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## **A.6 Supplemental Guidance**

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

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

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

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

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

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

### **A.6.1 Allowable Uses of Open Space**

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

The generally allowable land uses of acquired open space are:

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

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- ◆ Public restrooms
  - ◆ Small-scale recreational courts, ball fields, golf courses, and bike and walking paths
  - ◆ Campgrounds if adequate warning will be provided to allow for evacuation
  - ◆ Installation of signs when designed not to trap debris
  - ◆ Unimproved, unpaved parking areas consistent with open space uses
  - ◆ Unpaved access roads, driveways, and camping pads limited to those necessary to serve the acceptable uses on acquired property (existing paved roads can be reused for these purposes)
  - ◆ Small boat ramps, docks, and piers to serve a public recreational use
  - ◆ Drainage facilities intended to service onsite needs
  - ◆ Construction activities, excavation, and other localized flood control structures necessary to create areas for water detention/retention, including wetlands restoration or restoration of natural floodplain floodwater storage functions
  - ◆ Sewer, water, and power to serve the allowable uses and sewer, water, and power line crossings where there is no floodwater obstruction created and there are no other readily available locations for these systems
  - ◆ Simple structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of certain agricultural commodities, including livestock, such as a pole-frame building (any such structure cannot be constructed so as to make it eligible for NFIP insurance), and steel grain bins and steel-frame corn cribs
  - ◆ Reuse of existing paved surfaces for recreational uses on the acquired property consistent with allowable uses is generally acceptable, but paved surfaces beyond those directly required for such uses should be removed. Communities shall use unpaved surfaces allowing for natural floodplain functions, where feasible, for allowable uses such as trails. Examples of unpaved surfaces are grass, hard-packed earth, and graded gravel.
  - ◆ Communities may creatively salvage pre-existing structures on the acquired property. In some cases the complete demolition of a structure is not necessary and converting a closed-in structure with walls, such as a house, into an open picnic pavilion with a concrete slab floor and posts supporting the roof is possible.

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

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

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

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

### **A.6.2 Non-allowable Land Uses of Open Space**

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

- ◆ Hydraulic fracturing/HDD
- ◆ Construction of flood damage reduction levees, dikes, berms, or floodwalls
- ◆ Walled buildings or manufactured homes, except public restrooms (reuse of pre-existing structures is not allowed unless all walls are removed)
- ◆ Fences and all other obstructions in the floodway; fences outside the floodway must be designed to minimize trapping debris
- ◆ Storage of inventory supporting a commercial operation or governmental facility, including wheeled vehicles or movable equipment
- ◆ Cemeteries, landfills, storage of any hazardous or toxic materials, or other uses that are considered environmentally contaminating, dangerous, or a safety hazard
- ◆ Pumping and switching stations
- ◆ Above- or below-ground storage tanks
- ◆ Paved roads, highways, bridges, and paved parking areas that include asphalt, concrete, oil-treated soil, or other material that inhibits floodplain functions
- ◆ Placement of fill except where necessary to avoid affecting onsite archeological resources
- ◆ Installation of septic systems or reuse of pre-existing septic systems except to service a permissible restroom

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

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

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

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

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

### **A.6.3 Statement of Assurances**

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

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

### **A.6.4 Deed Restriction Language**

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

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

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

### **A.6.5 Property Owner Documentation**

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