

## Unit 4: FEMA Eligibility and Reasonable Costs



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### Unit Introduction

Large debris-generating events often result in a Presidential declaration of a major disaster wherein FEMA may provide supplemental assistance for eligible debris-related activities to those communities declared in the disaster.

- It is prudent for communities to be familiar with FEMA eligibility and reasonable costs guidelines during the planning stage in order to appropriately plan for critical issues such as contracting, monitoring, and preparing appropriate documentation to support requests for funding.
- Although there is not a requirement for communities to consider FEMA guidelines in the Debris Management Plans, a lack of knowledge of FEMA requirements has led communities to a loss of opportunities for funding.
- Therefore, this unit provides a discussion of:
  - The resources and tools available for assessing debris-related eligibility issues
  - Eligibility and reasonable cost issues for various debris activities
  - Distinctions between private and public property
  - Activities in assessing eligibility and reasonable cost issues and incorporating issues into debris planning
- This unit is intended to provide a general introduction to eligibility issues. It is not intended to cover all circumstances that may be encountered in the field. The tools and resources covered in this unit will assist the community in locating applicable laws and regulations relative to situations that may arise.

## Introduction (Cont'd)

### Objectives

- Identify eligibility and reasonable costs resources
- Explain eligibility and reasonable costs related to the planning and operations of debris-related activities

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### Unit Objectives

At the end of this unit, you will be able to:

- Locate FEMA eligibility and reasonable cost resources.
- Evaluate FEMA eligibility and reasonable costs for debris-related activities.
- Assess FEMA eligibility and reasonable costs issues in debris planning.

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Notes:



## Laws, Regulations, and Resources

### Laws and Regulations

- ❑ Stafford Act, sections 403, 407, 502
- ❑ Title 44 CFR, sections 206.224, 206.225
- ❑ FEMA policies
- ❑ State/Local Regulations and Policies

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FEMA and the PA Program are governed by the law defined in the Stafford Act and regulations provided in Title 44 of Code of Federal Regulations (44 CFR). These laws and regulations provide the criteria for determining eligibility of debris activities.

- **Stafford Act (PA Guide, Appendix B)**

- Section 403 Essential Assistance (page B-24) refers to the type of assistance available to meet immediate threats to life and property.
  - Basic eligibility for debris removal, clearance of roads, demolition, and reduction of immediate threats are all included in this section.
  - Use of Department of Defense (DOD) resources is also included but only rarely, if ever, used.
- Section 407 Debris Removal (page B-35) refers to more specific types of debris removal activities.
  - Debris and wreckage removal from public and private property.
  - The term indemnify is first used in this section as a method to protect the Federal government from claims.
  - Rules relating to large lots are also included.
  - Note: The FEMA Landslide Policy (*Landslide Policy Relating to Public Facilities*, FEMA 9524.2) indicates that removal of landslide debris from public and private property is authorized based on Section 407.
- Section 502 Federal Emergency Assistance (page B-49) authorizes Direct Federal Aid for debris removal activities.

- **Regulations 44 CFR Part 206 (PA Guide, Appendix C)**
  - 206.224 Debris Removal (page C-21)
    - Category A Criteria
    - Definition of public interest (*Discussed further in next slide*).
    - Criteria for debris removal from private property, including large lots.
    - Criteria for individuals and private organizations.
  - 206.225 Emergency Work (pages C-22, 23)
    - Category B Criteria
    - Emergency Protective Measures criteria used in determining eligibility for demolition. Cost effective measures must be used.
- **Regulations 44 CFR Part 206 (PA Guide, Appendix C)**
  - FEMA policies are prepared to provide clarification of the law and regulations, and to assist in consistent interpretation of regulatory criteria.
  - Policies pertinent to debris activities are discussed within this and later units.
- **State/Local**
  - Procurement processes must be followed
  - Environmental laws and regulations must be followed
  - Historical Preservation issues must be coordinated with the State Historical Preservation Office (SHPO)

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### Notes:



## Laws, Regulations, and Resources (Cont'd)

### Basic Eligibility

- Result of declared event
- Located in designated disaster area
- Legal responsibility of an eligible applicant

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### Basic Eligibility

- General Work Eligibility Criteria defined in 44 CFR 206.223.

An item of work must:

- (1) Be required as the result of the major disaster event;
- (2) Be located within a designated disaster area; and
- (3) Be the legal responsibility of an eligible applicant.

### Notes:



## Laws, Regulations, and Resources (Cont'd)

### Applicant Eligibility

- ❑ State government agencies
- ❑ Local governments
- ❑ Private Nonprofit Organizations
- ❑ Indian tribes and Alaska Native villages

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- Debris removal activities are eligible for both public and Private Nonprofit (PNP) applicants (44 CFR 206.222) as listed.
- For PNP applicants, debris activities are only eligible when they are associated with eligible PNP facilities.
  - **For example:** Removal of debris from a PNP recreational facility would not be eligible because PNP recreational facilities are not otherwise eligible PNP facilities.
  - Removal of debris from non-eligible facilities may only be eligible if the work meets the debris removal eligibility criteria (44 CFR 206.224(a)), and is performed by an eligible State, Tribal, or local governmental entity.

Debris removal activities by individuals and private organizations (non-PNPs) removing debris from their own property is not eligible. Additionally, eligible applicants cannot be reimbursed for payments they may make to individuals or private organizations for such work. (44 CFR 206.224(c))

### Notes:



## Laws, Regulations, and Resources (Cont'd)

### Tools for Assessing Eligibility

- *Public Assistance Guide*
- *Public Assistance Policy Digest*
- *Debris Management Guide*
- FEMA Policies and Appeals
- Debris Eligibility Reference Table

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The documents and resources listed provide copies of the laws etc., and/or a discussion of the applicability of the eligibility criteria to specific situations.

- These documents, other than the Reference Table, are generally available to all in the process—*applicant, State, FEMA*—and are available on the Internet.
- An applicant may use these references:
  - In assessing eligibility of projects
  - For providing guidance to applicants and other PA staff
  - In supporting eligibility determinations

### PA Guide (FEMA 322)

Debris eligibility criteria are located in various sections of the text of the PA Guide. The following are only samples of some of these references.

- Pages 67,68,69,70 — Category A—Debris Removal
  - Debris on roadways, in streams, and in wilderness areas is defined
  - Removal of temporary levees
  - Indemnification is a critical part of any debris removal from private property
  - Debris eligibility on Federal Aid System roads is defined
- Pages 71-74—Category B—Emergency Protective Measures
  - Cost effective measures to eliminate/reduce immediate threats to undamaged property, life, public health, or safety.

- Demolition, disposal of dead animals, boarding up buildings.
- Definition of immediate threat (page 71).
- Page 82—Category D—Water Control Facilities
  - Maintenance schedule and determination of pre-disaster debris is defined.
  - USACE and NRCS authority.

**PA Policy Digest (FEMA 321)**

- Page 31—Debris Removal
- Page 102—Private Property
  - Damages to private property during debris operations are not eligible unless a health or safety risk is present. Critical requirement for hold harmless and indemnification before accessing private property.

**PA Debris Management Guide (FEMA 325)**

- Page 6—Eligibility Criteria
  - Private property debris removal is the responsibility of the property owner, aided by insurance settlements and assistance from volunteer agencies.
  - Extent and duration of debris removal must be carefully controlled.
- Page 7—Debris removal from Recreational and Wilderness Areas
  - Criteria for determining eligibility of hazardous limbs from standing trees is provided.
- Page 9—FEMA Demolition Criteria
  - Slabs on grade, driveways, fences, and structurally sound buildings are not normally eligible.
  - Reasonable monitoring costs are eligible.
  - Asbestos and lead-based paint inspections, asbestos abatement and third party monitoring may be eligible.
  - Attractive nuisances are defined and eligibility criteria provided.

**FEMA Policies**—Located in the Policies Section

- Demolition of Private and Public Facilities (FEMA 9523.4)
- Mutual Aid Agreements for Public Assistance (FEMA 9523.6)
- Donated Resources (FEMA 9525.2)
- Duplication of Benefits—Non-Government Funds (FEMA 9525.3)
  
- Labor Costs—Emergency Work (FEMA 9525.7)
- Damage to Applicant-Owned Equipment (FEMA 9525.8)

- Disposition of Equipment, Supplies, and Salvaged Materials (FEMA 9525.12)

### Appeals

- Appeal Determinations related to Debris:
  - Headquarters-level appeal determinations are posted on the FEMA Website.
  - Appeals are categorized by program or eligibility type issues and include debris-related issues.
  - Appeal determinations available on the Web may be used as guidance for determinations on similar projects. But, it must be understood that the appeal decisions apply specifically to the conditions described in the appeal analysis.
  - Common appeal issues related to debris include:
    - Methods of contracting and estimating debris quantities
    - Insufficient documentation to support quantities
    - Lost landfill space issues including associated costs and requests for replacement
    - Environmental issues related to volume reduction methods, storage and disposal locations, and landfill opening and closing
- Appeal Database on Web
  - The FEMA Website has an appeal database where a specific topic can be entered and all appeals that contain that topic will be listed

### Debris Eligibility Reference Table—Located in the Policies Section

- As illustrated by the numerous sources of information described above, eligibility issues are located in many documents. It is, therefore, sometimes difficult and time consuming to locate a specific reference.
- The Debris Eligibility Reference Table was developed for this course to assist Debris staff in locating specific references to debris-related issues.
- Refer to the Debris Eligibility Reference Table located in the Policies Section. Discuss the general topics identified in the Table.

## Laws, Regulations, and Resources (Cont'd)

### Debris Removal Eligibility

- Eliminate immediate threat to life, public health, or safety
- Eliminate immediate threats of significant damage to improved public or private property
- Ensure economic recovery of the affected community to the benefit of the community-at-large

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- 44 CFR 206.224 states that debris removal activities are eligible when removal is in the *public interest*.
- *Public Interest* is defined as work necessary to:
  - Eliminate immediate threats to life, public health, and safety; or
  - Eliminate immediate threats of significant damage to improved public or private property; or
  - Ensure economic recovery of the affected community to the benefit of the community-at-large
  - Additionally, per statement in the June 26, 2001, Federal Register, the following additional criteria is added regarding the definition of *Public Interest*:
- Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Associate Director for Readiness, Response and Recovery extends this period.
- Note that the terms *immediate threat*, *public health*, and *community-at-large* are very important in assessing eligibility.
  - The debris must pose an immediate threat. Debris that would not otherwise result in harm is not eligible for removal.
  - The eligibility of the activities must address public health and safety. Close attention must be paid to whether or not these conditions are met, especially when considering debris removal from private property. (*Discussed in more detail later in this unit.*)
  - Debris can be removed when necessary to ensure economic recovery of the *community-at-large*. This is generally defined as removing debris from **commercial areas** to

expedite economic recovery. It does not mean general debris removal from **private property**.

## Eligibility Criteria and Issues

### Debris Removal Eligibility

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- Public roads
- Federal-Aid systems roads
- Homeowners' association and gated communities
- Native American reservations

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- The eligibility of debris activities has perhaps more factors, variables, and unique aspects to consider than any other item in PA. Significant issues of consideration include:
  - Applicant Eligibility
  - Public Versus Private Property
  - Vegetative and Other Debris Issue Considerations
  - Demolition
  - Curbside Debris Pickup
  - Hazardous/Toxic Waste
  - Insurance
- Each of the topics listed will be discussed in detail in this section.
- Cost, although a component of eligibility, will be discussed separately in the next section of this unit. Note that the issue of *reasonable costs* for debris activities is often a significant topic in reviewing applicants' requests for assistance and, therefore, warrants special consideration for discussion.

## Eligibility Criteria and Issues (Cont'd)

### Debris Removal Eligibility

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- Public roads
- Federal-Aid systems roads
- Homeowners' association and gated communities
- Native American reservations

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In general, debris on public property that must be removed to allow safe operation of governmental functions or to alleviate an immediate threat is eligible.

### Public Roads

- Generally, debris that is blocking streets and highways is considered a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Therefore, clearance of roadways is often a high priority.
- Debris may be removed from travel lanes, shoulders, roadside ditches and drainage features, and maintained rights-of-way.

### Federal-Aid System Roads

- Federal-Aid System Roads are under the authority of the Federal Highway Administration (FHWA). Therefore, FEMA may not provide assistance for activities that would otherwise be eligible by the FHWA. (Stafford Act Section 312, Duplication of Benefits).
- The FHWA has responsibility for permanent restoration of these roads, and provides some assistance for emergency actions, including debris removal, through its Emergency Relief (ER) Program.
  - The ER Program can be authorized if damages to Federal-Aid System roads exceeds \$500,000.
  - A maximum of \$100 million per State per disaster is available.
  - Requires a minimum \$5000 per site.
  - Emergency work, including debris removal, can begin immediately after the event and does not require pre-approval from FHWA.

- The availability of the ER Program must be considered before funding debris removal activities.
  - Debris removal from Federal-Aid System Roads is eligible except when the FHWA ER Program is activated and the work is eligible for ER funding.
  - The ER Program may only grant debris-related assistance for sections of roadway damaged by the disaster. FEMA may fund debris removal from undamaged roadway sections, if it otherwise meets FEMA's eligibility criteria.
  - If the ER Program is not activated, FEMA may fund debris removal and emergency activities that meet its criteria.
- The FHWA ER Manual is available through the Internet: [www.fhwa.dot.gov](http://www.fhwa.dot.gov)—U.S. Department of Transportation, Federal Highway Administration, Emergency Relief Manual, Federal-Aid Highways.

### Homeowners' Association and Gated Communities

#### Debris Removal from Private Property (RP9523.13)

- The Policy allows for debris removal from gated communities, orphan roads, and private roads.
- Debris removal from all other private property (residential, commercial, and industrial) is generally the responsibility of the individual property owner, aided by insurance settlements and assistance from volunteer agencies.
- A residential private property owner may move disaster-related debris from his/her property and place it at the curbside for pickup by an eligible applicant if the eligible applicant implements a curbside debris collection program.
- PA Funding is not available to reimburse private property owners for their cost of removing debris from their property.

### Native American Reservations

- When working on Native American Reservations, coordinate with FEMA Headquarters through the Debris Task Force Leader (DTFL) at the Joint Field Office (JFO) to assess eligibility.
- Be sure to collect pertinent information to assess the responsibility for, and thus the eligibility of, these roads.

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### Notes:



## Eligibility Criteria and Issues (Cont'd)

### Debris Removal Eligibility

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#### Curbside Debris Pickup

- Be disaster-related debris
- Be separated from garbage
- Be kept in distinct piles
- Monitor pickup activities
- Keep public informed

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### Debris Removal Eligibility - Continued

- Disaster-related debris from private property may be brought to the curbside and collected by an eligible applicant.
  - Construction and demolition materials from repairs and reconstruction should not be placed at curbside.
  - Items such as grass-clippings, household garbage, and automobile parts are not eligible.
- Residents should not mix normal garbage with disaster debris. Normal garbage pickup schedules should resume as soon as possible.
- Segregation of the types of debris will make the process go smoother and faster.
  - Applicants may be asked to separate their debris into the following categories:
    - Woody debris and yard waste
    - Household waste (damaged personal goods)
    - HHW
    - Construction and Demolition (C&D) waste (removed by the homeowner, not as a result of reconstruction)
- FEMA and/or the applicant should monitor the pickup activities to ensure that eligible materials are being collected and unnecessary mixing of debris does not occur.
  - The PA Group Supervisor/PA Debris Task Force Leader should work with the State counterpart to establish deadlines for debris pickup. The residents should be informed as soon as possible of the criteria for pickup, schedule, and deadlines.

## Debris Removal Eligibility

- Mobile homes
- Trees, limbs and stumps
- Animal removal
- Vehicles and Vessels

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## Debris Removal Eligibility - Continued

### Mobile Homes

- During many disasters, especially a hurricane or tornado, there may be a large number of mobile homes totally demolished.
- The eligibility for mobile home removal should be evaluated as for any other residential structure—removal may be eligible if a threat can be demonstrated—but there are some unique aspects to the units themselves.
  - Before demolition begins, the applicant should make arrangements to be sure remaining personal items, furniture, etc., that may remain in the units are removed.
  - Check the units for asbestos and lead paint, and any other HHW.
  - Units may need to be crushed or taken apart—few landfills will accept the units intact.
  - State DOTs may have regulations relating to hauling demolished mobile homes on State highways.
  - Consider salvage of the metal components.

### Hazardous Tree Limbs

Hazardous trees, limbs greater than 2 inches measured at point of break, and stumps on public property within or adjacent to improved or publicly used space, and on private property that meet criteria of posing a threat, may be eligible for removal. Examples include:

- Trees alongside public roadways
- Trees within a naturalized area of public parks or golf courses
- Trees within private property posing a threat to health and public safety or damage to residences.

- Hazardous trees 6 inches or greater in diameter that are unstable and leaning at an angle greater than 30% into the areas used by the public are eligible for removal

Straightening or bracing of trees is eligible for reimbursement when more cost effective than removal and disposal

Normally, trees requiring removal are flush cut to the ground.

Hazardous limbs considered to pose a threat are those that are still hanging in the tree and are threatening a public-use area, such as a trail, sidewalk, road or golf cart path, or other improved and maintained property.

Removal of fallen trees in a forested or wilderness area is not eligible.

Removal of cut trees from subdivisions under development or off the right-of-way in rural areas is typically not eligible as this condition generally does not pose an immediate threat.

**Hazardous Stump Extraction:** The Federal Emergency Management Agency (FEMA) will reimburse applicants reasonable costs for this type of work only when uprooted stumps are more than 24 inches in diameter with the consensus from the Applicant and the State, and is approved in advance by FEMA, using the attached Hazardous Stump Worksheet.

If it is necessary to remove an uprooted stump before it can be inspected by FEMA because it poses a threat that must be dealt with immediately, the applicant must submit documentation, to FEMA including photographs, that establishes its location on public property, specifics on the threat, stump diameter measured two feet up the trunk from the ground, quantity of material to fill the hole, and any special circumstances.

FEMA will reimburse applicants for extraction, transport and disposal of stumps with a diameter of 24 inches or smaller at the unit cost rate for regular vegetative debris, using the attached Stump Conversion Table, as such stumps do not require special equipment.

FEMA will reimburse applicants at the unit cost rate (usually cubic yards) for normal debris removal for all stumps, regardless of size, placed on the rights-of-way by others (i.e., contractors did not extract them from public property or property of eligible Private Non Profit organization). In such instances, applicants do not incur additional cost to remove these stumps – the same equipment is used to pick up “regular” debris can be used to pick up these stumps.

If an applicant incurs additional costs in picking up large stumps from rights-of-way, it should complete the Hazardous Stump Worksheet and present documentation to FEMA in advance for consideration.

Reimbursement for stump removal is extremely limited. Normally, reimbursement is limited to removing stumps that have been uprooted, and are located in an area where they would be a safety hazard. If a tree has been broken, instead of uprooted, the “stump hazard” is removed by cutting the tree at ground level. Stumps with less than 50% of their root ball exposed should be cut flush at ground level, and the cut portion included with regular vegetative debris.

A tree with more than 50% of the tree crown destroyed or damaged, a split trunk, or broken branches that expose the heartwood, or a tree that has been felled or uprooted is eligible for removal, especially if it is in a location approximate to or within public-use areas.

### **Animal Removal**

- Disposal of farm and companion animals presents unique challenges.
- Local emergency managers need to be involved if extensive numbers of dead animals are found.
- Because of potential health issues, disposal of dead animals needs to be addressed quickly.
- Disposal methods, burning or burying, needs to be coordinated with appropriate environmental agencies.
- A specialty contractor may be needed to appropriately pick up, haul, and dispose of the animals.

### **Vehicles and Vessels**

In order for removal of vehicles and vessels to be eligible the applicant must demonstrate that:

- The vehicle or vessel presents a hazard or immediate threat that blocks ingress/egress in a public use area;
- The vehicle or vessel is abandoned. (Example: vehicle or vessel is not on the owner's property and the ownership is undetermined);
- Applicants followed the local ordinances and State law by securing ownership; and
- Applicants verified chain of custody, transport, and disposal of the vehicle or vessel.

All supporting documentation relating to removal of abandoned vehicles and vessels must be submitted to FEMA for reimbursement consideration. For navigational vessels, applicants must follow their hazard abatement laws, coordinate with the requirements of the marine and harbor patrol agencies, and comply with local laws governing navigational vessels.

It is important for the applicant to follow its normal written procedures regardless of the circumstances. Any duplication of benefits issues will be addressed during FEMA's closeout evaluation.

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### **Notes:**



## Debris Removal Eligibility

- Water control facilities
- Buildings
- Utilities
- Parks and recreation areas

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## Debris Removal Eligibility - Continued

### Water Control Facilities - General

- Water control facilities naturally collect debris and sediment on a regular basis, requiring maintenance of the facilities to maintain their function.
- Therefore, when evaluating debris removal eligibility from such facilities, it is necessary for the applicant to provide documentation to demonstrate the portion of the existing debris that was generated by the disaster. Evidence of a formal maintenance program and records of the program being implemented are often required.
- Although the applicant may choose to remove all debris, pre-disaster and disaster-related, only the disaster-related debris quantities are eligible, and generally, only that portion that is necessary to remove the threat.

### Levees

- Debris removal from permanent levees is eligible for public health and safety, even from levees under authority of the USACE and National Resources Conservation Service (NRCS).
- Where temporary levees have been constructed as an emergency protective measure, removal of them is eligible only to protect public health and safety or to protect improved public or private property. This may be necessary to open roads.

### Dams and Reservoirs

- Removal of debris from dams may be eligible—for example, if debris is blocking a spillway or intake structures.
- Removal of disaster-related debris from reservoirs may be eligible if evidence is provided that the reservoirs were regularly cleaned prior to the disaster and the pre-disaster level can be established.

**Debris Basins, Drainage/Irrigation Channels**

- Removal of silt, mud, and other debris from lined and unlined basins and engineered channels may be eligible if the pre-disaster level of debris can be determined. Such facilities must have a regular schedule of debris removal.

**Natural Streams**

- Debris removal from natural streams normally is not eligible. Only debris that causes a threat to lives or public health and safety or damage to improved property is eligible.
- Eligibility is limited to only material that could cause flooding during a 5-year flood.
- Any work in natural streams must be closely reviewed and monitored to minimize undesirable environmental effects.
  - This work will often require a CAA Section 404 permit from the USACE.
  - The NRCS also has authority to clear streams of debris.
- Removal of debris from the banks is generally not eligible.

**Buildings**

- Removal of mud and silt, or similar disaster-related debris in and on buildings is eligible.
- If furnishings from public buildings are damaged to the point where they become debris, they are eligible for removal and disposal if brought to the curb.
- Sometimes, public facilities are damaged to the point that demolition is necessary for public health and safety.
  - FEMA's policy on demolition must be reviewed for these situations. This policy will be reviewed later in this unit.
- Insurance, also discussed later in this unit, is a large consideration in building debris removal and demolition activities.
- Debris resulting from permanent repair activities is not eligible as Category A, but would be eligible under the permanent repair efforts.

**Utilities**

- Generally, debris removal from eligible utilities also will be eligible.
- Some materials may be salvageable.
- Environmental issues may be present, such as PCB-filled transformers.

**Parks and Recreation Areas**

- The removal of debris from parks and recreational areas used by the public is eligible when it affects public health or safety or proper utilization of such facilities.
- Damage to publicly owned marinas can include abandoned sunken boats and other debris that may impede navigation.
  - Identified navigation hazards are eligible for removal.
  - Coordination must be made between the U.S. Coast Guard, State Marine Patrol, local

government agencies, legal counsel, contractors specializing in marine salvage operations, commercial divers and certified surveyors to ensure the hazards are removed safely and efficiently.

- See the Navigation Hazard Removal Checklist provided on page 40 of the *Debris Management Guide*.
- Debris removal from wilderness or unused areas is not eligible.
- Disaster-related debris on beaches is eligible if the beaches are consistently used for public purposes and a health and safety hazard exists.
- Recreational facilities are not eligible PNP facilities. Therefore, debris would only be eligible in accordance with the eligibility criteria for private property (discussed later in this unit).

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### Notes:



## Debris Removal Eligibility - Continued

### Debris Removal Eligibility

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#### Hazardous/Toxic Waste

- Eligible activities
  - Household Hazardous Waste (HHW)
- Ineligible activities
  - Long-term cleanup
  - RCRA/CERCLA Defined Activities

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- Major hazardous and toxic waste components are generally the responsibility of the Federal EPA.
- The PA Group Supervisor will coordinate with FEMA Headquarters at the beginning of a disaster to determine if there have been any agreements with the Federal EPA on addressing HAZMAT for the specific disaster.
  - For example, FEMA HQ may determine if retrieving and disposing of orphan drums and barrels will be funded by FEMA or through the Federal EPA.
- FEMA generally will fund the removal and disposal of HHW.
- FEMA may provide technical assistance to States on disposal methods.
- Activities related to long-term cleanup are generally not eligible for FEMA funding.

### Notes:



## Eligibility Criteria and Issues (Cont'd)

### Private Property

## General

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In accordance with 44 CFR 206.224(b) Public Interest is defined as being necessary to:

- Eliminate immediate threat to life, public health and safety; or
- Eliminate immediate threats of significant damage to improved public or private property
- Ensure economic recovery of affected community to the benefit of the community-at-large

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- Debris removal from private property is generally the responsibility of the individual property owner, aided by insurance settlements and assistance from volunteer agencies.
  - Within a specified period of time, a private property owner may move disaster-related debris from his/her property to the curbside for pickup by an eligible applicant.
  - FEMA assistance is not available to reimburse private property owners for their cost of removing debris from their property.
- However, the Stafford Act Sections 403 and 407 and 44 CFR 206.224(b) provide FEMA the authority to fund eligible applicants to remove debris from private property. This work may only be eligible when:
  - The disaster caused very severe and widespread damage.
  - The removal is necessary to eliminate an immediate threat to life, public health and safety or to improve public or private property, or to ensure the economic recovery of the affected community **to the benefit of the community-at-large**. (*Discussion regarding defining a threat is provided on the next slide*).
  - The work is performed by an eligible applicant, such as a municipal or county government.
  - The private property owner has provided all insurance information.
  - It is pre-approved by the Federal Coordinating Officer (FCO)
  - Required legal documents are in place
- Applicants and property owners must be aware that only FEMA makes eligibility determinations regarding removal of debris from private property. Not all actions taken by the local governments are eligible for FEMA assistance.

## Eligibility Criteria and Issues (Cont'd)

### Private Property **Immediate Threat**

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An Immediate Threat is defined as:

“Additional damage or destruction from an event that can reasonably be expected to occur within five years”

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### Private Property **Legal Responsibility**

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Applicants must demonstrate that they have the legal responsibility under State or Local Statutes to remove the debris or demolish a damaged structure on private property

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## Private Property Legal Issues

- Stafford Act – Sec 407(b)
  - Hold Harmless Agreement
  - Right of Entry Agreement
- Review by FCO

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- Section 407(b) of the Stafford Act requires that debris removal from private property not take place until the State, Tribal, or local government has agreed in writing to indemnify FEMA from a claim arising from such removal and obtained unconditional authorization to remove the debris from the property.
  - Note that because this criteria is specified in the Stafford Act, FEMA does not have the authority to waive this requirement.
- Note that this indemnification is also required for work performed on commercial property.
- The Joint Field Office (JFO) Attorney should review the documents prior to FCO/FEMA accepting them.

### Notes:



## Eligibility Criteria and Issues (Cont'd)

### Private Property

### Demonstrating the Threat

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- Local Ordinances and Resolutions
- Local Building Official Determinations
- Local Health Official Determinations
- Economic Recovery of the Community

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- An applicant must demonstrate that removal of debris from private property is required to reduce a threat or ensure economic recovery (44 CFR 206.224).
- A *resolution* after a disaster by an applicant that debris on private property constitutes a threat to public health and safety does not in itself make the debris removal eligible.
  - The applicant should submit to FEMA for review and approval specific legal requirements for declaring the existence of the threat.
    - A damaged structure may be a public health and safety hazard if it could be condemned as such, pursuant to the provisions of an applicant's ordinance related to condemnation of damaged structures. A qualified individual, such as a certified building inspector, must make this determination.
    - A public health hazard may exist if such a determination is made pursuant to the provision of an applicant's ordinance related to public health. An individual qualified to do so, such as a public health official, must make such a determination.
- The determination of work being required to ensure economic recovery must be carefully reviewed.
  - This concept is often misapplied.
  - Use of this criterion is normally restricted to the removal of disaster-related debris from large commercial areas to expedite restoration of the economic viability of the affected community.

## Eligibility Criteria and Issues (Cont'd)

### Private Property

### Ineligible Debris

- ❑ Removal of debris from vacant lots, forests, heavily wooded areas, unimproved property, unused areas and farmland
- ❑ Removal of debris from commercial properties and industrial parks
- ❑ Removal of re-construction debris

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Notes:



## Private Property Ineligible Debris

- ❑ Removal of underground structures, wells, tanks, septic tanks, basements, pools
- ❑ Removal of driveways, concrete pads, slabs, foundations
- ❑ Demolition of commercial structures

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- Only disaster-related debris that requires removal to reduce or eliminate a threat or ensure economic recovery is eligible for removal.
- In general, FEMA will not pay for the removal of the following:
  - Privately owned vehicles, whether they are insured or not.
  - Old white goods located on private property awaiting proper disposal.
  - Old tires, batteries, or any equipment/material located on private property awaiting proper disposal.
  - Damaged swimming pools, basements, and foundations. If it is determined that a public safety hazard exists, FEMA may reimburse the cost of filling these structures.
  - Reconstruction debris, sometimes called construction rubble, resulting from reconstruction activities. Removal should be a part of the renovation contract and is to be removed by the contractor.
  - Debris that does not pose a threat is not eligible for removal. For example, miscellaneous debris, such as minor vegetation and rubble, is not eligible. Raking of private property to ensure glass and nails are removed is not eligible.
  - If an eligible applicant damages private property as a result of eligible debris removal activities, repairs to the property are not eligible unless the damage results in a health or safety risk. Similarly, if private property is damaged by a Federal agency engaged in disaster response activities, the Federal government is not liable for repairs to that property.

### Notes:



## Eligibility Criteria and Issues (Cont'd)

### Other Eligibility Issues

### Building Demolition

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- ❑ Public and PNP facilities
- ❑ Private structures
- ❑ Eligible costs
- ❑ Ineligible activities
- ❑ Other considerations and checklists

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### Authority

- Sections 403 and 407 of the Stafford Act allows for the demolition of unsafe public or private structures that pose an immediate threat to life, property, or public health and safety.
- The following is a summary of the key items of the FEMA Policy: Demolition of Private and Public Facilities (FEMA 9523.4), included in the Policies Section, and other references.
  - Public and PNP Eligible Facilities
    - Section 403 requires that the structures must be damaged by the disaster.
    - The structures must be determined to be unsafe and pose an immediate danger to the public. This determination must be made by local officials and verified by State and Federal officials.
    - Work must be completed within Emergency Work deadlines (44 CFR 206.204 – 6 months plus extensions).
    - Additionally, Section 407 (Stafford Act) allows for demolition in the public interest, ensuring economic recovery, but this only applies when the first two criteria above are met to the satisfaction of the Regional Director, **and** the structures have been uninhabited since the major disaster. The timeline for emergency work completion does not govern this authority.

- Private Structures
  - The structures must meet the first three criteria defined above for Public and PNP facilities.
  - Liability and legal permission requirements must be met.
  - Slabs or foundations, broken or intact, generally do not present a health or safety hazard to the general public. Slabs removed primarily for reconstruction are not eligible.
  - Individuals and private organizations (non PNPs) will not be reimbursed for their efforts on their own property.
- For health and safety reasons, the following demolition costs are eligible:
  - Capping wells
  - Pumping and capping septic tanks
  - Filling in basements and swimming pools
- Not eligible activities include:
  - Concrete slabs removed for reconstruction purposes, even when brought to the curbside
  - Removal or covering of pads and driveways
  - Structures condemned as safety hazards before the disaster
  - Habitable, but not yet damaged, structures even when they are in serious danger of total destruction (for example, on a failing slope)
- Section 404 Hazard Mitigation
  - When part of the Section 404 Hazard Mitigation buyout and relocation project, the removal of substantially damaged structures including slabs, driveways, fencing, garages, sheds, and similar appurtenances are eligible.
- Insurance must be considered.
- All work must be reviewed in accordance with environmental, historic, and other Federal laws. Refer to the table on the top of page 2 of the Policy.
- **Other Considerations**
  - Stress that demolition of a structure is not always the most cost-effective health and safety alternative. For “attractive nuisances” where structural integrity has not been compromised, cleaning and securing the facility may not be the best alternative.
- **Demolition Checklists**
  - This section contains various checklists for inspection, debris removal, and demolition activities for private property and mobile home parks.

## Eligibility Criteria and Issues (Cont'd)

### Special Use Areas

- Parks and Recreational Areas
- Public Marinas and Harbors
- Beaches

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### Parks and Recreation Areas

The removal of debris from parks and recreational areas used by the public is eligible when it affects public health or safety or proper utilization of such facilities.

### Public Marinas and Harbors

Damage to publicly owned marinas can include abandoned sunken boats and other debris that may impede navigation. Identified navigation hazards are eligible for removal by an eligible applicant. Coordination must be made between the U.S. Coast Guard, Other Federal Agencies, State Marine Patrol, local government agencies, legal counsel, and contractors specializing in marine salvage operations, commercial divers and certified surveyors to ensure the hazards are removed safely and efficiently.

### Beaches

Disaster-related debris on beaches is eligible if the beaches are consistently used for public purposes and a health and safety hazard exists. The applicant must comply with all environmental laws when removing debris from beaches

### Notes:



## Reasonable Costs Criteria and Issues

### Reasonable Cost

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FEMA definition:

- A cost that is both fair and equitable for the type of work being performed (OMB A-87)

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- The definition of cost eligibility states that a cost must be reasonable and necessary to be eligible.
- A reasonable cost is a cost that is both fair and equitable for the type of work being performed.
- Communities often enter into contracts that may not meet the definition of reasonable cost.
  - For example: charging \$75/CY for hauling debris is unreasonable when the going rate for similar work in adjacent locations is \$25/CY.
- The reasonable cost requirement applies to all labor, materials, equipment, and contract costs awarded for the performance of eligible work.

### Notes:



## Reasonable Costs Criteria and Issues (Cont'd)

### Eligible Costs

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- Force Account Labor
- Equipment
- Materials & Supplies
- Mutual Aid
- Contracted Services
- Project Management
- Monitoring
- Volunteers (Offset Federal Cost Share)

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### Force Account Labor

- To accomplish effective debris clearance in the early stages of the disaster response, an applicant may rely on personnel from various sources to perform or manage the work. The eligibility of this labor may vary per source. *Refer to FEMA Policy: Labor Costs—Emergency Work (FEMA 9525.7) (included in the Policies Section).*
  - The cost of straight-time salaries and benefits of an applicant’s **permanently employed personnel** are not eligible in calculating the cost of eligible emergency work. (Employees **reassigned** from another department to perform work are considered permanent employees, *Policy Digest*, page 93).
  - **Seasonally employed personnel**, when covered under existing budgets and used for a disaster during the season of employment, are considered **permanently employed personnel** for the purpose of cost eligibility.
  - **Temporary employees** hired as a direct result of the disaster are eligible for both regular time and overtime pay (*Policy Digest*, page 110).

### Force Account Equipment

- The costs of using applicant owned (force account) equipment while conducting eligible work may be claimed on the basis of accepted equipment rates.
  - Refer to the Policy Digest, page 42, PA Guide, pages 37-38.
  - Rates are available through FEMA, the State, and sometimes locals.
  - FEMA will fund the least costly of the available rates.
  - Equipment rates generally include operation, insurance, depreciation, and maintenance.
  - Cost of labor to operate equipment is an additional cost.

- Extraordinary expenses for repairs and maintenance required due to severe conditions in disaster operations may be eligible for reimbursement. FEMA Policy 9525.8, Damage to Applicant-Owned Equipment, provides criteria for and examples of eligible conditions. (Policy included in Policies Section).

### **Mutual Aid Agreement, Volunteers**

- Debris activities may be performed through Mutual Aid Agreements and volunteer organizations.

### **Contracts**

- Costs of **contractors** used to accomplish emergency work are eligible for reimbursement.
- However, straight-time salary and benefits of **force account labor overseeing contractors** performing emergency work are not eligible in calculating the cost of eligible emergency work (*Labor Cost Policy*).

### **Project Management and Monitoring Costs**

- It has been found that defining an acceptable percentage to estimate these costs is not appropriate.
- For example: There can be extensive amount of debris deposited in a relatively small area (say from a tornado) that requires minimal project management and a small number of monitors, or the same amount of debris widely scattered (hurricane event) that may require much more management and monitoring.
- Associated costs must be evaluated on a case-by-case basis—considering a reasonable amount of effort of appropriate level personnel. For example: it is unlikely that professional engineers would be necessary to monitor debris operations.

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### **Notes:**



## Reasonable Costs Criteria and Issues (Cont'd)

### Sources of Cost Data

- Historical data
- Contract cost for similar work
- State rates
- FEMA Cost Codes and Equipment Rates

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- Costs for work to be performed should not be determined arbitrarily.
- There must be some basis for the reasonableness.
- Costs may be determined by reviewing:
  - Historical data for similar work—within the locale or region, check previous disasters.
  - Applicant data for previous similar work (either force account or contract).
  - Contract costs for similar work being done in the area.
  - State Office of Emergency Services data.
  - FEMA cost codes for force account work.
  - FEMA equipment rates for applicant-owned equipment—may consider local or State rates, using whichever is less.
- Available cost data may need to be adjusted to reflect:
  - Timeframe of the operation—costs may be higher immediately after the disaster, but implementation of a bidding process for pickup and disposal should reduce costs.
  - Location of the operation—accessibility for debris pickup and disposal.
  - Other factors in evaluating costs are provided on the next slide.

### Notes:



## Reasonable Costs Criteria and Issues (Cont'd)

### Factors Affecting Costs

- Travel distances and conditions
- Use of Debris Management Sites (DMS)
- Method of volume reduction
- Costs of disposal
- Environmental monitoring
- Landfill tipping fees

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- Each debris operation has unique aspects that affect the total cost, whether the work is performed by force account or contract.
- Other factors may include:
  - Security at the Debris Management Site to prevent off-hour dumping.
  - Some landfills may have a daily cap on how much waste they can landfill in a day—a special waiver may be needed by the State to allow emergency debris disposal over the regulated daily cap.
- Tipping Fees:
  - Components may include:
  - Bond payoff for construction
  - Operation
  - Cover materials
  - Expansion
  - Monitoring
  - The State PA Group Supervisor can indicate if there is a regulatory office that approves landfill tipping fees.
  - The charging of tipping fees should be consistent, and not waived for some and charged to others.
  - Waived tipping fees are not reimbursable.

### Notes:



## Reasonable Costs Criteria and Issues (Cont'd)

### Salvaged Materials

- Mulch
- Scrap metals
- Concrete/Bricks/Masonry Items

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- Refer to FEMA Policy: Disposition of Equipment, Supplies and Salvaged Materials (FEMA 9525.12), page 4.
- Debris generated by a disaster may have a market value. Any revenue generated from debris must be used to offset the project cost.
- Reasonable costs expended by the applicant to administer and market the sale of the materials may be recouped by the applicant from the proceeds.
- If a contract provides for the contractor to take possession of the material in return for lower bid prices, there is no salvage value to be recouped.

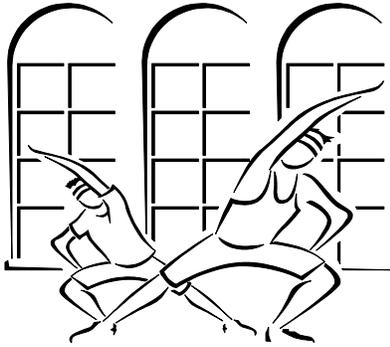
### Notes:



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## Review Activity 4.1

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### Activity 4.1: Debris Eligibility Scenarios

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