

### 3.4 SEVERE REPETITIVE LOSS PROGRAM

#### 3.4.1 Program Overview

SRL PROGRAM	KEY POINTS
<p>The Severe Repetitive Loss (SRL) Pilot Program, hereafter referred to as the SRL program, provides funding to reduce or eliminate the long-term risk of flood damage to severe repetitive loss residential structures insured under the NFIP.</p> <p>SRL program Applicants shall give priority to eligible project subapplications that demonstrate the greatest savings to the NFIF based on a BCR. The BCA must be completed using a FEMA-approved methodology.</p>	<p><b>SRL GUIDANCE</b></p> <p>The SRL guidance document is available from the FEMA Regional Office or at: <a href="http://www.fema.gov/government/grant/srl/index.shtm">http://www.fema.gov/government/grant/srl/index.shtm</a>.</p>
AVAILABILITY OF FUNDS AND LIMITS	KEY POINTS
<p>The SRL program is subject to the availability of appropriation funding, as well as any directive or restriction made with respect to such funds.</p> <p><b>FUND LIMITS</b></p> <p>Funding is restricted to a maximum Federal cost share of \$150,000 for Mitigation Reconstruction projects.</p> <p><b>COST SHARE</b></p> <p>FEMA may contribute up to 75 percent Federal funding for the amount approved under the grant award to implement approved activities.</p> <p>An increased Federal cost share of up to 90 percent is available for any State or federally recognized Indian Tribal government acting as an Applicant that has taken actions to reduce the number of repetitive loss properties, including severe repetitive loss properties, and has a FEMA-approved State or Tribal Mitigation Plan that specifies how it has reduced, and how it intends to reduce, the number of such repetitive loss properties.</p> <p><b>FUNDING ALLOCATIONS</b></p> <p>An Applicant’s target allocation is based on the national percentage of SRL properties present within the jurisdiction. The Applicant may apply for funding up to or exceeding its target allocation.</p> <p>States, Territories, and federally recognized Indian Tribal governments that do not meet the minimum threshold to receive a target allocation will be eligible to apply for a 10 percent set-aside of the SRL funds.</p> <p>Federally recognized Indian Tribal governments may receive funds through the 10 percent set-aside as a Grantee. Grant amounts allocated for Indian Tribal governments serving as the Grantee will not count against a State’s assigned target allocation.</p>	<p><b>AVAILABILITY OF FUNDS</b></p> <p>Interested Applicants should monitor the FEMA Web site at <a href="http://www.fema.gov/government/grant/srl/index.shtm">http://www.fema.gov/government/grant/srl/index.shtm</a> for details regarding program funding availability.</p>
ELIGIBILITY REQUIREMENTS	KEY POINTS
<p><b>ELIGIBLE APPLICANTS</b></p> <p>State emergency management agencies or a similar office of the State (i.e., the office that has primary emergency management or floodplain management responsibility), the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian Tribal governments. Each State, Territory, or Tribal government shall designate one agency to serve as the Applicant for this program.</p>	<p><b>NFIP PARTICIPATION</b></p> <p>NFIP participation is required for project grants to be eligible for funding under the SRL program.</p>

## ELIGIBLE SUBAPPLICANTS

State-level agencies, federally recognized Indian Tribal governments participating in the NFIP (including State-recognized Indian Tribes, authorized Indian Tribal organizations, and Alaska Native villages), and local communities that are participating in the NFIP.

Private nonprofit (PNP) organizations and individuals are not eligible subapplicants; however, a relevant State agency or local community in which the PNP or individual resides may act as the subapplicant and apply to the Applicant for assistance to mitigate a private or PNP property.

## NFIP PARTICIPATION

All subapplicants must be participating in the NFIP, and must not be suspended or withdrawn from the NFIP, to be eligible to apply for SRL funds. Property owners who participate in the SRL program must have a flood insurance policy on the structure to be mitigated that is current at the time of application and maintained through award, or until the property transfer is complete.

## MITIGATION PLAN REQUIREMENT

All Applicants must have a FEMA-approved State Mitigation Plan (Standard or Enhanced) or Tribal Mitigation Plan by the application deadline to be eligible to receive project grant funding under the SRL program, in accordance with 44 CFR Part 201. In addition, all subapplicants must have a FEMA-approved mitigation plan by the application deadline to be eligible to receive project grant funding under the SRL program.

In order to be eligible for an increased cost share of up to 90 percent, the FEMA-approved State or Tribal Mitigation Plan (for Tribal Grantee) in effect at the time of grant award must address repetitive loss properties.

If any plan is due to lapse soon after application, the project award may be held pending approval of a new or updated plan.

## MITIGATION PLAN REQUIREMENT

Projects submitted for consideration must be consistent with the goals and objectives identified in the current FEMA-approved mitigation plan for the jurisdiction in which the activity is located.

## ELIGIBLE ACTIVITIES AND MANAGEMENT COSTS

### ELIGIBLE PROJECT ACTIVITIES

- Acquisition and demolition or relocation of structures, with conversion of the underlying property to deed-restricted open space;
- Elevation of existing structures to at least the BFE or an ABFE or higher. Mitigation reconstruction is permitted when traditional elevation cannot be implemented;
- Minor physical localized flood reduction projects; and
- Dry floodproofing (historic properties only).

### ELIGIBLE MANAGEMENT COSTS

**Applicant Management Costs:** A separate management cost subapplication must be submitted for Applicant management costs. Applicants may include a maximum of 10 percent of the total funds requested in their SRL grant application budget (Federal and non-Federal shares) to support the project subapplications.

**Subapplicant Management Costs:** Subapplicants may include a maximum of 5 percent of the total funds requested in their project subapplication for management costs to support the project. Subapplicants requesting management costs should provide supporting documentation and include these

## KEY POINTS

### ELIGIBLE PROJECT ACTIVITIES

To be eligible for funding, properties must be currently insured by the NFIP at the time of the application and remain insured through the completion of the project.

costs as separate line items in the project cost estimate. Subapplicant management costs must be included in the project's BCA.

## CONSULTATION WITH THE PROPERTY OWNER

### CONSULTATION PROCESS

The consultation process is a required notification and information gathering process. The subapplicant will consult with the property owner prior to submitting the subgrant application on project activity types, estimated costs, and insurance implications, as well as the right to appeal. The subapplicant will make the consultation process as simple and streamlined as possible for the property owner. The consultation does not represent a formal offer of mitigation assistance.

## KEY POINTS

### CONSULTATION PROCESS

The goal of this process is for the Applicant/subapplicant to notify the property owner that his/her property will be included in an SRL subapplication, discuss pertinent program requirements, and identify appropriate mitigation activities.

## APPLICATION PROCESS

### APPLICATION SUBMISSION

Applicants must submit the complete grant application, including subapplications and any supporting documentation, using the Web-based, electronic grant (*eGrants*) management system. Only SRL grant applications submitted through *eGrants* will be accepted. If a subapplicant does not use the *eGrants* system, the Applicant must enter the subapplicant's paper subapplications into *eGrants* on their behalf using the Paper Subapplication Intake function.

Each Applicant may submit an unlimited number of subapplications for eligible project activities that the Applicant has reviewed and approved in *eGrants*.

### COST-EFFECTIVENESS REQUIREMENT

The SRL program funds cost-effective mitigation activities, demonstrated by a BCR of 1.0 or greater. The BCR is calculated by performing a BCA, a well-established method for quantitatively comparing the benefits and costs of mitigation projects. Applicants are required to submit a BCA for each mitigation project and adequate documentation for a complete review and analysis of the project.

### FEASIBILITY AND EFFECTIVENESS REQUIREMENT

Mitigation projects funded by the SRL program must be both feasible and effective at mitigating the hazard(s) for which the project was designed. FEMA will use the information provided in the project subapplication and supporting documentation to review the engineering feasibility and effectiveness of the proposed project.

### ENVIRONMENTAL/HISTORIC PRESERVATION REQUIREMENT

Applicants/subapplicants must answer a series of Environmental/Historic Preservation review questions in the project subapplication to provide information about environmental resources and historic properties in the project area and potential impacts to those resources. FEMA's Environmental/Historic Preservation review is completed as part of pre-award activities.

## KEY POINTS

### APPLICATION PERIOD

Applicants must submit an FY 2009 SRL grant application through the *eGrants* system to the appropriate FEMA Regional Office by December 19, 2008, at 11:59:59 p.m. Eastern Standard Time. All supporting documentation that cannot be attached to the *eGrants* system must be received by the FEMA Regional Office by the application deadline.

### eGRANTS TECHNICAL ASSISTANCE

FEMA will provide technical assistance regarding the *eGrants* system through the *eGrants* Helpdesk: (866) 476-0544 or [mtegrants@dhs.gov](mailto:mtegrants@dhs.gov).

### PROJECT TECHNICAL ASSISTANCE

Technical assistance for Engineering Feasibility, Benefit-Cost Analysis, and Environmental/Historic Preservation compliance is available through FEMA.

### PROJECT TECHNICAL ASSISTANCE HELPLINE

Phone:(866) 222-3580 (toll free)  
E-mail:

[enghelpline@dhs.gov](mailto:enghelpline@dhs.gov)  
[bchelpline@dhs.gov](mailto:bchelpline@dhs.gov)  
[ehhelpline@dhs.gov](mailto:ehhelpline@dhs.gov)

## APPLICATION REVIEW

### APPLICANT LEVEL REVIEW

Project subapplications are reviewed by the Applicant to ensure all program requirements are met. Applicants should submit eligible mitigation project subapplications against their target allocation.

### FEMA REVIEW

Project applications and subapplications are reviewed by FEMA for eligibility and completeness, cost effectiveness, engineering feasibility and effectiveness, and Environmental/Historic Preservation compliance.

### ELIMINATION CRITERIA

- Ineligible Applicant or subapplicant;
- Application and subapplicant mapped through the NFIP, but not participating in, suspended, or withdrawn from the NFIP;
- Incomplete application;
- Ineligible activities;
- Mitigation projects from Applicants/subapplicants who do not have FEMA-approved mitigation plans;
- Mitigation projects that are determined not to be feasible and/or effective at solving the problem for which they were designed;
- Mitigation projects with a BCR less than 1.0; and
- Mitigation projects without a FEMA-approved BCA or without an adequately documented BCA.

### FEMA REVIEW

Project subapplications that do not satisfy program requirements may be removed from consideration.

## RANKING AND SELECTION

### RANKING

FEMA ranks eligible mitigation project subapplications on the basis of the greatest savings to the NFIF. Projects are ranked from highest to lowest according to the FEMA-validated BCR for the project.

### SRL TARGET ALLOCATION APPLICATION SELECTION

Eligible subapplications from Applicants receiving an SRL target allocation will be selected for further review up to their target allocation based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR.

### SRL SET-ASIDE APPLICATION SELECTION

Eligible subapplications from Applicants without an SRL target allocation will be selected for further review on a national basis based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR.

## KEY POINTS

### RANKING AND SELECTION

FEMA will utilize the validated BCR to rank and prioritize projects for further review.

## MITIGATION OFFER PROCESS

### MITIGATION OFFER

The mitigation offer process begins once FEMA has awarded the grant funds to the Grantee and the Grantee has provided the grant funds to the subgrantee. The subgrantee will extend the formal Mitigation Offer to each property owner through a Mitigation Offer Letter.

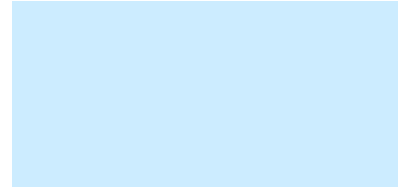
## KEY POINTS

### MITIGATION OFFER

Subgrantees are responsible for extending the formal Mitigation Offer to property owners following grant award.

### **INSURANCE IMPLICATIONS FOR DECLINING THE MITIGATION OFFER**

SRL property owners who decline a formal offer of mitigation under the SRL program will be subject to an increase in their insurance premium rates under the NFIP. SRL property owners may appeal insurance premium rate increases as outlined in the SRL program guidance.



### 3.4.2 Purpose

The SRL Pilot Program, hereafter referred to as the SRL program, provides funding to reduce or eliminate the long-term risk of flood damage to severe repetitive loss residential structures insured under the NFIP. The definition of severe repetitive loss as applied to this program was established in section 1361A of the NFIA, 42 U.S.C. § 4102a. An SRL property is a **residential property** that is covered under an NFIP flood insurance policy and:

- (a) That has at least four NFIP claim payments (including building and contents) over \$5,000 each, and the cumulative amount of such claims payments exceeds \$20,000; or
- (b) For which at least two separate claims payments (building payments only) have been made with the cumulative amount of the building portion of such claims exceeding the market value of the building.

For both (a) and (b) above, at least two of the referenced claims must have occurred within any 10-year period, and must be greater than 10 days apart.

The long-term goal of the SRL program is to reduce or eliminate claims under the NFIP through project activities that will result in the greatest savings to the NFIP in the shortest period of time. Individual property owners who decline offers of mitigation assistance under the SRL program will be subject to insurance premium rate increases; however, such increases may be appealed under certain conditions.

FEMA may contribute up to 75 percent Federal funding for the amount approved under the grant award to implement approved activities. Any State or federally recognized Indian Tribal government that has taken actions to reduce the number of repetitive loss properties, including severe repetitive loss properties, and has a FEMA-approved State Mitigation Plan that specifies how it has and how it intends to reduce the number of such repetitive loss properties, is eligible to receive an increased Federal cost share of up to 90 percent Federal funding for SRL grants.

**Applicants and subapplicants please note the following:** The SRL program differs from FEMA's other mitigation grant programs in that those property owners who decline offers of mitigation assistance will be subject to increases to their insurance premium rates. Furthermore, prior to submitting a grant application to FEMA, Applicants and subapplicants must consult, to the best extent practicable, with the property owner to select the most appropriate project type for that property to meet all programmatic, State, and local requirements. Generally, the term "property owner" includes any co-owners who share title to the property. Accordingly, the subgrantee shall take all necessary steps to ensure the property owner is fully informed of the conditions and procedures of the program, and that proper consultation and offer procedures are followed. Any Mitigation Offer made under the SRL program remains open and available to the property owner as long as the SRL program exists, subject to the availability of funds. In the event that the property owner does not accept a mitigation offer, the property owner may appeal the insurance premium rate increase under certain conditions.

### **3.4.3 SRL Grant Application Guidance**

#### **3.4.3.1 Authorization and Appropriation**

The SRL program is subject to the availability of appropriation funding, as well as any directive or restriction made with respect to such funds.

The SRL program was created pursuant to Section 1361A of the NFIA of 1968 (or “the Act”), 42 U.S.C. § 4102a, as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, with the goal of reducing flood damages to SRL properties. The CFDA number for the SRL program is 97.110.

FEMA published the interim final rule for the SRL program in the *Federal Register* at 72 FR 61720 on October 31, 2007. The regulations are codified at 44 CFR Part 79.

#### **3.4.3.2 SRL Target Allocations Application Selection**

An Applicant’s target allocation is based on the national percentage of SRL properties present within the jurisdiction. Applicants may apply for funding up to or exceeding their target allocation. States, Territories, and federally recognized Indian Tribal governments that do not meet the minimum threshold to receive a target allocation will be eligible to apply for a 10 percent set-aside of the SRL funds. In addition, federally recognized Indian Tribal governments may receive SRL funds through this set-aside as either a Grantee or subgrantee. The funds awarded to Indian Tribal governments serving as the Grantee will not count against a State’s assigned target allocation.

Eligible subapplications from Applicants receiving an SRL target allocation will be selected for further review up to their target allocation based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR. FEMA Regional Offices shall give priority to eligible project subapplications up to the Applicant’s target allocation from highest BCR to lowest BCR. Eligible project subapplications not selected for further review may be forwarded for consideration under the 10 percent set-aside.

The Regional Offices will notify Applicants if subapplications have been selected for further review, determined eligible but unfunded, or determined ineligible. Applicants may resubmit unfunded project subapplications for consideration in the next fiscal year.

#### **3.4.3.3 Redistribution of Funds**

For any of the following cases, FEMA may redistribute funds in any given fiscal year:

- An Applicant with a target allocation chooses not to participate in the SRL program;
- An Applicant’s target allocation exceeds the amount of eligible subapplications submitted; and
- Applicants included in the 10 percent set-aside have not submitted subapplications up to the set-aside amount.

FEMA may redistribute funds to Applicants with eligible subapplications that exceed either of the following:

- Their target allocations; and/or
- The amount of the 10 percent set-aside.

In all cases, FEMA will give priority to subapplications based on the FEMA validated BCR. This will provide opportunities for other Applicants and subapplicants to carry-out eligible activities in accordance with program goals.

#### **3.4.3.4 SRL 10 Percent Set-Aside Application Selection**

Subapplications from Applicants without an SRL target allocation, and those forwarded from the Target Allocation Application Selection Process (Applicants with excess subapplications), will be selected for further review on a national basis based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR. Project subapplications will be ranked nationally from highest BCR to lowest BCR and selected for further review in that order, until funds are exhausted.

The FEMA Regional Offices will notify Applicants if subapplications have been selected for further review, determined eligible but unfunded, or determined ineligible. Applicants may resubmit unfunded project subapplications for consideration in the next fiscal year.

#### **3.4.3.5 Application Process**

All Applicants must submit the complete grant application, including each subapplication and any supporting documentation, through the Web-based eGrants management system. Subapplicants should consult the designated SRL Point of Contact in their State, Territory, or federally recognized Indian Tribal government for more information regarding the application process. Applicants are strongly encouraged to establish an earlier deadline for subapplicants to submit project subapplications in order to allow time to review and give priority to project subapplications prior to submission to FEMA. Application instructions are also available at: <http://www.fema.gov/government/grant/srl/index.shtm>.

Application procedures for States, Territories, and federally recognized Indian Tribal governments:

- Applicants with target allocations can submit SRL projects up to or in excess of their allocation. Applicants are encouraged to submit subapplications in excess of their target allocation in the event that some subapplications are determined ineligible;
- Applicants not meeting the minimum threshold for a target allocation can submit SRL projects to the 10 percent set-aside. The FEMA Regional Office may forward these applications to FEMA headquarters for review and national ranking according to the FEMA-validated BCR;



- Federally recognized Indian Tribal governments are encouraged to request SRL assistance through their State emergency management office or floodplain management agency (i.e., State agencies normally responsible for other FEMA mitigation programs). The State agency will contact the FEMA Regional Office when serving as a Grantee on behalf of an Indian Tribal government. Funds awarded to an Indian Tribal government applying as a subapplicant through the State will be considered part of the State's target allocation; and
- A federally recognized Indian Tribal government serving as the Applicant can submit SRL projects to the 10 percent set-aside and therefore apply directly to FEMA if:
  - The State does not meet the minimum threshold for receiving an SRL target allocation;
  - The State will not, or cannot, serve as Grantee for the federally recognized Indian Tribal government; or
  - The federally recognized Indian Tribal government prefers to act as an Applicant/Grantee.

Funds awarded to a federally recognized Indian Tribal government applying as an Applicant will not count against a State's target allocation.

Applicants shall give priority to applications that demonstrate the greatest savings to the NFIF based on a BCR using a FEMA-approved methodology. FEMA's list of prioritized properties based on insurance history can be a useful tool in this process.

For the NFIF to realize the greatest savings in the shortest period of time from SRL projects, Applicants shall submit project subapplications that can be obligated 1 year from the close of the application deadline and completed within 3 years from the date of award. Extensions of grant performance periods may be approved as described in Section 2.6.3 (Extensions).

Subapplications from Applicants receiving an SRL target allocation will be selected for further review up to their target allocation based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR. Subapplications from Applicants without an SRL target allocation will be selected for further review on a national basis, based on the greatest savings to the NFIF, as demonstrated by the FEMA-validated BCR.

#### **3.4.3.6 SRL Program Eligibility**

All subapplicants must be actively participating in the NFIP (must not be suspended or withdrawn) to be eligible to apply for SRL funds. Property owners who participate in the SRL program must have a flood insurance policy on the structure to be mitigated that is current at the time of application and maintained through award, or until property transfer is complete. Applicants are encouraged to amend their plans to include a strategy for mitigating existing and future repetitive loss properties in order to be eligible to receive an increased Federal cost share of up to 90 percent for SRL grants.

### 3.4.3.7 Eligible Properties

Only residential properties meeting the definition of severe repetitive loss are eligible for flood mitigation grant funding through the SRL program. Such properties must be currently insured by the NFIP at the time of application and remain insured through the completion of the project. For acquisition projects, insurance must be maintained by the property owner until the transfer of ownership.

### 3.4.3.8 Eligible Activities and Associated Costs

To be eligible for funding, properties must be currently insured by the NFIP at the time of application and the insured property must be covered through the completion of the project. For acquisition projects, insurance must be maintained by the property owner until the transfer of ownership. For projects that mitigate existing structures remaining in the SFHA, insurance must be maintained for the life of the property. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year (see Section 3.4.9, Special Flood Hazard Area Requirement).

Only the following mitigation activities are eligible for the SRL program:

- a) **Acquisitions/Relocations:** The acquisition of the structure and underlying real property for the purpose of creating open space, demolition or relocation of the structure, and conversion of the property to deed-restricted open space uses in perpetuity. Applicants and subapplicants must comply with 44 CFR Part 80 and this Guidance. The relocation of existing residential structures must be to areas outside of the SFHA or local regulatory floodplain, outside of any regulatory erosion zones, and in conformance with any other applicable State or local land-use regulations (see Section 2.3.13, Property Acquisition and Relocation for Open Space);
- b) **Elevations:** Any activity through which an existing building with the lowest floor below the BFE is physically raised to an elevation at or above the BFE, with a new foundation system constructed. Structural elevation may be achieved through a variety of methods including elevating on continuous foundation walls; elevating on open foundations such as piles, piers, posts, or columns; and elevating on fill.

The techniques used for elevating structures in accordance with FEMA requirements can be found at: <http://www.fema.gov/government/grant/mitmeasures/elevate.shtm>;

- c) **Mitigation Reconstruction:** Any activity where an existing building and/or foundation is partially or completely demolished or destroyed and an improved, elevated building is constructed on the same site. This includes, but is not limited to, pre-existing buildings that were substantially damaged or destroyed as a result of a declared event. All activities submitted for consideration under FEMA's HMA programs that result in the construction of new living space at or above the BFE shall be considered Mitigation Reconstruction and shall be subject to all related requirements. Mitigation Reconstruction is currently an eligible activity type within the HMGP Gulf Coast Pilot and the SRL Program.

Eligible costs for Mitigation Reconstruction are limited to \$150,000 Federal share per property (excluding administrative allowances and permitting fees); in some cases there may be a higher percentage of non-Federal share required to cover the total project costs. Mitigation Reconstruction will not be eligible if the structure is located in a regulatory floodway or Zone V as identified on the effective FIRM, or within the mapped limit of the 1.5-foot breaking wave zone (see Section 3.4.8, Mitigation Reconstruction);

- d) **Minor Localized Flood Reduction Projects:** These projects may include the installation or modification of culverts and floodgates; the creation of small retention and detention basins; and upgrades of culverts to bridges. The purpose of this project type is to lessen the frequency or severity of flooding and decrease predicted flood damages. Minor localized flood reduction projects must not duplicate the flood prevention activities of other Federal agencies.

At least 50 percent of the structures directly benefiting from this mitigation activity must be SRL properties. Documentation must be provided in the subapplication that identifies all properties that will benefit from this activity and specifically identifies the SRL properties; and

- e) **Floodproofing:** Dry floodproofing of a historic residential structure is permissible only when other techniques that would mitigate to the BFE would cause the structure to lose its status as listed or eligible for inclusion on the NRHP. Structures to be dry floodproofed must meet the definition of a Historic Structure in 44 CFR § 59.1.

Floodproofing must be performed in accordance with NFIP Technical Bulletin 3-93, *Non-Residential Floodproofing—Requirements and Certification*, and the requirements pertaining to floodproofing of non-residential structures found in 44 CFR §§ 60.3(b)(5) and (c)(4).

### **3.4.3.9 Criteria for Subapplicant Consideration of Project Type**

The subapplicant will consider the following information in examining potential project activity types. The subapplicant should determine the activity types that it does not typically implement for legal, cost effectiveness, contractual, land-use, or other policy reasons prior to consulting with the property owner. For example:

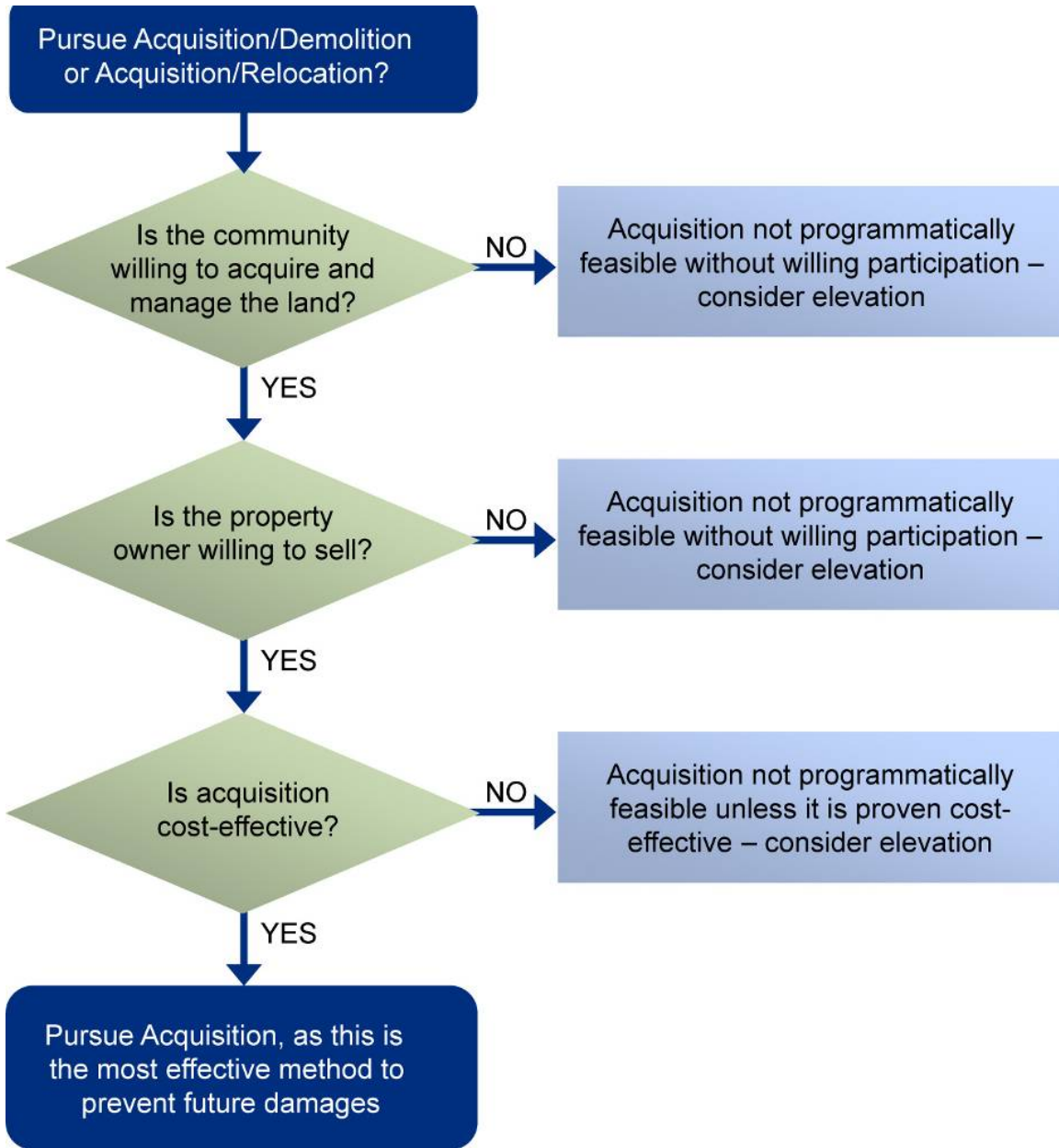
- Subapplicants should provide similar treatment to all property owners regarding the use of pre-event or current market value for acquisition projects;
- In order to maintain their tax base, some subapplicants will not elect to pursue an acquisition project;
- Some subapplicants will not select a specific mitigation activity because that mitigation approach is not preferred, and thus is not integrated into their FEMA-approved mitigation plans;
- Some subapplicants may not wish to implement elevation or acquisition projects requiring pass through of Federal funds to the SRL property owner;

- Some subapplicants may experience a shortage of qualified contractors and structural engineers to implement relocation, elevation, Mitigation Reconstruction, acquisition projects, or floodproofing (for historic properties only); and
- Some subapplicants may select minor, physical localized flood reduction projects because property owners will not experience the risk of increased insurance premium rates.

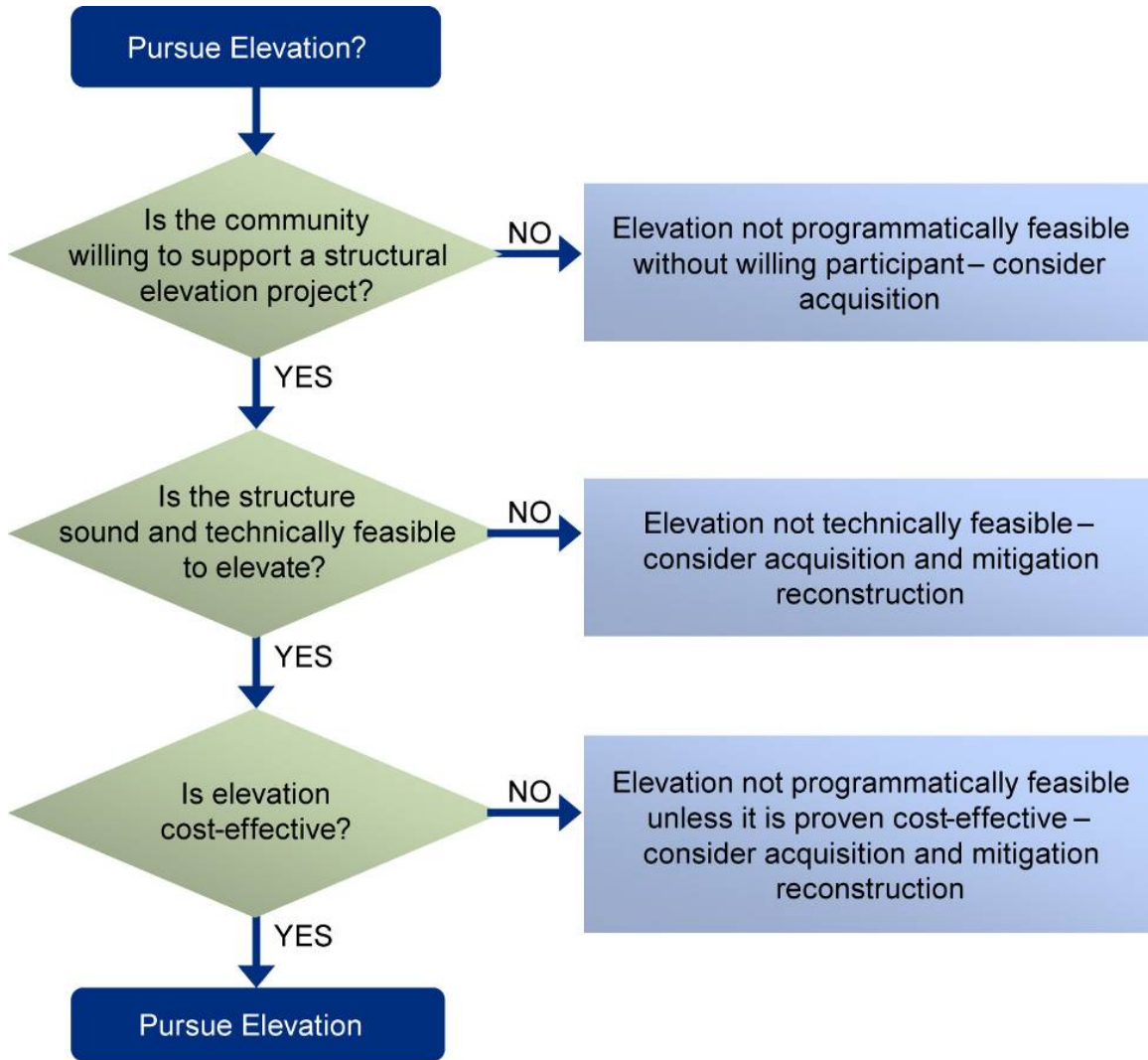
The subapplicant shall describe the process used to evaluate elevation mitigation measures. When Mitigation Reconstruction is selected, the following list of general criteria must be addressed in writing, as appropriate, to demonstrate why traditional elevation cannot be implemented:

- Health considerations, such as asbestos, mold, etc., requiring demolition;
- Structure and foundation type cannot be elevated due to high likelihood of collapse or disintegration of structure during the process (this statement must be certified by a registered engineer or architect);
- Local government is unable to support structural elevation for reasons such as the elevated structure would be non-compliant with the minimum standards of the 2003 International Codes or other codes and ordinances as certified by local building official; and
- Project costs are prohibitive and do not achieve a BCR of 1.0 or greater.

Information regarding appropriate mitigation project types is available in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. In addition, Figures 3-2 and 3-3 illustrate a recommended sequence for considering the feasibility of project activity types. Mitigation Reconstruction is permitted when traditional elevation cannot be implemented.



**Figure 3-2: Property Acquisition Decisionmaking Tree**



**Figure 3-3: Structural Elevation Decisionmaking Tree**

### 3.4.3.10 Ineligible Activities and Associated Costs

Certain project activities and their associated costs are not eligible. Ineligible project activities and costs include, but are not limited to, the following:

- Hazard mitigation plan development, update, or amendment;
- Major flood control projects related to the construction, demolition, or repair of dams, dikes, levees, floodwalls, seawalls, groins, jetties, breakwaters, and waterway channelization, and erosion projects related to beach nourishment or re-nourishment;
- Mitigation Reconstruction located in a regulatory floodway or Zone V as identified on the effective FIRM, or within the mapped limit of the 1.5-foot breaking wave zone;

- Floodproofing of any residential structure that does not qualify as a historic residential property listed or eligible for inclusion in the NRHP;
- A phased or partial project that is dependent on another phase or part to be effective and feasible;
- Studies not directly related to the design and implementation of the proposed mitigation project;
- Flood studies or flood mapping other than project designs and eligibility analyses;
- Projects that solely address operation, maintenance, or repairs of existing structures, facilities, or infrastructure;
- Generators and related equipment;
- Warning and alert notification systems (e.g., NOAA weather radios);
- Response and communication equipment;
- Legal procedures related to litigation for an approved application or subapplication;
- Landscaping for ornamentation (trees, shrubs, etc.);
- Site remediation of hazardous contaminants;
- Water quality infrastructure projects; and
- Activities for which implementation has already been initiated or completed.

Project subapplications that propose ineligible activities will be removed from consideration. FEMA will not separate eligible activities from ineligible project subapplications for funding consideration.

#### **3.4.3.11 Cost Share Requirements**

FEMA may contribute up to 75 percent Federal funding for the amount approved under the grant award to implement approved activities. Any State or federally recognized Indian Tribal government that has taken actions to reduce the number of repetitive loss properties, including severe repetitive loss properties, and has a FEMA-approved State Mitigation Plan that specifies how it has and how it intends to reduce the number of such repetitive loss properties (see Section 3.4.3.13, Repetitive Loss Strategy) in compliance with 44 CFR § 201.4(c)(3)(v), as determined by FEMA, is eligible to receive an increased Federal cost share of up to 90 percent Federal funding for SRL grants.

For Mitigation Reconstruction projects, the percentage of Federal funds may be lower than 75 percent, since there is a cap on the Federal contribution for such projects. Detailed guidance on Mitigation Reconstruction projects is located in Section 3.4.8 (Mitigation Reconstruction).

### 3.4.3.12 Non-Federal Cost Share

The non-Federal cost share is at least 25 percent of eligible project costs, or 10 percent if the State meets the SRL requirement of the State Mitigation Plan. The non-Federal cost share must be in direct support of the approved activities and must be an allowable cost for SRL funding. The amount of all contributions, cash, in-kind, or any combination thereof, may be accepted as part of the non-Federal cost share. For Mitigation Reconstruction projects, the Federal share is capped; therefore, the non-Federal cost share may be greater than 25 percent of the total project costs necessary to fund the Mitigation Reconstruction project.

In lieu of requesting pre-award costs, Applicants and subapplicants may submit eligible costs incurred prior to award, but after the SRL application period has opened, as their non-Federal cost share (see Section 2.3.4, Pre-award Activities and Costs). Indirect costs may be included as part of the total project cost. Indirect costs in excess of the 10 percent management costs limit may not be used as part of the cost share (see Section 2.2.1, Eligible Management Cost Activities).

SRL funds generally cannot be used as cost share for another federally funded activity. In addition, costs contributing to the non-Federal cost share for the SRL program cannot be used as cost share for other Federal grant programs. In general, the non-Federal cost share for the SRL program may not include funds from other Federal agencies, except for Federal funds that have authorizing statutes that explicitly allow the funds to be used as a cost share for other Federal grants. For exceptions, see Section 2.1.6.2 (Federal Funds Allowed to be used as a Non-Federal Cost Share).

### 3.4.3.13 Repetitive Loss Strategy

Applicants are encouraged to amend their plans to include a strategy for mitigating repetitive loss properties. To be eligible to receive an increased Federal cost share of up to 90 percent for SRL project grants, State or Tribal mitigation plans must address repetitive loss properties, including severe repetitive loss properties. States or Indian Tribes may address the repetitive loss strategy through an amendment to their existing FEMA-approved State or Tribal Mitigation Plan. Amendments must be submitted to the respective FEMA Regional Office at least 45 days prior to the application deadline to allow time for review and, if necessary, revisions by the State or Indian Tribe. The amendments must be approved by the respective FEMA Regional Office no later than the application deadline in order to be eligible for the increased cost share for SRL program grants. Further, in order to maintain eligibility, States and Indian Tribes are required to incorporate any amendments, including their repetitive loss strategy, into their State or Tribal Mitigation Plan at the next required 3-year update.

In order to be eligible for an increased Federal cost share of up to 90 percent under the SRL program, the FEMA-approved State or Tribal Mitigation Plan must be in effect at grant award and must also meet all of the requirements described below:

- a) **Repetitive Loss Strategy** - 44 CFR § 201.4(c)(3)(v): “A State may request the reduced cost share authorized under § 79.4(c)(2) of this chapter for the FMA and SRL programs, if it has an approved State Mitigation Plan meeting the requirements of this section that also identifies specific actions the State has taken to reduce the number of repetitive loss



properties (which must include severe repetitive loss properties), and specifies how the State intends to reduce the number of such repetitive loss properties...”

This requirement supplements the risk assessment and mitigation strategy portions of the plan required under §§ 201.4(c)(2) and (3) by specifically identifying goals, capabilities, and actions that will reduce the number of repetitive loss properties, including severe repetitive loss properties.

The mitigation strategy is based on the State’s Risk Assessment as required under § 201.4(c)(3)(ii). Therefore, the State must address repetitive loss structures in its risk assessment, where applicable. For example, in its overview of Estimating Potential Losses by Jurisdiction under § 201.4(c)(2)(iii), the State may analyze potential losses to identified repetitive loss properties based on estimates provided in local risk assessments. The plan should refer generally to geographic areas where concentrations of repetitive loss properties are located for the purpose of identifying and prioritizing areas for mitigation projects, or the plan may list the number of repetitive loss properties with aggregate repetitive loss data.

The State Hazard Mitigation Goals under § 201.4(c)(3)(i) must support the selection of activities to mitigate and reduce potential losses to structures susceptible to flood damage, including repetitive loss properties. In addition, the State and Local Capability Assessments required under § 201.4(c)(3)(ii) must include an evaluation of policies, programs, and capabilities that allow the mitigation of repetitive losses from flood damage.

The State must describe specific actions that it has implemented to mitigate repetitive loss properties, and specifically actions taken to reduce the number of severe repetitive loss properties as a subset of all repetitive loss properties in the State. If the State cannot show that any action has ever been taken to reduce the number of such properties, this criteria cannot be met.

Based on the findings of the risk assessment, the State must identify actions in the statewide mitigation strategy that specifically address repetitive loss properties, including those that are severe repetitive loss properties. This supplements the mitigation actions requirement under § 201.4(c)(3)(iii). Mitigation actions should be tied to goals and objectives and provide the means to achieve them. Actions should have been identified in the planning process, and local plans should be consistent with statewide actions.

As part of the mitigation strategy, the plan must also describe the current funding sources as well as potential sources that will be pursued to fund proposed mitigation actions for repetitive loss properties. This supplements the identification of funding requirement under § 201.4(c)(3)(iv); and

- b) **Coordination With Severe Repetitive Loss Jurisdictions** - 44 CFR § 201.4(c)(3)(v):  
“...In addition, the plan must describe the strategy the State has to ensure that local

jurisdictions with severe repetitive loss properties take actions to reduce the number of these properties, including the development of local mitigation plans.”

The State is required to identify strategies that encourage local communities to mitigate severe repetitive loss properties, including the development of local mitigation plans. This supplements the Coordination of Local Mitigation Planning portion of the plan under § 201.4(c)(4). At a minimum, the State must include severe repetitive loss in the description of its process for providing funding and technical assistance to prepare mitigation plans (§ 201.4(c)(4)(i)), and in its criteria for prioritizing communities that have such properties for planning and project grant assistance (§201.4(c)(4)(iii)). Other strategies for encouraging local communities to mitigate severe repetitive loss properties should be demonstrated through specific actions identified in the Mitigation Strategy.

#### **3.4.3.14 Cost Overruns and Cost Under-Runs**

If cost overruns are anticipated for obligated project activities, the Grantee shall inform the Regional Administrator, who will verify the circumstances, including costs incurred and activities completed, and either approve or disapprove requests for funding.

For SRL project grants, overruns may only be considered if the project grant, including the overrun amount, would continue to meet programmatic eligibility requirements, including cost effectiveness and cost share.

Cost under-runs (i.e., unexpended funds) remaining after the expiration of the period of performance must be reported to FEMA for de-obligation. Cost under-runs from one subapplication cannot be used to meet the cost overrun associated with another subapplication.

There may be limited exceptions made to permit an increase in subgrantee management costs.

### **3.4.4 The SRL Consultation, Offer, and Appeal Process**

#### **3.4.4.1 The SRL Consultation Process**

**The consultation process does not represent a formal offer of mitigation assistance.** The consultation process is a required notification and information gathering process for the Applicant and/or subapplicant interested in submitting an application for an SRL project. The goal of the consultation process is to notify the property owner that his or her property has been selected for the program, to collect sufficient information about the property, and to advise the property owner that the subapplicant may include his or her property in the SRL subapplication, and that there are potential consequences of declining a Mitigation Offer. Property owners who decline offers of mitigation assistance will be subject to increases to their insurance premium rates.

All information related to the individual SRL property owner and individual property that is collected during the consultation shall be protected consistent with the Privacy Act of 1974 as amended, and similar State and local laws and ordinances.

#### **3.4.4.2 Subapplicant Responsibilities during the Consultation Process**

The subapplicant shall consult with the property owner prior to submitting the sub-application on project types available, estimated costs, and insurance implications, as well as the right to appeal. The subapplicant will make every effort to make the consultation process as simple and streamlined as possible for the property owner.

#### **3.4.4.3 Preparation for Consulting**

In preparation for and prior to the consultation, the subapplicant will:

- Consider prioritizing their SRL properties for funding. FEMA has provided a tool to assist in this process. The alternative benefit-cost methodology prioritizes properties representing the greatest financial effect on the NFIF. This information may also be used in preparing the BCA;
- Identify appropriate mitigation project activity types that are available to the property owner in accordance with local codes and standards, and included within the local mitigation plan;
- Prepare property-specific examples of potential insurance premium rate increases. For property owners that refuse the offer, quantitative examples of the potential increase in the property owner's insurance premium rate are provided in Tables 3-1 and 3-2 (see Section 3.4.6.2, Actuarial Risk Premium Rate Limitation); and
- Notify SRL property owners that a personal representative may accompany or attend the consultation on behalf of a property owner. If a property owner wants the personal representative to make decisions on his or her behalf, the property owner must provide authorization (i.e., a notarized letter) to the personal representative. FEMA shall not pay for costs incurred by the property owners for a personal representative.

#### **3.4.4.4 Consultation with the Property Owner**

In consulting with the property owner, the subapplicant will:

- Conduct the consultation in a format agreed upon by, and convenient to, the property owner (i.e., in person, via telephone). The consultation process may involve an initial meeting and follow-up meetings as necessary to complete the process;
- Complete the project subapplication and not require the property owner to complete technical paperwork;
- Conclude and sign the Pre-Award Consultation Agreements, securing the signature of the property owner on the Pre-Award Consultation Agreements at the conclusion of the consultation process;
- Advise the property owner of the insurance implications of refusing a Mitigation Offer by providing quantitative examples of the potential increase in the property owner's insurance premium rate;

- Continue to consult with the property owner on the mitigation offer process if FEMA awards a grant for the mitigation project; and
- Advise the property owner that if FEMA does not award the grant for the mitigation project, the property owner will be notified by the subapplicant.

#### **3.4.4.5 Criteria for Subapplicant Consideration of Project Type**

The subapplicant will consider the SRL property owner's preference for a specific project type, but does not have to accept the SRL property owner's first preference, if that is an approach the subapplicant does not typically implement for legal, cost effectiveness, contractual, land-use, or other policy reasons; for example:

- Subapplicants should provide similar treatment to all property owners regarding the use of current market value or pre-event market value for acquisition projects;
- Some subapplicants will not elect to pursue an acquisition project, in order to maintain their tax base;
- Some subapplicants will not select elevation activities because that mitigation approach is not preferred, and thus is not integrated into their FEMA-approved mitigation plans;
- Some subapplicants may experience a shortage of qualified contractors and/or structural engineers to implement a particular project type, such as relocation, elevation, Mitigation Reconstruction, acquisition projects, or floodproofing (for historic properties only); and
- Some subapplicants may select minor, physically localized flood reduction projects because property owners will not experience the risk of increased insurance premium rates.

Therefore, under some circumstances, the subapplicant may select a different project type for an individual structure than proposed by the SRL property owner. Information regarding appropriate mitigation project types is available in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*.

#### **3.4.4.6 Consultation Meetings**

The subapplicant shall inform the property owner of the following items during the initial consultation meeting:

- The SRL program is a voluntary program, and the Applicant and subapplicant will not use eminent domain to acquire the property if the property owner opts out;
- A final Mitigation Offer is contingent upon SRL program funds being awarded to the subapplicant;

- The property appears on the FEMA SRL Property List, and the subapplicant intends to include the property in a SRL project subapplication;
- If the property owner declines a final offer made under the SRL program, the property will be subject to an increase in the flood insurance premium rate. To ensure that the property owner is aware of the insurance implications of refusing a Mitigation Offer, FEMA will support the subapplicant by providing quantitative examples of the potential increase in the insurance premium rate;
- There are benefits to the property owner for accepting the Mitigation Offer, if the subapplication is awarded, such as reduced risk of flood damage for elevated structures, and the opportunity to move out of the SFHA for acquisitions;
- Several eligible project types may be available for mitigating the property, including relocation, elevation, acquisition, Mitigation Reconstruction, and dry floodproofing (historic properties only). Eligible project types will be discussed with the property owner to determine the most appropriate project activity type for the property;
- The property owner's preferences will be discussed, and the final decision as to project type will be made by the subapplicant in conjunction with the property owner;
- If SRL program funds are awarded, the subapplicant shall make the final selection for the project type to be formally offered to the property owner. The subapplicant's decision regarding the selected project type will be based on a combination of factors, including the SRL property owner's preferences; cost effectiveness; technical feasibility; and the subapplicant's legal, land-use, and contractual requirements;
- For property acquisition, the subapplicant will:
  - Estimate the value of the property. Document the methodology to determine the purchase offer (e.g., current market value, pre-event market value, original purchase price) and estimate the highest purchase offer amount available to the property owner based on 44 CFR § 80.17 and this Guidance (see Section 2.3.13.3.1.5, Purchase Offer);
  - Explain that the final offer amount may also include any applicable comparable housing payments, and where applicable, deductions such as duplicated benefits and costs borne by the property owner consistent with 44 CFR § 80 and this Guidance;
  - Advise the property owner that he or she will need to certify that he or she is a National of the United States or qualified alien in order to receive an offer based on pre-event market value. This must be done as part of the application process, and the certification must be included in the application;
  - Complete all removal of existing incompatible facilities by demolition or relocation within 90 days of settlement of the property transaction. The acquired land will be deed restricted in perpetuity and managed by the subgrantee or an acceptable third-party organization;

- Recognize that any second mortgages or home equity loans taken out following the initial consultation meeting will not be included in the purchase offer;
  - Not use its power of eminent domain to acquire the property during or after negotiations. The property shall not be part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, or where there is an intention to use the property for any public or private future use inconsistent with the open space deed restrictions and FEMA acquisition requirements (examples include roads and flood control levees);
  - Recognize that any tenants who have resided in the property within 90 days prior to the initiation of the consultation process are entitled to relocation assistance under 44 CFR § 80;
- For elevation, Mitigation Reconstruction or dry floodproofing, a Model Acknowledgement of Conditions for Mitigation of Property in a SFHA with FEMA Grant Funds must be signed;
  - Any SRL mitigation grant funds received directly or indirectly are generally not taxable for Federal income tax purposes. The Applicant or subapplicant should advise the property owner that any further questions may be directed to a tax advisor or the IRS with respect to any potential State, local, or other tax implications regarding the property or income upon receiving an SRL program grant;
  - Any Mitigation Offer made under the SRL program remains open and available to the property owner as long as the SRL program exists, subject to the availability of funds;
  - Provide specific claims history information, which may include losses which occurred prior to current ownership of the property, in order to explain their inclusion on the SRL list. This information is available from the FEMA Regional Office or State NFIP coordinator;
  - An NFIP insurance policy must be maintained on the SRL structure from the time of application submittal until completion of the project or until property transfer is complete, in order to qualify for SRL program mitigation assistance. For certain types of mitigation where the structure remains in the SFHA, an NFIP policy must be maintained in perpetuity;
  - The property owner may appeal insurance premium rate increases that result from declining an SRL program Mitigation Offer based on criteria listed in this Guidance. Upon receiving the Notice of NFIP Insurance Premium Rate Increase, the property owner must mail a postmarked Request for Appeal to the appropriate FEMA Regional Administrator within 90 days of the date of the Notice of the NFIP Insurance Premium Rate Increase;
  - The schedule of premium rate increases resulting from declining a Mitigation Offer will not terminate with the expiration of the SRL program; and

- Explain to the property owner that their failure to sign the Pre-Award Consultation Agreement does not preclude the subapplicant from submitting a subapplication including their property.

#### **3.4.4.7 Consultation Process Required Information**

Prior to the conclusion of the consultation process, the subapplicant shall:

- Verify the property address and document property owner names and addresses of other individuals, financial institutions, or government agencies with a recorded interest in the property. This includes any co-owners of the property who have an interest in future offers of mitigation assistance;
- Verify the property owner's permanent mailing address for future communications regarding the Mitigation Offer;
- Collaborate with the property owner to identify the preferred eligible project activities appropriate for the property;
- Collect the names, unit numbers, length of time in residence, copies of current lease information (including monthly rent and utility payments), and other contact information for all tenants that may be adversely affected by a potential mitigation project;
- Identify all historical information in relationship to the property so that the selected project type will not interfere with the historic designation, or a historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP;
- Identify all environmental considerations that must be addressed in selecting an appropriate project type for the property (e.g., the presence of hazardous materials, natural resources, etc.);
- Collect any structural information necessary for determining the proposed mitigation activity, the cost of mitigating the property, and the cost effectiveness of alternative project types (e.g., the deed with original purchase price of the property, recent appraisals, elevation certificates, and documentation from structural inspections);
- Verify the current NFIP insurance policy coverage and the property owner's insurance premium rate;
- Verify the repetitive loss history of the property, and determine whether the property owner relied upon a FEMA FIRM that, although current at the time of purchase, did not indicate that the property was located in an SFHA;
- Advise the property owner that FEMA funds cannot duplicate amounts available to them from other sources, and that the property owner must identify any other sources of funds that may be reasonably available to them for the mitigation activity, such as:

funds to compensate in whole or part for the value of the property; funds to address any property damage, such as applicable insurance policies; and other assistance, legal claims, or third-party legal obligations; and

- Take the following measures for property acquisition:
  - Obtain a copy of the original deed and any deeds of trust for the property;
  - Estimate the highest purchase offer amount available to the SRL property owner based on this Guidance, and document the methodology used to determine the property value (i.e., market value, pre-event value, outstanding loans, original purchase price);
  - Comply with the requirements of 44 CFR § 80.7, 80.9 and this Guidance;
  - Determine if a comparable housing payment may be necessary for the property owner to purchase a replacement residence outside of the SFHA that is of comparable value and that is functionally equivalent.

Document through a signed Notice of Voluntary Interest or signed Pre-Award Consultation Agreement that the homeowner has been informed that participation in this project for open-space acquisition is voluntary. Neither the State nor the local government will use its eminent domain authority to acquire the property for open-space purposes if the homeowner chooses not to participate, or if negotiations fail.

#### **3.4.4.8 Documentation of the Consultation Process**

The Consultation Process is documented in the Pre-Award Consultation Agreement. The agreement may be signed by the property owner and the subapplicant, or the property owner may elect not to sign the agreement as detailed in Section 3.4.4.9 (Possible Outcomes of the Consultation Process). In either case, documentation must be provided acknowledging that the SRL program consultation process has occurred, is consistent with the requirements of this Guidance, and that all required information and documentation has been received from the property owner and the subapplicant. The Pre-Award Consultation Agreement is available at: <http://www.fema.gov/government/grant/srl/index.shtm> and will document the following:

- The property address and proposed mitigation project type for the property;
- The estimated final offer amount that the property owner might receive, directly or indirectly, for completion of the mitigation project. For acquisition projects, this estimate includes estimated purchase offer; any anticipated additions (e.g., supplemental housing payments), deductions (duplicated benefits or costs borne by the property owner), and the methodology used to determine the property value (i.e., market value, pre-event value, outstanding loans, or original purchase price). The subapplicant will indicate the methodology used to determine property value (market value, pre-event value, outstanding loans, or original purchase price);
- The estimated timeframe for implementing various project types and whether the property must be vacated during project implementation;



- The property owner understands that his or her property appears on the FEMA SRL Property List and the subapplicant intends to include the property in an SRL project subapplication; and
- In the event that the grant application is approved by FEMA and the property owner refuses a final offer of mitigation, the property owner understands that the insurance premium rate will increase. Quantitative examples of an effective increase in the property owner's insurance premium rate should be provided.

#### **3.4.4.9 Possible Outcomes of the Consultation Process**

The SRL program consultation process has two possible outcomes:

- The property owner will sign a Pre-Award Consultation Agreement that the subapplicant will include with the project subapplication to the Applicant; or
- The property owner will indicate either verbally or in writing that he or she will not sign the Pre-Award Consultation Agreement. In this case, the subapplicant must document the interaction with the property owner and inform the property owner that their property may be included in the subapplication and that an offer may be made even though the property owner declines to consult further. The subapplicant will include this documentation with the project subapplication.

#### **3.4.4.10 Privacy of the Property Owner**

All information related to the individual property owner and/or individual property that is collected during the consultation process shall be protected in accordance with the Privacy Act of 1974 and similar State and local laws and ordinances.

#### **3.4.4.11 Reimbursement for Consultation Costs**

The Applicant and subapplicant may claim allowable consultation costs, such as travel and salaries, associated with the consultation process as a pre-award cost in their project applications. Pre-award costs will not be reimbursed to an Applicant and/or subapplicant that does not receive a grant or subgrant from FEMA.

#### **3.4.5 Mitigation Offer Process**

The mitigation offer process will occur once FEMA has awarded the grant to the Grantee and the Grantee has awarded the subgrant to the subgrantee. The SRL program differs from FEMA's other mitigation grant programs because a property owner who declines the Mitigation Offer of assistance may experience increases to his or her NFIP insurance premium rate. The property owner retains the right to appeal such increases. Any Mitigation Offer made under the SRL program remains open and available to the property owner until the SRL program terminates, subject to the availability of funds. When a property owner declines an offer of mitigation, the Grantee may use its accounting system to retain the funds for the duration of the period of performance. The guidance provided below will assist the subgrantee in implementing the mitigation offer process with the property owner identified in the approved subgrant.

The amount of the Mitigation Offer includes the cost of the project, the basis for the offer, and the methodology for calculating the final offer. The amount that the property owner receives is the **final offer amount** that reflects applicable reductions (e.g., duplicated benefits and costs borne by the property owner) and additions (e.g., supplemental housing payments).

- **For non-acquisition projects**, the final offer amount will be based on at least two contractor estimates or appraisals for the cost of the project and applicable deductions; and
- **For acquisition projects**, the final offer amount is based on the purchase offer for the SRL property determined in accordance with Section 2.3.13.3.1.5 (Purchase Offer), adjusted by applicable deductions (e.g., duplicated benefits and costs borne by the property owner), additions (e.g., supplemental housing payment), and the methodology used to determine the property value (i.e., market value, pre-event value, outstanding loans, original purchase price). The subapplicant will indicate the methodology used to determine purchase offer (market value, pre-event value, outstanding loans, or original purchase).

#### **3.4.5.1 Subgrantee's Responsibilities during the Mitigation Offer Process**

The Mitigation Offer may involve an initial meeting and follow-up meetings, telephone calls, or mailings necessary to provide information requested by the property owner. In accordance with SRL program regulations, the property owner must return a signed Mitigation Offer Letter accepting or refusing the offer of mitigation to the subgrantee within 45 days from the date of the Mitigation Offer Letter. The 45-day period may be extended by the FEMA Regional Administrator, if the property owner submits a written request before the expiration of the 45-day time period describing extenuating circumstances and the FEMA Regional Administrator grants the request.

The subgrantee will:

- Sign and send (via certified mail) Mitigation Offer Letters to all property owners identified in the subgrant within 30 days of receiving the subgrant award. The 30-day period may be extended by the FEMA Regional Administrator if the subgrantee, through the Grantee, submits a written request before the expiration of the 30-day time period describing the extenuating circumstances, and the FEMA Regional Administrator grants the request;
- Follow the Mitigation Offer Letter with a meeting with the property owner, if requested;
- Forward a copy of each Mitigation Offer Letter and all responses to the appropriate FEMA Regional Office and the Grantee, and retain copies in the subgrant file for a minimum of 3 years after the project closeout;
- Make every effort to ensure the mitigation offer process is as simple and streamlined as possible for the property owner;

- Complete Federal grants reports or technical paperwork associated with the project implementation process for the property owner, or seek assistance from the appropriate FEMA Regional Office;
- Clearly state any financial and other reporting requirements incumbent upon the property owner accepting the Mitigation Offer;
- Ensure that for offers made based on pre-event market value, the property owner has certified that he/she is a National of the United States or qualified alien;
- Complete the Statement of Voluntary Participation form for the property owner's signature;
- Continue to coordinate the mitigation activity with the property owner; and
- If the property owner refuses the Mitigation Offer, then advise the property owner of the increase in insurance premium rate, their right to appeal the insurance premium rate increase, and that the Mitigation Offer remains open and available subject to the availability of funds.

#### **3.4.5.2 Content of Mitigation Offer**

The subgrantee will use the model format found at:

<http://www.fema.gov/government/grant/srl/index.shtm> when issuing a Mitigation Offer Letter. If the subgrantee finds it legally necessary to substitute its own Mitigation Offer Letter, the proposed draft must be reviewed and approved by the FEMA Office of Chief Counsel, prior to sending the letter to the property owner.

The Mitigation Offer Letter will inform the property owner of the following:

- A mitigation grant has been awarded to the subgrantee that includes the property owner's SRL property;
- The mitigation project activity type for which the grant award was made;
- For property acquisition: In accordance with 44 CFR § 80.17(c) and program guidance, the subgrantee will indicate the current market value of the property, and identify the highest purchase offer amount available to the property owner. This includes property value; any anticipated additions (e.g., supplemental housing payments) and deductions (duplicated benefits or costs borne by the property owner); and the methodology used to determine the property value (i.e., market value, pre-event value, outstanding loans, or original purchase price). The subapplicant will indicate the methodology used to determine purchase offer (market value, pre-event value, outstanding loans, or original purchase price);
- For elevation, Mitigation Reconstruction, and dry floodproofing projects: the total project cost of the proposed mitigation activity and any applicable deductions.

Alternatively, the Pre-Award Consultation Agreement may be referenced and attached to the Mitigation Offer Letter if the information is still valid;

- Participation in the SRL program is voluntary;
- There are benefits to the property owner for accepting the Mitigation Offer (e.g., reduced risk of flood damage for elevated structures and the opportunity to move out of the SFHA for acquisitions);
- All holders of recorded interest in the property have been notified that a formal Mitigation Offer has been made on the property;
- The property owner has 45 days from the date of the Mitigation Offer Letter to accept or refuse the mitigation offer of assistance;
- Failure to respond to the Mitigation Offer Letter within 45 days of the date on the Mitigation Offer Letter constitutes a refusal;
- The FEMA Regional Administrator may extend the property owner's period of consideration beyond 45 days based on a written request by the property owner explaining extenuating circumstances and submitted before the expiration of the 45-day time period;
- The Mitigation Offer Letter constitutes a formal Mitigation Offer under the SRL program, and refusing the Mitigation Offer will subject the property owner to an increase in flood insurance premium rate. The property owner will receive a separate notice of the determination of flood insurance rate increase;
- The property owner retains the right to appeal an increase in flood insurance premium rate in certain circumstances;
- A summary of the consultation process;
- The maintenance and insurance responsibilities of the property owner during and after the mitigation project process (e.g., maintaining flood insurance, securing a contractor, receiving funds in a bank account for the project, and keeping receipts for the project in accordance with State and local grant and contract requirements);
- If the selected project type is elevation, Mitigation Reconstruction, or dry floodproofing, the requirement for the property owner to sign a Model Acknowledgement of Conditions for Mitigation of Property in a SFHA with FEMA Grant Funds;
- For acquisition projects, the requirement for the property owner to sign a Notice of Voluntary Participation and attach it to the Mitigation Offer Letter;

- If the property has historic significance, there are compliance and treatment measures that must occur. If the property is 50 or more years of age, the property owner must be informed of the potential historic significance of their property. If the property is listed or eligible to be listed in the NRHP and the mitigation activity offered would cause the property to lose this status, the property owner has the right to appeal an insurance premium rate increase resulting from declining the offer; and
- For acquisition projects, the property owner must provide tenants 90 days to vacate the property prior to implementation of the acquisition. The subgrantee must notify affected tenants of their eligibility for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in accordance with 49 CFR § 24.203.

### **3.4.5.3 Personal Representative for the SRL Property Owner**

If the property owner wants a personal representative to make decisions on his or her behalf, the property owner must provide authorization (i.e., a notarized letter) to the personal representative. FEMA shall not pay for costs incurred by property owners for engaging personal representatives.

### **3.4.5.4 Possible Outcomes of the Mitigation Offer Process**

The SRL program mitigation offer process has two possible outcomes:

- The property owner accepts the mitigation offer of assistance and signs the Mitigation Offer Letter within the allotted time. The subgrantee then forwards the response to the Mitigation Offer Letter to the FEMA Regional Administrator copying the Grantee, and the mitigation activity may proceed; or
- The property owner does not accept the mitigation offer of assistance and/or does not sign and return the Mitigation Offer Letter within the allotted time. The subgrantee will notify the FEMA Regional Administrator (copying the State) and the Assistant Administrator for the Mitigation Directorate will issue a notice to the property owner specifying the effective date of the insurance premium rate increase for their property. Generally, this increase will occur upon renewal of the insurance policy contract. In this notice, the Assistant Administrator for the Mitigation Directorate will notify the property owner that he or she has the right to appeal the insurance premium rate increase in accordance with 44 CFR Part 79 and this Guidance.

### **3.4.5.5 Period of Mitigation Offer**

A Mitigation Offer made under the SRL program remains open and available to the property owner subject to the availability of funds. When a property owner declines an offer of mitigation, the Applicant may use its accounting system to retain the funds for the duration of the period of performance.

### **3.4.6 Increased Insurance Premiums and Subsequent Claims Payments**

Property owners who decline offers of mitigation assistance will be subject to increases to their insurance premium rates. In accordance with 44 CFR § 79.7(c) and this Guidance, in any case in

which the owner of a property refuses a mitigation offer of assistance or purchase under this program, the Assistant Administrator for the Mitigation Directorate will notify each holder of recorded interest on the property of such refusal. This notification will note that upon policy renewal or issuance of a new NFIP policy covering the property, the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable premium rate for the property at the time the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property. Such property will also be subject to subsequent premium rate increases as the result of each additional NFIP claim payment totaling in excess of \$1,500. These insurance premium rate increases are limited to the actuarial risk premium rate for the type and class of property as established in accordance with 44 CFR § 79.7(c).

### **3.4.6.1 Implementation of Insurance Premium Rate Increases**

In the case of a property owner who fails to respond in writing to the mitigation offer of assistance within the allotted 45-day time period, or who provides written notification of refusal of the Mitigation Offer, the property owner will receive a Notice of NFIP Insurance Premium Rate Increase from the Assistant Administrator for the Mitigation Directorate of the intent to increase the chargeable insurance premium rate for the property to an amount equal to 150 percent of the chargeable rate for the property at the time the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property.

Unless the property owner initiates a viable appeal of the Assistant Administrator for the Mitigation Directorate's written notice of increased insurance premium rate within 90 days of the date of the notice, the increase will take effect on the first renewal or issuance of a new NFIP policy covering the property after the 90-day appeal period has elapsed. Should the property owner submit a written appeal, including supporting documentation, during the 90-day appeal period and in accordance with this Guidance, the applicable insurance premium rate increase for the property will be suspended during a stay of applicability pending the outcome of the appeal.

If the property owner prevails on appeal, the chargeable risk premium rate for flood insurance coverage on the property will continue to be based on the applicable rating characteristics of the structure prior to the Mitigation Offer, including any other premium adjustments otherwise applicable to the class of property.

If the property owner loses the appeal, the increase in the chargeable risk premium rate for flood insurance coverage on the property will be effective on the first renewal or issuance of a new NFIP policy covering the structure after the appeal is closed. In addition, any insurance premium rate increase suspended during the stay of applicability shall be collected from the property owner. If FEMA does not receive the additional premium by the date it is due, the amount of coverage will be reduced to correspond to the amount of premium payment received. In addition, if a loss occurs, the loss payment will be limited to the amount of coverage which the original premium received will buy.

With every additional claim payment made against the NFIP policy in excess of \$1,500 in total claim payments, the chargeable premium rate for that property will be subject to an additional premium rate increase of 150 percent over the chargeable rate, as adjusted by any other premium

adjustments otherwise applicable to the property. Any additional premium rate increases will be effective at the first renewal of issuance of a new NFIP policy. The increases shall end when the actuarial rate is reached.

If the Mitigation Offer is refused, the Notice of NFIP Insurance Premium Rate Increase will be accompanied by a detailed, side-by-side comparison of the total premium at the time the offer was made and the projected total premium as a result of increased insurance premium rate (see Section 3.4.6.2, Actuarial Risk Premium Rate Limitation, Tables 3-1 and 3-2). A similar document and notification will accompany the official written notice of insurance premium rate increase resulting from any subsequent paid insurance claims of more than \$1,500 in total claim payments to a property owner who has previously refused a Mitigation Offer. The increases shall end when the actuarial rate is reached.

### 3.4.6.2 Actuarial Risk Premium Rate Limitation

To establish the actuarial or risk premium rate limits for the insurance premium rate increases, specific underwriting information related to the flood zone and BFE on the effective FIRM, and the elevation of the lowest floor, as well as other rating criteria specific to the subject property, are required. The property owner may be required to provide the Special Direct Facility with all such required information to ensure that initial and subsequent insurance premium rate increases do not exceed the actuarial risk premium rate limitation for the structure. The need for this underwriting information only exists should the property owner refuse a Mitigation Offer.

**Table 3-1: Pre-FIRM Premium Excluding ICC and Federal Policy Fee**

	PRE-FIRM PREMIUM <sup>1</sup> EXCLUDING ICC <sup>2</sup> AND FEDERAL POLICY FEE <sup>3</sup>			
	A, AE, A1-A30, AH, AO, D		V, VE, V1-V30	
BUILDING <sup>5</sup>	With Basement	Without Basement	With Basement	Without Basement
AMOUNT OF INSURANCE				
\$ 20,000	\$ 162	\$ 152	\$ 212	\$ 198
\$ 30,000	\$ 243	\$ 228	\$ 318	\$ 297
\$ 40,000	\$ 324	\$ 304	\$ 424	\$ 396
\$ 50,000	\$ 405	\$ 380	\$ 530	\$ 495
\$ 60,000	\$ 484	\$ 434	\$ 732	\$ 630
\$ 70,000	\$ 563	\$ 488	\$ 934	\$ 765
\$ 80,000	\$ 642	\$ 542	\$ 1,136	\$ 900
\$ 90,000	\$ 721	\$ 596	\$ 1,338	\$ 1,035
\$ 100,000	\$ 800	\$ 650	\$ 1,540	\$ 1,170
\$ 125,000	\$ 998	\$ 785	\$ 2,045	\$ 1,580
\$ 150,000	\$ 1,195	\$ 920	\$ 2,550	\$ 1,845
\$ 175,000	\$ 1,393	\$ 1,055	\$ 3,055	\$ 2,183
\$ 200,000	\$ 1,590	\$ 1,190	\$ 3,560	\$ 2,520
\$ 225,000	\$ 1,788	\$ 1,325	\$ 4,065	\$ 2,858
\$ 250,000 <sup>4</sup>	\$ 1,985	\$ 1,460	\$ 4,570	\$ 3,195

**As of May 1, 2008**

<sup>1</sup> Premium before applying any CRS credits or optional deductible factors.

<sup>2</sup> For building coverage amounts of \$230,000 and less, add \$75 to the building premium selected from the tables above to cover ICC cost, except Zone Ds add \$6. For building coverage amounts above \$230,000 see footnote 4 below.

<sup>3</sup> Add \$30 to the premium selected from the Tables above to cover the Federal Policy Fee.

<sup>4</sup> Add \$60 to cover the ICC cost for the \$250,000 building limit, except for Zone Ds. For Zone Ds add \$4.

<sup>5</sup> Rates are per \$100 of coverage for a 12-month policy term and applicable for single and 2- to 4-family dwellings only. The first rate list is applied up to the basic insurance limits of \$50,000 with the second rate applying to the additional insurance limits in excess of \$50,000. Premiums are rounded to the nearest \$1.

**Table 3-2: Pre-FIRM Premium Increased By 50% Excluding ICC and Federal Policy Fee**

<b>PRE-FIRM PREMIUM INCREASED BY 50%<sup>1</sup> EXCLUDING ICC<sup>2</sup> AND FEDERAL POLICY FEE<sup>3</sup></b>				
	<b>A, AE, A1-A30, AH, AO, D</b>		<b>V, VE, V1-V30</b>	
<b>BUILDING<sup>5</sup></b>	<b>With Basement</b>	<b>Without Basement</b>	<b>With Basement</b>	<b>Without Basement</b>
<b>AMOUNT OF INSURANCE</b>				
\$ 20,000	\$243	\$228	\$318	\$297
\$ 30,000	\$365	\$342	\$477	\$446
\$ 40,000	\$486	\$456	\$636	\$594
\$ 50,000	\$608	\$570	\$795	\$743
\$ 60,000	\$726	\$651	\$1,098	\$945
\$ 70,000	\$845	\$732	\$1,401	\$1,148
\$ 80,000	\$963	\$813	\$1,704	\$1,350
\$ 90,000	\$1,082	\$894	\$2,007	\$1,553
\$100,000	\$1,200	\$975	\$2,310	\$1,755
\$125,000	\$1,497	\$1,177	\$3,068	\$2,370
\$150,000	\$1,793	\$1,380	\$3,825	\$2,768
\$175,000	\$2,090	\$1,583	\$4,583	\$3,275
\$200,000	\$2,385	\$1,785	\$5,340	\$3,780
\$225,000	\$2,682	\$1,988	\$6,098	\$4,287
\$250,000 <sup>4</sup>	\$2,978	\$2,190	\$6,855	\$4,793

**As of May 1, 2008**

<sup>1</sup> Premium before applying any CRS credits or optional deductible factors.

<sup>2</sup> For building coverage amounts of \$230,000 and less, add \$75 to the building premium selected from the tables above to cover ICC cost, except Zone Ds add \$6. For building coverage amounts above \$230,000 see footnote 4 below.

<sup>3</sup> Add \$30 to the premium selected from the Tables above to cover the Federal Policy Fee.



<sup>4</sup> Add \$60 to cover the ICC cost for the \$250,000 building limit, except for Zone Ds. For Zone Ds add \$4.

<sup>5</sup> Rates are per \$100 of coverage for a 12 month policy term and applicable for single and 2- to 4-family dwellings only. The first rate list is applied up to the basic insurance limits of \$50,000 with the second rate applying to the additional insurance limits in excess of \$50,000. Premiums are rounded to the nearest \$1.

### **3.4.7 Requirements to Appeal an Insurance Premium Rate Increase**

A property owner who has received a notice from FEMA for an increase in flood insurance premium rates may appeal the decision by following the procedures in this section and supporting the appeal with one or more of the six statutorily permitted grounds for appeal. Section 3.4.7.5 (Six Grounds for Appeal) provides a description of each grounds for appeal that is permitted and the specific documentation required to be provided by a property owner to demonstrate that basis for appeal.

#### **3.4.7.1 Request for Appeal**

A property owner's Request for Appeal must be submitted in writing and include supporting documentation. The request for appeal must contain the following: the full name and current mailing address of the property owner, the full address of the SRL property at issue, a copy of the Mitigation Offer Letter, a copy of the Notice of NFIP Insurance Premium Rate Increase, the basis or bases for the appeal, and information and documentation in support of the specific grounds for appeal, consistent with this Guidance. In addition, the request for appeal must be postmarked or delivered to the appropriate FEMA Regional Administrator within 90 days of the date of the Notice of NFIP Insurance Premium Rate Increase.

At any time during the appeal phase, the property owner has the right to withdraw the appeal and opt to sign the Mitigation Offer Letter.

#### **3.4.7.2 Stay of Increased Insurance Premium Rate Pending Appeal**

By submitting a Request for Appeal, an increase in the chargeable insurance premium rate is stayed pending the decision on the appeal by the Independent Third Party (ITP). In addition, the stay will be lifted if:

- The FEMA Regional Administrator does not accept the appeal for submission to an ITP because it is (i) untimely, (ii) not based on one of the six-statutorily outlined grounds, or (iii) lacks the necessary supporting documentation, in which cases the increase will go into effect;
- The FEMA Regional Administrator closes the appeal prior to ITP review upon identification of error in the extension of the Mitigation Offer, in which case no increase will occur; and
- The property owner withdraws the appeal and accepts the Mitigation Offer prior to ITP review and therefore, no insurance premium rate increase will occur.

### **3.4.7.3 FEMA Regional Administrator Review of Appeal**

The FEMA Regional Administrator will conduct an initial review of each appeal received on a timely basis in order to:

- Confirm that the property owner is raising a viable appeal (i.e., that the appeal is based on one or more of the six statutorily outlined grounds and includes sufficient supporting documentation and information for consideration of each grounds for appeal on the merits). The FEMA Regional Administrator may reject the Request for Appeal if it is made on a basis other than one of the six-statutorily outlined grounds, resulting in an increase in the chargeable insurance premium rate upon renewal of the policy;
- Request and assemble additional documentation and information from the property owner in support of the grounds for appeal raised by the property owner. And if applicable, request cooperation, documentation, and information from the Grantee and subgrantee in support of the Mitigation Offer, and in opposition to the property owner's grounds for appeal. The FEMA Regional Administrator may reject the Request for Appeal if the property owner fails to provide sufficient supporting documentation within the time period prescribed by the Regional Administrator, resulting in an increase in the chargeable insurance premium rate upon renewal of the policy; and
- Consider whether the property owner can establish, based on the face of the documentation and information provided, that the basis of the Mitigation Offer was in error. In such a case, the FEMA Regional Administrator has the discretion to request that the subgrantee reoffer the mitigation, or to close the appeal if appropriate. In all other cases, the FEMA Regional Administrator will refer the appeal, consistent with Section 3.4.7.5 (Six Grounds for Appeal), for review by an ITP.

Upon receipt of the property owner's Request for Appeal, the FEMA Regional Administrator will review it for completeness and depending upon the basis for the appeal, may contact the Grantee and subgrantee to request their cooperation, as well as documentation and information in support of the Mitigation Offer to be provided within a specified period of time.

### **3.4.7.4 Appeal to Independent Third Party**

If the appeal is not resolved after FEMA's initial review, the FEMA Regional Administrator will transmit the Request for Appeal and the accompanying documentation and information to the Assistant Administrator for the Mitigation Directorate as soon as practicable.

The Assistant Administrator for the Mitigation Directorate will forward the property owner's Request for Appeal to the Director of FEMA's Alternative Dispute Resolution (ADR) Office (the ADR Director). The ADR Director will maintain a list of individuals qualified to hear appeals as an ITP based on objective criteria, including training and experience as an ADR professional, established by the ADR Director. FEMA's ADR Office employs ADR professionals who possess the training and experience to serve as a neutral third party to review the appeal in lieu of an ITP. Accordingly, the property owner may choose to have his/her appeal

heard by a reviewer from the FEMA ADR Office in order to minimize the expense of the appeal. If the property owner chooses this low-cost alternative to an ITP, the property owner waives the right to have the appeal heard by an ITP and the determination by the reviewer from the FEMA ADR Office has the same effect as a determination by an ITP. The ADR Director can provide further guidance to the property owner about his or her options for a reviewer.

**Grounds for Appeal:** The basis for a property owner's appeal must be one or more of the six statutorily based grounds for appeal described at 44 CFR § 79.7 (d) and this section of the guidance. No other grounds will be considered by the ITP.

**Selection of ITP:** The ADR Director will select an ITP from a list compiled by the ADR Director to hear each appeal. Selection of ITP for inclusion on the list will be based on objective criteria developed by the ADR Director. The ADR Director has the discretion to remove an ITP from the list for good cause.

**Appeal Based on the Record or Hearing:** The ITP may hear a property owner's appeal in one of two ways:

1. Upon written request by the property owner, the ITP will conduct a hearing in connection with the appeal. The written request for a hearing must be included in the Request for Appeal; or
2. If the property owner does not make a written request for a hearing, the ITP will consider the record on appeal; documents and information submitted by the property owner and the Grantee and subgrantee, if applicable, and make a decision based on the record on appeal.

Because the property owner is responsible for the compensation of the ITP if he or she loses on appeal, the property owner will receive information about additional costs, if any, associated with a hearing versus costs associated with consideration of the record on appeal.

When making a decision about the merits of the appeal, the ITP will consider the record on appeal. In addition, the ITP has the discretion to consider other relevant documentation and information outside the record on appeal. The ITP has the exclusive authority to determine whether other relevant documentation and information outside the record on appeal will be considered.

**Conduct of a Hearing:** If the property owner makes a written request for a hearing, such hearing will be conducted by the ITP in a manner consistent with guidelines established by the ADR Director. The ADR Director will provide these guidelines upon request. The ITP may convene a hearing at a location designated by the ADR Director. Whenever possible, hearings will be held at a location close to the SRL property that is the subject of the appeal, unless the parties jointly agree to a different location.

The parties to the hearing are the property owner and a representative of the Assistant Administrator for the Mitigation Directorate.

Parties are permitted to have a designated personal representative accompany them to the hearing. The ITP may request information about attendees other than the parties prior to the hearing. The ITP has the discretion to permit or refuse attendees at the hearing other than the parties and his or her personal representative.

**Technical or Subject Matter Experts:** The ITP has the discretion to consult with or hear from a technical or subject matter expert. The ADR Director will maintain a list of appropriate technical or subject matter experts from other Federal agencies and elsewhere. The ITP will notify the parties of his or her intent to utilize a technical or subject matter expert provided there is no conflict of interest among the parties to the appeal or the participants at the hearing. If one of the parties raises a conflict of interest, the ADR Director will consider it and make a decision about whether to replace the technical or subject matter expert.

For an appeal on the grounds of insufficient funding for an acquisition project, the ITP must coordinate with a certified Review Appraiser to ensure technical compliance of appraisal standards, consistent with Standard 3 of the USPAP, unless the ITP meets the USPAP requirements.

The Review Appraiser's responsibilities include reviewing the subgrantee's appraisal that served as the basis of the purchase offer to ensure compliance with relevant appraisal standards. In addition, the Review Appraiser will review the property owner's appraisal submitted as documentation for an appeal (see Section 3.4.7.5.2, Appeals Relating to Insufficient Funding for Acquisition, Relocation, Elevation, Mitigation Reconstruction, and Floodproofing).

**Decision:** Within 90 days of the date on which FEMA receives the property owner's Request for Appeal to an ITP, the ITP will issue a decision in connection with the property owner's appeal in writing to the ADR Director. The decision will establish whether or not the increased chargeable insurance premium rate for flood insurance coverage of the SRL property was properly determined and will be paid by the property owner. If the ITP decides to uphold the increase, the decision will include the reasons and the effective date of such increase (i.e., the date of the refusal of the Mitigation Offer). If, on the other hand the ITP reverses the determination to increase the chargeable insurance premium rate for flood insurance coverage, the decision will include the reasons for the reversal. In addition, depending on the outcome, the decision will state which party will bear the costs for the compensation of the ITP.

**Final Decision:** The decision of the ITP will be final and binding on the parties to the appeal. However, the ADR Director may correct clerical, typographical, or computational errors made by the ITP.

**Action on Decision:** The ADR Director will forward the decision to the parties and the Assistant Administrator for the Mitigation Directorate. If the determination to increase the chargeable insurance premium rate for flood insurance coverage is upheld, the Assistant Administrator for the Mitigation Directorate will calculate any required insurance premium rate increases, including past amounts due, based on regulation.

**Administration of Appeal to ITP:** The ADR Director will conclusively resolve any procedural disputes arising in the course of the appeal to the ITP. The ADR Director will initially pay the

fees of the ITP and reimburse the ITP for expenses unless the parties jointly agree otherwise. However, in the event the property owner loses on appeal, he or she is responsible for the compensation of the ITP and would be required to reimburse the ADR Director the amount paid in fees and expenses in connection with the appeal.

### **Outcomes of Appeal to ITP:**

- 1) **If the SRL Property Owner Prevails on Appeal**, the ITP shall require the Assistant Administrator for the Mitigation Directorate to charge the risk premium rate for flood insurance coverage of the property at the rate paid prior to the Mitigation Offer (see 44 CFR § 79.7(d)(5).)

The ITP has no authority to award attorneys' fees, pre-judgment interest, post-judgment interest, or punitive damages. In addition, the ITP is prohibited from creating other categories of awards; for example, no award of consequential, special, or exemplary damages is available to a property owner.

Costs: If the ITP or technical or subject matter expert receives compensation for his or her services and the property owner prevails on appeal, the NFIF shall bear the costs of such compensation. A property owner who brings an appeal will be responsible for paying his/her attorneys' fees and costs; or

- 2) **If the SRL Property Owner Loses the Appeal**, the Assistant Administrator for the Mitigation Directorate shall promptly apply the increase to the chargeable risk premium rate for flood insurance coverage of the property to the amount established pursuant to 44 CFR § 79.7(c) and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates while the appeal was pending.

Costs: If the ITP or technical or subject matter expert receives compensation for his/her services and the property owner loses on appeal, the property owner shall bear the costs of such compensation. In addition, a property owner who brings an appeal will be responsible for paying his or her attorneys' fees and costs.

### **3.4.7.5 Six Grounds for Appeal**

#### **3.4.7.5.1 Appeals Relating to Inability to Purchase Replacement Property (Acquisition Projects Only)**

The offered mitigation activity is an acquisition and the property owner would be unable to purchase a replacement of the primary residence that is of comparable value and that is functionally equivalent. The property owner must document the actions taken to locate such replacement dwelling and demonstrate that no such dwelling is available.

For purposes of this appeal, the definition of "comparable value and functionally equivalent" means a dwelling that is decent, safe, and sanitary, and that meets applicable housing and occupancy codes. It also performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. These grounds for appeal apply only where the mitigation offer was for the acquisition of a primary residence.

To prevail on this appeal, the property owner appellant must establish that, at the time of the Mitigation Offer, he/she was unable to purchase a replacement primary residence of comparable value and one that was functionally equivalent to the SRL property with the valuation contained in the Mitigation Offer Letter. The property owner shall demonstrate evidence of comparable value through documentation, including licensed real estate agency listings.

#### **3.4.7.5.2 Appeals Relating to Insufficient Funding for Acquisition, Relocation, Elevation, Mitigation Reconstruction, and Floodproofing**

“The amount of Federal funds offered for a mitigation activity, when combined with funds from the required non-Federal sources, would not cover the actual eligible costs of the mitigation activity contained in the mitigation offer, based on independent information. In the case of an acquisition, the purchase offer is not an accurate estimation of the market value of the property, based on independent information.

For a mitigation activity other than acquisition, the property owner must submit independent estimates from professional engineers or registered architects to support this claim. For an acquisition, the property owner must submit an appraisal from a qualified appraiser to support this claim, and valuations will be considered by a review appraiser (44 CFR § 79.7).”

This appeal applies to SRL property owners receiving a final Mitigation Offer for: (a) mitigation activities other than acquisition, and (b) acquisition only when the Mitigation Offer was based on the pre-event or current market value. These grounds for appeal do not apply to owners of SRL properties that were valued for the purpose of acquisition based on the original purchase price or the outstanding amount of any loan.

- a) **For Mitigation Activities Other Than Acquisition:** Under these grounds for appeal, the property owner who was offered funds for a mitigation activity other than acquisition must show that the total project cost that was the basis for the Mitigation Offer, including the Federal contribution combined with the non-Federal funding sources, does not cover the actual eligible costs of the project.

To prevail on these grounds for appeal for a mitigation activity other than acquisition, the property owner appellant must:

- 1) Submit at least two independent project cost estimates from professional engineers or registered architects demonstrating a higher project cost than the total project cost amount that was the basis for the offer;
- 2) Establish that the project cost estimates that were the basis of the subgrantee’s Mitigation Offer were not reasonable and appropriate; and
- 3) Establish that the subgrantee was not restricted from offering higher valued estimates by Federal, State, or local laws, or other policy reasons.

- b) **For Acquisition Offers:** Under these grounds for appeal, the property owner whose property was valued at its pre-event or current market value for the purpose of acquisition must show that the purchase offer, as described in Section 2.3.13.3.1.5.1 (Property Valuation), is not an accurate estimation of the market value of the property.

To prevail on these grounds for appeal for an acquisition offer, the property owner appellant must:

- 1) Submit an independent appraisal from a qualified appraiser demonstrating a higher value of the property than the purchase offer amount. Such appraisal shall reflect the property value at the time of the final Mitigation Offer (where current market value is the basis for the purchase offer) or the value immediately preceding the relevant event (where pre-event market value is the basis for the purchase offer). Appraisals must be conducted by an appraiser in accordance with the USPAP. The appraiser must comply with relevant State laws and requirements and shall have the appropriate certification, qualifications, and competency based on the type of property being appraised;
- 2) Establish that the subgrantee did not base the purchase offer on a reasonable and appropriately applied methodology to reflect market value; and
- 3) Establish that the subgrantee was not restricted from offering higher valued amounts by Federal, State, or local laws.

The subgrantee will supply documentation to the FEMA Regional Administrator or individual undertaking the ITP Review, if requested, concerning its own appraisals, project cost estimates, and applicable legal limitations, for the selected project for the ITP to compare with the property owner's documentation.

#### **3.4.7.5.3 Appeals Relating to Diminishing Integrity of Historic Properties**

The offered mitigation activity would diminish the integrity of a historic district, site, building, or object's significant historic characteristics to the extent where the historic resource would lose its status as listed or eligible for inclusion on the National Register of Historic Places.

This appeal is based on the impact of the proposed mitigation project to a historic district, site, or structure, referred to here as the historic resource.

FEMA must provide to the ITP information and documentation related to the NHPA Section 106 consultation process for the proposed undertakings. The subgrantee will provide the summary of the SRL consultation process between the subgrantee and the property owner.

To prevail on these grounds for appeal, the property owner appellant must establish that:

- 1) The affected historic resource is listed or eligible for inclusion on the NRHP as determined by FEMA through the NHPA Section 106 process at the time the Mitigation Offer was made; and
- 2) The mitigation activity offered for the SRL property would adversely affect the significant historic characteristics of that historic resource to the extent that it would cause it to lose its status as listed or eligible for inclusion in the NRHP.

#### **3.4.7.5.4 Appeals Relating to Third Party Violations Affecting Multifamily Properties**

For a multifamily property: Each of the flood insurance claims payments that served as the basis for its designation as a Severe Repetitive Loss property must have resulted directly from the actions of a third party in violation of Federal, State, or local law, ordinance, or regulation. The property owners must submit appropriate evidence, documentation, or data to support this claim.

This appeal is limited to multifamily SRL properties consisting of five or more residences.

- a) This appeal does **not** apply to owners of multifamily SRL properties whose NFIP insurance claims were caused by occurrences such as the following, which are not addressed in the FEMA NFIP Floodplain Management Regulations (44 CFR § 60.3):
  - Common sediment accumulation from upstream such as clay, mud, gravel, etc., that would raise the channel and floodplain elevation;
  - Increased run-off due to development of watershed or neighboring properties from paving, removal of vegetative cover (e.g., trees), or agricultural activities;
  - Natural debris accumulation downstream of a property, such as trees, plant material, etc.; or
  - Minor culvert or drainage ditch work in a watercourse that is not mapped by FEMA.
- b) This appeal does not apply to owners of multifamily SRL properties located in Zone B, C, or X.

To prevail on these grounds for appeal, the property owner appellant must establish:

- a) A third party's violation of floodplain management regulations or other applicable Federal, State, or local laws, ordinances, or regulations, depending upon the jurisdiction; and
- b) Such violations caused the flood-related damage that gave rise to each insurance claim payment that served as the basis for its designation as an SRL property.

Required evidence, documentation, or data would depend upon the specific alleged violation of Federal, State, or local law, ordinance, or regulation raised by the appellant as the basis for the appeal. A written statement from the community official responsible for floodplain management concerning the nature of the flooding may be also considered a form of documentation. Evidence of a settlement in connection with an alleged violation by a third party may also be considered on appeal.

#### **3.4.7.5.5 Appeals Relating to Reliance on FIRM Current at the Time of Purchase**

The property owner relied upon a FEMA FIRM that was current at the time the property was purchased, and the effective FIRM and associated FIS did not indicate that the property was



located in an area having special flood hazards. The property owner must produce the dated FIRM and FIS in effect at the time the property was purchased to support this claim.

To prevail on these grounds for appeal, the property owner appellant must produce the FIRM and FIS in effect at the time the SRL property was purchased.

Information regarding FIRMs and the FISs are available from:

- a) The FEMA Web site:
  - <http://www.fema.gov/hazard/map/firm.shtm>
  - <http://www.fema.gov/hazard/map/fis.shtm>
  - <http://www.fema.gov/business/nfip/mscjumppage.shtm>;
- b) The local town or county public records department, land use and development office, or library;
- c) The State NFIP coordinator, who is often part of the State's Department of Natural Resources or Environment (check State office departments);
- d) The FEMA Region supporting the State in which the property is located; and
- e) The FEMA Map Service Center, which can be reached by telephone: (877) FEMA-MAP (336-2627).

The property owner must also produce documentation establishing the purchase date of the SRL property. Examples of proof of property purchase include a deed to the property, a closing statement for the purchase of the property, real estate tax assessments, or bills.

The property owner must establish that at the time of purchase, the effective FIRM and associated FIS did not indicate that the SRL property was located in an area having special flood hazards. This would include a map showing the boundaries of the property in relation to the SFHA boundaries.

#### **3.4.7.5.6 Appeals Relating To Cost Effectiveness of Alternative Project**

An alternative mitigation activity would be at least as cost-effective as the offered mitigation activity. The property owner must submit documentation of the costs for a technically feasible and eligible alternative mitigation activity based on estimates from qualified appraisers, professional engineers, or registered architects, and information and documentation demonstrating the cost effectiveness using a FEMA approved methodology to support this claim.

Under this appeal, it will be incumbent upon the property owner to produce documentation of the costs for a technically feasible and eligible alternative mitigation activity based on estimates from qualified appraisers, professional engineers, or registered architects, and information and documentation demonstrating the cost effectiveness using a FEMA approved methodology.

Further, the Grantee and subgrantee will produce, from the Grantee or subgrantee files, documentation on alternative mitigation activity types evaluated for cost effectiveness for that particular structure. The Grantee and subgrantee will provide documentation of the property owner's preferences related to accepting different mitigation activities, as developed during the consultation.

Note: The subgrantee's legal, contractual, land-use preferences or restrictions, or other policies may cause the subgrantee to select a less cost-effective mitigation activity than that preferred by the property owner.

To prevail on these grounds for appeal, the property owner appellant must demonstrate that:

- a) Appraisals, engineering, or architectural materials provide sufficient information and documentation on total project costs for a proposed eligible mitigation activity that will meet all FEMA Environmental/Historic Preservation requirements; and
- b) The proposed eligible mitigation activity, based on an approved FEMA methodology, is at least as cost-effective as the mitigation activity selected by the subgrantee, **and** either of the following:
  - The subgrantee failed to consult with the property owner appellant to help identify other eligible mitigation activities for the property that are cost-effective and technically feasible; or
  - The subgrantee does not have any legal, contractual, land-use preferences or restrictions, or other policies that may have kept the subgrantee from implementing the mitigation activity type proposed by the property owner appellant.

### **3.4.8 Mitigation Reconstruction**

This section is specific to Mitigation Reconstruction activities and must be used in conjunction with the program guidance. Mitigation Reconstruction, which is the demolition and rebuilding of structures, is permitted when traditional elevation cannot be implemented.

Mitigation Reconstruction is defined as any activity where an existing building and/or foundation is partially or completely demolished or destroyed and an improved, elevated building is constructed on the same site. This includes, but is not limited to, pre-existing buildings that were substantially damaged or destroyed as a result of a declared event. All activities submitted for consideration under FEMA's HMA programs that result in the construction of new living space at or above the BFE shall be considered Mitigation Reconstruction and shall be subject to all related requirements. Mitigation Reconstruction is currently an eligible activity type within the HMGP Gulf Coast Pilot and the SRL Program.

Mitigation Reconstruction activities are intended to provide another option for State, Tribal, and local governments only when traditional elevation cannot be implemented. Refer to the diagrams in Section 3.4.4.5 (Criteria for Subapplicant Consideration of Project Type) for assistance in evaluating the appropriateness of this activity.

Applicants and subapplicants should recognize that not all potential Mitigation Reconstruction projects will be cost-effective due to locations within areas of low flood risk. Other eligible project types may be at least as cost-effective as Mitigation Reconstruction, and property owners may appeal Mitigation Offers based on identifying more cost-effective projects. Applicants and subapplicants should use discretion in selecting Mitigation Reconstruction even if individual property owners prefer this project type over more cost-effective mitigation measures.

Eligible costs for Mitigation Reconstruction projects are limited to \$150,000 Federal share per property (excluding administrative allowances and permitting fees); in some cases there may be a higher percentage of non-Federal share required to cover the total project costs.

Grantee and subgrantee management costs may be used to support increased oversight and inspection requirements associated with Mitigation Reconstruction projects.

Mitigation Reconstruction is a relatively new project activity type, and FEMA will continue to conduct analyses to determine the appropriateness of this activity in both the Gulf Coast Hazard Mitigation Grant Program Reconstruction Grant Pilot and the SRL program.

#### **3.4.8.1 Summary of Mitigation Project Requirements**

In addition to complying with the subapplicant requirements in Section 2.3, Mitigation Project Subapplication Guidance, the subapplicant must provide documentation that traditional elevation cannot be implemented (e.g., because it is not structurally feasible). Grantees may establish requirements more stringent than the parameters outlined in this guidance.

Mitigation Reconstruction will not be eligible if the structure is located in a regulatory floodway or Zone V as identified on the effective FIRM, or within the mapped limit of the 1.5-foot breaking wave zone. Flood elevation data applicable in a particular area is referenced as BFE or ABFE. In the wake of a major flood event, FEMA may issue ABFEs that more closely reflect post-storm conditions than pre-existing BFEs.

Mitigation Reconstruction must be completed to at least the BFE or an ABFE or higher if required by any State or local ordinance, and in accordance with criteria established in this Guidance. As outlined in the February 5, 2006 memo, *Issuance and Use of Advisory Base Flood Elevations (ABFE) in the Implementation of FEMA Assistance*, Applicants requesting FEMA program funds in areas where ABFEs have been issued will be required to elevate to the ABFE.

**Mitigation Reconstruction projects will result in the construction of a code-compliant and hazard-resistant structure on an elevated foundation system.** A Certificate of Occupancy must be issued by a qualified building official to certify that the construction was properly completed. Subgrantees must adhere to all requirements regarding building code, design, and proper inspections as set forth in this guidance. Specifically, projects funded under this program shall be designed and constructed, at a minimum, to the requirements of the 2003 edition of the International Building Code (IBC), or the *International Residential Code for One- and Two-Family Dwellings* published by the International Code Council. Use of the 2006 editions of the codes is strongly encouraged.

Mitigation Reconstruction activities must be feasible and cost-effective. The reconstruction must approximate the original footage of the structure before reconstruction. More details about the construction requirements of this project type are explained in Section 3.4.8.7 (Mitigation Reconstruction Project Scoping).

Property owners are required to sign the “Acknowledgement of Conditions for Mitigation of Property in a SFHA with FEMA Grant Funds” form as described in Section 2.6.4.4 (Special Flood Hazard Area Requirement) that require flood insurance coverage be maintained on the property.

### **3.4.8.2 Compliance with Local Standards**

Applicable local ordinances, State laws, as well as Federal laws, regulations, and Executive Orders must be followed, in addition to the standards and requirements outlined in this guidance. In addition, if a Mitigation Reconstruction project is proposed for a designated Historic District or other designated district, special considerations may be needed to determine SRL program eligibility and/or allowable construction methods.

### **3.4.8.3 Eligible Mitigation Reconstruction Activities and Costs**

Mitigation Reconstruction activities may involve the demolition of an existing structure, followed by onsite replacement with a hazard-resistant (e.g., flood, wind, and fire) and code-compliant structure.

All reasonable and necessary costs, including anticipated project costs, direct costs associated with project scoping, reviewing design professional changes, and pre-construction and construction activities listed below, are eligible project costs. All costs shall be based on the construction of fundamental, code-compliant structures as related to the codes and standards outlined in this Guidance. Eligible activities must adhere to all Federal, State, and local requirements. A detailed project cost estimate shall be prepared by, or under the supervision of, the design professional responsible for project design. Details pertaining specifically to the project cost estimate, such as submittal format, cost ranges, preparation requirements, and source documentation are included in Section 3.4.8.23 (Cost Estimate).

Eligible costs are limited to \$150,000 Federal share per property. Some eligible activities such as administrative allowances and permitting fees need not be included in the \$150,000 maximum Federal share as indicated in Table 3-3 below.

The activities eligible as part of a grant award under this activity type are separated into three major categories: Consultation and Project Scoping; Pre-Construction Activities; and Construction Activities. Specific activities within each of these categories that are eligible to the extent reasonable and necessary to perform the project purpose are identified in the following table:

**Table 3-3: Eligible Mitigation Reconstruction Activities**

Activity	Subject to Federal Share Funding Limit of \$150,000?
<b>1) Project Scoping</b>	
Property Verification (e.g., size of pre-existing structure)	No
Preliminary Elevation Determination	No
Environmental Site Assessment Phase 1	No
Engineering Feasibility Study (e.g., can existing structure be elevated? Is Mitigation Reconstruction feasible?)	No
Benefit-Cost Analysis	No
Title Search (e.g., ownership verification)	No
<b>2) Pre-Construction Activities</b>	
Site Survey (i.e., boundaries and elevation)	No
Testing of Soils/Geotechnical, Testing for Asbestos and Lead-Based Paint	No
Archeological Assessment Phase 1	No
Local, State, and Federal Permitting (e.g., environmental, historic, etc.)	Yes
Architectural/Engineering Design/Plans/Specifications	Yes
Plan Review	No
<b>3) Construction Activities</b>	
Permitted Disposal of routine asbestos and household hazardous wastes incidental to demolition	No
Environmental/Historic Preservation Mitigation	No
Demolition/Removal (see also Section 3.4.8.4, Eligible Demolition/Removal Activities)	Yes
Erosion Control/Grading/Drainage	Yes
Utility Connections	Yes
Landscaping for Site Stabilization (i.e., seeding)	Yes
Walkways and Driveways	Yes
Elevated Foundation Construction	Yes
Inspection of Foundation System	No
Structural Shell	
Framing	Yes
Exterior Doors	Yes
Windows (includes protection)	Yes
Access/Egress	Yes
Exterior Cladding	Yes
Roofing	Yes
Interior Partitioning	
Drywall	Yes
Trim	Yes
Painting	Yes
Interior Doors	Yes
Insulation	Yes

Activity	Subject to Federal Share Funding Limit of \$150,000?
Utility Equipment	
Heating, Ventilation, and Air Conditioning (HVAC)	Yes
Water/Wastewater Plumbing	Yes
Electrical Panel and Wiring	Yes
Hot Water Heater	Yes
Fixtures	
Sinks/Toilets>Showers	Yes
Lighting	Yes
Cabinets and Countertops	Yes
Flooring	Yes
Building Inspections	No
Certificate of Occupancy	No
Final Elevation Certificate	No
Owner Displacement Costs	No
Tenant Displacement Costs	No
Prepare and Record Flood Insurance Requirement (after construction finalized)	No

#### 3.4.8.4 Eligible Demolition/Removal Activities

Mitigation Reconstruction projects will include either total or partial demolition of the site. All demolition debris (e.g., hazardous and non-hazardous) shall be removed and taken to an approved landfill. The following must be considered during demolition:

- All asbestos must be abated and disposed of properly;
- Mitigation Reconstruction projects may include the removal of existing associated structures, garages, and above-grade concrete slabs as required;
- Any abandoned septic tanks that are not removed shall be emptied, have the floors and walls cracked or crumbled to prevent the tank from holding water, and be filled with sand or other clean fill;
- All foundation and basement walls not included within the Mitigation Reconstruction project footprint shall be removed to at least 1 foot below the finish grade of the site, or as necessary to construct the new foundations;
- All basements not included within the Mitigation Reconstruction project footprint shall be filled with compacted clean fill. Prior to filling, basement floors should be provided with a minimum 1-foot diameter hole in the floor to allow for drainage;
- Only trees which restrict the Mitigation Reconstruction work on any structure may be removed;

- Any abandoned utilities shall be terminated at least 2 feet below the finish grade of the site;
- Any abandoned wells shall be capped and associated components may be removed; and
- All disturbed areas must be graded and leveled. The top 12 inches of soil should be capable of encouraging vegetation in areas not included in the reconstructed footprint.

### **3.4.8.5 Ineligible Mitigation Reconstruction Activities and Costs**

Certain Mitigation Reconstruction activities and their associated costs are not eligible. Ineligible activities and costs include, but are not limited to, the following:

- Mitigation Reconstruction of structures located in a regulatory floodway or Zone V as identified on the effective FIRM, or within the mapped limit of the 1.5-foot breaking wave zone;
- Unapproved scope changes;
- Legal procedures related to litigation for an approved application;
- Landscaping for ornamentation (e.g., trees, shrubs, etc.);
- Decks and garages not included as part of the foundation system;
- All construction activities not specifically noted in this Guidance and not specifically approved by FEMA in advance;
- Site remediation of hazardous contaminants; and
- Maintenance costs.

### **3.4.8.6 Feasibility/Effectiveness Requirement**

Mitigation Reconstruction projects must be both feasible and effective at mitigating the hazards for which the project was designed. To determine both feasibility and effectiveness, FEMA will use the information provided in the project subapplication, including the SOW and cost estimate sections, as well as any supporting documentation to perform an Engineering Feasibility evaluation of the proposed project. If applicable, proposed schematic or detailed architectural/engineering drawings shall be included to allow FEMA to assess the effectiveness and feasibility of the proposed project.

The height to which a foundation can be constructed is a key factor in determining feasibility. Assistance in evaluating flood mitigation techniques can be found in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. FEMA has developed guidance for the design of appropriate foundations based on the requirements of the International Codes and other applicable coastal construction standards. This guidance is included in FEMA 550,

*Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*, which also includes sample foundation design calculations and drawings, and describes in detail the considerations for determining the feasibility of constructing to the required height. While FEMA 550 was developed in response to the reconstruction needs following Hurricane Katrina, the design solutions provided can be used in both coastal and non-coastal flood zones. The document recommends users employ the appropriate foundation by following the Foundation Selection Decision Tree. In this document, FEMA recommends that the sample designs be used for a maximum height of 8 feet for a closed foundation, and up to 15 feet for an open foundation. A design professional should be consulted to determine feasibility for residential structures with required foundation heights greater than these limits.

### **3.4.8.7 Mitigation Reconstruction Project Scoping**

In order to facilitate project development, including determination of technical feasibility and cost effectiveness, and to ensure all potential costs have been estimated, a conceptual design of proposed activities must be established during the application development. Although the construction of each structure will be designed by a licensed professional as part of the implementation of the project, basic design parameters for each structure must be established during project scoping. Some of the design parameters that must be established during project scoping include foundation type, required foundation height, flood hazard conditions, appropriate wind design, project cost, and site conditions. To aid potential subapplicants through the project scoping process, FEMA has developed detailed information regarding project cost estimates (see Section 3.4.8.23, Cost Estimate). The primary design parameters that must be considered during project scoping include:

- a) **Foundation Type:** A key consideration for scoping Mitigation Reconstruction projects will be the type of foundation required. The type of foundation for a specific Mitigation Reconstruction project will be based on the location of the property within a defined flood zone (based on the BFE or ABFE) and the required height of the proposed structure above adjacent grade. During project scoping, the applicable flood zone or flood hazard area for each structure must be identified as well as the associated foundation design requirements. This will aid subapplicants in determining the appropriate foundation type.

The type of foundation selected will affect the type and cost of construction, and must be identified prior to application submittal. Assistance in evaluating flood mitigation techniques can be found in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. Detailed guidance on foundation designs and design parameters can be found in FEMA 550, *Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*;

- b) **Foundation Height:** The required height to which a foundation must be constructed is a key factor in determining feasibility and cost. Assistance in evaluating flood mitigation techniques can be found in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. FEMA has developed guidance for the design of appropriate foundations based on the requirements of the International Codes and other applicable coastal construction standards. This guidance is included in FEMA 550, *Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*,



which also includes sample foundation design calculations and drawings. In this document, FEMA has recommended sample designs and associated height limitations for various foundation types. For residential structures with required foundation heights greater than these limits, a design professional should be consulted to determine feasibility;

- c) **Wind Design Considerations:** All Mitigation Reconstruction activities must be completed in accordance with the International Codes. This includes the appropriate wind design as dictated by the required wind design speed for the project location. An additional consideration is the requirement for the installation of shutters or other protective measures in wind-borne debris regions, which are defined by those areas with a design wind speed of 120 miles per hour or greater. During project scoping, projects located within these areas should be identified and the associated cost of shutters or protective measures must be included in project costs;
- d) **Seismic Considerations:** All Mitigation Reconstruction activities must be completed in accordance with the International Codes. This includes the appropriate seismic design as dictated by the required seismic design for the project location. During project scoping, projects located within these areas should be identified and the associated cost of seismic design measures or protection must be included in project costs; and
- e) **Project Cost:** The requirements and preferences for Mitigation Reconstruction developed through the parameters described above will significantly affect the cost of proposed activities. Proposed costs must be developed for consideration of mitigation options and completion of the BCA. Detailed guidance on costing procedures will be available from the FEMA Regional Office. In addition to these specific parameters, other considerations may need to be addressed during project scoping, such as:
  - Zoning requirements and other local ordinances
  - Soil conditions
  - Site access requirements
  - Environmental and historic structure considerations

During project scoping, consideration should be given to all parameters that have the potential to significantly affect project implementation including work schedule, project cost, and project effectiveness.

#### **3.4.8.8 Certificate of Occupancy**

Projects funded under this program shall not be occupied, or the occupancy category changed, without prior issuance of a Certificate of Occupancy by the governing local jurisdiction. In jurisdictions that have adopted the International Codes, the Certificate of Occupancy shall be issued only after the building official inspects the structure and finds no violations of the provisions of applicable codes or other laws enforced by the building department, as well as the provisions and requirements of this guidance.

In the absence of an adopted building code in a participating jurisdiction or the absence of a designated building official, the required inspections shall be conducted by or under the direct supervision of a design professional licensed in the State of the subject project. In communities that have not currently adopted the International Codes, the State Building Commission shall determine the education, training, and experience requirements for inspectors responsible for conducting inspections.

Inspections required prior to the issuance of a Certificate of Occupancy include, but are not limited to, the following:

- a) **Demolition Inspection:** Inspections shall be made after all utility connections have been disconnected and secured in such manner that no unsafe or unsanitary conditions exist on the site during or after demolition operations;
- b) **Foundation Inspection:** Inspections shall be made during foundation construction to verify that the foundations have been installed to the depth and capacity specified in the construction documents;
- c) **Floodplain Inspection:** Inspections shall be made for properties located in the SFHA, upon placement of the lowest floor, and prior to subsequent vertical construction. Documentation of the elevation of the lowest floor shall be provided by a land surveyor, engineer, or architect authorized by law to certify elevation information in the State where the project is located. Handheld, Global Positioning System (GPS)-derived ground elevations are not acceptable to meet this requirement. In addition, set backs and distances from water courses, the regulatory floodway, Zone V, and mapped limit of the 1.5-foot breaking wave zone should be checked prior to construction;
- d) **Framing Inspection:** Inspections shall be made after the roof is in place, including all framing and bracing, and after the plumbing, mechanical, and electrical rough-ins are complete. The framing inspections shall be made to verify that framing members are of the type, size, and grade indicated on the construction documents and the connections and fasteners have been installed in accordance with the applicable codes and construction documents;
- e) **Sheathing Inspection:** Shall be conducted after all roof and wall sheathing and fasteners are complete and, at a minimum, shall include inspection of the roof sheathing, wall sheathing, sheathing fasteners, and roof/wall dry-in; and
- f) **Final Inspection:** A final inspection should be completed to document compliance with all requirements of the International Codes, local floodplain ordinances, and any other State or local regulations.

A comprehensive list of all required inspections, permits, and certifications is included in the International Codes. Additional information on flood-related inspections can be found in the International Code Council document, *Reducing Flood Losses Through the International Codes*. A sample inspection checklist is available at:

<http://www.fema.gov/library/viewRecord.do?id=1595>.

### 3.4.8.9 Approximation of Original Square Footage

Mitigation Reconstruction activities must result only in an approximation of the original square footage of the structure. **The square footage of all resulting structures shall be no more than 10 percent greater than that of the original structure.** The final square footage will be verified at the time of subgrant closeout for compliance with this requirement. The original square footage shall be considered that portion of the structure that was situated on a foundation system. As such, breezeways, decks, garages, etc. will not be considered part of the original square footage unless they were situated on the original foundation system. Original square footage must be documented in the SRL subapplication through copies of tax records or other verifiable means.

### 3.4.8.10 Codes and Standards

Projects funded under this program shall be designed and constructed to the minimum standard as established by the requirements of the 2003 International Codes. Structures, including all parts and appurtenances, shall be designed and constructed to safely support all loads, including dead loads, live loads, roof loads, floor loads, wind loads, flood loads, snow loads, seismic loads, and combination of loads expected to be imposed on the structure as defined in the code and related documents referenced in the codes. The construction of structures shall result in a system that provides a complete load path capable of transferring all loads from the point of origin through load-resisting elements to the soils supporting the foundations. One- and two-family dwellings shall be designed and constructed, as a minimum, to meet the requirements of the *2003 International Residential Code for One-and Two-Family Dwellings* published by the International Code Council. However, FEMA encourages communities to use the newly implemented 2006 International Codes with its referenced standards. These include Appendix G: Flood Resistant Construction, as well as American Society of Civil Engineers (ASCE)/Structural Engineering Institute (SEI) 24-05, *Flood Resistant Design and Construction*, for all occupancies including residential, commercial, and other. The 2003 International Codes shall be the minimum applicable requirement until and unless a subsequent edition of that code is adopted by the governing jurisdiction.

Multi-family dwellings shall be designed and constructed, at a minimum, to meet the requirements of the IBC published by the International Code Council. The 2003 IBC shall be the minimum applicable requirement until and unless a subsequent edition of that code is adopted by the governing jurisdiction. For purposes of this program, the absence of an adopted building code in a participating jurisdiction or a jurisdiction's use of a building code not meeting the requirements of the International Codes shall not relieve the subapplicant from meeting the minimum design and construction requirements.

Installation of manufactured homes must follow regulations and guidance provided by HUD and the State Administering Agency. In addition, for installations in the SFHA, the flood provisions in the NFPA 225, *Model Manufactured Home Installation Standard* (2005 Edition), shall be the minimum requirement. This document details the standards for preparation of sites, foundations on which manufactured homes are installed, and the procedures for onsite installation of homes.

Project construction documents, including design drawings and specifications, shall be signed and sealed by a design professional licensed in the State in which the project is to be constructed

and certified for compliance with the codes, standards, and minimum construction requirements specified in this Guidance. Construction documents must be produced prior to the start of construction but are not required for submittal as part of an application. The construction documents shall include a statement that the design meets or exceeds the applicable 2003 International Code. Construction documents based on standard details developed by a manufacturer or material supplier, including framing members, framing connections and roofing, siding or appurtenance fasteners shall be signed and sealed by a design professional licensed in the State in which the project is constructed.

#### **3.4.8.11 Plan Review and Inspections**

Construction drawings and specifications shall be reviewed by the local jurisdiction prior to the start of construction. As defined by Section 103 of the IBC, the required review of the construction drawings and specifications shall be conducted by the local jurisdiction's building official. If the local jurisdiction has not established a building department, the reviews must be conducted by an independent design professional retained by the jurisdiction to conduct such reviews. The reviewing design professional shall be licensed in the State. Payment of the reviewing design professional is an allowable cost. Construction inspections must be conducted to verify that the project was constructed in full accordance with the approved design and the applicable International Codes. Construction inspections shall be conducted by the office of the building official or under the direct supervision of a design professional licensed in the State of the project as applicable.

#### **3.4.8.12 Builder Certification**

At a minimum, all work must be performed by contractors licensed or registered in the State where they are working and who maintain appropriate insurance coverage. In addition, contractors must adhere to more stringent local requirements, where applicable.

#### **3.4.8.13 Additional Design and Construction Guidance**

In addition to the code requirements established by the International Code Council, the following documents are available to provide additional guidance and assistance (i.e., not requirements) for Mitigation Reconstruction activities:

- ASCE/SEI 24-05, *Flood Resistant Design and Construction*, January 2006;
- ASCE/SEI 7-05, *Minimum Design Loads for Buildings and Other Structures*, 2002;
- IBC, 2006 edition (Note: IBC appendices are not mandatory unless specifically adopted by the local jurisdiction.);
- International Code Council, *Reducing Flood Losses Through the International Codes*, 2nd Edition, 2005;
- FEMA 55, *Coastal Construction Manual*, 3rd Edition, May 2000;
- FEMA 489, *Mitigation Assessment Team Report: Hurricane Ivan in Alabama and Florida*, August 2005;

- FEMA 499, *Home Builder's Guide to Coastal Construction, Technical Fact Sheet Series*, 2005;
- FEMA 543, *Design Guide for Improving Critical Facility Safety from Flooding and High Winds*, January 2007;
- FEMA 549, *Mitigation Assessment Team Report: Hurricane Katrina in the Gulf Coast*, July 2006;
- FEMA 550, *Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*, July 2006; and
- FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*, March 2007.

#### **3.4.8.14 Scope of Work for Mitigation Reconstruction Projects**

Eligible Mitigation Reconstruction activities and costs are divided into three major categories: Project Scoping, Pre-Construction Activities, and Construction Activities (see Section 3.4.3.8, Eligible Activities and Associated Costs). However, more specific details about the Construction Activities portion of the process are needed to ensure an effective and feasible project. This process is described in detail in the sections that follow.

FEMA will use documentation provided by the subapplicant to evaluate the SOW, which determines the eligibility and feasibility of the Mitigation Reconstruction project. Therefore, when applicable, attachments must be provided of details, supplementary data, and pertinent information from qualified/credible sources (e.g., professional engineer, architect, and local government records). See Section 2.3.6 (Project Subapplication Scope of Work) for a checklist of all pertinent information pertaining to a well-documented application. Any deviation from methods, standard building procedures, or techniques must be thoroughly explained and documented.

#### **3.4.8.15 General Requirements**

The SOW for Mitigation Reconstruction projects is expected to include six general activities associated with construction. Each of the following activities is outlined in subsequent subsections:

- Pre-construction;
- Site preparation;
- Foundation construction;
- Structural shell construction;
- Interior finishes; and
- Construction completion.

### **3.4.8.16 Pre-Construction**

Pre-construction activities for each structure include project design, analysis, and permitting required to meet the requirements for funding.

Project design will be performed by, or under the direct supervision of, a design professional (i.e., a registered architect or engineer licensed in the State of the project). The design includes all calculations, analysis, and research necessary to determine the forces expected to act on the project structure. The design must account for all attachments and appurtenances. The selected structural framing members must be sufficient to provide a load path for all load bearing members so as to transfer design loads to the foundations. The design must also account for the connections required to transfer load from one member to another in accordance with the design concept.

Assistance in evaluating flood mitigation techniques can be found in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. Design and construction techniques for building foundations can be found in FEMA 550, *Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*. This Guidance describes in detail the considerations for determining the feasibility of constructing to the required height. While FEMA 550 was developed in response to the reconstruction needs following Hurricane Katrina, the design solutions provided can be used in both coastal and non-coastal flood zones.

The design process also includes any testing required to establish site-specific design parameters, such as soil borings conducted as part of a geotechnical exploration, to determine foundation requirements.

Prior to construction, each subapplicant must obtain all applicable permits and pay all required permitting fees. Applicable permits are expected to include, but not be limited to the following:

- Zoning or land use approvals;
- Environmental permits or required certifications;
- Historic preservation approvals; and
- Building permits.

### **3.4.8.17 Site Preparation**

Site preparation activities include demolition of existing structures, removal and disposal of project debris, site environmental restoration, utility relocation, and site grading required as part of the project. Environmental site remediation costs are not eligible; the properties must be certified as “clean” by the appropriate State office before project funds may be expended on the site.

### **3.4.8.18 Foundation Construction**

Foundation construction activities include installation, monitoring, and testing (if required) of foundations supporting the structure. Assistance in evaluating flood mitigation techniques can be

found in FEMA 551, *Selecting Appropriate Mitigation Measures for Floodprone Structures*. Design and construction techniques for building foundations can be found in FEMA 550, *Recommended Residential Construction for the Gulf Coast: Building on Strong and Safe Foundations*. This guidance document describes in detail the considerations for determining the feasibility of constructing to the required height. While FEMA 550 was developed in response to the reconstruction needs following Hurricane Katrina, the design solutions provided can be used in both coastal and non-coastal flood zones.

Installation of an open foundation system shall be monitored to assure that foundation elements are installed to the depth and achieve the load capacity specified in the construction documents. Foundation construction monitoring can be conducted by a building official or their designee, the licensed design professional responsible for the project design, or an independent agency.

#### **3.4.8.19 Structural Shell Construction**

Structural shell construction activities include all framing, load-carrying elements, attachments, and building envelope components above the foundation. As rough-in installation of electrical, communications, plumbing, and mechanical systems may require drilling through or making notches in load-carrying elements, such rough-in work also is part of the structural shell construction activities. Structural shell construction activities must include an inspection of the completed shell prior to interior work covering the framing.

A critical element of structural shell construction is an engineering inspection conducted after framing, service rough-in, and building envelope construction are completed but prior to installation of interior wall or coverings. The engineering inspection shall verify that the size, location, and materials used in the construction are in conformance with the construction drawings and the applicable International Code.

Results of an engineering inspection by, or under the direct supervision of, the responsible design professional or an independent agency shall be presented in a written report signed and sealed by the licensed design professional in charge of the monitoring. The engineering inspections must be conducted by a building official or their designee. The licensed design professional responsible for the project design may inspect the structure for quality control reasons.

#### **3.4.8.20 Interior Finishes**

Interior finish activities include installation of interior walls, flooring, wiring/lighting fixtures, insulation, plumbing and mechanical fixtures, kitchen/bath counters, cabinets, sinks, toilets, tub/shower, and HVAC. Inspections of these interior finish activities shall be conducted in accordance with the requirements of the applicable International Code Council building code.

#### **3.4.8.21 Construction Completion**

Construction completion activities consist of conducting final inspections, preparation of a final elevation certificate (including digital photographs), issuance of a Certificate of Occupancy for the structure, and assembling the documentation necessary to verify the project's conformance with program requirements.

### **3.4.8.22 Scope of Work Changes for Mitigation Reconstruction Projects**

Requests for changes to the SOW after award are permissible as long as they do not change the nature of the activity, cost of the project, the feasibility and effectiveness of the project, or the BCR. SOW changes can include the type of foundation (i.e., from closed to open) and the type of structure to be constructed (i.e., from masonry to wood frame). Requests must be supported by adequate justification from the Applicant in order to be processed. The justification is a written explanation of the reason or reasons for the change, an outline of remaining funds available to support the change, and a description of the work necessary to complete the activity. There is no guarantee that SOW changes will be approved, and all approvals will be at FEMA's discretion.

### **3.4.8.23 Cost Estimate**

Each project requires a project cost estimate as part of the technical and cost effectiveness evaluation process. The project cost estimate shall include all reasonably anticipated project costs, including direct costs associated with project scoping and construction and closeout activities. The project cost estimate should also be based on standard-grade construction.

Eligible costs are limited to \$150,000 Federal share per property. Some eligible activities such as administrative allowances and permitting fees need not be included in the \$150,000 maximum Federal share, as detailed in Table 3-3, Eligible Mitigation Reconstruction Activities.

Federal share funding will be estimated and obligated on a per square foot basis; reimbursement will be in a manner consistent with standard SRL Grantee procedures. Based on the foundation type and required elevation height, a square foot cost for each potential combination of structure characteristics will be developed. All structures of the same type within an application will have costs allocated at the same square foot rate. Subapplicants will identify the type and number of structures of each possible combination to be included in the proposed project.

For cost estimating purposes, the breakdown of structure types will be based on the following structure and foundation characteristics:

- Structure Type:
  - One-story
  - Two-story
- Structure Area:
  - 800 to 3,200 square feet (one-story)
  - 1,200 to 3,600 square feet (two-story)
- Foundation Type:
  - Open foundation
  - Closed foundation



- Foundation Height:
  - 0 to 5 feet
  - 5 to 10 feet
  - 10 to 15 feet
  - Over 15 feet

To facilitate the application development process, FEMA will provide square foot cost estimates for combinations of the above structure characteristics with respect to the appropriate geographic region of the Grantee. The square foot costs will be developed with the understanding that the costs of eligible construction activities can vary based on the quality and type of construction materials and finishing work. Mitigation Reconstruction costs will be consistent with Section 3.4.8.10 (Codes and Standards), and based on materials, service equipment, and standard-grade construction practices, with basic exterior ornamentation and interior refinements consistent with an average quality of construction as defined by Marshall & Swift, RSMeans, or similar guidance. Any costs incurred above and beyond the square foot costs as allocated by FEMA will not be the responsibility of FEMA and will not be included in the determination of the Federal share or local match. Only actual costs incurred for eligible activities will be reimbursed by the Grantee.

Subapplicants may contact their Applicant to obtain the FEMA-provided square foot cost estimates and may use these values without submitting additional documentation. However, an Applicant may provide a specific cost estimate for each combination of structure characteristics on a square foot basis. FEMA will review cost estimates submitted to ensure they are reasonable and valid for the type of construction and the geographic area. Cost information will be maintained and updated by FEMA to keep the reference cost range information as current as possible. Additional dollars per square foot information provided by subapplicants may be used by FEMA to manage the changing dynamic of construction cost variances.

For Applicants not using the square foot costs provided by FEMA, documentation of the source of all cost estimates must be provided. Costs must be provided in dollars per square foot format. The costs shall be based on the construction of fundamental, code-compliant structures with essential appurtenances as described. This will allow for a comparative review of projects of varying types within a region and to ensure reasonable construction costs have been submitted.

#### **3.4.8.24 Cost Estimate Documentation**

The project cost estimate shall describe all anticipated and potential costs associated with the proposed Mitigation Reconstruction project. Sufficient detail should be provided regarding various cost items. The project cost estimate should clearly identify costs associated with each major work activity, including construction and non-construction activities, and include a detailed breakdown of costs within each activity. Project cost estimates may be developed using commercial estimating references, well-documented local area historic costs, or competitive bids for the proposed project.

### **3.4.8.25 Cost-Effectiveness**

Applicants and subapplicants should recognize that not all potential Mitigation Reconstruction projects will be cost-effective due to locations within areas of low flood risk. Other eligible project types may be at least as cost-effective as Mitigation Reconstruction, and property owners may appeal Mitigation Offers based on identifying more cost-effective projects. Applicants and subapplicants should use discretion in selecting Mitigation Reconstruction even if individual property owners prefer this project type over more cost-effective mitigation measures.

Considering and evaluating the potential costs and benefits when scoping project activities will help to ensure the submission of cost-effective projects. For project subapplications that address multiple structures, the BCR may be calculated by totaling the anticipated or net present value of benefits for each structure to obtain the project's total net present value of benefits and then dividing the total project benefits by the total project cost. This represents the composite project BCR. Applicants and subapplicants are encouraged to ensure that the BCA includes all benefits associated with the proposed mitigation project. Projects with a composite project BCR less than 1.0 will not be eligible for funding.

### **3.4.8.26 Methodology**

Cost effectiveness of Mitigation Reconstruction activities must be demonstrated through the use of a standard FEMA BCA module. Applicants and subapplicants should select the appropriate BCA Flood module based on the type of flood hazard for the structure location and the data available. The Very Limited Data module may not be used for SRL mitigation projects. Project costs in the BCA will be based on all eligible costs, as described in Section 2.3.8 (Cost Estimate). Applicants and subapplicants must ensure the projects costs reflect the full costs associated with Mitigation Reconstruction to the BFE or appropriate design elevation.

### **3.4.8.27 Data Requirements for Mitigation Reconstruction Projects**

The data required to conduct a BCA for Mitigation Reconstruction activities will vary slightly depending on the module and methodology utilized. Typical data required to conduct a standard BCA for Mitigation Reconstruction activities will include:

- Structure square footage;
- Structure type;
- Site specific elevation data, including first floor elevations;
- Structure use;
- Unit replacement costs (in dollars per square foot);
- Contents value<sup>2</sup>;
- Displacement costs<sup>2</sup>;

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<sup>2</sup> If different than FEMA standard value

- Loss of rent or business income<sup>3</sup>; and
- Site FIS or ABFE data.

Project applications should include surveys, copies of elevation certificates, copies of appropriate sections of the FIS, FIRM, or ABFE data, copies of relevant supporting information, and data from engineering reports and other documentation to support figures used in developing the project BCA.

### **3.4.8.28 Closeouts**

Closeout of Mitigation Reconstruction projects generally includes the following:

- Agreement to close the project;
- Reconciliation/adjustment of project costs;
- The subgrantee shall submit to the Grantee a Certificate of Occupancy and Final Elevation Certificate for each structure in the project to certify that the structure is code-compliant. A copy of a recorded deed for each property including Mitigation Reconstruction project deed requirements shall also be submitted to the Grantee. In addition, a certification from a building official or licensed design professional verifying that the structure was designed and constructed to the minimum standard of the 2003 International Codes must be provided. These documents shall be submitted before closeout can be completed. If a subgrantee fails to provide these documents, FEMA has the authority to recoup grant funds provided for the project;
- Verification that final square footage is within 10 percent of original structure square footage at time of closeout;
- Verification of insurance for each structure;
- Submission of the final project report;
- Site visit and photograph record for each structure;
- Update to repetitive loss database for mitigated properties;
- Update to property site information in the eGrants database for each structure; and
- Project closeout in SRL program and financial systems.

### **3.4.9 Special Flood Hazard Area Requirement**

See Section 2.6.4.4 (Special Flood Hazard Area Requirement) for details.

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<sup>3</sup> If applicable