



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 24, 2026

CBCA 8688-FEMA

In the Matter of BLACKHAWK GEOLOGIC HAZARD ABATEMENT DISTRICT

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Ramoncito J. deBorja and Andrew Bevacqua, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **SULLIVAN**, **KANG**, and **NEWSOM** (presiding).

SULLIVAN, Board Judge, writing for the Panel.

Blackhawk Geologic Hazard Abatement District (BGHAD), applicant, sought to arbitrate the denial of its request for public assistance funds by the Federal Emergency Management Agency (FEMA). FEMA determined that BGHAD was not eligible because it failed to establish legal responsibility for the work for which it sought funds. We determine that BGHAD has established legal authority to perform the work on private property and eligibility for two of the three types of public assistance it seeks.

Background

In January 2023, following severe winter storms in California that caused flooding, mudslides, and landslides, the President declared a major disaster. BGHAD is a special district within California. BGHAD applied for public assistance funds for debris removal, emergency protective measures, and permanent work to restore facilities to their pre-disaster design and function. Request for Arbitration (RFA), Exhibit 2¹ at 2.² BGHAD sought funds for debris removal from roads and rights-of-way, open spaces that functioned as drainage, and common areas owned by the homeowners association. FEMA Response to RFA (FEMA Response), Exhibit C. As emergency measures, BGHAD “secure[d] damaged sites with emergency response actions, materials and temporary control of water and solid debris through installations, protections, control and management measures.” RFA, Exhibit 9 at 4. The record includes spreadsheets with addresses at which work was undertaken, but there is nothing in the record to describe how widespread the emergency efforts were. *See* RFA, Exhibits 9, 10.

BGHAD was established by the Contra Costa Board of Supervisors in 1986 in a resolution in which the board determined that it was “in the public interest to abate geologic hazards.” RFA, Exhibit 6 at 8. BGHAD was created to provide “geologic hazard abatement” services within the county service area for which BGHAD is responsible. *Id.* BGHAD is “a political subdivision of the state.” Cal. Pub. Res. Code § 26570 (Westlaw through 2025 Reg. Sess.). BGHAD is authorized to undertake “improvements,” which is defined as “any activity that is necessary or incidental to the prevention, mitigation, abatement, or control of a geologic hazard, including . . . [m]aintenance, repair, or operation of any improvement.” *Id.* § 26505. BGHAD is authorized to “[a]cquire, construct, operate,

¹ RFA exhibits are cited to .pdf page numbers.

² The parties dispute the amount of public assistance BGHAD sought. FEMA explains that the amount in the determination memo contains a scrivener’s error by FEMA that incorrectly increased the amount from \$9 million to \$16.5 million. FEMA Response at 11-13. BGHAD states that FEMA required it to capture its costs in different categories not included in the \$9 million and its actual costs exceed \$16.5 million. Applicant Reply to FEMA Response (Applicant Reply) at 2 n.1. We need not reach this issue because the central dispute between the parties concerns BGHAD’s eligibility, which needs to be established before FEMA considers the costs included in applicant’s request. Public Assistance Program and Policy Guide at 38 (June 2020).

manage, or maintain improvements on public or private lands.” *Id.* § 26580(a).³ Improvements are deemed to be “specific actions necessary to prevent or mitigate an emergency” as defined by Cal. Pub. Res. Code § 21080(b)(4). *Id.* § 26559. Improvements on private property require the consent of the owner. *Id.* § 26580(a).

BGHAD operates pursuant to a plan of control, which defines a “GHAD project” as the “prevention, mitigation, abatement, or control of a geologic hazard.” RFA, Exhibit 7 at 9. GHAD projects fall into two categories:

- (1) major maintenance and monitoring activities of infrastructure and instrumentation meant to prevent instability of existing slopes and of which include, but are not limited to, cleaning, maintaining, replacing, and/or installing surface and subsurface drainage systems and monitoring instrumentation, and
- (2) major landslide repair projects requiring, but not limited to, site grading and installation of drainage or engineered earth retaining system infrastructure.

Id. at 11. BGHAD prioritizes projects for the “[p]revention, mitigation, abatement, or control of geologic hazards that have either damaged or pose a significant threat of damage to residences, critical underground or overhead utilities, or roadways that provide emergency egress.” *Id.* at 17.

In a determination memorandum issued in July 2024, FEMA denied the request for public assistance funds because BGHAD “failed to provide documentation establishing legal responsibility/ownership of the slopes or ditches located on private property.” RFA, Exhibit 2 at 4. FEMA found that the plan of control discussed the “ability to develop and maintain improvements within the facility” but did not discuss “ownership or legal responsibility.” *Id.* FEMA also noted that BGHAD had failed to provide “documentation showing property owners expressly transferred or granted any legal authority to [BGHAD] to repair slopes located on private property.” *Id.* FEMA expected BGHAD to provide a “lease or any other legal instrument.” *Id.* Without this documentation, FEMA could not determine that BGHAD was legally responsible to undertake the repairs. *Id.* FEMA also determined that BGHAD did not have the authority to determine that a public health or safety threat existed, a necessary condition for the removal of debris from private property. *Id.*

³ The lands included within a district such as BGHAD may be publicly or privately owned. Cal. Pub. Res. Code § 26532.

BGHAD appealed FEMA’s determination and, in the record in its first-level appeal, included two types of agreements that it has with private property owners for work performed on their properties.⁴ The first set of agreements, executed in 2014 and titled “Right of Entry and Facilities Maintenance License,” permit BGDHAD access to the property for the purpose of maintaining “monitored facilities,” which are defined as horizontal drains, piezometer wells, subdrains and/or inclinometers for which BGDHAD has maintenance and monitoring responsibilities. RFA, Exhibit 8. The second set of agreements, executed in 2023 and titled “License Agreement for Landslide Repair,” were entered into with owners of land “affected by an actual or threatening landslide and drainage facility damage.” RFA, Exhibit 13. The agreements grant BGDHAD an “irrevocable license” to enter the property for the purposes of repairing the damage and stabilizing the land. *Id.*

In its first-level appeal decision, FEMA upheld its denial of funding. FEMA Response, Exhibit E. For the permanent work, FEMA determined that BGDHAD’s plan of control only authorized BGDHAD to “develop and maintain improvements” within private property and that BGDHAD did not meet “the requirement of facility ownership to satisfy the legal responsibility stipulation.” *Id.* at 2. For the emergency work, FEMA determined that neither of the agreements that BGDHAD had with private property owners demonstrated BGDHAD’s legal authority to perform emergency protective measures on private property. *Id.* at 2. Regarding the rights-of-entry agreements that BGDHAD provided, none of them indemnified the Federal Government. *Id.* at 3. Finally, FEMA also stated that BGDHAD could not meet the eligibility requirements for private property debris removal because BGDHAD had not obtained FEMA’s approval prior to undertaking the removal. *Id.*

Discussion

For a project to be eligible for public assistance funding, including permanent work, FEMA regulation requires that the work must:

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

⁴ According to the document index attached to FEMA’s determination memorandum, these agreements were not provided to FEMA prior to the first-level appeal. *See* RFA, Exhibit 2 at 6.

44 CFR 206.223 (2022). The parties' dispute focuses upon this third prong. While FEMA determined that BGHAD was an eligible applicant as a local government entity, RFA, Exhibit 2 at 4,⁵ FEMA contends that BGHAD has failed to establish that it has the legal responsibility to perform the work for which it seeks public assistance funding.

Pursuant to FEMA policy, “[w]ork on private property is the legal responsibility of the property owner and generally ineligible for [public assistance (PA)] funding.” Public Assistance Program and Policy Guide (PAPPG) at 54 (June 2020). However, FEMA may provide funding if a state, local, tribal, or territorial (SLTT) government had “legal authority” to perform the work:

In rare cases, FEMA may provide PA funding for specific, limited activities. In such cases, at a minimum, the Applicant must have legal authority to conduct the activity. To determine whether a SLTT government has legal authority to conduct activities on private property, FEMA reviews the Applicant's legal basis and specific authority to conduct the activities.

Id. It is this policy provision that governs the eligibility analysis, rather than the property ownership provisions upon which FEMA relied.

BGHAD has established that it had legal authority to do the work on private property. BGHAD is charged by state law and the resolution of the local board of supervisors to undertake projects to address geologic hazards on both public and private property. State law conditions the ability to work on private property on agreements with property owners. BGHAD had agreements with private property owners to perform maintenance and repair work on their property. FEMA has found that similar documentation established legal responsibility. In its second-level appeal decision in *Village of Cahokia Water and Sewer*, FEMA-4461-DR-IL, GMP 127363 (Mar. 24, 2023) (available at <https://www.fema.gov/appeal/legal-responsibility-37> (last visited February 23, 2026)), FEMA determined that a locality had the legal responsibility to repair damaged sewer lines on private property based upon local ordinances and easements. BGHAD has established the legal authority to undertake the permanent repair work for which it seeks public assistance funds.

⁵ FEMA found that, as a “special district,” BGHAD was a local government entity. RFA, Exhibit 2 at 4. Citing California state law, BGHAD asserts that it is a political subdivision of the state. *See* Cal. Pub. Res. Code § 26570. The parties' disagreement on this point is immaterial to the panel's resolution of the dispute because both state agencies and local governments are applicants pursuant to FEMA regulation. 44 CFR 206.201(a).

FEMA, in its first-level appeal analysis, found that BGHAD had failed to establish that it had legal authority to perform the work because agreements with the private landowners stated that BGHAD did not have the “obligation” to perform the work. FEMA conflates obligation and legal authority. “Authority” is defined as “[t]he official right or permission to act.” *Black’s Law Dictionary* (12th ed. 2024). “Obligation” is defined as “[a] legal or moral duty to do or not do something.” *Id.* FEMA’s policy uses the word “authority” and requires applicants to establish the legal authority to do work on private property. The state law and right-of-entry agreements grant BGHAD the legal right or permission to act to address geologic hazards on private property.

BGHAD also seeks funds for emergency measures and debris removal. FEMA policy imposes additional and different requirements that must be satisfied before this work will be deemed eligible. To establish eligibility for emergency protective measures on private property, an applicant must establish that the “immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public;” that it has “legal authority” to perform the work; and that it has obtained “rights-of-entry and agreements to indemnify and hold harmless the Federal government.” PAPPG at 112. Eligible emergency protective measures on private property are limited but include work to stabilize a slope. *Id.*

BGHAD had the legal authority, pursuant to state law, to address geologic hazards on an emergency basis. The 2014 rights-of-entry agreements allowed BGHAD to assess the condition of the monitoring facilities, replace facility components, and clear drain lines. These terms allow the emergency maintenance activities for which BGHAD seeks public assistance funding. But, BGHAD has not established that the threat was widespread enough to constitute a threat to the safety of the general public. The only description of the emergency work in the record describes “sites” where work was undertaken. *See* FEMA Response, Exhibit H, Second Appeal Analysis, *Blackhawk Geologic Hazard Abatement District*, FEMA-4305/4308-DR-CA, at 4 (emergency measures to address threats to “certain private properties within the community” found not widespread and not eligible); *see also* FEMA Response, Exhibit I, First Appeal Analysis, *Canyon Lakes Geological Hazard Abatement District*, at 5. In addition, the right-of-entry agreements did not indemnify the Federal Government. BGHAD has not established eligibility for public assistance for emergency measures.

For the debris removal from private property to be eligible, a determination—that the debris removal is in the public interest—must be made by a “public entity that has legal authority to make a determination that disaster-generated debris on private property constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.” PAPPG at 108. While this requirement uses the phrase

“immediate threat,” it appears to be different than the immediate threat required for emergency work. FEMA also requires a written statement from the applicant that: (1) certifies that the applicant has legal authority and responsibility to remove the debris from private property; (2) cites all applicable sources of authority (law, ordinance, code, contract etc.); and (3) indemnifies the United States for any claim arising from the debris removal. *Id.*

FEMA, in its first-level appeal analysis, found BGHAD ineligible because BGHAD did not first obtain FEMA approval.⁶ FEMA’s statement that the version of the PAPPG in effect at the time of the disaster declaration required FEMA’s prior approval is incorrect. While prior versions of the PAPPG required prior approval for debris removal,⁷ the version in effect at the time of this disaster did not, unless the debris was to be removed from commercial property. PAPPG at 108 (“With the exception of debris removal from commercial property, the Applicant does not need to wait for FEMA approval to start work.”).⁸

BGHAD also has met the requirement that the debris removal be declared to be in the public interest by an entity with authority. Pursuant to state law, actions taken by geologic hazard abatement districts are deemed to be specific actions necessary to prevent or mitigate an emergency. Cal. Pub. Res. Code § 26559. Therefore, actions undertaken by BGHAD to address safety threats meet this requirement. As we have already determined, BGHAD had the legal authority to perform the debris removal.

⁶ In its response to the RFA, FEMA again states, incorrectly, that failure to obtain prior FEMA approval renders BGHAD ineligible for public assistance funds for debris removal. FEMA Response at 28-29.

⁷ Public Assistance Program and Policy Guide (Jan. 2016) at 53; Public Assistance Program and Policy Guide (Apr. 2017) at 55; Public Assistance Program and Policy Guide (Apr. 2018) at 54.

⁸ FEMA policy at the time of the disaster did require applicants to submit a written request to FEMA identifying where “private property debris removal activities will occur.” PAPPG at 108. FEMA did not allege that BGHAD failed to provide this information, and the record contains spreadsheets that list the locations of debris removal. RFA, Exhibits 9, 10. Moreover, in response to a question about where debris removal would occur, BGHAD told FEMA that it would not remove debris from private residential property. FEMA Response, Exhibit C.

The last requirement—indemnification of the Federal Government—is a bit different than for emergency protective measures. FEMA policy requires a statement from applicant that the applicant, not a private landowner, indemnifies the Federal Government. Moreover, pursuant to the Stafford Act, this statement for indemnification need only be obtained before FEMA authorizes funds for debris removal. 42 U.S.C. § 5173(b) (2018) (“No authority under this section shall be exercised unless the affected State or local government . . . [,] in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.”). FEMA may condition the grant of public assistance on the receipt of indemnification by the state or local government, but the absence of that statement does not provide a basis for finding an applicant not eligible. Therefore, unlike for emergency protective measures, the absence of indemnification language in the right-of-entry agreements was not a basis to conclude that BGHAD was not eligible for public assistance for debris removal.

The panel also must address the scope of relief requested by BGHAD. In its reply, in addition to asking that the panel conclude that it had the legal responsibility to undertake the work, BGHAD asks that the panel determine that “[t]hat the failed engineered slopes and drainage systems are eligible facilities under [the] PAPPG” and “[e]mergency debris removal that prevents [the] worsening of damages to engineered slopes and related facilities . . . [and] functions as part of the District’s mitigation system is eligible emergency work.” Applicant Reply at 18-19. BGHAD also requests that the panel direct FEMA to obligate public assistance funds in the minimum amount of \$16,500,930. *Id.* at 19. The panel, by statute, is charged to resolve disputes between applicants and FEMA on requests for public assistance. 42 U.S.C. § 5189a; *see* 48 CFR 6101.603. A dispute requires FEMA to have decided an issue and applicant to have appealed that determination. *See Housing Authority for the City of Fort Myers, Florida*, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,378. Because neither FEMA’s determination nor the first-level appeal decision turned on whether the slopes and drainage systems are eligible facilities, we cannot reach that issue now. As noted, applicant eligibility is one of the steps in FEMA’s analysis. The next steps will be to analyze the work undertaken and the amounts sought. The panel cannot direct that FEMA obligate public assistance funds before FEMA undertakes that review. Accordingly, the panel denies BGHAD’s requests that its facilities be deemed eligible and that FEMA be directed to obligate \$16.5 million.

Decision

FEMA's determination that BGHAD had not established that it had legal authority to undertake the work on private property was incorrect. BGHAD has established its legal authority to undertake the work but did not meet the additional requirements for eligibility for emergency protective measures. The panel returns the matter to FEMA for further review of the request for public assistance for permanent work and debris removal in accordance with this decision.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge

Jonathan L. Kang

JONATHAN L. KANG

Board Judge

Elizabeth W. Newsom

ELIZABETH W. NEWSOM

Board Judge