
For more information about project closeout, see Part VII D of the HMA Unified Guidance.

A.14 Future Federal Benefits

After settlement of the property acquisition transaction, no disaster assistance for any purpose from any Federal entity may be sought or provided with respect to the property, and FEMA will not distribute flood insurance benefits for that property for claims related to damage occurring after the date of settlement in accordance with the requirements in 44 CFR Part 80.

In addition, crops for which insurance is not available will not be eligible for any disaster assistance and are grown at the farmer's risk. Payment through the Non-Insured Crop Disaster Assistance Program (7 U.S.C. 7333) for damage to crops for which insurance is not available is considered "disaster assistance" and as such is not available to owners of open space-restricted land. However, benefits obtained through crop insurance programs offered under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), are not considered "disaster assistance" and are available to owners of open space-restricted land.

A.15 Open Space Land Use Requirements

Subgrantees must apply deed-restriction language to all acquired properties to ensure that the property is maintained in perpetuity as open space consistent with natural floodplain functions, as agreed to by accepting FEMA mitigation grant funding. Deed-restriction language is applied to acquired properties by recording the open space and deed restrictions. Modifications to the language in the FEMA Model Deed Restriction can be made only with prior approval from the FEMA Office of Chief Counsel through the appropriate FEMA Regional Office. The FEMA Model Deed Restriction is available on the FEMA Web site at <https://www.fema.gov/library/viewRecord.do?id=6327>.

Allowable land uses for open space generally include parks for outdoor recreational activities, wetlands management, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow for evacuation), unpaved surfaces, and other uses that FEMA determines are compatible with the grant and deed restrictions. See Addendum Part A.15.1 and A.15.2 for a more detailed list of allowed uses. FEMA makes a determination of the open space compatibility of access to a subsurface resource on a case-by-case basis.

Allowable land uses do not generally include walled buildings; flood control structures such as levees, dikes, or floodwalls; paved surfaces; bridges; cemeteries; actions that pose health, safety, or environmental risk in the floodplain; above- or below-ground pumping stations or storage tanks; placement of fill materials; or other uses that obstruct the natural and beneficial use of the floodplain. See below for additional details on land use. See Addendum Part A.15.3 for a more detailed list of land uses that are not generally allowed.

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

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 it is 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.

A.15.1 Allowable Uses of Open Space

The list below is a guide to open space use that addresses typical situations, but the subgrantee and Grantee 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 Grantee and subgrantee, 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;
- ◆ 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;

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- ◆ 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 minor 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; and
 - ◆ 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.

A.15.2 Allowable Uses of Open Space in CBRS Units or OPAs

Allowable land uses for acquired open space in CBRS units or OPAs 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;
- ◆ 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; and
- ◆ Minor construction activities, excavation, and other flood control structures necessary for wetlands restoration or restoration of natural floodplain floodwater storage functions.

A.15.3 Non-allowable Land Uses of Open Space

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

- ◆ 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. Paved parking areas 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; and
- ◆ Installation of septic systems or reuse of pre-existing septic systems except to service a permissible restroom.

A.15.4 Non-allowable Uses of Open Space in CBRs Units or OPAs

For projects in CBRs Units or OPAs, 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; and
- ◆ Any uses determined by the Grantee and/or FEMA as inconsistent with the regulations, this guidance, or deed restrictions.

Reuse of existing paved surfaces for recreational uses on the acquired property consistent with allowable uses is generally acceptable; however, 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 include 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 may not be necessary; it may be possible to convert