

Federal Emergency Management Agency, DHS

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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 ac-

countable 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.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

[72 FR 61743, Oct. 31, 2007, as amended at 74 FR 47481, Sept. 16, 2009]

§ 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

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(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 sub-applicant/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 sub-applicant/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), except for encumbrances FEMA determines are compatible with open space uses, as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.