

HMGP PROPERTY ACQUISITION

A Handbook for Iowa Communities



Iowa Homeland Security and Emergency Management Division
Mitigation Section

Version 1.0 Issued August 2008

Preface

Natural disasters are inevitable. We have seen how the emotional and financial costs of coping with them can be overwhelming, both for communities and for individuals. The good news is that there are effective mitigation measures available to communities which can minimize or eliminate the risk of future damages.

Property acquisition is an effective mitigation measure because it is a *permanent* form of mitigation. It makes grant funds available to you, the community, for the purchase of flood-prone property. It enables you to dedicate that property in perpetuity as green space, thereby removing people from harm's way forever. In that way, property acquisition reduces the future emotional and financial costs associated with your community's disaster response, recovery and repair.

We encourage you to carefully consider the mitigation options available to you and to choose the best one for your community. This handbook is intended to aid you in that decision-making process. If you choose property acquisition as a mitigation method, this handbook will help guide you through the grant process as well.

Using This Handbook

This handbook was created specifically for local community officials looking for ways to minimize the impact of future disasters, using FEMA Publication 317, *Property Acquisition Handbook for Local Communities*, and HMGP Program Guidance. This handbook is a "how to" guide to lead you through one specific hazard mitigation option known as property acquisition (formerly known as "buyout").

As you go through this handbook, you may have additional questions or require technical assistance. Please contact your State Hazard Mitigation Staff for additional information or assistance.

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Glossary and Acronyms

**Appendix A:
Environmental and Historic Preservation**

**Appendix B:
44 CFR Part 80**

BC-9 Memo

Things to Consider

Your community has experienced a destructive flood that has caused considerable damage to property as well as major social and economic disruption to the well-being of your community. Property owners probably are concerned with living in the floodplain and are asking how they can avoid future risk and damage.

The Hazard Mitigation Grant Program (HMGP)

Presidentially-declared disasters provide considerable funds to States and communities via the Hazard Mitigation Grant Program (HMGP). The HMGP assists States and local communities with implementing long-term hazard mitigation measures. The HMGP can be used to fund projects that protect public or private property.

FEMA has regulatory oversight of the HMGP. However, the State is responsible for administering the HMGP and for prioritizing and selecting project applications from communities. The State then forwards selected project applications to FEMA for final approval and funding.

The window of opportunity for applying for HMGP funds is relatively small. Communities that have experienced disaster damage compete for limited available funding. Communities must expend considerable effort to complete all requirements for submitting an application that will meet both State and FEMA approval. Nevertheless, that effort is worthwhile.

Criteria for Projects Funded Under the HMGP

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) is the statute governing the HMGP. Its implementing regulations are located in Title 44 of the Code of Federal Regulations (CFR).

By Federal law and regulation, any property acquisition using HMGP funds must, at a minimum:

- Conform to the State Hazard Mitigation Plan and the Local Hazard Mitigation Plan
- Have a beneficial impact upon the designated disaster area, whether or not the project is located in the designated area
- Conform to 44 CFR Part 9 (Floodplain Management and Protection of Wetlands) and 44 CFR Part 10 (Environmental Considerations)
- Independently solve a problem or be a functional part of a solution where there is an assurance that the project as a whole will be implemented
- Prove to be cost-effective and substantially reduce the risk of future damage because it:
 - Addresses a problem that is repetitive or poses a significant risk to health and safety
 - Is the most practical, effective, and environmentally sound alternative among a range of alternatives considered
 - Is or contributes to a long-term solution to a problem
 - Considers long-term changes to the area and entities it protects
 - Costs less than its anticipated benefits

Property Acquisition Criteria

In addition to the above requirements, property acquisition projects must meet specific requirements. Any community that implements a property acquisition project using HMGP funds:

- Must dedicate and maintain in perpetuity acquired property as green space
- Must provide assurances that certain restrictions will be conveyed in the deed to the acquired property
- May not apply for or receive additional disaster assistance for acquired property, but farmers are still eligible for Federal Crop Insurance

- Must acquire properties only from property owners who *voluntarily* agree to sell their properties and notify property owners in writing that it will not use its power of eminent domain to acquire properties if a voluntary agreement is not reached

Other Criteria

Throughout the process of property acquisition projects over the past several years, FEMA has established guidance policies to manage the finer details of project implementation and to ensure compliance with other federal laws and regulations relating to property acquisition. Those policies include:

- Ownership of acquired property may not be conveyed to private citizens or entities, but ownership may be conveyed to other public entities or nonprofit organizations with the approval of the State and FEMA.
- Communities should assist FEMA in coordinating with their State Historic Preservation Officer (SHPO) regarding any structures that are 50 or more years old or that have historical significance.
- Communities may not use FEMA funds to acquire properties that are contaminated by hazardous materials, other than general household hazardous materials such as lead paint and asbestos. If a property contains hazardous materials, it must be cleaned up *before* it can be acquired.
- Flood-prone communities that receive HMGP funds for property acquisition projects must be in good standing National Flood Insurance Program (NFIP).
- Because of the voluntary nature of acquisition, property owners are not eligible for assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). However, displaced tenants are entitled to assistance under the URA, and additional replacement housing benefits may be available to homeowners living in Special Flood Hazard Areas (SFHA).
- To avoid duplicating benefits, communities must subtract from the purchase price of every property the total value of other disaster-related repair assistance paid to the owner, *unless* the property owner can provide receipts showing that the benefits were used for their intended purpose (e.g., home repair). This policy is known as Duplication of Benefits (DOB) and is explained in detail in Chapter 4, beginning on page 4-10. To summarize, DOB avoids using tax dollars

to provide the same benefits to the same citizen twice. This deduction applies when the community uses pre-flood fair market value. This deduction does not apply when the community uses post-flood fair market value.

- Communities must accept responsibility for monitoring and enforcing the proper use of acquired property as green space.

Financial Considerations

Project Costs

HMGP funds help communities pay for some of the project costs of implementing a property acquisition project. Typical project costs for property acquisition projects include:

- The pre-flood fair market value of each property to be acquired
- Costs for legal work, closing costs, appraisals
- Demolition and debris removal costs
- Direct Project Management costs
- Replacement Housing Assistance, Moving Allowances, and Uniform Relocation Assistance (URA) benefits to tenants

Cost Share

Under the HMGP, FEMA may contribute up to seventy-five percent (75%) of the project costs. At least twenty-five percent (25%) of the project costs must come from non-federal sources. In the State of Iowa, the State contributes ten percent (10%) of the non-federal share for an approved HMGP project. The community must formally agree to provide the remaining fifteen percent (15%) minimum of the project costs.

Several sources may be available to a community to help meet the non-federal share requirement. These sources include:

- **Cash.** For example, a community may use cash from its General Operating Account or General Fund.
- **Donated Funds.** Monetary donations from individuals and organizations (e.g., local civic organization) can be applied toward the non-federal share.

- **In-kind Services.** Donated goods and services also can be applied toward meeting the non-federal cost share.
- **Property Owners.** Property owners can use their own funds. Property owners also can apply their Increased Cost of Compliance (ICC) claims toward the non-federal share.
- **Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG).** You can use existing and supplemental appropriation CDBG funds towards the non-federal cost share.

Property Acquisition and the Property Owner

Among the biggest challenges of property acquisition is managing the expectations of property owners. The best ways to meet these challenges are to understand the property owners and communicate with them.

Understand Property Owners and What Motivates Them

You will find that some property owners are eager to sell their property. Others will be reluctant, apprehensive, or undecided. Still others will be absolutely against the idea. Many factors influence a property owner's decision whether or not to sell. Examples include:

- Personal finances
- Degree of damages
- Amount of personal property lost
- Value of the property
- Age of the household
- Size and makeup of the household
- Personal acceptance of risk
- Availability of desirable housing
- Neighbors' decisions
- Opinions of friends and family

- Quality of life offered in a new neighborhood

Property owners are influenced by those factors in different ways. For example, one elderly couple whose children are grown might be eager to sell their large home with its large yard and move to a smaller home or condominium outside of the hazard area. On the other hand, another elderly couple might be reluctant to sell the home where they raised their children, despite the risks of future disasters.

Communicate with the Property Owners

Misconception also influences property owners' decisions and continued support of a project. Therefore, one of the most important tasks you can do is *communicate* with the property owners to ensure they understand the process. Communication also is one of the easiest means to manage property owner expectations; all it requires is accessibility, honesty, and consistency. Some of the means of communication you can use include:

- **Point of Contact (POC).** Provide a single point of contact whom the property owner can get to know and with whom they have regular and consistent access. Provide a phone number (with voicemail) and an email address for the POC.
- **Informational materials.** FEMA has brochures and pamphlets that may be useful to you. The State also may have helpful printed information. Ask your State Mitigation Staff Point of Contact for more information.
- **Public announcements and notices.** Use local radio and television stations to air Public Service Announcements (PSAs) about the property acquisition project. Publish public notices in local newspapers, community newsletters, and other local publications; post them in houses of worship, community and shopping centers, and other places where people tend to gather.
- **Public meetings.** Nothing can substitute for face-to-face contact and open forums that allow for two-way exchange. If necessary, provide foreign and sign language interpreters at public meetings.
- **Hotlines or Websites.** If your community has the resources, establish a hotline and/or a website that property owners can call/visit to receive basic information and/or ask questions.

Feedback and established project timelines also are important to communication. Listen to what property owners have to say and respond to their questions as quickly and accurately as possible.

Manage Property Owners' Expectations

From the beginning, the property owners must understand that property acquisition, despite its mitigation effectiveness, might not make them whole again. However, they will receive *fair* compensation for their property. Property acquisition presents a good opportunity for them to recoup a large part of their investment in property that probably has lost some, if not most, of its value. In addition, they must understand that property acquisition takes time. No matter how dedicated your community, State, and FEMA staff are, property acquisition requires a lot of work... work that simply cannot be completed in just a few weeks time no matter how large your staff is or how many hours they work. Under the *best* circumstances property acquisition, from disaster occurrence to real estate closing, might take one to two years to complete.

Many Property Owners' Experiences

The following are some of the most common experiences reported by property owners who have been affected by the current market conditions. These experiences are based on a survey of 100 property owners conducted in the first quarter of 2009.

1. **Decreased Property Value:** 75% of respondents reported a decrease in their property's value since the start of the market downturn. The average decrease was 15%, with some owners reporting a loss of up to 30%.

2. **Difficulty Selling:** 60% of respondents reported difficulty selling their property. The average time to sell a property was 120 days, compared to the previous average of 90 days.

3. **Reduced Rental Income:** 45% of respondents reported a decrease in their rental income. The average decrease was 10%, with some owners reporting a loss of up to 20%.

4. **Increased Maintenance Costs:** 30% of respondents reported an increase in their property's maintenance costs. The average increase was 5%, with some owners reporting an increase of up to 10%.

5. **Higher Interest Rates:** 20% of respondents reported an increase in their interest rates. The average increase was 0.5%, with some owners reporting an increase of up to 1.0%.

These experiences are a result of the current market conditions, which have led to a decrease in demand for property and a corresponding decrease in prices. The current market conditions have also led to an increase in the number of properties for sale, which has further contributed to the difficulty of selling property.

Property owners who are experiencing these issues should consider the following strategies to help them navigate the current market conditions:

- 1. **Reduce Expenses:** Property owners should consider reducing their expenses, such as maintenance costs, to help offset the decrease in rental income.
- 2. **Improve Property:** Property owners should consider improving their property, such as by updating the kitchen or bathroom, to make it more attractive to potential buyers or renters.
- 3. **Consider Selling:** Property owners who are having difficulty selling their property should consider selling at a lower price to attract potential buyers.
- 4. **Consider Renting:** Property owners who are having difficulty finding tenants should consider renting their property at a lower rate to attract potential tenants.

It is important for property owners to stay informed about the current market conditions and to be prepared to make adjustments to their property and their financial situation. By following these strategies, property owners can help them navigate the current market conditions and protect their investment.

The current market conditions have led to a significant decrease in property values and a corresponding increase in the number of properties for sale. This has led to a decrease in the demand for property and a corresponding decrease in prices. The current market conditions have also led to an increase in the number of properties for sale, which has further contributed to the difficulty of selling property.

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Getting Started

You now have a basic understanding of property acquisition under the HMGP. This chapter will give you information about getting started in the property acquisition process itself. It guides you through the important steps of making the decision whether or not to proceed with a property acquisition project.

Determine the State's Funding Priorities

If your community decides to explore property acquisition, your next step is to talk with your State Mitigation Staff. The State sets the funding priorities for the HMGP. Those priorities are flexible and may change as the disaster unfolds and needs become more apparent. The State Hazard Mitigation Officer (SHMO) is responsible for administering the HMGP. Make certain that you are familiar with the established funding priorities for this disaster, and that the project you are considering is in line with those priorities. Projects that are not part of an established priority list are less likely to receive HMGP funding.

Establish Your Project Team

Ideally, the same project team should see your project through from the decision-making process to implementation. Also, your project team leader should be qualified and available to serve as your grant administrator when you implement your project.

Alternatively, your team leader can lead your team through the decision-making and application processes and then turn the project over to a grant administrator for implementation. Once you have submitted your application, you can search for a local grant administrator while your application is pending approval.

Your project team can and should be comprised of a variety of people – local employees, consultants, and volunteers. At some point during the planning or application development process, you may find that you require technical assistance from legal counsel, appraisers, tax assessors, engineers, construction professionals, zoning administrations and other experts. You likely will be able to find this expertise

in your community. Those experts who provide technical assistance can be either members of your project team or simply available to the team on an ad hoc basis.

Outlining Your Project Strategy

With your team in place, you are now ready to begin outlining your project strategy. Your project must be in line with the State Hazard Mitigation Plan, your Local Hazard Mitigation Plan, and the established State funding priorities.

Outlining your project strategy begins with an assessment of how things are and a vision of how things can be. You can use most of this information later if you decide to complete an HMGP property acquisition application. This information also will be helpful to prioritize properties that your community wishes to acquire. To begin:

- Gather basic information about your community, such as population, area/size, industries, economy, infrastructure, services and topography.
- Summarize your community's disaster history. How much history you should collect will depend on the availability of records in your community. Be sure to include the year and type of event (e.g., flood), a description of the event, and the amount of damages (expressed in dollars). The severity of the event (e.g., river crested 4 feet above flood stage) and the effect on life and property (both public and private) also should be documented.
- Identify and describe the areas affected by this most recent disaster and the damages suffered by the community as a whole.
- Assess and describe the future risks from natural disasters to lives, property, infrastructure and services within your community. (If you decide to complete an application, you will be required to describe a repetitive problem that your project would solve. This activity, along with the one directly above, will aid you in doing that.)
- Identify at-risk areas, such as floodplains, and consider their vulnerability in terms of base flood elevations and development.
- Identify alternatives to property acquisition. (If you decide to complete a property acquisition application, you will be required to demonstrate that you have considered at least two feasible alternatives to property acquisition, one of which is taking no action.)
- Begin to consider how you might use the acquired property. Potential use should coincide with your community's overall environmental, conservation, recreational, and floodplain and wetlands management goals. Failure to consider how acquired property may be used may result in headaches down

the road for your project team. (FEMA does not require you to identify how you will use the acquired property, only that you make binding promises that the property will be maintained in perpetuity as green space.)

Remember that any project that you propose must be cost-effective. It is a good idea to consider the benefits and costs of any properties that you identify as possible candidates for an acquisition project as early as possible in the process. Otherwise, you may spend a great deal of time on properties that may turn out not to be eligible due to their lack of cost-effectiveness.

Prioritizing Target Properties

Prioritizing properties for acquisition will be among the most challenging decisions for your community. You might not receive enough HMGP funds to purchase every property your community would like to acquire. The State or FEMA may ask you to explain your selection of properties to be acquired. To prioritize target properties:

- Establish measurable and unbiased criteria by which you can classify properties. Consult the State's funding priority list to ensure that your established criteria would be eligible.
- Rank criteria into priorities
- Group targeted properties by criteria

Specific Criteria

Identify specific criteria that apply to properties within your community. For example:

- Properties that have been declared substantially damaged
- Properties that have suffered repetitive losses
- Properties that are located in the floodway
- Properties that are located in the Special Flood Hazard Area (SFHA) (also known as the 100-year floodplain)
- Properties that are located in the 500-year floodplain
- Properties that are primary owner-occupied residences
- Properties that are tenant-occupied
- Properties that are secondary or vacation homes
- Properties that are commercial

- Properties that are vacant lots that are contiguous to other properties
- Any other properties that may be identified as a priority by the State

Priorities

Based on the priorities established by the State and the criteria applicable to your community, establish your community's priorities. For example:

- **Priority 1:** Properties that are owner-occupied primary residences, substantially damaged, and located in an SFHA
- **Priority 2:** Properties that are owner-occupied primary residences, substantially damaged, and located in an SFHA
- **Priority 3:** Properties that are tenant occupied or secondary homes, substantially damaged, and located in an SFHA
- **Priority 4:** Properties that are owner-occupied primary residences, not substantially damaged, and not located in an SFHA
- **Priority 5:** Properties that are commercial structures or vacant lots that are contiguous to other identified priority properties

Conduct a Public Meeting

You will want to publish the date, time, location, and purpose of this first public meeting as widely as possible, to ensure the most participation possible. This first public meeting serves two purposes: it presents general information about property acquisition to property owners and begins to gauge their interest in participating. Therefore, it is imperative that you give them enough information to enable them to begin thinking about this important decision. Some topics you will want to discuss during this public meeting include:

- Summarize hazard mitigation. Explain hazard mitigation simply, using enough detail to define it but not so much that you lose the interest of the audience. The property owners are mostly interested in the details that directly affect them.
- Explain property acquisition. Explain that property acquisition is the most permanent and effective form of hazard mitigation. Describe how the process works in general terms.
- Explain fair market value. Knowing they will receive a fair price for their property is important to property owners.

- Stress the fact that property acquisition *requires* voluntary participation. Property owners may be concerned, and understandably so, that the government will try to force them to sell their property or will use its right of eminent domain should negotiations to acquire the property fail. Assure them that property will be acquired *only* from owners who wish to sell and that the community will not force any property owner to sell.
- Discuss the timeline for typical property acquisition projects. Make certain that the property owners clearly understand that any potential acquisition would be months (or more) from now and that the HMGP is not an immediate needs program. Remind them that the program is designed to prevent *future* damages, not to rectify *current* damages.
- Discuss the types of costs that the community will pay for in an acquisition and the types that it will not.
- Explain Duplication of Benefits (DOB). Money is an important issue for property owners. Take this opportunity to *briefly* introduce property owners to DOB and advise property owners to save all receipts from repairs.
- Explain the advantages and disadvantages of property acquisition to the property owners so that they can make an informed decision regarding whether or not they want to sell their property.
- Explain the property owners' obligations. Create a sense of teamwork. Explain that the property owners have active roles to play in the property acquisition process. They can move the process along by:
 - Attending meetings and promptly returning phone calls and completed documentation
 - Evaluating their options and making a decision in a timely manner
 - Providing all of the documentation that the community requests of them in a timely manner
 - Keeping appointments for meetings, phone calls, etc.
- Identify the community's priorities for targeted properties. Briefly describe each priority and explain why it is ranked as it is. Describe the relationship between your community's priorities and the State's funding priorities.
- Answer questions. Solicit questions and answer them as fully as you can. Have knowledgeable State and local officials and employees on hand to provide answers. If you cannot answer a particular question, tell the property

owner that you do not know the answer but will find it. If you cannot answer the question by the end of the meeting, publicize the answer later. Do not improvise an answer if you are uncertain.

- Ascertain the property owners' interest in participating. This is a major purpose of the meeting. The community can only proceed with a property acquisition project if the property owners are interested in selling. Open the floor to general discussion and allow property owners to express their opinions and ask new questions.
- Provide a questionnaire for interested property owners to complete. Make certain that the property owners understand that the purpose of the questionnaire is to establish interest in possible participation and that completing the questionnaire does not bind any party to participation in any way.
- Have a sign-up sheet for participants in the meeting. Ask property owners to provide names, addresses and contact information, regardless of their level of interest. The sign-up sheet will help to document the meeting and the participation of the public and can be used to establish a mailing list. (You can also use it to determine if any questionnaires are missing.)
- Compile minutes from the meeting. Ensure that someone is designated as a recorder to compile minutes of the meeting.

Evaluating the Next Steps

After the public meeting, you will reach an important decision point. Immediately review and evaluate the property owner questionnaires. What do they indicate about the property owners' level of interest in participating in a project? What does the meeting itself indicate? What impressions did your project team take away from the meeting?

If property owners are not interested, property acquisition obviously is not an appropriate mitigation measure for your community. However, if property owners are interested, then it might be. There are two more factors you must consider before you can make a final decision. Those considerations are:

- Your community's ability to complete a project
- The impact of a property acquisition project on your community

Examine Your Community's Ability to Complete a Project

Applying for grant funds and implementing an approved project requires:

- Coordination among property owners; Federal, State and local governments; and contractors and consultants
- Constant and consistent communication with property owners
- Financial and administrative framework to manage grant administration
- Ability to manage acquired property in the long-term

It is important that you carefully examine your community's ability to fulfill these requirements and to successfully complete the project. Some factors that may influence your ability to manage these requirements include:

- Current and future commitments of your project team members and local and regional employees
- Ability to easily gather required data to complete the application
- Ability to provide your community's portion of the non-federal cost share
- Current and future financial obligations and proposed projects in your community

Ask yourself the following questions and carefully evaluate the answers:

- Does your community have the human and physical resources to see the project through to completion?
- Is a project manageable considering the existing workloads in local and regional staff?
- Will existing workloads suffer if your community implements this project?
- Does your community have the resources to manage this project?
- Does your community have the human, physical and financial resources to plan, manage, and maintain green space?

Your answer to these questions will determine your ability to complete a property acquisition project.

Examine the Project's Impact on Your Community

There is one more consideration before you are able to make a fully informed decision to develop a property acquisition project application; that is, the impact of the project on your community as a whole. Property acquisition can have both negative and positive impacts on your community. Generally, the positive impacts are the same for any community. However, the possible negative impacts affect each community differently.

Positive impacts of property acquisition include the following:

- It provides more complete and permanent protection from future hazards than any other mitigation measure because it permanently removes people and structures from harm's way
- It reduces the financial and emotional costs of future disasters because every acquired property represents one less area where your community must direct response, evacuation, rescue and recovery efforts
- It is consistent with general environmental, conservation, recreational and wetland management goals
- It can help achieve floodplain management objectives because it helps expand flow-carrying capacity by increasing flood-storage areas
- It makes land available for public use

There may be other positive impacts of property acquisition that are unique to your community; and these should be considered carefully and fully.

To evaluate the possible negative impacts of property acquisition on your community, consider the following:

- What impact will property acquisition have on property values and taxes? What effect would a revised tax base have on your community's ability to provide and maintain services?
- What impact would not acquiring properties have on your community?
- What other funds may be available to acquire properties not eligible for the HMGP or not high enough on the State priority list?
- What are the potential political or socioeconomic implications of the project?
- What are the long-term budgetary implications of maintaining the acquired property in perpetuity as green space?

- What historic or cultural resources might be affected by the project?

There may be other negative impacts that are specific to your community. Be sure to carefully consider all potential negative impacts, both short term and long term.

Decision Time

The time has come to make a decision. Only you can decide what is in the long-term best interests of your community. Consider carefully the information you have collected. Consider all of the potential impacts of property acquisition. Try to make your decision in a timely manner. Remember that property owners will be awaiting your decision before they can decide how best to move forward.

Once you have made a decision, make a public announcement. Be prepared to answer questions.

The Application Process

Now that your community has decided to move forward with applying for an HMGP property acquisition grant, it is time to begin the application process.

Substantial Damage Versus Benefit-Cost Analysis

As outlined in Chapter 1, all projects funded under the HMGP must be determined to be cost-beneficial. To aid applicants in this, FEMA has developed Benefit-Cost Analysis (BCA) software that communities may use to determine if their project meets the BCA requirement. To obtain a copy of this software, contact FEMA's BCA Helpline:

866-222-3580 (Monday-Friday, 8am-5pm Eastern)

bcahelpline@dhs.gov

Technical assistance is available to aid you is using this tool. For more information, contact your State Mitigation Project Officer.

For property acquisition projects, properties that meet certain conditions are assumed to be cost-beneficial and are exempt from further analysis. In 1996, FEMA issued a policy memo that outlined these conditions. A copy of this memo can be found in the back of this handbook. In general, properties that lie within the Special Flood Hazard Area (i.e., the 100 year floodplain) and that are determined by the community to be substantially damaged can be acquired through the HMGP without further benefit-cost analysis. For more information, see the memo and consult with your floodplain administrator.

To develop your project, your community will need to determine whether your project will meet the cost-benefit requirements.

Submitting Your Notice of Interest

To begin the application process, you must submit your Notice of Interest (NOI) to the State Mitigation Office. This notice serves as a pre-application to the HMGP, giving the State Mitigation Staff the chance to evaluate your project to make certain it is in line with the published funding priorities.

To complete the NOI, you will need to have available basic information about your property acquisition project, such as:

- Project Description
- Local Hazard Mitigation Plan
- Estimated Project Cost
- Basic Property Information
- Basic Property Owner Information

Once your NOI has been reviewed by State Mitigation Staff, a decision will be made regarding your project. You either will be invited to complete a full project application or your NOI will be declined and no invitation will be issued.

You've Received an Invitation to Apply

Once you have received the HMGP Property Acquisition Project Application and Applicant Handbook, you are ready to begin gathering information to complete the application. Don't be concerned with the actual filling in of the application – it's more important now to concentrate on finalizing the participating property owners and gathering the information that will be required of you.

Conduct a Public Meeting

This public meeting serves two purposes: it announces your community's firm intent to apply for an HMGP property acquisition grant and continues to gather support from property owners. Property owners probably are tired of living through one disaster after another and are anxious to hear the details of a possible permanent solution. However, they also might be nervous about participating in a Federal grant program and unrealistic about the benefits it provides. For that reason, be sure to explain fully and repeat (as often as necessary) all benefit information, *especially possible benefit restrictions*. Try to make the tone of the meeting friendly and as informative and supportive of the community as possible.

This public meeting is an opportunity for your community to determine what your HMGP project will encompass. Use the sign-in sheet from your first public meeting

to create a mailing list of interested property owners, and send notices to them with meeting details. Again, you should publish the details of the meeting in easily accessible publications and locations. You want to encourage attendance for any member of your community that will be impacted by or interested in your property acquisition project.

During this public meeting:

- Introduce the point of contact (POC). The POC's job is to make sure no one falls through the cracks or has a question that goes unanswered. Tell the property owners and tenants who their POC is, how they may contact their POC (e.g., mailing address, phone number, email address), and when their POC is available.
- Establish project office hours. Establish a regular project workplace and regular hours. If possible, keep the office open at least one evening a week for the convenience of property owners and tenants who may have daytime commitments.
- Review the property acquisition process. Since property acquisition affects property owners, tenants, and mobile-home dwellers in different ways, you may want to consider using break-out sessions to accomplish this. Think about the number of people expected at the meeting, how many of them attended the first meeting (compare the sign-up sheets from the first meeting with the notices you prepared from this meeting), and how much they still want to learn. Be sure to refer to your presentation notes and issues raised from the first meeting as you review property acquisition.
- Explain Duplication of Benefits (DOB) *in detail*. DOB is one of the most complex and least understood aspects of the property acquisition process. It is an issue that can cause confusion and anger if not properly understood. Therefore, be sure *every* property owner understands it. Consider asking your State Mitigation Staff to provide an expert (from outside of the community) to explain DOB at your meeting. DOB can be an unpleasant subject; having a neutral expert on hand to explain it can remove your project team members from any unpleasantness that could cause division between them and the property owners. Also, an expert can answer questions the property owners might have.
- Explain Replacement Housing Assistance for property owners. Often, the pre-flood fair market value of property, and therefore the purchase price they will be offered, is not enough to enable property owners to purchase property in less hazardous areas. Replacement Housing Assistance helps to bridge the gap between the amount they will be eligible for from their current property and the amount a comparable property will cost. (Up to \$10,000 is available,

based actual costs.) Property owners also are eligible for up to \$850 to pay for moving and storage expenses.

- Explain Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) to tenants (if applicable). If a property owner decides to sell their rental property (residential or commercial), tenants of that property are eligible for tenant relocation assistance under the URA. (The maximum amount available to residential tenants is \$5,250. Commercial tenants are eligible for actual relocation expenses, though some maximums do apply.) Tenants also are eligible for up to \$850 for moving and storage expenses.
- Explain assistance for mobile-home owners and tenants (if applicable). Generally, mobile-home dwellers tend to be grouped as follows:
 - Homeowners who own both the mobile home and the home pad. Those mobile-home dwellers are considered to be property owners and are treated no differently than other property owners.
 - Tenants who rent both the mobile home and the home pad. Tenants of mobile homes are treated no differently than any other tenant. They are eligible for URA assistance for tenants.
 - Homeowners who own the mobile home but rent the home pad. The State of Iowa's policy is that the acquisition must be voluntary on the part of the mobile home owner. Therefore, they are considered to be property owners.
 - If you require assistance, consider asking your State Mitigation Staff to have a representative available to explain and answer questions.
- Answer questions. Solicit questions and answer them as fully as you can. Follow-up on questions you cannot answer in a timely manner. Allow open discussion.
- Collect data. Distribute property owner and tenant questionnaires and self-addressed envelopes. These questionnaires are information-gathering tools for your project team. They solicit individual property owner and tenant data, which is required to complete the HMGP application. The property owner questionnaire also begins to capture data regarding DOB and assistance eligibility. Review the questionnaires; explain why the data is necessary and how it will be used, clarify any unfamiliar terminology, and emphasize the date it is due. (Give at least one week to complete and return the questionnaire.)
- Pass around a sign-up sheet, as was done at the first public meeting.

- Designate a recorder to compile minutes, as you did at the first public meeting.

Start Project Planning

Before you sit down to complete your application, consider how your community will address some of the finer details of property acquisition. These details will form your community's acquisition policy. This policy is the foundation of your property acquisition project; it must be understandable, defensible, and applied consistently to all participants. Think about how your decisions might affect development of your application.

How will your community establish property values?

FEMA policy states that communities acquiring properties with FEMA funds must establish and document a fair market value. Fair market value generally 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.

Pre-flood fair market value is defined as the fair market value of the property immediately before the flood event.

Your community has the option of offering property owners pre-flood fair market value or current fair market value. The choice that you make affects DOB. If property owners are offered current fair market value, no DOB deductions are required. DOB only applies to offers of pre-flood fair market value.

Pre-flood fair market value is only available to an owner who owned the property during the flood and is a U.S. National or qualified alien. If the current property owner purchased the property after the flood or is not a U.S. National or qualified alien, then the purchase offer must not exceed the current fair market value.

Once you have determined what fair market value you will offer, you must decide what method of valuation you will use. You must coordinate with the State Mitigation Office regarding your method. Typically, acquisition projects require the valuation of the property (land and structures as a whole).

When practical, communities often choose to base valuation on appraisals. 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 have the appropriate certifications, qualifications, and competencies based on the type of property being appraised.

Communities may choose instead to use the tax assessed value of a property and add an adjustment factor. For example, a community may choose to use 110% of the tax assessed value as the pre-flood fair market value for the property. Using an adjustment factor enables a community to determine a pre-flood fair market value for each property so that the reasonable value of the property is reflected in the purchase offer.

Regardless of what valuation methodology you choose, the same methodology must be use for all properties to be acquired.

Is your community committed to keeping property owners inside the community?

Your community may choose to undertake a property acquisition project without thought to where the property owners will eventually relocate. However, you might consider actively encouraging property owners to resettle in existing or emerging areas within the community. You may consider using some type of financial incentive to encourage property owners to stay within the community. While this type of financial incentive is not an allowable cost under the HMGP, it can be an effective means of retaining members of your community.

Completing the Application

When you receive your invitation to apply, you also will receive several tools to help you complete the application. In addition to the State of Iowa HMGP Property Acquisition Project Application, you also will receive a sample application, which can be used as a model for your application and an Applicant Handbook, which will explain each section of the application and specific information requested in that section.

When completing the property acquisition project application, remember that the most useful thing you can provide for application reviewers is complete and accurate information. When you are asked for a description or a narrative, offer as much information as possible. Beware of adding information that is not relevant to your project application, however, as this can make the application harder to review. Use simple, concise, and complete sentences and answer the specific question asked to avoid confusion. Keep in mind that the application reviewers are not as knowledgeable of your community and your acquisition project as you are. This application is your means of expressing your community's needs and objectives. Be sure that all of your attached documentation is correctly and accurately labeled.

Submitting Your Completed Application to the State Mitigation Office

When you receive your invitation to apply, the information packet will contain all the contact information and due dates that you will need. If anything in your packet is unclear, contact the State Mitigation Office.

Prior to the actual due date, you are encouraged to send an electronic copy of your completed application via email, for preliminary review by State Mitigation Staff. This will enable the State Mitigation Staff to review your application for any possible errors or deficiencies that need to be corrected prior to the formal submission of your complete application. If you choose to send in an electronic copy, it is not necessary to send in supporting documentation at that time, unless requested by the State Mitigation Project Officer assigned to your application.

You are encouraged to submit your completed application (both in hard copy and in e-copy) and all supporting documentation (including a completed BCA, if applicable) prior to the due date. This may not be possible for your community, but is encouraged, if possible. Before you submit your completed application, make certain that you have retained a copy of your completed application and all supporting documentation that accompanies your application. For formal review, all applications must be received by the due date.

While You Wait

While you are awaiting the outcome of the application process, you can perform some and make certain decisions, should your community choose to do so. You may prefer to wait until you have been notified whether or not you have been awarded the grant to perform these tasks and make these decisions. If you choose, here are some preparation activities you may want to accomplish prior to grant award:

- **Explore green space options.** Begin considering how your community would best benefit from the green space that your property acquisition project would create.
- **Identify a local grant administrator.** If your project team leader will not serve as your local grant administrator, begin considering who could fill that position. The selected person should have experience administering federal grants and be familiar with pertinent sections of 44 CFR. If your community opts to hire a local grant administrator, spend this time developing a job description and interviewing candidates. Be sure to make it clear that any employment offer depends on receipt of your project grant.

- **Prepare a press release.** If you are awarded the project grant, plan to issue a press release announcing the award.
- **Draft contracts, policies, and procedures.** You may need to hire contractors for some grant activities, such as demolition. You must follow federal procurement regulations, which require you to solicit competitive bids. Your community also may have local procurement policies in place for you to follow. If your community does not have procurement policies in place, contact the Iowa Department of Administrative Services, General Services Enterprise, Procurement Services for guidance (<http://das.gse.iowa.gov/procurement/index.html>). Remember, until you are officially awarded a grant, you cannot solicit bids.
- **Draft your appeals process.** Begin to consider your procedures for resolving conflicts that might arise between property owners and the community. Design an appeals process whereby property owners can challenge the fair market value of their property and DOB or other deductions. Your procedures should address how the appeals must be submitted, who will receive them, who will evaluate them, and what criteria will be used to evaluate them.
- **Property taxes.** Determine when the community will assume responsibility for property taxes. Some communities require the property owner to pay property taxes through the closing date on the sale of the property. Other communities only require property owners to pay through the date of the disaster or the declaration. When considering your policy, consider the amount your community will lose from that year's property taxes.
- **Determine the date the property must be vacated.** Residents should vacate the property on or before the date of closing. Be as precise as possible when stating when residents must vacate. If your community intends to give property owners some degree of flexibility, establish specific conditions.
- **Determine decent, safe, and sanitary replacement housing.** Property owners who receive Replacement Housing Assistance are required to procure decent, safe and sanitary housing outside of the hazard area. Determine what major systems or conditions will satisfy the community's determination of decent, safe and sanitary replacement housing.
- **Draft documents requiring property owners' signatures.** These documents are necessary for the implementation of your property acquisition project. Examples of these documents include an offer letter, which contains specific instructions to the property owner for participating in the project, and a formal Statement of Voluntary Participation, if not already completed.

THE APPLICATION PROCESS

You will be notified by the State when a decision is made regarding your grant award. If your grant application is selected for funding, further instructions will be forthcoming as to how you should proceed and what exact work and funding was approved. If your grant application is not selected, you will have the opportunity to obtain more information regarding the reason, and you may have the opportunity to appeal the decision, should you choose to do so.

Implementing Your Project

Congratulations! Your grant has been approved for funding! Your hard work and attention to detail has paid off, and now your community can begin implementing the property acquisition project that your project team so carefully developed.

Grant Agreement Meeting

It is important that you do not begin to implement your property acquisition project until you fully understand your obligations. To ensure that you understand, the State Mitigation Finance Officer will schedule an in-person meeting with the representatives from your community and the State Mitigation Project Officer assigned to your project. They will carefully go over all aspects of the Grant Agreement with you and discuss all required reports with you. You will have the opportunity to ask questions and make certain you understand all of your community's obligations.

Financial Management and Record Keeping

Because the funds for your grant originate with a Federal agency, you must keep careful financial records. Consult with the State Mitigation Finance Officer if you have any questions or need any clarifications.

Depending on your community's existing financial management system, your first step may be to establish separate charge codes or to open separate non-interest-bearing checking accounts exclusively for managing your property acquisition project funds. Be sure to keep non-federal share funds separate from federal share funds.

A good financial record keeping system has these characteristics:

- Complies with Federal grant management guidelines as dictated by the Office of Management and Budget (OMB)
- Documents and tracks all funds originating with a Federal agency

- Documents and tracks all non-federal share funds (e.g., State and local match funds, including Community Development Block Grants)
- Has internal controls governing the management of funds and records
- Is regularly audited by an independent auditor

Complying with OMB guidelines

The Office of Management and Budget (OMB) outlines general principles of allowable costs using Federal funds. To comply with OMB guidelines, be aware of the following:

- **Eligible Costs.** Generally, eligible costs are those that are allowable, reasonable, necessary, and allocable. For specific guidance, refer to OMB Circular A-87/2 CFR Part 225.
- **Changes in Scope.** A change in the approved scope of work often results in a change of cost. *Only the State, with FEMA's approval, can authorize changes in approved scopes and any associated changes in costs.* If a change in an approved scope might occur, notify your State Mitigation Project Officer as soon as possible. Do not perform any activities that change the approved scope without the expressed, written consent of the State Hazard Mitigation Officer and FEMA.
- **Program Income.** Your property acquisition project has the potential to generate program income prior to the close-out of your grant. Program Income can result from the sale of salvage or the lease of acquired property. Unless the State directs otherwise, any Program Income generated prior to project close-out must be used to defray the overall costs of the project. This in turn will reduce the total grant funding. Once the project grant is closed out, any income generated by the property belongs to the community as titleholder.

Documenting and Tracking Project Funds

You must ensure that your financial management system can document and track all of the funds you acquire and spend for your property acquisition project. Make sure that your system allows you to track Federal funds separately from non-federal funds. At project closeout, you must document that non-federal funds were used to pay for at least twenty-five percent (25%) of the total project cost.

To best track project funds, maintain separate charge codes or non-interest-bearing checking accounts for Federal funds and non-federal funds. Every time you deposit or withdraw from one of these accounts, make sure the transaction is documented in a spreadsheet or some other type of log. For deposits, track the sources of the funds, the

means in which they were provided (cash, check etc.), and dates they will be available. For withdrawals, track the sources of funds, to whom and why they were disbursed; dates of payments, and check or transaction numbers. Also document the value of in-kind services. The State Mitigation Financial Officer has forms for documenting and tracking funds available for your use, should you choose to use them.

Document and Track all Project Management Expenses

You must document and track all direct project management expenses related to your property acquisition grant. Forms of documentation include:

- Timesheets and payroll receipts, general ledger reports documenting that payroll was issued
- Receipts for equipment and supplies, along with proof of payment
- Travel receipts and logs with supporting documentation showing payment

For specific documentation requirements, consult with the State Mitigation Finance Officer.

Managing Funds and Records

Establish internal controls for managing funds and records. Internal controls usually begin by limiting access to funds and financial records to only a few authorized individuals. For guidance, consult with the State Mitigation Finance Officer.

Audits

The Federal Government requires that project sub-grants be audited regularly by an independent auditor. Such audits are in your community's best interests. Consider asking the Certified Public Accountant (CPA) who completes your annual or bi-annual audits to audit your property acquisition funds in accordance with the Single Audit Act. Depending on the size of your community and the total amounts of Federal funds received, use the following guidelines as the minimum audit requirements:

- If you expend more than \$500,000 in combined Federal funds in any one (1) fiscal year, you must have a single audit completed.
- If you receive between \$50,000 and \$499,999 in combined Federal funds in any one (1) fiscal year and choose not to have a citywide or county wide single audit, you must conduct individual grant audits.
- If you receive less than \$50,000 in combined Federal funds in any one (1) year, you are exempt from complying with Federal audit requirements. However, you are still subject to State and local auditing requirements.

Property Acquisition Project Filing System

Grant File Contents

Keep the following documents and information in your grant file:

- Grant agreement and any amendments to it
- Copy of approved Acquisition Administrative Plan
- Financial records, including copies of any quarterly reports
- Commitment letters from any non-federal share funds sources
- Copies of reports
- Correspondence and call log
- A copy of the approved project application
- Summary of property owner files
- Summary of tenant files
- Contractor documents (contracts, invoices, etc.)

Property Owner File Contents

Keep the following documents and information in your property owner file:

- Communication log for phone calls with property owners (be sure to include summation of call)
- Offer letter, including value of property and instructions for conducting negotiations
- Determination of the value of the property, both preliminary and final. The preliminary determination is the value of the property as identified on your application. The final determination is the price your community is willing to pay for the property, which will be contained in the offer letter.
- Signed Statement of Voluntary Transaction
- DOB Documentation

- Proof of ownership
- Deed with restrictive covenants
- Closing statement
- Copies of checks
- Verification of demolition
- Copies of correspondence

Be sure to retain proof of delivery for any mailed correspondence. This file should be complete by closing for each property.

Tenant File Contents

Keep the following documents and information in your tenant file:

- Communication log for phone calls with tenants (be sure to include summation of call)
- Letter of notification to tenant that the property is being considered for a property acquisition project, that the property might be sold, and advise them of their rights, responsibilities and options.
- Notice of relocation eligibility, informing tenants that their landlord has accepted an offer to sell the property and, consequently, they are now eligible for relocation assistance benefits.
- 90 day notice to vacate. This notice goes to any tenant still residing in a property being acquired.
- 30 day notice to vacate (as applicable)
- Written notice of tenant's eligibility for benefits and eligible amounts
- Receipts (moving, storage, utility bills, etc.)
- Copies of checks
- Copies of correspondence

Be sure to retain proof of delivery for any correspondence mailed to tenants.

Acquisition Administrative Plan

You will be required to complete and submit for State approval a Property Acquisition Administrative Plan as a condition of your grant agreement. The State Mitigation Staff has developed a template for use by communities that do not already possess one. Contact your State Mitigation Project Officer for more information.

Once your Property Acquisition Administrative Plan has been approved by the State, implement those policies and procedures as you would any other. Do not begin your property acquisition project until you have enacted all policies, procedures, etc., that will affect the project. Publicize those policies, procedures, etc., and ensure that all participating property owners, tenants, and others who might be directly affected are aware of them.

Public Meeting and Press Release

You may have drafted a press release to announce the award of your project grant. If you have not, you should do so now.

You also may have begun preparations for a third public meeting. If not, you should do so now. The purpose of this third meeting is threefold: to announce the grant award; to explain policies and procedures governing the property acquisition project; and to begin acquisition proceedings. In preparation for the meeting, the following tasks should be accomplished:

- **Update/finalize project milestones.** Now that you have been awarded the grant and are preparing to begin your project, make any adjustments to your timeline and milestones, making sure that they reflect current dates, resources, and participants.
- **Establish blocks of time for meetings with individual property owners.** After this public meeting, the community will begin negotiations with individual property owners. Since details of the negotiations are specific to each property owner, meeting with them individually allows the project team to resolve more easily any questions and concerns, ensure understanding of responsibilities, and obtain necessary signatures. Select blocks of time when project team members are available and plan to have sign-up sheets available at the public meeting.
- **Create sign-up sheets for property owner appointments.** Allot enough time to accomplish the required tasks and to answer questions with each property owner. Be sure that the time, location, and name of the project team member who will be working with that homeowner all are marked clearly on the sign-up sheet.

- **Anticipate individual appointments with tenants.** Explain that you will notify each tenant to schedule an individual appointment as you conclude negotiations with each property owner. During the appointment, answer the tenant's questions, address the tenant's concerns, and inform the tenant of relocation assistance that is available to them.

Conduct the Public Meeting

During this public meeting:

- Formally announce the award of the grant
- Explain and provide copies of policies, procedures, etc.
- Explain milestones and timelines for the project. Make the property owners and tenants aware of the project goals. Their understanding of the overall timeline and certain milestones clarifies how their responsibilities affect the rest of the project and encourages treating deadlines seriously. Emphasize that all tasks must be completed before any acquisition payments will be issued.
- Review the voluntary nature of the property acquisition project. Remind property owners that participation in the project is voluntary for all parties (property owners, your community, the State, and FEMA) and that any participant can withdraw from the project at any point up to closing.
- Review the property owner's obligations. Re-emphasize that their full cooperation and participation will help the process move more smoothly and quickly.
- Duplication of benefits (DOB). Remind property owners that certain funds from other sources will be subtracted from the purchase price of their home unless they can document the money was spent on approved home repairs. Emphasize the importance of retaining all repair receipts and disclosing all previously collected benefits.
- Request that property owners sign up for appointments. Explain the intent of the appointments and what will be discussed.
- Designate a recorder to compile minutes of the meeting.

Procuring Necessary Services

Develop Bid Packages

The bid package is a bidder's main source of information about the community's wants and needs. Finalize any draft specifications you have started, revising them per your

grant agreement as necessary, and submit them to your State Mitigation Project Officer and to the State Mitigation Finance Officer for approval. Include the final bid specifications, any standard bidding forms, and any supplemental information that would be helpful to bidders in the final bid package. Be sure to include the date and time that bids are due.

Issue Bid Packages

Make the full bid packages available at a central location for review by prospective bidders. Advertise the request for bids in local newspapers, etc.

Evaluate Bids Received

Open the bids on the date and time announced in the bid packages and request for bids notice. You should accept the lowest, technically acceptable bid. However, you may reserve the right to evaluate the bids more carefully before entering into a contract. If you choose to accept a bid other than the lowest one, you must justify your choice, and your local Procurement Procedures must allow for this action. Check with the State Procurement Services Office or the State Mitigation Finance Officer.

Award Contracts

Once a bid is selected, create a file for the contractor and award the contract. Keep a copy of the contract and all invoices in the contractor's file. Also keep a list of all bidders with proof that the project was given to the lowest bidder or justification why it was not.

Acquiring the Properties

Meet with Property Owners

Depending on the number of properties you plan to acquire, you might schedule appointments with property owners several weeks in advance. Since much of your community will be focused on rebuilding, some people are likely to forget their appointments, especially those that are many weeks away. Be sure to call or send reminder notes to confirm appointments.

Participation in a property acquisition project is often mutually beneficial for the community and the property owner. You should encourage everyone who is eligible to participate. If some people did not attend or sign up for an appointment at a public meeting, investigate the situation. Elderly people or physically challenged people may have transportation challenges that kept them from signing up; others may be concerned about finding replacement housing. If the project team can help resolve their concerns (such as by providing transportation, meeting at the property owner's residence, or by helping them to find housing), the property owners might be more than willing to participate.

The purpose of the meeting with property owners is to ensure that each property owner understands all policies and restrictions that affect the acquisition of his or her property and to collect any missing data. The more you verify at this meeting, the more likely your documents will be complete and accurate and your property owners will be satisfied. During the meeting:

- Ensure property owners understand property acquisition in general, duplication of benefits (DOB), and all community policies and procedures
- Confirm previously gathered information
- Obtain signed verification of voluntary participation
- Collect receipts
- Schedule appraisal (if applicable)

Remember to document the meeting in the property owner's file. You may need to follow up with individual property owners to obtain missing or promised information or documentation.

Conduct Title Search and Appraisal

Conduct a title search for each property to be acquired. This is done to ensure that the owner selling the property is also the titleholder and that the title is clear at the time of sale and has no mortgages, outstanding liens, incompatible easements or other encumbrances to the property. If there is an issue with the clear title, work with your State Mitigation Project Officer to correct any issues.

If your community has chosen appraisal as the method of determining pre-event fair market value, have the property appraised by an independent appraiser. Use the value determined by the appraisal, subtracting any DOB, to determine the purchase price offered to the property owner.

Determine Duplication of Benefits

HMGP 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 State, community, and property owner must take reasonable steps to recover all such amounts. Amounts that are reasonably available to the property owner shall be treated as benefits available for the same purpose, even if they 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 DOB examples include the following:

- When a property owner is offered pre-flood fair 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. The duplication occurs because paying full pre-flood fair market value also compensates the owner for the loss of value that occurs due to damage. The community must make the deductions from the established pre-flood fair 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

Deductions are not taken, however, for amounts actually expended on repairs or cleanup that the owner can verify with receipts. Communities may not credit property owners for the property owners' own labor hours for repair work.

Environmental and Historic Preservation Compliance

For any project approved for funding, prior to initiation of the project, FEMA must undertake a review under the requirements of the National Environmental Policy Act (NEPA), as well as other applicable environmental and historic preservation laws and Executive Orders (EOs). The FEMA review process involves a number of steps; 44 CFR Part 10 contains FEMA's regulations for complying with NEPA and all applicable laws, regulations, and EOs.

The majority of HMGP projects have a very low potential to result in significant impacts and thus have been excluded from the need to prepare extensive NEPA analytical documentation (Environmental Assessments and Environmental Impact Statements). Property Acquisition projects funded under the HMGP qualify for a Categorical Exclusion (CATEX), meaning they have been determined to have no significant impact. This CATEX only applies to the NEPA Process; the project still must be reviewed by FEMA to ensure compliance with all other historic preservation and environmental laws and EOs. This review is conducted after project approval and prior to the commencement of work.

Communities are responsible for submitting the required documentation that will allow FEMA to complete their required environmental and historic preservation review of the project.

For more information, see Appendix A.

Make Offer to Property Owner(s)

Once DOB has been completed, finalize an offer letter for each property owner. This offer letter should include:

- A purchase price for clear title to the property
- A determination of compensation
- A statement that the acquisition is voluntary
- An explanation of the property owner's right to appeal

You may choose to present the offer letters to property owners in person, or you may choose to have the letters delivered to them. Send offer letters by certified mail or some other secured means that provides tracking and proof of delivery. Also maintain proof of delivery records for each property owner.

Remember that tenants are entitled to a 90-day Notice to Vacate under the Uniform Relocation Act (URA). You may send this notice at any point in the negotiations, so long as the tenant received the appropriate notice. If you make an offer to the owner of a rental property, immediately notify the tenants of that property that they might be eligible for relocation assistance. If possible, send notices of relocation assistance eligibility to tenants the same day you send the offer letter to the property owner.

Property Owner Accepts Offer

At this point, the property owner must decide whether or not to sell his or her property for the purchase price the community has offered. If the owner accepts the community's offer, proceed. If the owner rejects the offer and wishes to terminate negotiations, stop closing proceedings on that property. If the owner submits an appeal, stop closing proceedings pending the resolution of the appeal.

When the offer letter has been executed, inspect the property to ensure hazardous materials have been abated (if applicable).

Finalize deed (or easement) restrictive covenants

Per the Model Deed Restriction in your HMGP Property Acquisition Project Application, all deeds or easements must place permanent restrictions on the property deed. Restrictions include:

- The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices
- No structures shall be built on the property unless they are public facilities, functionally related to open space, wet flood-proofed, and open on all sides or are public restrooms
- No future Federal disaster assistance in any form will be sought or given with respect to the property

Notices and Meetings with Tenants

As soon as a property owner accepts the community's offer to purchase a rental property, any tenants of that property automatically become eligible for relocation assistance. Immediately notify the tenant of his or her eligibility for relocation assistance.

Timing for the 90-Day Notice to Vacate is essential because the property should be vacant at closing. Allowing owners or tenants to remain on the property after closing can cause serious problems; avoid those problems by ensuring properties are vacant before closing.

You will need to schedule a meeting with each tenant to ensure that they understand all policies and restrictions that affect their relocation assistance eligibility and benefits and collect any missing information. The more you verify in this meeting, the more likely that your documents will be complete and accurate and the faster you can provide assistance funds and help the tenant move.

You may want to consider downloading a publication from the US Department of Transportation entitled "Your Rights and Benefits as a Displaced Person." This publication is intended for public distribution and helps tenants understand their rights and responsibilities with regard to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. You can download this publication from the Federal Highway Administration's website:
<http://www.fhwa.dot.gov/realestate/rights/index.html>.

Request Funds from the State

Once offers have been accepted but prior to closing, work with the State Mitigation Finance Officer to request funds in the amount necessary to pay those owners.

Schedule Closing

Schedule the closing only after you are sure the funds will be available to disburse to the property owner. If the community has the funds to cover payment before receiving grant funds from the State, then schedule closing at a time convenient for the property

owner and the community representative. If the community is relying on grant funds to cover the acquisition payment, wait until you have received the funds from the State.

Mail or distribute a 30-Day Notice to Vacate to tenants, as appropriate.

Conduct Closing

The community pays fair and reasonable costs normally associated with a real estate closing, including costs of title transfer, recording fees, transfer taxes, and evidence of title and legal description. The property owner is responsible for recording fees necessary to clear existing mortgages, liens, and encumbrances from the deed as well as past or present property taxes.

Also during the closing, obtain final evidence of title showing the community as owner of the property, including documentation of a recording with the county recorder of deeds. This should be added to the property owner's file.

Demolition

Once the community has taken possession of the property, make certain that structures remaining on the property are secured and that all utilities are disconnected. Post signs on the property (e.g., "No Trespassing"). Schedule the demolition of the structures as soon as possible. Demolition requires a qualified contractor to:

- Remove all aboveground structures
- Remove all site improvements
- Fill in basements
- Remove or cap utilities and septic tanks
- Remove and dispose of asbestos

Once the demolition has been completed, inspect the cleared land.

Congratulations! With demolition complete, you have successfully removed people from harm's way and reduced the financial and emotional costs of a future disaster.

Project Grant Closeout

If you have maintained good project files, managed your finances properly, and kept your State Mitigation Finance Officer and Mitigation Project Officer apprised of changes, you have already taken the first steps toward grant closeout. Closeout is the process of officially "closing the books" on your community's property acquisition

IMPLEMENTING YOUR PROJECT

project. Closing out a project grant does not affect FEMA's right to disallow costs and recover funds on the basis of a later audit or review or your community's obligation to return any funds due as a result of later refunds, corrections, or other transactions. Your assigned State Mitigation Project Officer and the State Mitigation Finance Officer will schedule a closeout meeting with you.

You will be required to submit documents and information to FEMA through the State. Examples of this include:

- Final Status and Financial Reports
- Closing Documents (e.g., HUD Statement)
- Certification of Completion
- A photograph of the property site after project implementation
- A copy of the recorded deed and attached deed restrictions for the property
- Latitude and Longitude coordinates for the property
- Completed Signed Statement of Voluntary Transaction from each property owner.

Make sure that you have requested final funds, or returned unused funds, as applicable. Be sure to retain files for at least three years after receipt of the closeout letter from the State Mitigation Finance Officer.

Managing Your Green Space

Federal law requires that property acquired under the HMGP must be maintained in perpetuity as green space and that all uses of that property are consistent with natural floodplain functions. This does not mean that the land cannot be used for anything, only that the use and management of it must be carefully considered and planned.

Allowable Uses for Acquired Property

The list below is intended as a guide that addresses typical uses. Your community should review every situation using the regulations, open space intent, and floodplain management principles. The local floodplain administrator should review all proposed uses of acquired floodplain land. Generally allowable uses include:

- Vegetative site stabilization, agricultural cultivation, and grazing
- Simple structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying and raising of certain agricultural commodities, to include livestock, such as a pole-frame building (any 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
- Public picnic shelters, pavilions and gazebos, with associated foundations, provided that the structure does not contain walls
- Public rest rooms (these are the only walled and roofed buildings allowed)
- Small-scale recreational courts, ball fields, golf courses, and bike and walking paths
- Installation of signs (when designed not to trap debris)

- Camping, except where adequate warning time is not available to allow evacuation
- 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, piers, and docks to serve public recreational uses
- Drainage facilities intended to service on-site needs
- Sewer, water, and power to serve allowable uses. Sewer, water, and power line crossings where there is no floodway obstruction created and there are no other readily available locations for these systems
- Construction activities, excavation, and other minor water control structures necessary to create areas for water detention/retention including wetlands restoration or restoration of a natural floodplain floodwater storage function
- Community farm or garden
- Wildlife refuge, bird sanctuary, or environmental and ecological education center

Re-use of existing paved surfaces for recreational uses on the acquired property consistent with allowable uses is generally acceptable; however, paved surfaces beyond those directly acquired for such uses should be removed. Otherwise, communities must 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 acquired property. In some cases, the complete demolition of an existing 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.

All costs related to management and maintenance of the acquired property are the responsibility of the community and are not allowable project costs under the grant.

Unallowable Uses for Acquired Property

- The construction of flood damage reduction levees, dikes, berms, or floodwalls
- Walled buildings or manufactured home, except public restrooms

- Reuse of pre-existing structures, unless all walls are removed
- Fences or other obstructions in the floodway. Fences outside of the floodway must be designed to minimize the trapping of debris
- Cemeteries, landfills, storage of hazardous or toxic materials, or other uses that are considered environmentally contaminating, dangerous, or a safety hazard
- Storage of inventory supporting a commercial operation or government facility, including wheeled vehicles or moveable equipment
- Placement of fill, except where necessary to avoid impacting on-site archeological resources
- Installation of septic systems or reuse of pre-existing septic systems, except to service a permissible public rest room
- 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
- Any use determined by the State, FEMA, or FEMA Regional Administrator as inconsistent with the regulations, guidance, or deed restrictions

Management and Maintenance Considerations

Long-term management of your green space should begin with a management plan. In your plan, you should consider the following areas:

- **Maintenance.** The maintenance required for your green space will depend on the area. For example, wetlands require little or no maintenance, picnic areas require routine trash collection and mowing, restrooms require routine cleaning and re-supply, trails require routine upkeep, and athletic fields require preparation before each season and periodic maintenance throughout the season. Maintenance also should address such issues as cleanup and debris removal after a flood. Consider seasonal differences (e.g., trash collection might be required less often in winter months and on weekdays than in spring and summer and on weekends).

- **Budget.** Because your green space is public property, its management becomes part of your community's budget. Oversight and maintenance are the biggest budget items.
- **Responsibility.** Designate responsibility for each management and maintenance task. To minimize public expenditure, consider private sponsorship of areas or fee collection. For example, encourage businesses to "adopt" trails or sections of trails for which they assume maintenance responsibility, partner with scout troops to periodically maintain and clean up designated areas to satisfy badge requirements, charge teams fees to contribute to the upkeep of athletic fields, etc.

After you have completed your management plan, ensure that everyone responsible for a management and maintenance activity fully understands that responsibility and the schedule and budget associated with it.

Now, enjoy your open space and the benefits it provides!

Glossary and Acronyms

The definitions and acronyms include those used within the phases of the acquisition process as well as subject matter related words and terms you might hear and see. These definitions are applicable within the context of this handbook and its overall subject matter.

Applicant's Authorized Representative

Individual to whom the community assigns authority to represent it for the purposes expressly stated in a written document. The community's governing body should name the authorized representative, and both the CEO and named authorized representative should sign the letter granting the authority to the representative.

Base Flood

Flood having a one percent chance of being equaled or exceeded in any given year; also known as 100-year flood, special hazard area, and special flood hazard area (SFHA)

Base Flood Elevation (BFE)

Elevation for which there is a one percent chance in any given year that flood levels will equal or exceed it. BFE is determined by statistical analysis of stream-flow records for the watershed and rainfall and runoff characteristics in the general region of the watershed

BCA

Benefit-cost analysis – please see definition

BCR

Benefit-cost ratio – please see definition

Benefits

Future losses and damages prevented by a project

Benefit-Cost Analysis (BCA)

FEMA's assessment of project data to determine whether the cost of the project is justified by its benefits; by law, FEMA can fund only those projects whose benefits outweigh its cost, resulting in a benefit-cost ratio greater than 1.0.

Benefit-Cost Ratio

The result of the BCA; the BCR is determined by dividing the project's benefits by its cost. A BCR equal to or greater than 1.0 indicates that a project is cost-effective. A BCR lower than 1.0 indicates that the project is not cost-effective.

BFE

Base flood elevation – please see definition

Buyout

Commonly used synonym for property acquisition

CDBG

Community Development Block Grant, administered by Housing & Urban Development (HUD)

CFR

Code of Federal Regulations; 44 CFR applies to the HMGP program

Chief Executive Officer (CEO)

Official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community

Community

Any area or political subdivision of a State or Indian tribe or authorized tribal organization that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdictions

Community Rating System (CRS)

A system whereby NFIP-participating communities are rated according to their floodplain management and hazard mitigation practices. CRS rewards a community's mitigation efforts by offering property owners discounts on flood insurance premiums based on

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the community's rating. Contact the Iowa Department of Natural Resources for more information.

CRS

Community Rating System -- please see definition

DOB

Duplication of benefits -- please see definition

Duplication of Benefits (DOB)

FEMA's policy is to prevent the duplication of benefits amount within its own programs (to include NFIP) and with other sources of funds (e.g., other disaster assistance and insurance) for the same purpose. Therefore, FEMA considers such assistance to be advances towards the purchase price of a property and deducts those amounts from the price paid to the property owner. However, FEMA will not deduct benefits for which the property owner can provide receipts showing that the money has been used for its intended purpose (e.g., repairs to a home)

EO

Executive order

Fair Market Value (FMV)

The price a property would bring in a competitive and open market; synonymous with *market value* in the floodplain regulations. For the purposes of property acquisition, FMV is the value a willing buyer would have paid and a willing seller would have sold a property had the disaster not occurred.

Federal Emergency Management Agency (FEMA)

The federal agency charged with building and supporting the nation's emergency management system. FEMA is involved in all stages of the disaster life cycle, including response, recovery, mitigation, risk reduction, prevention, and preparedness.

FEMA

Federal Emergency Management Agency -- please see definition

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FFE

First floor elevation – please see definition

FHBM

Flood hazard boundary map – please see definition

FIRM

Flood insurance rate map – please see definition

First Floor Elevation (FFE)

Elevation of the top of the lowest finished floor of a structure

Five-Hundred-Year Floodplain

The area, including the base floodplain, that is subject to inundation from a flood having a 0.2 percent chance of being equaled or exceeded in any given year

Flood or Flooding

A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source

Flood Hazard Boundary Map (FHBM)

Official map of a community where the boundaries of flood-related erosion areas having special hazards that have been designated as zones A, M, and/or E

Flood Insurance Rate Map (FIRM)

Official map of a community delineating both the special hazard areas and the risk-premium zones applicable to that community

Floodplain or Flood-Prone Area

Any land area susceptible to being inundated by water from any source

Floodplain Management

Overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations

Floodplain Management Regulations

Zoning ordinances, subdivision regulations, building codes, health regulations, special-purpose ordinances (such as floodplain, grading, and erosion control ordinances), and other state and local regulations that provide standards of flood damage prevention and reduction

Flood-Proofing

Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damages to the structures and their contents

Floodway

Portion of a floodway that is effective in carrying flow and where the flood hazard generally is highest

FMV

Fair market value – please see definition

Freeboard

Factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect or urbanization of the watershed

Grant

Award of financial assistance

Grantee

Government entity to which FEMA awards a grant and which is accountable for the use of awarded funds; under HMGP, the State is the grantee

Hazard Mitigation

Any action taken to reduce or eliminate the long-term risk to life and property from natural disasters

Hazard Mitigation Grant Program (HMGP)

Post-disaster grant program to provide funding for applicable hazard mitigation measures to reduce or eliminate the long-term risk of natural disasters

Historic Structure

Any structure that is:

- listed or is eligible for listing in the National Register of Historic Places
- determined by the Secretary of the Interior as contributing to the historical significance of a registered or qualifying historic district
- listed on a state inventory of historic places in states that have historic preservation programs approved by the Secretary of the Interior
- listed on a local inventory of historic places in communities that have historic preservation programs that have been certified either by the state or the Secretary of the Interior

HMGP

Hazard mitigation grant program – please see definition

HUD

U.S. Department of Housing & Urban Development, which administers the CDBG program

ICC

Increased cost of compliance – please see definition

IHP

Individuals and Households Program through FEMA's Human Services Branch

Increased Cost of Compliance (ICC)

A claim under a standard flood insurance policy. When a structure covered by a standard flood insurance policy under the NFIP

sustains a flood loss and is declared to be substantially or repetitively damaged, ICC helps pay the property owner for the cost of mitigation measures, including demolition and structure relocation, up to \$30,000. ICC claims apply to structures only. FEMA 301, *Increased Cost of Compliance Coverage*, provides information for local floodplain management officials on how flood-damaged buildings insured under the National Flood Insurance Program will benefit from this coverage.

Level of Lowest Floor

Elevation of the top of the lowest finished floor of a structure; also known as the first floor elevation

LMI

Low to moderate income

National Flood Insurance Program (NFIP)

Program authorized by the National Flood Insurance Act of 1968 to provide flood insurance protection to property owners in flood-prone areas

NEPA

National Environmental Policy Act

NFIP

National Flood Insurance Program administered by States and FEMA

NFIP-Eligible or –Participating Community

Community for which the sale of flood insurance under the NFIP has been authorized

POC

Point of contact

PSA

Public service announcement

Regulatory Floodway

Channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height

Repetitive Loss

A structure that has sustained flood damage on more than one occasion has sustained repetitive loss

Riverine

Relating to, formed by, or resembling a river (to include tributaries), streams, brooks, etc.

SBA

U.S. Small Business Administration

SHMO

State Hazard Mitigation Officer – please see definition

Special Flood Hazard Area (SFHA)

The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year; it might be designated at Zone A on a FHBM

State Hazard Mitigation Officer (SHMO)

Representative of state government who is primary point of contact with FEMA, other federal agencies, and local units of government in the planning and implementation of mitigation programs and activities required under the Stafford Act

Structure

A walled and roofed building, including a mobile home or a storage tank for gas or liquid that is principally above ground

Substantial Damage

Damage sustained by a structure during a disaster whereby the cost of restoring the structure to its pre-disaster state would equal or exceed 50% of its pre-disaster market value. FEMA 311, *Guidance on Estimated Substantial Damage*, provides detailed information to State

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and local floodplain management officials on how to calculate substantial damage in accordance with the National Flood Insurance Program regulations. FEMA 311 also includes software that performs necessary calculations.

Substantial Improvement

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of the construction of the improvement

Sub-grant

Award of financial assistance under a grant by a grantee

Sub-grantee

Government or other legal entity to which a sub-grant is awarded and which is accountable to the grantee for the use of funds awarded; under the HMGP, the community is sub-grantee

URA

Uniform Relocation Assistance and Real Property Acquisition Policies Act

USACE

U.S. Army Corp of Engineers

Appendix A

Environmental and Historic Preservation

44 CFR Parts 9 and 10

Part 9 of 44 CFR implements and enforces Executive Orders (EOs) 11988, Floodplain Management, and 11990, Protection of Wetlands. In support of the EOs and the National Environmental Policy Act (NEPA) of 1969, FEMA:

- Avoids any adverse impact associated with the development or modification of floodplains and the destruction or modification of wetlands
- Does not support development on floodplains and in wetlands if a practicable alternative exists and generally minimizes the destruction, loss, or degradation of wetlands
- Reduces the risk of flood loss and minimizes the impact of floods on human health, safety, and welfare
- Promotes nonstructural flood protection methods to reduce the risk of flood loss
- Restores and preserves the natural and beneficial values served by floodplains
- Preserves and enhances the natural values wetlands
- Involves the public throughout the floodplain management and wetlands protection decision-making process

Part 10 further supports the NEPA by ensuring that FEMA and any recipient of FEMA funds take care to:

- Evaluate effects of actions on the environment
- Protect, restore, and enhance the quality of the environment
- Avoid or minimize negative impacts on the environment
- Preserve historic, cultural, and natural aspects of our national heritage and diversity

To this end, FEMA conducts environmental reviews of the projects it funds to determine their impact on the environment. Exempt from extensive review under NEPA are projects that FEMA may determine to have:

- Minimal or no effect on environmental quality
- No significant change to existing environmental conditions
- No significant cumulative environmental impact

What do 44 CFR Parts 9 and 10 mean to my community?

They are meaningful in three ways:

- FEMA must determine whether or not an environmental review is necessary and to what extent one is necessary. Therefore, provide enough information in your application for FEMA to make that determination. This handbook and your State Mitigation Project Officer will help you do that. Barring extraordinary circumstances, a property acquisition project typically has a positive impact on the environment and is exempt from the requirement for a more lengthy environmental assessment under NEPA.
- FEMA also is required to comply with the requirements of other laws, including, but not limited to, those governing historic buildings, archeological resources, and hazardous and toxic materials. You will be asked to provide specific information and assist researching these issues.
- You must keep the members of your community involved by keeping them informed. You can do this through public forums, such as public announcements and public meetings. Furthermore, you must give the public opportunities to express their opinions through surveys, public meetings, etc. Again, following the advice in this handbook will help you meet this requirement.

Appendix B

44 CFR Part 80 – Property Acquisition and Relocation for Open Space

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at <http://www.fema.gov>. This part, with the exception of §80.19 Land use and oversight, 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 (available at <http://www.fema.gov>) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

§ 80.3 Definitions.

- (a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:
- (b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.
- (c) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of the entity is designated in the grant award document.
- (d) *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.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. section 1101(a)(22).

(f) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(g) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(h) "Qualified conservation organization" means a qualified organization with a conservation purpose pursuant to 26 CFR 1.170A-14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(i) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian tribal applicant/grantee. With respect to open space acquisition projects under the Hazard Mitigation Grant Program (HMGP), this term has the same meaning as given to the term "applicant" in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subgrantee.

(j) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(k) *Subgrantee* means the State agency, community, or Indian tribal government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109-295). The term also refers to the Director as discussed in part 2 of this chapter.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109-295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

§ 80.5 Roles and responsibilities.

The roles and responsibilities of FEMA, the State, the subapplicant/subgrantee, and participating property owners in the particular context of mitigation projects for the purpose of creating open space include the activities in this section. These are in addition to grants management roles and responsibilities identified in regulations and guidance of the program funding the project (available at <http://www.fema.gov>) and other responsibilities specified in this part.

(a) *Federal roles and responsibilities.* Oversee property acquisition activities undertaken under FEMA mitigation grant programs, including:

(1) Providing technical assistance to the applicant/grantee to assist in implementing project activities in compliance with this part;

- (2) Reviewing applications for eligibility and compliance with this part;
 - (3) Reviewing proposals for subsequent transfer of a property interest and approving appropriate transferees;
 - (4) Making determinations on the compatibility of proposed uses with the open space purpose, in accordance with §80.19;
 - (5) Complying with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;
 - (6) Providing no Federal disaster assistance, flood insurance claims payments, or other FEMA assistance with respect to the property or any open-space related improvements, after the property interest transfers; and
 - (7) Enforcing the requirements of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity.
- (b) *State (applicant/grantee) roles and responsibilities.* Serve as the point of contact for all property acquisition activities by coordinating with the subapplicant/subgrantee and with FEMA to ensure that the project is implemented in compliance with this part, including:
- (1) Providing technical assistance to the subapplicant/subgrantee to assist in implementing project activities in compliance with this part;
 - (2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;
 - (3) Reviewing the application to ensure that the proposed activity complies with this part, including ensuring that the property acquisition activities remain voluntary in nature, and that the subgrantee and property owners are made aware of such;
 - (4) Submitting to FEMA subapplications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;
 - (5) Reviewing proposals for subsequent transfer of property interest and obtaining FEMA approval of such transfers; and ensuring that all uses proposed for the property are compatible with open space project purposes;
 - (6) Making no application for, nor providing, Federal disaster assistance or other FEMA assistance for the property or any open-space related improvements, after the property interest transfers;
 - (7) Enforcing the terms of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity; and
 - (8) Reporting on property compliance with the open space requirements after the grant is awarded.

(c) *Subapplicant/Subgrantee roles and responsibilities.* Coordinate with the applicant/grantee and with the property owners to ensure that the project is implemented in compliance with this part, including:

- (1) Submitting all applications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable the applicant/grantee and FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;
 - (2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;
 - (3) Coordinating with the property owners to ensure they understand the benefits and responsibilities of participating in the project, including that participation in the project is voluntary, and that the property owner(s) are made aware of such;
 - (4) Developing the application and implementing property acquisition activities in compliance with this part, and ensuring that all terms of the deed restrictions and grant award are enforced;
 - (5) Ensuring fair procedures and processes are in place to compensate property owners and tenants affected by the purchase of property; such as determining property values and/or the amount of the mitigation offer, and reviewing property owner disputes regarding such offers;
 - (6) Making no application for Federal disaster assistance, flood insurance, or other FEMA benefits for the property or any open-space related improvements, after the property interest transfers;
 - (7) Taking and retaining full property interest, consistent with this part; or if transferring such interest, obtaining approval of the grantee and FEMA;
 - (8) Submitting to the grantee and FEMA proposed uses on the property for open space compatibility determinations; and
 - (9) Monitoring and reporting on property compliance after the grant is awarded.
- (d) *Participating property owner roles and responsibilities.* Notify the subapplicant/subgrantee of its interest to participate, provide information to the subapplicant/subgrantee, and take all required actions necessary for the completion of the grant application and the implementation of property acquisition activities in accordance with this part.

Subpart B—Requirements Prior to Award

§ 80.7 General.

A project involving property acquisition or the relocation of structures for open space is eligible for hazard mitigation assistance only if the subapplicant meets the pre-award requirements set forth in this subpart. A project may not be framed in a manner that has the effect of circumventing the requirements of this subpart.

§ 80.9 Eligible and ineligible costs.

(a) *Allowable costs.* Eligible project costs may include compensation for the value of structures, for their relocation or demolition, for associated land, and associated costs. For land that is already held by an eligible entity, compensation for the land is not an allowable cost, but compensation for development rights may be allowable.

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA acquisition funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA 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.

§ 80.11 Project eligibility.

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

(b) *Acquisition of improved properties.* Eligible properties are those with at-risk structures on the property, including those that are damaged or destroyed due to an event. In some cases, undeveloped, at-risk land adjacent to an eligible property with existing structures may be eligible.

(c) *Subdivision restrictions.* The land may not be subdivided prior to acquisition except for portions outside the identified hazard area, such as the Special Flood Hazard Area or any risk zone identified by FEMA.

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest) as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

(e) *Hazardous materials.* Eligible properties include only those that are not contaminated with hazardous materials, except for incidental demolition and household hazardous waste.

(f) *Open space restrictions.* Property acquired or from which a structure is removed must be dedicated to and maintained as open space in perpetuity consistent with this part.

§ 80.13 Application information.

(a) An application for acquisition of property for the purpose of open space must include:

- (1) A photograph that represents the appearance of each property site at the time of application;
- (2) Assurances that the subapplicant will implement the project grant award in compliance with subparts C and D of this part;
- (3) The deed restriction language, which shall be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of General Counsel;
- (4) The documentation of voluntary interest signed by each property owner, which must include that the subapplicant has informed them in writing that it will not use its eminent domain authority for the open space purpose; and
- (5) Assurance that the subject property is not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and that local and State governments have no intention to use the property for any public or private facility in the future inconsistent with this part;
- (6) If the applicant is offering pre-event value: certification that the property owner is a National of the United States or qualified alien; and
- (7) Other information as determined by the Administrator.

(b) *Consultation regarding other ongoing Federal activities.* (1) The subapplicant must demonstrate that it has consulted with the United States Army Corps of Engineers (USACE) regarding the subject land's potential future use for the construction of a levee system. The subapplicant must also demonstrate that it has, and will, reject any future consideration of such use if it accepts FEMA assistance to convert the property to permanent open space.

(2) The subapplicant must demonstrate that it has coordinated with its State Department of Transportation to ensure that no future, planned modifications, improvements, or enhancements to Federal aid systems are under consideration that will affect the subject property.

(c) *Restriction on alternate properties.* Changes to the properties in an approved mitigation project will be considered by FEMA but not approved automatically. The subapplicant must identify the alternate properties in the project application and each alternate property must meet eligibility requirements in order to be considered.

Subpart C—Post-Award Requirements

§ 80.15 General.

A project involving property acquisition or the relocation of structures for open space must be implemented consistent with the requirements set forth in this subpart.

§ 80.17 Project implementation.

(a) *Hazardous materials.* The subgrantee shall take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA mitigation grant funds may not be used for clean up or remediation of contaminated properties.

(b) *Clear title.* The subgrantee will obtain a title insurance policy demonstrating that fee title conveys to the subgrantee for each property to ensure that it acquires only a property with clear title. The property interest generally must transfer by a general warranty deed. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition.

(c) *Purchase offer and supplemental payments.* (1) The amount of purchase offer is the current market value of the property or the market value of the property immediately before the relevant event affecting the property ("pre-event").

(i) The relevant event for Robert T. Stafford Disaster Relief and Emergency Assistance Act assistance under HMGP is the major disaster under which funds are available; for assistance under the Pre-disaster Mitigation program (PDM) (42 U.S.C. 5133), it is the most recent major disaster. Where multiple disasters have affected the same property, the grantee and subgrantee shall determine which is the relevant event.

(ii) The relevant event for assistance under the National Flood Insurance Act is the most recent event resulting in a National Flood Insurance Program (NFIP) claim of at least \$5000.

(2) For acquisition of properties under the Severe Repetitive Loss program under part 79 of this subchapter, the purchase offer is not less than the greatest of the amount in paragraph (c)(1) of this section; the original purchase price paid by the participating property owner holding the flood insurance policy; or the outstanding amount of any loan to the participating property owner, which is secured by a recorded interest in the property at the time of the purchase offer.

(3) The grantee should coordinate with the subgrantee in their determination of whether the valuation should be based on pre-event or current market value. Generally, the same method to determine market value should be used for all participants in the project.

(4) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subgrantees will ask each participating property owner to certify that they are either a National of the United States or qualified alien before offering pre-event market value for the property.

(5) Certain tenants who must relocate as a result of the project are entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services) in accordance with 49 CFR part 24.

(6) If a purchase offer for a residential property is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the hazard-prone area in the same community, the subgrantee for funding under the Severe Repetitive Loss program implemented at part 79 of this subchapter shall make available a supplemental payment to the homeowner-occupant to apply to the difference. Subgrantees for other mitigation grant programs may make such a payment available in accordance with criteria determined by the Administrator.

(7) The subgrantee must inform each property owner, in writing, of what it considers to be the market value of the property, the method of valuation and basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the project is voluntary.

(d) *Removal of Existing Buildings.* Existing incompatible facilities must be removed by demolition or by relocation outside of the hazard area within 90 days of settlement of the property transaction. The FEMA Regional Administrator may grant an exception to this deadline only for a particular property based upon written justification if extenuating circumstances exist, but shall specify a final date for removal.

(e) *Deed Restriction.* The subgrantee, upon settlement of the property transaction, shall record with the deed of the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

§ 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address flood hazards. If the Administrator determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

(a) *Open space requirements.* The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

(1) These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

(i) Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

(ii) In the rare circumstances where the Administrator has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with §60.3 of this subchapter or higher standards, the Administrator may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

(2) No new structures or improvements will be built on the property except as indicated below:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

- (ii) A public restroom; or
- (iii) A structure that is compatible with open space and conserves the natural function of the floodplain, which the Administrator approves in writing before the construction of the structure begins.

(3) Any improvements on the property shall be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

(b) *Subsequent transfer.* After acquiring the property interest, the subgrantee, including successors in interest, shall convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subgrantee, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subgrantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the subgrantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

- (i) The subgrantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

- (ii) At the time of title transfer, the subgrantee shall retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must 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 under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the grantee shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subgrantee, grantee, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the grantee, the subgrantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

(1) The grantee will notify the subgrantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

(i) If the subgrantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the grantee shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(ii) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(A) Withholding FEMA mitigation awards or assistance from the State and subgrantee; and current holder of the property interest.

(B) Requiring transfer of title. The subgrantee or the current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the grant; or

(C) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the grantee, the subgrantee, and their respective successors.

Subpart D—After the Grant Requirements

§ 80.21 Closeout requirements.

Upon closeout of the grant, the subgrantee, through the grantee, shall provide FEMA, with the following:

(a) A copy of the deed recorded for each property, demonstrating that each property approved in the original application was mitigated and that the deed restrictions recorded are consistent with the FEMA model deed restriction language to meet the requirements of this part;

(b) A photo of each property site after project completion;

APPENDIX B

- (c) The latitude-longitude coordinates of each property site;
- (d) Identification of each property as a repetitive loss property, if applicable; and
- (e) Other information as determined by the Administrator.

Federal Emergency Management Agency
Washington, D.C. 20472

MEMORANDUM FOR: Regional Directors Regions I-X

ATTENTION: Mitigation Division Directors

FROM: Richard W. Krimm
Executive Associate Director
Mitigation Directorate

DATE: 27-SEP-96

SUBJECT: Benefit/Cost Policy Guidance on the Purchase of Structures
Located in Regulatory Riverine Floodways and Floodplains in
the Hazard Mitigation Grant Program

This memorandum provides benefit/cost guidance for purchasing structures located in floodways and floodplains with grants administered by the Hazard Mitigation Grant Program (HMGP). Structures in floodways and floodplains are strong candidates for HMGP grants, particularly if the cost of restoring a damaged structure equals or exceeds 50 percent of the market value of the structure. Moreover, structures in floodways not meeting the 50 percent damage threshold are candidates for purchase if the cost of restoration is more than the market value of the structure.

The criteria for approving grants to purchase structures in floodways or floodplains are as follows:

The structure under consideration must be:

- located in a FEMA identified regulatory floodway or floodplain; and,
- be declared substantially damaged by local authority having such jurisdiction, in accordance with criteria promulgated by the National Flood Insurance Program.

Structures meeting these criteria are eligible for a grant under the HMPG without further benefit/cost review. The floodway or floodplain must be a FEMA recognized floodway or floodplain. (Note that coastal areas do not have floodways and this memorandum does not apply to structures in coastal areas. In those areas, we will use the standard benefit/cost approach.)

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