



FEMA

February 9, 2022

Jana Petersen
County Administrator
Boulder County
1325 Pearl Street
Boulder, Colorado 80302

Re: Private Property Debris Removal in Boulder County, FEMA-4634-DR-CO

Dear Ms. Petersen:

This is in response to your letter dated January 31, 2022, requesting Public Assistance (PA) funding from FEMA to remove debris from private property in Boulder County under DR-4634-CO. The County reported extensive damage under this declaration, especially residences damaged by the fire. I am partially approving your request to the extent necessary to abate immediate threats to public health and safety on residential property. I am deferring a decision on other elements in your request pending a submission of additional information concerning economic recovery.

FEMA may provide federal assistance under the Stafford Act to remove “debris and wreckage” resulting from an incident. For FEMA to approve private property debris removal (PPDR), applicants must comply with all requirements of Section 407 of the Stafford Act, 44 C.F.R. Part 206, and the Public Assistance Program and Policy Guide (PAPPG). Among other things, applicants must 1) unconditionally indemnify the federal government against any claim arising from debris removal; 2) have legal authority and responsibility to remove debris from private property; and 3) demonstrate the PPDR is in the public interest. Applicants must also undertake practical measures to avoid duplications of federal assistance as required by Section 312 of the Stafford Act.

Your request letter provides an adequate indemnification, and the County previously distributed right-of-entry (ROE) forms to community residents that included provisions indemnifying the federal government. In addition, your letter describes the County’s legal authority and responsibility to perform the work, citing various provisions in state and local law. You also sufficiently demonstrated PPDR is in the public interest. Your letter asserted that ash and other debris from burned residential structures is highly toxic and that their expeditious removal is necessary to protect public health and safety. Your supporting attachments included a declaration from the Executive Director of Boulder County Public Health dated January 2, 2022, identifying examples of debris they determined posed an immediate threat and urging swift action. County attorneys separately confirmed the legal authorities for declaring the existence of a threat to public health and safety. Finally, you assured that the County will undertake measures to avoid duplications of benefits, including by assisting the federal government in recovering any insurance or other proceeds that are

paid to any private party for PPDR for which federal aid or reimbursement was received. *See* 42 U.S.C. § 5155, 44 C.F.R. § 206.253(a), and 2 C.F.R. § 200.406.

FEMA accepts Boulder County's justification based on the threat to public health and safety. I am therefore approving PA funding to remove debris from private residential property as Category A under this declaration. Only the removal of debris necessary to eliminate or abate immediate threats to public health and safety will be eligible. Accordingly, the following types of hazardous debris on private residential property generated by the event would be considered eligible for PPDR:

- Removal of surface ash, which may include 3-6 inches of incidental soil;
- Burned debris from property remains, including burned or partially burned furniture, personal belongings, white goods, household appliances, and patio furniture;
 - This does not include burned or partially burned stone, concrete, landscaping features, or statues.
- Hazardous materials and pollutants; and
- Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.

The temporary stabilization of retaining walls may be allowable if they pose an immediate threat to debris removal crews. Furthermore, hazardous trees are eligible only to the extent they pose a risk to PPDR crews or pose an imminent threat of falling on the public right-of-way (ROW) or other public improved property. FEMA will require a subject matter expert's opinion (i.e. certified arborist or professional licensed forester) to substantiate the tree was so damaged that it posed a risk. *See* PAPPG, pages 101 to 103. All hazard trees will be flush cut with the stumps left in place unless stump removal is specifically requested and FEMA reviews it for eligibility. *See* PAPPG, page 103.

To expedite the PPDR process, please provide to FEMA as soon as possible the debris removal lead, a list of affected properties, ROEs or other authority to enter affected properties for debris removal activities, and a description of the proposed scope of work and debris identified for each property. The County must identify eligible, disaster-related debris to FEMA within 60 days of the Recovery Scoping Meeting. *See* 44 C.F.R. § 206.202(d)(1)(ii).

There are several other conditions to consider with my approval. First, if a property owner receives assistance for PPDR from any third party, the state and local governments must facilitate reporting and recovering these amounts, which will be offset against PPDR expenses. Likewise, if the disaster was caused by a third party, the state and County must make reasonable efforts to pursue damages and return any duplication of funds to the federal government. *See* PAPPG, page 95; 44 C.F.R. § 206.223(e). Next, the County must monitor all contracted debris operations to ensure that quantities and work are accurate and eligible. Any contract for carrying out PPDR work must comport with the approved scope of work and allow for accurate tracking of costs. It must also comply with the requirements of 2 C.F.R. §§ 200.318-200.336, the Cost Principles at 2 C.F.R. Part 200, Subpart E, and the PAPPG. In addition, the County must comply with all laws and regulations pertaining to historic preservation and environmental protection. Finally, you are encouraged to adhere to County debris removal operations plans (DROPs) or similar constructs to avoid jeopardizing funding.

As stated above, I am deferring my decision on other debris categories in your request. Your letter expressed that state and local jurisdictions are gathering supplemental information for the County's PPDR request, particularly with regard to a public interest justification based on economic recovery.

Because this information is pending, the following activities are not approved for federal funding at this time:

- Demolition of partially burned structures on private property if more than one wall is still standing;
- Debris removal from vacant lots, unused areas, unimproved property such as forests, or agricultural lands used for crops or livestock;
- Removal of burned vehicles on private property (normally abated through local government and law enforcement);
- Removal of topsoil or soil excavation (except where incidental to removing surface ash described above);
- Soil sampling or testing;
- Removal of structural footings, foundations, basements, concrete slabs, driveways, sidewalks, or retaining walls; and
- Debris removal from commercial properties.

If you have any questions regarding this letter, please contact me at (303) 476-1579. The conditions of this letter will be incorporated into any future approvals for PPDR for this disaster.

Sincerely,

Nancy M. Casper
Federal Coordinating Officer
FEMA-4634-DR-CO

cc:

Nancy Dragani, Regional Administrator, FEMA Region 8
Ryan Pietramali, Acting Deputy Regional Administrator, FEMA Region 8
Jennifer Dick, Regional Counsel, FEMA Region 8
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