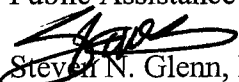





FEMA

September 20, 2004

MEMORANDUM FOR: Public Assistance Staff

THROUGH: 
Steven N. Glenn, Infrastructure Branch Chief

FROM: Valerie Rhoads, Public Assistance Officer 

SUBJECT: Disaster-Specific Guidance #8
Public Assistance Program
FEMA-1539/1545/1551-DR-FL
Debris Removal from Roadways in Private or Gated Communities

ISSUE: Local government applicants have requested approval for debris removal from roadways in private or gated communities, suggesting there should be no distinction between public and private roads when acting to eliminate a threat to life, public health and safety. The purpose of this memorandum is to provide guidance for determining the eligibility of debris removal from roadways in private or gated communities.

GUIDANCE:

A. General. FEMA regulations provide for FEMA assistance for debris removal when, as a result of a declared emergency or major disaster, the removal of debris from publicly and privately owned lands and waters is in the public interest, and is performed by an eligible applicant. FEMA Region 4 issued Regional Guidance #R4-RR-PA-07-05-03, Debris Removal from Private Property, on May 7, 2003, setting out eligibility criteria for removal of debris from private property. For the purposes of this guidance, the phrases "private or gated communities" and "private property" are used interchangeably.

When an eligible applicant, such as the local government, undertakes removal of disaster-related debris from public rights-of-way, it is considered to be in the public interest and would be eligible for reimbursement under FEMA's Public Assistance Program. However, removal of debris from private property, including roadways in private or gated communities, does not necessarily serve the public interest, because the restrictions inherent to private or gated communities limit the exposure of the community-at-large to the hazard posed by the debris. More importantly, the removal of debris from private or gated communities is not the legal responsibility of an eligible applicant. Debris on private property is usually the legal responsibility of individual homeowners or a Homeowners' Association (HOA), aided by reserve funds, insurance settlements, or assistance from volunteers. HOAs are ineligible for Public Assistance for debris removal from roadways pursuant to FEMA Policy 9521.3, *Private Nonprofit Facility Eligibility*.

B. Establishing Eligibility. Debris removal from private property is typically ineligible because it is the legal responsibility of the owner. However, in rare circumstances, an eligible applicant, such as the local government, may undertake or seek to undertake removal of debris from private property. In such cases, FEMA and the State will determine eligibility on a case-by-case basis. When

determining eligibility under the Public Assistance Program for private property debris removal, the Public Assistance Coordinator (PAC) must be able to reach the following conclusions, in relation to the work in question:

- Removal was the legal responsibility of an eligible applicant, such as the State or local government;
- It was necessary in the public interest to eliminate an immediate threat to life, public health and safety; and,
- The Federal government was held harmless and indemnified for all claims of loss or damage resulting from the work.

All other applicable provisions of the law, regulations and policies apply, as well. Each of the above points is discussed below.

1. Legal Responsibility: The eligible applicant claiming Federal assistance must demonstrate that it has taken steps under its own legal process to gain legal responsibility for the removal of the debris from private property.

The rights of government to enter private property, for any purpose, are limited and are spelled out in law, ordinance, and code. Such ordinances typically relate to abatement of nuisances, solid waste, condemnation, or emergencies. Simply obtaining rights-of-entry and hold harmless agreements from private property owners or HOAs is not enough to establish legal responsibility on the part of the local government.

Each jurisdiction is controlled by different and varying laws, ordinances and codes, so there can be no global determination of eligibility. In order for FEMA to make a case-by-case determination of eligibility on the basis of legal responsibility, each interested eligible applicant will be required to show FEMA its legal process for taking responsibility for debris on private property, and demonstrate how it followed that process in the present case. PACs may wish to consult with Applicants' Agents for referral to persons knowledgeable of the specific legal requirements of the particular jurisdiction.

2. Immediate threat to life, public health and safety. The eligible applicant claiming Federal assistance must demonstrate that the actions it took (or plans to take) in private or gated communities were in the public interest, necessary to eliminate an immediate threat to life, public health and safety. As discussed earlier, the local government would have had to utilize one of its ordinances in order to gain legal responsibility for the debris on private property. The language of the ordinance itself may clearly set out the parameters under which a public health and safety threat may be declared, and the manner in which the legal process is triggered in order to remedy the threat. When the language of the ordinance is vague, or does not set out criteria for a public health and safety threat determination, the eligible applicant claiming legal responsibility must demonstrate to the satisfaction of FEMA the method it used to determine the existence of a threat to life, public health and safety at the private or gated community sites from which it removed or intends to remove debris.

PACs should work closely with eligible applicants to collect information and documentation necessary for FEMA to make eligibility determinations. The following items should be obtained

by PACs to allow proper coordination with the Public Assistance Officer (PAO) on private property debris determinations:

- A list of sites and/or locations with an existing threat to public health and safety (as a result of the disaster);
- A copy of related ordinances, policies and guidelines that were used by the local government to determine that a public health and safety threat existed;
- Solid waste ordinances and any information on waste pickup, such as contract information, fee information, standard pick-up schedules, and any storm related pick-up services put on for the benefit of the private or gated communities; and
- Any applicable documentation that demonstrates that the local government followed its established procedures for determining the existence of a public health and safety threat.

Remember, FEMA does not “approve” the removal of debris from private property. That is a determination that must be made by the local government based on its own laws, ordinances and codes. Only FEMA, however, can make determinations as to eligibility under the Public Assistance Program. PACs will coordinate private property debris removal eligibility issues with their respective Deputy PAOs, who will in turn coordinate with the PAO and the Infrastructure Branch Chief. Any adverse eligibility determinations will be thoroughly documented by the PAC in the applicant’s Case Management File in NEMIS.

3. Hold harmless and indemnification. The eligible applicant must, for any work meeting the eligibility criteria set out above, provide rights-of-entry and hold harmless agreements from private property owners or HOAs, as a condition of receiving Federal funding.

C. No Eligible Applicant. In circumstances where the local government has decided not to remove debris from private property or legal responsibility for same cannot be established, FEMA may still reimburse the local government for the cost of picking up and disposing of disaster-related debris when it is placed at the curb of a public road by private individuals. Debris originating within private or gated communities may become eligible for removal and disposal, provided that:

- The debris has been removed to a public right-of-way outside the private or gated community;
- The removal of the debris has become the legal responsibility of a legal applicant, such as a county or municipal government, on the basis of alleviating an immediate threat to life, public health and safety; and,
- There is a reasonable assurance that the debris did not produce from otherwise ineligible activities, such as clearance of wooded lots, removal of trees and stumps from private golf courses, building repair, and any other activity not necessary to eliminate an immediate threat to public health and safety.

REFERENCES: 44 CFR §206.223(a)(3)
44 CFR §206.224(c)
FEMA Policy 9521.3, Private Nonprofit Facility Eligibility
Regional Guidance #R4-RR-PA-07-05-03, Debris Removal
from Private Property