

## Open Space Land Use Agreement for Acquisition Project

Subrecipients should abide by the following provisions per the Code of Federal Regulations (CFR).

### § 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address [flood](#) hazards. If the [Administrator](#) determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

**(a) *Open space requirements.*** The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

**(1)** These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

**(i)** Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

**(ii)** In the rare circumstances where the [Administrator](#) has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with [§ 60.3](#) of this subchapter or higher standards, the [Administrator](#) may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

**(2)** No new [structures](#) or improvements will be built on the property except as indicated below:

**(i)** A public facility that is open on all sides and functionally related to a designated open space or recreational use;

**(ii)** A public restroom; or

(iii) A [structure](#) that is compatible with open space and conserves the natural function of the floodplain, which the [Administrator](#) approves in writing before the construction of the [structure](#) begins.

(3) Any improvements on the property shall be in accordance with proper floodplain management policies and practices. [Structures](#) built on the property according to [paragraph \(a\)\(2\)](#) of this section shall be floodproofed or elevated to at least the [base flood](#) level plus 1 foot of [freeboard](#), or greater, if required by FEMA, or if required by any [State](#) or local ordinance, and in accordance with [criteria](#) established by the [Administrator](#).

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to [structures](#) on the property occurring after the date of the property settlement, except for pre-existing [structures](#) being relocated off the property as a result of the project.

**(b) *Subsequent transfer.*** After acquiring the property interest, the [subgrantee](#), including successors in interest, shall convey any interest in the property only if the [Regional Administrator](#), through the [State](#), gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the [subgrantee](#), through the [State](#), to the [Regional Administrator](#) must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The [subgrantee](#) may convey a property interest only to a public entity or to a qualified conservation organization. However, the [subgrantee](#) may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the [Regional Administrator](#), and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

(i) The [subgrantee](#) shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

(ii) At the time of title transfer, the [subgrantee](#) shall retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the [subgrantee](#) or [grantee](#) in the event that the transferee ceases to exist or loses its eligible status under this section.

**(c) Inspection.** FEMA, its representatives and assigns, including the [grantee](#) shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

**(d) Monitoring and reporting.** Every 3 years the [subgrantee](#) (in coordination with any current successor in interest) through the [grantee](#), shall submit to the FEMA [Regional Administrator](#) a report certifying that the [subgrantee](#) has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

**(e) Enforcement.** The [subgrantee](#), [grantee](#), FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the [grantee](#), the [subgrantee](#), and subsequent holders of the property interest at the time of enforcement, shall include the following:

(1) The [grantee](#) will notify the [subgrantee](#) and any current holder of the property interest in writing and advise them that they have 60 days to correct the [violation](#).

(i) If the [subgrantee](#) or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the [grantee](#) shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(ii) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

- (A) Withholding FEMA mitigation awards or assistance from the [State](#) and [subgrantee](#); and current holder of the property interest.
- (B) Requiring transfer of title. The [subgrantee](#) or the current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the grant; or
- (C) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the [grantee](#), the [subgrantee](#), and their respective successors.

By signing the subrecipient is aware and confirming conformance with the above stated provisions as stated in the Code of Federal Regulations Title 44- Emergency Management and Assistance.

Please attach photos of project location as proof that guidelines are being met.

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Signature

Date

Enter Name

Enter Title

Enter Agency/Organization Name

Enter Email Address

Enter Project Number

Enter Project Title