



FEMA

FP 302-405-146-1

MITIGATION POLICY

I. TITLE:

Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands

II. DATE OF ISSUANCE:

May 5, 2014

III. POLICY STATEMENT:

Subsurface hydraulic fracturing and horizontal directional drilling (hydraulic fracturing/HDD) generally are not authorized uses of properties acquired with FEMA HMA funds.

FEMA generally will not approve property acquisition for open space projects involving properties with underground oil, gas or other mineral encumbrances that may allow hydraulic fracturing/HDD to occur.

Subgrantees cannot enter into leases or other encumbrances that permit oil, gas or other mineral extraction by hydraulic fracturing/HDD.

Owners, or holders of previously acquired HMA properties generally cannot encumber the property with or transfer underground oil, gas or other mineral rights that may allow hydraulic fracturing/HDD to occur on that property.

IV. PURPOSE:

The purpose of this policy is to provide HMA Program guidance on the eligibility of acquiring properties with underground oil, gas and/or mineral rights which have been or may be severed, including encumbrances that allow hydraulic fracturing/HDD, and on the allowance of hydraulic fracturing/HDD as a post-acquisition use.



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V. SCOPE AND EXTERNAL AUDIENCE:

This policy applies to all HMA projects. 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, Tribal and local officials involved in the administration of HMA programs.

VI. AUTHORITY:

Sections 203 and 404 of the Robert T. Stafford Disaster and Emergency Assistance Act, 42 U.S.C. §§ 5133, 5170c (b)(2), 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, and Title 44 Code of Federal Regulations Part 9, Part 10, Part 80 and Part 206, Subpart N.

VII. DEFINITIONS, ABBREVIATIONS, AND FORMATTING:

Definitions

"Clear Title" means title to real property that is free of any encumbrances, burdens, or limitations.

"Direct Impacts" means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Direct impacts are caused whenever these natural values and functions are affected as a direct result of an action.

"Grantee" means the government to which the grant is awarded, which is accountable for the use of funds, responsible for administering the grants, and responsible for complying with program requirements and other applicable Federal, State, Territorial and Indian Tribal laws and regulations. Indian Tribal governments may choose to be a grantee, or act as a subgrantee under a State.

"Horizontal Directional Drilling" (HDD) is drilling a portion of a well horizontally to expose more of the formation surface area to the wellbore.



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“Hydraulic fracturing” (commonly known as “fracking”) is the process of using high pressure to pump sand along with water and other fluids into subsurface rock formations in order to improve flow of oil and gas into a wellbore.

“Indirect Impacts” means an indirect result of an action whenever the action induces or makes possible related activities which affect the natural values and functions of floodplains or wetlands or the risk to lives and property. Indirect impacts occur whenever these values and functions are potentially affected, either in the short- or long-term.

“Subgrantee” means the government or other legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of funds, responsible for administering the grants, and responsible for complying with program requirements and other applicable Federal, State, Territorial and Indian Tribal laws and regulations.

Abbreviations

C.F.R.	Code of Federal Regulations
FEMA	Federal Emergency Management Agency
FIMA	Federal Insurance and Mitigation Administration
FMA	Flood Mitigation Assistance Program
HDD	Horizontal Directional Drilling
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
PDM	Pre-Disaster Mitigation program

VIII. POLICY DETAILS:

FEMA’s property acquisitions under the HMA programs permanently remove structures from risk of damage and seek to conserve natural floodplain functions. Properties generally must be acquired under the HMA programs with clear title (44 C.F.R. § 80.17(b)). Any incompatible easements or other encumbrances to the property must be extinguished before acquisition. Properties acquired under HMA are also subject to strict limitations on development for the purpose of



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maintaining open space for the conservation of natural floodplain functions. FEMA's regulation at 44 C.F.R. § 80.19(a) provides examples of activities that are generally compatible and incompatible with the natural functions of floodplains.

Hydraulic fracturing/HDD is a practice with currently unresolved environmental impacts and unknown open space compatibility. Based on available scientific information, FEMA is unable to make a determination of compatibility with open space requirements. Therefore, the acquisition of property with underground oil, gas, or mineral rights permitting extraction by means of hydraulic fracturing/HDD generally is not eligible under HMA grant programs. Further, FEMA generally will not permit any current or future property owner, grantee, subgrantee or transferee to sever or transfer underground oil, gas, or mineral rights that include hydraulic fracturing/HDD on properties acquired with HMA grant funds.

FEMA notes that other Federal agencies with environmental and land use authorities are currently evaluating the practice of hydraulic fracturing/HDD. FEMA will review data on the environmental impacts of hydraulic fracturing/HDD developed in the future by these other federal agencies and will determine whether hydraulic fracturing/HDD is an activity that is compatible with open space and that conserves the natural function of the floodplain.

IX. ROLES & RESPONSIBILITIES:

Federal, grantee, and subgrantee 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**.

X. MONITORING AND EVALUATION:

Every three years, the grantee and subgrantee must submit a report to FEMA certifying that the acquired property was inspected and that the property continues to be maintained consistent with the provisions of open space requirements, deed restrictions and grant award. (44 C.F.R § 80.19(d) **Land use and oversight, Monitoring and reporting**)



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XI. RESPONSIBLE OFFICE:

The FIMA Risk Reduction Division Grants Policy Branch is the originating office for this policy document, with the overall responsibility for policy updates and enforcement.

XII. SUPERSESSION:

There are no previous mitigation policies or guidance related to this subject.

XIII. REVIEW DATE:

Within three years of the date of issuance.

A handwritten signature in black ink, appearing to read "Roy E. Wright", written over a horizontal line.

Roy E. Wright
Deputy Associate Administrator
Federal Insurance and Mitigation Administration
Federal Emergency Management Agency