Harris County Flood Control District

Voluntary Buyout Manual

Property Acquisition Services Section

VOLUNTARY BUYOUT MANUAL

Exhibits

Acknowledgments

Data for this Manual was obtained though the following sources:

- Interviews with key Harris County Flood Control District staff involved in the buyout program
- Author’s historical knowledge
- Florida Handbook for Floodplain Acquisition and Elevation Projects (January 2001)
- FEMA Handbook for Local Communities
- FEMA 2003 BC Analysis Workshop

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List of Acronyms

B/C -	Benefit Cost
BCA -	Benefit Cost Analysis
BFE -	Base Flood Elevation
CDBG -	Community Development Block Grant
COM -	Communications Division, HCFCD
DEM -	Division of Emergency Management, State of Texas
DMA 2000-	Disaster Mitigation Act of 2000
DOB -	Duplication of Benefits
EMR -	Emergency Minimal Repair Grant
FEMA -	Federal Emergency Management Agency
FFE -	First Floor Elevations
FHBM -	Flood Hazard Boundary Map
FIRM -	Flood Insurance Rate Map
FIS -	Flood Insurance Study
FMA -	Flood Mitigation Assistance
FMV -	Fair Market Value
GL -	General Ledger
HCAD -	Harris County Appraisal District
HCFCD -	Harris County Flood Control District
HMGP -	Hazard Mitigation Grant Program
ICC -	Increased Cost of Compliance
IFG -	Individual and Family Grants
JL -	Journal Ledger
NEPA -	National Environmental Policy Act
NFIP -	National Flood Insurance Program
OMB -	U.S. Office of Management and Budget
OPS -	Operations Division, HCFCD
PASS -	Property Acquisition Services Section
PDM -	Pre-Disaster Mitigation Program
PID -	Project ID
PIF -	Project Initiation Form
PO -	Purchase Order
ROW -	Right of Way Division, Public Infrastructure Dept., Harris County; also, right-of-way
SBA -	U.S. Small Business Administration
SFHA -	Special Flood Hazard Area
SHPO -	State Historic Preservation Officer
SSB -	Scope, schedule, budget
URA -	Uniform Relocation Assistance and Property Acquisition Act

1.0 INTRODUCTION

"Buyout", including voluntary buyout, has long been a tool used by the Harris County Flood Control District (HCFCD). In recent years, the size of voluntary home buyout projects and the overall scope of the buyout program have grown as events have shown the appropriateness of this tool to accomplishing HCFCD's mission. This manual is intended to serve as a guide for HCFCD staff for procedures currently in place to implement a voluntary buyout project.

1.1 HCFCD Mission

Since its creation, HCFCD's role has become increasingly complex. Whereas its original role was to serve as the local partner for major projects with the U.S. Army Corps of Engineers, HCFCD's current efforts to reduce flood risks in Harris County encompass a wide range of activities. All of these activities contribute to achieve HCFCD's mission, which is to: ***provide flood damage reduction projects that work, with appropriate regard for community and natural values.*** HCFCD accomplishes its mission by:

- Devising the flood damage reduction plans;
- Implementing the plans; and
- Maintaining the infrastructure.

1.2 Mandate to Educate: Flood Insurance

HCFCD encourages property owners to buy flood insurance. In addition to being protected financially against future losses due to floods, reasons to purchase flood insurance include:

- Many floods do not qualify for a Presidential disaster declaration. Due to the unavailability of grant funds, those owners without insurance must bear the full cost of damage and repair. The Federal Emergency Management Agency's (FEMA's) largest source of funds, the Hazard Mitigation Grant Program (HMGP), is triggered by declared disasters, and is not available to help after smaller events.
- FEMA's Flood Mitigation Assistance Program (FMA) is funded by the National Flood Insurance Program (NFIP), and FEMA Region VI currently has an eligibility requirement that buildings be on FEMA's repetitive loss list, and be currently insured.

- Acquisition of a fully-insured home that is destroyed by flood is less expensive if the owner had flood insurance, because the grant has to pay only for demolition, site cleanup, and the value of the land.
- Under certain circumstances, notably if a building is damaged more than 50% of its market value (substantial damage), federal flood insurance will pay a mitigation claim of up to $30,000 toward a mitigation project. This money must be used for an approved project, and can be part of the non-federal match used to pay for demolition in an acquisition project.

1.3 Overview of Steps in a Buyout Project

Exhibit 1 to this manual is a flow chart illustrating steps in the buyout process. (See Exhibit 1.) The process is initiated when a potential need for a buyout project is brought to the attention of the Property Acquisition Services Section (PASS) Leader, who is the Project Manager (PM). The PM evaluates whether there is an available grant program through which to apply for funds or if District funds will be required. If an application for external funds is developed, Commissioners Court approval is requested to submit the grant application. Additionally, if a grant is awarded, Commissioners Court approval is requested to accept the grant and proceed with the project. FEMA-funded projects require public notice to inform the public of the grant award.

Once a grant award is made or funds are approved for a District-funded buyout program, the PM assembles the acquisition project team (or buyout team) to provide an overview of the buyout project and to request current scope, schedule and budget (SSB) data from each team member. At this point, a Purchase Order (PO) for Buyout Counseling will likely be issued, and buyout counseling meetings begin.

Once the buyout counselor verifies homeowner eligibility and interest, a PO for appraisals is issued to the Harris County Right of Way Division (ROW). It is at this time that ROW requests a preliminary title report from the County Attorney. Appraisers are then sent assignments to appraise certain homes and are given 30 days to complete the assignment. At the same time that the appraisal assignment is issued, the owner is sent a letter informing them of which appraiser was assigned and how to contact the appraiser. Once the appraisal assignment is

complete, it is provided to ROW, whose staff conduct an in-house review. After the review is complete, ROW provides the appraised home values to the PASS PM who reviews the data to ensure that the project remains within budget.
Assuming the project is within budget, the PM prepares POs for the following services:

- ROW Agent,
- Relocation Agent,
- Relocation Housing Payment,
- Home Acquisition,
- Closing, and
- Demolition.

It is at this point that a ROW Agent is assigned (agents can be in-house or contract agents) for each home for which an appraisal has been completed. Using the appraisal information, the ROW Agent prepares the documents necessary to make an offer to an owner. Once all appropriate documents are prepared, the agent sets up a meeting with the homeowner to present the offer, complete the Duplication of Benefits analysis and certification (see Sec. 7.5). The offer letter provided to the owner, states that the owner has 14 days to decide whether to accept the offer. The Agreement for Sale (see exhibit 16) specifies that the transaction must be completed within 120 days or HCFCD can withdraw its offer (the offer becomes null and void).

Simultaneous with the appointment of a ROW Agent, the appraisal is sent to the ROW relocation manager who assigns either an in-house agent or contract agent. Relocation meetings are scheduled when the agent receives the appraisal report and occur as soon as possible after the offer has been made.

Assuming the owner accepts the offer, the ROW Director accepts the offer on behalf of HCFCD and a request to begin the title search work is given to a title company. Once the title company provides ROW the final closing costs, the ROW agent prepares a Request for Payment. This Request for Payment is sent to the PASS PM who confirms the data on the Request for Payment and directs PASS staff to put all relevant data into the PASS database. The Request for Payment is then sent to the CIP Budget Officer for processing.

Upon receipt of the Request for Payment, the CIP Budget Officer adds all pertinent financial codes and adds the amount of the payment request to the financial database. The Request for Payment is then sent to the HCFCD Administrative Services Division who verifies that calculations are correct, and puts the request on Commissioners Court agenda.

Once approved for payment, the list of approved checks is sent by the CIP Budget Officer to the Harris County Treasurer's office, who puts an agenda item on Commissioners Court requesting approval to issue checks. Once checks are written, the Administrative Services Division sends a runner to the Treasurer's office to pick up checks. Checks are then distributed to ROW and settlements are scheduled.

Once settlements are scheduled, ROW sends the HCFCD Construction Section this schedule. (In addition, the Construction Section can run a report from ROW's database that will let them know, by project, what properties are in settlement.) The Construction Section performs a pre-settlement inspection and informs ROW that the property is vacant and ready to go to closing.

After settlement, ROW receives the closing documentation from the title company and sends a copy to PASS. PASS sends a memo to the Construction Section asking them to schedule demolition. With this memo, PASS provides a sketch of the property and a photo. The Construction Section spray paints a "no trespassing" sign on the property and shortly afterward, meets with the demolition contractor on site. They jointly measure the structure and estimate the cost of demolition for each home (demolition costs are based on contract rates). The demolition process includes a hazardous materials survey, completed by the demolition contractor. Within 90 days of settlement, the properties are demolished.

After demolition, vacant properties are turned over to the HCFCD Infrastructure Division's – Property Management Department for future maintenance in accordance with any grant requirements and with HCFCD policy.

2.0 INTERACTIONS

A successful voluntary buyout effort requires the cooperation of many team members. This section provides a brief overview of some of these team members.

2.1 Property Acquisition Services Section

Principal responsibility for planning and implementing voluntary buyout projects is assigned to the HCFCD's Property Acquisition Services Section (PASS).

2.1.1 Organization

PASS is a part of the Operations Division and the PASS Section Leader reports directly to the Manager of the Capital Projects Department.

2.1.2 Staffing

PASS is staffed with personnel experienced in all elements of the buyout process. The core staff includes the Section Leader, who is the Project Manager (PM), an Assistant Project Manager, a receptionist, and three support personnel. The PM is responsible for the day-to-day operations of the buyout team; project implementation for specific buyout projects; SSB of each ongoing buyout project, and for application development for all proposed buyout projects. The Assistant PM is the primary backup to the PM and, in addition, is responsible for preparing all required status reports. The support personnel are responsible for maintaining the PASS database, day-to-day contact with potential and current buyout participants, for assisting the PM and Assistant PM in completion of various project tasks, and for data collection in support of ongoing buyout projects and application development. Because of the large number of Harris County residents whose primary language is Spanish, it is imperative that at least one member of the core staff be fluent in Spanish

2.1.3 Contractors

HCFCD uses a combination of in-house and contract employees to implement property acquisition. A list of services for which HCFCD often contracts follows. Specific functions of these individuals are spelled out in other sections of this manual.

- Buyout counselor
- Appraiser
- ROW Agent (as needed to augment in-house staff)
- Relocation Agent (as needed to augment in-house staff)
- Title Company
- Demolition Contractor

2.2 Working within HCFCD

2.2.1 Upper Management

Many steps of the buyout process require review and approval by HCFCD management. Depending on the stage of the project and the approval required, the PASS PM coordinates this review and approval with one of the following managers: HCFCD Director, OPS Division Manager, or the Capital Projects Department Manager.

2.2.2 Programming and Scheduling Department

The Programming and Scheduling Department within the OPS Division provides budget allocations and ongoing project tracking for each approved buyout project. This department includes the CIP Budget Officer, who participates in planning, making and tracking expenditures by PASS.

2.2.3 Operations Division Information Officer

The Operations Division Information Officer (OPS DIO) assists with internal and external communications during all stages of a buyout project. This includes assistance with selecting appropriate forms of communication with different audiences and developing appropriate materials to support buyout project objectives.

2.2.4 Mapping, Graphics and Design Services Section

The Mapping, Graphics, and Design Services Section within the Capital Projects Department develops maps, presentation materials, and various Geographic Information System products in support of application development and the ongoing buyout projects.

2.2.5 Construction Section

The Construction Section within the Capital Projects Department manages the demolition and inspection process after homes are acquired.

2.2.6 Infrastructure Division – Property Management Department

The Property Management Department is responsible for managing all real property acquired by HCFCD. After completion of demolition, the Property Management Department provides and manages services, such as mowing vacant parcels, for all properties acquired as part of a buyout project.

2.2.7 Communications Division – Project Coordinators

A Project Coordinator from the Communications Division (COM) is assigned to each of the four precincts within Harris County. Project Coordinators are the primary interface within each precinct to ensure Harris County Commissioners and residents within their precinct are aware of buyout activities. Project Coordinators also assist by supporting any pre- or post-disaster public meetings and outreach efforts associated with buyout projects.

2.3 Working with Partners

2.3.1 Federal Emergency Management Agency

The Mitigation Division of the Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program and oversees FEMA's mitigation programs, described in section 3.3.1 of this manual. FEMA has a number of programs and activities that provide protection directly to citizens through flood insurance, prevention through mitigation measures, and partnerships with communities such as HCFCD. In Texas, these programs are overseen by FEMA Region VI located in Denton. Grants are between FEMA, as the Grantor, and either the State Division of Emergency Management or the Texas Water Development Board, as the Grantee. If HCFCD applies for buyout funds and is funded, it is the “subgrantee” under all three of FEMA’s mitigation grant programs.

2.3.2 State of Texas, Governor's Division of Emergency Management

The Division of Emergency Management (DEM) is tasked with administering a program of comprehensive emergency management, designed to reduce the vulnerability of the citizens and communities of the State of Texas to damage, to injury, and to loss of life and property by providing "a system for the MITIGATION of, PREPAREDNESS for, RESPONSE to and RECOVERY from natural or man-made disasters." DEM oversees both the Pre-Disaster Mitigation Program (PDM) and the Hazard Mitigation Grant Program (HMGP). These programs are described in more detail in section 3.3.1 of this manual.

2.3.3 State of Texas, Texas Water Development Board

Through an agreement with FEMA, the Texas Water Development Board administers the Flood Mitigation Assistance (FMA) Program. This program provides federal funding to assist communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures. This program is described in more detail in section 3.3.1 of this manual.

2.3.4 Harris County Right of Way Division

Acting on behalf of HCFCD, the Harris County Right of Way Division is responsible for several phases of a voluntary buyout project's implementation. These include the appraisal of potential buyout properties, the preparation and presentation of offers to property owners, the closing of the purchase process, and the relocation assistance process.

2.3.5 Other Local Jurisdictions

HCFCD works closely with Harris County and the many incorporated municipalities within the county. Within the municipalities, PASS interfaces with the local floodplain managers/administrators and building officials during the application development and implementation phases of a buyout project to ensure HCFCD priorities are consistent with the municipalities' priorities and to clarify roles and responsibilities of each. PASS also works with the Harris County Permits Division, which is the local floodplain administrator for unincorporated Harris County.

2.4 Working with the Public

Mitigation projects are designed and implemented with public participation. Communicating with those affected, including those whose homes are not within the immediate project area, can minimize misinformation and rumors. Because voluntary acquisition projects cannot be completed unless the property owners participate, it is in everyone's best interest to share accurate information.

2.4.1 Individual Homeowners

Once a buyout project has been initiated and properties to be acquired are identified, PASS attempts to keep homeowners informed during all stages of the project. This is accomplished through a combination of buyout counseling meetings, telephone and/or mail communications from PASS to individual homeowners, and public meetings hosted by HCFCD.

2.4.2 Civic Clubs and Homeowners Associations

Throughout all phases of a buyout project, PASS, the Project Coordinators, and the Operations Division Information Officer (OPS DIO) cooperate to provide information to those who are interested in ongoing or pending buyout projects. Any requests for information or presentations to clubs and associations are responded to jointly by PASS and the appropriate Project Coordinator, and any input received by PASS or a Project Coordinator is shared.

2.4.3 Elected Officials

Project Coordinators are responsible for buyout-related communications with County-level elected officials. The OPS DIO is responsible for buyout-related communication with local, state and federal jurisdictions.

2.4.4 The Media

The OPS DIO will assist with establishing consistent messages for buyout projects and serves as the liaison between OPS and the Communications Division (COM) to provide appropriate background information to support COM's media activity. COM provides the media spokesperson for HCFCD and coordinates directly with the media.

3.0 FLOOD DAMAGE MITIGATION PLANNING

Buying flooded properties and removing the structures from the floodplain means that those structures will not flood in future storm events. Flood damage mitigation planning allows a buyout project to be targeted toward most effectively and efficiently achieving HCFCD's mission.

3.1 Pre-Application Preparation

While actual project implementation often has to wait until money becomes available, some mitigation actions can be taken right away. Some actions that HCFCD has initiated (or will be initiating) to lay the groundwork for defining projects in the future, and that substantially shorten the application phase include:

- Obtain and verify the list of NFIP-insured properties that have received repetitive flood insurance claim payments. Update this list to ensure that (a) properties are listed within the correct jurisdiction, (b) all entries for a property are properly coded to that property, and (c) all claims are correctly linked to the property address.
- Gather surveyed ground and lowest floor elevations and Base Flood Elevations (BFEs) of repetitive loss properties and incorporate into the Property Acquisition Services Section database. Include some preliminary building data that are useful when estimating project costs and completing a benefit cost analysis (BCA), such as square footage, building age and type, and assessed value. If possible, include the latitude and longitude, which may be provided by surveyors or by using hand-held GPS units, of each building to geocode its location.
- Photograph buildings in flood hazard areas before the next event.
- Prepare an estimated BCA of possible projects to get a feel for whether they will meet the cost-effectiveness criteria of the grant programs.

3.1.1 Collect "Sunny Day" Data

An important step in mitigation planning is the documentation of existing conditions. HCFCD collects data on buildings and owners that could be part of a future mitigation project, including photographs, when possible. These data are particularly important if the

area is severely damaged to the point that it would be difficult to determine pre-damage conditions for the purpose of preparing market value appraisals.
Severe or total damage may be caused by flood and/or high wind, or in extreme cases post-flood fires that totally destroy buildings. Because insurance payments are considered in determining Duplication of Benefits (see Sec. 7.5), good “sunny day” photographs will help sort out which coverage should pay for which parts of the damage.

3.1.2 Receive Post-Disaster Substantial Damage Determinations

Following a flood event, communities that participate in the NFIP are required to make determinations as to whether damaged buildings located within the Special Flood Hazard Area (SFHA or 100- year floodplain) have been “substantially damaged.” To declare a property substantially damaged, the local jurisdiction makes a determination that the building experienced greater than 50% damage in a single flood event, relative to the value of the building. The determination of substantial damage must be made regardless of whether the owner intends to repair at all, and whether repairs will be made over a long period of time. After an event, Floodplain Managers/Administrators of jurisdictions within Harris County send out crews to inspect houses that received damage from flooding to determine if these homes were substantially damaged.

For homes with less than 50% estimated damage, a permit may be issued. For homes with greater than 50% estimated damage, a substantial damage determination letter is issued. Once a substantial damage determination has been made, a homeowner can appeal the determination. A homeowner interested in appealing the substantial damage determination should contact the local jurisdiction for specific information required by that jurisdiction.

3.1.3 Maintain Property Acquisition Services Section Database

There is one main database used to maintain all application data for various stages of the buyout program; it is called the Property Acquisition Services Section (PASS) database. The function of this database is to collect and manage data on properties involved in current buyout projects, for record keeping on properties involved in completed buyout projects, and for properties interested in and eligible for future buyout projects. A detailed list of database elements is included in Exhibit 2.

3.2 Obtaining Approval to Apply for Federal Funds

3.2.1 HCFCD Management Approvals

Once the need for a buyout is identified, the PASS PM evaluates whether there is an available grant program from which to apply for funds or if District funds will be required. Based on this assessment, either a grant application or an “internal buyout proposal” is developed. Prior to submitting either document to the Harris County Commissioners Court for review and approval, HCFCD management approval is required.

3.2.2 Commissioners Court Authorization

Authorization from Harris County Commissioners Court is required prior to submitting either a grant application or a proposed buyout supported by District funds. To meet this requirement, a Commissioners Court letter is prepared by PASS requesting authority to submit the grant application or defining an area to be bought. Once notified of Commissioners Court approval, the PASS PM proceeds to develop the grant application.

3.3 Applying for FEMA Funds

3.3.1 Three FEMA Funding Programs

In terms of timing, work can begin on an application to FEMA at any time, and the application can be refined after more funding information is available and the project is better defined. There are currently three funding programs that come from FEMA, and each has its own overall timeline: 1) Hazard Mitigation Grant Program, 2) Flood Mitigation Assistance Program, and 3) Pre-Disaster Mitigation Program.

3.3.1.1 Hazard Mitigation Grant Program (HMGP)

Due primarily to the rising costs of disasters, FEMA’s Hazard Mitigation Grant Program (HMGP) was authorized by Congress (Section 404 of the Robert T. Stafford Disaster Relief Act) to fulfill four objectives:

1. Prevent future loss of life and damage to property due to disasters;
2. Implement state or local mitigation plans;
3. Enable mitigation measures to be implemented during immediate recovery from a disaster; and
4. Provide funding for previously identified mitigation measures that benefit the disaster area.

HMGP funds become available after a disaster is declared by the President of the United States. The State (DEM) will provide technical assistance support on grant applications during the period between one and six months after the disaster, and the deadline to submit applications is about nine months after a disaster declaration. With each disaster, the State provides written notification of the exact due date to apply for grant funds, and the specific eligibility criteria associated with the funding. Extensions are not granted except under extraordinary circumstances.

HMGP Funding. HMGP funds are made available following a Presidential disaster declaration. The amount of funding is computed as a percentage of other federal disaster assistance (emergency support, assistance to repair public infrastructure, and assistance provided to individuals and families). It is set aside for the purpose of supporting state and local mitigation projects. After every disaster declaration that includes HMGP funds, the authorized state agency will contact affected communities and provide the opportunity to participate.

HMGP currently provides up to 75% of eligible costs for mitigation projects that meet all eligibility criteria. The non-federal share can be comprised of several funding sources, including federal CDBG funds (for which HCFCD is not eligible), local and/or State general revenue, and private non-profit funds. A portion may be covered by certain in-kind or donated services, and property owners can provide some or all of the non-federal share.

States are required to develop hazard mitigation plans, and these typically establish priorities for mitigation funding. These priorities may be set or revised after every disaster for which HMGP funds are available. Currently, the state priorities for awarding HMGP funds are as follows:

STATE OF TEXAS STRATEGY GUIDELINES FOR HMGP PROJECTS

Priority I *- Mitigation Action Plans (MAPs) that meet State standards.*

Congress has established that no more than 7% of the available HMGP funds in a disaster may go toward planning grants.

Priority II *- Acquisition.*

Priorities as listed in order below: (B/C requirement is waived for substantially damaged primary residences.)

1) Primary Residences

- *In the floodway with > 50% damage.*
- *In the floodplain with > 50% damage*

◦ Severe repetitive loss properties (use FEMA'S Targeted Repetitive Loss list as a reference)

- *In the floodway with < 50% damage.*
- *In the floodplain with < 50% damage.*

2) Secondary Residences

- *In the floodway with > 50% damage.*
- *In the floodplain with > 50% damage.*

◦ Severe repetitive loss properties (use FEMA'S Target Repetitive Loss list as a reference)

- *In the floodway with < 50% damage.*
- *In the floodplain with < 50% damage.*

3) Non-residential/commercial property

- *In the floodway with > 50% damage.*
- *In the floodplain with > 50% damage.*

◦ Severe repetitive loss properties (use FEMA'S Target Repetitive Loss list as a reference)

- *In the floodway with < 50% damage.*
- *In the floodplain with < 50% damage.*

4) Vacant lots

- *In the floodway with a B/C ratio greater than or equal to 1.0*
- *In the floodplain with a B/C ratio greater than or equal to 1.0*

5) Primary, then Secondary Residences

- *Outside floodplain with > 50% damage.*
- *Outside the floodplain with < 50%*

Priority III *- Residential Relocation, then Elevation projects.*

Starting with the most cost effective.

Priority IV *- Retrofitting (including saferooms), then Structural..*

Starting with the most cost effective.

Priority V *- Warning, Public Information.*

These projects are usually submitted as "initiative" projects, and are not required to meet the standard 1/1 B/C. A maximum of 5% of the available HMGP funds in any disaster may go toward initiative type projects.

Priority VI *- Equipment: Emergency generators, radios, etc.*

These do little to reduce damages in the next disaster. These actions normally will not result in an acceptable B/C ratio and funding is therefore requested under the "initiative" category.

Eligible Grant Applicants. There are three categories of applicants eligible to apply for HMGP funds:

1. Government entities, including state agencies, general purpose local governments, and special purpose districts. As a special purpose district, HCFCD meets this definition of an eligible applicant.

2. Private non-profit organizations that have an effective ruling letter from the IRS granting tax exemption status under Sec. 501(c), (d), or (e), or that are able to demonstrate they meet non-profit status under applicable state law.
3. Indian Tribes or authorized tribal organizations.

Minimum Project Eligibility. Minimum eligibility standards for HMGP funds are set forth in federal regulations and each state's mitigation plan. (Note that an applicant must have an approved Comprehensive Hazard Mitigation plan and the State must have an approved plan also.) Acquisition, elevation, and relocation of flood-prone homes that are located in a mapped 100-year floodplain are eligible projects provided they meet <u>all</u> of the following criteria:

1) <u>Conform with the State's plan</u>. Acquisition projects are among the State's priorities for disasters declared due to floods;
2) <u>Provide a beneficial impact on the disaster area</u>. Especially in areas of high risk for repetitive flooding, acquisition and elevation may meet this criterion through reduction in risks to safety and property damage;
3) <u>Conform with environmental regulations</u>. Acquisition projects typically are categorically excluded from an extensive environmental review, although certain information is required so that the State and FEMA can make informed decisions;
4) <u>Solve a problem either independently or as a functional part of a solution</u>. Acquisition projects satisfy this criterion, in that a successful project may address only one or many homes. The acquired land can be part of a solution (e.g., using the acquired land for stormwater management;
5) <u>Impact a local government that participates in the NFIP</u>. To receive mitigation grant funding, communities that have mapped special flood hazard areas must participate in the NFIP;
6) <u>Meet all applicable State and local codes and standards and not contribute to or encourage development in coastal high hazard areas or other vulnerable areas</u>. Certain codes are triggered by acquisition projects, and project applications must provide evidence that such codes and standards are addressed and that permits have been or will be issued, as applicable;

7) Demonstrate cost-effectiveness. Briefly stated, this concept means that the benefits of a project must outweigh the costs. There is a distinct Priority placed on acquisition projects, especially those that address repetitive loss properties. In some instances, [for example, if buildings have sustained substantial damage (50% or more of building value)], a policy statement issued by FEMA deems that acquisition is cost effective; and

8) Consider a range of alternatives. Communities are required to determine that a proposed project is the most practical, effective and environmentally sound alternative after considering a range of options.

3.3.1.2 Flood Mitigation Assistance (FMA) Program

The Flood Mitigation Assistance (FMA) Program was authorized in 1994 for the purpose of funding mitigation projects that are in the best interest of the National Flood Insurance Program (NFIP). It was prompted by the fact that a small number of insured buildings account for a significant percentage of the dollars paid out by the NFIP for flood insurance claims. The hope is that if mitigation measures are focused on that subset of buildings, then claim payments will be reduced and the pressure to raise the rates may be relieved.

FMA Funding. FMA funds are made available from amounts collected by the NFIP through the sale of flood insurance. The majority of these funds are targeted for project grants, including acquisition of insured structures. FMA funds are allocated among the states based on criteria established by FEMA, such as the number of repetitive loss properties and the number of insurance policies.

The National Flood Insurance Reform Act of 2004 augments the existing Flood Mitigation Assistance Program. Additional funding and mechanisms will focus mitigation efforts on “severe” repetitive loss structures that result in a disproportionate amount of claims to the National Flood Insurance Fund. The following is a summary of the key provisions of the Flood Insurance Reform Act of 2004 that are related to buyouts:

- Creates Pilot Program for Mitigation of Severe Repetitive Loss Properties. This 5-year program is to be funded, subject to annual appropriations, with $40 million available nationwide per year. For the purpose of the Pilot Program, “severe repetitive loss properties" are defined as NFIP-insured single-family properties (1-4 family) that meet one of two triggers: 1) 4 or more claims of at least $5,000 that cumulate to more than $20,000; or 2) at least 2 claims with the cumulative amount exceeding the value of the property.

- <u>Amends the [Basic] Flood Mitigation Assistance Program</u>. Without changing what constitutes eligibility under the basic FMA program, emphasis is placed on addressing properties and subsets of properties that are in the best interests of the National Flood Insurance Fund and for which the non-federal matching amounts are available. Funding is increased from the current $20 million a year to $40 million a year nationwide, to remain available until expended.

For both the Pilot program and the amendment to the basic FMA program, the non-federal match is 25%, under usual circumstances. If a state has an approved Section 322 mitigation plan that "specifies how the state intends to reduce the number of severe repetitive loss properties", and FEMA determines that the state has taken such actions, then the non-federal match is reduced to 10%.

Eligible Grant Applicants. Most applicants for FMA funds are communities, although other authorities, such as flood control districts and drainage districts that are specifically and formally designated by communities to develop and administer mitigation plans and projects, may apply. Communities must:

1) Participate in the NFIP (Communities on probation or suspended from the NFIP are not eligible.);
2) Have an approved Flood Mitigation Plan; and
3) Have the ability to provide the non-federal cost share.

Minimum Project Eligibility. To be eligible for FMA funding, projects are to:

1) Be technically feasible;
2) Be cost-effective;
3) Conform to applicable environmental regulations and state and local codes and standards;

4) Conform with the Flood Mitigation Plan, which must specifically address continued compliance with the NFIP; and
5) Be located in an eligible community.

Eligible activities are activities that are consistent with the goal of FMA: to reduce the risk of flood damage to structures insurable under the NFIP. Examples of eligible types of projects include:

- Elevation of NFIP-insured residential structures, and elevation or dry floodproofing of NFIP-insured non-residential structures, in accordance with 44 CFR Part 60.3.
- Acquisition of NFIP-insured structures and underlying real property.
- Relocation of NFIP-insured structures from acquired or restricted real property to sites not prone to flood hazards.
- Demolition of NFIP-insured structures on acquired or restricted real property.
- Other activities that bring an NFIP-insured structure into compliance with the statutorily authorized floodplain management requirements of 44 CFR Part 60.3.
- Minor physical flood mitigation projects that do not duplicate the flood-prevention activities of other Federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages in localized flood problem areas. These include modification of existing culverts and bridges, installation or modification of flood gates, stabilization of streambanks, and creation of small debris or flood/stormwater detention basins in small watersheds.

The priority for FMA projects are those that mitigate buildings on FEMA's repetitive loss list (including the requirement to carry a current NFIP policy). Although projects that include uninsured buildings are not excluded automatically from consideration, they may be ranked lower than others. This is a good reason to encourage all property owners in a potential project area to buy flood insurance and to ensure the repetitive loss list is and remains accurate.

3.3.1.3 Pre-Disaster Mitigation Program (PDM)

The Pre-Disaster Mitigation Program (PDM) was authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA 2000), Pub. L. 106-390, 114 Stat. 1552 to assist States and communities to implement a sustained pre-disaster natural hazard mitigation program and reduce the overall risk to the population and structures.

PDM Funding. PDM funding is provided through the National Pre-Disaster Mitigation Fund to assist states and local governments (including Indian Tribal governments) in implementing cost-effective hazard mitigation activities that complement a comprehensive mitigation program. PDM provides up to 75% of eligible costs for projects that meet the eligibility criteria. In addition to CDBG and local or State funds, the match may include property owner funds. No more than 12.5% of the local match may be from in-kind contributions.

Eligible Grant Applicants. Eligible entities include state-level agencies other than the state emergency management agency; Federally- recognized Indian Tribal governments; and local governments including state recognized Indian Tribes, authorized Tribal organizations, and Alaska Native villages. Private non-profit organizations are not eligible sub-applicants but may ask their local government to submit an application on their behalf. All applicants and sub-applicants must be participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area, and a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued. In addition, the community must not be on probation, suspended or withdrawn from the NFIP.

Eligibility is contingent upon having a FEMA- approved DMA 2000 mitigation plan.

Minimum Project Eligibility. Multi-hazard mitigation projects such as PDM's must focus primarily on natural hazards, but also may address hazards caused by non-natural forces. Funding is restricted to a maximum of $3M Federal share per project.

The following are eligible mitigation projects:

- Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity;
- Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, floodproofing, storm shutters, hurricane clips);
- Minor structural hazard control or protection projects that may include vegetation management, stormwater management (e.g., culverts, floodgates, detention basins), or shoreline/landslide stabilization;
- Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and that do not constitute a section of a larger flood control system.

Mitigation projects must also meet the following criteria:

1) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster, consistent with 44 CFR 206.434(c)(5) and related guidance, and have a Benefit-Cost Analysis that results in a B/C ratio of 1.0 or greater (see the Section titled Benefit-Cost Analysis).
2) Be in conformance with the current FEMA-approved State hazard mitigation plan;
3) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed, consistent with 44 CFR 206.434(b)(4);
4) Be in conformance with 44 CFR Part 9, Floodplain Management and Protection of Wetlands,
5) Not duplicate benefits available from another source for the same purpose, including assistance that another Federal agency or program has the primary authority to provide;

6) Be located in a community that is participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area (a FHBM or FIRM has been issued). In addition, the community must not be on probation, suspended or withdrawn from the NFIP; and,
7) Meet the requirements of Federal, State, and local laws.

3.3.2 Preparing an Application

The FMA and HMGP programs have a standard application packet that is designed to capture all necessary information. Until 2004, both HMGP and FMA applications have been requested in hardcopy. PDM FY03 applications were handled via FEMA's *e-grant* system and all application materials were prepared and submitted in electronic format. Given FEMA's desire to reduce paperwork and provide a more efficient application process, it is likely at some time in the future that both the HMGP and FMA applications will also be handled through the *e-grant* system.

3.3.2.1 General Information Required

The following information is required to be discussed in the application:

- General information about the applicant;
- History of hazards/damages in the project area;
- Project description, including project type and number of people and properties involved;
- Project location detail, including maps and photographs;
- Project cost worksheets for specific project types;
- Total project budget;
- Identification of funding sources;
- Benefit Cost Analysis;*
- Project schedule, with milestones; and
- Information for the environmental review.

*Projects that propose acquisition of homes in the FEMA-mapped floodplain that have been substantially damaged are not subject to the same comparison of benefits to costs. A certification of the substantial damage determination must be included in the application and is typically developed by the local floodplain administrator using FEMA's Residential Substantial Damage Estimator software.

3.3.2.2 Specific Data on Each Property

The level of data required for each building to be included in the application depends somewhat on the type of benefit cost analysis to be performed. (See the section on data requirements of the full and limited benefit cost data modules later in this chapter.) In addition to the hazard data required to run BCA, the following items of general information are required:

- Property address
- Ownership status (primary owner occupied or rental property)
- Level of damage (substantial damage or repetitive loss)
- Date of construction (for State Historic Preservation Officer's determination)
- Construction type (e.g. wood frame, brick veneer)
- Floodplain location (in or out of the mapped 100-year floodplain)
- Estimate of total acquisition costs
- Repetitive loss locator number (if on FEMA's repetitive loss list)

3.3.2.3 Flood Hazard Information

Hazard data are used to estimate the frequency and magnitude of future flood events and to quantify damage that can be expected over time if the project is not implemented. These estimates of future damage become the project "benefits" used to determine the benefit cost ratio.

Again, depending on the benefit cost module to be used, differing levels of hazard data are required. (See section 3.3.2.4 on hazard data requirements of the full and limited benefit cost data modules later in this chapter.) In general, for areas where Base Flood Elevations (BFEs), First Floor Elevations (FFEs), and stream discharge rates are <u>not</u> known, HCFCD collects and analyzes historical loss data and frequency of losses for each building. For insured buildings, FEMA's paid claims database is a good source of data. For uninsured buildings, a combination of information from homeowners, and historical knowledge of flood depth and damage is a good source of data. When it comes to hazard data for use in FEMA's full data module, the best sources of flood hazard data are the Flood Insurance Rate Map (FIRM), and the Flood

Insurance Study (FIS). Some FIRM's show the BFE when engineering studies have produced detailed information on the frequency and magnitude of anticipated flooding (numbered zones).

3.3.2.4 Benefit and Cost Information

As mentioned previously in this manual, projects that propose acquisition of buildings that were substantially damaged are, by current FEMA policy, not required to be supported with a rigorous benefit cost analysis (BCA). Other properties are subject to the BCA requirement. Projects must be cost effective – which generally means the benefits over time are greater than the costs of the project. There are two methodologies to determine a project's BCA, full data and limited data. The following two sections describe these two methodologies and data requirements.

Full Data Module. This method utilizes quantitative flood hazard data, typically from a Flood Insurance Study (FIS), to determine quantitatively the annual probability of flooding in one-foot increments of flood depth. There are several steps for this method:

- Obtain the necessary flood hazard data, including flood data from a FIS and building first floor elevation (FFE),
- Obtain information about building, type, size and value, and contents value,
- Choose appropriate depth-damage relationships for building and contents, both before and after mitigation
- Choose appropriate displacement time relationships and enter reasonable displacement costs,
- Document all of the data sources and assumptions and then run the BCA module to calculate benefits and the B/C ratio,
- Determine an appropriate mitigation project "useful lifetime" and mitigation project cost.

The benefits of using the full data module are that it provides the most accurate B/C results and often requires less work for the analyst because the full data module and the hybrid module have building depth-damage functions built in.

The principal limitation of the full data method is that the necessary flood hazard data or building elevation data frequently are not available. This approach cannot be used without first obtaining the missing data.

HCFCD has performed many limited data module B/C computations for prior grant submittals. Knowing that the full data module yields more accurate results, the current desire is to collect the data required to complete full data module BCAs. When this level of data is not available, the limited data module is used.

Limited Data Module. This method of BCA expresses damages and losses both before and after mitigation as a function of flood frequency. Steps for the Limited Data method are:

1) Gather historical data on the frequency and severity of flooding at the mitigation project site (HCFCD most often uses FEMA's paid claims database for information on prior losses.);
2) Estimate average damages and losses for floods, both before and after mitigation;
3) Determine an appropriate mitigation project useful lifetime and mitigation project cost;
4) Document all of the data sources and assumptions and then run the BCA module to calculate benefits and the B/C ratio.

Project Benefits. The statutory authorities behind HMGP, FMA, and PDM grant programs require that projects be cost effective. Weighing the numbers – the costs and the physical damages avoided – is only one aspect of determining whether a project is a good investment. There are many benefits that are difficult to quantify, but that are very real benefits associated with flood mitigation projects. By FEMA policy, projects that propose to acquire homes that have been substantially damaged are not subject to the same comparison of costs and benefits. When an application includes substantially damaged properties, a certification of the substantial damage determination must be included in the application.

Quantitative Benefits. To compute benefits, it is necessary to quantify the damages that will be avoided if the project is implemented. This is done using the hazard data and data regarding the type of building (and contents) and its susceptibility to damage.
HCFCD is responsible for determining the cost-effectiveness of proposed acquisition projects using FEMA's BCA software. The project cost data, combined with the hazard data, yield estimates of damages that will be avoided (benefits) if a project is implemented.

HCFCD prepares a BCA and submits individual BCA reports for each property included in the application. In addition, HCFCD prepares and submits an overview of the process used to determine BCAs, including assumptions made, derivations of data used, and the analytical techniques applied. (See Exhibit 3 for an example of this process overview.)

Other direct benefits associated with the project should be included in the application so that they may be included in the BCA. Examples of other direct benefits include:

- Infrastructure damage that may be avoided if, for example, water and sewer lines can be terminated because an entire area is acquired and returned to open space and natural floodplain function.
- Avoidance of displacement costs and temporary housing/sheltering or relocation costs, especially in areas where floodwaters remain high over long periods of time.

Certain "losses" that may not be included are those for which there is no clear cause and effect between the event and the loss. Examples of some of these "indirect benefits" that might accrue if the project is implemented include: (a) wages that would not be "lost," and (b) tax income that would not be "lost."

Qualitative Benefits. FEMA's policy allows funding of certain types of projects where the ratio of benefits to costs is "close" to 1:1, provided there are other benefits. A statement of qualitative benefits should always be included in the narrative supporting the project.

The following are examples of qualitative benefits:

- Emergency response is costly in time, equipment, and risks to evacuees and response personnel. When flood-prone homes are acquired, there is no one there to evacuate, so life and limb are not threatened.
- Homes with septic systems or underground fuel tanks will not pose environmental risks if they are acquired and removed from the floodplain.
- Allowing acquired land to return to a natural state over time or by reforestation, may enhance wildlife habitat.
- Recreating wetlands on acquired land will improve water quality.

- Developing passive recreational opportunities on acquired land will enhance the quality of community life.

Project Costs. Grant funds may be used for certain project costs that are called "allowable costs" and for reasonable contractor fees. One of the most critical steps in the entire mitigation process is making solid estimates of project costs. Underestimating costs, or not including key cost elements, will likely mean the amount of funds approved will be inadequate. This could jeopardize completion of the project. While there is a process to address cost overruns and request additional funding, there is no guarantee that federal grant funds will be available to cover increases.

Allowable and Unallowable Costs–General. The U.S. Office of Management and Budget (OMB) outlines the general principles and standards for "allowable costs." Stated simply, "allowable" means a cost that may be funded from a grant, provided there are sufficient funds to cover the costs. Note that allowable costs that are included in the total project budget are funded consistent with the established cost-share percentages, currently no more than 75% of total project costs from HMGP, FMA, or PDM. "Unallowable costs" are those that clearly are not grant-eligible.

FEMA directs states and communities to circulars prepared by OMB for details on allowable and unallowable costs. OMB Circular A-87 (See Exhibit 4) applies to acquisition projects managed under the HMGP. In general, A-87 states that to be allowable, costs must meet several general criteria. The most important (but not all) of those criteria specify that the costs must be:

- Necessary and reasonable for proper and efficient performance and administration of the grant and the project;
- Allocable to the grant (for goods and services necessary to conduct the activity);
- Specifically authorized or not prohibited under state or local laws or regulations;
- Not used to meet cost-sharing or match requirements of another federal grant; and
- Adequately documented.

"Reasonableness" is another aspect that the State and FEMA consider when reviewing project costs. Reasonable costs, defined in Circular A-87, are those that "do not exceed costs that would be incurred by a prudent person in the same circumstances at the same time." In addition to applicable laws and regulations, factors that enter into the determination of reasonableness are the specific terms and conditions of the federal award and market prices for comparable goods and services.

The State and FEMA will disallow costs that are determined to be unreasonable, as well as costs that are not directly applicable to the proposed project. Costs may be disallowed at the application phase, or when reimbursement requests are submitted. Obvious areas of caution include:

- Costs incurred before grant approval, unless specifically approved as pre-award costs;
- Items covered by subgrantee administrative costs;
- Loss of tax revenue for acquired lands; and
- On-going maintenance of a project area.

Allowable and Unallowable Costs- Acquisition Projects. Allowable costs that are specific to the acquisition of flood-prone properties, as determined by FEMA, include:

- Environmental mitigation costs associated with residential properties, including removal of asbestos, lead, and underground fuel tanks;
- Costs for specific measures that are required to protect endangered species;
- Reasonable costs for contracts for program management or implementation;
- Costs to obtain one appraisal from a licensed real estate appraiser for each property.
- Costs for a property survey;
- Up to FMV of the real property (land and structures) either at the time of sale or immediately prior to the damaging event;
- Necessary closing costs: title search, easement and deed recordation, title insurance, closing fees, and title transfer fees;
- Legal fees associated with review of deeds and contracts, if applicable;
- Demolition or removal of buildings and accessory structures, filling in of basements, removal of utilities and site improvements, closure of wells and septic tanks, disposal of debris, and site stabilization;
- Uniform Relocation Assistance and Property Acquisition Act (URA) relocation assistance for eligible tenants.

Unallowable costs that may be part of acquisition projects include:

- Percentage-based contracts;
- Value of donated services (however, donations can be part of the in-kind cost share); and
- General government expenses such as salaries and costs associated with services normally provided to the public, such as fire, police, inspectors, etc. Funds to cover such services, called subgrantee administrative costs, are provided by FEMA and are computed on a sliding scale.

3.3.2.5 NEPA Requirements

Consider Alternatives. The National Environmental Policy Act (NEPA) requires an applicant to consider at least two viable alternatives to a proposed project, particularly when environmental issues or impacts are anticipated. After a damaging flood, it may not seem productive to consider alternatives if the extent of damage has more or less defined the project. However, NEPA applies to a wide variety of federal actions, not just mitigation projects. So, although this may seem like an extra step, an explanation of why the preferred alternative was selected must be included in the application.

The description of alternatives does not require a great deal of information, but the description should approximate costs, describe likely benefits, and discuss the impacts on the project area. Note that the alternatives considered should be limited to those that are eligible for funding by HMGP or FMA. Typical alternatives considered include:

- No Action Alternative (always included);
- Elevation, as an alternative to proposed acquisition; and
- Demolition and rebuild, as an alternative to acquisition.

Public Notice. Public notices are required at the beginning of the process to develop a project (initial notice) and at the end of the application review (final notice). For projects that impact a large number of people, or that are controversial for other reasons, HCFCD often holds public meetings to inform people who may be affected by the project. At a minimum, NEPA requires:

1) **Initial Notice.** HCFCD needs to prepare and publish an initial Public Notice in accordance with Executive Order 11988 (floodplains), Executive Order 11990 (wetlands) and 44 CFR §9.12(e), and must keep a copy of the published notices as part of the project records.
2) **Final Notice.** When the grant is awarded, HCFCD must prepare and publish a final Public Notice, and keep a copy of the published notices as part of the project records.

3.3.2.6 Environmental Reviews

A significant determination as to whether a project is eligible for funding under FEMA's mitigation grant programs is whether it meets the environmental requirements. All project applications must include information on the environmental, historical, and archaeological impacts that may result if a project is implemented.

FEMA is required to conduct environmental reviews pursuant to the NEPA, which is a federal law that establishes national policy for the protection and maintenance of the environment. It provides a broad planning process that must be followed to ensure that a funding agency has considered environmental effects before deciding to fund a proposed action. NEPA requires that environmental information be made public. Most buyout projects are "categorically excluded" from a detailed federal environmental review. However, HCFCD must still provide environmental data and fulfill the requirements for public notice.

HCFCD's Responsibilities Even though acquisition projects are exempt from federal environmental review, the environmental information requested in the application must be provided. FEMA and the State are still required to review it in order to confirm that no further review is necessary.
Applications are designed to collect the information required for the environmental review. FEMA and the State will review the environmental information for completeness. Environmental matters that may be reviewed include:

- **Historic Structures.** In cooperation with the State Historic Preservation Officer (SHPO), HCFCD provides a letter regarding cultural and historic resources.

Although required only for structures that are more than 50 years old, this letter is obtained for all structures so that delays can be avoided if questions arise later. The SHPO requires photographs, maps, and a project description in order to determine if the affected structures have historic significance. (National Historic Preservation Act, Section 106)

- **Endangered Species.** Only rarely would threatened and endangered species issues arise for an acquisition project. In many cases, acquisition has a net benefit by returning vacated land to permanent open space. Nevertheless, a statement about the presence or absence of endangered species should be included in the application. (Endangered Species Act)
- **Wetlands.** If wetlands will be disturbed during the project, HCFCD must obtain the necessary permits and approvals from the appropriate regulatory agencies. Even if wetlands impacts are not involved, it is helpful to attach a copy of an appropriate resource map, such as the National Wetlands Inventory. (Clean Water Act; Executive Order 11990).
- **Air Quality.** Provisions in the National Emissions Standards for Hazardous Air Pollutants address asbestos removal. (Clean Air Act)
- **Contamination.** FEMA has determined that its funds may not be used to acquire contaminated property. This issue typically is not a concern for residential property unless, for example, an outbuilding has been used for a non-residential purpose such as an auto repair or a furniture refinishing shop.
- **Hazardous and Toxic Materials.** Projects involving non-residential properties and that involve buying land or disturbing the ground must address certain questions related to hazardous and toxic materials. In general, residential properties are not expected to have significant issues regarding hazardous and toxic materials even though “normal quantities” may be found. The presence of normal quantities does not preclude use of FEMA funding for acquisition. If special treatment is required, the cost of removal should be included in the estimate of demolition and site clearance.

- **Effects on Low-Income and Minority Populations: Environmental Justice.**

FEMA is required to identify and address disproportionately high and adverse human health or environmental effects that projects may have on minority populations and low-income populations. The NEPA review is a convenient mechanism for satisfying this requirement, which includes public involvement to encourage affected citizens to participate in project planning. (Executive Order 12898).
Presidential Executive Order (EO) 12898 requires federal agencies, including FEMA, to identify and address any disproportionately high and adverse human health or environmental effects of programs, policies, and activities on low income and minority populations. Flood mitigation acquisition projects that change land use practices or remove structures from flood risk areas may also contribute to a reduction of available, affordable housing in the disaster-prone area. If this situation has a disproportionately high and adverse effect on the low income or minority population, additional actions are required to correct this imbalance and insure that environmental justice is achieved. HCFCD often offers relocation assistance as mitigation of environmental justice issues. (See section 7.6 for more information about relocation assistance)

As a means to comply with EO 12898 requirements, all HMGP, FMA, and PDM applications must include an Environmental Justice Certification stating that:

1. There are no concentrations of low income or minority populations in or near the Project area;
2. The Project will not result in a disproportionately high or adverse effect on low income or minority populations; and
3. Actions will be taken by the applicant to ensure achievement of environmental justice for low income and minority populations.

3.4 Determining Properties to Include in a Buyout

3.4.1 Primary Properties

As discussed in section 3.3.1 of this manual, each funding source has its own eligibility criteria and priority for award. HCFCD develops applications using a combination of HCFCD priorities and program eligibility criteria/priorities. For all FEMA funding programs, only those primary properties listed and approved on an application are eligible for acquisition. In a voluntary process, it is highly unlikely that all approved applicants will accept an offer under a given buyout project. With this in mind, FEMA encourages applicants to include a list of potential substitutes (see following section) along with the primary properties list.

3.4.2 Identifying Substitute Properties

Historically, as HCFCD implemented a buyout program, if homeowners declined the buyout offer, FEMA allowed HCFCD to request the substitution of other eligible homes, even if these substitutes were not on the original approved application. FEMA has begun to enforce a grant requirement that no scope of work change will be authorized on any mitigation grant programs. Substitution of homes not on the original application is considered by FEMA to be a scope of work change. To resolve this issue, FEMA and the State now encourage communities to submit a list of potential substitutes with the original application to ensure there will be a list of qualified properties from which to request substitutions if homes on the original application do not accept an offer, and money is left on the grant. An example of this requirement was included in the 2003 PDM grant guidance and stated,

> "*For acquisition projects, changes to the properties in an approved mitigation project will be considered but will not be approved automatically. The Applicant must have identified the alternate properties in the project application, including a BCA for each property. The alternate properties should not be included in the cost estimate or the overall project BCA. Eligible properties may be substituted as long as the substitution does not change the overall nature of the project or increase the amount of the Federal share."*

Current practice is that for every mitigation application submitted by HCFCD, a substitution list is submitted with the application. The data provided for each potential substitute is the same level of data provided for the primary list (BCAs, SHPO release, etc.).

3.4.3 Post-Acquisition Limitations on Use of Acquired Property

A consideration to be taken into account when preparing applications to FEMA's mitigations programs is the limitation placed on the future use of acquired properties. FEMA- funded buyouts require deed restrictions and land use limitations as a condition of the grant.

Deed restrictions include:

- To maintain in perpetuity the property for uses compatible with open space, recreational, or wetlands management practices,
- After completion of 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, and
- No new structure(s) will be built on the property except as indicated below:
  - A public facility that is open on all sides and functionally related to a designated open space or recreational use,
  - A rest room,
  - A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director of FEMA or an official to whom the Director of FEMA has expressly delegated authority to issue rules, before the construction of the structure begins

Land use restrictions on properties purchased under a FEMA program prohibit:

- The construction of flood damage reduction levees, dykes, berms, or floodwalls.
- All walled buildings or manufactured homes, except restrooms. Re-use of pre-existing structures, unless all walls are removed.
- Fences and all other obstructions in the floodway. Fences outside of the floodway must be designed to trap a minimum amount of debris.
- Storage of inventory supporting a commercial operation or governmental facility, except for temporary storage in the open of wheeled vehicles. Long-term storage of very limited amounts of equipment, such as lawnmowers, necessary for maintenance of the acquired open space land is acceptable.
- 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.
- Impervious parking. Impervious parking includes asphalt, concrete, oil treated soil, or other impervious material.

3.5 Preparing an Acquisition Project Budget

3.5.1 Estimating the Value of Properties

Regardless of the approach used to determine property values, it is a requirement of FEMA buyout programs that State-certified independent appraisers prepare the valuations. This requirement is communicated to property owners during buyout counseling to ensure they understand the process of valuation is unbiased.

The most common approach to determining FMV is to base the appraisal on the pre-flood condition of the home. The most obvious benefit is that it encourages owners to voluntarily participate because they feel that the community is not taking advantage of them when they're struggling with all the impacts of damage. One downside to this approach is that if a long period of time elapses from the date of damage to the date of offer, the owner feels that any inflation-related increase in value is lost.

FEMA policies allow the community to make post-flood value determinations in two circumstances:

1. Homes are un-repaired. This situation usually occurs if HCFCD is ready to start the project very soon after a flood, and owners receive emergency and insurance payments, but do not use them for repairs. If post-flood value is used, ROW is not required to perform the DOB determination and owners are allowed to keep those payments for use toward purchase of another property. Note that this approach assumes that emergency and insurance payments were adequate to compensate for the damage sustained, and that combined with the post-flood value, the purchase price is effectively equivalent to the pre-flood value.
2. If a long period of time has elapsed between the last flood and the award of the grant, then it makes sense to value the homes in their current condition.

In either case, consistency must be applied. All homes in a buyout program must be appraised using the same valuation date.

HCFCD estimates the value (likely purchase price) of each property in the project area in order to prepare the project budget for the application. This is a very important step because it represents the largest part of the cost of the project. If property values are under-estimated, the requested grant funds won't be enough to finish the project. These estimates are for the application only – the final buyout offers must be based on a complete appraisal prepared by a State-certified appraiser.

There are four ways in which the Property Acquisition Services Section can develop estimates of the value of properties to be included in an acquisition project:

1. Apply a multiplier to the tax assessment value (obtained from the Harris County Appraisal District – HCAD). There are some cautions to consider, for example, sometimes a single tax bill can cover more than one lot, or the owner may have requested one bill for the building and another for the land, or the owner may have tax exemptions resulting in an assessed value significantly below market. Tax assessments are revenue-generating tools, they are not necessarily good predictors of market value. If tax assessments are used, a multiplier is used to estimate a more accurate fair market value. This is the valuation approach used most often by HCFCD.
2. In areas in which buyouts have recently occurred, review the actual appraised values for homes in these prior projects and use the data to estimate values for new applications.
3. Contact a knowledgeable real estate broker in the area and request the "broker's opinion of value."
4. Hire a licensed appraiser to prepare a statement of Fair Market Value.

It should be noted that value estimations, for which there is a fee, are likely not reimbursable costs under the grant. Further, estimates made for the purpose of the application may not hold up over time, especially if 6 months or more elapses before offers are made to property owners. Even though the homes are prone to flooding and identified for potential acquisition, real estate values tend to keep rising. This should be factored into the project cost property valuation estimate.

3.5.2 Appraisal Costs

The Harris County Right of Way Division (ROW) manages the appraisal process for a buyout program. ROW has contracts in place with several local appraisal firms that have set fees for conducting appraisals. The PASS contacts ROW during the application development process to obtain the current appraisal costs and uses these data when determining the project budget.

3.5.3 In-House and Contract Costs

HCFCD uses a combination of in-house and contractors to implement buyout projects. The functions that are frequently contracted include:

- Buyout Counselor - serve as Buyout Counselor to the property owners, representing HCFCD during the entire buyout process
- Right of Way Agent – prepare and present offers to homeowners
- Appraisers – complete an estimate of pre- or post-flood fair market value
- Title Company – handle title transfer, title insurance, and settlement
- Demolition Contractor – after settlement, remove all improvements from the acquired parcel

Costs associated with these services are clearly known at the time of application development and are included in the estimate of project cost.

3.5.4 Title Company and Closing Costs

HCFCD uses one of the following two methods for estimating title company services and closing costs:

1. Determine the estimated value of the property and then applies 1% of this value as an estimate.
2. Determine the estimated value of the property and then apply the Texas Department of Insurance title insurance premiums for each property and adds $100 in escrow and recordation fees as an estimate. (See Exhibit 5 for a copy of *Schedule of Basic Rates for Title Insurance* currently in use).

3.5.5 Demolition Costs

Given the volume of acquisition related demolitions managed by HCFCD every year, the best way to estimate future demolition costs is to use average historical costs. At the beginning of every project application, PASS contacts the HCFCD Construction Section to obtain updated demolition cost data. These data, and information from the PASS database, are used to estimate demolition costs in project areas.

3.5.6 Relocation Assistance Costs

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) mandates just compensation for property and appropriate relocation assistance when acquisition programs are supported by federal funds. URA also has requirements for assistance to tenants who must move due to an acquisition project. URA does not require payment of relocation assistance for owners of owner-occupied homes who voluntarily sell their homes, since they are willing sellers and compensated at FMV.

Projects for acquisition using FEMA's mitigation grant funds require voluntary participation by property owners. Therefore, as a rule, owners are not entitled to assistance under the URA mandates. The following guidance, and that provided in FEMA documents, is a summary of the requirements of 49 CFR Part 24, which take precedence if a conflict arises.

Early on, when defining the project, HCFCD determines, to the best of its ability, if the potential project area includes homes that are occupied by tenants. A person or family who rents or leases a home in the floodplain as a primary residence may be eligible for relocation assistance if they are displaced and must relocate due to an acquisition project. Displaced tenants are entitled to URA relocation benefits if:

- They occupied the home for at least 90 days before "initiation of negotiations" with the owner; and
- They rent or purchase a decent, safe, and sanitary replacement dwelling within 1 year after moving out of the acquired home.

The following discussion is intended as an overview of the types of assistance that can be offered. It is not intended as a complete explanation.

Tenants of manufactured home parks either own the mobile unit and lease the pad, or they rent the unit and the pad. If the park owner is negotiating to sell the land, then eligible tenants may be eligible for URA assistance:

- **Homepad Rental Assistance.** The tenant who owns the mobile unit and rents the pad is entitled to compensation for a reasonable increase in rent and utility costs of a new pad location and reasonable out-of-pocket moving expenses. Compensation may not exceed $5,250.
- **Replacement Housing Assistance.** If the tenant owns the mobile unit and rents the pad, and if the unit has been damaged by flood and therefore will not be relocated, then the unit owner is entitled to replacement housing assistance (which is equivalent to "acquisition"). The amount is determined by subtracting the value of the damaged unit from the cost of a new replacement manufactured home unit. The owner may also be compensated for the rental increase for a new homepad. However, the total replacement/relocation benefits may not exceed $22,500.
- **Moving a Manufactured Home.** If the tenant owns the mobile unit and rents the pad, and if the unit is to be relocated rather than sold, then the owner is eligible for reasonable moving costs, including moving and anchoring the unit on the new site, utility disconnect and hookup charges, and the costs of disassembling, moving, and reassembling any attached appurtenances such as porches, decks, skirting and awnings. The total assistance may not exceed $22,500.

Eligible tenants of housing to be acquired will get no more than the maximum prescribed by law ($5,250). The following may be eligible:

- Reasonable out-of-pocket moving expenses or a moving allowance determined using HUD's guidelines (usually more generous); and
- Adjustment for a reasonable increase in rent and utility costs, if comparable non-flood-prone rental units are more expensive.

URA assistance to eligible tenants is an allowable grant cost. After determining if the project will impact eligible tenants, HCFCD can add an estimate of these costs by assuming each likely tenant will receive the maximum amount. The actual amounts will be determined during implementation.

The Right of Way Division (ROW) manages the relocation process for a buyout program. PASS contacts ROW during the application development process to obtain the current estimates of relocation expenses and uses this data when determining the project budget.

3.6 Appealing a Grant Decision

Each mitigation program offers an appeals or reconsideration process. The following is an overview of the appeals process for the three federal programs discussed in this manual.

3.6.1 HMGP and FMA Programs

An eligible grant applicant may appeal, in writing, any FEMA decision regarding projects submitted for funding under HMGP and the FMA. The appeal should contain documentation that justifies the request for reconsideration. The appeal should specify the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. Whether the appeal is originated by the State or by an applicant, the appeal must be submitted in writing to the FEMA Regional Director by the State. There are two levels of appeal within FEMA:

1. The Regional Director is the decision maker on first appeals.
2. If there is an appeal of the Regional Director's decision on any first appeal, the Associate Director for Mitigation is the decision maker for the second appeal.

In some cases, the appeal may involve highly technical issues. The Regional Director or Associate Director may consult independent scientific or technical experts on the subject under appeal.

Appeals must be made within 60 days of the applicant's receipt of FEMA's funding decision. The State must forward any appeal from an applicant or subgrantee with a written recommendation to the Regional Director within 60 days of receipt. Within 90 days following the receipt of an appeal, the Regional Director will notify the State in writing as to the new decision or the need for more information. If additional information or technical evaluation is needed in order to make a decision, the Regional Director or Associate Director will act within 90 days following the receipt of the new information.

FEMA will provide its decision to the State in writing. If the decision is to grant the appeal, the Regional Director will take the appropriate action.

3.6.2 PDM Program

At its discretion, FEMA may review a decision if there is an indication of material, technical, or procedural error that influenced FEMA's decision. There will be no reconsideration regarding the amount of management costs; however, FEMA may amend an applicant's management costs if additional applications are later selected for award. As grants are awarded on a competitive basis, FEMA will not entertain requests for reconsideration based upon the merits of an original application. Similarly, FEMA will not consider new information provided after the application period has closed. In the case of new information, FEMA encourages applicants to incorporate this information into their applications for future grant cycles.

Requests for reconsideration based upon technical or procedural error should be directed to the Regional Director within 60 days of the date of the notice of FEMA's decision**.** The Regional Director will analyze the reconsideration request and make a recommendation to the Director of the Mitigation Division at FEMA Headquarters or his designee. A small percentage of funds will be set aside for reconsideration requests. If funds are available after reconsideration requests are analyzed, then the funds may be used to award additional grants or returned to the National Pre-Disaster Mitigation Fund for use in the next grant cycle.

4.0 INITIATING A VOLUNTARY BUYOUT

4.1 Project Management

The PASS PM assigned to oversee the project is responsible for the following activities:

- Develop the data and compile the grant application;
- Facilitate project team meetings and develop the initial grant budget
- Conduct public meetings when appropriate;
- Keep good records and submit reports in a timely manner;
- Be responsive to the public, individual property owners, and to the media when appropriate.
- Oversee the day-to-day tasks;
- Maintain continuous communication with the State; and
- Keep all the various pieces of the project moving forward.

The key steps of the buyout project management process are described below and are illustrated in the flow chart included as Exhibit 6.

HCFCD has designated the PASS Leader as the overall Project Manager for voluntary acquisition projects. The PASS PM has opted to contract with a buyout counselor to assist the buyout team with technical aspects and to interface with the homeowners. The PM is assigned for the duration of the project to provide oversight and continuity, thus avoiding misinformation and confusion. The PM is responsible for identifying grant opportunities and for analyzing potential District- funded buyouts.

Once a need for a buyout is identified, the PM evaluates whether there is an available grant program from which to apply for funds or if District funds will be required. Based on this assessment, a grant application or an “internal buyout proposal” is developed. If there are federal grant funds available, an application is developed and Commissioners Court approval to submit the grant is requested. At this time, the HCFCD Director assigns a Project ID (PID) and requests General Ledger (GL) and Journal Ledger (JL) codes for the approved project.

If the application or the internal buyout proposal is not approved, the PM looks for additional sources of funding. Upon the notice of grant award, the PM seeks Harris County Commissioners Court approval to accept the grant. At this time, the PM develops a Purchase Order (PO) for buyout counseling services and submits the PO to the Director for review and approval. Once approved, the PO for buyout counseling is issued and counseling meetings are conducted with owners of homes on the approved application/internal buyout proposal.

Also, upon notice of grant award or internal buyout proposal approval, the PM holds a buyout team meeting. Participants on this team include:

- Property Acquisition Services Section
- Buyout Counselors
- Operations Information Office
- Construction
- CIP Budget Office
- Right of Way Division
- Infrastructure (Post Acquisition Maintenance)

The purpose of this meeting is for the PM to provide an overview of the buyout program and to request current scope, schedule, and budget (SSB) data from each team member. Subsequent meetings are held periodically to provide internal and external coordination for the buyout project.

The buyout counselors meet with all eligible homeowners to verify eligibility; brief them on the program; discuss their rights and options; and determine interest. If an owner on the approved buyout list declines participation, the PASS database is updated. Once owners have been contacted and a list of interested homeowners has been developed, an appraisal PO is developed and submitted to the HCFCD Director for review and approval. Only homes on the list of homeowners interested in participating will be appraised.

Upon approval of the appraisal PO by the HCFCD Director, the PM issues a PO to the Right of Way (ROW) Division. Once ROW receives the PO, appraisers are sent assignments to appraise certain homes. In this assignment, the appraiser is given 30 days to complete the appraisal. At the same time, the owner is sent a letter informing them of which appraiser was assigned – including contact information for the appraiser. The owner is encouraged to be present during the appraiser's inspection.

Once the appraisal assignment is complete, the appraisal is provided to ROW, who conducts an in-house appraisal review. After the appraisal review is complete, home values and a copy of the appraisal are provided to the PM. The appraised value is entered into the PASS database. The PM combines the appraised values with the current project cost data, provided earlier by the buyout team members. The PM uses these data to determine if the budget is within the limits of the grant/internal buyout proposal. If this budget exceeds the available funds, the scope of the project is revised to stay within budget. If estimated project cost is within budget, or after revision is within budget, the PM develops the final SSB and Project Initiation Form (PIF), and submits these to the HCFCD Director for review and approval.

Once the Director approves the SSB and PIF, the PM prepares POs for ROW Agent, Relocation Agent, Relocation Housing Payment, Home Acquisition, Closing, and Demolition. These POs are submitted to the HCFCD Director for review and approval. Once approved, all but the demolition PO, which is sent to Construction, are sent to ROW. PO budget managers within PASS, ROW and Construction begin work as directed by the PM and in accordance with the PO. The PO budget managers provide monthly status reports to the PM and a monthly status meeting is held to review the tasks on SSB.

If the PO is within SSB, the task continues until the project task is complete. If the PO is not within budget, the PM prepares a SSB revision request and submits to the HCFCD Director for review and approval. If the HCFCD Director approves the SSB revision, the task continues until the project task is complete. If the HCFCD Director does not approve the SSB revision, the PM revises the SSB as required. Once all tasks in the project are complete, the PM prepares a Project Completion report and submits it to the proper agency.

4.2 Determining and Meeting Staff Needs

4.2.1 Staff

The staff required to support a given buyout project is dependent on the size of the project. An endeavor such as Tropical Storm Allison in 2001 clearly would require augmentation to existing

PASS personnel, especially in the early phases of project implementation. The day-to-day staffing level and skill requirements for the PASS team are described in detail in section 2.1.2 of this manual. Any required augmentation of the core staff would be done on an as- needed basis and would require personnel with similar skills as the core team.

4.2.2 Contracting for Assistance

HCFCD uses a combination of in-house and contract employees to implement property acquisition. A list of services for which HCFCD often contracts is as follows. Specific functions of these individuals is spelled out in other sections of this manual.

- Buyout counselor
- Appraiser
- ROW agent (as needed to augment in-house staff)
- Relocation agent (as needed to augment in-house staff)
- Title Company
- Demolition Contractor

4.3 Property Owner Rights and Responsibilities

Property owners have certain rights that are protected through the acquisition process. They also have certain responsibilities to fulfill. The property owner has the right to:

- Understand the process and be able to access someone who is able and has the time to explain it to them (this role is fulfilled by the buyout counselor);
- Appeal the valuation of the property by securing a second market value appraisal; and
- Decline an offer.

The property owner has the responsibility to:

- Provide complete and accurate information about the property;
- Provide complete and accurate information about disaster benefits and insurance claim payments received; and
- Respond to requests within a reasonable time.

4.3.1 Information Required of Property Owners

4.3.1.1 Statement of Voluntary Participation.

HCFCD receives statements of voluntary participation from the property owners in the project area. This statement, as well as additional pertinent information, is included in HCFCD's Home Acquisition Data Collection Form (See Exhibit 7 for a sample Home Acquisition Data Collection Form).

4.3.1.2 Request for Appraisal Form.

HCFCD receives a Request for Appraisal form, signed by each buyout participant, which states that the owner agrees to allow an appraiser to enter in and upon the property to conduct an appraisal. (See Exhibit 8 for a Sample Request for Appraisal Form).

4.3.1.3 Privacy Release Form.

HCFCD receives a Privacy Release Form, signed by each buyout participant, which authorizes HCFCD to request all applicable insurance and grant information regarding the property. (See Exhibit 9 for a sample Privacy Release Form).

4.3.2 Limits on Assistance to Unlawful Residents

HCFCD Buyout Counselor and the ROW agent that presents offers determine the residence status of property owners. The buyout offer that can be made is affected by the determination. Each owner of property included in the buyout is required to certify that they either are a U.S. citizen or a qualified alien. Owners who certify they are U.S. citizens or qualified aliens are offered pre-flood, appraised fair market value. While proof of status is not required, FEMA may conduct an audit. If the owner applied for federal disaster assistance, a form is on-file, and FEMA may provide verification of status if requested.

4.3.3 Uniform Relocation Assistance and Property Acquisition Act (URA)

The Uniform Relocation Assistance and Property Acquisition Act (URA) mandates just compensation for property and appropriate relocation assistance when acquisition programs are supported by federal funds. URA also has requirements for assistance to tenants who must move due to an acquisition project. A brief summary of both of these situations follows.

Property Owners. URA does not require payment of relocation assistance for owners of owner-occupied homes who voluntarily sell their homes. HCFCD implements a relocation program for all participants in buyout programs. Details of this program are discussed in Exhibit 18 - Relocation Assistance Document.

Displaced Tenants. Certain displaced tenants in rental property are entitled to relocation assistance. The actual amount of assistance will vary, but will not exceed the amount prescribed by law ($5,250). The assistance for tenants can be paid directly by the community and credited as part of the non-federal match, or it can be added to the project cost and cost-shared.

Projects for acquisition using FEMA's mitigation grant funds require voluntary participation by property owners. HCFCD must inform the owner that (a) it will not use its power of eminent domain should negotiations fail, and (b) it will provide the FMV for the property. Therefore, as a rule, owners are not entitled to assistance under the URA mandates. This guidance, and that provided in FEMA documents, is a summary of the requirements of 49 CFR Part 24.

4.4 Owners who Change Their Minds or Refuse an Offer

Buyout projects are voluntary and HCFCD permits owners to change their minds up to the actual closing on the property. If someone decides not to sell, HCFCD informs these owners that HCFCD is still interested, but that the property will be moved to the end of the list of properties eligible under that grant. If there are enough funds, HCFCD may renew its offer at a later date. However, based on participation rates, it is unlikely that there will be enough funding to buy homes at the end of the list, and there is no guarantee that funds will be available after the next flood.

4.5 Staying in Touch with Property Owners

One very important step in the buyout process is staying in touch with property owners, from pre-application through closing. HCFCD is interested in developing a process by which owners of flood prone properties can express interest in participating in future mitigation projects, and keep their contact data current. This process is likely to utilize the HCFCD web site and the Buyout Hotline.

5.0 IMPLEMENTING A FEMA-FUNDED BUYOUT

5.1 Overview of HCFCD's Role during Implementation

The assigned Property Acquisition Services Section Project Manager (PASS PM) is responsible for ensuring that the buyout project is within scope, schedule, and budget. HCFCD has put the project management process into flow chart form. This chart is included as Exhibit 6. This process is overviewed in section 4.1 of this manual, titled Project Management.

5.2 The Subgrantee Agreement

As stated in section 2.3.1, the State of Texas (either DEM or TWDB) is the Grantee and HCFCD is the subgrantee. A mitigation grant is awarded using a Subgrantee Agreement. Some key elements of the Subgrantee Agreement that are specific to HMGP, FMA, and PDM grants are:

- Upon award, HCFCD prepares and publishes a final Public Notice (See Exhibit 10 for a sample public notice).
- The period of the agreement is 24 months for HMGP and FMA grants, and 36 months for PDM grants; extensions may be granted after review.
- Copies of contracts for services are to be submitted to the State prior to reimbursement under the grant.
- For each property acquired, DOB are to be verified and determined based on data provided by FEMA and the State.
- FEMA/State is to be notified immediately if a change in scope is anticipated.
- A Certificate of Completion is to be submitted to certify completion in accordance with the approved scope and Subgrantee Agreement. (See Exhibit 11 for a sample Certificate of Completion).

5.3 Record Keeping

As with any grant program, a significant responsibility is to maintain complete records to document project performance and to provide evidence that funds have been used appropriately. There are three primary components of the record keeping system: 1) grant files, 2) project files and 3) financial records. All records are to be retained for at least three years, and access is to be provided to the State or FEMA for audit purposes.

5.3.1 Grant Files

PASS maintains a general folder on each grant. ROW maintains a separate folder on each property on the approved application (for which the buyout process is initiated). The grant project folder contains the following:

- The application and supporting documentation
- Map identifying each property
- Letters documenting SHPO release. This release is required if any home in an approved buyout is greater than 50-years old.
- Correspondence with the State, FEMA and other agencies
- The Subgrantee Agreement
- Quarterly progress reports
- Reimbursement requests
- Project Completion reports

5.3.2 Project Files

For individual properties (including substitution properties identified on a grant application), a separate case file that contains all the information and correspondence specific to each parcel and owner is maintained by PASS. At a minimum, these folders include:

- Owner letter
- Home Acquisition Data Collection Form (Statement of Voluntary Participation)
- Request for Appraisal Form

- Privacy Release Form
- Fully executed Agreement for Sale
- DOB Certification
- Statement of Determination of Compensation
- Certificate of Inspection and Possession
- Appraisal
- Demolition Certificate
- Closing Documentation
- HUD-1
- General Warranty Deed
- Settlement
- Check Disbursement Ledger

5.3.3 Financial Records

For the project as a whole, the Finance Department maintains the following financial records:

- Separate accounts for each funding source
- Bid and contract documents for contracted services
- Vouchers that detail the services provided by contractors
- Affidavit or tipping receipts for debris disposal
- Quarterly financial reports submitted to the State
- Reconciled project budget
- Close out and audit records

As a grant recipient, HCFCD must comply with the audit requirements of OMB Circular A-133 (revised), issued pursuant to the 1996 amendment of the Single Audit Act of 1984, P.L. 98-502 (supercedes OMB Circular A-128).

5.4 Reporting Requirements

The Subgrantee Agreement that HCFCD executes with the State specifies the reporting requirements and provides standard report forms. The following report is required:

Quarterly Reports

PASS prepares and submits draft quarterly reports to the Harris County Auditor's Office. The Harris County Auditor's Office reviews this report and submits it to the State. The State, in turn, reviews the reports and submits summary reports to FEMA. (See Exhibit 12 for a sample of a quarterly report form). For each active project, the following information is provided:

- Specific activities achieved during this quarter
- Comparison of actual accomplishments to the planned objectives established in the application
- Reasons for slippage if objectives are not being met
- An analysis and explanation of possible cost overruns/underruns, scope changes or extensions
- Problems/delays encountered and reasons why
- Number of structures acquired, demolished, still to be purchased, and still to be demolished
- Completion Certificates

6.0 IMPLEMENTING A DISTRICT-FUNDED BUYOUT

On occasion, HCFCD purchases properties through a voluntary buyout program using its own funds. These are usually referred to as "District-funded buyouts".

6.1 Purposes of a District-Funded Buyout

District-funded voluntary buyouts are generally initiated for a specific or special purpose. Examples include:

- Avoiding checkerboarding due to federal funded buyout eligibility requirements
- Preventing future development on un-purchased lots remaining after a buyout program
- Acquiring land for structural project development
- Acquiring land for expansion of current flood control structure or waterway

Funds for District-funded buyouts are allocated annually in the Capital Improvement Program budget.

6.1.1 Property Eligibility

PASS ensures that properties acquired using District funds are in support of HCFCD's mission to provide flood damage reduction projects that work, with appropriate regard for community and natural values. Therefore, PASS assesses property eligibility on a case-by-case basis.

6.1.2 Budget Procedures

If a District-funded buyout project is identified, an internal buyout proposal is developed and submitted to HCFCD management for review. Once the preliminary SSB is developed, the project is presented to the Harris County Commissioners Court for review and approval. A detailed description of the budget and financial oversight procedures for a project from budget approval through closeout is discussed in detail in Section 4.1 of this manual, titled Project Management.

6.2 Post-Acquisition Limitations

In a District-funded buyout project none of the deed restrictions or land use restrictions that attach to a FEMA-funded buyout apply. HCFCD is free to resell the property for development, use it for construction of flood control projects or fence the property as needed.

7.0 DETAILS OF A BUYOUT PROJECT

7.1 Appraisals

Each property to be acquired must be appraised to determine its Fair Market Value (FMV). Most appraisals are performed on the basis of pre-flood value, which should not present a problem for the appraiser unless the homes were so severely damaged that the remaining debris was removed during disaster cleanup. Any deviations from a standard FMV appraisal should be clearly specified in the instructions to the appraiser.

ROW maintains relationships with appraisers experienced with appraising flood damaged properties. Once ROW receives a PO from the PM, appraisers are sent assignments to appraise certain homes. In this assignment, the appraiser is given 30 days to complete the assignment. At the same time, the owner is sent a letter informing them of which appraiser was assigned – including contact information. The owner is encouraged to be present during the appraiser's inspection.

Once the appraisal assignment is complete and submitted, ROW conducts an in-house appraisal review. After the appraisal review is complete, the appraised values and a copy of the appraisal are provided to the PM. The appraised value is entered into the PASS database. The PM combines the appraised values with the current cost data, provided earlier by the buyout project team members. The PM uses this data to determine if the budget is within the limits of the grant/internal buyout proposal.

7.2 Title Search

The purpose of the title search is to ensure that the owner is really the titleholder and that the title is clear. If owned by more than one person or entity, all must participate in the discussions. If encumbrances such as mortgages or outstanding liens against the property are discovered, they are handled at closing. The title search will also reveal whether there are any easements over the property that may conflict with the intent of the project.

The title company will search the title of the property and provide a title commitment to insure (title insurance). The title commitment must identify:

- The owners of record;
- Title deed;
- Easements, restrictions and out conveyances; and
- All liens, mortgages, and other encumbrances.

Copies of all documents referenced in the title commitment must be attached. The title commitment is reviewed to check that the property owner with whom discussions have been initiated is the owner of record and can convey free and clear title to the property.

7.3 Situations That May Come Up

7.3.1 The Property Has Changed Hands

After a flood, property may change hands for several reasons: an owner may have already had the home on the market, they may decide they can't wait for a buyout, or a speculator has heard a buyout is pending and thinks he can buy low and sell high.

When the word gets out that "HCFCD is buying floodplain houses" some people may try to profit from the program. This is more likely to happen shortly after a flood, because that's when some damaged property owners most likely want to sell quickly and cheaply — they just want out.

Owners who purchased their property after a flood are offered the current FMV, or their actual purchase price, whichever is higher.

7.3.2 One Title Deed for Multiple Lots

If an owner purchased multiple lots at the same time, all of the lots may be shown on a single title deed. The rule is that HCFCD must offer to purchase all property listed on the deed containing the primary buyout property. The only exception to this rule is if the owner has divided the lots onto separate title deeds prior to the acquisition.

Conversely, if an owner holds multiple titles to multiple lots, and all lots are not included in the approved application, HCFCD can only offer to purchase with grant funds the property listed on the deed containing the primary buyout property. There may be situations in which HCFCD desires to acquire these additional lots. If so, they are appraised separately and the lots can be acquired using District funds. These decisions are typically made by the PASS PM on a case-by-case basis.

7.3.3 Multiple Owners of One Parcel

Some properties have multiple owners, especially if a property was transferred to heirs as part of an estate. Buyout projects discussed in this manual are limited to “willing” participants. This means that all owners of a parcel must be willing participants. If all owners of a parcel are willing participants, they all have to sign all the paperwork or they can select one person who has “power of attorney” to act on behalf of the group. If all owners are not willing participants, the property cannot be purchased. The most effective approach when this situation arises is to give all owners of record the appropriate information about the buyout program and let them work it out on their own.

7.3.4 Building is Damaged by Other than Flood

This situation isn’t any different to handle than a building that is damaged by flood. If compensating owners for pre-flood FMV, nothing changes. ROW determines the value by appraisal, deducts disaster assistance and flood insurance payments, accounts for documented repairs during the DOB determination, and then deducts whatever non-flood damage was covered by the homeowner’s policy.

7.3.5 An Additional Flood Occurs

If an additional flood occurs after a voluntary buyout program has been initiated, the way the situation is handled depends on whether the owner has invested in repairs between the two events. If this is the case, repairs that were paid using flood insurance payments or disaster assistance (if documented with receipts) will not be deducted during the DOB determination. If no repairs were made and the building was still covered by flood insurance, then any additional insurance payment will be deducted.

7.4 Working with Owners and Tenants

7.4.1 One-on-One Counseling of Property Owners

The buyout counselors meet with all eligible homeowners individually to verify eligibility; brief them on the program; discuss their rights and options; and determine interest in participating in a buyout program. For each parcel that is approved for acquisition, the buyout counselors perform the following services:

- Serve as buyout counselor representing HCFCD during the entire buyout process
- Meet with each parcel owner to describe the acquisition process
  - Timeframe for acquisition
  - Appraisal procedures and process
  - Grant requirements re Duplication of Benefits or Increased Cost of Compliance
  - Offer process
  - Closing process
  - Demolition process

For each buyout program, a homeowner handbook is developed and provided to each homeowner during the one-on-one counseling session. The homeowner handbook is tailored to each specific buyout program and describes all elements of the buyout process and the specific eligibility criteria of the program being implemented. (See Exhibit 13 for a sample homeowner handbook).

7.4.2 Negotiating the Purchase

7.4.2.1 Prepare Buyout Offers

After the PM issues a PO to ROW for Agent services, a ROW Agent is assigned. (Agents can be in-house or contract agents.) The agent uses the data from the appraisal, along with any DOB information received in advance and prepares several documents required during the presentation of the buyout offer. These documents are detailed in the following sections.

7.4.2.2 Prepare the Determination of Compensation

The Determination of Compensation summarizes how ROW arrived at the price they intend to offer the property owner and summarizes the DOB adjustments. A copy of the determination is to be provided to the property owner along with an explanation. (See Exhibit 14 for a sample Owner Letter used to overview the buyout process and to explain this determination.) This form is called the Statement of Determination of Compensation and is provided to the owner at the same time as the Agreement For Sale (See Exhibit 15 for a sample “Statement of Determination of Compensation”). The Statement is to be signed by the owner, to certify that it represents all benefits received.

The Statement of Determination of Compensation includes:

- Identity of the owner of record;
- Description of property and associated improvements;
- The method used to determine the purchase price;
- The amount of compensation and the basis for that amount, including the appraised Fair Market Value and the details of the Duplication of Benefits determination;
- The appraisal report; and
- A specific period of time (14 days), during which the property owner is to ask for clarifications, decide on the offer, and advise the ROW agent of that decision.

7.4.2.3 Prepare the Agreement For Sale

The Agreement for Sale identifies the owner as “Seller”, includes a legal description of the property, describes the amount to be paid, including all deductions and credits, and reminds the owner that the process is strictly voluntary. (See Exhibit 16 for a sample of the “Agreement for Sale”).

7.4.2.4 Provide the Offer to the Property Owner

After all appropriate documents have been prepared, the ROW Agent sets up a meeting with the homeowner to present the offer, complete/verify the DOB, and to collect any Increased Cost of Compliance (ICC) data, if applicable. The ICC process is discussed in more detail in section 9.3, titled “Increased Cost of Compliance.”

The ROW Agent reviews the appraisal with the owner (providing them with a copy), and reviews the DOB data provided by the State/FEMA. In an attempt to ensure the owner accurately reports the federal funds received (insurance and grants) and repairs made (supported by receipts) the owner is required to sign the Duplication of Benefits Certification. This form requires the owner to sign, certifying that SBA Loans, Flood Insurance for Structure Repairs, FEMA Individual and Family Grant, Emergency Minimal Repair (EMR) Grant, and FEMA Disaster Housing benefits defined on this form have been accurately reported and that the amounts not used for the purposes identified above have been fully disclosed. (See Exhibit 17 for a sample of the Duplication of Benefits Certification).

Once the offer is finalized, the owner is given 14 days to accept, reject, or contest the offer. Further, the Agreement for Sale specifies that the transaction must be completed within 120 days or HCFCD can withdraw the offer (the offer becomes null and void).

ROW schedules a relocation meeting as soon as possible after the offer has been made.

7.4.2.5 Owner Accepts Offer

To accept the offer, the property owner executes the Agreement for Sale. If not signed during the one-on-one meeting, the owner is given 14 days to return a notice of intent to appeal or to make a decision regarding the sale. If the owner accepts, they are asked to notify the agent as soon as possible. The owner can either take the signed documents back to the ROW offices or mail them. In either case, the Agreement for Sale must be signed and witnessed. By signing the Agreement, the owner agrees to convey free and clear title and further agrees not to remove any fixtures or components of the property without prior approval.

7.4.2.6 Appeals of Property Value by Property Owners

The valuation of the property to be acquired usually is determined by a pre-flood FMV appraisal. There is an appeals process if owners disagree with this value. At their own expense, they may obtain a second appraisal. The appraiser selected by the owner must be acceptable to ROW, must be State licensed, and must make the determination on the same basis as ROW's appraisal. The owner's appraisal will be reviewed against the standards used by ROW.

If the owner's appraisal is higher, ROW completes an in-house review to compare the two appraisals. After review, ROW completes a written assessment of the two appraisals, and if warranted, increases the offer to match the amount of the higher appraisal. This written assessment is kept in the project file to support the determination of compensation. If the owner's appraisal is lower, the higher value of the original appraisal is used.

If the owner's appraisal is approved, revised Determination of Compensation and Agreement for Sale documents are prepared and provided to the owner. If ROW rejects the owner's estimate of value, a written explanation of the rejection is provided to the owner. The owner may then choose to sign the original Agreement for Sale, accepting the amount originally offered.

7.5 Duplication of Benefits Determination

7.5.1 Overview

In order to avoid using tax dollars to provide the same benefits more than once, federal funding programs require a Duplication of Benefits (DOB) determination to ensure that:

- Amounts received from federal disaster assistance that are specifically intended for repair will be deducted from the buyout offer, unless the owner has receipts to document that the money was used for repairs;

- Amounts received from NFIP flood insurance and homeowner's insurance are handled the same way, provided the funds were paid to repair flood-related damage; and
- Amounts received for temporary living are not deducted from the buyout offer.

Experience indicates that homeowners have more confusion associated with DOB than any other aspect of a post-disaster buyout mitigation project. Buyout counseling meetings and offer presentation meetings are used to ensure that owners understand the DOB process and requirements. It is important to notify disaster victims as soon as possible after a flood event that a buyout program is being developed, and encourage them to perform minimal repairs, and keep their paperwork and receipts. During the post-disaster damage inspection process, the local permitting agency, either the Harris County Permit Department or municipalities, provides victims with a packet of information, including information on DOB.

If the owner received disaster assistance or insurance payments to repair the damaged building, and if the money was not spent for that purpose, then DOB requires that it be deducted from the FMV.

Most acquisition projects use pre-flood Fair Market Value (FMV) to determine the purchase offers. From this pre-flood FMV, HCFCD subtracts the total amount of other disaster-related repair assistance, including flood insurance. This avoids duplicating "benefits." The exception is if the owner has receipts to show that the money was used for the intended purposes; that is, if it was actually used for home repairs. In this case, the benefits received are not subtracted, as long as receipts confirm the actual cost of repairs.

If post-flood market value is used to develop buyout offers, then a DOB assessment is not required and the owner keeps all disaster assistance and insurance payments. A post-flood market valuation takes into consideration the damage that was repaired as well as un-repaired damage.

7.5.2 Steps in the DOB Process

The DOB process is described below, in the following steps:

1. PASS PM requests DOB data from the DEM. This request includes a list of properties (owner name and address) on the approved application.
2. The DEM and FEMA research their records and return an Official DOB Settlement Sheet showing amounts of assistance (including flood insurance claim payments) that were provided as a result of the damaging flood that prompted the project.
3. The DEM searches records for Individual and Family Grants (IFG) that may have been provided to the owners on the list;
4. FEMA researches its Individual Assistance program records to identify whether owners received EMR Grants;
5. FEMA searches the NFIP claim and payment records to determine whether insured properties received claim payments.
6. During the offer presentation process, the ROW agent verifies with each property owner the assistance received and determines if private insurance payments were made to cover flood-related damage.
7. If federal assistance was provided for the purpose of making repairs, then the ROW agent prepares a Duplication of Benefits Certification. This form requires the owner to sign, certifying that the SBA Loans, Flood Insurance for Structure Repairs, FEMA IFG, EMR Grant and FEMA Disaster Housing benefits defined on this form have been accurately reported and that the amounts not used for the purposes identified above have been fully disclosed. (See Exhibit 17 for a sample of the Duplication of Benefits Certification).

7.5.3 Are SBA Loans Part of the DOB Determination?

SBA loans must be paid off as part of an acquisition, but they are handled differently than disaster grants and insurance payments. The ways SBA loans are handled depends on the type of loan:

- If the owner has not yet spent the money from an SBA loan given to make repairs, then it is used pay off the loan.

- If the loan was used, then the SBA loan will be treated just like any other lien against the home, and the title company will handle it. It will be paid off from the proceeds of the sale, and at the closing both the mortgage loan and the SBA loan will be paid. The owner will receive the balance.
- In some rare cases, especially if the money was spent to repair the home (and if the owner has receipts) an SBA loan may be "rolled" over to the new home if the proceeds from the sale aren't enough to pay it off. This could happen, for example, if what the owner's current mortgage plus the SBA loan add up to more than the FMV (buyout price) of the home. This is a very unusual situation.
- Some SBA loans are specifically to help buy a new home, and these loans usually have a condition that the owner sell the flood damaged home within two years and return the proceeds of the sale and any unused funds.

If the owner received an SBA disaster loan to purchase a new home, then SBA will take the flood-damaged home as additional collateral and place a lien on it, which will show up during the title search. When HCFCD wants to buy the property as part of a mitigation project, SBA gives a partial release that gives clear title to the property. It is the title company's responsibility to handle the details. Payoffs will be made in this order: 1) taxes owed, 2) mortgage(s), then 3) SBA's lien.

7.5.4 Determination of DOB

As discussed above, ROW receives DOB information for each property owner. It identifies, from the data provided by the DEM and FEMA, deductions and credits that are to be applied to the buyout offer. The data collected from the property owner is checked to verify the data provided by the DEM and FEMA and to determine if a private insurance payment was received.

Because this step likely results in a reduction in the dollars the owner will receive, a copy of the determination is provided to the property owner along with an explanation. This is called the Statement of Determination of Compensation (see Exhibit 15) and is attached to the Agreement for Sale.

7.5.5 DOB Example

The following example illustrates how benefits are factored into the Determination of Compensation, depending on the benefits received and what the property owner did with those benefits. Assume that the owner owns a home that was flooded and determined to be eligible for buyout. The pre-flood FMV is determined to be $100,000.

- The home was declared to be substantially damaged.
- The owner had a federal flood insurance policy that paid $60,000 for structural damage.
- The flood insurance policy paid $20,000 for personal contents damage (this is not part of the DOB computation because the payment was not for damage to the building).
- Because of the substantial damage, ICC coverage under the flood insurance policy may pay up to $30,000, depending on the mitigation measure applied. The availability of the ICC claim payment does not alter the purchase price – however, an Assignment of Coverage D form is obtained from the owner during the offer presentation process for use in filing a claim to recover the cost of demolition. (See section 9.3, titled "Increased Cost of Compliance" for more information on this subject). The owner does not "keep" any of this flood insurance benefit.
- Because of the pending buyout offer, the owner cleaned up the house and completed some minor repairs - enough to allow them to occupy the home. They have receipts totaling $10,000 for clean up/repairs), so they have not spent the remaining $50,000 of the payment.

Scenario – Determination of Compensation:

a. A deduction for an insurance payment of	$60,000
b. A deduction for an IFG Grant payment of	n/a
c. A deduction for an EMR Grant payment of	n/a
d. A credit for documented repairs or rent*	($10,000)
Total Adjustment:	$50,0000
Fair Market Value:	$100,000
Total Adjustment:	($50,000)
Compensation Due at Closing**:	$50,000

* Rent credit given is only that portion which has been paid over and above Disaster housing payments received from FEMA

** Less seller's obligations such as mortgage, liens, taxes, etc.

Note: HCFCD's policy is to only deduct temporary housing payments if there is a temporary housing (rent) credit being applied that is greater than the amount of temporary housing assistance received. In the above example, if IFG or EMR grants were received, the deduction and credit works just as an insurance payment.

7.5.6 Appeals of DOB Determination by Property Owners

During the offer presentation process, the owner is asked to verify the DOB data and to provide any receipts for repairs to the home, since the event. If the DOB information from the owner differs from the DOB information provided by the DEM / FEMA, the owner must provide proofs of loss and/or grant letters showing what they believe they actually received. In the case of DOB discrepancies, the ROW Agent refers the matter to the PM who will resolve the issue with the DEM / FEMA. Once the issue is resolved, the ROW Agent is advised to finalize the offer, and if there is a change to the DOB, the DOB Certification Form, Determination of Compensation, and the Agreement for Sale are revised.

7.6 Housing and Relocation Assistance

When providing housing and relocation assistance, ROW relies on a guiding document titled "Relocation Assistance". This document is used by ROW when it is acting on behalf of HCFCD for property acquisitions, and is attached as Exhibit 18.

7.7 Completing the Acquisition

7.7.1 Internal Request for Funds

Assuming the owner accepts the offer, the following steps are followed:

1. ROW Director accepts for HCFCD
2. Title is opened with a title company
3. ROW Agent prepares Request For Payment with all acquisition costs included
4. For use in preparing the Request For Payment, the title company provides final closing cost data to Agent
5. The Request For Payment is provided to the PM who confirms the data on the Request For Payment, and verifies that costs are within budget

6. PASS inputs all relevant data into the PASS database – including DOB data
7. Request For Payment is sent to CIP Budget Officer for processing
8. Upon receipt of Request For Payment all pertinent financial codes are added and the Request For Payment amount is added to financial database by the CIP Budget Officer.
9. Request For Payment is then sent to the Finance Department who verifies all data are accurate
10. Finance Department sends the Request For Payment to the Harris County Auditor's office who places the request on the Harris County Commissioners Court agenda for payment
11. Once approved for payment, the list of approved checks is sent to the Harris County Treasurer's office
12. The Treasurer's office puts an item on Commissioners Court agenda requesting approval to write checks
13. Once checks are written, the Administrative Services Division a runner to Treasury to pick up checks
14. Checks are distributed to ROW by the Administrative Services Division
15. Closings are scheduled

7.7.2 Title Search

Once an Agreement for Sale has been fully ratified (signed by the owner and the ROW Director) it is provided to the title company so they can begin the title search process and begin to prepare for closing. The purpose of the title search is to ensure that the owner is really the titleholder and that the title is clear. If owned by more than one person or entity, all must sign all required documents. If encumbrances such as mortgages or outstanding liens against the property are discovered, they will be handled at closing.

The title company searches the title of the property and provides a title commitment to insure (title insurance). The title commitment identifies: the owners of record; title deed; easements, restrictions ; and all liens, mortgages, and other encumbrances.

Copies of all documents referenced in the title commitment are attached. The title commitment is reviewed by ROW to ensure that the property owner with whom ROW has initiated discussions is the owner of record and can convey free and clear title to the property.

7.7.3 Prepare the Deed

Once the title commitment is prepared by the title company it is sent to the ROW Agent who prepares a General Warranty Deed to be signed by the owner and HCFCD. This deed identifies the property owner as Grantor, includes the legal description of the property to be conveyed, and specifies the actual purchase price of the property. The deed must include the restrictions on future use of the land, as required by FEMA. (See Section 3.4.3 for information about deed restrictions and Exhibit 19 for a sample of a General Warranty Deed).

7.7.4 Request Funds from the State

In the case of FEMA grant buyouts, once the owner has accepted the offer, and all relevant acquisition costs have been determined, including closing and title related fees, a funding request is prepared by the PASS for submission to the State. This funding request identifies the property(s) to be acquired and details all associated reimbursable acquisition costs. As this is the first funding request sent to the State on a specific property, it also includes the appraisal fee, buyout counselor fee and ROW Agent fee.

See section 9.2, titled “Processing Funding Reimbursement Requests” for details on the process of submitting funding requests.

7.7.5 Schedule the Closing

When funds are received from the State, they are deposited into the appropriate account and the title company is notified they can schedule closing. The owner is notified the closing can be scheduled. If the owner is not yet ready to move, the closing is delayed, within reason. Please note that the Agreement for Sale includes a clause that closing must take place within 120 days of ratification of the contract or the contract can be deemed null and void.

7.7.6 Moving from Agreement to Closing

Owners are advised that the home must be vacated prior to closing. The HCFCD Construction Section performs a pre-closing inspection and informs ROW that all requirements have been met. At the time of the pre-closing inspection, the Construction Section completes a Certificate of Inspection and Possession, which becomes part of the property case file. (See Exhibit 20 for a sample Certificate of Inspection and Possession).

7.7.7 Closing

The closing will be conducted by the title company, using the standard HUD-1 Closing Statement form. The owner(s) executes the General Warranty Deed, which conveys fee simple title to HCFCD. ROW signs the Warranty Deed on behalf of HCFCD to formally accept the land use restrictions.

The seller is responsible for any costs of clearing title, and obtaining and recording releases from liens or mortgages. HCFCD pays all other closing costs, except current and/or delinquent taxes, which must be paid by the seller.

The title company disburses the proceeds of the sale as follows:

1) All mortgages, liens, judgments, taxes, assessments and other encumbrances are paid from the seller's proceeds, and
2) The balance of the proceeds are paid to the seller.

The title company prepares and provides a complete title package to ROW, including:

1) Final title insurance policy that insures HCFCD as having free and clear title to the property;
2) Recorded Warranty Deed;
3) The signed closing statement; and
4) Copies of disbursement checks.

ROW provides a copy of this package to PASS.

8.0 CLEARING AND MANAGING ACQUIRED PROPERTIES

8.1 Demolition

By signing the Subgrantee Agreement with the State for a buyout project, HCFCD agreed that acquired buildings will be demolished within 90 days of closing. In order to facilitate this requirement, the HCFCD Construction Section has contracts in place with demolition contractors. Once the property has been purchased, ROW prepares a vacate notice and sends it to the PASS. PASS prepares a memo to the Construction Section asking for them to schedule demolition. With this memo, PASS sends a sketch of the property and a photo. The Construction Section spray paints a “no trespassing” sign on the property.

Once properties have been scheduled for demolition, the Construction Section meets with the Demolition Contractor at the site and they measure the structure to estimate the cost of demolition for each home, within the rates of the overall contract with the demolition contractor.

8.1.1 Shutting Off, Removing/Capping Utilities

An important part of responsible demolition is the proper disconnection of underground utilities, which is performed by State-licensed contractors, as required by State law. Each utility company, whether public or private, is likely to have its own preferred approach to permanent removal or capping. Fees to cover the termination, if any, are included as part of the contract with the demolition company.

If there is a well on the property, the well must be plugged according to Texas State Law. All work must be documented and a copy sent to the state’s regional project office. The Construction Section is responsible for ensuring this requirement is met.

8.1.2 Curb and Sidewalk

Removal, repair or replacement of curbs and sidewalks is not part of the primary demolition contract. The HCFCD Construction Section has a separate agreement with a contractor(s) to perform this required work. Once demolition of the structures is complete, the

Construction Section schedules the replacement of curbs and sidewalks. Note: the cost associated with the repair or replacement of curbs and sidewalks is a reimbursable cost under the demolition line item of the project budget.

8.1.3 Covering Demolition with Public Assistance Funds

When the President declares a major disaster, different forms of assistance become available. Public Assistance (Section 406) helps communities deal with debris removal, emergency works, and repair of damaged public buildings and utilities.

When privately-owned buildings are destroyed or have been determined to be substantially damaged they may be deemed health and safety hazards and the remains are then considered to be debris. In most cases, HCFCD can develop a Public Assistance Project Worksheet to cover the work required to demolish and remove the debris. This approach does not save money for HCFCD, because Section 406 also requires a non-federal match (usually 75-25), but it does stretch FEMA's mitigation grant funds.

Like ICC, the Section 406 Project Worksheet covers only the demolition and debris removal. Allowable Public Assistance work does not include the costs to deal with utilities, removal of slabs, sidewalks, and driveways, filling in basements, final grading and stabilization of the lots.

To make effective use of Section 406, all of the following things conditions must be met:

- The flood must be a declared disaster;
- The buildings must be substantially damaged;
- A determination of health and safety hazards must be made;
- The building was not insured through the NFIP; and
- The mitigation project must be defined quickly.

8.2 Inspections and Maintenance

8.2.1 Inspections

The HCFCD Construction Section Project Manager (Construction PM) conducts site inspections throughout the demolition process. As each demolition is completed a Demolition Certificate is prepared and signed by the Construction PM. (See Exhibit 21 for a sample Demolition Certificate]. This Demolition Certificate is needed for both the reimbursement of demolition costs under the grant and for filing any ICC claims. In addition to the property address, the Demolition Certificate includes the property's latitude and longitude.

The final inspection of all lots is conducted before submitting the request for final reimbursement.

8.2.2 Mowing Vacant Parcels

Once properties have been acquired and turned back into open space, HCFCD is required to ensure the properties are properly maintained – consistent with the use of the property. The current practice is to mow residential lots monthly during the growing season and to allow other lands to return to a natural state.

8.3 Post Acquisition Requirements for Acquired Land

8.3.1 Lands Acquired Using FEMA Funding

Land acquired using FEMA's mitigation funds is subject to restrictions that are set forth in both statute and regulation. The primary objective of floodplain buyout projects is to permanently reduce flood damage by returning floodplain land to a more natural condition to fulfill its natural and beneficial functions.

The laws and regulations for FEMA's HMGP, FMA, and PDM programs have specific language about acquired land. Sec. 404(b)(2)(B)(i) states: "any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for use that is compatible with open space, recreational, or wetlands management practices."

8.3.1.1 Allowable Uses of Vacated Land

Congress clearly anticipated that vacated land would, in large measure, be allowed to serve its natural and beneficial floodplain functions. The most important floodplain function is to store and convey floodwaters downstream. This function is restored when the homes are removed and the land is graded and stabilized.

For a complete list of allowable open space use, please refer FEMA's HMGP Desk Reference, which can be accessed on-line at http://www.fema.gov/doc/fima/hmgp/unit11.doc.

8.3.1.2 Uses Not Allowed on Vacated Lands

Sometimes flood-prone homes are acquired and removed from land that will be used in a phase of another project, such as a structural hazard control project (stormwater basin, levee or floodwall). Again, FEMA is clear that the use of the land must be specified in the application. If the application indicates that it will be preserved for open space, FEMA may not approve a change in use, for example to allow for stormwater detention. Because projects should be planned prior to application, FEMA is understandably cautious about modifying something as important as re-use of acquired land.

For a complete list of unallowable open space uses, please refer FEMA's HMGP Desk Reference, which can be accessed on-line at http://www.fema.gov/doc/fima/hmgp/unit11.doc.

8.3.2 Deed Restrictions and Monitoring

In both the grant application and the Subgrantee Agreement, HCFCD commits to certain deed restrictions to be imposed on any property acquired with federal funds. The following restrictions are included in the General Warranty Deed:

- The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- No new structure will be erected on the property other than a facility that is open on all sides and functionally related to the open space use or a restroom for public use;
- After the date of acquisition, no application for disaster assistance for any purpose will be submitted to any Federal entity, and no disaster assistance will be provided for damage on the property.

FEMA-funded acquisition projects represent a significant taxpayer investment. FEMA and the State have the right to monitor and enforce deed restrictions that are agreed upon as part of the project. Properties may be inspected periodically to determine that inappropriate uses are not taking place.

8.3.3 Landscape Agreements

To reduce the long-term maintenance costs of acquired properties, HCFCD may allow others the right to use the land, with restrictions, in return for maintaining those properties. HCFCD has developed a landscape agreement to facilitate this arrangement, that is entered into between HCFCD and the interested party (see Exhibit 22 for a sample of a Landscape Agreement).

9.0 PROJECT CLOSEOUT AND FILE INSPECTION

9.1 Overview

Upon project completion, after the last house is acquired and demolished, HCFCD notifies the State by submitting a final quarterly report, and a Project Completion Certificate. It should be noted that quarterly reports are required until the State officially closes out the project, even if there is no project activity. Once all appropriate documentation is received by the State, they will schedule a final field inspection. It is following this field inspection that the State informs HCFCD that the project is officially closed.

9.2 Processing Funding Reimbursement Requests

All funding requests are prepared by PASS and forwarded to the OPS Budget Officer for review and concurrence. The Budget Officer sends the funding request to the Harris County Auditor's office, who prepares a transmittal letter, opens an account receivable for each budget line item, and forwards the funding request to the State.

The State reviews the funding request against the approved buyout application list, and approves it for payment. Once the funding request has been verified and approved for processing, funds are typically transferred to Harris County within 21 days.

Note: if questions or discrepancies on the funding requests are found by the State, the State contacts PASS for clarification and/or resolution.

9.3 Increased Cost of Compliance

During the offer presentation meeting, the ROW agent explains the ICC process and obtains a signed Assignment of Coverage D form from the policyholder of homes that have been determined substantially damaged. (See Exhibit 23 for a sample of the Assignment of Coverage D form). Once an owner has accepted HCFCD's offer, the signed Assignment of Coverage D and the Substantial Damage Determination Letter are filed by the PASS PM. These documents are submitted directly to the FEMA Bureau and Statistical Agent. The Bureau and Statistical Agent then has administrators confirm current coverage at time of flood and look at the flood zone the property was listed in at the time the original policy was written. If the original policy shows something other than the property located in a Special Flood Hazard Area (SFHA), HCFCD must provide verification of the current zone determination. This verification comes from the local floodplain administrator and includes the relevant map revision and date. Once the above information is verified, the Bureau and Statistical Agent sends the paperwork to the Write-Your-Own companies who then forward it to a local adjuster.

Once the demolition is complete and HCFCD has paid receipts, the appropriate documentation is filed with the adjuster. Once the adjuster reviews the documentation, they prepare and return a proof of loss. This proof of loss is signed by the PASS PM and notarized. The signed and notarized proof of loss is then returned to the adjuster who will send it to the Write-Your-Own company for review and payment.

Note that:

- ICC reimbursement typically includes only the demolition of the primary structure (not detached garages - unless they had a separate policy), no driveways/sidewalks, no outbuildings, no environmental or asbestos survey, and no trash removal). The HCFCD Construction Section requires the demolition contractor to break out costs in sufficient detail to satisfy ICC reimbursement requirements.
- HMGP will reimburse 75% of the cost of demolition as part of the total project cost even in those cases in which part of the costs were reimbursed to HCFCD through the ICC process.
- There is a two-year deadline (from the date of the event) by which HCFCD must file to complete the ICC claim process. In unusual circumstances, HCFCD has requested and been granted an extension to this two-year deadline.

9.4 Project Closeout

As part of the final request or reimbursement, PASS prepares and submits a Project Completion Certification. When the State receives this certification it contacts HCFCD to schedule the field inspection for the closeout of the project. During the final field inspection, the State will typically check all acquired lots to make sure that all improvements are removed and the lots are stabilized.

During the final closeout office visit, the State may check project files and individual property case files for the following documentation:

- Copies of procurements and contracts;
- Copies of public notices and advertisements;
- Account balance sheets, reimbursement documentation, front/back copies of all checks, and closing statement;
- Agreement for Sales, appraisals, Determination of Compensation (including DOB);
- Property deeds, with restrictions;
- Maintenance agreements;
- Demolition permits, if required;
- Demolition Certificates;
- Photographs of cleared sites; and
- Project Completion Certificate.

The next step in the closeout process is the final financial accounting. As part of the final reimbursement request, HCFCD summarizes any overrun or under-runs. Before the State can approve the final payment, HCFCD must respond to all inquiries and requests for follow-up information or action.

9.5 Administrative Costs

HCFCD is a subgrantee to the State of Texas and will be reimbursed for certain documented administrative costs that are "all necessary costs of requesting, obtaining, and administering federal financial assistance." FEMA and the State require subgrantees to keep detailed records of expenditures for use in determining the actual amount of future reimbursement. The amount of potential reimbursement is determined by a sliding scale that is keyed to the total costs of the project that are eligible for cost-share; cost items that are not allowable costs are not included. Administrative costs include those associated with:

- o Preparation of the application;
- o Record keeping and preparation of quarterly reports;
- o Financial management, such as preparing reimbursement requests, and audits; and
- o Routine field inspections conducted by staff.

The notice of grant approval and obligation from FEMA specifies the federal share and the non-federal share. The allowable administrative costs are computed based on the total net eligible costs, which are the FEMA share plus the non-federal, minimum required match. **Administrative costs are not included in project budgets and are over and above the total grant amount.**

Potential Subgrantee administrative costs are determined by adding the following amounts:

3% of first $100,000 of the total project cost
+ 2% of next $900,000 of the total project cost
+ 1% of next $4,000,000 of the total project cost
+ 0.5% of assistance over $5,000,000 of the total project cost.

9.6 Financial Records

For the project as a whole, the Finance Department maintains the following:

- o Separate accounts for each funding source;
- o Bid and contract documents for contracted services;
- o Work reports and time sheets for in-kind services;
- o Time sheets and valuation computations for donated services;
- o Vouchers that detail the services provided by contractors;
- o Affidavit or tipping receipts for debris disposal;

- Quarterly financial reports;
- Reconciled “as built” project budget; and
- Close out and audit records.

Grantees must comply with the audit requirements of OMB Circular A-133 (revised), issued pursuant to the 1996 amendment of Single Audit Act of 1984, P.L. 98-502 (supercedes OMB Circular A-128). An overview is on the Internet at **www.fema.gov/ofm/grants.htm**.