

Guidance for the Re-Use of Buyout Properties

Guidance for re-use plans in small towns must prioritize the Federal Emergency Management Agency (FEMA) mandate that acquired properties be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Because federal grants cover acquisition and demolition but not subsequent restoration or ongoing management, re-use plans should focus on sustainable, low-maintenance solutions that provide community value.

No work, development, or change in land use may be initiated on any property acquired for open space purposes without prior written approval from FEMA, with the sole exception of the initial grading and seeding of the former building site immediately following demolition.

Federal law and regulations (44 CFR Part 80) mandate that these properties be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Consequently, FEMA must review and approve the proposed land use of all acquired property to ensure compatibility with these restrictions.

Specific activities that constitute a change in use or development and require a written determination of compatibility from the FEMA Regional Administrator before work begins include, but are not limited to:

Structural Construction: Building any new structure or improvement, even those functionally related to open space (e.g., pavilions or restrooms), must be confirmed in writing by FEMA before construction starts.

- Site Alterations: Any activity involving filling, paving, or excavation.
- Grading Changes: Any grading occurring outside the original building footprint.
- Vegetation Management: The planting or removal of vegetation.
- New Encumbrances: Establishing any new easement, lease, or encumbrance on the property.

To seek approval, the subrecipient must submit a written request through Vermont Emergency Management (VEM) to FEMA. If a property is not maintained in accordance with the deed restrictions and applicable FEMA requirements, FEMA may work with the Recipient and Subrecipient to address the issue and bring the property back into compliance. If compliance cannot be achieved, FEMA may pursue remedies available under the grant, which can include enforcement actions and the potential repayment of federal funding used for the acquisition.

All properties acquired through Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance (HMA) and Flood Mitigation Assistance (FMA) Swift Current programs for the purpose of creating open space must adhere to the following regulations to ensure compliance with 44 CFR Part 80 and associated grant requirements.

Even when proposed use seems allowed (like parks, trails, gardens, or other open-space uses), FEMA still must review and approve the plan before anything happens on the property.

This is because FEMA-funded buyout properties come with a permanent open-space deed restriction. The federal government keeps a long-term interest in the land to make sure it stays safe from future flood risk and continues to meet federal environmental and grant requirements.

Any new activity on the property — even small or temporary ones — may require FEMA to confirm that it:

- Fits the open-space rules
- Does not increase flood risk
- Meets environmental and historic preservation laws
- Matches the intent of the original FEMA project

For this reason, **no changes or new uses should move forward until FEMA has reviewed and provided written approval.**

This step protects the town, the state, and the project from compliance issues or potential repayment of grant funds.

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I. General Land-Use Mandate

- **Perpetual Open Space:** The acquired property must be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.
- **Natural Function Preservation:** Any use of the land must be consistent with the restoration and conservation of the natural floodplain floodwater storage functions.
- **Deed Restrictions:** The subrecipient must record restrictive covenants with the property deed that are consistent with the FEMA Model Deed Restriction, ensuring all future owners are bound by these rules.

II. Administrative Oversight and Reporting

- **Monitoring and Inspection:** The subrecipient must inspect the property every three years and submit a report to FEMA certifying that the land continues to be maintained as allowable open space. This process is initiated by VEM.
- **Enforcement:** FEMA and the State have the right to enter the parcel (with notice) to ensure compliance and may take legal action or withhold future funding if violations occur.
- **Transfer of Ownership:** Ownership may only be transferred to another public entity or a qualified conservation organization with prior written approval from the FEMA Regional Administrator.

III. Allowable vs. Prohibited Land Uses

Allowable uses must be compatible with open space, recreational, or wetlands management practices.

Generally Allowable Uses	Generally Prohibited Uses
Parks for outdoor recreation and athletic fields	Walled buildings or manufactured homes
Nature reserves and wildlife refuges	Flood control structures like levees, dikes, or floodwalls
Agricultural cultivation and grazing	Paved roads, highways, or paved parking areas
Unpaved trails, bike paths, and walking paths	Storage of commercial inventory or hazardous materials
Public restrooms and open-sided pavilions	Cemeteries and landfills
Small boat ramps, docks, and piers	Placement of fill materials (with limited exceptions)

**Note on Structures: Any new structure must be open on all sides and functionally related to the use of open space. If yes, describe the structure and confirm it will be elevated/floodproofed to the Base Flood Elevation plus 1 foot of freeboard or what your local zoning or ordinance determines (whichever is more conservative). Please provide a completed elevation certificate based on proposed construction signed by a licensed engineer or surveyor.*

IV. The Planning Process

Small towns should use a multi-objective planning process to ensure broad support and long-term viability.

1. **Gather Information:** Collect data on the site's natural features, existing infrastructure, and connection to nearby protected areas.
2. **Map the Site:** Overlay the site with FEMA's National Flood Hazard Layer (NFHL) and Vermont's River Corridor data. Determine which areas are in the floodway or subject to erosion. Visualize how the buyout parcels relate to the broader landscape to identify habitat connectivity or trail extension opportunities.
3. **Engage the Community:** Host workshops to solicit public ideas on how the space can fill existing "gaps" in town amenities.
4. **Develop a Management Plan:** Identify who will be responsible for maintenance (e.g., a local parks department or volunteer group) and how it will be funded.
5. **Ensure that land will be monitored every 3 years to confirm it meets federal open-space requirements.**

V. The Application Process

Once a town has completed its re-use planning for buyout properties and is ready to submit its application to the state agency, there are several critical administrative, regulatory, and procedural steps to ensure the plan is compliant with federal law and eligible for final approval.

The following outlines the actions a town should take to move from the "idea" phase to a formal, submission-ready re-use application.

1. Final Regulatory and Compatibility Check

Before filling out the application, the town must verify that the proposed re-use aligns strictly with Federal Emergency Management Agency (FEMA) open space requirements.

- **Confirm Perpetual Open Space:** Ensure the plan acknowledges that the property must be dedicated and maintained in perpetuity for the conservation of natural floodplain functions.
- **Verify Structure Compatibility:** If the plan includes any structures (e.g., picnic shelters), they must be open on all sides. Any structure other than a standard open pavilion or public restroom requires prior written approval from the FEMA Regional Administrator before construction.

- **Prohibit Obstructions:** Double-check that the plan does not include "walled buildings," paved surfaces, or any feature that obstructs the natural and beneficial use of the floodplain.

2. Local Administrative Alignment

The re-use plan must be integrated into the town's existing regulatory zoning and planning framework.

- **Local Floodplain Administrator Review:** The town must have its local floodplain administrator review the proposed use to ensure it conforms to local standards and the community's broader floodplain management policies.
- **Consistency with Hazard Mitigation Plans:** The project must be consistent with the local hazard mitigation plan and the state's mitigation strategy.
- **Zoning and Land Use:** Verify that the proposed use (e.g., a park or garden) is consistent with State and local land-use regulations and the community's comprehensive plan.

3. Finalizing the Documentation Package

The town should assemble a comprehensive set of attachments to support the draft application.

- **Geospatial and Visual Data:** Provide latitude and longitude coordinates to the nearest sixth decimal place, clearly labeled FIRM (Flood Insurance Rate Map) and River Corridor segments showing the property's location, and site photographs of the current condition. This information can be obtained from the ANR Atlas or the FEMA Map Service Center (linked below).
- Any related permitting, State or local
- Concept Plans/Designs

4. Financial and Operational Commitment

Because FEMA funds the acquisition and demolition but not the subsequent restoration or management, the town must confirm it has a long-term plan for the site.

- **Identify Funding:** The applicant must confirm they have acquired local or state funding sources for the implementation of the re-use plan (e.g., local bonds, taxes, grants or partnerships).
- **Define Maintenance Responsibility:** Confirm that maintenance of the site meets the requirements of the original maintenance agreement and deed restrictions.

5. Submission and Coordination Steps

- Obtain any required State Permits from other agencies (if needed). For example, ANR Rivers has a list of floodplain permits here: [State Permits | Department of Environmental Conservation](#)
- Complete Vermont Emergency Management's (VEM's) Application Form
- Obtain Authorized Signatures: The application must be signed by the town's authorized agent (e.g., Mayor or City Manager) and local Floodplain Administrator.
- Coordinate with VEM: Submit the application to VEM for review. VEM will evaluate the plan's alignment with state priorities before forwarding it to FEMA for final determination.
- Wait for Written Approval: Once the VEM forwards the plan, no work can begin until the town receives prior written approval from FEMA.

Frequently Asked Questions:

I just want to plant a few trees. Is all this necessary? Yes, FEMA requires that we confirm any tree plantings are outside of floodway or areas that could cause an increase in flooding.

Our proposed plans are outside of the Special Flood Hazard Area (SFHA) and river corridor (RC). Do I still need to submit the re-use application? Yes, any work, development, or change in land use on the buyout property, even if it is well outside of the SFHA and RC requires a re-use application.

Additional Sources:

List of State Permits for floodplain areas: [State Permits | Department of Environmental Conservation](#)

[eCFR :: 44 CFR 80.19 -- Land use and oversight.](#)

[eCFR :: 44 CFR Part 60 -- Criteria for Land Management and Use](#)

Starting on Page 303 of [Hazard Mitigation Assistance Program and Policy Guide, Version 2.1](#)

Vermont Agency of Natural Resource Atlas: [Vermont ANR - Natural Resources Atlas HTML5 Viewer](#)

FEMA Map Service Center: [FEMA Flood Map Service Center | Welcome!](#)