
SUBJECT: HAZARD MITIGATION LAND ACQUISITION

ADOPTED DATE: AUGUST 4, 2003

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In order to reduce future public expenditures from flood damage, Cass County has acquired, and may continue to acquire, certain flood prone properties. Properties have been acquired with funding received under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("Stafford Act"). It is Cass County Government's policy that all use of these properties will be in complete accordance with the provisions of the Stafford Act, as outlined below.

Farmland purchased by Cass County may continue to be farmed if deemed by Cass County to be the most appropriate use of the land. Farmland acquired by Cass County may be leased to private operators to farm. Any land leased to private operators will be leased at market rental rates for the area, as recommended by a competent professional and approved by the county commission or as determined by a competitive bid process.

If the previous landowner is also the operator, they have first refusal rights at a rent price recommended by a competent professional and approved by the Commission.

In cases where the current land operator is not the same party as the owner, Cass County may either allow the current operator to continue to lease the land at a fair market rental rate or solicit bids from the public. In making this determination, Cass County will give consideration to the practicality of separate operators on the county-owned and adjacent non-county owned land. Annual property taxes on leased property will be paid by Cass County.

Lessee has the right to restrict access by the public to land being farmed.

Hunting and motorized vehicles will not be allowed on any county owned land other than the operation of motorized vehicles owned by the lessee.

Leases should not exceed three years in length.

Lease payments are due each year by April 1.

Subleasing of the property will not be allowed.

The Stafford Act identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain.

Section 404 of the Stafford Act provides a process for a community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space.

The terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values. Land acquired under this program is subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:
 - a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.
 - b. Structures. No new structures or improvements shall be erected on the property other than:
 - i. A public facility that is open on all sides and functionally related to the open space use;
 - ii. A public rest room; or
 - iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the property according to this paragraph shall be flood proofed or elevated to the Base Flood Elevation plus one foot of freeboard.

- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided.
- d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified State or Federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

- i. The Grantee shall convey, in accordance with section (d), above, a Conservation Easement to someone other than the title holder, or
 - ii. At the time of title transfer, the Grantee shall retain such Conservation Easement, and record it with the deed.
2. Inspection. FEMA, its representatives, and assigns, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, the State of North Dakota, and FEMA, its representatives, and assigns, are responsible for taking measures to bring the property back into compliance.
 - a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.
 - b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.