify opportunities to strengthen such requirements or to adopt such requirements that are determined to be appropriate given the frequency of occurrence of hazard events and the extent and severity of the resulting damage. It**

should be explicit that some amount of grant funds made available for planning may be used by states that identify as a priority the implementation or strengthening of land use, planning, zoning, and/or building codes to reduce future losses.

b. Examine the type, nature, and severity of damages that qualify for Public Assistance in order to identify feasible approaches to reduce such losses in the future, with particular attention to costs associated with the repair of public facilities, roads and bridges, public utilities, and parks and recreational facilities.

B. STAFFORD ACT AUTHORITY FOR CATASTROPHIC EVENTS

The Stafford Act has proven to be effective for most disasters; however, additional provisions are needed to address the challenges that arise during events that far exceed state and local capacity to respond. An event may be catastrophic on a regional level – as evidenced by Hurricane Katrina – or an event may be catastrophic on a localized level – as evidenced in many decimated communities in the past 30 years. When an event causes that degree of damage, some routine government functions suffer, such as planning, permitting, and inspection and the pre-existing level of local staffing and resources is not sufficient to ensure adequate management of the rebuilding process. The consequence of this shortfall is that often citizens start repairing and rebuilding before safety inspections are conducted and building permits are issued – putting businesses and families back in harm's way. In addition, when an event causes such impacts, disaster assistance (financial and technical) throughout post-disaster recovery may be required for as long as 12 to 24 months.

FEMA/DHS has consistently denied reimbursement of costs associated with private property damage inspections and permitting, despite the Congressional finding in the Stafford Act that "because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary." The community suffers as a whole when inappropriate development occurs immediately after a disaster.

- **The ASFPM recommends that, to address FEMA's policy position, Congress should explicitly provide for reimbursement of costs incurred by communities to perform damage inspections, administration of codes and ordinances, and permitting of repairs and reconstructions when the damage to public and private property exceeds the capacity of the local agency responsible for those functions.**
- The ASFPM recommends that when an event causes catastrophic damage, whether regionally or locally, reimbursement of the costs to respond, inspect and permit should be eligible for a period of time of at least 12 months to 24 months, or necessary to guide the community's post-disaster rebuilding and recovery process.

C. NINE GENERAL RECOMMENDATIONS FOR IMPROVING THE STAFFORD ACT

C-1. Delegation of additional authority for HMGP to qualified states. FEMA has not initiated action to implement Sec. 404(c) Program Administration by States (42 U.S.C. 5170c). All states have hazard mitigation plans prepared pursuant to Sec 322; seven have instituted programmatic enhancements necessary to qualify for approval of "enhanced mitigation plans" which qualify them for additional HMGP funding. The enhanced plan states are poised to assume the additional responsibilities and authority that Congress anticipated would be delegated. Although many states are unlikely to seek delegation, especially those that experience relatively few disasters, having one or more of the more active states assume administration of HMGP would yield significant benefits, including faster processing of grant applications and awards and obligation of the program funds. Many of the communities that have very active mitigation programs are in these same states and would greatly benefit from their states assuming additional administrative responsibilities and authority. The Federal government, including FEMA, needs strong and capable state and local mitigation programs if the costs and suffering of disasters is to be reduced.

- **The ASFPM recommends report language expressing the Committee expectation that FEMA is to undertake consultation with state and local governments and implement delegation of authority for administration of the Hazard Mitigation Grant Program by a certain date.**

C-2. Demolish and rebuild as a mitigation measure. Since hazard mitigation programs have been in effect, much has been learned about what works and what does not work. New mitigation

options are continually being discovered and old mitigation ideas are constantly being evaluated for effectiveness. The Flood Insurance Reform Act of 2004 for the first time specifically cited a newer hazard mitigation option – "demolition and rebuild." This option is based on the premise that some buildings are not structurally sound enough to be raised up onto a higher foundation, and some buildings are more expensive to elevate than to rebuild. In addition, elevating older buildings generally does not result in disaster-resistant buildings because they may not meet current codes for high winds, earthquakes, snow loads, and fire resistance (or energy efficiency). Demolition and rebuild allows replacement with a building of approximately the same size and function. This mitigation measure has been tested in several states and is welcomed by communities that want to retain their neighborhoods and improve their housing stock, and by property owners (even though they often have to commit more of their own funds for this type of project). Despite the success of those projects, FEMA has declined to approve demolish and rebuild projects under the mitigation grant programs authorized by the Stafford Act (except in those communities included in disaster declarations for Hurricanes Katrina, Rita, and Wilma). This is an uneven and unjustified restriction on a successful mitigation measure.

- **The ASFPM recommends that the Committee direct FEMA to include "demolition and rebuild" (currently referred to as "mitigation reconstruction") among mitigation activities eligible under the mitigation grant programs authorized by the Stafford Act. Demolition and rebuild should be an eligible activity when it is consistent with a community's overall goals, when it encourages safe and livable housing, and when it is determined to be feasible and cost-effective.**

C-3. FEMA should formalize the "expanded planning" concept. FEMA should be directed to formalize and regularize the "expanded planning" concept now underway in Mississippi and Louisiana. Under this concept, communities with approved mitigation plans can use some of the HMGP funds that are normally set aside for planning (up to 7% of HMGP) to refine/define projects, do engineering (e.g., determine if house is sound enough to elevate), prepare Benefit: Cost Analyses, and develop mitigation project applications. Even communities that have an approved mitigation plan rarely have nicely defined projects "on the shelf", and they need support to get concepts from the "big picture" mitigation plan phase to where they're ready to submit applications.

- **The ASFPM recommends that the Committee should direct FEMA to formalize and institute its policy that allows use of certain Hazard Mitigation Grant Program funds set aside for mitigation planning to be used by states to help communities define projects, develop data, conduct analyses, determine cost effectiveness, and develop applications.**

C-4. Integrate mitigation into public assistance projects. FEMA has adopted a policy and maintains a list of pre-approved mitigation measures that can be funded under the Public Assistance Program as part of repair for public buildings and infrastructure projects. Despite the presence of this policy, States and communities consistently report that FEMA Public Assistance staff (and its disaster employees and contractors) do not always fully embrace mitigation and reduction of future damage as part of the purpose when reviewing projects that otherwise are eligible for disaster assistance, such as public buildings, infrastructure and critical facilities. FEMA should be reminded that Congress views hazard mitigation as an integral component of disaster response and recovery work that is undertaken as part of FEMA's Public Assistance programs.

- **The ASFPM recommends that the Committee express its expectation that FEMA, as a part of its public assistance program, shall ensure that its employees and contractors have the necessary guidance and training to identify, assess, formulate and approve feasible and cost effective mitigation measures for public facilities and public infrastructure.**

C-5. Minimum funding for Pre-Disaster Mitigation Technical Assistance. The Pre-Disaster Mitigation program (PDM) authorized by Sec. 203 of the Stafford Act is a (42 U.S.C. 5131 et seq.) a national competitive grants program managed by FEMA and creates a program that is subject to annual appropriations. After three years of this competition, it is abundantly evident that most of the successful applicants have received significant technical assistance to identify projects, develop benefit: cost analyses, and prepare the applications. Thus, many applicants with fewer resources, especially in states that are unable to meet the demand for technical assistance, are less likely to be competitive, despite the merits of their mitigation projects. For those states that have not received HMGP funding in over a decade, or two, PDM funding is the sole source of mitigation planning and

project money. Additionally, PDM funding allows the flexibility for states and communities to address multiple natural hazards in a single project or planning initiative.

The Stafford Act provides for a minimum allocation to each state (this provision has been overridden in previous appropriation acts which specifically precluded allocations; the House Homeland Security Appropriations bill for FY07 was amended on the House floor to strike language that waived the state-based allocations).

- **The ASFPM urges the Committee to support the provision of a minimum allocation to each state to build long-term state capability in hazard mitigation programs in order to support communities and other eligible recipients of mitigation funding. Further, the Committee should clarify that a portion of those allocations may be used to provide technical assistance for the planning, project identification, and application development for the PDM grant program.**

C-6. Continue to improve administration and delivery of HMGP. Now that many of the Nation's high risk communities have pre-disaster mitigation plans (and a list of pre-identified mitigation projects), they need to have faster access to post-disaster mitigation funding (HMGP). It is common for decisions on applications to be made more than 12 months after a declaration, which leaves communities and property owners in an uncertain environment. Especially for proposed projects that involve private property, an effective and timely program is critical to limit owner investments in repairs of properties that are scheduled for floodplain buyouts. Most states perform a significant amount of review and forward eligible applications with recommendations for funding. FEMA should not take several more months to perform much of the same work.

- **The ASFPM recommends that the Committee direct FEMA to continue to improve delivery of post-disaster mitigation programs to meet the needs and demands of states and communities that have demonstrated a commitment to mitigation by adoption of mitigation plans. It would be reasonable for the Committee to urge that FEMA strive to approve grant applications within 90 days of receipt.**

C-7. Communities that refuse to participate in the National Flood Insurance Program should not be eligible for Public Assistance under the Stafford Act. Currently, if a community

with an identified flood hazard does not participate in the NFIP and thus declines to manage development in areas of known flood risk, its citizens cannot purchase flood insurance and they are ineligible for certain individual disaster assistance. Ironically, the community leaders who make the decision to not participate in the NFIP can still apply for and receive certain public assistance even on facilities that are located in floodplains (other than public buildings). This is not good public policy – it rewards communities that allow at-risk development because they know FEMA will bail them out (with taxpayer funds). And it penalizes communities that do the right thing because they help pay for those who do nothing.

- **The ASFPM recommends that the Committee clarify that all public assistance for any damaged public buildings and infrastructure located in FEMA-mapped special flood hazard areas is to be withheld from communities that have declined to participate in the National Flood Insurance Program.**

C-8. Restore HMGP to 15% as a mitigation incentive. The demand for post-disaster mitigation funding always exceeds the available funding. Now that more communities have developed pre-disaster mitigation plans and as the success of mitigation measures throughout the country is highlighted, that demand will only increase. Restoring HMGP to the 15% formula (replacing the current 7.5%) would significant enhance reduction of future damage at times when communities and property owners are most aware of the benefits – after a damaging event.

- **The ASFPM recommends that the formula for HMGP be restored to 15%.**

C-9. Authority to increase federal contribution for hazard mitigation projects. Under Section 404 (42 U.S.C. 5170c), the federal share of hazard mitigation projects is limited to 75 percent. Under the Public Assistance there are circumstances when the magnitude of a major disaster is so significant that the federal contribution to repair and recover can be increased to 90 percent. It is appropriate that the same flexibility be authorized for the Hazard Mitigation Grant Program.

- **The ASFPM recommends that the Committee provide that when the cost-share for Public Assistance is changed, the same change shall apply to HMGP.**

D. THE IMPACT OF FEMA'S REORGANIZATION ON THE STAFFORD ACT PROGRAMS

Prior to being reorganized and incorporated into the Department of Homeland Security in 2003, FEMA was a lean organization. Since the mid-90s it had responded to both natural and man-made events in an effective manner. In fact, the "new" FEMA – as part of DHS – is untested in the area of man-made disasters such as a terrorism event. Why was the agency that effectively handled the Murrah Building bombing in Oklahoma City, the World Trade Center attack in New York City, and innumerable natural disasters quickly reorganized? Also between the mid-90s and 2003, FEMA had built excellent relationships with states and communities; was able to quickly respond to disasters and decide on policy matters regarding its programs; had a true multi-hazard focus; and had developed a successful track record to accomplish its mission.

The ASFPM was concerned from the beginning that the inclusion of FEMA into DHS would not bode well for the progress the nation has made in reducing our risk to natural hazards. Unfortunately, there has been mounting evidence that our concerns have been realized. FEMA has gone from a small, independent agency with direct access to the President to just one among many entities in a huge organization. The nation has gone from "mitigation" being the cornerstone of disaster programs to having the word (and concept) nearly excised from the emergency management lexicon. Even though assurances were made that legacy missions of organizations would continue, terrorism was and is the primary focus of DHS (which ASFPM agrees is the appropriate mission for DHS). State and local emergency managers, especially those in areas prone to recurring natural hazards, are lamenting the "loss" of FEMA and are increasingly vocal about the need to restore FEMA to its previous state.

The following have been and continue to be specific concerns: transfer of specifically-authorized FEMA and NFIP funds to support other DHS functions; detailing FEMA staff out of that directorate; not filling vacant positions throughout FEMA, including senior leadership positions; and extensive delays in FEMA policy decisions and guidance due to an added layer of DHS bureaucracy. In 2004, the ASFPM Board of Directors passed a resolution that FEMA should be taken out of DHS and reinstated as an independent agency.

- **ASFPM urges the Committee to work to restore FEMA as an independent agency with direct access to the President. Barring that, the Committee should (1) Monitor FEMA/DHS to ensure that Disaster Relief Funds and NFIP funds are not spent inappropriately; and (2) Empower FEMA to have enough independence to carry out programs effectively and efficiently.**

CONCLUSION

The ASFPM has been a long-time supporter of FEMA's hazard mitigation programs and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Today, we once again stand at a crossroads – in the aftermath of a catastrophic disaster with an opportunity to refine the nation's policies for managing disasters of any magnitude. Thank you for the opportunity to provide our thoughts on these important issues. The ASFPM and its members look forward to working with you as we move towards a common goal of reducing the impacts from natural disasters.

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