Statement of

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Transportation and Infrastructure Committee
Subcommittee on Economic Development, Public Buildings, and Emergency Management

Legislative Fixes for Lingering Problems that Hinder Katrina Recovery

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Chairwoman Norton, Ranking Member Graves, and Members of the Subcommittee,

Thank you for conducting this hearing and for agreeing to draft legislation to resolve the remaining problems with FEMA and the Stafford Act that are hindering the recovery from Hurricane Katrina.

More than 20 months after Katrina, there are obvious signs of recovery on the Mississippi Coast, but we still have a long way to go. Many of the homes that were damaged, but not destroyed, have been repaired. Those that have to be completely rebuilt are coming along more slowly, but every week when I go home, I see a few more houses being rebuilt. Next week, the Mississippi Department of Transportation will open two lanes of the new bridge across St. Louis Bay, reconnecting Bay St. Louis with Pass Christian.

Unfortunately, there is one gaping hole in the recovery in Mississippi. During the time that MDOT and the contractor, Granite Archer Western, built a two-mile, high-rise bridge across the bay, not one significant city, county, or school building has been rebuilt. A few public facilities have been repaired, but none of the major public buildings that were destroyed have been replaced.

If you ask the mayors, the county supervisors or the school superintendents about the status of their projects, they all give the same answer, "We are still in negotiations with FEMA." At this rate, the schools and local government buildings will be last things built in Mississippi. When I see a new construction project anywhere on the Mississippi Coast, it is a safe bet that it is not a public assistance project involving FEMA.

We are finishing our second school year with many schools in temporary classrooms. The Hancock County Emergency 911 system is still operating in a trailer. There are hundreds of Project Worksheets in Mississippi that are indefinitely delayed by a never-ending process of objections, revisions, and disputes. FEMA is supposed to pay 90 percent of the cost to rebuild these facilities, but FEMA narrows the scope to exclude many costs that are necessary to comply with building codes and standards.

My first and most urgent request is for Congress to mandate a fast track procedure and direct FEMA to get these public infrastructure projects approved, paid for, and built. We need to require FEMA to apply a common-sense or reasonableness test to these projects.

I will give you a couple of examples from the Bay St. Louis – Waveland School District. At North Bay Elementary School, FEMA says it will not pay any of the cost of relocating the temporary classrooms to clear the site to construct the new school. Also, FEMA says the new building cannot be larger than the old building. But the classrooms in the old school opened to outdoor walkways. That design does not meet today's security

requirements. The new building should have an interior hallway, but that would add square footage to the building that FEMA will not approve.

At Waveland Elementary, FEMA has ruled that the center section is more than 50 percent damaged, but the wings on either side are less than 50 percent damaged. That means that the school district is required to rebuild the middle section three or four feet off the ground, but repair the two wings at ground level.

These are the kinds of projects that desperately need intervention to apply a common-sense standard so that the buildings can be rebuilt to current codes and standards.

The current system has a strong bias toward rebuilding the same facility that was destroyed. In some cases, alternate projects would be reasonable or even desirable, but are discouraged because they will receive less funding. Under current law, a local government loses 25 percent of its FEMA funds if it decides to build a new structure rather than repairing the damaged structure.

Second Street Elementary in Bay St. Louis is an old, historic building that suffered storm damage. FEMA says it will cover new flooring, but not new electrical wiring. If the district repairs the school to modern code and standards, they would have $5 million to $7 million in costs that FEMA says it will not cover. The school district would rather consolidate the elementary schools by building additional classrooms at North Bay Elementary, but they would lose 25% of the FEMA funds for Second Street if they do so.

FEMA should be encouraging cities and counties that lost several buildings to consider projects to consolidate those facilities. This is especially true in areas where FEMA is requiring the new construction to be built to higher elevations and stronger building standards.

I recommend a change in the Stafford Act so that there is no reduction in funding for alternate projects. FEMA should consider alternate projects on their merits, rather than looking for loopholes in order to reject them. We have the chance to rebuild public facilities according to stronger building codes and disaster mitigation standards if FEMA will allow to us to take advantage the opportunity.

My third request is for language to direct FEMA to apply a "reasonableness" standard to the dozens of disputed project worksheets for reimbursement for debris removal. The main problem in many of these cases is that local governments, school districts, and public utilities took decisive actions in the immediate aftermath of the storm while FEMA was still nowhere to be found. After the fact, FEMA challenged their contracts for not complying with notice and bid rules.

The Stafford Act allows emergency contracting procedures for 72 hours, but then requires local governments to follow its bid requirements. The 72-hour requirement should have been waived a long time ago. In Hancock County, we had no communication, no electricity, no gasoline, and no leadership from FEMA for several weeks.

All of the public utilities did a phenomenal job and saved FEMA millions of dollars by making it possible for people to return to their homes. Electric cooperative hired contractors to remove trees and other debris from their rights-of-way so that the power crews could come behind them restoring service.

FEMA has denied reimbursement for some of the contracts. FEMA wants all debris removal to be paid by the cubic yard, but the utilities paid by time and equipment. FEMA's rules would have made the job more expensive and would have taken longer to restore utility service.

I suggest language stating that FEMA cannot disallow a contract by a public utility during the emergency period solely for failure to comply with FEMA's bid requirements. For public utilities, the emergency period should be defined to extend until utility service has been restored to the service area. FEMA should then reimburse reasonable charges on the time-and-equipment contracts.

School districts have similar debris removal disputes. Dr. Kim Stasny, the Bay-Waveland School Superintendent, immediately hired contractors to remove debris from the schools and then made sure that they did so quickly and efficiently.

FEMA still has not fully reimbursed the district for that debris removal because it did not follow FEMA's bid regulations. For example, FEMA said it would pay for cutting down

the dead trees and limbs on school campuses, but it would not pay for grinding the stumps or for cutting any limbs smaller than two inches in diameter.

FEMA's second-guessing of these local contracts is especially outrageous because, on its own contracts, FEMA handed out billions of dollars in no-bid; cost-plus contracts to Bechtel, Shaw, Fluor, and CH2M Hill with very little oversight. FEMA ignored the huge waste and fraud by its own contractors, but then sent people out measuring stumps and limbs to deny reimbursement to the local school system.

My final recommendation is for language to correct a problem regarding the new elevations in Mississippi. FEMA is requiring that all projects built with public assistance funds must be built to the new elevations. I support that idea and I encouraged them to adopt it. However, FEMA is interpreting that directive to mean that public assistance funds cannot be used to rebuild bus shelters at street level or replace restrooms near the beaches and harbors. So, I ask for a provision to specify that public assistance funds can be used in those instances.

There are many more examples in Mississippi where FEMA is delaying the recovery of public facilities. I have no doubt that Louisiana has many just like these. Congress has to take charge and make FEMA apply common sense and flexibility to resolve these cases. Thank you again for the opportunity to testify. I look forward to working with the subcommittee to speed up the recovery from Katrina.