

Debris Removal Program

Debris Removal Right of Entry Permit

Background

The State of New Mexico is providing debris removal services in areas impacted by the October 2024 Chaves County flooding. Services covered by this Right of Entry permit are specifically limited to public waterway debris cleanout.

Instructions

- 1. Complete** the Right of Entry Permit form. Be sure to fill the form out completely.
- 2. Sign** the Right of Entry Permit. The Permit must be signed by the landowner or authorized agent.
- 3. Submit** the Right of Entry Permit, as described below.

Where to Submit

✓ **Electronic**

Send completed and signed form to:

DHSEM-DCM@dhsem.nm.gov

E-Signature is now available! When submitting electronically, you must include a scan or picture of a government-issued photo ID for the property owner.

Right-of-Entry Permit for Disaster Debris and Hazard Tree Removal on Private Property and Waterway Embankments

Name of Owner(s)/Agent: _____

Phone Number of Owner(s)/Agent: _____

Email of Owner(s)/Agent: _____

Property Address: _____

Assessor's Parcel No. (APN): _____

I / we, _____, certify that I am / we are the owner(s), or authorized agent of the owner(s), of the real property located at the above address (hereinafter "Owner"). I hereby certify that I/we have full power and authority to execute this Right of Entry Permit (ROE) without the need for any further action, including, but not limited to, notice to or approval from any other party.

I / we hereby grant Chaves County ("County"), as well as the State of New Mexico ("State"), and the United States Government, including their officers, employees, agencies, and independent contractors (collectively, the "Government"), a right to enter upon the real property specified above by address and Assessor's Parcel Number (hereafter the "Property") and will guarantee access to the property for the activities selected below and described herein. The provisions below are applicable.

- 1. Purpose:** The Government is granted this Right of Entry (ROE) solely for the purpose of accessing and conducting flood response and recovery operations within the waterways affected by the severe flooding that occurred in Chaves County in October 2024, as recognized by Presidential Major Disaster Declaration DR-4843 designating Chaves County as a Primary Natural Disaster Area. This includes the Hondo River, Berrendo River, Spring River, Middle Berrendo River, Summit Drainage Channel, and Spur Drain.

This ROE establishes a temporary easement allowing access across private property only as necessary to reach these waterways. No private property debris removal (PPDR) will occur outside of what is necessary to facilitate access to and operations within the waterways.

- 2. Time Period:** This ROE shall expire twelve (12) months after the date of the Owner's signature(s), below; or when the Debris Removal Program ends, as determined in the sole discretion of the Government; or when the owner submits an executed *Withdrawal Form* (see below) to the

Property Address: _____
APN: _____

Disaster Recovery Center at the Roswell Mall, 4501 N. Main Street, Roswell, NM 88201, or DHSEM-DCM@dhsem.nm.gov.

- 3. Authorized Activities:** Owner hereby grants to the Government, its officers, employees, agencies, and independent contractors, a temporary easement to access the Property as necessary to reach the designated waterways, including the Hondo River, Berrendo River, Spring River, Middle Berrendo River, Summit Drainage Channel, and Spur Drain. In carrying out these activities, the Government and its contractors may utilize embankments along the waterways to facilitate debris removal and restoration efforts, which may include the temporary staging of debris prior to removal. Necessary equipment may be operated on the embankments to support work within the waterways, provided that no equipment shall be driven through or otherwise disturb residential yards beyond the embankments and necessary areas to access the impacted waterways. Work conducted under this easement shall be necessary to restore the flow and function of the waterways while minimizing any disruption to private property.
- 4. Property Sold Prior to Cleanup Certification:** Any property that is sold prior to issuance of the cleanup certification will be withdrawn from the program, unless both new and previous Owners sign a property transfer affidavit, and the new Owner fills out an ROE.
- 5. Release and Waiver of Liability:** Owner acknowledges that the Government’s decisions about when, where, and how to provide flood-generated debris removal in the waterway, as accessed through the Owner’s property, are discretionary functions. Owner hereby acknowledges that the Government is not liable for any claim based on the exercise or performance, or failure to exercise or perform, a discretionary function, and promises not to make such a claim. **Owner further releases the Government from all liability for any damage to property or bodily injury or death to persons on the property that may occur during or after the Debris Removal Program. Please also see Sections 8 and 9, below.** Owner therefore waives any claims or legal action against the Government, in accordance with state and federal law, including the New Mexico All Hazard Emergency Management Act, and the Stafford Act, 42 U.S.C. § 5148. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680 provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by federal employees within the scope of their employment.
- 6. Indemnification:** Owner agrees to indemnify and hold harmless the Government from any and all claims, damage, or losses arising out of the Debris Removal Program activities carried out pursuant to this ROE. This indemnification is required by state and federal law, including but not limited to the Stafford Act, 42 U.S.C. § 5173. Please also see Section 9, below.
- 7. Markings of Infrastructure Facilities:** Owner agrees to make their best efforts to mark subgrade

Property Address: _____
APN: _____

utility lines (sewer, water, electricity, gas, cable, etc.), and to mark the location of septic tanks, leach fields, water wells, hand dug wells/cisterns, or other subgrade structures. Owner should carefully complete the attached *Property Information Form* **and append any maps, diagrams, or legible notes** that may be useful to the Government's contractor in locating subgrade structures and instructing the crews which items the Owner may want to remain on the Property following the Debris Removal Program. The Government will endeavor to avoid all marked structures; however, **Owner acknowledges pursuant to Section 5, that they release the Government from any liability for damages to marked or unmarked structures.** Owner further acknowledges pursuant to Section 6 that they indemnify, hold and save harmless the Government from any claims or losses due to any damages to marked or unmarked structures. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680 provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by federal employees within the scope of their employment.

8. Driveway, Roadway and Other Incidental Damage: Multi-ton excavators must perform much of the demolition, consolidation and loading of flood debris into trucks for removal to appropriate recycling and disposal and end use sites. The scale and weight of this equipment, and the weight of loaded trucks hauling debris out of flood-damaged neighborhoods, often exceeds the design capacity of residential driveways, sidewalks, and roadways. Crews will take reasonable precautions to mitigate against damage. However, Owner acknowledges cracking and damage to asphalt and concrete pavement is a common and unavoidable consequence and is therefore considered incidental to the Debris Removal Program. By signing this ROE and providing the Government access to waterways to execute the Debris Removal Program at this Property, the Owner acknowledges the risk of such incidental damage as well as their responsibility for the cost of any repairs to private property or jointly owned private roadways that may be caused by Government contractors in the performance of the Debris Removal Program operations. Owner acknowledges pursuant to Section 6, they indemnify, hold and save harmless the Government from any repair claims described above, or any other incidental and unavoidable damage occurring as a result of routine operations associated with the Debris Removal Program.

9. Damage to Improved Property: Flood-generated debris removal crews will attempt to minimize impacts to improved property that was not damaged by the flood. Owner may submit a complaint regarding any improved property that Owner believes was damaged during the Debris Removal Program operations at the Chaves County Clerk's Office at 1 St. Mary's Place, Roswell, NM 88203, or DHSEM-DCM@dhsem.nm.gov. However, Owner acknowledges Section 5 of this ROE limits the liability of the Government with respect to such damage, if any.

10. Erosion Control: Owner acknowledges that erosion control measures may be necessary, such as wattles, compost socks, and hydromulch, to stabilize soil on or about the Property. Such erosion

Property Address: _____
APN: _____

control measures are at the sole discretion of the Government.

11. Modification: The provisions of this ROE may not be modified. Owner may cancel this ROE only by submitting an executed *Withdrawal Form* (see below) to the County at the Chaves County Clerk's Office at 1 St. Mary's Place, Roswell, NM 88203, or DHSEM-DCM@dhsem.nm.gov.

12. Fraudulent or Willful Misstatement of Fact: An individual who fraudulently or willfully misstates any fact in connection with this ROE may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 U.S.C. § 1001.

13. Public Records Act: Owner acknowledges that completed ROE forms may be subject to public disclosure under the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12. Other state and federal laws may apply. Pursuant to Section 14-2-1.1, the following protected personal identifiable information will be redacted: (1) all but the last four digits of a taxpayer identification number, financial account number, or driver's license number; all but the year of a person's date of birth; and a social security number.

Printed name of Owner or Agent

Signature of Owner or Agent

Date

Printed name of Owner or Agent

Signature of Owner or Agent

Date

Printed name of Owner or Agent

Signature of Owner or Agent

Date

Property Address: _____
APN: _____

Phone number of Owner or Agent E-mail address of Owner or Agent

Mailing address of Owner or Agent

Approved by County of [Insert County] and verified that the Property, APN, and Owner are accurate and meet the eligibility requirements of program:

Title and Printed name of County Representative

Signature of County Representative

Date

Property Address: _____
APN: _____

Insert or Draw Map of Property

Additional Property Information

Property Address: _____
APN: _____

STOP HERE AND DO NOT FILL OUT THE BELOW PAGE UNLESS YOU WISH TO WITHDRAW FROM THE DEBRIS REMOVAL PROGRAM

Withdrawal Form

To cancel this ROE, this Withdrawal Form must be signed by the Owner, delivered to the Chaves County Clerk's Office at 1 St. Mary's Place, Roswell, NM 88203, or emailed to DHSEM-DCM@dhsem.nm.gov of the County in which the Property is located at, and acknowledged by an authorized employee in advance of the Debris Removal Program activities at the Property. Allow at least three (3) business days to process.

Alternatively, the ROE may be cancelled at the Property site *by verbally communicating to the crew onsite when they appear on Property site. However, the Owner must deliver the Withdrawal Form to the Disaster Recovery Center at the Chaves County Clerk's Office at 1 St. Mary's Place, Roswell, NM 88203, or emailed to DHSEM-DCM@dhsem.nm.gov within 48 hours of said communication.* Due to scheduling constraints, the Government cannot provide specific dates and times when they will be available at the Property site to accept a cancellation. Owner should therefore turn in the Withdrawal Form at the location designated by the County in the above paragraph if possible.

I have read and understand the foregoing statement concerning cancellation policies.

I hereby certify that the Debris Removal Program at the Property **has** commenced, and that I request to cancel the Right of Entry (ROE).

I hereby certify that the Debris Removal Program at the Property **has not yet** commenced, and that I request to cancel the Right of Entry (ROE).

Printed name of Owner or Agent

Signature of Owner or Agent Date

Phone number of Owner or Agent E-mail address of Owner or Agent

Mailing address of Owner or Agent

I hereby acknowledge receipt of the foregoing request for cancellation:

Title and Printed Name of County Representative

Signature of County Representative

Property Address: _____
APN: _____