



# FEMA POLICY: Hazard Mitigation Assistance Acquisition Projects: Hydraulic Fracturing and Horizontal Directional Drilling FEMA Policy #302-094-03

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## BACKGROUND

This policy applies to all Hazard Mitigation Assistance (HMA) programs. HMA is comprised of the Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM) program, and the Flood Mitigation Assistance (FMA) program. This policy is intended for federal, state, local, tribe, and territory officials involved in the administration of HMA programs.

This policy supersedes FEMA Policy *Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands* (FP 302-405-146-1). FP 302-405-146-1 was incorporated into the HMA Guidance dated February 27, 2015 and then sunset. Thus, this policy also supersedes the associated sections of the HMA Guidance that incorporated FP 302-405-146-1.

## PURPOSE

The purpose of this policy is to provide HMA program guidance on the compatibility of subsurface hydraulic fracturing and horizontal directional drilling (hydraulic fracturing/HDD) uses occurring on or under properties acquired for open space with HMA funds.

FEMA property acquisitions under the HMA programs permanently remove structures from risk of damage and seek to conserve natural floodplain functions. Properties eligible for acquisition must be able to demonstrate clear title, or that any easements or other encumbrances to the property are compatible with open space that conserves the natural and beneficial floodplain functions. Post-acquisition land uses and structures must be approved by FEMA.

## PRINCIPLES

- A. Hydraulic fracturing/HDD activities occurring in subsurface layers to extract natural gas or oil are uses that are generally compatible with open space.
- B. Surface activities and related appurtenances, equipment, and/or wastewater disposal associated with hydraulic fracturing/HDD are not uses compatible with open space and are not allowed on the acquired parcel.

## REQUIREMENTS

Every three years, the HMA funding recipient and subrecipient must submit a report to the FEMA Regional Administrator. The report must certify that the acquired property was inspected within the preceding month and that the property continues to be maintained consistent with the provisions of open space requirements, the deed restrictions, and the grant award. (44 C.F.R § 80.19(d) Land use and oversight, Monitoring and reporting).



## A. Compatible Use

**Outcome:** Provide guidance on the compatibility of surface and subsurface activities associated with hydraulic fracturing and horizontal directional drilling with FEMA's open space requirements under HMA property acquisitions.

1. Property acquisitions under the HMA programs permanently remove structures from risk of damage and seek to conserve natural floodplain functions in perpetuity.
  - a. Properties acquired under HMA are subject in perpetuity to strict limitations on development for the purpose of maintaining open space for the conservation of natural floodplain functions. The FEMA regulation at 44 C.F.R. §80.19(a) provides examples of activities that are generally compatible and incompatible with open space for the conservation of natural floodplain functions.
  - b. Properties must be acquired under the HMA programs with clear title (44 C.F.R. §80.17(b)).
  - c. Any easements or other encumbrances to the property that are incompatible with open space requirements must be extinguished before acquisition (44 C.F.R. §80.17(b)).
  - d. After acquisition, FEMA must approve any land use changes prior to implementation to ensure the proposed use is compatible with open space requirements. This includes FEMA approval for changes to leases or encumbrances prior to the subrecipient leasing the property to a private individual or entity.
  - e. FEMA, the recipient, and the subrecipient are required to enforce compliance with open space restrictions (44 C.F.R. §80.19(e)).
2. Hydraulic fracturing/HDD is a practice of producing energy by accessing fossil fuel resources buried in geologic strata. Wells may be drilled vertically hundreds to thousands of feet below the ground surface and may include horizontal or directional drilling sections. A hydraulic fracturing/HDD operation includes actions that occur on the ground surface and actions that are conducted underground in a subsurface geologic formation.
  - a. The subsurface actions associated with hydraulic fracturing/HDD include but are not limited to horizontal and/or directional drilling and fracturing the rock formation. FEMA has considered the practice of hydraulic fracturing/HDD and determined based on the available information the subsurface actions associated with hydraulic fracturing/HDD generally do not present an obstruction in the floodplain, generally do not increase flood risk, and generally do not obstruct the natural and beneficial floodplain functions. Thus, the subsurface actions associated with hydraulic fracturing are uses that are compatible with open space.
    - i. New property acquisitions for properties encumbered with leases or other instruments allowing for subsurface hydraulic fracturing/HDD activities may be eligible for HMA funding.



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- ii. FEMA may approve requests for post-acquisition use that will encumber previously acquired properties with leases or other instruments allowing for subsurface hydraulic fracturing/HDD activities.
  
- b. The surface activities associated with fracking include, but are not limited to, the well bore mouth, well head, well pad, drilling site, storage facility, transport equipment, and wastewater disposal such as injection wells, evaporation ponds, and discharge into surface water. These surface activities require placement of equipment and structures on the surface that obstruct the floodplain and/or impact the flood risk and therefore are not an allowable use for open space. Surface actions associated with fracking are not a compatible use and are prohibited on the open space parcel.

All other Federal statutory, regulatory, and programmatic requirements for acquisition projects under the HMA programs apply. Federal requirements for the HMA programs are outlined in the HMA Guidance. Federal, recipient, and subrecipient roles and responsibilities in the acquisition of properties for open space are outlined in 44 C.F.R. Part 80, Property Acquisition and Relocation for Open Space.

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Federal Emergency Management Agency

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Date



## ADDITIONAL INFORMATION

### REVIEW CYCLE

FEMA Policy #302-094-03: *Hazard Mitigation Assistance Acquisition Projects: Hydraulic Fracturing and Horizontal Directional Drilling* will be reviewed, reissued, revised, or rescinded within 4 years of the issue date.

### AUTHORITIES

- A. Sections 203 and 404 of the Robert T. Stafford Disaster and Emergency Assistance Act, 42 U.S.C. §§5133, 5170c(b)(2)
- B. Section 1366 of the National Flood Insurance Act of 1968 (NFIA), as amended by the Biggert-Waters Flood Insurance Reform Act of 2012, 42 U.S.C. §4104c
- C. Title 44 Code of Federal Regulations Part 9, Part 79, Part 80 and Part 206, Subpart N
- D. FEMA Directive 108-1 and FEMA Instruction 108-1-1

### REFERENCES

- A. FEMA Policy *Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands* (FP 302-405-146-1), dated May 5, 2014
- B. Hazard Mitigation Assistance Guidance, issued February 27, 2015

### DEFINITIONS

**Clear Title:** a title that is free of any encumbrances, burdens, or limitations.

**Encumbrance:** any right to, or interest in, land which may subsist in third persons, to the diminution of the value of the estate of the tenant, but consistently with the passing of the fee.

**Horizontal Directional Drilling:** is a mechanism to conduct hydraulic fracturing to reach targets beneath adjacent lands by drilling non-vertical wells.

**Hydraulic Fracturing:** (commonly known as “fracking”) is a process in which fractures in rocks below the surface are opened and widened through high pressure injection of a fracturing solution at high pressure. The process is used to extract natural gas or oil.

### ABBREVIATIONS

<b>CFR</b>	Code of Federal Regulations
<b>FEMA</b>	Federal Emergency Management Agency
<b>FIMA</b>	Federal Insurance and Mitigation Administration
<b>FMA</b>	Flood Mitigation Assistance Program
<b>HDD</b>	Horizontal Directional Drilling
<b>HMA</b>	Hazard Mitigation Assistance
<b>HMGP</b>	Hazard Mitigation Grant Program
<b>PDM</b>	Pre-Disaster Mitigation Program



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## **MONITORING AND EVALUATION**

Every three years, the recipient and subrecipient must submit a report to the FEMA Regional Administrator. The report must certify that the acquired property was inspected within the preceding month and that the property continues to be maintained consistent with the provisions of open space requirements, the deed restrictions, and the grant award. (44 C.F.R § 80.19(d) Land use and oversight, Monitoring and reporting)

## **QUESTIONS**

Direct questions to the HMA Grants Policy branch at [fema-hma-grants-policy@fema.dhs.gov](mailto:fema-hma-grants-policy@fema.dhs.gov).