

## FEMA Model Deed Restriction

### **PRIVACY ACT STATEMENT**

**Authority:** Sections 203 and 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5133 and 42 U.S.C. § 5170c; § 1366 of the National Flood Insurance Act, (NFIA) as amended, 42 § U.S.C. 4104c; § 1323 of the NFIA, 42 U.S.C. § 4030; and § 1361A of the NFIA, 42 U.S.C. § 4102a.

**Purpose:** This template is provided by FEMA for signature by local government officials participating in a property acquisition project funded in part by Hazard Mitigation Assistance (HMA).

**Routine Uses:** The information on this form may be disclosed as generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/FEMA-009 - Hazard Mitigation Disaster Public Assistance and Disaster Loan Programs System of Records System of Records Notice (79 Fed. Reg. 16,015, March 24, 2014), and upon written request, by agreement, or as required by law.

**Disclosure:** The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent FEMA from being able to provide Hazard Mitigation Assistance for the acquisition and demolition of the structure for the purposes of mitigation. The signed voluntary participation statement will be forwarded to the State/applicant and the paper form will be contained in the grant application.

### **Context and Instructions**

The form below is FEMA's Model Deed Restriction that supports the requirements of FEMA's property acquisition regulations at 44 C.F.R. Part 80.

Prior to award, applications requesting mitigation assistance to acquire property for open space purposes must include a copy of the deed restriction language the local government will record with the property deeds to meet these requirements. See Application Information, 44 C.F.R. § 80.13(a)(3). Any variation from the language of the model deed restriction can only be made with prior approval from FEMA's Office of Chief Counsel. *Id.* Such requests should be made to the FEMA Regional Administrator through the relevant State or Tribal Office prior to any Deed Restriction being recorded.

Post-award, the deed conveying the property to the Subrecipient must reference and incorporate Exhibit A (or equivalent name). Exhibit A shall be attached to the deed when the deed is recorded on the property. See Project Implementation – Deed Restriction, 44 C.F.R. § 80.17(e).

FEMA will require amendment and re-recording of a compliant Deed Restriction on the title of an acquired property if, upon close-out of the project, the recorded Deed Restriction is incomplete, incorrect, or non-compliant. FEMA recommends Subrecipients provide the Recipient, i.e., the State or Tribal government that receives a Federal award directly from FEMA, a copy of its proposed Deed and final Deed Restriction before property transfer and

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filing to ensure the Deed conveys clear title to the Subrecipient as required by FEMA's regulations and that the Deed Restriction is complete, correct, and compliant. See Project Implementation – Clear title, 44 C.F.R. § 80.17(b).

Clear title ensures that the owner, i.e., the FEMA Hazard Mitigation Assistance Subrecipient, is the sole and actual titleholder to the property. The property must not have any easements or other encumbrances that are incompatible with open space and that would make the property either ineligible for acquisition or noncompliant with FEMA's open space land use restrictions. See 44 C.F.R. Part 80. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition. See Project Implementation – Clear title, 44 C.F.R. § 80.17(b).

**Note:** Highlighted and bracketed language below specifies information the Subrecipient should insert at that location in the deed restriction, after which the Subrecipient should remove the highlighting and brackets (“[ ]”). Wherever shown, parentheses and language within or inserted into the parentheses should remain in the text.

### Exhibit A – FEMA DEED RESTRICTION

In reference to the property or properties (“Property”) conveyed by the Deed between [**name of participating property owner**], participating in the federally-assisted acquisition project, (“the Grantor”) and [**name of the mitigation grant program subrecipient**] (“the Grantee”), its successors and assignees:

#### **[SELECT ONE OF THE FOLLOWING “WHEREAS” CLAUSES APPROPRIATE FOR THE GRANT AWARDED AND DELETE ALL OTHERS]**

- WHEREAS, the Flood Mitigation Assistance (FMA) program, authorized by Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. § 4104c), provides federal financial assistance for planning and carrying out activities designed to reduce the risk of flood damage to structures insurable under the National Flood Insurance Program;
- WHEREAS, the Hazard Mitigation Grant Program (HMGP), authorized by Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (“Stafford Act”) (42 U.S.C. § 5170c), including the HMGP Post Fire program authorized by Sections 404 and 420 of the Stafford Act (42 U.S.C. §§ 5170c and 5187, provides federal financial assistance, in any area affected by a major disaster or for which assistance was provided under Section 420, for hazard mitigation measures;
- WHEREAS, the Building Resilient Infrastructure and Communities (BRIC) program, authorized by Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5133), provides federal financial assistance for the implementation of predisaster hazard mitigation measures;
- WHEREAS, the Pre-Disaster Mitigation (PDM) program, authorized by Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5133), provides federal financial assistance for the implementation of predisaster hazard mitigation measures;

#### **[FROM THIS POINT – INCLUDE ALL OF THE REMAINING PARAGRAPHS]**

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WHEREAS, the hazard mitigation assistance grant programs provide a process for a local government, through a State or Tribe, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain and structures at risk of harm from natural disaster hazards, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, [insert name of **State or Tribe**] through the [insert name of **Recipient agency**] has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program with FEMA according to [insert title of the **FEMA-State/Tribe Agreement (FSA/FTA) or the FEMA Grant Agreement** if not the FSA/FTA dated [insert **date**] (“Grant Agreement”)], and herein incorporated by reference; making it a hazard mitigation assistance grant program recipient;

WHEREAS, the [insert name of **subrecipient**], acting by and through the [insert name of **subrecipient’s governing board or council**], has applied for and been awarded federal funds pursuant to an agreement with [insert name of **State or Tribe**], [insert title of the **Agreement**] dated [insert **date**] (“State-Local Agreement” or “Tribe-Local Agreement”), and herein incorporated by reference, making it a hazard mitigation assistance grant program subrecipient;

WHEREAS, the terms of the hazard mitigation assistance grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement or Tribe-Local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity to protect and preserve natural floodplain values, and to mitigate risks from natural disaster hazards;

NOW THEREFORE, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the [insert acronym of appropriate grant program] program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement or Tribe-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:
  - a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such 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 consistent with applicable FEMA guidance for open space acquisition in Hazard Mitigation Assistance programs and all requirements for property acquisition and relocation for open space.
  - b. Structures. No new structures or improvements shall be erected on the Property other than:
    - i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
    - ii. A public rest room; or
    - iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator

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in writing before construction of the structure begins.

- Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. 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, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator (*see* 44 C.F.R. § 80.19(a)(3)).
- c. Disaster Assistance and Flood Insurance. 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. 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.
  - d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State or Tribe, gives prior written approval of the transferee in accordance with this paragraph.
    - i. The request by the Grantee, through the State or Tribe, to the FEMA 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 the provisions of 44 C.F.R. Part 80, and documentation of its status as a qualified conservation organization if applicable.
    - ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee 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 FEMA Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.
    - iii. 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:
      - a) The Grantee 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
      - b) At the time of the title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
    - iv. 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 State or Tribe (**leave parentheses and insert name of Recipient Agency**), or local government in the event that the transferee ceases to exist or loses its eligible status under this section.
2. Inspection. FEMA, its representatives and assignees including the State or Tribe shall have

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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 section 1, and the provisions of 44 C.F.R. Part 80, the Property conveyance, and the grant award.

3. Monitoring and Reporting. Every three (3) years on [insert month/date as determined by the Recipient], the Grantee (hazard mitigation assistance grant program subrecipient), in coordination with any current successor in interest, shall submit through the State or Tribe (leave parentheses and insert name of Recipient Agency) to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.
4. Enforcement. The Grantee (mitigation grant program subrecipient), the State or Tribe (leave parentheses and insert name of Recipient Agency), FEMA, and their respective representatives, successors and assignees, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State or Tribe (leave parentheses and insert name of Recipient Agency), the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:
  - a. The State or Tribe will notify the Grantee and any current holder of the property interest in writing and advise them that they have sixty (60) days to correct the violation.
    - i. If the Grantee 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 State or Tribe 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 one (1) or more of the following:
      - a) Withholding FEMA mitigation awards or assistance from the State or Tribe, Grantee, or current holder of the property interest;
      - b) Requiring transfer of title. The Grantee 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 State, the Tribe, the local community, and their respective successors.
5. Amendment. This agreement may be amended upon signatures of FEMA, the State or Tribe, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.
6. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with state and local law.]

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Grantor's Name and Title \_\_\_\_\_

Grantor's Signature \_\_\_\_\_

Date \_\_\_\_\_

Grantee's Name and Title \_\_\_\_\_

Grantee's Signature \_\_\_\_\_

Date \_\_\_\_\_