

## 6. Debris Removal from Private Property (Requires Prior FEMA Approval)

In limited circumstances, based on the severity of the impact of an incident, FEMA may determine that debris removal from private property is eligible under the PA Program. In making its determination, FEMA evaluates whether the impacts of debris on private property affect the general public in that community and whether the Applicant has legal authority to perform the work.



If debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may provide PA funding for debris removal from private property. This debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals within the community.<sup>177</sup>

In such cases, FEMA works with the State, Territorial, Tribal, and local governments to designate specific areas where debris removal from private property, including private waterways, is eligible.



### Clarification of Demolition versus Debris

If more than one wall of a structure is standing, FEMA considers the removal of that structure to be demolition and not debris removal. Demolition is subject to additional documentation to determine eligibility and must comply with Chapter 2 Section VI.B.16.

#### (a) *Written Request*

Prior to commencing work on private property, the Applicant must submit a written request and receive approval from FEMA. The written request must include:

- A public interest determination;
- Documentation supporting the Applicant's legal authority to remove the debris; and
- Indemnification.

The Applicant needs to identify the specific properties or areas of properties for which it is requesting approval.

#### Public Interest Determination

The Applicant must provide the basis for the determination that removing the debris from the private property requested is in the public interest. The determination must be made by the State, Territorial, Tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.

Additionally, the Applicant must submit its established, specific legal requirements for declaring the existence of a threat to public health and safety.

### Legal Authority and Responsibility

The Applicant must provide documentation to confirm its legal authority and responsibility to enter private property and remove disaster-related debris. This includes:

- Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to remove debris from private property. The authority cited must be applicable to the condition representing the immediate threat and not merely the Applicant's uniform level of services. Typically, solid waste disposal ordinances are part of an Applicant's uniform level of services and not a justification for entering private property to remove disaster-related debris.
- Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area to remove debris to address immediate threats to life, public health, and safety.

### Indemnification

The Applicant must indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

#### *(b) FEMA Approval*

FEMA will provide a written response to the request specifying any properties or area of properties for which debris removal is approved.

The Applicant must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry) and agreements to indemnify and hold harmless the Federal Government before FEMA will provide PA funding for debris removal from private property.

#### *(c) Debris Removal from Gated Communities*

Debris removal from private residential property within a gated community is not eligible. However, if the debris is placed on a private road within the gated community, debris removal from the road may be eligible in accordance with the eligibility and request criteria listed in Chapter 2.VI.A.6(a).

#### *(d) Debris Removal from Commercial Property*

Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks, is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of Chapter 2.VI.A.6(a) and (b).

#### *(e) Duplication of Benefits*

The Applicant should work with private property owners to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds received. In some

circumstances, FEMA may provide IA assistance to individuals for debris removal; consequently, FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.