
A. Property Acquisition and Structure Demolition or Relocation for Open Space

Part A of the Addendum supplements the information provided in Parts I through IX of the Hazard Mitigation Assistance (HMA) Guidance. The project-specific guidance in this section does not provide all of the information necessary to apply for funding through an HMA program and must be read in conjunction with all other relevant sections of this guidance.

A.1 Overview

For property acquisition and structure demolition or relocation projects for the purpose of creating open space, Applicants and subapplicants must comply with Title 44 of the Code of Federal Regulations (CFR) Part 80 and this guidance. A project may not be framed in a manner that has the effect of circumventing these requirements.

Generally, Federal Emergency Management Agency (FEMA)-funded property acquisition and structure demolition or relocation projects with the purpose of creating open space consist of the following: the community purchases a flood-prone structure from a willing seller and then demolishes or relocates it to a site outside the floodplain. The purchased property is deed restricted and maintained as open space in perpetuity to restore and/or conserve the natural floodplain functions. Although some communities elect to develop a site outside the floodplain and relocate structures to the new site, simpler acquisition and structure demolition projects require minimal environmental review, are considerably less expensive, and allow the homeowner to determine where to relocate.

Federal law requires properties acquired with FEMA funds in structure demolition or relocation projects to be maintained as open space in perpetuity and Recipients and subrecipients to be 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 the development of an acquisition project for open space, property owners are responsible for notifying the subapplicant of their interest in participating in the proposed project. They must provide all of the information requested by the subapplicant, and they must complete all of the actions that are required to complete the subapplication and to implement the property acquisition and structure demolition or relocation.

A.2 Additional Project Eligibility Requirements

For a property to be eligible for FEMA-funded acquisition, the subapplicant must acquire the [full] fee title of the property (except for any easements and encumbrances that FEMA determines are compatible with open space) from a willing, voluntary seller or must retain such interest. The subapplicant must commit not to use eminent domain if the property owner chooses not to participate and must verify that the property is not needed as a part of an intended

or planned HMA project. Once funds have been awarded for the project, a property may not be subdivided before it is acquired except for portions outside the Special Flood Hazard Area (SFHA) or any risk zone identified by FEMA.

A property is eligible for acquisition if it:

- ◆ Will be acquired from a willing, voluntary seller
- ◆ Contains a structure that may or may not have been damaged or destroyed as a result of a hazard event
- ◆ Is undeveloped, flood-prone land that is part of a project with an adjacent eligible property with one or more existing structure(s) and the total project remains cost effective
- ◆ Has easements that are incompatible with open space or encumbrances that can all be extinguished
- ◆ Is not contaminated with hazardous materials at the time of acquisition other than incidental demolition or household waste
- ◆ Is 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 use that is inconsistent with the open space deed restrictions and FEMA acquisition requirements (e.g., roads, flood control levees)

Other eligibility requirements are as follows:

- ◆ Per the Coastal Barrier Resources Act (CBRA) FEMA HMA programs may fund projects in Otherwise Protected Areas (OPAs) if they do not require flood insurance after project completion. Acquisitions in a Coastal Barrier Resources System (CBRS) unit are eligible only if they qualify for one of the exceptions in Section 6 of CBRA, Title 16 United States Code (U.S.C.) 3505. That is, acquisitions are eligible if they are consistent with the purposes of the CBRA and qualify as projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, as provided in 16 U.S.C. 3505(a)(6)(A) and 44 CFR Section 206.345. Acquisitions are subject to the regulatory restrictions of allowable uses under 44 CFR Section 80.19 and eligibility requirements of 44 CFR Section 206.434.
- ◆ Any structure that is relocated must be placed outside the SFHA and outside any regulatory erosion zone or other mapped hazard area, and the relocation must conform to any other applicable State or local land use regulations.

A.2.1 Limits on Subsurface Uses Affecting Eligibility

Any incompatible easements or other encumbrances to the property must be extinguished before acquisition. Subsurface hydraulic fracturing and horizontal directional drilling (HDD) generally are not authorized uses of properties acquired with FEMA HMA funds. FEMA generally will not approve property acquisition for open space projects involving properties with underground oil,

gas, or other mineral encumbrances that may allow hydraulic fracturing/HDD to occur. Subrecipients cannot enter into leases or other encumbrances that permit oil, gas, or other mineral extraction by hydraulic fracturing/HDD. Owners, or holders of previously acquired HMA properties, generally cannot encumber the property with or transfer underground oil, gas, or other mineral rights that may allow hydraulic fracturing/HDD to occur on or under that property.

Consistent with applicable statutes and regulations, properties for which funds have not been approved and obligated are subject to these restrictions. These limits are not applicable for those properties in approved projects that have already reached the point of obligation. However, for approved projects, any future actions, such as a subsurface lease renewal or creation of a new encumbrance involving hydraulic fracturing/HDD on or under the surface of a property, would be subject to FEMA approval. HDD generally is not an allowable use.

A.2.2 Open Space Restrictions

To be eligible, a project must result in property acquisition and structure demolition or relocation, and the acquisition and demolition or relocation must meet all of the requirements of 44 CFR Part 80 and adhere to the following guidance on open space restrictions governing the use of award funds and the use of acquired real property.

The subrecipient will dedicate and maintain the property in perpetuity for uses that are compatible with open space, recreational, or wetlands management practices and that are consistent with conservation of natural floodplain functions by recording deed restrictions consistent with the FEMA Model Deed Restriction (see Addendum Part A.6.4 for information on the FEMA Model Deed Restriction). Hydraulic fracturing/HDD is a practice with currently unresolved environmental impacts and unknown open space compatibility; therefore, it is generally not an allowable use.

No new structures will be built on the property, except:

- ◆ Public buildings that are open on all sides and functionally related to a designated open space or recreational use
- ◆ Public restrooms
- ◆ Structures that are compatible with open space, recreational, or wetlands management use and applicable floodplain management policies and practices, and for which compatibility is confirmed in writing by the FEMA Regional Administrator before construction of the structures begins
- ◆ Structures described in the three bullets above that will be elevated or floodproofed to the Base Flood Elevation (BFE) plus 1 foot of freeboard and that meet the applicable requirements of the National Flood Insurance Program (NFIP) floodplain management regulations at 44 CFR Section 60.3

A.3 Property Acquisition Application Package

Subapplicants are responsible for meeting the requirements and timeframes in 44 CFR Section 80.13 and for providing the information that is necessary for the Applicant and FEMA to determine the eligibility of the project as described in the subapplication. The subapplication must contain property and project information, including the project description and Environmental Planning and Historic Preservation (EHP) information.

FEMA may request additional information after the subapplication has been submitted to ensure that all necessary information is received. However, all information required by the regulations and this guidance must be received before a funding decision and award or final approval can be made.

A.3.1 General Application Requirements

For property acquisition projects, the project Scope of Work (SOW) in the subapplication must include the following:

- ◆ For all HMA programs, the value of each property (pre-event or current, as appropriate) and documentation demonstrating how the market value was determined
- ◆ An appeal or reconsideration process for property owners who dispute the purchase offer property valuation

Additional subapplication requirements include:

- ◆ Statement of Assurances
- ◆ A sample of the deed restriction
- ◆ Property owner documentation
- ◆ Voluntary interest documentation
- ◆ Certification of owner status for pre-event value
- ◆ Consultation regarding other ongoing Federal activities

A.3.2 Allowable Property-Related Costs

Allowable costs are costs that are necessary and reasonable for the proper and efficient performance and administration of the Federal award. Allowable costs for property acquisition and structure demolition or relocation projects for open space depend on the scope of the project. Allowable costs are listed in **Table 1**.

A shortfall is the difference between the amount the subrecipient pays an owner for a damaged residence and the cost of a comparable replacement home in a non-hazard-prone location if the cost of the replacement home is higher. A shortfall is an allowable cost up to \$31,000 per property. See Addendum Part A.6.9.4.

A.3.3 Non-allowable Property-Related Costs

Property-related costs that are not allowable under HMA programs include, but are not limited to, the following:

- ◆ Compensation for land that is already held by an eligible entity, even if the eligible entity is not the subapplicant for the project; however, compensation for development rights (e.g., obtaining an open space easement) may be an allowable cost (see **Table 1**)
- ◆ Property acquisition and structural demolition projects where State and/or local laws or ordinances create a legal condition that requires structure demolition and/or prohibits future development of the property (e.g., a coastal setback requirement)
- ◆ Remediation, remediation plans, and environmental cleanup and certification of contaminated properties; however, permitted disposal of incidental demolition, household hazardous wastes, and fuel tanks that support a residential use only may be an allowable cost
- ◆ Aesthetic improvements and landscaping, new site property acquisition, and public infrastructure and utility development

Table 1: Generally Allowable Costs for Property Acquisition and Structure Demolition or Relocation for Open Space

| Both Structure Demolition and Relocation | Structure Demolition Only | Structure Relocation Only |
|---|---|---|
| <ul style="list-style-type: none"> • Removal of demolition debris and household hazardous wastes to an approved landfill (including debris from the demolition of houses, garages, driveways, sidewalks, and above-grade concrete slabs) • Abatement of asbestos and/or lead-based paint • Removal of septic tanks; if not removed, floors and walls must be cracked or crumbled so the tank will not hold water, and the tank must be filled with sand or other clean fill • Permitted disposal of fuel tanks that support residential use only • 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 1-foot-diameter hole in the floor to allow for drainage) • Removal of only the trees, if any, 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 • Grading, leveling, and site stabilization of all demolition sites | <ul style="list-style-type: none"> • 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, provided State/local laws do not prohibit future improvements and/or require structure demolition • For land already owned by an eligible entity, compensation is for the structure and for development rights only, not for the land. This includes any entity eligible to apply for award or subaward funding under the relevant funding program, even if the entity is not the Applicant or subapplicant for the project. • Fees for necessary appraisals, title searches, title insurance, property inspections, and surveys • Property tax liens or tax obligations can be extinguished with proceeds from property sale while performing the transfer of title • Fees associated with the title transfer, contract review, and other costs associated with conducting the real estate settlement, including recordation of the deed and deed restrictions • Demolition, site restoration, and site stabilization of the acquired site | <ul style="list-style-type: none"> • Market value of the real property (land only) • For land already owned by an eligible entity, compensation is for the development rights. This includes any entity eligible to apply for award or subaward funding under the relevant funding program, even if the entity is not the Applicant or subapplicant for the project. • Fees for necessary appraisals, title searches, title insurance, property inspections, plan reviews, permit fees, and surveys • Property tax liens or tax obligations can be extinguished with proceeds from property sale while performing the transfer of title • Fees associated with the title transfer, contract review, and other costs associated with conducting the real estate settlement, including recordation of the deed and deed restrictions • Jacking and moving the structure to a different site • The reasonable cost of disassembling, moving, and reassembling any attached appurtenances such as porches, decks, skirting, ramps, and awnings • Necessary site preparations, including foundation, water, sewer, and utility hookups • Site restoration and site stabilization of the acquired site |

A.4 Implementation

This section discusses clear title, statement of voluntary participation, final mitigation offer, open space land use requirement, and subsequent transfer of a property interest.

A.4.1 Clear Title

The subrecipient 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, to identify other persons with a property interest if the owner is not the sole and actual titleholder, and to ensure that the title is clear (i.e., there are no mortgages or liens outstanding on the sale of the property). In addition, the property must not have easements or other encumbrances that are incompatible with open space and that would make the property either ineligible for acquisition or noncompliant with FEMA's open space land use restrictions (see Addendum Part A.6.2).

All known encumbrances that are incompatible with open space use must be revised or extinguished to ensure that the property use is consistent with the open space requirements in 44 CFR Part 80 and this guidance. Encumbrances include any encumbrance providing an interest in subsurface resource rights whether or not the interest involves an implicit right for surface access to the subsurface resource. The Applicant will obtain a title insurance policy reflecting that all incompatible easements or other encumbrances to the title have been extinguished to demonstrate a clear fee title in conformance with 44 CFR Section 80.17(b).

If evidence obtained during the review indicates long-dormant subsurface rights (usually in excess of 50 years or beyond the reach of a standard title search) and the identity of the subsurface owner is unknown or otherwise not reasonably ascertainable, FEMA may approve the eligibility of the acquisition on a case-by-case basis. If a right to access a subsurface resource is discovered and asserted after the acquisition, the Recipient and subrecipient are required to take all appropriate action to enforce the open space restrictions required by 44 CFR Section 80.19.

Other title-related requirements are as follows:

- ◆ A title insurance policy demonstrating that a clear title conveys must be obtained for each approved property that will be acquired
- ◆ A physical site inspection for each property must be conducted to verify that there are no physical encumbrances to the property (a site survey may be necessary to clearly establish property boundaries)
- ◆ The property title must be transferred by a warranty deed in all jurisdictions that recognize warranty deeds
- ◆ All incompatible easements or encumbrances must be extinguished
- ◆ The subrecipient must take possession at settlement

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- ◆ The subrecipient must record the deed at the same time as and along with the programmatic deed restrictions
 - ◆ The deed transferring title to the property and the programmatic deed restrictions will be recorded according to State law and within 14 days after the settlement
 - ◆ All property transfers must be consistent with 44 CFR Part 80 and this guidance

A.4.2 Statement of Voluntary Participation

The Statement of Voluntary Participation formally documents the Notice of Voluntary Interest and information related to the purchase offer. The Statement of Voluntary Participation is available on the FEMA website at <https://www.fema.gov/media-library/assets/documents/13708>. The subrecipient must provide FEMA with a signed copy of the Statement of Voluntary Participation for each property post-award. For more information on voluntary interest documentation, see Addendum Part A.6.5.1. For more information on the purchase offer, see Addendum Part A.6.9.

Participation is not voluntary for tenants of properties to be acquired; for information about considerations for tenants, see Addendum Part A.6.10.

A.4.3 Final Mitigation Offer

The final Mitigation Offer to a property owner is based on the value assigned to a property (“purchase offer”) and applicable additions and deductions. Deductions to the purchase offer may include Duplication of Benefits (DOB) deductions, and additions may include any supplemental housing or insurance incentive payments. The subrecipient must ensure that all property owners are treated fairly and are offered an equitable package of benefits. The subrecipient (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 the final Mitigation Offer.

If several 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 subrecipient should coordinate the release of property valuation information and purchase offers to property owners for the various programs. The subrecipient may wish to set a time limit with the property owner for the validity of a purchase offer. The subrecipient must provide an appeal or reconsideration process for property owners who dispute the amount of the purchase offer property valuation.

A.4.4 Open Space Land Use Requirements

Subrecipients must apply deed-restriction language to all acquired properties to ensure that the property is maintained in perpetuity as open space consistent with natural floodplain functions, as agreed to by accepting FEMA mitigation award funding. Deed-restriction language is applied

to acquired properties by recording the open space and deed restrictions. Modifications to the language in the FEMA Model Deed Restriction can be made only with prior approval from the FEMA Office of Chief Counsel through the appropriate FEMA Regional Office. The FEMA Model Deed Restriction is available on the FEMA website at <https://www.fema.gov/media-library/assets/documents/28496?id=6327>.

Allowable land uses for open space generally 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 that FEMA determines are compatible with the award and deed restrictions. See Addendum Part A.6.1 for a more detailed list of allowed uses. FEMA makes a determination of the open space compatibility of access to a subsurface resource on a case-by-case basis.

Land uses that are not allowable include:

- ◆ Hydraulic fracturing/HDD
- ◆ 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
- ◆ Other uses that obstruct the natural and beneficial use of the floodplain

See Addendum Part A.6.2 for a more detailed list of land uses that are generally not allowed.

A.4.4.1 Competing Federal Interests

In rare circumstances, when the Administrator has determined that competing Federal interests are unavoidable and has analyzed floodplain impacts for compliance with 44 CFR Section 60.3 or higher standards, the Administrator may find that only U.S. Army Corps of Engineers (USACE) projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems are allowable uses. A pre-existing Federal aid transportation system includes roads and bridges that are eligible for Federal aid under 23 U.S.C., including National Highway System component projects, Surface Transportation Program projects, and Highway Safety Improvement Program projects. These projects may be subject to additional EHP review.

A.4.5 Subsequent Transfer of a Property Interest

Post-Federal award, the subrecipient may transfer a property interest only with the prior approval of the appropriate FEMA Regional Administrator and only to certain entities in accordance with 44 CFR Section 80.19(b) and this guidance.

After acquiring the property interest, the subrecipient, including successors in interest, may convey any interest in the property only if the appropriate FEMA Regional Administrator, through the Recipient, gives prior written approval of the transferee. The transferee must be another public entity or a qualified conservation organization. Property transfer to private citizens and corporations will not be approved. A qualified conservation organization is an organization whose purpose has been conservation for at least 2 years before the opening of the application period that resulted in the transfer of the property interest to the subrecipient, 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 that contains documentation of the following:

- ◆ The proposed transferee acknowledges and agrees to be bound by the terms of the original mitigation award/subaward conveyance according to 44 CFR Part 80 and this guidance.
- ◆ The statement references and incorporates the original deed restrictions providing notice of the conditions in this section.
- ◆ The statement incorporates a provision for the property interest to revert to the subrecipient or Recipient in the event the transferee ceases to exist or loses its eligible status as defined under this section. See 44 CFR Section 80.19 for more information.

The subrecipient may convey an easement or lease to a private individual or entity for purposes that are compatible with the uses described in 44 CFR Section 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 that are compatible with open space purposes and is clearly subject to the land use and other restrictions of the property by reference and/or incorporation of the recorded deed restriction language.

A.5 Property Acquisition Closeout

At completion of the award/subaward activity, FEMA and the Recipient shall verify that all required subaward activities have been accomplished in accordance with all programmatic guidance and proper grants management practices and 44 CFR Section 80.21, that all properties identified in the subapplication have been acquired, and that the Model Deed Restriction language was recorded with each corresponding deed.

The subrecipient shall provide to FEMA, through the Recipient, the following property 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
- ◆ A signed Statement of Voluntary Participation from the owner of each property identified in the subaward SOW (see Addendum Part A.6.5.1)
- ◆ For each property identified in the FEMA Repetitive Loss database, a completed FEMA Form AW-501 documenting the completion of mitigation on the repetitive loss property is required. The form is available on the FEMA website at <https://www.fema.gov/media-library/assets/documents/13146>.

For more information about project closeout, see Part VI, F of the HMA Guidance.

A.5.1 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 the requirements in 44 CFR Part 80.

In addition, 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 (7 U.S.C. 7333) for damage to crops for which insurance is not available is considered "disaster assistance" and, as such, is not 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 are available to owners of open space-restricted land.

A.5.2 Open Space Monitoring, Reporting, and Inspection

The Recipient will work with subrecipients to ensure that the property is maintained in accordance with land use restrictions. The Recipient and subrecipients should jointly monitor

and inspect acquired properties every 3 years to ensure that the inspected parcels continue to be used for allowable open space purposes.

Every 3 years, the subrecipient, the Recipient, and FEMA must coordinate to ensure that the subrecipient submits documentation to the appropriate FEMA Regional Administrator certifying that the subrecipient 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 award/subaward. If the property subsequently transfers to an allowable transferee, the subrecipient, the Recipient, and FEMA will coordinate with that entity to submit the information.

The Recipient, the subrecipient, and FEMA have the right to enter the parcel, with notice, to inspect the property to ensure compliance with land use restrictions. Subrecipients may identify the open space nature of the property on local tax maps to assist with monitoring.

A.5.3 Enforcement

If the required monitoring (or other information) results in the determination that the subject property is not being maintained according to the terms of the award, the subrecipient, Recipient, 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 Recipient shall notify the subrecipient (which includes successors in interest) that they have 60 days to correct the violation. If the subrecipient fails to demonstrate a good faith effort within the terms of the grant agreement within 60 days, the Recipient 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 Recipient fails to bring the property into compliance, 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 Recipient, subrecipient, and current holder of the property interest (if different) pending corrective action
- ◆ Requiring the transfer of title
- ◆ Bringing an action of law or equity in a court of competent jurisdiction against the Recipient, subrecipient, and/or their respective successors

FEMA also reserves the right to transfer the property title and/or easement to a qualified third party for future maintenance. For additional information, see 44 CFR Section 80.19(e)(ii).

A.6 Supplemental Guidance

Allowable land uses for properties acquired for open space under all HMA programs for projects within CBRs units are identified in Addendum Part A.6.1.1. FEMA may prohibit additional post-acquisition uses that it determines, in consultation with the U.S. Fish and Wildlife Service, are inconsistent with the purposes of the CBRA.

After settlement, no Federal disaster assistance for any purpose from any Federal source and no flood insurance payments may be made with respect to the property, and no person or entity shall seek such amounts.

The subrecipient must obtain the approval of the Recipient and the FEMA Regional Administrator before conveying ownership (fee title) of the property to another public agency or qualified conservation organization. All development rights in the form of a conservation easement on the property must be conveyed to the conservation organization or retained by the subrecipient or other public entity.

By accepting award funds, the subrecipient accepts responsibility for monitoring and enforcing the deed restriction and/or easement language.

The open space restrictions described above and included in 44 CFR Section 80.19 apply to all FEMA-funded property acquisitions for the purpose of open space, regardless of when the application period opened, when the Presidential major disaster was declared, or when the property was acquired.

For more information on managing open space after a property acquisition and structure demolition or relocation project, see Addendum Part A.5.2. For the FEMA Model Deed Restriction see Addendum Part A.6.4.

A.6.1 Allowable Uses of Open Space

The list below is a guide to open space use that addresses typical situations, but the subrecipient and Recipient should review every situation for adherence to the relevant regulations, open space intent, and floodplain management principles. The local floodplain administrator should review all proposed uses of acquired floodplain land. The Recipient and subrecipient, in coordination with the appropriate FEMA Regional Office, shall determine whether a proposed use is allowable and consistent with the deed restrictions, grant agreement, this guidance, and floodplain management requirements.

The generally allowable land uses of acquired open space are:

- ◆ Vegetative site stabilization, natural dune restoration, agricultural cultivation, and grazing
- ◆ Public picnic shelters, pavilions, and gazebos with associated foundations, provided the structures do not have walls

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- ◆ Public restrooms
 - ◆ Small-scale recreational courts, ball fields, golf courses, and bike and walking paths
 - ◆ Campgrounds if adequate warning will be provided to allow for evacuation
 - ◆ Installation of signs when designed not to trap debris
 - ◆ Unimproved, unpaved parking areas consistent with open space uses
 - ◆ Unpaved access roads, driveways, and 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 localized flood 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 and sewer, water, and power line crossings where there is no floodwater obstruction created and there are no other readily available locations for these systems
 - ◆ Simple structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of certain agricultural commodities, including livestock, such as a pole-frame building (any such structure cannot be constructed so as to make it eligible for NFIP insurance), and steel grain bins and steel-frame corn cribs
 - ◆ Reuse of existing paved surfaces for recreational uses on the acquired property consistent with allowable uses is generally acceptable, but 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 such as trails. Examples of unpaved surfaces are 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 is not necessary and converting 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 is possible.

A.6.1.1 Allowable Uses of Open Space in Coastal Barrier Resources System

Allowable land uses for acquired open space in CBRS units are limited to the following:

- ◆ Vegetative site stabilization for the management, protection, and enhancement of fish, wildlife, plants, and their habitats
- ◆ Bike and walking paths that are consistent with the conservation purposes of the acquisition

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- ◆ Installation of signs when designed not to trap debris
 - ◆ Unpaved access roads and driveways limited to those necessary to serve the conservation purposes of the acquisition (existing paved roads can be reused for these purposes); all roads must be on natural grade
 - ◆ Small boat ramps, docks, and piers to serve a use that is related to the study, management, protection, and enhancement of fish, wildlife, plants, and their habitats
 - ◆ Minor construction activities, excavation, and other flood control structures necessary for wetlands restoration or restoration of natural floodplain floodwater storage functions

A.6.2 Non-allowable Land Uses of Open Space

The land uses of acquired open space that are not generally allowed are:

- ◆ Hydraulic fracturing/HDD
- ◆ Construction of flood damage reduction levees, dikes, berms, or floodwalls
- ◆ Walled buildings or manufactured homes, except public restrooms (reuse of pre-existing structures is not allowed unless all walls are removed)
- ◆ Fences and all other obstructions in the floodway; fences outside the floodway must be designed to minimize trapping 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 areas that include asphalt, concrete, oil-treated soil, or other material that inhibits floodplain functions
- ◆ Placement of fill except where necessary to avoid affecting onsite archeological resources
- ◆ Installation of septic systems or reuse of pre-existing septic systems except to service a permissible restroom

A.6.2.1 Non-allowable Uses of Open Space in the Coastal Barrier Resources System

For projects in CBRS units, the following land uses of acquired open space are generally not allowed:

- ◆ Any use FEMA determines is inconsistent with the allowable land uses identified above

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- ◆ Any uses determined by the Recipient and/or FEMA as inconsistent with the regulations, this guidance, or deed restrictions
 - ◆ Paved surfaces

Communities may creatively salvage pre-existing structures on the acquired property. In some cases, the complete demolition of a structure may not be necessary; converting 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 is possible.

A.6.3 Statement of Assurances

Subapplications for assistance for property acquisition and structure demolition or relocation must include the FEMA Statement of Assurances. The FEMA Statement of Assurances must be signed by the subapplicant's authorized agent. The Statement of Assurances must provide acknowledgement of, and agreement to, the requirements in the model Statement of Assurances, which is available at <http://www.fema.gov/media-library/assets/documents/28695>.

Subapplications that do not include a signed FEMA Statement of Assurances are incomplete and will not be considered for funding.

A.6.4 Deed Restriction Language

The subapplication must include a sample of the deed restriction (not including property-specific details) that the subapplicant intends to record with each property deed. The sample must be consistent with the FEMA Model Deed Restriction, which is available on the FEMA website at <http://www.fema.gov/media-library/assets/documents/28496>.

If the subapplicant makes any changes to the language in the Model Deed Restriction, the subapplicant must seek approval from the FEMA Office of Chief Counsel, through the FEMA Regional Office, for the changes. Changes may be made to comply with local requirements, but changes to substantive, programmatic provisions will not be approved.

The subapplicant must follow the procedure described in the previous two paragraphs for acquisitions for open space in CBRS units. The subapplication must include a sample of the deed restriction for review and approval by the FEMA Office of Chief Counsel, through the Regional Office, to ensure compliance with all deed restriction requirements specific to these areas.

A.6.5 Property Owner Documentation

Documentation of the property owner's voluntary interest and certification that the property owner is a National of the United States or qualified alien must be submitted during the application process. See Addendum Part A.6.9.2 for definitions of a National of the United States and qualified alien.

A.6.5.1 Voluntary Interest Documentation

Participation in property acquisition and structure demolition or relocation projects by property owners is voluntary. 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 if negotiations fail and the property owner chooses not to participate.

Documentation of voluntary interest must be signed by each property owner and should be obtained as early in the project development as possible. The documentation must be submitted as specified in 44 CFR Section 80.13.

A Notice of Voluntary Interest can be documented using individually signed statements or a group sign-up sheet. An Example Notice of Voluntary Interest is available at <https://www.fema.gov/media-library/assets/documents/15689?id=3596>.

The documentation must include the name and signature of the interested property owners associated with each property and clear acknowledgement by every property owner of 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.

During project implementation, the subrecipient must execute a more formal Statement of Voluntary Participation with the owner of each property identified in the subapplication SOW (see Addendum Part A.3.1).

A.6.5.2 Certification of Owner Status for Pre-event Value

Before the property owner can receive a pre-event value for the property, the subrecipient must provide certification obtained from the property owner that the property owner is a National of the United States or a qualified alien (see Addendum Part A.6.9.2). For property owners who are not Nationals of the United States or qualified aliens, or who refuse to provide certification, the subrecipient will offer no more than the appraised current market value for the property.

A.6.6 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 with the appropriate Federal agency or agencies in accordance with 44 CFR Section 80.13 to ensure that other Federal actions are not anticipated that would affect the parcels under consideration for acquisition for open space.

If other Federal activities are planned in the proposed project area, the subapplicant will need to forego an open space acquisition project and pursue other mitigation project options. If the subapplicant decides to proceed with the acquisition project, the subapplicant must include documentation of its coordination under this section in the subapplication.

Consultation with the USACE, Department of Transportation (DOT), and other Federal agencies is discussed below.

A.6.6.1 U.S. Army Corps of Engineers

The allowed uses of open space that have been created as a result of an acquisition project do not include flood levee systems, and subapplicants will be required to reject consideration of such use if they accept FEMA assistance to convert a property to permanent open space. The subapplicant must demonstrate in the subapplication that it has consulted with USACE regarding each subject property's potential use for the construction of a flood levee system (including berms, floodwalls, and dikes). FEMA will not award funds for any property without this documentation. This restriction does not generally apply to structures for ecosystem preservation, restoration, or enhancement.

If the initial 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 undertake an expanded consultation with the Applicant, 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. The local government may be able to pursue open space acquisition and flood damage reduction levee projects in the same community when there are no land use conflicts (i.e., the levee would not cross acquired land). However, if the local government determines that a conflict exists and that it cannot be resolved and chooses to pursue the USACE flood damage reduction levee, the local government must notify FEMA, through the Applicant, that it will not submit a subapplication for FEMA mitigation award funding for property acquisition and structure demolition or relocation.

If, after the consultation, the local government decides to pursue a FEMA-funded property acquisition and structure demolition or relocation project, the subapplication must include an assurance, resolution, or equivalent document adopted by the governing body of the local government that indicates the following:

- ◆ In consultation with USACE, the local government has identified and considered the future potential use of acquired land for the construction of flood damage reduction levees and has chosen to proceed with acquisition of permanent open space.
- ◆ 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.

A.6.6.2 Department of Transportation

The subapplicant must demonstrate in the subapplication that it has coordinated with the relevant State DOT to ensure that future plans do not contain any improvements or enhancements to Federal aid systems or other State transportation projects that would affect the proposed project area under consideration. The construction of such transportation improvements, enhancements, or projects on open space land is incompatible with open space uses and, therefore, is not allowed.

A.6.6.3 Other Federal Agencies

The Applicant and subapplicant must demonstrate in the application and subapplication, respectively, that they have consulted with other Federal agencies, as appropriate, regarding other program requirements and/or activities and have identified the relationship between the requirements and activities to FEMA mitigation grant activities and funding. Other Federal agency requirements may apply to mitigation grant activities if other agency funds are used for activities related to the project in the community or for matching the mitigation grant funding, such as Community Development Block Grant funds.

Other Federal agency funds may be used to contribute to the non-Federal share of a FEMA-funded mitigation project if the requirements of both programs apply to the project. The Applicant is responsible for coordinating with the programs that are available in the State. The coordination should include local program representatives and approaches and schedules. The objective should be to make the process as simple and consistent as possible for subapplicants and property owners.

A.6.6.4 Consultation Regarding Properties in the Coastal Barrier Resources System

For any proposed action that involves the acquisition of a structure for open space purposes that is within or attached to the CBRs, the FEMA Regional Administrator, as required by Section 6 of the CBRA, consults with the designated representative of the U.S. Department of the Interior (DOI) at the regional level before approving the action.

The request for consultation is in the form of a memorandum to the DOI representative that contains the following:

- ◆ Identification of the CBRs unit
- ◆ Description of the structure and the property to be acquired and demolished or relocated, including the identification of the structure as an exception under Section 6 of CBRA and full justification of its status as an exception

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- ◆ Amount of proposed Federal funding
 - ◆ Any additional required mitigation measures
 - ◆ A determination of the action’s consistency with the purposes of the CBRA, in accordance with 44 CFR Section 206.349

Pursuant to FEMA’s understanding with the DOI, the DOI representative provides technical information, an opinion as to whether the proposed action meets the criteria for a CBRA exception, and an opinion as to whether the action is consistent with the purposes of CBRA, if consistency is required. DOI is expected to respond in a timely manner from the date of the FEMA request for consultation. If a written response is not received in a timely manner, the FEMA Regional Administrator will contact the DOI representative to determine whether the request for consultation was received.

When the opinion of the regional DOI representative is that the proposed action should not be taken and the issue cannot be resolved at the regional level, the FEMA Regional Administrator submits the issue to the Director, Office of Environmental Planning and Historic Preservation, Federal Insurance and Mitigation Administration for review. Consultation is accomplished at FEMA Headquarters with the DOI consultation officer and the Office of Environmental Planning and Historic Preservation, Federal Insurance and Mitigation Administration in coordination with the FEMA Office of Chief Counsel. The Director, Office of Environmental Planning and Historic Preservation, Federal Insurance and Mitigation Administration, then approves or does not approve the proposed action.

A.6.7 Relocation and Removal of Existing Buildings

Existing buildings that are part of an open space acquisition and demolition or relocation project must be removed and disposed of in accordance with applicable laws within 90 days of closing and settlement of the property acquisition transaction. The Recipient and subrecipient are responsible for the removal and disposal.

Even if numerous properties are purchased on different dates, the Recipient and subrecipient are still responsible for structure disposal or removal within 90 days of settlement for each property. The FEMA Regional Administrator may grant an exception in accordance with 44 CFR Section 80.17(d) for multiple properties in a single project when the properties are individually identified and the need for an exception is justified, in accordance with the regulations.

All relocated structures in open space acquisition and relocation projects must be placed on a site outside an SFHA, outside any regulatory erosion zones at a distance at least 60 times the average annual erosion rate measured from an appropriate “erosion reference feature,” and outside any other identified hazard areas. The owner is responsible for ensuring that the building is brought into compliance with all applicable laws and regulations.

Existing buildings that are part of an open space acquisition and demolition project must be demolished (resulting in the permanent destruction of each structure) and disposed of in accordance with applicable laws.

After a disaster, the demolition and debris removal of acquired structures may be eligible for reimbursement under the FEMA Public Assistance (PA) Program if the structures represent a health and safety hazard as a result of the disaster. States/Recipients and subrecipients should coordinate with the appropriate FEMA Regional Office to determine whether these costs are eligible under the PA Program. If the costs of demolition do not qualify for PA Program funding, they are eligible project costs under the relevant mitigation grant program. If any parts of the structure are sold for salvage value, the total cost of the project will be reduced by the salvage value before cost shares are calculated.

A.6.8 Hazardous Materials

In accordance with 44 CFR Section 80.11(e), properties that are contaminated with hazardous materials are not eligible for acquisition. The subrecipient must ensure that a property with past or present commercial or industrial use and any adjacent properties suspected of having hazardous materials at the site are not contaminated when the project application is approved. If the subapplication is selected for further review by FEMA, the subrecipient must meet the requirements of the Environmental Protection Agency's "all appropriate inquiries" rule, 40 CFR Part 312, including contracting with an appropriate qualified environmental professional to perform a Phase I Environmental Site Assessment (ESA), as defined by the rule. Any assessment must be in accordance with the procedures of ASTM International Standard E1527-05 or E2247-08. The costs for meeting these requirements are considered eligible project costs if such costs are included in the project budget.

In accordance with these criteria and 44 CFR Section 80.17(a), the subrecipient shall:

- ◆ Conduct interviews with past and present owners, operators, and occupants
- ◆ Search for recorded environmental cleanup liens
- ◆ Review Federal, federally-recognized tribal, State, and local government records
- ◆ Conduct visual inspections of the facility and of adjoining properties

The purpose of the ESA is to identify conditions that are indicative of releases and threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances on, at, in, or to the subject property by gathering the following types of information about the subject property:

- ◆ Current and past property uses and occupancies
- ◆ Current and past uses of hazardous substances

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- ◆ Waste management and disposal activities that could have caused releases or threatened releases of hazardous substances
 - ◆ Current and past corrective actions and response activities undertaken to address past and ongoing releases of hazardous substances
 - ◆ Engineering controls
 - ◆ Institutional controls
 - ◆ Properties adjoining or near the subject property that have environmental circumstances that could have resulted in conditions indicative of releases or threatened releases of hazardous substances to the subject property

The subrecipient must seek to gather all information that is publicly available, obtainable from its source within reasonable time and cost constraints, and that can practicably be reviewed.

If the Phase I ESA “all appropriate inquiries” report identifies the presence of hazardous substances, pollutants, contaminants, petroleum and petroleum products, or controlled substances on, at, or in the subject property, the subrecipient shall require the owner to remove the materials or remediate the property in accordance with any applicable Federal, State, federally-recognized tribal, or local requirements. If a Phase II ESA (to evaluate suspected areas and to identify the nature and extent of contamination on, at, in, or to the property) is required, the costs of this study are not eligible mitigation grant project costs. Additionally, the cost of a Phase III ESA (to determine remediation plans, cleanup, and certification of the property) are not eligible mitigation grant project costs.

A contaminated property must be “certified clean,” per 44 CFR Section 80.17(a). Certified clean, in this case, is a letter from the appropriate local, State, federally-recognized tribal, or Federal entity determining that no further remedial action is required to protect human health or the environment. A contaminated property must be certified clean before any interest in the property is purchased. The seller must also agree to indemnify the Recipient, FEMA, and the subrecipient for any liability arising from previous contamination of the property.

A.6.9 Purchase Offer: Value of the Property

For each property identified for acquisition, the subrecipient shall establish and document a property value based on market value, which is 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. Pre-event market value is defined as the market value of the property immediately before the relevant event affecting the property. For the Hazard Mitigation Grant Program (**HMGP**), the relevant event for assistance is the major disaster under which funds are available. For the Pre-Disaster Mitigation (**PDM**) Program, pre-event market value is the value before the most recent declared Presidential 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 Flood Mitigation Assistance (**FMA**) Program, the pre-event market value is defined as the value of the property immediately before the most recent flood event resulting in an NFIP claim of at least \$5,000.

The relevant event may vary under the HMA programs, but the pre-event market value or current market value may be used at the Applicant's discretion for all HMA programs. The Recipient should coordinate with the subrecipient to determine whether the valuation should be based on the pre-event market value or current market value. The current market value may be the most efficient method if no damage has occurred to the property or if a reasonable amount of time has elapsed since the event.

The benefit of the pre-event market value is available only to owners who owned the property during the event and are Nationals of the United States or qualified aliens. If the current property owner purchased or took possession of the disaster-damaged property after the major relevant event or is not a National of the United States or qualified alien, the subrecipient may not offer the owner more than the current market value.

FEMA generally does not include subsurface mineral valuations in the current market value. However, there is no legal or regulatory requirement to exclude those values. Costs associated with surface or subsurface land appraisal are considered part of the overall cost-effectiveness evaluation of any acquisition project.

Typically, property acquisition and structure demolition or relocation projects require the valuation of the property (land and structures as a whole). When an eligible entity already owns the property and wants to deed-restrict it, valuation is for the structure and development rights instead of for the land. Relocation projects require the valuation of land only.

A.6.9.1 Valuation Methodology

The following appraisal methodology must be used to determine property value:

- ◆ The appraisal must be conducted by an appraiser in accordance with the *Uniform Standards of Professional Appraisal Practice*
- ◆ The appraiser must comply with relevant State laws and requirements and have the appropriate certification, qualifications, and competencies based on the type of property being appraised

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- ◆ The subrecipient must coordinate with the Recipient to determine the assumptions that will be used in the appraisal (i.e., current or pre-event market value), and the assumptions must be applied consistently throughout the project area for all properties to be acquired
 - ◆ When determining the value for a large number of structures, the subrecipient may conduct 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

Potential deductions from and additions to the purchase offer must also be considered (see Addendum Parts A.6.9.3 and A.6.9.4, respectively).

A.6.9.2 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 the current market value.

“National of the United States” is defined in 8 U.S.C. 1101 as a citizen of the United States or a person who is not a citizen but who owes permanent allegiance to the United States. “Qualified alien” is defined in 8 U.S.C. 1641 as:

[A]n 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. Part 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/or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).*

Prior to the award or final approval, subrecipients will ask all property acquisition and structure demolition or relocation project participants (property owners) to certify that they are a National of the United States or a qualified alien. Subrecipients will offer participants who refuse to

provide such certification, 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 who are not Nationals of the United States or qualified aliens, may not receive supplemental housing payments.

Subrecipients may use FEMA Form 009-0-3, *Declaration and Release* (available at <http://www.fema.gov/pdf/assistance/process/00903.pdf>), as certification of the nationality of participating property owners. At the time of certification, the subrecipient will ask the property owner to show a form of identification (any government-issued identification displaying the signer's name is sufficient). If the property owner has applied for FEMA disaster assistance, Form 009-0-3 will already be on file at FEMA, and the subrecipient will instead request verification from FEMA through the Recipient that a certification is on file.

A.6.9.3 Deductions from the Purchase Offer

The Recipient, subrecipient, and property owner must identify any potential DOB. FEMA deducts benefits from other sources from the purchase offer. Repair assistance that has been used for its intended purpose is generally not deducted if documentation of the use is provided. Examples of when DOB may occur in a property acquisition and structure demolition or relocation project are as follows:

- ◆ The subrecipient offers the full pre-event market value to the property owner, but the property owner cannot provide documentation to demonstrate that assistance such as insurance, loans, repair grants, compensation in compliance with a court order, or other such assistance has been used for its intended purpose. This is because payment of the full pre-event market value compensates the owner for the loss of value that has occurred.
- ◆ The subrecipient offers the full pre-event market value to the property owner, but legal claims are appropriate or legal obligations arise in connection to the property that may provide a benefit to the property owner. The parties involved in pending legal disputes must take reasonable steps to recover benefits available to them.
- ◆ Relocated tenants receive relocation assistance and rental assistance but have received payments for the same purpose as part of the disaster assistance provided by any agency or payments from any other source. Any acquisition-related assistance provided to tenants must be reduced accordingly. However, tenant-related DOB deductions do not affect amounts available to the property owner.

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

- ◆ The subrecipient establishes the purchase offer property value as of a certain date.

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- ◆ The subrecipient provides the Recipient with a list of property owners participating in the property acquisition and structure demolition or relocation project, and a list of tenants who may be affected by the acquisition.
 - ◆ The Recipient and FEMA inform the subrecipient of the amount of repair or replacement assistance available to each property owner and rental or relocation assistance available to tenants. FEMA provides NFIP coverage information to the Recipient and subrecipient, including the amount paid on a claim and the amount of coverage available.
 - ◆ The subrecipient coordinates with property owners who must disclose all funding received for the same purpose, as described above, including repair or replacement assistance received, all insurance benefits available to them under an existing policy (whether or not they submitted a claim), and any potential recovery of funds based on litigation or other legal obligations. The property owner must take reasonable steps to recover such amounts. The subrecipient must coordinate with tenants who must disclose any amounts received from rental or relocation assistance.
 - ◆ Property owners who have a Small Business Administration loan are required to repay the loan or roll it over to a new property at closing.
 - ◆ The subrecipient identifies any other potential sources of benefits to the subrecipient, property owner, or tenant.

The subrecipient shall reduce the purchase offer by the amount of any DOB. Deductions are not taken for any amounts the owner can verify with receipts that were expended on repairs or cleanup. Subrecipients may not credit property owners for their own labor hours for repair work.

For insurance payments made for which the purpose is unspecified, property owners may submit (1) an affidavit stating that the unspecified settlement will be used for personal property replacement or (2) documentation from the insurance company specifying the type of losses covered by the previously unspecified settlement. If the property owner submits an affidavit, upon receipt of the affidavit, the Recipient and subrecipient will treat the payment as a personal property settlement that is not subject to a DOB deduction.

A.6.9.4 Additions to the Purchase Offer

If the purchase offer for a property is less than the amount the property owner must pay to purchase a comparable replacement dwelling in a non-hazard-prone site in the same community, the Recipient and subrecipient may choose to make available to the property owner a supplemental payment of up to \$31,000 that would be applied to the difference. Subrecipients should consider the cost of relocating to a permanent residence that is of comparable value and that is functionally equivalent.

In order for the property owner to receive a supplemental payment, the Recipient and subrecipient must demonstrate that the following circumstances exist:

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- ◆ Funds cannot be secured from other more appropriate sources, such as housing agencies or voluntary groups.
 - ◆ 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.
 - ◆ The project would otherwise have a disproportionately high adverse effect on low-income or minority populations because project participants in these populations would not be able to secure comparable decent, safe, and sanitary housing.

For **HMGP**, the Recipient has the option of allowing subrecipients to provide a credit to property owners who have flood insurance. The subrecipient provides an incentive payment that is equal to up to 5 years of flood insurance premiums actually paid by the current property owner for an NFIP policy for structure coverage.

A.6.10 Tenants

Although the property owner must voluntarily agree to participate in an open space project, participation is not voluntary for residential and business tenants and owners of mobile homes who rent homedads (homedad 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 (URA), as amended (42 U.S.C. 4601 et seq.). The implementing Federal regulations are in 49 CFR Part 24. Property owners participating in FEMA-funded property acquisition and structure demolition or relocation projects are not entitled to relocation benefits because the voluntary program meets URA exceptions.

URA regulations define “tenant” as a person who has the temporary use and occupancy of real property that is owned by another.

URA relocation benefits to displaced tenants include moving expenses, replacement housing rental payments, and relocation assistance advisory services. Displaced tenants include owners of manufactured homes who lease a pad site.

The amount of assistance the subrecipient must pay the tenant is provided in 49 CFR Part 24, Subpart E. An eligible displaced tenant is entitled to:

- ◆ Reasonable out-of-pocket (or fixed schedule) moving expenses
- ◆ 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 toward 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 toward the down payment.

An alien who is 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. Subrecipients 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. Subrecipients will not provide URA assistance to participants who refuse to certify that they are, or who are not a U.S. citizen or lawfully present.

Refer to 49 CFR Part 24 for instructions on implementing URA requirements. Subrecipients must coordinate closely with the Recipient and FEMA when implementing URA requirements. The State DOT is often a good resource in determining how to calculate the appropriate URA payment because the Federal Highway Administration oversees the applicability of the URA.

A.6.10.1 Rental Increase Payment

A tenant displaced from a dwelling as a result of a federally funded property acquisition and structure demolition or relocation project is entitled to a rental increase payment if:

- ◆ The 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 subrecipient wants to purchase a particular property. Any tenant who occupied the dwelling before a disaster event is usually eligible. The exception is if the project negotiations are unrelated to the 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. A signed lease is preferable for proving tenancy, but other documentation, such as utility bills, may be used to prove tenancy if a signed lease is not available because of the disaster event.

Compensation for a 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 rental increase payment may not exceed a total of \$7,200.

Subrecipients may exceed the limits identified in the URA regulations in extraordinary circumstances if necessary to ensure that a displaced tenant will be able to obtain and retain a comparable unit that is decent, safe, and sanitary (as defined at 49 CFR Section 24.2(a)(8)) outside a high-hazard area. A rental assistance payment may, at the subrecipient's discretion, be disbursed in a lump sum or in installments. If any U.S. Department of Housing and Urban Development programs are providing partial funding for the project, the subrecipient should verify the program requirements to ensure proper coordination with mitigation grant program requirements.

A.6.10.2 Rental Assistance for 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 entitled to URA relocation benefits and/or replacement housing payments. Payments to mobile home owners may 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 appropriate FEMA Regional Office for eligibility determination and calculation of benefits.

Displaced mobile home owners who rent their homepads are entitled to assistance as described below. In some cases, the combination of the two types of URA assistance may exceed URA's statutory maximum replacement housing differential of \$31,000.

The displaced mobile home owner/homepad tenant is entitled to compensation for rental and utility increases resulting from renting a comparable homepad and moving expenses as described in this section. 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 the average monthly cost of utilities for a comparable replacement homepad. The rental increase payment may not exceed a total of \$7,200.

Displaced mobile home owners may also be entitled to the following:

- ◆ **Replacement Housing Assistance:** For URA purposes, the mobile home owner is considered to be involuntarily displaced from his or her residence as a result of the homepad owner (landlord) selling the property. In addition, if the mobile home is also purchased, the displaced mobile home owner is 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 purchased mobile home from the cost of a new replacement mobile home.

In some cases, it may not be possible to secure a comparably located site for a replaced/displaced mobile home; thus, the site on which the home is ultimately placed is called "last resort

housing.” The cost to find and/or obtain such a site may exceed the statutory maximum differential replacement housing payment of \$31,000. Last resort housing cases can result when the subapplicant has not adequately planned for the relocation of mobile homepad tenants. If a comparable location for a replacement mobile home cannot be found, the homepad tenant may be eligible for replacement housing payments up to the cost of a traditionally constructed home that is comparably located.

A.6.10.3 Requirements for Applications Involving Mobile Home Owners

Subapplicants seeking funds for mobile home park acquisitions must demonstrate capacity to administer the subaward within the project cost estimate. To demonstrate capacity, the subapplication should include:

- ◆ An estimate of the number of mobile homes that will be involuntarily displaced
- ◆ Identification of in-house URA experience or an estimate of the cost of obtaining URA expertise shown as a line item in the project budget
- ◆ A preliminary relocation analysis discussing whether an adequate stock of potential replacement sites and/or dwellings is available

A.6.10.4 Tenant Businesses

Tenant businesses that are involuntarily relocated as a result of a FEMA-funded property acquisition and structure demolition or relocation project are entitled to URA benefits. Assistance provided to a tenant business cannot duplicate payments from insurance or any other source. Thus, Small Business Administration loans and other types of financial assistance received after the disaster must be subtracted from benefits received under the URA. The Recipient and subrecipient should seek assistance from the appropriate FEMA Regional Office in determining benefits for tenant businesses. The State DOT can be a good resource for determining benefits for tenants because the Federal Highway Administration oversees the applicability of the URA.