

20. Acceptance of a Status Report Regarding Storm-Related Debris Removal in Private Subdivisions and Along Private Roads

The Board approved Options 1 & 2: 1) Accept the status report regarding storm-related debris removal in private subdivisions and along private roads, and 2) Direct staff to prepare an Ordinance regarding debris removal from private streets, roads, roadways, and private property for Board consideration.

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Board of County Commissioners

Leon County, Florida
www.leoncountyfl.gov

Agenda Item Executive Summary

Tuesday, June 09, 2009

Title:
Acceptance of a Status Report Regarding Storm-Related Debris Removal in Private Subdivisions and Along Private Roads

Staff:
Parwez Alam, County Administrator
Alan Rosenzweig, Assistant County Administrator
Tony Park, P.E., Director of Public Works

Issue Briefing:

This item seeks Board acceptance of a status report regarding storm-related debris removal in private subdivisions and along private roads.

Fiscal Impact:

This item has no fiscal impact.

Staff Recommendation:

- Option #1: Accept the status report regarding storm-related debris removal in private subdivisions and along private roads.
- Option #2: Direct staff to prepare an ordinance regarding debris removal from private streets, roads, roadways, and private property for Board consideration.

Report and Discussion

Background:

For the last several years, Leon County has experienced several disaster declarations. Storms such as Bonnie/Charley (2004), Frances (2004), Ivan (2004), Jeanne (2004), Dennis (2005), and Fay (2008), resulted in debris being deposited throughout the County or deposited in specific areas of the County.

Prior to 2004, the Federal Emergency Management Agency (FEMA) took a hard stance on not reimbursing debris removal expenses associated with private subdivisions and/or private roads. In 2007, FEMA released Disaster Assistance Policy 9523.13 entitled, "Debris Removal from Private Property" (Attachment #1).

The following analysis outlines the FEMA policy and the procedures jurisdictions must follow if attempting to seek reimbursement.

Analysis:

Section VI (C) of the FEMA policy states, "*Generally, debris removal from private property following a disaster is the responsibility of the property owner.*" However, the Section goes on to recognize that, in large-scale disasters, enormous quantities of debris may be deposited on private property resulting in widespread immediate threats to the public. In these cases, the local government may find that private property debris removal is necessary 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

When such a finding is determined, "*. . . 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).*"

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.

To be considered for reimbursement of debris removal on private property, the local government must submit a written request for reimbursement to, and receive approval from, the Federal Coordinating Officer (FCO), prior to the commencement of work. The written request has to include an explanation of the Public Interest Determination and the authority of the person or entity making such determination and Documentation of Legal Responsibility.

Staff has received inconsistent answers regarding the type of documentation necessary to support legal responsibility. Some FEMA and State representatives have indicated that the Franchise Agreement with Waste Management, Inc. is sufficient in supporting legal responsibility. However, other FEMA and State representatives have opined differently. Section VII (B) 1(b)(i) of the FEMA policy states:

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

Given the inconsistency of interpretation and the policy language itself, staff would encourage the Board to explore the

option of adopting an ordinance to substantiate legal responsibility (Attachment #2). Staff understands that several counties and cities have either adopted such type of ordinance or are in the process of considering one. An ordinance of this kind must be independent of any expectation, or request, that FEMA will reimburse costs incurred for private property debris removal. The purpose would be to establish the County's legal responsibility to take action after storm events receiving emergency declarations where there is an immediate threat of life, public health, and safety.

Options:

1. Accept the status report regarding storm-related debris removal in private subdivisions and along private roads.
2. Direct staff to prepare an ordinance regarding debris removal from private streets, roads, roadways, and private property for Board consideration.
3. Do not accept the status report regarding storm-related debris removal in private subdivisions and along private roads.
4. Do not direct staff to prepare an ordinance.
5. Board Direction.

Recommendation:

Options #1 and #2.

Attachments:

1. [FEMA Disaster Assistance Policy 9523.13](#)
2. [Sample Ordinance](#)

