



Federal Insurance and Mitigation Administration

Disaster Recovery Reform Act Acquisition of Property for Open Space

July 17, 2019

Through its Hazard Mitigation Assistance (HMA) grant programs, FEMA funds the voluntary acquisition of hazard-prone properties from private owners. Property acquisition is not new for FEMA; however, the Disaster Recovery Reform Act (DRRA), signed into law on October 5, 2018, contains new requirements for the project notification process and emphasizes a community’s responsibilities regarding acquired land. As a condition of the grant, the relevant, state, tribal, territorial or local government must maintain the property as open space in perpetuity. The associated deed restriction stipulates allowable land use and other conditions for the property. This fact sheet supplements existing FEMA guidance on property acquisition projects per the DRRA.

New requirements in DRRA

Emphasis on Notification Process: Section 1231 of the DRRA specifies that within 60 days of a grant award, that the State Hazard Mitigation Officer provides notification to each affected unit of local government with detailed information on the sub-recipients approved acquisition projects. The notification must include the following:

- The location and address of the acquisition property
- A description of the acquisition project (i.e., latitude/longitude, legal description, other identifying characteristics)
- A copy of the model deed restrictions for acquired properties
- The state/territory-local or state-tribal grant assistance agreement

Statement of Assurances for Property Acquisition: This document describes the grants management responsibilities of local communities, including tribes, receiving grant funding for acquisition projects. It is submitted with the initial grant application and can also supplement the state/territory-local or state-tribal agreement. The Statement of Assurances includes information specific to acquisitions and must include the following:

- Declaration that the land will be maintained as open space for the conservation of natural floodplain functions. The land uses will primarily consist of the “generally allowable uses” that are compatible with open spaces (see inset box) as indicated in Title 44 of the Code of Federal Regulations (CFR) Part 80, Hazard Mitigation Assistance (HMA) Guidance, and an official deed restriction of the property

Generally Allowable Land Uses

In Title 44 of the Code of Federal Regulations, Section 80.19, generally allowable uses on deed-restricted property include, but are not limited to:

- Parks for outdoor recreation
- Wetlands management
- Nature reserves
- Unimproved, unpaved parking lots

Land uses NOT generally allowed, include, but are not limited to:

- Flood control structures (levees, floodwalls, dikes)
- Walled buildings
- Paved surfaces
- Off-site fill

For details on acquisition projects and deed restrictions, see the FEMA Hazard Mitigation Assistance Guidance (February 2015) Addendum at

<https://www.fema.gov/media-library/assets/documents/103279>.

- Declaration that the local or tribal government (subrecipient) will be responsible for all maintenance costs of the property
- Declaration that the proposed acquisition is consistent with local hazard mitigation, land use, and environmental plans, as well as relevant statute, regulations, and guidance
- Declaration that adjoining property owners will be notified about the acquisition project

Policy Clarification for Acquisition/Demolition and Other Mitigation Projects

Eligibility of Hazard Mitigation Assistance Applications with Pre-Award Demolitions: FEMA has generally found acquisitions, mitigation reconstruction and other mitigation projects, including properties with structures that had been demolished prior to application to FEMA, ineligible for HMA funding. This finding applied to HMA’s three programs, the Hazard Mitigation Grant Program, Pre-Disaster Mitigation, and Flood Mitigation Assistance. FEMA’s regulation on eligible costs for acquisitions at 44 CFR 80.9(b) states that activities where implementation is initiated or completed prior to an award are not eligible and will not be reimbursed. FEMA interpreted this to mean that in all cases demolition was regarded as part of the acquisition project.

FEMA has recently evaluated this approach and determined a finding of ineligibility based on a property owner’s use of private funds, or other non-Federal funds, to demolish a structure, in which the demolition has been completed prior to FEMA receiving a project application for a subsequent HMA project, is unnecessarily restrictive. When a property owner uses private funds to demolish an event-damaged structure, and at the time of the demolition, the property had not been in an application submitted to FEMA, the demolition is not a “connected action” under the National Environmental Policy Act (i.e., is not connected to the FEMA federal project). Therefore, the demolition is not subject to FEMA review and approval for Environmental and Historic Preservation compliance, the costs of the demolition are not considered pre-award costs, and the demolition does not preclude a finding of project eligibility. The demolition must be in accordance with state and local legal requirements, and any applicable federal law.

Further details can be found in the HMA Policy clarification: Eligibility of Hazard Mitigation Assistance Applications with Pre-Award Demolitions.

Resources

FEMA’s Hazard Mitigation Assistance Guidance and Addendum:
<https://www.fema.gov/media-library/assets/documents/103279>

Property Acquisition Handbook for Local Communities:
<https://www.fema.gov/media-library/assets/documents/3117>

FEMA Model Statement of Assurances for Property Acquisition Projects (revised, 06/2019):
<https://www.fema.gov/media-library/assets/documents/28695>

FEMA Model Deed Restriction:
<https://www.fema.gov/media-library/assets/documents/28496>

Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space:
<https://www.fema.gov/media-library/assets/documents/13708>