

The DeKalb County Commission met in regular session on Tuesday, May 24, 2011 at 10:00 a.m. in the DeKalb County Activities Building (Courthouse Annex). Those present were Ricky Harcrow, President, Jerome Tinker (newly elected District I Commissioner), Ed Nix, Chris Kuykendall and Dewitt Jackson. Those absent were none.

The meeting was called to order by President Harcrow with Commissioner Jackson delivering the invocation and Jimmy Wright leading the Pledge.

It was moved by Mr. Jackson, seconded by Mr. Nix, all members voting affirmatively, motion carrying to dispense with the reading of the minutes and to accept them as presented in written format.

EMA Director Mike Leath requested the Commission to amend the last Emergency Declaration to extend the declaration to Friday, May 20, 2011.

It was moved by Mr. Jackson, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to amend the Declaration of Emergency Resolution as follows:

THE DeKALB COUNTY COMMISSION		
COMMISSION MEMBERS	RICKY HARCROW, PRESIDENT	COMMISSION MEMBERS
VACANT DISTRICT I	MATT G. SHARP, ADMINISTRATOR SUITE 200 111 GRAND AVE. S.W. FORT PAYNE, AL 35967 256-845-8500 PHONE 256-845-8502 FAX	CHRIS KUYKENDALL DISTRICT III
ED NIX DISTRICT II		DEWITT JACKSON DISTRICT IV

**EXECUTIVE ORDER FOR
DECLARATION OF A LOCAL STATE OF EMERGENCY
RESOLUTION NO. 11-0524-01
AMENDMENT to 11-0512-01**

WHEREAS, the entire State of Alabama was impacted by at least 425 Tornadoes between April 25-28, 2011, 249 Tornadoes on April 27 alone causing 250 fatalities statewide, including 33 in DeKalb County; and

WHEREAS, DeKalb County was severely impacted by at least three Tornadoes, the first an EF2 Tornado that impacted the Grove Oak community near Bucks Pocket State Park and up the DeKalb/Jackson County line; the 2nd an EF4 Tornado that impacted the Cartersville/Shiloh Communities in the northern part of DeKalb County, causing multiple fatalities; then finally another EF4 Tornado that impacted the Lakeview, Fyffe, Rainsville, Sylvania, Highpoint, Henagar, Ider, Cartersville and Shiloh Communities causing multiple fatalities; and

WHEREAS, at some points on April 27 through the following weekend, power outage across the Tennessee Valley effected over 650,000 homes and caused damage in DeKalb County to approximately 956 homes and 154 mobile homes, including total destruction of 303 homes and 78 mobile homes; further causing damage to 46 businesses, 37 churches, 504 barns/outbuildings and 59 Chicken Houses; and

WHEREAS, the local government has the responsibility to protect the public health, safety and welfare, and to mitigate the effects of such events, does hereby resolve in this recessed session on this 12th Day of May, 2011, to authorize Commission President Ricky Harcrow to sign said Resolution:

NOW THEREFORE, I Ricky Harcrow, Commission President by the authority vested in me do hereby declare that a local State of Emergency exists in DeKalb County, Alabama as of April 27, 2011 through Friday, May 20, 2011, and direct that:

- 1) The Local Emergency Operations Plan, as approved shall be fully executed to direct all local disaster and emergency response forces and operations in DeKalb County, Alabama;
- 2) The Emergency Management (EMA) Director under authorities provided in the local Emergency Operations Plan, and local orders or ordinances, shall take immediate action to protect public safety and direct the provision of such assistance as can be delivered from available local resources and shall coordinate the response of all local agencies that provide assistance in DeKalb County, Alabama.
- 3) All agencies in DeKalb County, Alabama shall cooperate to the fullest extent with the EMA Director, and shall provide such assistance as may be requested or required for response to this emergency.
- 4) Under this State of Emergency, the County Commission President can waive procedures and formalities otherwise required by the law pertaining to: a) performance of public work; b) entering into contracts; c) incurring obligations; d) employment of permanent and temporary workers; e) utilization of volunteer workers; f) rental of equipment; g) purchase and distribution of supplies, materials and facilities; h) appropriations and expenditure of public funds; and i) the demolition and removal of damaged public and private structures.

IT IS ALSO RESOLVED to amend the Emergency Declaration (Resolution No. 11-0512-01) to extend the emergency declaration period through Friday, May 20, 2011 to be in the best interest of the citizens of DeKalb County.

Mr. Leath then discussed a new Program by the Governor and FEMA called "Operation Clean Sweep" which would authorize the USACE, Contractors or the County (by Force Account) to enter onto private property to cleanup debris around the "dwelling" of homes. Mr. Harcrow read the following document from the Alabama Attorney General's Office:



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

May 12, 2011

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Mr. Mike Byrne
Federal Coordinating Officer/
Disaster Recovery Manager
FEMA-1971-DR-AL
417 20th Street North
Birmingham, Alabama 35203

Re: FEMA Assistance in Emergency Debris Removal from Private
and Public Property

Dear Mr. Byrne:

This Office has been asked by the Alabama Emergency Management Agency ("AEMA") to provide a letter that details the legal basis through which the Governor, the municipalities, or the counties may authorize emergency debris removal from private property without the need to obtain a condemnation order from a court or the property owner's permission.

On or about April 15, 2011, through April 28, 2011, severe storms, hail, straight-line winds, flooding, and tornadoes deposited a tremendous amount of debris on public and private property in certain areas of the State of Alabama ("Disaster"). The State of Alabama Health Officer has issued a Declaration of Public Health Nuisance declaring tornado-generated debris to be an immediate threat to the public's health and safety, a copy of which is attached hereto. In addition, I understand that the immediate removal of the debris from public and private property is necessary to provide space for temporary housing to be provided to the citizens affected by the Disaster.

The AEMA has missioned the U.S. Army Corps of Engineers ("USACE"), through the Federal Emergency Management Agency ("FEMA"), to remove debris in the State following the Disaster. After the mission assignment, certain local jurisdictions forwarded letters to AEMA requesting that the USACE perform debris operations in their jurisdictions. The issue is whether the Governor and/or local officials may authorize USACE and its contractors to perform emergency debris removal from private property without the need to first obtain a condemnation order from a court or a right of entry from the property owner.

Mr. Mike Byrne
Page 2

In a previous opinion, this Office stated that a municipality has the power to authorize the removal of debris from its jurisdiction without obtaining the consent of the private property owner if conditions constitute a health or safety hazard. Opinion to Honorable William B. Parrett, Council Member, City of Sylacauga, dated September 10, 1979, A. G. No. 79-00285. That opinion relied on section 11-47-117 of the Code of Alabama, which empowers "cities [or towns] . . . to prevent injur[ies] or annoyances from anything dangerous or offensive or unwholesome and to cause all nuisances to be abated . . ." ALA. CODE § 11-47-117 (2008).

Counties have similar authority to abate health and safety hazards pursuant to section 11-3A-2 of the Code of Alabama. ALA. CODE § 11-3A-2 (2008). This Office has also determined that cities have the authority to expend public funds for debris removal from private property following a hurricane if the governing body determines that a public purpose is served by that work. Opinion to Honorable Frank P. ("Skippy") White, Member, House of Representatives, dated December 13, 2004, A.G. No. 2005-029. Counties have similar authority to make a determination that a public purpose is served by such work. Opinion to Honorable Larry Bennich, Chairman, Morgan County Commission, dated October 23, 2003, A. G. No. 2004-012.

Section 31-9-3 of the Code of Alabama defines "emergency management" as "[t]he preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, *minimize, and repair injury and damage* resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, earthquake, or other natural cause." ALA. CODE § 31-9-3 (1998) (emphasis added).

Furthermore, section 31-9-13 provides as follows:

All orders, rules and regulations promulgated by the Governor as authorized by this chapter shall have the full force and effect of law when a copy thereof is filed in the office of the Secretary of State. All existing laws, ordinances, rules and regulations or parts thereof inconsistent with the provisions of this chapter or of any order, rule or regulation issued under the authority of this chapter, shall be suspended during the period of time and to the extent that such inconsistency exists.

ALA. Code § 31-9-13 (1998). Based upon these provisions, the Governor could, in the alternative, issue a proclamation declaring the public health emergency

and authorizing the USACE or its contractors to enter private property to remove debris to eliminate the threat to public health and safety.

Based on the above, if the city, town, or county approves the removal of debris on private property to eliminate a health and safety hazard, such as in the present case, it can be removed by the USACE or its contractors without obtaining the private property owner's permission. Local officials should be cautious in the use of such power and take steps to document the condition of the property before removal (such as pictures or video tape).

Sincerely,

LUTHER STRANGE
Attorney General
By:

Mr. Leath said the FEMA Regulations talk about public interest and eliminating immediate threats for life, public health and safety or to eliminate immediate threats of significant damage to improve public or private property. The key word being "improved". That being around the defined living area of a residence and to insure economic recovery of the affected community to the benefit to the community at large. This is not going to be a wide spread deal. It is going to take a lot of documentation and work to even get this thing started, but once started it might benefit some but it's not going to be a big benefit to the entire storm track and that's the big thing everyone has to remember. It's just in specified areas.

Mr. Jackson asked how long it would take. Mr. Leath said it would take 3-4 days to get the authorization ready to begin the first step. Then it will be placed in the tracking system, along with any municipalities that want to participate. Several more steps will need to be taken before actual clean up starts. If an applicant is denied, there are steps that can be made to request that those grids be added into the system.

Mr. Kuykendall said he thought there was the potential for a great deal of confusion. Mr. Leath said FEMA was drafting medial releases to try to further explain what the criteria is.

Mr. Nix asked if EMA would be making the decision on who would be cleaned up? Mr. Leath said FEMA would be making that determination. He said FEMA would be going out to inspect each of these places.

Mr. Nix stated that he felt like there will be a great deal of misunderstanding. They need something to explain to the public. Mr. Leath said the basic purpose of Operation Clean Sweep (which is a lot different than the normal debris cleanup) is because of the potential of unsafe buildings being left, uninhabitable buildings or structures being left and things and it has grown outside of that to include other types of debris also.

It was moved by Mr. Kuykendall, seconded by Mr. Nix, all members voting affirmatively, motion carrying to pass the following resolution to proceed with Operation Clean Sweep:

RESOLUTION AUTHORIZING OPERATION CLEAN SWEEP

COMES NOW the County Commission of DeKalb County, Alabama, in its regularly scheduled meeting on the 24th day of May, 2011, does adopt the following resolution authorizing Operation Clean Sweep. The County Commission of DeKalb County, Alabama finds as follows:

WHEREAS, certain areas of DeKalb County, Alabama, on both public and private property, sustained severe damage during a tornado outbreak and episodes of straight-line winds on April 27, 2011; and

WHEREAS, as a result of the said storm damage, many residential structures have been badly damaged and tremendous amounts of vegetative, construction and demolition debris has been deposited on county rights of way and on private property; and

WHEREAS, in many instances, the debris: 1) contains dead animals and animals acting as vectors of disease, and/or 2) is causing buildings, yards, premises or places to become menaces to the public health, and/or 3) contains unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, appliances, and/or 4) contains unwholesome, decayed and/or infected meat, fish, fruits, or other foods, medicines, drugs, chemicals or substances which are likely to become a menace to the public health; and

WHEREAS, to the extent that such debris remains on private property for an extended period of time, it constitutes a threat to the public health and safety, prevents adequate economic recovery and is preventing the immediate placement of temporary housing for displaced disaster survivors; and

WHEREAS, counties have the authority and responsibility, pursuant to section 11-3A-2 of the Code of Alabama, to abate health and safety hazards; and

WHEREAS, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Grant, as amended, the President of the United States has directed the U.S. Army Corps of Engineers ("USACE") to work with local governments to remove such debris in "Operation Clean Sweep"; and

WHEREAS, Operation Clean Sweep authorizes targeted Direct Federal Assistance for the debris removal at a 90% Federal cost share and will require the expenditure of local funds for the 10% local cost share; and

WHEREAS, Operation Clean Sweep is only available in areas designated by the National Geospatial-Intelligence Agency as having extensive or catastrophic damage; and

WHEREAS, the County Commission of DeKalb County, Alabama desires to request that the Federal Coordinating Officer authorize Operation Clean Sweep in those certain areas with DeKalb County, Alabama designated by the National Geospatial-Intelligence Agency as having extensive or catastrophic damage.

NOW THEREFORE, the County Commission of DeKalb County, Alabama, does hereby declare that it is in the public interest of the citizens of DeKalb County, Alabama at large to authorize Operation Clean Sweep and to expend public funds to have debris removed from certain qualified private property in those certain areas within DeKalb County, Alabama designated by the National Geospatial-Intelligence Agency as having extensive or catastrophic damage in Operation Clean Sweep. To this end, we, the County Commission of DeKalb County, Alabama, do hereby ratify, authorize and direct the following:

1. The expenditure of County funds for the 10% cost share is authorized.
 2. The Chairman, the County Administrator and/or their designated representatives are authorized to execute any and all written request to the Federal Coordinating Officer as required by Operation Clean Sweep and to fully comply with the requirements, specifically including but in no way limited to the indemnification requirement, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, codified at 42 U.S.C § 5173, et seq.
 3. The County Engineer and/or his designated representative shall determine, for structures that are heavily damaged and/or have been deemed to be a complete loss by the property owner and an insurance adjustor/FEMA representative, what of the structure is debris that qualifies for removal under Operation Clean Sweep.
 4. The County Engineer and/or his designated representative, with the assistance of the County Attorney and/or USACE, shall obtain fully executed and specific Rights of Entry from the property owner of the property where the USACE will engage in debris removal.
- IN WITNESS WHEREOF, We have hereunto set my/our hand this 24th day of May, in the year two thousand eleven.

County Revenue Commissioner Martha Ogle addressed the Commission requested that she and one employee be authorized to attend the Tax Administrator's Conference in July.

It was moved by Mr. Nix, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to authorize travel for the Tax Administrator's Conference in July.

County Road Superintendent Tom Broyles gave the following maintenance update:

- 1) Potholes: Continuing to patch potholes.
- 2) Mowing: All crews are mowing
- 3) Herbicide: Crews are still spraying on good weather days.
- 4) Shop: Restoration on the Shop should start in the next 2 weeks. Crews are putting a new roof on part of the building and they have prepared a new place to store signs.
- 5) Bridge: Bridge Projects will get started as soon as the water level goes down a bit more.

Chief Deputy Michael Edmondson notified the Commission that Kevin Woodall had previously been promoted to Deputy; however, he hadn't yet passed the physical agility test at the police academy. He has now passed that test, so Chief Edmondson asked that his paygrade be moved up to Deputy pay.

It was moved by Mr. Nix, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to authorize pay raise for Deputy Kevin Woodall to G8/1.

County Attorney Charles Mauney requested that the Commission enter into Executive Session regarding pending litigation which the County is involved in.

It was moved by Mr. Nix, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to move into Executive Session. Time – 10:30 a.m.

President Harcrow called the meeting back to order following the Executive Session. Time – 11:00 a.m.

President Harcrow stated that the Commission would recess until next Tuesday morning at 9:00 a.m. and will take the pending litigation at that time.

It was moved by Mr. Nix to recess until 9:00 a.m. Tuesday, May 31, 2011, without objection, so ordered.

The DeKalb County Commission met as scheduled after recessing on Tuesday, May 31, 2011 at 9:00 a.m. in the DeKalb County Activities Building (Courthouse Annex). Those present were Ricky Harcrow, President, Jerome Tinker, Ed Nix, Chris Kuykendall and Dewitt Jackson. Those absent were none.

The meeting was called to order by President Harcrow.

Mr. Harcrow noted that Allied Waste was purchasing Advanced Disposal and the contract has been deliberated by the Attorneys. Mr. Mauney stated that Allen Dodd, Eric Brisendine, Joe Salamone and associates were at the meeting this morning. Mr. Mauney stated that the current agreement with Advanced is now null and void and a new contract with Allied at their previous bid price of \$13.05 would need to be entered into. This agreement also contains the 500 free exemptions as included in the Advance Disposal bid.

Mr. Mauney stated that it was imperative to sign this agreement today because Advanced Disposal would no longer be in operation on June 1, 2011.

Mr. Harcrow read the following resolution:

Effective June 1, 2011 and provided that Advanced has provided written notice to the County on or before 11:59 Central Daylight time on May 31, 2011 that it will withdraw its proposal and the County will award Solid Waste Collection and Disposal contract to it, Allied Waste Disposal or (Allied) shall be awarded the DeKalb County Residential and Solid Waste and Collection Disposal Contract under the terms of Allied's bid dated April 22, 2010. Pursuant to that bid, the monthly rate per household for collection and disposal of residential garbage will be \$13.05. Allied will pick up the first 500 exempt households at no charge to those exempt households or the County. This award is made pursuant to Alabama Code Section 411657 (1975) and shall be memorialized by written contract entered into by and between DeKalb County and Allied. The award contemplated under the County request for bids was a period of three years beginning July 1, 2010 and ending June 30, 2013. This award shall be made for the remainder of the award period under DeKalb County's original request to bid for the period beginning from the date of this award until June 30, 2013. The Commission further resolves that the Chairman of the Commission shall have the authority to enter into any such contracts on behalf of the DeKalb County Commission.

It was moved by Mr. Nix, seconded by Mr. Tinker, all members voting affirmatively, motion carrying to authorize the contract with Allied Waste Disposal.

It was moved by Mr. Jackson to adjourn, without objection, so ordered.