

Hazard Mitigation Assistance (HMA)

Guidance on Property Acquisition and Relocation for the Purpose of Open Space

Recent amendments to Title 44 of the Code of Federal Regulations added a new Part 80, Property Acquisition and Relocation for Open Space. More detailed guidance to assist with implementation of the provisions found in Part 80 has also been developed. This property acquisition and relocation guidance applies to all FEMA hazard mitigation grant programs. It is included in the FY09 Hazard Mitigation Assistance (HMA) Program Guidance at Section 2.3.13 and also governs this project type under the Hazard Mitigation Grant Program (HMGP) in place of previous desk reference sections. The property acquisition guidance section must be read in conjunction with the overall requirements for each grant program including the HMGP. The Part 80 rule and implementing property acquisition guidance are effective for all disasters declared on or after December 3rd, 2007 (12/03/2007).

The following is FEMA guidance on property acquisition for the purpose of open space for the HMGP. The text below is identical to that contained in the FY09 Unified HMA Guidance document, and reflects the section references to that document.

2.3.13 Property Acquisition and Relocation for Open Space

2.3.13.1 General

For property acquisition and relocation projects, FEMA HMA Applicants and subapplicants must comply with 44 CFR Part 80, FEMA's Property Acquisition and Relocation for Open

Space regulation, and this HMA Program Guidance. A project may not be framed in a manner that has the effect of circumventing these requirements.

This section applies to all the HMA Programs and is also applicable to HMGP, and replaces the following portions of the HMGP Desk Reference, Publication FEMA 345, dated October 1999:

- Section 7
 - Page 7-5 and 7-6, “Applicant Agreement to Property Acquisition Requirements” section;
- Section 11
 - Page 11-5, “Duplication of Benefits” paragraph;
 - Pages 11-6 and 11-7;
 - Pages 11-10 through 11-24;
 - Job Aid 11-2, 11-3, and 11-4;
- Section 12
 - Page 12-4; and
- Related tools or job-aids

This section, with the exception of Section 2.3.13.2.2 (Open Space Requirement/Land Use) applies to projects for which the funding program application period opens, or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program shall apply. Section 2.3.13.2.2 (Open Space Requirement/Land Use) applies as of December 3, 2007, to all FEMA-funded property acquisitions for the purpose of open space, regardless of when the application period opened or when the major disaster was declared.

2.3.13.1.1 Purpose and Scope

Generally, FEMA-funded property acquisition projects consist of a community purchasing flood-prone structures from willing sellers and either demolishing the structures or relocating the structures to a new site outside of the floodplain. The purchased property is then maintained for open-space purposes in perpetuity in order to restore and/or conserve the natural floodplain functions. While some communities may elect to develop a new site outside of the floodplain for participating residents to move to, FEMA encourages communities to opt for the simpler acquisition and structure removal model. These projects require only minimal environmental review, are considerably less expensive, and allow homeowners to determine where to relocate.

Roles and Responsibilities

Applicants/Grantees and subapplicants/subgrantees are responsible for ensuring that applications for acquisition/relocation open space projects and the implementation of approved projects meet all requirements of Part 80 and this Guidance, and for providing the necessary information to enable FEMA determinations of eligibility, technical feasibility, cost effectiveness, and Environmental/Historic Preservation compliance for proposed projects. They must also ensure that applications/subapplications are not framed in a manner that has the effect of circumventing any regulatory requirements. Because Federal law requires properties acquired with FEMA funds to be maintained as open space in perpetuity, Grantees and subgrantees are also responsible for

oversight in ensuring and enforcing proper land use, and for coordinating with FEMA on any future land use or property disposition issues.

During development of a project, property owners are responsible for notifying the subapplicant of their interest in participating in the proposed project. They must provide all requested information to the subapplicant, and they must take all required actions necessary for completing the grant subapplication and for implementing the property acquisition activities.

A more complete listing of the responsibilities of all parties can be found at 44 CFR § 80.5.

2.3.13.2 Requirements Prior to Award

2.3.13.2.1 Eligible and Ineligible Costs

2.3.13.2.1.1 Allowable Costs

Allowable costs are those costs that are necessary and reasonable for the proper and efficient performance and administration of the Federal award. Allowable costs for property acquisition/structure removal projects depend upon the scope of the project.

- The following costs associated with the acquisition of hazard-prone real property and the demolition of structures are generally allowable:
 - Market value of the real property (land and structures) either at the time of sale or immediately prior to the most recent disaster or flood event subject to applicable adjustments. See Section 2.3.13.3.1.5 (Purchase Offer). However, for land already owned by an eligible entity, compensation will be for the structure and for development rights only, not for the land. This includes any entity eligible to apply for grant or subgrant funding under the relevant funding program, even if they are not the Applicant or subapplicant for the project;
 - Fees for necessary appraisal costs, title search, title insurance, property inspection, and survey (if necessary);
 - Fees associated with title transfer, contract review, and other costs associated with conducting the real estate settlement including recordation of the deed and deed restrictions; and
 - Demolition and removal of structures.

- The following costs associated with the acquisition of hazard-prone property and relocation of structures are generally allowable:
 - Market value of the real property (land only). See Section 2.3.13.3.1.5 (Purchase Offer). However, for land already owned by an eligible entity compensation will be for the development rights. This includes any entity eligible to apply for grant or subgrant funding under the relevant funding program, even if they are not the Applicant or subapplicant for the project;
 - Fees for necessary appraisal costs, title search, title insurance, property inspection, and survey (if necessary);

- Fees associated with title transfer, contract review, other costs associated with conducting the real estate settlement, including recordation of the deed and deed restrictions;
 - Jacking and moving of structure to new site;
 - Necessary individual site preparations including foundation, water, sewer, and utility hookups, but not aesthetic improvements and landscaping, new property acquisition, or public infrastructure and utility development; and
 - Demolition, site restoration, and site stabilization for the acquired site.
- The following costs of demolition activities at the vacated site are generally allowable if necessary for either property acquisition/structure removal project type:
 - Removal of demolition debris to an approved landfill (this includes debris from the demolition of houses, garages, driveways, sidewalks and above-grade concrete slabs);
 - Asbestos abatement;
 - Removal of septic tanks (if not removed, floors and walls must be cracked or crumbled so the tank will not hold water, and be filled with sand or other clean fill);
 - Removal of all structure foundation and basement walls to at least 1 foot below the finish grade of the site;
 - Filling of basements with compacted clean fill (basement floors must have a minimum one foot diameter hole in the floor to allow for drainage);
 - Removal of only those trees that restrict the demolition work on any structure;
 - Termination of all abandoned utilities at least 2 feet below the finish grade of the site;
 - Capping of all wells and/or removal of associated components; and
 - Grading, leveling, and site stabilization of all demolition sites.

In addition to the allowable costs identified above, in exceptional circumstances there may be a significant shortfall between the amount the subgrantee pays an owner for his/her damaged residence and the cost of a comparable replacement home in a non-hazard-prone location. In that case, the State/Grantee may allow the subgrantee to provide owner-occupants a payment to apply to the difference between the two amounts, up to \$22,500 per property. More information about supplemental housing payments can be found in Section 2.3.13.3.1.7 (Additions to Purchase Offer).

2.3.13.2.1.2 Property-Related Costs That Are Not Allowable

Costs that are not allowable under FEMA's mitigation grant programs include, but are not limited to, the following:

- Compensation for land that is already held by an eligible entity. This is the case even if the eligible entity is not the subapplicant for the project. In that event, however, compensation for development rights (i.e., obtaining an open space easement) may be an allowable cost; and

- The cleanup or remediation of contaminated properties, except for permitted disposal of incidental demolition and household hazardous wastes.

2.3.13.2.1.3 Duplication of Benefits

Costs that duplicate amounts received by or available to the Applicant, subapplicant, property owner, or affected tenant from another source for the same purpose are not allowable. FEMA and the Grantee must avoid DOB between FEMA mitigation grant program funds and any other source, as required by 44 CFR § 80.9 (c) and this guidance. More information about DOB can be found in Section 2.3.13.3.1.6 (Deductions from Purchase Offer). FEMA will recoup duplicative amounts identified after grant funds have been expended. Property owners who receive duplicative payments following the conclusion of the property settlement are responsible for reimbursing the subgrantee for those duplicated funds.

2.3.13.2.1.4 Negligence, Tortious Conduct, Legal Obligations

Mitigation grant funds are not available when an Applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions that result in the need for mitigation. Additionally, mitigation grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

2.3.13.2.2 Project Eligibility

To be eligible, the subapplicant must acquire the full fee title of properties from willing, voluntary sellers, or retain such interest. The subapplicant must commit not to use eminent domain should the property owner choose not to participate, and must verify that the property is not needed as a part of an intended planned project. A property may not be subdivided prior to acquisition, except for portions outside the identified hazard area, such as the SFHA or any risk zone identified by FEMA (see Section 2.3.13.3.1.10, Relocation and Removal of Existing Buildings).

Properties that are eligible for acquisition include those where:

- The property will be acquired from a willing, voluntary seller;
- The property contains a structure that may or may not have been damaged or destroyed due to an event;
- For the FMA, RFC and SRL programs, the property contains a structure insured by the NFIP at the time of Application submittal;
- All incompatible easements or encumbrances can be extinguished;
- The property cannot be contaminated with hazardous materials at the time of acquisition, other than incidental demolition or household waste;

- Any relocated structure must be placed on a site located outside of the SFHA, outside of any regulatory erosion zones, and in conformance with any other applicable State or local land use regulations;
- The property cannot be part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and/or where there is an intention to use the property for any public or private future use inconsistent with the open space deed restrictions and FEMA acquisition requirements (examples include roads and flood control levees); and
- The property will not be subdivided prior to acquisition, except for portions outside the identified hazard area, such as the SFHA or any risk zone identified by FEMA.

2.3.13.2.2.1 Hazardous Materials

At the time of acquisition, property to be acquired cannot be contaminated with hazardous materials other than incidental demolition or household waste. The presence of non-leaking underground storage tanks, septic systems, home heating oil tanks, and normal quantities of lead, asbestos, and household hazardous materials does not preclude the use of grant funds for acquisition. Costs associated with disposing of these materials should be addressed in the project budget. More information on hazardous materials can be found in Section 2.3.13.3.1.1 (Hazardous Materials).

2.3.13.2.2.2 Open Space Restrictions

To be eligible, a project must result in property acquisition that meets all of the requirements of 44 CFR Part 80 and this Guidance governing the use of grant funds and the use of acquired real property, including:

- The subgrantee will dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices, and consistent with conservation of natural floodplain functions, by recording deed restrictions consistent with the model deed (see Section 2.3.13.2.3.3, Deed Restriction Language);
- The property acquired, accepted, or from which structures are removed will carry a permanent deed restriction providing that the property be maintained for open-space, recreational, or wetlands management purposes only;
- No new structures will be built on the property except as indicated below:
 - A public building that is open on all sides and functionally related to a designated open-space or recreational use;
 - A public restroom;
 - A structure that is compatible with open-space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the FEMA Regional Administrator approves in writing before the construction of the structure begins;

- Any structures built on the property according to the third subparagraph above will be elevated or flood-proofed to the Base Flood Elevation (BFE) plus 1 foot of freeboard and meet applicable requirements of the NFIP floodplain management regulations at 44 CFR § 60.3;
- After settlement, no Federal disaster assistance for any purpose from any Federal source, nor flood insurance payments, may be made with respect to the property, and no person or entity shall seek such amounts;
- The subgrantee must obtain the approval of the State/Grantee and the FEMA Regional Administrator before conveying ownership (fee title) of the property to another public agency or qualified conservation organization. Property transfer to private citizens and corporations will not be approved. All development rights in the form of a conservation easement on the property must be conveyed to the conservation organization or retained by the subgrantee or other public entity; and
- The subgrantee accepts responsibility for monitoring and enforcing the deed restriction and/or easement language.

2.3.13.2.3 Subapplication Information

2.3.13.2.3.1 Project Information

Subapplicants are responsible for meeting the requirements specified at 44 CFR § 80.13, and must provide information necessary for the Applicant and FEMA to determine the eligibility of the project, as specified in the subapplication package. This includes project description and property information (including Environmental/Historic Preservation information). Project cost estimate information for the value of the properties must be provided as appropriate: for the HMGP, a cost estimate for each property is required; for the PDM, FMA, RFC, and SRL programs, market value documentation is required. Subapplicants must include cost effectiveness information, including the net present value of the project benefits for each property to be acquired. Additionally, subapplicants must identify each property address included in the SOW, and provide a photograph of each property.

The subapplicant should include additional, alternate properties it may substitute should one or more of the other properties drop out due to eligibility or owner withdrawal. The subapplicant shall provide the same level of information for the alternate properties as provided for the proposed properties.

The subgrantee must identify an appeal or reconsideration process for property owners who dispute the amount of the purchase offer property valuation.

The subapplicant must also provide certification that each participant who will receive pre-event value is a National of the United States or qualified alien. Subgrantees will ask all acquisition project participants (property owners) to certify that they are either a National of the United States or a qualified alien. Subgrantees will offer participants who refuse to certify, or who are not Nationals of the United States or qualified aliens, no more than the appraised current market value for their property (see Section 2.3.13.3.1.5.2, Purchase Offer and Nationality).

2.3.13.2.3.2 Assurances

Subapplicants requesting assistance for property acquisition or building relocation must include a written Statement of Assurances in their subapplication. Acquisition projects without these formal assurances will not be considered for funding. The Statement of Assurances must be signed by the subapplicant's authorized agent and a model statement is available at:

http://www.fema.gov/government/grant/resources/acq_assurances.shtm. The Statement of Assurances must provide acknowledgment of, and agreement to, the following requirements that apply to acquisition of the property:

- Participation by property owners is voluntary. The prospective participants have been/will be informed in writing that participation in the program is voluntary, and that the subapplicant will not use its eminent domain authority to acquire their property for the project purposes should negotiations fail.

Example Notices of Voluntary Interest are available at:

http://www.fema.gov/government/grant/resources/vol_notice1.shtm and

http://www.fema.gov/government/grant/resources/vol_notice2.shtm;

- Each property owner will be informed, in writing, of what the subapplicant considers to be the market value of the property. The subapplicant will use the model Statement of Voluntary Participation to document the market value of the property and will provide a copy for each property after award. This model Statement of Voluntary Participation is available on FEMA's Web site at: http://www.fema.gov/government/grant/vol_participation.shtm;
- All of the requirements of 44 CFR §§ 80.17 and 80.19, this program guidance, and the deed restrictions governing the use of the subgrant funding and the use of acquired land are applicable. The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions and restricted from use or development that interferes with that purpose;
- Properties associated with the proposed project are not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and/or where there is an intention to use the property for any public or private future use inconsistent with the open space deed restrictions and FEMA acquisition requirements. Examples include planned construction of, or improvements to, publicly owned buildings, road construction projects, flood control levees, or other development projects. The acquired land will be unavailable for these and all other such incompatible uses. Any intent to use any of the properties proposed for acquisition as part of an intended, planned, or designated project area could make the project ineligible for mitigation grant funding. Subapplicants shall coordinate with the appropriate FEMA Regional Office for further information;
- Existing buildings will be removed within 90 days of settlement;

- Once the subgrantee acquires the property it may convey a property interest only with the prior approval of the FEMA Regional Administrator and only to certain entities in accordance with 44 CFR § 80.19 and this program guidance;
- Every 3 years from the date of acquiring the property, the subgrantee must submit to the Grantee, who will submit to the FEMA Regional Administrator a report certifying that it has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant. If the subject property is not maintained according to the terms of the grant, the Grantee and FEMA, its representatives, successors and assigns are responsible for taking measures to bring the property back into compliance;
- For an offer of pre-event value, the subgrantee will obtain documentation from the property owner demonstrating that the property owner is a National of the United States or qualified alien;
- After settlement, no disaster assistance for any purpose from any Federal entity may be sought or provided with respect to the property, and FEMA will not distribute flood insurance benefits for that property for claims related to damage occurring after the date of the property settlement; and
- At closeout, the subgrantee will provide information in accordance with 44 CFR § 80.21 and this program guidance.

Subapplications that do not include a signed Statement of Assurances acknowledging these requirements are incomplete and **will not** be considered for funding.

2.3.13.2.3.3 Deed Restriction Language

The subapplication must also include the deed restriction language, consistent with the language in the FEMA Model Deed, that the subapplicant intends to record with each property deed (but need not include property specific details). A Model Deed Restriction is available on FEMA's Web page at <http://www.fema.gov/government/grant/resources/pre-award.shtm>. The subapplicant must seek approval from FEMA's Office of Chief Counsel, through the FEMA Regional Office, for any changes in language differing from the Model Deed Restriction language. Changes may be made to comply with local legal form requirements, but changes to substantive, programmatic provisions will not be entertained.

2.3.13.2.3.4 Documentation of Voluntary Interest

Documentation of voluntary interest signed by each property owner must be submitted with the project subapplication. This documentation should be accomplished as early in the project development process as is feasible. Participation in acquisition/relocation projects by property owners is voluntary. The prospective participants must be informed in writing that participation in the program is voluntary, and that the subapplicant will not use its eminent domain authority to acquire their property for the project purposes should negotiations fail and the property owner chooses not to participate.

The Notice of Voluntary Interest can be documented using individual signed statements, or through a group sign-up sheet (as identified in the examples cited below). The documentation must record the **name and signature** of interested property owners associated with each property and must also clearly show each property owner acknowledging the following language:

“This project for open space acquisition is voluntary and neither the [Applicant] nor the [subapplicant] will use its eminent domain authority to acquire the property for open space purposes should negotiations fail and the property owner chooses not to participate.”

Example Notices of Voluntary Interest are available at:

http://www.fema.gov/government/grant/resources/vol_notice1.shtm and
http://www.fema.gov/government/grant/resources/vol_notice2.shtm.

For the SRL Program, documentation of voluntary interest from each property owner may be documented in the Pre-Award Consultation Agreement and included with the project subapplication (see Section 3.4.4.4, Consultation with the Property Owner).

During the implementation of the project, the subgrantee shall execute a more formal Statement of Voluntary Participation with the owner of each property identified in the subapplication’s Statement of Work (see Section 2.3.13.3.1.3, Statement of Voluntary Participation).

2.3.13.2.3.5 Tenant Information

Although the property owner must voluntarily agree to participate in the open space project, participation is not voluntary for tenants whose property is being acquired as a result of an acquisition project. Therefore, the project subapplication must document properties occupied by tenants. Tenant assistance may include costs such as moving expenses, replacement housing rental payments, and relocation assistance advisory services. These costs must be estimated, and included in the project cost estimate. More specific information on costs related to tenant relocation can be found in Section 2.3.13.3.1.8 (Tenants).

2.3.13.2.3.6 Consultation Regarding Other Ongoing Federal Activities

Because properties acquired under HMA programs must be permanently converted to open space and will be unavailable for future development, subapplicants must coordinate to ensure that other Federal actions are not anticipated that would affect the same parcels considered for acquisition for open space.

2.3.13.2.3.6.1 U.S. Army Corps of Engineers Coordination

The subapplicant must demonstrate in its subapplication for mitigation assistance that it has consulted with the United States Army Corps of Engineers (USACE) regarding each subject property’s potential future use for the construction of a flood levee system (including berms, floodwalls, or dikes) and that USACE will reject future consideration of such use if the subapplicant accepts FEMA assistance to convert the property to permanent open space. FEMA will not award funds for any property without this documentation. The construction of flood levee systems on these lands is incompatible with open space uses and, therefore, will not be

allowed. This restriction generally does not apply to structures for ecosystem preservation, restoration, or enhancement.

If this initial level of consultation with the subapplicant indicates that the local government wishes to consider a flood damage reduction levee in the area, the subapplicant or local government must then undertake an expanded consultation process with the State/Grantee, FEMA, and USACE. The consultation will involve the identification and full consideration of future potential land use conflicts to enable the local government to make an informed decision regarding how it should proceed. There may be situations where the local government may be able to pursue both the open space acquisition and flood damage reduction levee projects in the same community without any land use conflicts (i.e., the levee will not cross acquired land). If, however, the local government determines that such conflicts cannot be resolved and chooses to pursue the USACE flood damage reduction levee, the local government must notify FEMA, through the State/Grantee, that it will not submit a subapplication for FEMA mitigation grant funding for property acquisition or relocation for open space.

If the local government decides to pursue an acquisition project following the consultation process, the subapplicant will include in its subapplication assurances a resolution or a comparable document adopted by the governing body of the local government that indicates:

- In consultation with USACE, the local government has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, and has chosen to proceed with acquisition of permanent open space; and
- The local government understands that land acquired for open space purposes under the relevant mitigation grant program will be restricted in perpetuity to open space uses and will be unavailable for any use that is incompatible with the open space and floodplain purposes designated for the property, including the construction of flood damage reduction levees, paved roads, and other development.

2.3.13.2.3.6.2. Department of Transportation Coordination

The subapplicant must demonstrate in their subapplication for mitigation assistance that they have coordinated with the relevant State Department of Transportation (DOT) to ensure that no future, planned improvements or enhancements to the Federal aid systems, or other State transportation projects, are under consideration that will affect the proposed project area. The construction of such improvements, enhancements, or projects on these lands is incompatible with open space uses and, therefore, will not be allowed.

2.3.13.2.3.6.3. Other Federal Agency Coordination

The State/Grantee and subapplicant must demonstrate in the application/subapplication for mitigation assistance that they have consulted with other Federal agencies, as appropriate, regarding other program requirements and/or activities, and identified the relationship to FEMA mitigation grant activities and funding. Other Federal agencies' requirements may apply to the mitigation grant activities if other agency funds are used for activities related to the project in the community, or to match the mitigation grant funding, such as CDBG funds. In the limited cases when another Federal agency's funds may be used to contribute to the non-Federal share of a

FEMA-funded mitigation project, both programs' requirements apply to the whole project. The State/Grantee is responsible for coordinating the various programs available within the State. It is important to include local program representatives. Therefore, it is important to coordinate approaches and schedules with other programs involved. The objective should be to make the process as simple and consistent as possible for subapplicants and homeowners.

2.3.13.3 Post-award Requirements

2.3.13.3.1 Project Implementation

Before the subgrantee acquires a property, it will ensure the property is not contaminated with hazardous materials, confirm a clear title, and determine the appropriate mitigation offer for the property and any additional payments associated with the property acquisition. After acquiring the property, the subgrantee must take steps to convert and maintain the property permanently as open space.

2.3.13.3.1.1 Hazardous Materials

The subgrantee shall take steps to ensure that a property with past or present commercial or industrial use, or that is adjacent to such property, or that is suspected of having hazardous contaminants may be present at the site, is not contaminated at the time of acquisition. It shall ensure that the property owner provides information identifying what, if any, hazardous materials have been deposited or stored on the property (this does not include household hazardous wastes). The subgrantee shall require the owner to remove hazardous materials and containers. The owner must provide certification from the appropriate State agency that the site is clean before the subgrantee can purchase any interest in the property. Any cleanup costs associated with obtaining clean-site certification, and any costs associated with hazardous materials are not eligible project costs. The seller must also agree to indemnify the State/Grantee, FEMA, and the subgrantee for any liability arising from previous contamination of the property.

If the State/Grantee and FEMA determine that a Phase I environmental site assessment is necessary, the subgrantee, FEMA, or the State/Grantee may conduct one prior to property acquisition. The cost of Phase III environmental site assessment remediation plans, cleanup, and certification of the property are not eligible mitigation grant project costs.

2.3.13.3.1.2 Clear Title

The subgrantee shall conduct a title search for each property it plans to acquire. The purpose of the title search is to ensure that the owner is the sole and actual titleholder to the property, or identify other persons with a property interest, and to ensure that the title is clear. This means that there are no mortgages or liens outstanding at the time of sale. In addition, there may not be incompatible easements or other encumbrances to the property that would make it either ineligible for acquisition or noncompliant with open space land use restrictions.

Other requirements in particular include:

- A title insurance policy demonstrating that clear (fee) title conveys must be obtained for each approved property that will be acquired;

- A physical site inspection for each property verifying no physical encumbrances to the property (where appropriate this may require a site survey to clearly establish property boundaries);
- Title to the property must transfer by a warranty deed in all jurisdictions that recognize warranty deeds;
- All incompatible easements or encumbrances must be extinguished;
- The subgrantee shall take possession at settlement;
- The subgrantee must record the deed at the same time as and along with the programmatic deed restrictions (see Section 2.3.13.2.3.3, Deed Restriction Language);
- The deed transferring title to the property and the programmatic deed restrictions will be recorded according to State law and within 14 days after settlement; and
- All property transfers shall be consistent with 44 CFR Part 80 and this Guidance.

2.3.13.3.1.3 Statement of Voluntary Participation

The Statement of Voluntary Participation documents more formally the Notice of Voluntary Interest provided previously in Section 2.3.13.2.3.4 (Documentation of Voluntary Interest), as well as documenting information related to the purchase offer, as identified in Section 2.3.13.3.1.5 (Purchase Offer), following. The Statement of Voluntary Participation is available on FEMA’s Web site: http://www.fema.gov/government/grant/vol_participation.shtm. The subgrantee shall provide to FEMA a signed copy of the Statement of Voluntary Participation for each property after award.

2.3.13.3.1.4 Mitigation Offer

The mitigation offer for acquisition and relocation projects is based on the property value (purchase offer information) and applicable additions and deductions. Deductions to the purchase offer may include DOB deductions, and additions may include any supplemental housing or insurance incentive payments. For the SRL program, see Section 3.4.5 (Mitigation Offer Process).

2.3.13.3.1.5 Purchase Offer

The purchase offer is the initial value assigned to the property as determined using the approved methodology, which is later adjusted by applicable additions and deductions, resulting in a final mitigation offer amount to a property owner. In all cases, the subgrantee must ensure that all property owners are treated fairly and are offered an equitable package of benefits. The subgrantee (using a Statement of Voluntary Participation) shall inform each property owner in writing of the market value (pre-event or current) of the property, and the method used to determine that value.

If several different entities or programs are acquiring property in the same area, property owners may find it confusing if different offers are made to area owners at different times. To avoid any negotiation difficulties or confusion, the subgrantee should coordinate the release of property valuation information and purchase offers to property owners for the various programs. The subgrantee may wish to set a time limit with the property owner for the validity of a purchase offer. The subgrantee must provide an appeal or reconsideration process for property owners who dispute the amount of the purchase offer property valuation.

Purchase offers made under the SRL program have different requirements than those made under FEMA's other mitigation grant programs and, in addition to the following requirements, must comply with the offer requirements identified in the SRL FY guidance. The purchase offer of an SRL property must be the greatest of the following amounts:

- The current market value of the property or the pre-event market value of the property;
- The original purchase amount paid by the property owner holding the flood insurance policy as demonstrated by property closing documents; and
- The outstanding amount of any loan to the property owner, secured by a recorded interest in the property at the time of the purchase offer.

When determining value based on the outstanding amount of loans to the property owner for the SRL program, the loans must be secured by a recorded interest in the property at the time of the purchase offer and the value shall not include home equity loans or lines of credit secured after the property owner signs the Pre-Award Consultation Agreement. Any loans secured after the property owner signs the Pre-Award Consultation Agreement are not eligible.

2.3.13.3.1.5.1. Property Valuation

For each property identified for acquisition, the subgrantee shall establish and document a property value based on market value. Market value is generally defined as:

The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

Current market value reflects the property value at the time of the final mitigation offer (see Section 3.4.5, Mitigation Offer Process, for more information). Pre-event market value is defined as the market value of the property immediately before the relevant event affecting the property. The relevant event for assistance under the HMGP is the major disaster under which funds are available. For the PDM program, pre-event value is the value before the most recent major disaster, however if the project is occurring separate from or more than 12 months after a disaster event, the current market value may be more appropriate. For the FMA, RFC, and SRL programs

the pre-event market value is defined as the value of the property immediately before the most recent flood event resulting in a NFIP claim of at least \$5,000.

The benefit of payment of pre-event market value is only available to an owner who owned the property during the event and is a U.S. National or qualified alien (see below for more information). If the current property owner purchased the disaster damaged property after the major relevant event, or is not a U.S. National or qualified alien, then the subgrantee shall not offer the owner more than the current market value.

Typically, acquisition projects require the valuation of the property (land and structure as a whole). In situations where an eligible entity already owns the property but wants to deed restrict it, valuation will be for the structure and development rights instead of for the land. Relocation projects require the valuation of land only.

Valuation Methodologies

The property value, either current or pre-event, must be derived from a methodology that results in a reasonable determination of market value. The subgrantee must coordinate with the Grantee to determine the methodology that will be used for property valuation determinations. This methodology must be applied consistently throughout the project area, using the same methodology for all properties to be acquired.

When practicable, the appraisal methodology shall be used. Appraisals must be conducted by an appraiser in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP). The appraiser must comply with relevant State laws and requirements, and shall have the appropriate certification, qualifications, and competencies based on the type of property being appraised.

When determining value for a large number of structures, the subgrantee may choose to perform appraisals to establish a statistical sampling of property values, and develop an adjustment factor to apply to tax assessed values so that they reasonably reflect each property's market value.

2.3.13.3.1.5.2. Purchase Offer and Nationality

A property owner who is not a National of the United States or a qualified alien is not eligible for a pre-event market value determination of property value. The property value must be based on current market value.

The term "National of the United States" is defined at 8 U.S.C. § 1101 and means a citizen of the United States or a person who is not a citizen but who owes permanent allegiance to the United States. The term "qualified alien" is defined at 8 U.S.C. § 1641 and means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:

- 1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.];
- 2) An alien who is granted asylum under Section 208 of such Act [8 U.S.C. § 1158];

- 3) A refugee who is admitted to the United States under Section 207 of such Act [8 U.S.C. § 1157];
- 4) An alien who is paroled into the United States under Section 212(d)(5) of such Act [8 U.S.C. § 1182 (d)(5)] for a period of at least 1 year;
- 5) An alien whose deportation is being withheld under Section 243(h) of such Act [8 U.S.C. § 1253] (as in effect immediately before the effective date of Section 307 of division C of Public Law 104–208) or Section 241(b)(3) of such Act [8 U.S.C. § 1231 (b)(3)] (as amended by Section 305(a) of division C of Public Law 104–208);
- 6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of such Act [8 U.S.C. § 1153 (a)(7)] as in effect prior to April 1, 1980; or
- 7) An alien who is a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980).

Subgrantees will ask all acquisition project participants (property owners) to certify that they are either a National of the United States or a qualified alien. Subgrantees will offer participants who refuse to certify, or who are not Nationals of the United States or qualified aliens, no more than the appraised current market value for their property. Participants who refuse to certify, or are not Nationals of the United States or qualified aliens, also may not receive supplemental housing payments as described in Section 2.3.13.3.1.7 (Additions to Purchase Offer).

Subgrantees may wish to use FEMA Form 90-69B to obtain certification from participating property owners. At the time of certification, the subgrantee will ask the property owner to show a form of identification (any identification displaying the signer's name will suffice). If the property owner applied for FEMA disaster assistance, a Form 90-69B will already be on file at FEMA and the subgrantee will instead request verification from FEMA through the State/Grantee that a certification is on file.

2.3.13.3.1.6 Deductions from Purchase Offer

Duplication of Benefits

FEMA mitigation grant program funding is supplemental to other funding sources and must be reduced by amounts reasonably available (even if not sought or received) from other sources to address the same purpose or loss. Insurance payments, FEMA housing needs assistance, property-related legal claims and/or funds from any other sources that are available for the purpose of making repairs to or replacing a structure, or other compensation for the value of the real property, are considered duplicated amounts. In this case, the eligible project costs are reduced by the duplicative amount. This has the effect of reducing both the Federal and non-Federal shares of the project, and ensures that mitigation grant funds do not duplicate benefits available to owners and tenants from another source for the same purpose.

The Grantees, subgrantees and project participants (including property owners and tenants) must take reasonable steps to recover all such amounts. Amounts that are reasonably available to the individual or entity shall be treated as benefits available for the same purpose, even if he/she/it

did not seek them. Duplications can occur at any time in such cases, and if amounts for these purposes are received subsequent to the property settlement they must be reimbursed to FEMA.

Some examples when DOB occurs include the following:

- If the subgrantee decides to offer pre-event market value, duplication may occur if homeowners have insurance, loans, repair grants, or other assistance available to them to help address the damage to the structure. This is because paying full pre-event market value also compensates the owner for the loss of value that occurs due to damage. The subgrantee must make the deductions from the established pre-event market value purchase offer before making a final mitigation offer to the property owner;
- Duplication may occur when insurance benefits are available to the property owner under an existing policy, whether they submitted a claim or not. (If insurance paid a claim that included reimbursement for the property owner's own labor for clean up, this is not a DOB and it should not be deducted);
- Duplication may occur where legal claims are appropriate or legal obligations arise (e.g., to comply with a law or court order) that may provide a benefit to the property owner on the basis of that property. Parties involved in pending legal disputes must take reasonable steps to recover benefits available to them; and
- Duplications may also occur when relocated tenants receive relocation assistance and rental assistance if they have received payments for the same purposes as part of the disaster assistance provided by FEMA and other agencies, or payments from any other source, as described in Section 2.3.13.3.1.8 (Tenants). Any acquisition-related assistance provided to tenants must be reduced accordingly. This also affects the total eligible costs allowable for the project (Tenant-related DOB deductions do not affect amounts available to the property owner).

For property valuations based on pre-event market value, the following procedures assist in preventing mitigation grant funds from duplicating benefits available from other sources:

- For property owners, the subgrantee establishes the purchase offer property value as of a certain date;
- The subgrantee provides the State/Grantee with a list of property owners who are participating in the property acquisition project, and with a list of tenants that will potentially be affected by acquisition of the property they occupy;
- The State/Grantee and FEMA inform the subgrantee of the amount of repair or replacement assistance available to each property owner, and rental or relocation assistance available to tenants from FEMA and the State. FEMA shall provide to the State/Grantee and subgrantee NFIP coverage information, including the amount paid on a claim and the amount of coverage available;

- The subgrantee shall coordinate with property owners who shall disclose all potential amounts available to them for the same purpose, as described above, including repair or replacement assistance received, all insurance benefits available to them under an existing policy (whether they submitted a claim or not), and any potential recovery based on litigation or other legal obligations. The property owner must take reasonable steps to recover such amounts. Amounts that are reasonably available to the property owner shall be treated as benefits available for the same purpose, even if the property owner did not seek them. The subgrantee shall coordinate with tenants who shall disclose any amounts received from rental or relocation assistance;
- Property owners who have a U.S. Small Business Administration loan are required to repay the loan or roll it over to a new property at closing;
- The subgrantee shall identify any other potential sources of benefits to the subgrantee, property owner, or tenant; and
- The subgrantee shall reduce the purchase offer by the amount of any duplicating benefits. Deductions are not taken, however, for amounts the owner can verify with receipts that were expended on repairs or cleanup (Subgrantees may not credit homeowners for the homeowners' own labor hours for repair work).

2.3.13.3.1.7 Additions to Purchase Offer

Supplemental Housing Payments

If a purchase offer for a property is less than the cost for the property owner to purchase a comparable replacement dwelling in a non-hazard-prone site in the same community, the State/Grantee and subgrantee may choose to make available a supplemental payment of up to \$22,500 for the property owner to apply to the difference. Subgrantees should consider the cost of relocating to a permanent residence that is of comparable value and that is functionally equivalent. The State/Grantee and subgrantee must demonstrate that all of the following circumstances exist:

- Decent, safe, and sanitary housing of comparable size and capacity is not available in non-hazard-prone sites within the community at the anticipated acquisition price of the property being vacated; and/or
- The project would otherwise have a disproportionately high adverse effect on low income or minority populations because project participants within those populations would not be able to secure comparable decent, safe, and sanitary housing; and
- Funds cannot be secured from other more appropriate sources such as housing agencies or voluntary groups.

For SRL only: Property owners that receive additional amounts of SRL program funds to cover the original purchase price of the property, or to cover second mortgages or other loans, are generally not eligible to receive supplemental housing payments.

Incentive Payment for Flood Insured Properties

For HMGP-funded acquisition/structure removal projects, the State/Grantee has the option to allow subgrantees to provide a credit to property owners with flood insurance. In this case, the subgrantee would provide an incentive payment in an amount equal to up to 5 years of flood insurance premiums actually paid by the current property owner for a NFIP Policy for structure coverage.

2.3.13.3.1.8 Tenants

Although the property owner must voluntarily agree to participate in the open space project, participation is not voluntary for residential and business tenants and owners of mobile homes who rent homepads (homepad tenants) and who must relocate as a result of acquisition of their housing. Therefore, these tenants are entitled to assistance as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA). The Act is implemented at 49 CFR Part 24. (Owners participating in FEMA-funded acquisition projects are not entitled to relocation benefits because the voluntary program meets URA exceptions.) URA relocation benefits to displaced tenants include moving expenses, replacement housing rental payments, and relocation assistance advisory services. This includes owners of manufactured homes who lease the pad site.

The amount of assistance the subgrantee must pay to the tenant is described at 49 CFR Part 24, Subpart E. An eligible displaced tenant is entitled to:

- Reasonable out-of-pocket (or fixed schedule) moving expenses; and
- Compensation for a reasonable increase in rent and utility costs incurred in connection with the relocation in certain circumstances.

Relocation assistance payments for tenants are intended to ensure that these individuals are able to relocate to decent, safe, and sanitary comparable replacement dwellings outside the floodplain or hazard area. If a tenant chooses to purchase a replacement dwelling, the tenant may apply the amount of rental assistance to which he or she would be entitled towards the down payment. Similarly, if a mobile home owner who rents a homepad chooses to purchase a replacement pad or lot, the mobile home owner may apply the amount of rental assistance to which he or she would be entitled towards the down payment.

However, mitigation grant funding is supplemental to other primary funding sources and must be reduced by amounts reasonably available (even if not sought or received) from other sources, such as insurance and other funds to address the same purpose or loss. A DOB may occur when relocated tenants receive relocation assistance and rental assistance if they have received payments for the same purposes as part of the disaster assistance provided by FEMA, the State/Grantee, and/or other sources. A DOB verification shall focus on the assistance provided through FEMA's disaster assistance programs, including temporary housing and rental assistance and/or funds from *any* other sources. The State/Grantee and FEMA shall inform the subgrantee of the amount and source of any such assistance provided to tenants who may be displaced by an acquisition project. Any acquisition-related assistance provided to tenants must be reduced accordingly. This also affects the total eligible costs allowable for the project. (Tenant-related

DOB deductions do not affect amounts available to the property owner.) For more information on DOB see Section 2.3.13.3.1.6 (Deductions from Purchase Offer).

A person who is an alien not lawfully present in the United States is not eligible to receive URA relocation benefits or relocation advisory services. FEMA may approve exceptions if unusual hardship to the alien's spouse, parent, or child who *is* a U.S. citizen or an alien admitted for permanent residence, would otherwise result. Subgrantees will ask tenants who are potential recipients of URA assistance to certify that they are a U.S. citizen or are lawfully present in the United States. Subgrantees will not provide URA assistance to participants who refuse to certify or who are not a U.S. citizen or lawfully present.

Please refer to 49 CFR Part 24 for detailed instructions regarding implementation of URA requirements. Subgrantees shall closely coordinate with the State/Grantee and FEMA when implementing URA requirements. The State DOT is often a good resource in determining how to calculate the appropriate URA payment, since the Federal Highway Administration (FHWA) oversees applicability of the URA.

2.3.13.3.1.8.1. Rental Payments

A tenant displaced from a dwelling due to a federally funded acquisition project is entitled to a rental increase payment if:

- That tenant rents or purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date he or she moves out of the original dwelling; and
- The tenant occupied the displacement dwelling for the 90 days preceding the initiation of negotiations for acquisition of the property. The initiation of negotiations is defined as the first formal indication that the subgrantee wants to purchase a particular property. Any tenant who occupied the dwelling prior to a disaster event is usually eligible. The exception to this is if the project negotiations are unrelated to a disaster event or begin so long after the event that the event is no longer a relevant factor. If the dwelling is re-inhabited after the event, former tenants are generally not eligible (generally, a signed lease is preferable to prove tenancy; however, other documentation such as utility bills may be used to prove tenancy if a signed lease is not available due to the disaster event).

Compensation for rent increase is 42 times the amount that is obtained by subtracting the “base monthly rent” for the displacement dwelling from the monthly rent and average monthly cost of utilities for a comparable replacement dwelling, or the decent, safe, and sanitary replacement dwelling now occupied by the displaced person.

The “base monthly rent” for the displacement dwelling is the lesser of the average monthly cost for utilities plus the rent at the displacement dwelling as determined by FEMA, or 30 percent of the tenant's average gross household income. (The URA regulations define “tenant” as a person who has the temporary use and occupancy of real property owned by another.)

Subgrantees may exceed this limit in extraordinary circumstances, if necessary to ensure that a displaced tenant will be able to obtain and retain a decent, safe, and sanitary (as defined by the

URA regulations at 49 CFR § 24.2 (a) (8)) comparable unit outside of the high-hazard area. A rental assistance payment may, at the subgrantee's discretion, be disbursed in either a lump sum or in installments. However, if any HUD programs are providing partial funding for the project, verify those program requirements to ensure proper coordination with mitigation grant program requirements. The rental increase payment may not exceed a total of \$5,250.

2.3.13.3.1.8.2. Homepad Tenants

Mobile home owners who lease a homepad and who must relocate to a new homepad as the result of acquisition of their pre-disaster homepad are also entitled to URA relocation benefits and replacement housing payments. Payments to mobile home owners shall not duplicate insurance payments or payments made by other Federal, State, local or voluntary agencies. Complex situations involving FEMA mobile homes that have been donated to a State or local government and then sold to the mobile home owner should be directed to the FEMA Regional Office for eligibility determination and a calculation of benefits.

Displaced mobile home owners who rent their homepads are entitled to assistance as detailed below. However, in only rare cases may the combination of the two types of URA assistance exceed \$22,500.

Homepad Rental Assistance

The displaced mobile home owner and homepad renter is entitled to compensation for rental and utility increases resulting from renting a comparable homepad and moving expenses as detailed in the section for tenants. Compensation for homepad rent increase is 42 times the amount that is obtained by subtracting the "base monthly rent" for the displacement homepad from the monthly rent and average monthly cost of utilities for a comparable replacement homepad. The rental increase payment may not exceed a total of \$5,250. Displaced mobile homeowners are also entitled to one of the following:

- **Replacement Housing Assistance:** For URA purposes the displaced mobile home owner is considered to be involuntarily displaced from his or her residence due to the homepad owner (landlord) selling that property. Therefore, if the mobile home is purchased, the displaced mobile home owner is also entitled to replacement housing assistance to compensate for his or her need to find replacement housing. Compensation for mobile home replacement is equivalent to the amount that is obtained by subtracting the value of the displacement mobile home from the cost of a new replacement mobile home. In acquisition projects where the mobile homes are intact and are being relocated to new homepads, there is no difference. The replacement housing payment may not exceed a total of \$22,500. If the owner is also being compensated for homepad rental increase, then the combination of rental and relocation assistance may not exceed a total of \$22,500; or
- **Costs to Move a Manufactured Home:** If the manufactured homeowner wishes to move their existing home to a new site, rather than sell it, those moving costs are eligible. The reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, anchoring the unit, and utility hook-up charges are included.

2.3.13.3.1.8.3. Tenant Business

Tenant businesses that are involuntarily relocated due to a FEMA acquisition project are also entitled to URA benefits. Assistance provided to a tenant business cannot duplicate payments from insurance or any other source. Thus, Small Business Administration (SBA) loans and other types of financial assistance received after the disaster would have to be factored out of benefits received under the URA. The State/Grantee and subgrantees should seek the assistance of the FEMA Regional Office in determining benefits for tenant businesses. Also, the State DOT can be a good resource for determining benefits for tenants, since the FHWA oversees applicability of the URA.

2.3.13.3.1.9 Increased Cost of Compliance and Cost Share

NFIP Insurance coverage provides for a claim payment to pay qualifying owners' costs to elevate, demolish, or relocate residential structures (nonresidential structures may also be floodproofed) after a flood. The maximum amount of ICC coverage available is \$30,000. Because these are also eligible mitigation grant program costs, the homeowner cannot receive grant funds for the same costs. However, if the insurance claim does not pay the total mitigation cost, mitigation grant funds can be used to pay the remainder. The ICC insurance claim payment would then be counted as non-Federal cost share.

ICC claims can only be used for costs approved as eligible for ICC benefits; these can then be applied to the grant program non-Federal match requirement. Thus, ICC can't pay for property acquisition, but can pay for demolition or structure relocation. Additional information regarding the use of ICC funds can be found in Section 2.1.6.2 (Federal Funds Allowed to be used as Non-Federal Cost Share).

2.3.13.3.1.10 Relocation and Removal of Existing Buildings

If the structure on the property is to be relocated, the relocated structure must be placed on a site located outside of the SFHA, outside of any regulatory erosion zones, and in conformance with any other applicable State or local land use regulations. Existing buildings must be removed and/or disposed of in accordance with applicable laws within 90 days of closing and settlement of the property acquisition transaction. If numerous properties are purchased on different dates, the State/Grantee and subgrantee are still responsible for structure removal within 90 days of settlement for each individual property. The FEMA Regional Administrator can only grant an exception to this requirement in accordance with 44 CFR § 80.17 (d).

Any relocated structures will be placed on a site outside of SFHAs or any other identified hazard areas, and at a distance at least 60 times the average annual erosion rate measured from an appropriate "erosion reference feature." The owner shall ensure the building is brought into compliance with all applicable Federal, State, and local laws and regulations.

In certain disaster-related instances, the demolition and debris removal related to acquired structures may be eligible for reimbursement under FEMA's Public Assistance program if the structures represent a health and safety hazard as a result of the disaster. States/Grantees and subgrantees should coordinate with the appropriate FEMA Regional Office for more information and to determine whether these costs are eligible under that program. If the costs of demolition do not qualify for Public Assistance program funding, they are eligible project costs under the

relevant mitigation grant program. If any parts of the structure are sold for salvage value, this amount shall reduce the total cost of the project before cost shares are calculated.

2.3.13.3.1.11 Conversion to Open Space

Subgrantees must apply specific deed restriction language to all acquired properties to ensure the property will be maintained in perpetuity as open space and consistent with natural floodplain functions, as agreed by accepting FEMA mitigation grant funding. This is done for each property by recording the open space and land use restriction, consistent with FEMA model deed language found at <http://www.fema.gov/government/grant/resources/pre-award.shtm>. Any modifications to the model deed restriction language can only be made with prior approval from FEMA's Office of Chief Counsel through the appropriate FEMA Regional Office.

2.3.13.3.2 Land Use and Oversight

2.3.13.3.2.1 Future Federal Benefits

After settlement of the property acquisition transaction, no disaster assistance for any purpose from any Federal entity may be sought or provided with respect to the property, and FEMA will not distribute flood insurance benefits for that property for claims related to damage occurring after the date of settlement in accordance with 44 CFR Part 80 requirements.

Also, crops for which insurance is not available will not be eligible for any disaster assistance and are grown at the farmer's risk. Payment through the Non-Insured Crop Disaster Assistance Program (NAP), 7 U.S.C. § 7333, for damage to crops for which insurance is not available, is considered to be "disaster assistance," and as such will not be available to owners of open space-restricted land. However, benefits obtained through crop insurance programs offered under the Federal Crop Insurance Act, as amended, 7 U.S.C. § 1501 et seq., are not considered "disaster assistance," and will be available to owners of open space-restricted land.

2.3.13.3.2.2 Open Space Requirements/Land Use

After settlement of the property acquisition transaction, the property must permanently be maintained for open space purposes and consistent with natural floodplain functions.

Allowable land uses generally may include parks for outdoor recreational activities, wetlands management, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow for evacuation), unpaved surfaces, and other uses FEMA determines compatible with the grant and deed restrictions, including more specific listings provided below.

Allowable land uses generally **do not** include walled buildings, flood control structures (such as levees, dikes, or floodwalls), paved surfaces, bridges, cemeteries, actions that pose health, safety or environmental risk in the floodplain, above- or below-ground pumping stations or storage tanks, placement of fill materials, or other uses that obstruct the natural and beneficial use of the floodplain (see below for additional detail regarding land use).

The list below is a guide to open space use that addresses typical situations; however, the subgrantee and State/Grantee should review every situation using the regulations, open space intent, and floodplain management principles. The local floodplain administrator should review

all proposed use of acquired floodplain land. The State/Grantee and subgrantee, in coordination with the appropriate FEMA Regional Office, shall determine whether a proposed use is allowable, consistent with the deed restrictions, grant agreement, this Guidance, and floodplain management requirements.

Allowable Uses Include:

- Vegetative site stabilization, agricultural cultivation, and grazing;
- Public picnic shelters, pavilions, and gazebos, with associated foundations, provided that the structure does not contain walls;
- Public restrooms are the only walled and roofed buildings that are allowed;
- Small-scale recreational courts, ball fields, golf courses, and bike and walking paths;
- Camping, except where adequate warning time is not available to allow evacuation;
- Installation of signs when designed not to trap debris;
- Unimproved, unpaved parking consistent with open space uses;
- Unpaved access roads, driveways, camping pads limited to those necessary to serve the acceptable uses on acquired property. Existing paved roads can be reused for these purposes;
- Small boat ramps, docks, and piers to serve a public recreational use;
- Drainage facilities intended to service onsite needs;
- Construction activities, excavation, and other minor water control structures necessary to create areas for water detention/retention including wetlands restoration or restoration of natural floodplain floodwater storage functions;
- Sewer, water, and power to serve the allowable uses. Sewer, water, and power line crossings, where there is no floodwater obstruction created and there are no other readily available locations for these systems; and
- Simple structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of certain agricultural commodities, to include livestock, such as a pole-frame building (any such structure cannot be of a nature that would make it eligible for insurance under the NFIP), and steel grain bins and steel-frame corn cribs.

Uses Generally Not Allowed on Acquired Open Space Land:

- The construction of flood damage reduction levees, dikes, berms, or floodwalls;

- All walled buildings or manufactured homes, except public restrooms. Reuse of pre-existing structures, unless all walls are removed;
- Fences and all other obstructions in the floodway. Fences outside of the floodway must be designed to minimize the trapping of debris;
- Storage of inventory supporting a commercial operation or governmental facility, including wheeled vehicles or movable equipment;
- Cemeteries, landfills, storage of any hazardous or toxic materials, or other uses that are considered environmentally contaminating, dangerous, or a safety hazard;
- Pumping and switching stations;
- Above- or below-ground storage tanks;
- Paved roads, highways, bridges, and paved parking. Paved parking includes asphalt, concrete, oil treated soil, or other material that inhibits floodplain functions;
- Placement of fill, except where necessary to avoid impacting onsite archeological resources;
- Installation of septic systems or reuse of pre-existing septic systems, except to service a permissible restroom; and
- Any uses determined by the State/Grantee, FEMA, or FEMA Regional Administrator as inconsistent with the regulations, this Guidance, or deed restrictions.

Reuse of existing paved surfaces for recreational uses on the acquired property consistent with allowable uses is generally acceptable; however paved surfaces beyond those directly required for such uses should be removed. Communities shall use unpaved surfaces allowing for natural floodplain functions where feasible for allowable uses, particularly trails. Examples include grass, hard-packed earth, and graded gravel.

Communities may creatively salvage pre-existing structures on the acquired property. In some cases, the complete demolition of a structure may not be necessary; it may be possible to convert a closed-in structure with walls, such as a house, into an open picnic pavilion with a concrete slab floor and posts supporting the roof.

2.3.13.3.2.3 Subsequent Transfer of a Property Interest

Post-grant award, the subgrantee may convey a property interest only with the prior approval of the appropriate FEMA Regional Administrator and only to certain entities in accordance with 44 CFR § 80.19 (b) and this Guidance.

After acquiring the property interest, the subgrantee, including successors in interest, shall convey any interest in the property only if the appropriate FEMA Regional Administrator, through the State/Grantee, gives prior written approval of the transferee. The transferee must be

another public entity or a qualified conservation organization. A qualified conservation organization means an organization with a conservation purpose where the organization has maintained that status for at least 2 years prior to the opening of the grant application period that resulted in the transfer of the property interest to the subgrantee, pursuant to Section 170(h) (3) and (4) of the Internal Revenue Code of 1954, as amended, and the applicable implementing regulations. The transferee must document its status as a qualified conservation organization, where applicable. Any request to convey an interest in the property must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of the original mitigation grant/subgrant conveyance, 44 CFR Part 80, and this Guidance, and must reference and incorporate the original deed restrictions providing notice of the conditions in this section. The statement must also incorporate a provision for the property interest to revert to the subgrantee or Grantee in the event that the transferee ceases to exist or loses its eligible status as defined under this section. See 44 CFR § 80.19 for more information.

The subgrantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in 44 CFR § 80.19 and this Guidance, with prior approval of the appropriate FEMA Regional Administrator, and as long as the conveyance does not include authority to control and enforce the terms and conditions identified above. The FEMA Regional Administrator may choose to consult with the FEMA Office of Chief Counsel in reviewing documents proposed to convey an interest in the property. Any lease or easement must be for uses compatible with open space purposes and are clearly subject to the land use and other restrictions of the property by reference and/or incorporation of the recorded deed restriction language.

2.3.13.3.2.4 Monitoring and Reporting and Inspection

The State/Grantee will work with subgrantees to ensure that the property is maintained in accordance with land use restrictions. The State/Grantee and subgrantees should jointly monitor and inspect acquired properties every 3 years to ensure that the inspected parcels continue to be used for open space purposes.

Every 3 years, the subgrantee, the State/Grantee, and FEMA must coordinate to ensure the subgrantee submits documentation to the appropriate FEMA Regional Administrator certifying that the subgrantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant/subgrant. If the property subsequently transfers to an allowable transferee, the subgrantee, the State/Grantee, and FEMA will coordinate with that entity to submit the information.

The State/Grantee, FEMA and the subgrantee have the right to enter the parcel, with notice, in order to inspect the property to ensure compliance with land use restrictions. Subgrantees may identify the open space nature of the property on local tax maps to assist with monitoring.

2.3.13.3.2.5 Enforcement

If the required monitoring (or other information) identifies that the subject property is not being maintained according to the terms of the grant, the subgrantee, State/Grantee, and FEMA are responsible for taking measures to bring the property back into compliance.

In the event a property is not maintained according to the identified terms, the State/Grantee shall notify the subgrantee (which includes successors in interest) that they have 60 days to correct the violation. If the subgrantee fails to demonstrate a good faith effort within the terms of the grant agreement within 60 days, the State/Grantee shall enforce the terms of the grant agreement by taking any measures it deems appropriate, including bringing an action of law or equity in a court of competent jurisdiction. If the State/Grantee fails to bring the property into compliance, then FEMA may enforce the terms of the grant agreement by taking any measures it deems appropriate including:

- Withholding FEMA mitigation awards or assistance from the State/Grantee, subgrantee, and current holder of the property interest (if different) pending corrective action;
- Requiring the transfer of title; and/or
- Bringing an action of law or equity in a court of competent jurisdiction against the State/Grantee, subgrantee, and/or their respective successors and assigns.

FEMA also reserves the right to transfer the property title and/or easement to a qualified third party for future maintenance.

2.3.13.4 Post-Grant Requirements

2.3.13.4.1 Closeout Requirements

At completion of the grant/subgrant activity, FEMA and the State/Grantee shall identify that all required subgrant activities have been accomplished (in accordance with all programmatic guidance and proper grants management practices and § 80.21), that all properties identified in the application have been acquired, and that the model deed restriction language was recorded with each corresponding deed. The subgrantee shall provide to FEMA through the State/Grantee the following property reporting requirement information:

- A photograph of the property site after project implementation;
- A copy of the recorded deed and attached deed restrictions for each property;
- Latitude and longitude coordinates of the property;
- Signed Statements of Voluntary Participation from the owner of each property identified in the subgrant SOW. The Statement of Voluntary Participation documents more formally the Notice of Voluntary Interest provided in the subapplication, as well as documenting required property valuation notices. A Model Statement of Voluntary Participation is available on FEMA's Web site at http://www.fema.gov/government/grant/vol_participation.shtm or from the appropriate FEMA Regional Office; and

- For each property identified on FEMA’s Repetitive Loss list, a completed FEMA form AW-501, documenting the completion of mitigation on the repetitive loss property. The form is available on FEMA’s Web site at <http://www.fema.gov/government/grant/resources/aw501ins.shtm>.