



HEAD STRONG

A collaborative effort between the Town of Hilton Head Island and its many community associations—put to the test during Hurricane Matthew in 2016—should serve as a master class in disaster preparedness everywhere.

BY JENNIFER A. LOHEAC, ESQ.

WHEN HURRICANE MATTHEW slammed into Hilton Head, S.C., in October 2016, it downed thousands of trees, flooded hundreds of homes, and created 8-foot high barriers of debris everywhere, making access throughout the island exceedingly difficult.

“Besides the fallen trees and flooding, there were hundreds of homes with food rotting in the refrigerators because electricity had been down for several days, and there was no trash service. To deal with the rotting food, we called a waste management company for 40-yard, rollup dumpsters and must have had 50 or 60 pulls,” says T. Peter Kristian, CMCA, LSM, PCAM, general manager of Hilton Head Plantation Property Owners Association and a CAI past president.

Indigo Run Community Owners Association had a number of water and sewer breaks that couldn’t be fully repaired, which presented a health hazard.

“I had to scramble to secure trailers to address kitchens and bathroom facilities

for approximately 40 percent of the homes in my community. (The homes) weren’t ready to be occupied when people began returning,” explains Chip Munday, CMCA, AMS, PCAM, general manager of the 1,000-home community.

Matthew caused roughly \$62 million in damages on the island, which spans about 69 square miles and consists of several large-scale, gated communities. By and large, the immediate concern for all Hilton Head communities was the overwhelming task of moving hundreds of millions of cubic yards of debris so emergency and utility repair vehicles could gain access. Debris removal throughout the island totaled \$40 million, of which \$28 million was attributed to private roads.

Debris removal is often the first step in the immediate aftermath of natural disasters, and Hilton Head’s success collaborating with the local municipality to get the work done may serve as a guide to community associations across the country.



NO RELIEF

In most cases, community associations are on their own organizing and funding debris removal. The Federal Emergency Management Agency, which is responsible for helping individuals and local governments recover from natural disasters, will not offer relief to private, residential communities. Due to archaic law, or at least FEMA's interpretation of it, the agency regards private communities as commercial entities and refuses to reimburse associations for the cost of debris removal or for repairs to critical infrastructure.

"It has been disheartening to see FEMA's disparate treatment of community associations in times of natural disasters, especially because the enabling law, the Stafford Act, can be interpreted to allow relief to associations," says Ron Perl, a partner with the New Jersey-based Hill Wallack law firm, chair of CAI's Federal Legislative Action Committee, a CAI past president, and a fellow in CAI's College of Community Association Lawyers (CCAL).

J. David Ramsey, a partner with Becker & Poliakoff in Morristown, N.J., a CAI past president, and a CCAL fellow, emphasizes that the residents of community associations pay the same municipal taxes as do those who live outside of associations. Those taxes are substantial in many states.

"It's outrageous that these taxpayers are denied help from their own governments in natural disasters," says Ramsey, also a member of CAI's federal committee.

All too often, FEMA pushes community associations to seek relief elsewhere, such as through a Small Business Administration loan. Yet the SBA routinely declines to lend to communities, citing that they aren't "small businesses" or already have loans that make them a less desirable loan applicant.

Scott Canady, principal of Tambala Strategy and CAI's federal lobbyist, has been battling these unfair practices on behalf of community associations for years.

"Association board members sometimes find the truth of the matter unbelievable. No one wants to believe their federal government will actually refuse help in a time of disaster," he says. "CAI has documented case after case where community association disaster assistance requests have been denied by FEMA. The debris removal trucks of the local municipality literally drive right by a community association."

But something very different—special, even—has occurred on Hilton Head.

When Hurricane Matthew struck, the municipality and the island's large-scale communities mobilized, executing an emergency and recovery plan that had been years in the making and practiced by the island's leaders during annual emergency drills.

That joint effort makes for a perfect case study of community association storm preparedness.

COLLABORATIVE STEPS

Nearly two decades ago, several municipal and community association leaders on the island joined together to form the Hilton Head Recovery Task Force.

"With so much of Hilton Head made up of planned-unit developments, we knew we needed large-scale managers on a commission to work with the municipality, in the event of disaster, to organize everything from utility and road repair to insurance matters," says Charles Cousins, the town's disaster recovery manager.

Kristian is grateful for Hilton Head's active town council and mayor. "Because nearly 70 percent of property on Hilton Head Island is behind gates, the town council realized that they needed to assist all stakeholders if we were going to bring the economy back 'online' in a timely matter," he says.

That economy is tied closely to tourism. People flock to the area for its beaches, golf courses, PGA golf tournaments, and more.

Common Ground+

» Read more about Hilton Head Island's emergency operations protocols at www.caionline.org/cg.

The task force formed agreements with Hilton Head community associations for disaster preparedness and crafted a detailed recovery plan. The group's efforts were in response to FEMA's stance that it wouldn't reimburse private communities directly. To work around that position, the municipality has to fund the entire obligation of cleanup and repair. FEMA also requires a municipal ordinance that such an obligation for storm cleanup exists.

In the spring of 2010, after years of collaboration, the Hilton Head council took that step, passing an ordinance to grant the town broad authority to enter into private communities and offer relief in the event of emergency. Among other terms, the ordinance covers access and debris removal from public and private roads, storm drainage easements, and ingress/egress for emergency vehicles.

INDIVIDUAL AGREEMENTS

The municipality also created agreements with each of the community associations that expressly state an intention to "maintain a high level of pre-disaster readiness."

The agreements acknowledge the need to re-establish downed public and private transportation networks following a disaster, to engage in "significant debris removal and disposal, and to restore emergency vehicle and utility access." This advance agreement gives the town automatic authority to enter private properties to help clear roads and abate emergencies. The agreements do not cover private amenities, such as private golf courses and pools.

Cousins explains that FEMA requires three things: some kind of indemnification; proof that the community owned their roads; and finally, information that private insurance would not cover areas in need of disaster relief.

Kristian adds that to satisfy FEMA's conditions, each community was required to provide the town a deed for their roads, a copy of any insurance policy that covered the roadways for such a disaster, and to sign an affidavit indemnifying the town and FEMA.

"Putting these packets together was intensive, and we did a lot of the legwork

in advance of Hurricane Matthew," says Cousins.

That step is critical, especially since FEMA's two plans for debris removal and reimbursement are time-sensitive.

Under one plan, the agency will reimburse 85 percent of debris cleanup but only if the submission is approved within the first 30 days after the storm. After six weeks, the reimbursement drops to 80 percent. Within 90 days, the number is 75 percent. Once 180 days passes, FEMA won't reimburse anything and will never grant an extension.

For the second plan, FEMA offers a flat 75 percent reimbursement if work is accomplished within 180 days and will routinely grant extensions. How quickly a municipality is reimbursed depends on when applications are submitted. Pushing debris out of the way and picking it up are FEMA's first priorities; the town is required to exhaust other avenues first for stormwater cleanup, such as a Department of Agriculture grant.

BRIDGING THE DISCONNECT

Even though Hilton Head was able to successfully pass the ordinance and create FEMA-compliant agreements and packets in advance, some details were better handled independently by the town and the community associations.

"Part of the problem is the disconnect with the process combined with time restraints," says Cousins. "Towns must wait for the assessment by a FEMA case manager to be eligible for any relief at all."

With disasters all over the country, case managers can be slow to respond or routinely substituted with a new manager who needs to be brought up to speed all over again, explains Cousins. "This is all going against the timed sliding scale that determines reimbursements."

Recovery efforts were delayed after Matthew because the town's debris management program needed to be reviewed and approved by state environmental and health officials.

"Our dump site happens to be prehistoric, and we discovered only later that we never had the original archeological approval," says Kristian, explaining that the town lost several weeks while archeologists looked for artifacts. "It felt absurd to be waiting on this in the midst of a disaster."

Another problem is that FEMA will only reimburse municipalities for areas for which they are responsible. Clearing the marshes, for example, is the state's responsibility, but where the state fails to respond, that responsibility falls to the county.

"To the tune of millions of dollars, the county began picking up the debris along the marshes, but due to ongoing arguments with the state, it lost 100 of their 180 days and didn't meet the deadline for reimbursement. FEMA denied an extension," says Cousins.

Meanwhile, Hilton Head Plantation just couldn't wait to get FEMA approval to clear streets after Matthew because it would have taken at least 10 days. Instead, the association was able to clear debris to the sides along 73 miles of roadway for approximately \$40-50,000, which was a



lot less expensive than FEMA's estimates, explains Kristian.

"If we hadn't acted quickly to open our roads, utility companies couldn't have repaired all broken electrical, sewer, or water lines. Fire, rescue, and police



DISASTER EQUITY

CAI's Federal Legislative Action Committee has been advocating for legislative changes to how FEMA treats community associations during natural disasters.

Just this past September, CAI blanketed several dozen congressional offices to seek co-sponsors of the proposed Disaster Equity Act of 2017 (HR 3238). If passed into law, community associations would be eligible for federal assistance following a presidentially declared disaster; the legislation also would remove onerous requirements to authorize disaster recovery work in the immediate wake of disaster.

➤ [Read more about CAI's advocacy efforts on the Disaster Equity Act of 2017 \(HR 3238\) on p. 46.](#)

wouldn't have had access to mitigate emergencies at individual homes," says Kristian "People would have been displaced for far longer.

"We performed the work much more efficiently and timely, and yet we were declined reimbursement for our efforts."

EMERGENCY PROTOCOLS

The Hilton Head Recovery Task Force also urged each community association to craft its own set of hurricane procedures tailored to its unique needs. Each community adheres to the procedures every hurricane season—June 1 to Nov. 30.

Hilton Head Plantation's procedures identify a hurricane coordinator, who is responsible for naming a backup, confirming all key contacts, calling a meeting of all individuals involved in hurricane preparedness and recovery, taking inventory supply, and checking that all satellite phones, laptops, and other equipment are operational. The manual lists the supplies that must be stocked in "hurricane lockers," including water, batteries, rain gear, extra satellite phones, oars, and plywood. The community even stores shotguns with ammunition for the protection of property and facilities, if necessary.

The manual also identifies evacuating hotels, an established debris storage location, and a pre-planned organization of toll-free numbers for resident re-entry after evacuation. During Hurricane Matthew, Kristian's association had emergency credit lines arranged and a team of "storm professionals" on-site before the storm hit to take action immediately.

But it's an additional collaboration

with the town that made Hilton Head Plantation's recovery even better.

Kristian negotiated a mutual-aid agreement with Hilton Head's fire and rescue department for fuel. The community can hold 5,000 gallons of diesel and 8,000 gallons of gas in underground tanks. Before a storm, the association makes sure the tanks are full.

"During Hurricane Matthew, the fire department fueled all of their equipment at Hilton Head Plantation just before people evacuated, and they refueled again when they were allowed to re-enter the island," he says.

Since the fuel tanks are located in the community's service center complex, that meant a path was cleared early to the association offices, security building, and maintenance yard. "The town reimbursed us for every drop of fuel," Kristian says.

Munday, the Indigo Run manager, also recounts that the municipal team had an organized communication system in place. Not only were emergency personnel in constant contact with the island's governmental officials, but they also were providing regular updates for displaced owners through websites, email, and social media.

LASTING LESSONS

The Town of Hilton Head has received checks from FEMA, to date, for approximately \$20 million for cleanup and repairs after Hurricane Matthew and is still in negotiations for more. By all accounts, Hilton Head is expecting to be reimbursed for at least 75 percent of the total costs. The town will cover whatever FEMA doesn't.

Kristian estimates that Hilton Head Plantation saved approximately \$16-18 million from the collaboration.

The island's community association managers recently reconvened to discuss the efforts during and after Matthew. The group discussed:

- Replacing downed pine trees with trees that are more native to the island and can better withstand harsh winds and rains
- Urging each community to secure their own contractors who would be ready to act as soon as re-entry to the island is authorized

- Implementing a more regular maintenance schedule of drainage ditches that collect roots, branches, or leaves so basins have a greater capacity when a storm hits
- Transferring all community association databases to cloud-based systems for ongoing access to email and other communications when the power is out

Munday also is hopeful that the Hilton Head Recovery Task Force can go beyond offering generalized updates during a storm to refine communications with individual owners who are displaced.

"The problems we encountered were that residents were granted permissions by local law enforcement to return to their homes before we were ready, with nearly 40 percent of homes still without water and sewer functions," he says. "It would have been good for individual owners to know of their particular status prior to returning to the island."

Cousins stresses the need for a much larger emergency fund in the future. Before Matthew, which came ashore as a "weaker" storm, the town had approximately \$25 million saved for recovery efforts. It borrowed another \$10 million.

"I can't imagine the costs associated with a Category 4 or 5 hurricane," he says. **CG**

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