**ACQUISITION/DEMOLITION**

A. BASIC PARAMETERS

The acquisition (or buyout) process involves the purchase of properties which are subject to impacts due to natural hazards. A hazard mitigation acquisition project is voluntaryfor all parties involved. The community must obtain Statements of Voluntary Participation (see forms) and may not use their powers of eminent domain at any time during the acquisition process. Each party must use their own discretion to continue or deny participation in the project. The local officials may use their discretion to determine whether or not particular properties should be considered, but should be consistent with their local hazard mitigation plan. The state agencies involved in funding the project may use their discretion to determine whether or not funding will be provided for particular properties. All parties should be in consensus regarding the acquisition of any property.

A jurisdiction must be in good standing in the National Flood Insurance Program (NFIP) to be eligible for hazard mitigation funds. Good standing means that there are no violations of the local floodplain ordinance or state floodplain regulations. Any jurisdiction with NFIP violations/issues may be placed on a "hold" status until the violations are resolved. By being placed on "hold," the Jurisdiction will not receive any hazard mitigation funding or state matching funding. This "hold" status may occur prior to the project commencing or at any point during the implementation of the project. It is the responsibility of local jurisdiction to administer the local flood damage prevention ordinance. It is critical for the jurisdiction to maintain its good standing in the NFIP in order to continue to be eligible for any type of hazard mitigation funds and/or state funds.

B. ELIGIBILITY

Generally, the properties in an acquisition project are located in the identified special flood hazard area, and have been repetitively or substantially damaged. **The North Carolina Division of Emergency Management, however, retains the right to establish and alter acquisition criteria based on funds availability, specific grant source requirements and Division policy.**

For the purpose of determining eligibility for hazard mitigation funding in the State of North Carolina, the Division of Emergency Management will use the following criteria:

Please see the current State 409 Administrative Plan for the latest HMGP list of priorities and the State 322 Plan for non-disaster funding priorities.

**Determination of use.** NCEM mitigation policies typically prioritize principle places of residence as top candidates for grant funded mitigation activities. If the proposed structure was clearly substantiated by Federal Income Tax Returns as an individual’s primary residence, the structure would be eligible. If an applicant has two residences and the structure proposed to be acquired or elevated is clearly substantiated by Federal Income Tax Returns as a secondary home, the residence would not be eligible under HMGP in the State of North Carolina, but other non-disaster grant programs may be used at NCEM’s discretion.

The acquisition project must acquire the property as it is defined on the property deed at the time of the flood event. The acquisition project guidelines generally do not encourage a property owner to divide, separate, or sub-divide the pre-flood deed for inclusion or exclusion in the acquisition project, unless part of the property lies outside of the floodplain, funding is limited, or the structure lies on a very large parcel of land **The North Carolina Division of Emergency Management retains the right to review each individual property on a case-by-case basis and may alter certain guidelines if deemed necessary.**

Also, if multiple parcels are owned by one property owner, all deeds that make up contiguous floodplain property should be acquired, however, as previously noted, all participation is voluntary.

For HMGP projects the pre-disaster fair market value as determined by a certified appraiser will be offered only to the individual who owned the property at the time of the disaster event. The current fair market value will be offered if the property is funded under NCDEM’s non-disaster programs. If potential buyout participant voluntarily purchased the flood-damaged property ­after a flood, they may be offered only what was paid to acquire the property (i.e., the amount of the purchase transaction), unless the pre-flood fair market value is less than the amount of the purchase transaction. In such cases, the buyout participant is offered the lesser of the two amounts.

In cases where the individual who owned the property at the time of the flood event has passed away, the heirs to the estate will be offered the pre-flood fair market value. In cases where the individual who owned the property at the time of the flood event has lost title to the property through situations such as bankruptcy or repossession, the post-flood owner legally appointed will be offered the pre-flood fair market value. With these two cases the post-flood owner has not voluntarily acquired the property and therefore may be offered the pre-flood fair market value rather than the amount of the purchase transaction (as stated in the above paragraph). **Please refer to Policy Memorandum #2 Foreclosure and post-disaster ownership changes for further guidance.**

The structure will notbe considered for acquisition if the structure was voluntarily removed after insurance or other assistance has been paid to the property owner for the value of the structure. The owner will not receive a buyout offer for the structure regardless of the amount of damage the structure received. The owner will receive a buyout offer for the land only.

**Debris on Property/Underground Storage Tanks**

Prospective buyout properties with debris/garbage will not be purchased until the debris/garbage has been removed from the premises. This type of debris/garbage may include but not limited to hazardous materials, propane tanks, abandoned vehicles, appliances, or temporary structures. The site must be inspected by a local official to verify that the site is free of debris/garbage prior to closing on the property. This policy is in the best interest of the jurisdiction due to potential liability and debris removal costs not covered under demolition funding.

**Relocation Assistance (SEE CHAPTER ON URA)**

If rental property is in the acquisition project, Uniform Relocation Act (URA) may apply to the renters. There is potential to involuntarily displace renters if the property owner (or landlord) accepts the buyout offer. If this occurs, the renters being displaced may receive relocation assistance, depending on their individual situation. Each renter's situation must be evaluated to determine how much, if any, relocation assistance they may receive. This evaluation should be done by a local official, preferably someone with experience in relocation assistance. The local housing authority may be able to provide the jurisdiction with assistance in evaluating each renter's situation. Please see specific guidelines for URA assistance in chapter 5.

C. STEPS IN THE ACQUISITION PROCESS

(See the Hazard Mitigation Acquisition/Demolition Process in the forms section.)

For each step in the acquisition process, the Uniform Act and the implementing regulations require the Sub-grantee to take certain actions to inform property owners of their rights. Sensitive data will be collected for each property owner and privacy must be protected. A cost tracking spreadsheet will be provided for tracking each step of the acquisition process.

The steps to property acquisition include:

a.. **Notify the property Owner**

After the decision to acquire is made, a written Preliminary Acquisition Notice must be issued to each property owner. This notice, and all other such notices, MUST be sent by certified or registered mail, return receipt requested, or personally served and receipt documented.

b. **Obtain a Survey**

It is necessary to have a legal metes and bounds description of the property to be acquired. An exception to this may be the acquisition of easements where the easement joins an existing property line. To obtain a metes and bounds description requires the property to be surveyed by a professional land surveyor. Professionally prepared survey plats created prior to intuition *may be considered eligible* at the discretion of the State Hazard Mitigation Officer.

c. **Conduct Title Searches**

As with all real estate transactions a title search is conducted in order to assure that property is being acquired from rightful owners. It is necessary to have the Sub-grantee's attorney render an opinion of title for each property to be acquired in order to identify any ownership issues and encumbrances that will need to be resolved prior to closing.

d. **The Appraisal Process**

The appraiser, hired through competitive bidding for the buyout project must complete a (pre-disaster for HMGP) fair market value appraisal on each property in the project, including vacant lots. The appraisals should recognize that the majority of properties in the acquisition project are located in a special flood hazard areas. **Appraisers must be licensed by the State of North Carolina.**

The cost of the first appraisal for all buyout properties will be paid as a project expense and must be maintained in the jurisdictional office through which the grant is administered. A minimum of one appraisal is required for each parcel of property to be acquired. However, if the project is potentially controversial (as with a dissatisfied seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted, (see Second Appraisal). A review appraisal may be required in certain instances that are evaluated on a case by case basis.

Prior to any appraisals being conducted, the Sub-grantee must advise the property owner (in writing) as to the time the appraiser will visit the property and invite the property owner to accompany the appraiser during a site visit. This notice may be included as part of the written Preliminary Acquisition Notice or be sent as a separate notice, (as noted previously, all notices MUST be sent by certified or registered mail, return receipt requested, or personally served and receipt documented).

The appraisal report must reflect nationally recognized appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the opinion of value. Commercial properties (structure/building) are to be treated the same as residential properties, except **commercial properties must be appraised by a** **North Carolina certified general appraiser** using the narrative format (as opposed to the Uniform Residential Appraisal standard (Fannie Mae) form used for residential structures). The acquisition of commercial property does not include contents of the commercial property or business value. NCDEM will require a copy of the summary page to be forwarded with a reimbursement request.

Appraisal Reports

At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose of the appraisal, a statement of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;

(2) A description of the physical characteristics of the property (and, in the case of a partial acquisition, a description of the remaining property, which must lie outside of the floodplain), a statement of known encumbrances, if any, title information, zoning, an analysis of highest and best use, and at least a 5-year sales history of the property;

(3) All relevant and reliable approaches to determine value consistent with commonly accepted professional appraisal practices;

(4) A description of comparable sales, including all relevant physical, legal and economic factors, and verification by a party involved in a transaction;

(5) A statement of the value of the property to be acquired and, for a partial acquisition, a statement of the damages and benefits, if any, to the remaining property; and

(6) The effective date of valuation, date of appraisal, signature and certification of the appraiser.

Second (CONTESTED) Appraisal

If a property owner contests the value determined by the first appraisal, they may obtain a second appraisal at the cost of the property owner. If a homeowner already has an appraisal which is within twelve months of the disaster or initiation of negations for non-disaster grants, they may submit it as a second appraisal. The second appraisal must be conducted under all of the same guidelines as the first appraisal. In cases where a review appraisal is done, if the review appraiser finds the Appraisal Report acceptable, a written report shall be given on the fair market value of the property. The second appraisal must be completed by a North Carolina licensed appraiser, must depict relevant comparables and must be on a "standard form" for residential and narrative form for commercial appraisals. Once the initial appraiser and the review appraiser have prepared and submitted the Appraisal Report and Second Appraisal to the Sub-grantee, the Sub-grantee MUST review both reports promptly. If the second appraisal is within 15% of the original appraisal, use the higher appraisal as the fair market value. If the difference is greater than 15%, a third appraisal, paid using hazard mitigation funds will be conducted. The homeowner has two weeks to accept or decline the second appraisal. The final fair market value in these cases will be the average of the three appraisals. Reimbursement of higher values will be subject to funds availability and programmatic requirements including cost effectiveness.

e. **Establish Just Compensation**

Following review of the appraisal, the Sub-grantee must establish just compensation. Just compensation is usually the same as the review appraiser's recommended fair market value. However it can never be less than the review appraiser's recommended fair market value. The Sub-grantee may determine just compensation to be in excess of the fair market value and pay that amount to the property owner. Hazard mitigation will pay only fair market value, but additional compensation may be available from other sources such as Community Development Block Grant funds.

The Sub-grantee MUST prepare a written Statement of the Basis for the Determination of Just Compensation to be sent to the property owner with the Written Offer to Purchase. This statement must include:

a. A legal description of and location identification of the property;

b. Interest to be acquired (e.g., fee simple, easement, etc.);

c. An inventory identifying the building structures, fixtures, etc., which are considered to be a part of the real property;

d. In the case of tenant-owned improvements, the amount determined to be just compensation for the improvement and the basis, as set forth in the review appraisal; and

e. Any Purchase Option Agreement.

f. **Provide Written Offer To Purchase**

As soon as feasible after establishing just compensation, the Sub-grantee issues to the owner a Written Offer to Purchase along with the written Statement of the Basis of the Determination of Just Compensation. This offer must be sent by certified or registered mail, return receipt requested or hand delivered and receipt documented. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. If the property is tenant or owner-occupied, the Sub-grantee must issue either a written Notice of Relocation Eligibility, or in the case of a tenant (not an owner-occupied) a Notice of Right to Continue in Occupancy, within thirty (30) days of the date specified for the initiation of negotiation.

g. **Negotiate Purchase**

Once the Sub-grantee has submitted the Written Offer of Purchase to the property owner, the Sub-grantee then negotiates the purchase of the property. The owner must be provided an opportunity to discuss the offer, propose a higher value and document the higher value. The owner can consider the offer and either accept it, obtain a new appraisal, or decide not to participate in the buyout. Condemnation of property is not allowed in any hazard mitigation grant programs.

h. **Closing**

Following successful negotiations, a Deed of Transfer or Contract of Sale must be prepared and executed, including the transfer of documents, prior to or at the time of closing. The Sub-grantee must reimburse the owner to the extent it deems "fair and reasonable" for incidental costs associated with transfer of title including, but not limited to recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre­existing recorded mortgages.

At the conclusion of settlement, the Sub-grantee must provide the owner with a Statement of Settlement Costs which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. This information is presented on the HUD1 form. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the Sub-grantee.

## D. LAND VALUE ONLY

If the buyout participant has received flood insurance which exceeds the appraised amount of the structure, the jurisdiction may offer the participant the land value which is identified on the appraisal. No Duplication of Benefits are deducted from the land value. The jurisdiction should consider this option if leaving the property would prevent the jurisdiction from acquiring contiguous land. By accepting the land value in the above situation, the structure may be included in the demolition with other acquired property, thereby saving the property owner the cost of removing a substantially damaged structure.

E. ACQUISITION AGREEMENT

The Acquisition Agreement (see “Sample Forms”) is the document which clarifies whether or not the property owner is going to accept the buyout offer. The acquisition agreement provided in this document should not need any modifications other than information specific to the jurisdiction and the buyout participant.

F. DEED RESTRICTIONS

The deed to the property acquired will carry a restriction that the property be maintained as open space in perpetuity and that no future federal disaster assistance be made available for that property. Recorded deed restrictions must be recorded on each individual deed for each acquired propert. Each file will be checked to ensure the restrictions are recorded properly.

The requirement to maintain these properties as open space is one of the cornerstones of the Unified Mitigation Assistance Program. To prevent future development of this land, it is essential to have the open space restrictions specifically stated in the deed. An ordinance restricting the development will not suffice.

The sample deed restriction lists the following conditions and restrictions:

Pursuant to the Interim Rule set forth as 44CFR Part 209.10 (c) by FEMA at Volume 65, No. 29 of the Federal Register, the following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed:

1. The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and
2. No new structure(s) will be built on the property except for the following:
3. A public facility that is open on all sides and functionally related to a designated open space or recreational use; or
4. A public rest room; or
5. A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the FEMA Director approves in writing before the construction of the structure begins.
6. After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.
7. Any structures built on the property must be located to minimize the potential for flood damage, be flood-proofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.
8. Every two years on October 1st, the RECIPIENT/SUBGRANTEE will report to the AGENCY/GRANTEE certifying that the property continues to be maintained consistent with the provisions of this Agreement.
9. Allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the floodplain.

Please refer to the NCDEM pamphlet, *Getting to Open Space Alternatives* *to Demolition and Options for Land Use,* for further information.

Deed restrictions must also be recorded for properties elevated using UHMA funding. The deed restriction in this case will hold all current and future owners responsible for maintenance of a flood insurance policy with a structure benefit equal to at least the cost of the elevation project. For further information, please see SOP section concerning elevation projects.

G. SPECIAL CASES

The Sub-grantee must pay attention to acquisition rules which apply in each special case.

1. Not to Acquire

If the Sub-grantee decides not to acquire the property at any time after the Preliminary Acquisition Notice has been sent to the property owner, the Sub-grantee must notify the owner and all tenants in residence in writing of its intention not to acquire property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within ten (10) days of the Sub-grantee's determination not to acquire. (See “steps in the Acquisition Process,” number 1 subsection b). If the property owner at any time decides not to participate in the acquisition program they should sign a non-participation form and the jurisdiction should keep it on file.

2. Donations

In the case of easements, the preliminary acquisition notice may also include language advising the property owner that they may voluntarily waive their right to an appraisal and compensation and donate the easement to the Sub-grantee. The Housing & Urban Development (HUD) brochure "When a Public Agency Acquires Your Property" is enclosed. (see “Sample Forms” tab).

The property owner may respond in writing to waive all rights to appraisals and just compensation, and to donate the property. A formal

Donation and Waiver Statement (see “Sample Forms” tab) should be executed.

If the property owner requests the locality to secure an appraisal and review appraisal, the Sub-grantee must secure an independent appraisal and a review appraisal from licensed real estate appraisers, and document these steps in a written report. The Sub-grantee must then prepare a Statement of the Basis for the Determination of Just Compensation (See “Sample Form” tab). The Sub-grantee can then prepare a Waiver of Just Compensation that clearly states the amount established as just compensation and that the owner-occupant understands that he/she cannot be required to donate the property, or sell it, to the Sub-grantee at less than the amount determined to be just compensation and that he/she voluntarily agrees to do so.

If donations are being made by elderly, very poor, functionally illiterate, or non-English speaking persons, the Sub-grantee should take special care to document the efforts made to insure the owner-occupant understood his/her rights in order to demonstrate the owner was not persuaded or coerced. This is especially true if there are any questions about the level of understanding of the process by the individual(s) involved in the project.

H. RECORDKEEPING

The Sub-grantee shall maintain a separate acquisition file for each real property acquisition for at least three years after completion of the project, final settlement of the acquisition, or the disposition of the applicable relocation records, whichever is later.

All projects require monthly progress reports to document progress, problems encountered, and/or delays. Requests for extensions MUST be made in writing to NCDEM at least 60 days before the end of the Grant Agreement period.

Since all projects are approved with a budget based on a number of assumptions and estimations, a running total must be kept so that all unanticipated under runs and overruns can be reported on monthly progress reports. If a property has been approved using a Benefit–Cost Analysis (BCA), overruns may affect its cost-effectiveness. The BCA may need to be re-evaluated before proceeding with the purchase.

The following documents must accompany requests for the payment of the first property acquisitions:

* Signed HUD1 Settlement Statement
* Acquisition Agreement
* Full Appraisal
* Full Survey
* Warranty Deed with restrictions
* Title Opinion

If more than one appraiser or surveyor is hired, the first full appraisal and survey completed by each appraiser and surveyor must be submitted to the project manager. Copies of the signed HUD1 settlement statement and a summary appraisal must accompany requests for payment for subsequent acquisitions.

At NCDEM’s discretion advance payments may be considered under special circumstances. In the event that an unsigned HUD1 settlement statement should be submitted along with the appraisal, a signed HUD1 settlement statement must be submitted to NCDEM immediately after the acquisition takes place. Advanced funds must be appropriately disbursed within 3 business days of receipt by the local government.

I. MOBILE HOME AQUISITION

There are three acceptable methods for appraising mobile homes that are classified as personal property and not real property. Communities may hire licensed appraisers who can appraise personal property or licensed appraisers who can use the Kelley Blue Book or Marshal & Swift to determine pre-disaster fair market value.

Mobile homes that serve as primary residences can be included in an acquisition project and must meet the same eligibility criteria as other residential structures. If the mobile home owner does not own the land upon which his/her mobile home is situated, hazard mitigation funds cannot be used to acquire the mobile home unless the landowner agrees to sell the land. The following scenarios provide additional guidance:

* Properties that are part of a proposed buyout and demolished prior to grant approval are still eligible for acquisition.
* There could be as many as three parties involved in the acquisition of a property with a mobile home: the landowner, mobile home owner, and tenant.
* Under 49 CFR Part 24, in the event of a natural disaster the occupancy requirement for applicant eligibility is determined from the date of the event, as opposed to the period immediately preceding the initiation of negotiations for the real property. In particular, 49 CFR Sec. 24.403(d)(1) states that “[n]o person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for the a reason beyond his or her control,” including, in pertinent part, a disaster.

In addition, moving costs are available if the mobile home is movable and the owner wishes to move their existing home to a new site rather than sell it. The reasonable costs include expenses for dissembling, moving, and resembling any attached appurtenances (see URA section). However, if the mobile home suffered flood damages, the structure may not be suitable for habitation.

There may be situations where titles to mobile homes are no longer accessible and have been “junked”. In such cases, court documentation declaring ownership or a certified letter from DMV showing clear ownership as well as showing the mobile home is free and clear of all liens can be accepted in lieu of a title on a case by case basis.

Mobile homes are classified as “motor vehicles” for purposes of the North Carolina statutes. See In re Wester, 229 B.R. 348, 350 (Bankr. E.D.N.C.19998). A motor vehicle will be deemed abandoned when that vehicle “has remained illegally on private or public property for a period of ten (10) days without the consent of the owner or person in control of the property.” N.C.G.S §20-137.7(1). Abandoned vehicles may legally be removed, provided the removal is not objected to by the owner of the private property, provided the requisite statutory notice is given the vehicle owner. N.C.G.S. §20-137.9. Specifically, N.C.G.S. §20-137.10 requires that “[w]hen any vehicle is derelict or abandoned in this State, the Secretary [of North Carolina Department of Transportation] shall cause a tag to be placed on the vehicle which shall be noticed to the owner… the same is considered to have been derelict or abandoned and is subject to forfeiture to the State.” N.C.G.S. §20-137.10(a). Due Diligence to locate mobile home owners is required.