

FREQUENTLY ASKED QUESTIONS (FAQs)

FEMA Funded Residential Property Voluntary Flood Buyouts

INTRODUCTION

Your community has experienced a destructive flood that has caused considerable damage to property, as well as major social and economic disruption to the well-being of your community. As a property owner, you understandably are concerned about continuing to live in the floodplain and are interested in how you can avoid future risk and damage. You also want to know how you can do so while minimizing economic losses. We hope these Frequently Asked Questions (FAQs) will help you better assess your options to recover from the flooding you have endured, and to avoid future damages.

WHAT IS A FEMA VOLUNTARY FLOOD BUYOUT PROGRAM?

An eligible City or County voluntarily requests and accepts a federal grant and assumes responsibility and liability for managing a program that offers to its citizens, who own houses in a flood-prone area, an opportunity to sell their property to the City or County through a voluntary flood buyout program.

Under the post-disaster Hazard Mitigation Grant Program (HMGP), seventy-five (75) percent of eligible costs for a project are funded by a Federal Emergency Management Agency (FEMA) grant, generated through and managed by the Maryland Emergency Management Agency (MEMA). The remaining twenty-five (25) percent of the eligible costs are provided by non-federal sources such as the eligible City or County. (Note: Other FEMA flood buyout grant programs may have slightly different non-federal match requirements.)

Properties meeting the voluntary flood buyout requirements may be purchased by the City or County at their (generally pre-flood) fair market value, as established by a State-board certified appraiser procured by the participating City or County using a sales comparison approach. (Note: There is an appeals process if the property owner does not agree with the local jurisdiction's appraisal.) Mobile homes are considered personal property, and as such the type of offer is determined on a case by case basis. Factors to be considered include, but may not be limited to whether the owner of the mobile home also owns the land and other factors such as whether the mobile home owner wishes to retain the mobile home and relocate it in lieu of demolition. Once property is purchased in a buyout, all structures are removed, the utilities are capped, the ground level, and the property deed restricted to open space use. The land is usually allowed to return to its natural state, and it remains as open space, such as parks, vacant lots, or wetlands. In general, a residential buyout must encompass no more than one (1) acre or less of land to be purchased with the acquisition of a residential structure. Outbuildings and garages located on the same property are considered

as part of the buyout package and will be removed during the demolition process. It should be noted that the offer will not be based on “replacement value.”

For a City or County to provide an offer, the property owner must provide a clear title. A title search will be conducted as part of the grant project. The procured title company must be willing to provide title insurance on a property for it to remain eligible as part of the buyout project. Hopefully, the appraised value, minus any duplication of benefits, lien payments, accrued property taxes, and mortgage settlements, will enable the property owner to have a:

- Greater peace of mind because it reduces or eliminates most future flood risk.
- Fair compensation based on pre-flood market value.
- Chance for a fresh start.

Due to the voluntary nature of acquisition, homeowners are not entitled to assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). However, federal flood buyout program displaced tenants are entitled to assistance under the URA when renting properties acquired under the program. Tenants must submit proof of cost of rent at the displaced residence and proof of cost of rent at decent, safe, and sanitary replacement housing.

Property owners agree to move (or ensure their residential rental tenants move) and all personal property must be removed from the residence by the day of closing. Anything remaining after closing becomes public property and must be disposed of in a public manner (i.e., auction, bids, etc.). The residential structure and any outbuildings are demolished by the City or County, and proper disposition is made of the debris, in accordance with state and federal environmental laws, rules and regulations.

The vacant land acquired with the residential structure is deeded to the City or County, and must by federal statute remain in perpetuity open space deed restricted, and managed by the City or County under very strict terms, excepting that related to wetland, agriculture or recreation uses as approved in advance by MEMA and/or FEMA.

WHY IS IT CALLED A VOLUNTARY FLOOD BUYOUT PROGRAM?

It is called a “Voluntary” flood buyout program because participants (i.e., the Federal Government, the State Government, the Local Government and the Property Owner) must voluntarily participate in the program. The Federal Government cannot force the State Government to participate and vice versa. Likewise, the State Government cannot force the Local Government to participate, etc. Moreover, the City or County cannot use the community's power of eminent domain to purchase property with federal funds; these must be strictly voluntary acquisitions of the property.

WHAT IS REQUIRED TO BE ELIGIBLE FOR PARTICIPATING IN A FEMA FLOOD BUYOUT PROGRAM?

In Maryland, due to the lack of any federal or state recognized Indian tribe, the eligible applicants for these voluntary flood buyouts includes only communities (i.e., a City or County) that participate in the National Flood Insurance Program (NFIP), unless the City or County has not yet been mapped. Limited funding, the current widespread need for flood

buyouts in multiple communities across the state, and competing interests for other mitigation projects such as school tornado safe rooms, community owned bridge and low water crossing replacements, and most importantly, the need to assign a higher priority to residential structures in the interest of the health, safety and welfare of the residents who are at risk and have nowhere else to live precludes MEMA from funding the acquisition of commercial and other types of non-residential properties at this time (i.e., vacation homes, etc.).

As with all FEMA mitigation programs, the voluntary flood buyout programs must be administered in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, economic status, disability or language. The program must comply with Section 308 of the Stafford Act and Title VI of the 1964 Civil Rights Act. All Applicants/Grantees must comply with Title VI, including State and local governments distributing Federal assistance. Applicants and subapplicants must ensure that no discrimination is practiced. The City or County must consider fairness, equity, and equal access when prioritizing and selecting properties to submit with the grant application. Subapplicants must ensure fairness and equal access to homeowners and individuals that benefit from property activities.

To be eligible for the federal funding, a City or County must have participated in developing and have formally adopted a **State and FEMA approved Local Hazard Mitigation Plan**. In addition, the proposed flood buyout project must:

- Conform to the State's Hazard Mitigation Plan.

- Conform to 44 CFR Part 9, Floodplain Management and Protection of Wetlands, and 44 CFR Part 10, Environmental Considerations.

- Independently solve or be a functional part of a solution to a problem.

- Prove to be cost-effective and a substantial reduction of future risk because it:

 - Addresses a problem that is repetitive or poses a significant risk to health and safety.

 - Is the most practical, effective, and environmentally sound alternative among a range of alternatives.

 - Is or contributes to a long-term solution to a problem

 - Considers long-term changes to the areas it protects

 - Costs less than its anticipated benefits.

Ownership of acquired property may not be conveyed to private citizens or entities; ownership may be conveyed to other public entities with the approval of the State and FEMA.

WHAT ARE ELIGIBLE PROJECT COSTS?

Project costs include, but are generally limited to:

- The fair market value (FMV) of each property

- Costs for conducting appraisals, lot surveys, title searches, closings

- Tenant relocation assistance

- Costs for asbestos identification, demolition, and asbestos abatement

HOW LONG DOES THIS PROCESS TAKE?

The five phases of a flood buyout project include:

Phase I - To Buy or Not to Buy. (Time is determined by the City or County, but needs to be expeditious. MEMA may have multiple applications for the same grant funding, and also has time limits for submitting grant applications to FEMA to avoid expiration of available funding.)

Phase I is the decision-making phase, which empowers the City or County and citizens to make an informed decision whether or not property acquisition is an appropriate mitigation alternative for the community.

Phase II - Application Missouri State Emergency Management Agency (SEMA)n. (First 1 – 3 months, depending on how long it takes the City or County to obtain information from interested property owners and to develop the required Benefit-Cost Analysis (BCA) and application.) During Phase II the City or County prepares and submits an application through MEMA for the FEMA funds and prepares the community for administering the buyout program, if the project is approved. The application is a complex process and requires detailed documentation; project work schedule timeline and milestones; environmental, endangered species and historic preservation assurances; acceptable Benefit-Cost Analysis (BCA) ratio; prioritized listing of properties to be acquired; prepares the non-binding Voluntary Transaction Agreements from interested property owners; guarantee of adherence to FEMA’s “Open Space” deed restrictions in perpetuity, etc. (Note: The City or County also must coordinate with the Maryland Department of Natural Resources State Historic Preservation Office (SHPO) regarding any structures or property that may have archeological or historic significance, as well as obtain proper permits, avoid doing anything that might harm endangered species, etc.) These documents and procedures are covered in more detail by MEMA in meetings/training sessions with the City or County.

Phase III –Relocation/Acquisition. (Next 6 – 18 months, depending on the number of properties to be acquired, and the time it takes to procure services, perform appraisals, perform title searches, prepare offers, and schedule closings.) During Phase III the City or County accepts the grant, adopts a voluntary buyout project policy, administers the MEMA provided FEMA flood buyout project funds; prepares, advertises, tabulates bids, gives notices to proceed for property appraisals and title work (including title searches and title insurance); prepares and makes the property offers; coordinates tenant relocation documentation; participates in closings to acquire the of properties and records warranty deeds with “Open Space” restrictions; and prepares, advertises, tabulates bids, makes awards and implements the contracts for asbestos identification demolition/asbestos abatement or mobilizes resources to perform the demolition with City or County assets.

Phase IV - Demolition. (The next 3 – 6 months after the closings of the acquired properties, depending on the number of properties and nature of the contract) During Phase V the City or County oversees the asbestos identification and the demolition/asbestos abatement of the acquired “Open Space” properties, and ensures the refuse is placed in proper disposal sites. (Note: The price paid for a purchased property includes all items listed at the time of the appraisal. All items on a buyout property become public property at the time of closing. The City or County contracts with a

demolition/asbestos abatement company typically giving the salvage rights to that company. Therefore, if a property owner wishes to remove part of the property that would typically be considered structural (i.e., favorite window or door), and it was property previously appraised, then the appraisal, and possibly the purchase price, must be amended before the closing.) Or, the property owner may contact the demolition contractor to salvage the item after closing, if the City or County gave salvage rights to the demolition contractor. Otherwise, the property must be disposed of in a public manner (i.e., auction, bids, etc.) (Note: The City or County is responsible for ensuring that the asbestos identification, asbestos abatement, and demolition follow all applicable Federal and State laws and requirements.)

Phase V - Open Space Management. (In perpetuity) During Phase VI the City or County plans, manages, monitors for compliance with deed restrictions, and reports to MEMA (every two years) on the use of the acquired “Open Space” deed restricted properties, as required by law, for the long term.

WHAT IS A COST-BENEFIT ANALYSIS (BCA)?

Benefits are future damages that do not occur because a project has been implemented and properties are no longer in harm's way. Because acquisition projects permanently eliminate flood risks for purchased properties, their benefits continue far into the future. The BCA compares the present-day cost of a project to its long-term benefits. A project is cost-effective if the ratio of the project's benefits is equal to or higher than the costs. If a property's BCA ratio is less than 1:1, that property cannot be purchased under this program, unless it can be aggregated into an overall cost effective project. If the ratio is equal to or greater than 1:1, the property is eligible for acquisition, demolition and deed restriction. FEMA or State financial analysts will assist the City or County to perform a Benefit-Cost Analysis (BCA) for each property to be acquired to determine if a voluntary flood buyout project is cost effective.

WHAT IS A NON-FEDERAL MATCH?

Cash. Monetary payments from local government or individual property owners to participate in a flood buyout program can be applied toward the non-federal match.

Donated funds. Monetary donations from individuals and organizations (e.g., a local civic organization) can be applied toward the non-federal match.

Payment-In-Kind (PIK) services (or Soft Match). Donated services (e.g., demolition) provided by the City or County may be applied toward the local match. (Sometimes in such cases, a community will grant the demolition company salvage rights.)

Property Owners. Property owners can use their own funds or donate 25 percent of the FMV of their properties. Property owners with flood insurance also can apply their Increased Cost of Compliance (ICC) claims toward the local match because the purpose of ICC is to assist property owners in implementing mitigation measures.

Increased Cost of Compliance (ICC). When a structure covered by a standard flood insurance policy under the NFIP sustains a flood loss and is declared to be substantially or repetitively damaged, ICC helps provide some limited financial assistance to property owners for the cost of mitigation measures, to include elevation, demolition, and relocation. ICC claims apply to structures only.

WHAT IS A DUPLICATION OF BENEFIT (DOB)?

Certain federal disaster assistance and insurance (FEMA, SBA, Insurance, etc.) must be counted toward the purchase price of a home (reducing the final amount paid to the property owner), unless the property owner can document that the money received actually was spent on approved home repairs associated with the flooding. These financial payments paid to homeowners for structural repairs to the flooded property, if not used for the intended purpose, must be deducted from the pre-flood offer made to the property owner. This policy is known as duplication of benefits (DOB).

Each property owner participating in a FEMA flood buyout must sign a statement disclosing all Federal disaster assistance benefits received in conjunction with the event leading to this property acquisition. For this reason, City or County officials and property owners must understand that this is a federally funded grant and that federal laws make it extremely important that property owners disclose any and all previously collected benefits.

However, when property owners retain receipts for any repairs made, the property owner may submit them through the City or County to MEMA. MEMA then submits the receipts to FEMA for review and approval. (**Note: Receipts must be from bonafide businesses recognized by local governments. The labor of property owners, friends and family for clean up and repair is not eligible for reducing the duplication of benefits.**)

The below types of disaster assistance that must be considered advances toward the purchase price or replacement housing payment (if receipts cannot be provided indicating proceeds were used for intended purpose) may include:

IHP—Individual and Households Program. IHP grants are awarded to homeowners to make repairs to the home that are deemed necessary to make the dwelling safe, sanitary and secure. This program consolidates the former Disaster Housing and Individual and Family Grant Programs. Only the amount the homeowner receives for home repair will be considered toward the DOB (unless there are receipts of eligible work/repairs submitted to document the use of the funds in the repair of the home).

National Flood Insurance Program (NFIP) Settlements. NFIP deductions must be researched and figured for any homeowner involved in the buyout that received NFIP settlements for real property. Only real property settlements will be deducted (unless the owner has already made repairs and can verify with receipts). (Note: Other private insurance payments such as fire insurance payments may also constitute a duplication of benefit and must be evaluated on a case by case basis.)

Small Business Administration. Any loan(s) for real property that have been disbursed prior to closing must be repaid to SBA, provided there is a balance of funds after all other deductions are computed. If there are any net proceeds after other lien holder deductions, these proceeds must be applied to the outstanding SBA loan. The proceeds will be applied until they are exhausted or the loan is paid off, whichever comes first. The settlement sheet must identify any DOB that must be deducted from the fair market value, and any payments that are due to the SBA at closing.

HOW ARE PROPERTY TAXES HANDLED?

MEMA and FEMA respect the rights and responsibilities of City or County governments that voluntarily participate in a flood buyout program. The City or County may choose to collect all taxes on a prorated basis or may waive part or all of taxes that may be due. However, MEMA and FEMA expect the collection of such property taxes due to be made in a fair and equitable manner for all property owners.

WHAT IS OPEN SPACE?

Communities must accept responsibility for monitoring and enforcing the proper use of acquired property as “Open Space.” Generally, allowable open space uses for acquired property include, but are not limited to, recreation; preservation; cultivation; grazing; camping (if adequate warning and evacuation time is available); non-commercial, temporary, open storage of vehicles that are easily moveable (such as recreational vehicles); and unimproved permeable parking lots. See Phase IV for more detail on allowable use of acquired property. Conservation easements (Note: Simply defined, an easement is a right of passage over someone else’s land. However, an easement can be used to prevent the owner from doing certain things) may also be eligible.

FEMA flood buyout program acquired property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices. No new structure(s) can be built on the property except for a public facility open on all sides and functionally related to a designated open space or recreational use; A public rest room that is wet floodproofed; or A structure compatible with open space, recreational, or wetlands management use and proper floodplain management policies and practices, which FEMA’s Administrator approves in writing before construction of the structure begins.

In any event, the participating City or County must comply with the “Open Space” deed restrictions and should submit written details and drawings to MEMA before allowing any use of any kind, on or below any buyout property acquired by FEMA.

ARE THERE ANY OTHER CONSIDERATIONS?

The City or County may not use FEMA funds to acquire properties that are contaminated by hazardous materials at the expense of the property owner before an offer can be made. If a property contains hazardous materials, it must be cleaned up before it can be acquired. **THE STATE OF MARYLAND DOES NOT TAKE OWNERSHIP OF THE ACQUIRED PROPERTY OR ANY FUTURE PROPERTY DISPUTES AND IS NOT RESPONSIBLE OR LIABLE IF HAZARDOUS MATERIALS ARE DISCOVERED ON THE PROPERTY, EVEN AFTER IT IS ACQUIRED BY THE CITY OR COUNTY. IN THIS CASE, THE CITY OR COUNTY IS RESPONSIBLE AND LIABLE FOR ANY AND ALL ENVIRONMENTAL ISSUES AND COSTS, AS WELL AS FOR ANY FUTURE PROPERTY DISPUTES.**

In addition to the Hazard Mitigation Grant Program (HMGP), FEMA offers the Pre-Disaster Mitigation (PDM) program, the Flood Mitigation Assistance (FMA) program, the Repetitive Flood Claims (RFC) program, and the Severe Repetitive Loss (SRL) program. The two new grant programs, RFC and SRL, are designed to reduce or eliminate the long-term risk of flooding to NFIP-insured structures, and are aimed at reducing the number of claims paid from the National Flood Insurance Fund (NFIF).

**WHAT SHOULD I DO IF I AM INTERESTED IN PARTICIPATING
IN A BUYOUT?**

At this point, please contact your local City or County government elected officials to express your interest and obtain their instructions. Thank you!