

**FEMA Region IV**  
**Guidelines for Determining Eligibility of Private Property Debris Removal**

A. General.

1. Private property owners. Debris on private property is the legal responsibility of the private property owner. This includes demolition of destroyed, unsafe or unsound structures, as well as removal of building and personal property wreckage, trees, tree limbs and other vegetative debris. Assistance for storm-related debris removal or the costs related thereto may be available through personal insurance, FEMA's Individual Assistance Program, the Small Business Administration or from volunteer agencies. Individuals are not eligible for assistance under the Public Assistance Program.
2. Homeowners' Associations. Debris removal from private roadways and roadways in gated communities are either the responsibility of a Homeowners' Association (HOA) or of private property owners. Assistance for storm-related debris removal or the costs related thereto may be available through insurance, FEMA's Individual Assistance Program, the Small Business Administration or from volunteer agencies. HOAs are not eligible applicants under the Public Assistance Program for roadways (see FEMA Policy 9521.3).
3. Mobile Home or Recreational Vehicle Parks. Many mobile home or recreational vehicle parks are privately owned, for-profit businesses. Accordingly, it is expected that the owners of the property will cover the cost of debris removal through their insurance policies or through a disaster loan from the Small Business Administration. Privately-owned, for-profit businesses are not eligible for assistance under the Public Assistance Program.
4. Certain Special Districts. Many States have established under law special purpose districts that function much like HOAs and serve a limited purpose. As special districts, these applicants may qualify for assistance under the Public Assistance Program. Removal of debris from roadways under a special district's legal responsibility may be eligible for assistance, provided that the roadways are not restricted with respect to access to the general public. However, when an HOA operates within an otherwise eligible special district and has legal responsibility to maintain the roadways, debris removal from those roadways is ineligible for assistance under the Public Assistance Program.
5. Local government. Local government has no inherent legal responsibility to remove storm-related debris from private property. In certain emergency situations or as a result of the need to terminate and abate conditions detrimental to public health and safety, the local government may institute civil action to gain legal responsibility. Many special districts, even though technically classified as a form of local government, do not have policing powers and may not act to terminate and abate threats to public health and safety on behalf of HOAs within their districts.
  - a. Emergency road clearance. Local government has a duty to provide basic life/safety services to the public, such as fire, police, and emergency

**FEMA Region IV**  
**Guidelines for Determining Eligibility of Private Property Debris Removal**

medical. When storm-related debris blocks public and private roadways, the local government cannot effectively provide basic life/safety services to the public, necessitating emergency road clearance of the debris. Subject to cost reasonableness, demonstration of the exigency, and execution of rights-of-entry and hold-harmless agreements, this activity is generally eligible under the Public Assistance Program.

- b. Debris removal. When a private property owner or HOA does not remove storm-related debris that is its legal responsibility, either through its own volition or because it lacks the ability or means to do so, the debris itself may present a threat to public health, safety and welfare as defined in local code or ordinances. When this occurs, local government may have to take legal action to terminate and abate the immediate threat.
  
- B. Legal responsibility. When a local government has acted pursuant to its codes and ordinances to terminate and abate an immediate threat to public health and safety, it has taken legal responsibility for the work. When a local government has not acted pursuant to its codes and ordinances to terminate and abate an immediate threat to public health and safety, it has not taken legal responsibility for the work. This distinction is key to establishing eligibility under the Public Assistance Program.
  
- C. Guidelines for determining eligibility. The attached guidelines will be used by FEMA field staff to determine eligibility of private property debris removal and develop properly documented Project Worksheets.

## **FEMA Region IV Guidelines for Determining Eligibility of Private Property Debris Removal**

**Step 1. Define the condition.** Cite the condition or conditions that gave rise to a reasonable determination by local government officials that such condition or conditions represented an immediate threat to the health and safety of the public by virtue of its unsafe, dangerous or hazardous nature. Conditions may include, but are not limited to:

- Threat of increased fire hazard
- Existence of hazardous materials
- Existence of attractive nuisances
- Threat of infestation, breeding or refuge of rodents, vermin, reptiles or other wild animals
- Threat to public health due to existence of putrid debris or household waste

FEMA **cannot** make a determination that an immediate threat to public health and safety exists. Such determination **must be made** by the local government through application of its existing codes and ordinances. If the local government has not made such a determination, it has no basis for eligibility under the Public Assistance Program.

FEMA will not attempt to confirm the existence of the condition or conditions purported to be causing an immediate threat to public health and safety unless the local government has demonstrated legal responsibility pursuant to its relevant codes and ordinances (see Step 2, below).

**Step 2. Describe the legal authority.** Cite the legal authority used by the local government in response to the above cited condition or conditions. The local government, acting to terminate or abate the condition or conditions described above, must do so upon its legal authority. Legal authority is usually found in local code or ordinances, and local governments may need to consult with their attorneys to properly establish legal authority. Applicable code or ordinances may include, but are not limited to:

- Nuisance
- Fire
- Public Health
- Condemnation
- Demolition
- Emergency
- Solid Waste

Codes or ordinances must be germane to the condition representing an immediate threat to health or public safety, and not merely define the local government's uniform level of services. For example, a solid waste ordinance may define terms of collection services provided to residents and businesses, but not provide any legal authority to terminate or abate immediate threats to public health and safety.

In addition, the legal authority established above should define which governmental official has jurisdiction to make a determination of a threat to public health and safety. Such officials include, but are not limited to:

**FEMA Region IV**  
**Guidelines for Determining Eligibility of Private Property Debris Removal**

- Fire chief
- Building inspector
- Code enforcement officer
- Public health official

**Step 3. Review and document actions taken by local government.** Obtain and annotate a copy of the applicable code or ordinance used by the local government to terminate or abate the unsafe, hazardous or dangerous condition or conditions established above. Local governments must take specific actions in conformance with codes and ordinances it has enacted, and such actions must be documented as part of this effort. Such actions may include, but are not limited to:

- Implementing laws that reduce the time allowed for due process
- Documenting the name of owners and addresses of properties in violation of the relevant local code or ordinance
- Giving notice to private property owners to remedy the condition or conditions constituting a threat to public health and safety
- Providing legal notice of the government's intent to terminate or abate such conditions
- Obtaining executed rights-of-entry and hold harmless agreements from private property owners or HOAs
- Acting to terminate or abate the threat to public health and safety by removing and disposing of the debris
- Instituting civil action to recover costs
- Requiring the private property owner to remit any insurance proceeds it may have received for debris removal
- Placing a lien upon the real property for the costs of removal of debris from private property, to include hauling, disposal, legal fees, and applicable surcharges

**Step 4. Determine eligibility.** FEMA, in coordination with the Office of General Counsel, will make determinations as to the eligibility of debris removal from private property. Eligibility decisions will be based on:

- The local government's determination of the existence of the condition or conditions that gave rise to a reasonable determination by local government officials that such condition or conditions represented an immediate threat to public health and safety
- The local government's legal authority to take action to terminate or abate the condition or conditions described above
- Actions taken by the local government to terminate or abate immediate threats to public health and safety

**FEMA Region IV**  
**Guidelines for Determining Eligibility of Private Property Debris Removal**

**Step 5. Confirm the threat and develop Scope of Work.** Once the local government has established the existence of an immediate threat to public health and safety and has demonstrated conformance to its relevant codes or ordinances outlined above, the FEMA will, on a site-by-site basis, confirm and document the existence of the condition or conditions at each site that gave rise to a reasonable determination by local government officials that such condition or conditions represented an immediate threat to public health and safety. PAC Teams that cannot confirm the existence of the threat will refer the matter back to Public Assistance Officer for resolution.

**Step 6. Prepare Project Worksheet.** Upon completion of the site-by-site inspection necessary to confirm the threat and develop a Scope of Work, the FEMA and State PAC Team will prepare Project Worksheets for eligible costs following prescribed procedures and with proper coordination with debris teams, environmental and historic specialists, beach specialists, etc. All Project Worksheets will contain the following documentation:

- A narrative report that fully documents the eligibility determination mutually agreed upon and the basis for reaching such determination
- A location sheet, showing property owners' names and addresses (no sensitive data or information covered under the Privacy Act will be collected)
- Executed rights-of-entry and hold harmless agreements from private property owners or HOAs
- Signed statements from private property owners or HOAs certifying that they do not have insurance covering the removal of the debris or otherwise agree to remit to the local government any insurance proceeds it may receive for debris removal
- A statement in General Comments that sets the condition that the local government will return to FEMA any Federal funds that are duplicated through the receipt of insurance proceeds from property owners or resulting from a civil collections process in enforcement of applicable codes or ordinances

A sample form combining a Right-of-Entry permit, a hold-harmless agreement, and a duplication of benefits declaration is attached at Attachment 1. However, local governments may use any form provided it satisfies State and FEMA requirements above.

**FEMA Region IV  
Guidelines for Determining Eligibility of Private Property Debris Removal**

**Attachment 1  
SAMPLE  
RIGHT-OF-ENTRY PERMIT  
AND AGREEMENT**

Property Address/Description \_\_\_\_\_  
Name (Owner or Tenant) \_\_\_\_\_  
City \_\_\_\_\_  
County \_\_\_\_\_  
Date \_\_\_\_\_

**Right of Entry**

I certify that I am the owner, or an owner's authorized agent, of the property described above. I grant, freely and without coercion, the right of access and entry to said property to the \_\_\_\_\_ (eligible applicant), its agents, contractors, and subcontractors, for the purpose of demolishing, removing and/or clearing any or all storm-generated debris of whatever nature from the above-described property.

**Hold Harmless**

I understand that this permit is not an obligation upon the government to perform debris removal. I agree to indemnify and hold harmless the United States Government, the Federal Emergency Management Agency (FEMA), the State of \_\_\_\_\_, the County of \_\_\_\_\_, the City of \_\_\_\_\_, and any of their agencies, agents, contractors, and subcontractors, for damages of any type whatsoever, either to the above-described property or to persons situated thereon. I release, discharge, and waive any action, either legal or equitable, that might arise by reason of any action of the above entities, while removing storm-generated debris from the property. I will mark any sewer lines, septic tanks, water lines, and utilities located on the described property.

**Duplication of Benefits**

Most homeowner's insurance policies have coverage to pay for removal of storm-generated debris. I understand that Federal law (42 United States Code 5155 et seq.) requires me to reimburse \_\_\_\_\_ (eligible applicant) the cost of removing the storm-generated debris to the extent covered in my insurance policy. I also understand that I must provide a copy of the proof/statement of loss from my insurance company to \_\_\_\_\_ (eligible applicant). If I have received payment, or when I receive payment, for debris removal from my insurance company, or any other source, I agree to notify and send payment and proof/statement of loss to \_\_\_\_\_ (eligible applicant). I understand that all disaster related funding, including that for debris removal from private property, is subject to audit.

For the consideration and purposes set forth herein, I hereby acknowledge this agreement by my dated signature below.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004:

(All owners must sign)

(Witness)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_