



The Town of Hilton Head Island
Regular Public Facilities Committee Meeting

February 7, 2012

2:00 p.m.

Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting

- **Call to Order**
- **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- **Committee Business**
 1. Approval of Minutes
 - January 3, 2012
- **Unfinished Business**
- **New Business**
 - Clearing of Disaster Related Debris from Private Streets, Easements, and Multi-Family Developments.
- **Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

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TOWN OF HILTON HEAD ISLAND PUBLIC FACILITIES COMMITTEE

5 Date: January 3, 2012

Time: 4:00 P.M.

7 Members Present: Kim Likins, George Williams, Bill Harkins

9 Members Absent: None

11 Staff Present: Scott Liggett, Jeff Buckalew, Shea Farrar, Charles Cousins, Cary
12 Gaffney

14 Others Present: Bill Ferguson, *Councilman*, Richard Cyr, *General Manager*,
15 *Hilton Head Public Service District*

17 Media Present: None

21 **1. Call to Order.**

22 The meeting was called to order at 4:00 P.M.

23 **2. FOIA Compliance:**

24 Public notification of this meeting has been published, posted and mailed in
25 compliance with the Freedom of Information Act and the Town of Hilton Head
26 Island requirements.

27 **3. Committee Business:**

28 **1. Approval of Minutes:**

29 Councilman Williams moved to approve the Minutes of December 6, 2011.
30 Councilman Harkins seconded. The Minutes of December 6, 2011 were
31 unanimously approved.

33 **4. Unfinished Business:** None

35 **5. New Business**

- 36 • **Consideration of Additional Funding for Tax Increment Financing (TIF)**
37 **Area Sewer Projects**

39 Scott Liggett, Director of Public Projects & Facilities advised the Committee it is
40 staff's recommendation the Committee endorse the request made by the Hilton
41 Head Public Service District and recommend Town Council provide an additional
42 \$160,000 of Tax Increment Financing (TIF) funds in order to complete the
43 referenced projects.

44
45 Mr. Liggett also advised the Committee that over the last several years Town
46 Council, through the approved budgeting process, has allocated the use of TIF
47 monies for the purpose of furthering and expanding sewer coverage areas in
48 working with heavy partnership with the Hilton Head Public Service District. In

49 many ways you could look at today's recommendation as a status report both from
50 a budgetary and project update standpoint. As those monies have been budgeted,
51 the PSD through their consultants and staff is working through to bring these
52 projects to fruition.

53
54 As it relates to the current issue before you insofar as this mid-year update, there is
55 a request that is consolidated in the packet that you have that includes a letter from
56 the PSD with a request for additional amount of money in the amount of \$160,000
57 in order to deliver all three of the projects that remain outstanding in the TIF area.
58 Simply described as the Squire Pope Road area in and around the Ford Shell Park,
59 the Marshland Road East in the area always described as the horseshoe at the
60 headwaters of Broad Creek and the third area in and around the Chaplin Initiative
61 (Linear Park).

62
63 After a brief discussion, Councilman Harkins moved the Public Facilities
64 Committee recommend to Town Council consideration for additional funding for
65 Tax Increment Financing for the sewer projects as discussed today. Councilman
66 Williams seconded. The motion passed unanimously.

67
68 • **Conveying Portion of Gum Tree Nursery Tract to Sandra Simmons for**
69 **Road Right of Way and a Permanent Sight Triangle Easement**

70 Jeff Buckalew, Town Engineer advised the Committee it is staff's recommendation
71 the Committee endorse the conveyance of a 0.027 acre portion of right of way
72 (0.014 acres of which will be restricted with a sight triangle easement) to Sandra
73 Simmons and that this endorsement be forwarded to Town Council as a
74 recommendation for approval.

75
76 The Town has recently acquired land from Gum Tree Nursery (0.508 acres) as well
77 as a 0.362 acre permanent storm drainage easement from Sandra Simmons to
78 facilitate storm drainage improvements off Gum Tree Road. The Simmons' were
79 generous enough to donate the permanent storm drainage easement to the Town,
80 although they are considering the future development potential of their property.
81 Their concept plans for the development of their parcel include a new road off Gum
82 Tree whose right of way would encroach onto the Town's newly acquired parcel.
83 The area of this encroachment is 0.013 acres. A permanent sight triangle easement
84 (0.014 acres) would also be needed on the Town's land for the new road to comply
85 with the Land Management Ordinance, resulting in a total conveyance of 0.027
86 acres.

87
88 After a brief discussion, Councilman Harkins moved that the Committee
89 recommend to Town Council the conveyance of a portion of Gum Tree Nursery
90 Tract to Sandra Simmons for the road right of way and permanent site triangle
91 easement as presented. Councilman Williams seconded. The motion unanimously
92 passed.

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99 **6. Adjournment:**
100 Councilman Williams moved to adjourn. Councilman Harkins seconded the
101 motion. The meeting was adjourned at 4:30 p.m.

102
103 Respectfully Submitted,

104
105 _____
106 **Karen D. Knox**
107 **Senior Administrative Assistant**

DRAFT

Memo

To: Public Facilities Committee

Via: Scott Liggett, Dir. of PP&F / Chief Engineer

Charles Cousins, Dir. of Comm. Dev.

Stephen Riley, Town Manager

From: Jeff Buckalew, Town Engineer

Jennifer Lyle, Assistant Town Engineer



Subject: Clearing of Disaster Related Debris from Private Streets, Easements, and Multi-Family developments

Date: January 24, 2012

Recommendation:

Staff recommends that Phase II of the Town's policy on the removal of disaster related debris from private streets and easements be revised, effective June 1, 2012. The proposed revisions to this policy (Exhibit A) directly relate the actions and monetary expenditures of the Town to a prerequisite, formal determination on the threat to the public health, safety and the economic recovery of the Town. As a point of clarification, staff also recommends the Town remove and dispose of disaster debris from multi-family developments if it is properly placed in a road right of way, or access way, in which the Town has a legal interest, or is delivered to a citizen drop-off center for processing.

Summary:

The proposed revisions to Phase II of the current policy (Exhibit A) require the Town to conduct a preliminary damage assessment after a disaster and to make a determination as to whether the debris on private roads, rights of way, storm drainage easements, or ingress / egress easements poses an immediate threat to life, public health and safety, or the economic recovery of the Town. If such a threat is determined to exist, the Town Manager shall order the removal of the debris at the Town's expense. The policy revisions do not require the private property owner to share in the funding of the work. If policy revisions are approved, the Town will need to amend the current PUD agreements the Town has for debris removal.

Staff has also been asked to clarify the Town's policy on pushing and removing debris from multi-family / condominium developments. The Town's current policy is that the Town will not go onto those private developments to push or remove debris; however the Town will remove and dispose of debris generated on multi-family properties if it is properly placed in a platted road right of way or access easement in which the Town has a legal interest. It should be known by the PFC and Town Council that current FEMA policy recognizes multi-family developments as commercial enterprises and thus this debris is NOT necessarily eligible for federal reimbursement under the public assistance

program.

The Disaster Recovery Commission approved the revisions of this policy at their last meeting on November 17, 2011.

Background:

Since the adoption of the current Town policy in 2007, FEMA has revised its own policy on public assistance for private debris (Exhibit B) under the Stafford Act. The Town has recently adopted two important ordinances that define the legal authority to address debris removal on private property, as this is required for public assistance under the FEMA policy. The Town's current disaster debris removal policy needs to be updated, to comport with these ordinances and the FEMA policy. The current Town policy that addresses the removal of debris from private roads or access routes was adopted as part of the Disaster Recovery Plan approved by Town Council on March 3, 2007.

FEMA's Debris Removal from Private Property Policy (Exhibit B) and FEMA 325, Public Assistance Debris Management Guide, Chapter 4 – Private Property Debris Removal and Demolition of Private Structures (Exhibit C) both classify apartments and condominiums as "Commercial Property". Both documents state that commercial property is generally ineligible for Public Assistance grant funding due to it being assumed that these enterprises retain insurance that can and will cover the cost of debris removal. However, both documents do state that the Federal Coordinating Officer (FCO) may determine that debris removal from private commercial property by a State or local government may be eligible for FEMA reimbursement, but only when such removal is in the public interest.

FEMA's disaster assistance policy (p. 5, Section D.) states that eligible debris removal work from private property includes:

- *Large piles of disaster-generated debris in the living, recreational, and working areas of properties*
- *Disaster-generated debris obstructing primary ingress and egress routes to improved property*
- *Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way*
- *Debris created by the removal of disaster-damaged interior and exterior materials from improved property.*
- *Household hazardous wastes*
- *Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, providing that the removal of the debris is the legal responsibility of the applicant, on the basis of removing an immediate threat to life, public health, and safety.*

FEMA's policy goes on to state that removal of debris from commercial property is generally not eligible for Public Assistance grant funding (p. 6, Section E. of the Disaster Assistance Policy and p. 39 of FEMA's 325 Guide). FEMA defines industrial parks, private golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks as commercial property.

The Town currently has memorandums of understanding (MOA's) with several PUD's and POA's which provide the Town (or the Town's agent) uncontested access to the platted road network to clear for two lanes of traffic, and removal of disaster debris from the platted road network right-of-way in accordance with prevailing Town policy (Exhibit D). Neither the current policy nor the MOA's specify the how the multi-family debris is to be handled. Based on staff's inquiries with the Town's Debris Removal Contractor, Crowder Gulf, the Town's Debris Monitoring Firm, SAIC, and FEMA's representatives for Region IV, the debris generated on private property would be eligible if the event were catastrophic and the debris needed to be cleared to remove an immediate threat to life, public health and safety, to remove an immediate threat of significant damage to improved public and private property, or to remove an immediate threat to the economic recovery of the Town.

A basic guideline for FEMA's Public Assistance eligibility is to not duplicate services that may be covered by insurance or another source. Staff has recently been advised by some condominium associations that their insurance policies only cover construction and demolition debris, and not vegetative debris. These entities shall be subsequently advised of the Town's policy and to review their insurance coverage as necessary.

Exhibit A:

Debris Management Policy approved March 3, 2007 by Town Council addressing debris removal from private roads

Proposed Changes to Phase II of the Policy

Debris Management Policy approved March 3, 2007 by Town Council:

Phase I - So as to provide adequate, clear and safe access routes which facilitate:

- ◆ The movement of emergency vehicles
- ◆ Law enforcement
- ◆ Resumption of critical services
- ◆ Damage assessment of critical public facilities and utilities

The Town of Hilton Head Island will move storm generated debris from the roadway surface to the side of the road or to some other acceptable location in order to provide access into impacted areas as quickly as possible. During this phase, no attempt will be made to remove or dispose of the debris.

Phase II – So as to provide adequate, clear and safe access routes which ensure the Community's long-term:

- ◆ Health
- ◆ Safety,
- ◆ Economic restoration

The Town of Hilton Head Island will remove storm generated debris from all public roads, private roads (including PUD's), access ways and, property in which the Town has a legal interest. The Debris Management Official will determine the number and type of sweeps required based on the level of the storm, and the amount and type of debris generated.

Proposed Changes to Phase II of the Policy:

Phase II - So as to remove an immediate threat

- 1) to life, public health and safety;
- 2) of significant damage to improved public and private property, and,
- 3) to the economic recovery of the Town:

The Town of Hilton Head Island will remove storm generated debris from all public roads and property in which the Town has a legal interest. The Town will conduct a preliminary damage assessment after the disaster. Based on this assessment, the Town Manager shall determine whether the debris on private roads, rights-of-way, storm drainage easements, or ingress/egress easements poses an immediate threat to life, public health and safety, of significant damage to improved public and private property, or the economic recovery of the Town. If the debris is determined to pose such a threat, the Town Manager shall order the removal of the debris and payment of the cost thereof. The Town will remove disaster debris generated from multi-family developments if it meets the criteria above and is placed in a road right of way or access easement in which the Town has a legal interest or is delivered to a citizen drop off center.

In accordance to the Debris Management Plan, the Debris Management Official will determine the number and type of collection passes required based on the level of the storm, and the amount and type of debris generated. Standard procedure shall be to make two passes along each road designated for eligible debris pick up and after that, the private property owner will be responsible for any subsequent debris removal. These passes will be well publicized and timed to ensure the efficient collection and removal of all eligible debris within the right of way or easement at that time.

Exhibit B:

**FEMA Disaster Assistance Policy (DAP 9523.13) Debris
Removal from Private Property dated July 18, 2007**



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.13

I. TITLE: Debris Removal from Private Property

II. DATE: JUL 18 2007

III. PURPOSE:

This policy describes the criteria that the Federal Emergency Management Agency (FEMA) will use to evaluate the eligibility of debris removal work from private property under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403(a)(3)(A), 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5173, 42 U.S.C. 5192, and 44 CFR 206.224.

VI. BACKGROUND:

A. Sections 403(a)(3)(A) and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, respectively, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal.

B. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR 206.224 establish the requirement that debris removal be in the "public interest" in order to be eligible for reimbursement. "Public interest" is defined as being necessary to:

1. eliminate immediate threats to life, public health, and safety; or
2. eliminate immediate threats of significant damage to improved public or private property; or



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3. ensure economic recovery of the affected community to the benefit of the community-at-large.

C. Generally, debris removal from private property following a disaster is the responsibility of the property owner. However, large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large. In these cases, the State or local government may need to enter private property to remove debris to: eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved property; or ensure economic recovery of the affected community to the benefit of the community-at-large. In these situations, debris removal from private property may be considered to be in the public interest and thus may be eligible for reimbursement under the Public Assistance Program (44 CFR 206.224).

VII. POLICY:

A. Definitions.

1. Disaster-generated debris: Any material, including trees, branches, personal property and building material on public or private property that is directly deposited by the disaster.

2. Improved property: Any structure, facility, or equipment that was built, constructed, or manufactured. Examples include houses, sheds, car ports, pools, and gazebos. Land used for agricultural purposes is not improved property (44 CFR 206.221(d)).

3. Legal responsibility: A statute, formally adopted State or local code, or ordinance that gives local government officials responsibility to enter private property to remove debris or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).

4. Private property: Land and structures, to include contents within the structures, built on land that is owned by non-governmental entities (44 CFR 206.224(b)).

5. Private road: Any non-public road for which a subdivision of the State is not legally responsible to maintain. Private roads include roads owned and maintained by homeowners associations, including gated communities, and roads for which no entity has claimed responsibility. Local police, fire, and emergency medical entities may use these roads to provide services to the community (44 CFR 206.224(b)).



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B. Approval for FEMA Assistance. FEMA will work with states affected by a disaster to designate those areas where the debris is so widespread that removal of the debris from private property is in the "public interest" pursuant to 44 CFR 206.224, and thus is eligible for FEMA Public Assistance reimbursement on a case-by-case basis.

1. Any State or local government that intends to seek reimbursement to remove debris from private property within a designated area will, prior to commencement of work, submit a written request for reimbursement to, and receive approval from, the Federal Coordinating Officer (FCO). The written request will include the following information:

a. Public Interest Determination (44 CFR 206.224(a)):

i. Immediate Threat to Life, Public Health, and Safety Determination. The basis of a determination by the State, county or municipal government's public health authority or other public entity that has legal authority to make such a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety; or

ii. Immediate Threat to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris is cost effective. The cost to remove the debris should be less than the cost of potential damage to the improved property in order for the debris removal to be eligible; or

iii. Ensure Economic Recovery of the Affected Community to the Benefit of the Community at Large Determination. The basis of the determination by the State, county, or municipal government that the removal of debris from commercial properties will expedite economic recovery of the community-at-large. Generally, commercial enterprises are not eligible for debris removal.

b. Documentation of Legal Responsibility (44 CFR 206.223(a)(3)).

A detailed explanation documenting the requesting State or local government's authority and legal responsibility at the time of disaster to enter private property to remove debris, and confirmation that all legal processes and permission requirements (e.g., right-of-entry) for such action have been satisfied.

i. The eligible applicant requesting assistance must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to remove disaster-related debris from private property. Codes and ordinances must be germane to the condition representing an immediate



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threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants do not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).

ii. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety must be independent of any expectation, or request, that FEMA will reimburse costs incurred for private property debris removal. In addition, legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.

c. Authorization for Debris Removal from Private Property (44 CFR 206.223(a)(3)). Confirmation that a legally-authorized official of the requesting applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to remove/reduce threats to life, public health, and safety threat via debris removal.

d. Indemnification (44 CFR 206.9). The requesting entity indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

2. The FCO will approve or disapprove in writing each written request submitted by the State or local government for FEMA to designate areas eligible for private property debris removal. After receiving approval from the FCO, the State or local government may begin identifying properties and the specific scope of work for private property debris removal activities and apply for supplemental assistance through the Public Assistance Program.

C. Duplication of Benefits (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the debris removal work accomplished on each piece of private property.



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1. When debris removal from private property is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the costs of debris removal from private property.

2. If FEMA discovers that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding that the property owners received from other sources.

D. Eligibility of Debris Removal Work from Private Property (44 CFR 206.224(b)).

1. Eligible debris removal work from private property includes removal of:

a. Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.

b. Disaster-generated debris obstructing primary ingress and egress routes to improved property.

c. Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way.

i. Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criterion: more than 50% of the crown is damaged or destroyed; the trunk is split or broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.

ii. Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.

d. Debris created by the removal of disaster-damaged interior and exterior materials from improved property.

e. Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)

f. Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, provided that the



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removal of the debris is the legal responsibility of an eligible applicant, on the basis of removing an immediate threat to life, public health, and safety.

2. Ineligible debris removal work on private property includes the removal of:

- a. Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas.
- b. Debris on agricultural lands used for crops or livestock.
- c. Concrete slabs or foundations-on-grade.
- d. Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

E. Debris Removal from Commercial Property. The removal of debris from commercial property is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal. However, in some cases as determined by the FCO, the removal of debris from private commercial property by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).

Industrial parks, golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property with respect to Public Assistance funding.

F. Environmental and Historic Review Requirements. Eligible debris removal activities on private property must satisfy environmental and historic preservation compliance review requirements as established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.



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VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Recovery Policies 9523.13 and 9523.14, dated October 23, 2005, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

A handwritten signature in black ink, appearing to read "C. Castillo", written over a horizontal line.

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

Exhibit C:

Chapter 4 – Private Property Debris Removal and Demolition of Private Structures from FEMA 325, Public Assistance Debris Management Guide (July 2007)

Chapter 4 – Private Property Debris Removal and Demolition of Private Structures

Chapter Highlights

Private Property Debris Removal

- Approval for FEMA Assistance
- Documentation for PPDR
- Types of Eligible PPDR Work

Demolition of Private Structures

- Eligible Demolition Costs
- Documentation for Demolition

Commercial Property

Duplication of Benefits for PPDR and Demolition

The FEMA policies on debris removal from private property and demolition of private structures can be found in Appendix G.

Private Property Debris Removal

Private property debris removal (PPDR) is generally not eligible for reimbursement under the Public Assistance Program because debris on private property does not typically present an immediate health and safety threat to the general public. Also, debris removal from private property is generally the responsibility of individual private property owners, and other sources of funding, such as insurance, are commonly available to property owners to cover the cost of work. However, if private property owners move disaster-generated debris to the public right-of-way, the costs associated with removing this debris from the right-of-way may be eligible under the Public Assistance Program.

When large-scale disaster events cause mass destruction and generate large quantities of debris over vast areas, debris on private property may sometimes pose health and safety threats to the public-at-large. If private property owners are not available because they have evacuated, the State or local government may need to enter private property to remove debris considered to be an immediate threat to the lives, health, and safety of its residents. In such situations, the Federal Coordinating Officer (FCO) is authorized to approve the provision of Public Assistance for the removal of debris from private property when it is considered to be in the public interest. The section below describes the process through which applicants may obtain approval for Public Assistance funding for the costs of performing PPDR.

Approval for FEMA Assistance

FEMA will work with States affected by large-scale disasters to designate those areas where the debris is so widespread that removal of debris from private property is in the public interest on a case-by-case basis. Any applicant that intends to seek reimbursement to remove debris from private property within those designated areas will, prior to commencement of work, submit a written request to the FCO seeking approval for reimbursement. The applicant must provide documentation confirming that an immediate threat to the public exists as well as evidence of its legal responsibility to enter private property to eliminate the threat posed by the debris. Specifically, this includes:

Immediate Threat Determination

The applicant must provide documentation from the applicant's public health authority or other public entity with legal authority stating that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety.

The applicant may also provide documentation stating that the debris poses an immediate threat to improved property and that its removal is cost effective. The cost to remove the debris should be less than the cost of the potential damage to the improved property in order for the debris removal to be eligible.

Documentation of Legal Responsibility

The applicant must demonstrate its authority and legal responsibility to enter private property to remove debris. The legal basis for this responsibility must be established by law, ordinance, or code at the time of the disaster and must be relevant to the post-disaster condition representing an immediate threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

Applicants ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances where the applicant determines that ordinary condemnation and/or nuisance abatement procedures are too time consuming to address an immediate public health and safety threat. Applicants do not have to precisely follow their nuisance abatement procedures, or other ordinances, that would prevent the applicant from taking emergency protective measures to protect public health and safety.

In addition to providing documentation detailing an applicant's immediate threat determination and legal responsibility to remove debris from private property, the applicant must confirm that a legally authorized official has ordered the exercise of public authority to enter private property to perform PPDR. The applicant must also submit in its request

indemnification to the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

The FCO will approve or disapprove in writing each applicant's request for Public Assistance to perform PPDR. If approval is granted, applicants should immediately begin identifying properties for PPDR work and establishing specific scopes of work on each of these properties.

Additional information on the applicant approval process for PPDR may be found in Appendix G, *FEMA DAP9523.13, Debris Removal from Private Property*.

Documentation for PPDR

If PPDR is authorized and considered for Public Assistance grant funding, applicants are required to properly document all legal processes used to gain access to private property, as well as document applicable scopes of work, and compliance with Federal, State, and local environmental and historic preservation review requirements. Applicants should work with the Public Assistance staff prior to the commencement of any PPDR work to ensure that all legal, environmental, historic, and scope of work considerations are addressed.

The following documents are necessary for Public Assistance funding for PPDR work:

1. **Right-of-Entry.** A right-of-entry signed by the property owner should include a hold harmless agreement and indemnification applicable to the project's scope-of-work. FEMA's Office of Chief Counsel (OCC) should review the right-of-entry form and the language of the hold harmless agreement and indemnification. The right-of-entry form may also include space for the private property owner's insurance information (policy number) for verification purposes, if applicable.
2. **Photos** are strongly encouraged to show the condition of the property prior to the beginning of the work. Generally, pictures are used to confirm the address and identified scope-of-work on the property.
3. A **PPDR Assessment** is a property-specific assessment which establishes the scope of eligible work. This may be a map which serves as a guide indicating the location of the eligible items of work that present an immediate threat relative to improved property or ingress and egress routes. These maps may incorporate symbols and a legend to identify structures, property lines, and eligible items of work. This assessment may also be a work order or may be covered in the right-of-entry form, as long as the scope of work can be clearly identified.

4. **Documentation of Environmental and Historic Review.** Debris removal work from private property must satisfy compliance review requirements as established by 44 CFR Parts 9 and 10 and all other applicable Federal environmental and historic preservation requirements.

Additional documentation may be required by Public Assistance staff on a case-by-case basis to demonstrate eligible work performed and compliance with applicable Federal, State, and local laws and regulations.

Types of Eligible PPDR Work

Eligible debris removal work from private property includes removal of:

- Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.
- Disaster-generated debris obstructing primary ingress and egress routes to improved property.
- Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way.
 - Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and:
 - has more than 50% of the crown damaged or destroyed, or;
 - has split trunk or broken branches that expose heartwood, or; the tree itself is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.
 - Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.
- Debris created by the removal of damaged interior and exterior materials from improved property.
- Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)
- Disaster-generated debris on private roads and streets of a gated community, provided that the removal of the debris has become the legal responsibility of an eligible applicant.

Ineligible debris removal work on private property includes the removal of:

- Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas.
- Debris on agricultural lands used for crops or livestock.
- Concrete slabs or foundations-on-grade.
- Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

Demolition of Private Structures

State and local governments may need to enter private property to demolish private structures made unsafe by disasters to eliminate immediate threats to life, public health, and safety. In some cases, the costs of performing demolition of private structures may be eligible for Public Assistance grant funding. Typically, the demolition of private structures to eliminate immediate threats is authorized under Section 403(a)(3)(E) of the Stafford Act.

FEMA will consider alternative measures to eliminate threats to life, public health, and safety posed by disaster-damaged unsafe structures, including fencing off unsafe structures and restricting access, when evaluating requests for Public Assistance grant funding for demolition work. The Public Assistance staff must also concur that the demolition of unsafe structures and removal of demolition debris are in the public interest.

The demolition of unsafe privately owned structures and subsequent removal of demolition debris may be eligible when the following conditions are met:

- The structures were damaged and made unsafe by the declared disaster, and are located in the area of the disaster declaration;
- The applicant certifies that the structures are determined to be unsafe and pose an immediate threat to the public. An unsafe structure is a non-commercial or non-industrial structure that threatens the life, health or safety of the public because the structure is so damaged or structurally unsafe that partial or complete collapse is imminent. This certification may be made by the State or local government's building inspector and may be based on a structural assessment in accordance with local ordinances and building codes;
- The applicant has demonstrated that it has legal responsibility to perform the demolition. Similar to private property debris removal, the applicant must demonstrate its authority and legal responsibility to enter private property to perform demolition of unsafe structures. The legal basis for this responsibility must be established by law, ordinance, or code at the time of the disaster and must be relevant to the post-disaster

condition representing an immediate threat to life, public health, and safety, and not merely define the applicant's uniform level of services;

- A legally authorized official has ordered the demolition of unsafe structures and removal of demolition debris;
- The applicant has indemnified the Federal government and its employees, agents, and contractors from any claims arising from the demolition work; and
- The demolition work is completed within the completion deadlines outlined in 44 CFR §206.204 for emergency work.

Additional information on the general eligibility of demolition of private structures may be found in Appendix G, *FEMA DAP9523.4, Demolition of Private Structures*.

Eligible Demolition Costs

Eligible costs associated with the demolition of private structures may include, but are not limited to:

- capping wells;
- pumping and capping septic tanks;
- filling in basements and swimming pools;
- testing and removing hazardous materials from unsafe structures including asbestos and household hazardous wastes;
- securing utilities (electric, phone, water, sewer, etc.);
- securing permits, licenses, and title searches. Fees for permits, licenses, and titles issued directly by the applicant are not eligible unless it can be demonstrated that the fees are above and beyond administrative costs; and/or
- demolition of disaster-damaged outbuildings such as garages, sheds, and workshops determined to be unsafe.

Ineligible costs associated with the demolition of private structures include:

- removal of slabs or foundations, except in very unusual circumstances, such as when disaster-related erosion under slabs on a hillside causes an immediate public health and safety threat; and/or
- removal of pads and driveways.

Structures condemned as safety hazards before the disaster are not eligible for demolition and subsequent demolition debris removal under Public Assistance grant authority.

Individuals and private organizations (except for eligible PNPs) will not be reimbursed for demolition activities on their own properties under the Public Assistance Program.

Documentation for Demolition

In order to receive reimbursement of eligible demolition costs, applicants should provide documentation of applicable legal processes and scopes of work performed, similar to the private property debris removal process described above. Specifically, this includes:

- Rights-of-entries;
- Photos of the structures;
- Structural assessments, or other certifications that the structures are determined to be unsafe or pose an immediate threat to the public, based on local ordinances or building codes;
- Notices of demolition; and
- Documentation of environmental and historic review.

All documentation should be consistent with the requirements of applicable Federal, State, and local laws and regulations governing demolition of private structures. Similar to PPDR work, additional documentation may be required by Public Assistance staff on a case-by-case basis to demonstrate eligible work performed and compliance with applicable Federal, State, and local laws and regulations.

Commercial Property

The removal of debris from commercial property and the demolition of commercial structures are generally not eligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal and/or demolition. However, in some cases as determined by the FCO, the removal of debris from private commercial property and/or the demolition of private commercial structures by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest.

Industrial parks, private golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property.

Duplication of Benefits for PPDR and Demolition

FEMA is prohibited from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for

PPDR work and the demolition of private structures. Typically, the rights-of-entries used for PPDR and demolition of private structure have a clause that states that a private property owner will re-pay an applicant the amount of insurance proceeds received for any PPDR or demolition work performed. The right-of-entry form being used by the applicant may also include space for the private property owner to list insurance information (policy number) for verification purposes.

When PPDR and demolition of private structures is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be eligible for the remainder of the cost of the eligible work after insurance proceeds are recouped from the property owner. If it is discovered that a duplication of benefits has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding the property owners received from other sources.

Exhibit D:

**Existing Memorandum of Agreement (Example)
Between the Town and a PUD for debris removal after a disaster
debris-generating event**

C 46-2003
NOA #6

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

MEMORANDUM OF AGREEMENT-

THIS AGREEMENT is made and entered into this 16 day of September, 2003, by and between the Town of Hilton Head Island, South Carolina, (hereinafter referred to as the "Town"), and the below listed Planned Unit Development (PUD) or Property Owners Association (POA).

WHEREAS, the Town seeks to establish and maintain a high level of pre-disaster readiness to execute the storm debris management mission in the wake of a hurricane or other disaster; and

WHEREAS, the Town has contracted for debris management services within the Town limits of the Town of Hilton Head Island; and

WHEREAS, the Town recognizes the urgent need to re-establish the publicly and privately maintained transportation network throughout the Town following a disaster; and

WHEREAS, the aftermath of a disaster event could produce a significant debris clearing, reduction, and disposal mission, which would greatly exceed the capabilities of owners of private road networks (i.e.- planned unit developments, property owner associations), to adequately respond; and

WHEREAS, restoration of utility services cannot be effectively performed without proper access to a clear transportation network;

NOW, THEREFORE, the below listed agreements (as indicated by a placed in the boxes shown by the representative of the Planned Unit Development (PUD) or Property Owners Association (POA) between the Town and the named PUD or POA are established in the event of a disaster that produces a significant volume of debris.

Planned Unit Development or POA PALMETTO DUNES RESORT

Solid Waste District #3 Hilton Head Island

Land Use

Agrees to permit the Town to use the identified properties as Debris Management Locations (DMLs) for the duration. The Federal Emergency Management Agency (FEMA) has established the disaster debris mission completion duration at six months with two possible six-month extensions depending upon the magnitude of the disaster. Properties must meet the specifications identified in prevailing Town policy. The Town's debris management contractor shall restore the property to pre-use condition upon completion of the debris mission. There will be no compensation for use of this property. This DML will be used only for the staging, segregation, temporary storage and reduction of burnable debris and burnable construction debris originating within the identified solid waste district. List any properties by parcel number.

Properties:

Road Clearance & Burnable Debris Removal

Agrees to permit the Town or its public or private agents uncontested access to the platted road network for the purpose of responding to the debris mission following a storm event. The Town or its agents will perform the following work:

- Initially clear two lanes of traffic (one lane in each direction) by pushing disaster debris to the edge of the two-lane width.
- Subsequent clearance of the entire traveled-way by pushing disaster debris to the edge of the traveled-way.
- Subsequent removal of all disaster debris from the platted road network right-of-way (The Town of Hilton Head Island or its agents assume no liability or responsibility for the damage of utilities in the course of the debris response mission).
- Pick-up of segregated debris piles placed at the edge of the road ROW in accordance with prevailing Town policy.

This agreement does not cover the clearance, collection or removal of debris from golf courses or other designated open space. Further, The Town of Hilton Head Island and its agents shall be held harmless from damage to property and utilities in the course of performing the debris mission with due diligence.

Equipment & Materials Staging Area

Agrees to permit the storage of equipment and materials (exclusive of significant debris quantities) on designated parcels of property in support of the debris management mission in the general vicinity. List properties by parcel number.

Properties:

Personnel and equipment

Agrees to use equipment and personnel employed by the PUD for the clearance of roads and ROW within the PUD or POA if such assets are available. List personnel by name, position title and hourly rate (salary and benefits). (Can be provided at time of disaster).

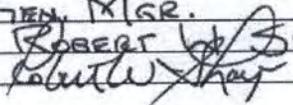
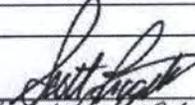
Personnel:

List equipment by Manufacturer and model:

This commitment of personnel and equipment is not contingent upon possible reimbursement by any government agency. Further, no commitment to reimbursement by Federal, State or Local Governments is implied.

Debris Management Location (DML) access

The Town of Hilton Head Island agrees to permit agents of this PUD or POA to bring burnable debris and burnable construction debris only to a DML operated by the Town (or its agents) for reduction and subsequent disposal. Loads will be accounted for by a load ticket system employed by the DML operator. Mixed debris will not be accepted. The Town (and its agents) reserves the right to refuse loads. This commitment does not suggest any reimbursement to the PUD or POA for its assumption of the debris hauling mission.

Planned Unit Development or POA ~~XXXXXXXXXX~~ PALMETTO DUNES RESORT
Title GEN. MGR.
Print Name ROBERT W. SHARP
Signature 
Engineering Department Representative (Town of Hilton Head Island) 
Town Manager Stephen G. Riley, AICP
Signature 