

Buyouts: Program Design, Intake, Coordination and Allowable End Uses

2023 CDBG-DR Problem Solving Clinic| Chicago, IL

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Presenters



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Learning Objectives

- Learn about various funding opportunities for buyouts, as well as opportunities for coordination
- Understand basic buyout program and compliance requirements which will inform the initial planning, program design, and implementation of a grantee's buyout activities
- Understand how to achieve efficiencies and innovations in buyout program implementation
- Learn about allowable activities for end use, strategies for long-term land management, and coordination with other programs and funding opportunities

Agenda

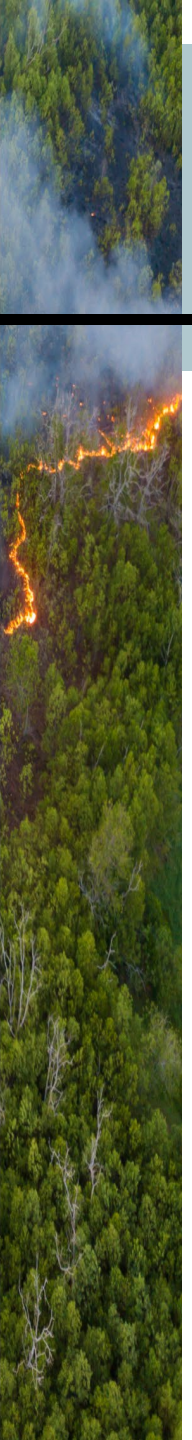
- Funding Opportunities
- Pre-Buyout Activities
- Program Launch
- Buyout Implementation Activities
- Post-Buyout Activities
- Questions and Answers



Funding Opportunities

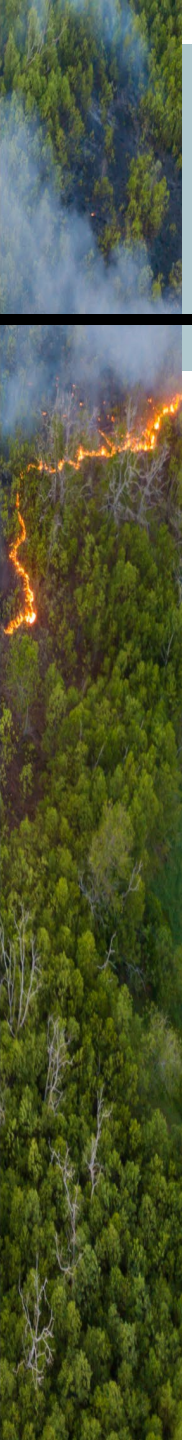


Buyout Programs



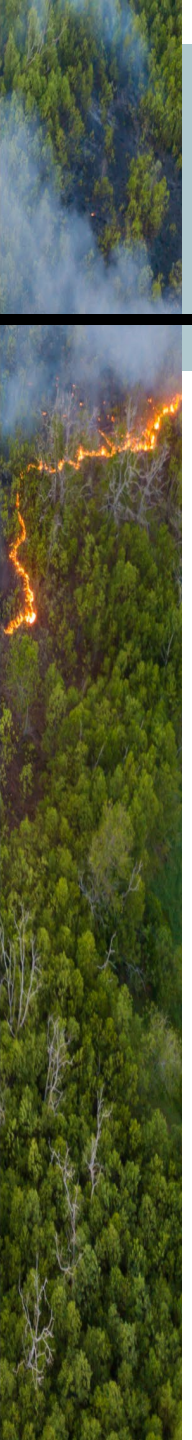
What Is a Buyout?

- A particular form of property acquisition (purchase of residential property) with the purpose of establishing open space to reduce risks and minimize damages from future disaster events
- Residential, commercial, agricultural, undeveloped or vacant property can be the focus of buyouts
- Properties in the floodplain, Disaster Risk Reduction Area, or similar
- Generally accompanied by demolition and site clearance, relocation assistance, and other activities
- Alignment with using nature-based solutions for resilience purposes, such as restoration of natural floodplains
- In acquiring property, the intended end use is not for purposes of redevelopment, but for land to be maintained as open space in perpetuity to reduce risk
- Permanent decisions – no Federal assistance for future disasters



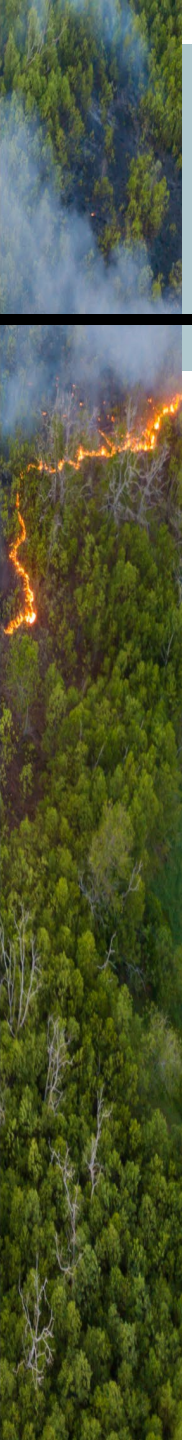
HUD Funding For Buyouts

- Eligible Activity
  - Allowable as an acquisition activity with restrictions on final disposition and end use in compliance with applicable laws and regulations
- Applicable Laws and Regulations
  - Community Development Block Grant Program (24 CFR Part 570)
  - Environmental Review (24 CFR Part 58)
  - Uniform Relocation Act (49 CFR Part 24 and 24 CFR 570.606 and Section 414 of the Stafford Act)
  - Section 104(d) one-for-one replacement requirement
  - Stafford Act - Duplication of Benefits (DOB) (42 U.S.C. 5121-5207, 84 FR 28836 and 84 FR 28848 dated June 20, 2019)
  - Relevant Public Law(s) appropriating CDBG-DR funds
  - Relevant Federal Register Notices applicable to the disaster



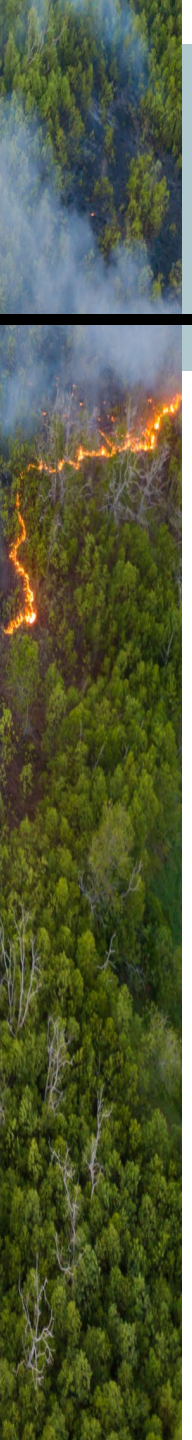
CDBG-DR and MIT Funding

- CDBG-DR: Tie back to the Disaster
  - Programs must support recovery activities with a tie back to the disaster in the most impacted and distressed areas
  - There should be evidence of disaster damage to document tie-back
- CDBG-MIT/DR Mitigation Set Aside: Mitigate against Future Risks
  - Programs must increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters in the most impacted and distressed areas
  - Does not require "tie-back" to the disaster event



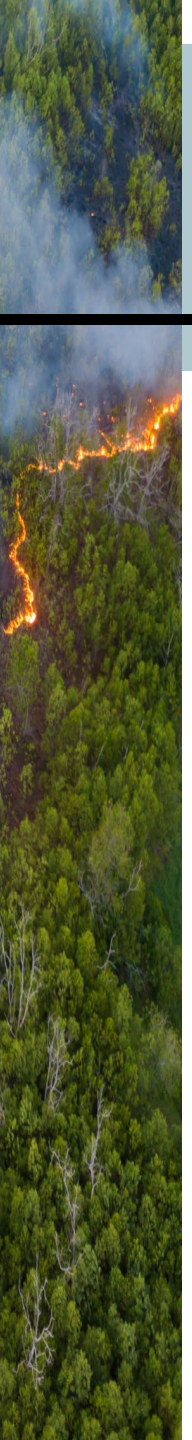
FEMA Funding for Buyouts

- Hazard Mitigation Assistance Grants
  - HMGP: Hazard Mitigation Grant Program
  - BRIC: Building Resilient Infrastructure and Communities
  - FMA: Flood Mitigation Assistance
  - PDM: Pre-Disaster Mitigation



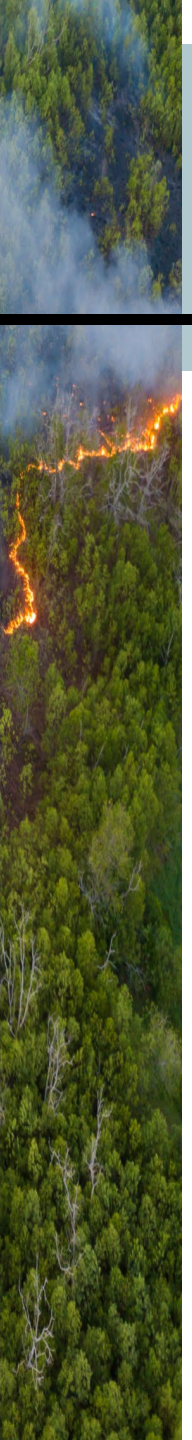
FEMA Property Acquisitions Requirements

- A property is eligible for FEMA funds if acquired from a willing, voluntary seller
- Hazard Mitigation Assistance Grants – Generally Allowable Costs
  - Market value of real property (land and structures) at the time of sale or immediately prior to the most recent disaster
  - Demolition or relocation of structure
  - Debris removal, abatement costs, grading, seeding, leveling, site stabilization
  - Fees for necessary appraisals, title searches, inspections, permit fees, surveys
  - Development of an adaptive land management strategy for the purpose of addressing long-term management of the acquired property and developing funding strategies
- Subsequent Transfer of a Property Interest
  - A subgrantee may transfer a property interest only with prior written approval of FEMA
  - Transferee must be another public entity or a qualified conservation organization
  - Property transfer to private citizens and corporations are not approved



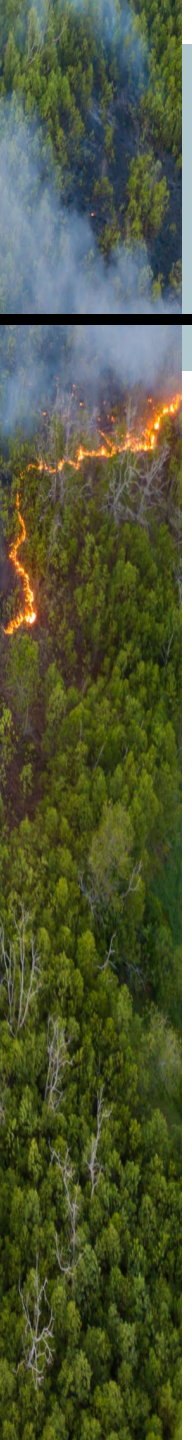
Coordination

- FEMA Cost Share
  - Usually a 25% non-FEMA cost share (10% generally for small impoverished communities)
  - Other funding, including CDBG-DR, as potential source of cost share
- Buyout strategies consistent with Hazard Mitigation Plan (HMP)
- For acquisition for open space in Coastal Barrier Resource System, required FEMA regional coordination with Department of the Interior
- Coordination with local program representatives on approaches and schedules
- Object to make the process as simple and consistent as possible for sub applicants and property owners
- Alignment with nature-based solutions
- Buyouts most effective as part of a larger coordinated strategy



FEMA and Other Resources

- FEMA Hazard Mitigation Assistance Program and Policy Guide (HMA Guide) (March 23, 2023)
- FEMA 2022 HMA Mitigation Action Portfolio
- FEMA Hazard Mitigation Assistance Mitigation Action Portfolio Submittal Form
- FEMA Model Deed Restriction
- US Fish and Wildlife Service: Coastal Barrier Resources Act Project Consultation

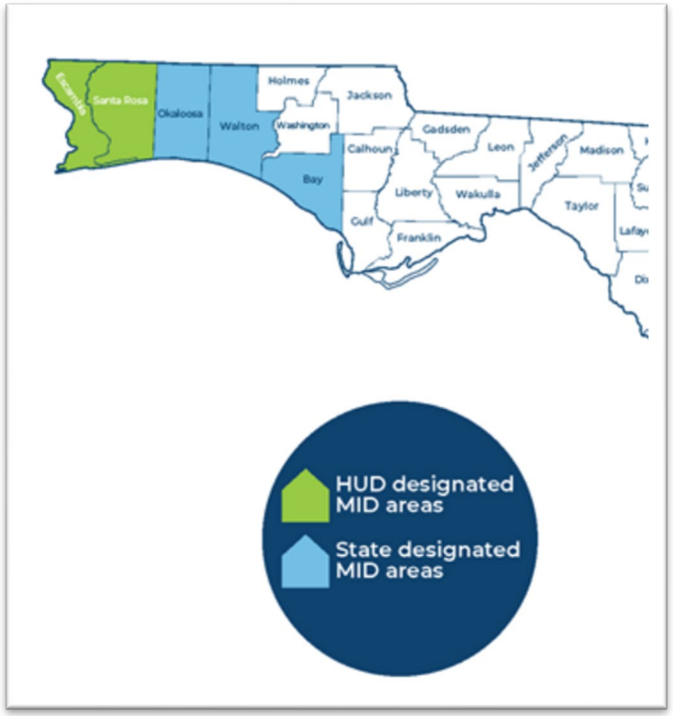


Other Sources of Funding

- Federal
  - Environmental Protection Agency (EPA) Brownfields Coalition funds
  - Economic Development Authority (EDA)
  - US Army Corps of Engineers
  - HUD Sustainable Community Regional Planning Grant
- State
  - Environmental bond act funds
- Local
  - Special Tax Purpose Zones
  - Local funds for ongoing maintenance
  - Community organization donations, private foundations, civic clubs
  - Stormwater utility fees
- See 2022 Hazard Mitigation Assistance Mitigation Action Portfolio for examples

Case Study: Escambia County, Florida

- Escambia County has been running a local buyout program since 2014 using FEMA HMGP
- The County just received awards to purchase approx. 60 homes across 4 different focus areas
- Repetitive loss: significant numbers of those impacted by Hurricane Sally were also affected by 2014 floods
- The County's Hurricane Sally Action Plan includes $22 Million in Rebuild Florida CDBG-DR funds, including to cover local match for previously approved HMPG funds
- One of the targeted acquisition areas is to support stream restoration

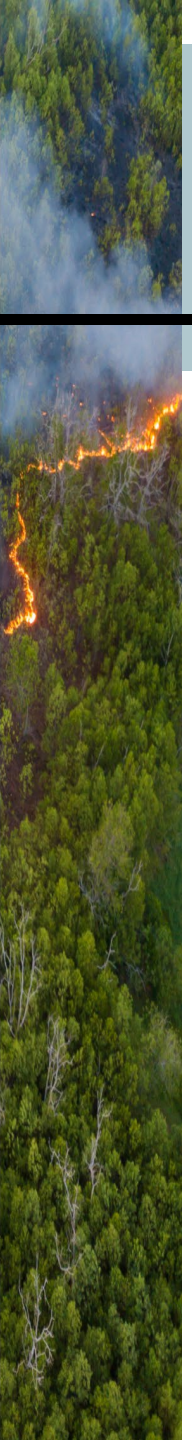




Pre-Buyout Activities



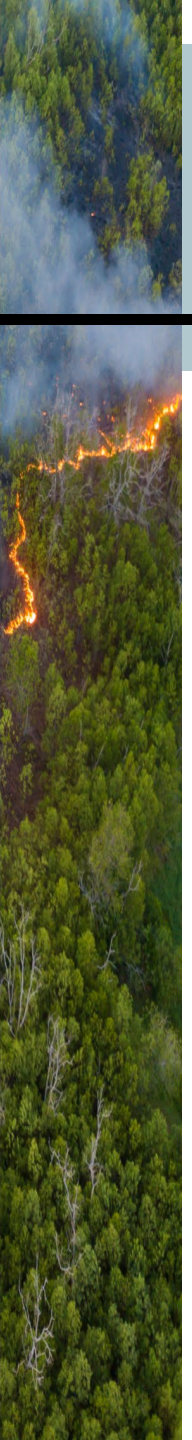
Critical Program Decisions



Key Program Decisions

CDBG-DR grantees must make some key decisions before designing their buyout program. These decisions include:

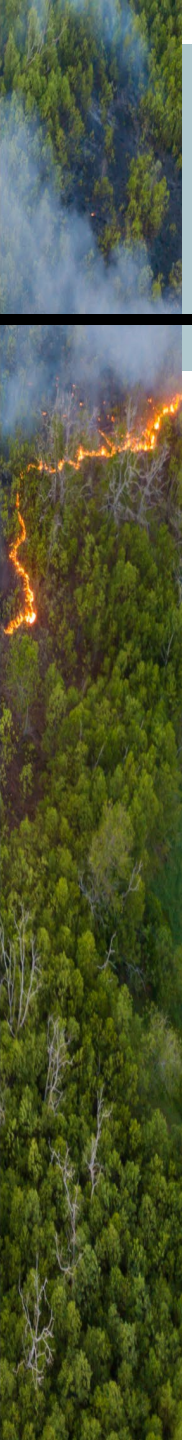
- Method of property valuation
  - Will the program pay pre-disaster fair market value of the property or the current post-disaster fair market value?
    - Whether a property is purchased at the pre-disaster or post-disaster FMV determines what national objective will be met by the activity
    - Additionally, the pre- or post-disaster FMV also informs whether Safe Housing Incentives or other assistance will be required to meet a national objective
  - Will the fair market value (whether pre- or post) be based on appraisals, tax assessments, or other means to determine an offer price?
  - Will the buyout activity be voluntary or involuntary?
    - When undertaking a voluntary buyout with CDBG-DR funds, the grantee can choose method for determining FMV
    - If undertaking an involuntary buyout with CDBG-DR, must use an appraisal and review appraisal method for determining FMV



Key Program Decisions

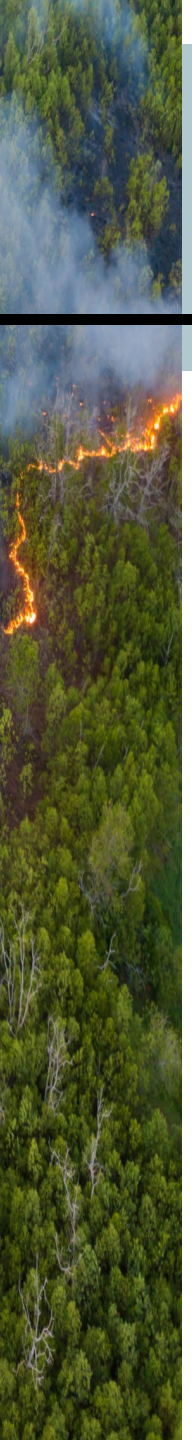
Other Key Program Decisions include:

- Determining eligible properties to acquire
  - Will program purchase only properties in flood zones or will Disaster Risk Reduction Areas be established in accordance with the allocating Federal Register notice?
- National Objective to be met
  - The CDBG-DR Consolidated Notice allows for following national objectives: LMH, LMA, LMC, UN, and LMHI for low-to-moderate income Safe Housing Incentives
- Safe Housing Incentive for Buyout participation
  - Will the program provide additional incentive payments along with the property purchase?
  - Note: when using the LMH national objective and purchasing the property at the current post-disaster FMV, additional assistance must be provided to the household to assist with housing replacement costs



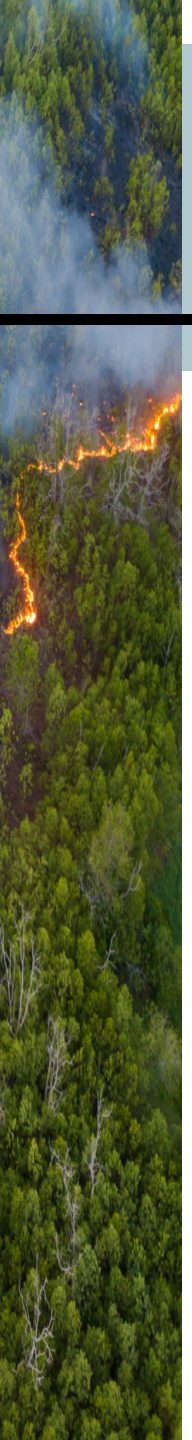
Determining Eligible Buyout Properties

- The term “buyouts” means the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards
  - Properties located in a floodway/floodplain tend to have repetitive flooding impacts and removing those properties from these high-risk areas reduce risk
  - Properties not in a floodway or floodplain can still be high risk (e.g., mudslides) and those areas are called Disaster Risk Reduction Areas (DRRA).
- If acquiring properties in a DRRA, it must be established in accordance with the criteria in the Consolidated Notice
  - Per the Notice, grantees must establish an open space management plan or equivalent, if one has not already been established, before implementation.



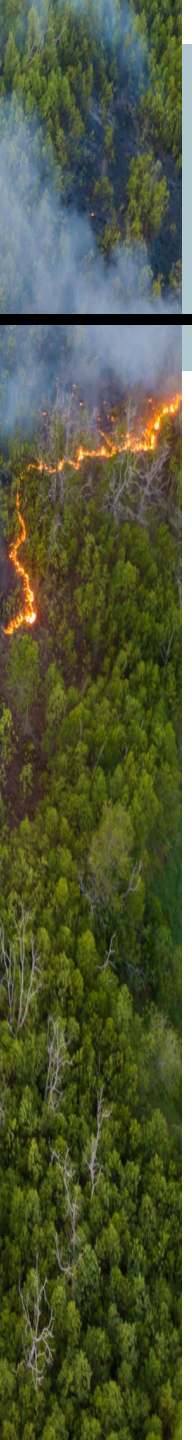
Establishing a Disaster Risk Reduction Area (DRRA)

- Grantees who will buyout properties in a DRRA must establish criteria in its policies and procedures to designate an area for the buyout
- DRRA Requirements:
  - The area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received CDBG-DR funds;
  - The hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidence by the best available data (e.g., FEMA Repetitive Loss Data, etc.), and science such as engineering and structural solutions propounded by FEMA, USACE, etc.; and
  - The area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area



National Objectives for Buyout Activities

National Objective	Implementation Requirement	Considerations
LMH (Low Mod Housing Activities)	• Any assisted activity that involves acquisition of properties with another direct benefit (LMH activity) that results in occupancy and meets LMH national objective criteria. • **Grantee must verify that the household secures new housing and provides additional assistance to secure it (must be permanent housing).** • Example of a direct benefit might be providing down payment assistance.	Per the FRN, a buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential structure. Therefore, acquisition-only buyout programs cannot satisfy the LMH national objective criteria.
LMA (Low Mod Area Benefit)	If the buyout area and subsequent greenspace benefit all residents of an area that is primarily residential and 51 percent or more LMI persons. • Grantee must define service area based on end use of property.	Per the FRN, grantees covered by the ‘‘LMI exception criteria’’ as described in section IV.C. of the Consolidated Notice may apply it to these activities. To satisfy LMA criteria, grantees must define the service area based on the end use of the buyout Properties.



National Objectives for Buyout Activities

National Objective	Implementation Requirement	Considerations
LMC (Low Mod Limited Clientele)	The activity is restricted to only LMI persons and benefits LMI sellers by acquiring the property for **more than post-disaster value**.	This national objective cannot be used if purchasing property at the current post-disaster fair market value.
UN (Urgent Need)	Buyout to households that are not at or below 80% AMI (*Note: The grantee's action plan must address all three criteria described in the Consolidated Notice to use the alternative urgent need national objective for the program and/or activity. This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee's Allocation Announcement Notice*.)	Includes all properties purchased from non-LMI household or properties that could not meet either the LMH or LMA national objective. *(Note: Before pursuing urgent need, grantees should make sure they on a path to meet their LMI overall benefit req.)*



Program Launch



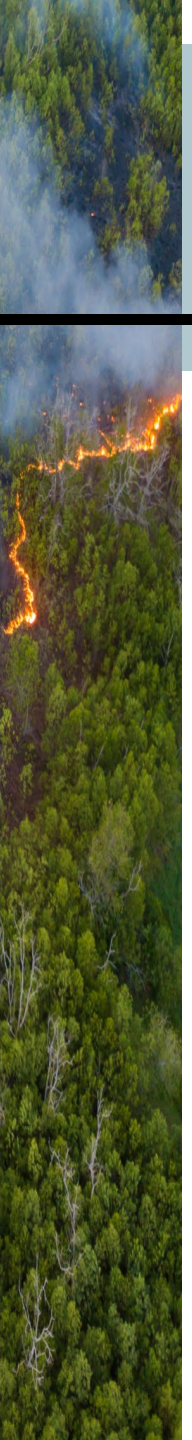
Policies and Procedures

Policies Needed to Support Comprehensive Buyout Program Activities

- Once key decisions have been determined, these decisions must be captured in the following policies to support a successful program!
- Items to be addressed in policy:
  - Eligible applicants and properties,
  - Duplication of benefits (DOB)
  - Property valuation and acquisition process,
  - Safe Housing Incentives,
  - Uniform Relocation Act (URA) and any optional relocation,
  - Demolition of acquired structures,
  - Environmental clearance, Section 3, and other cross-cutting federal requirements,
  - Post-buyout eligible uses,
  - Property maintenance plan



Community Outreach



Community Outreach and Public Engagement

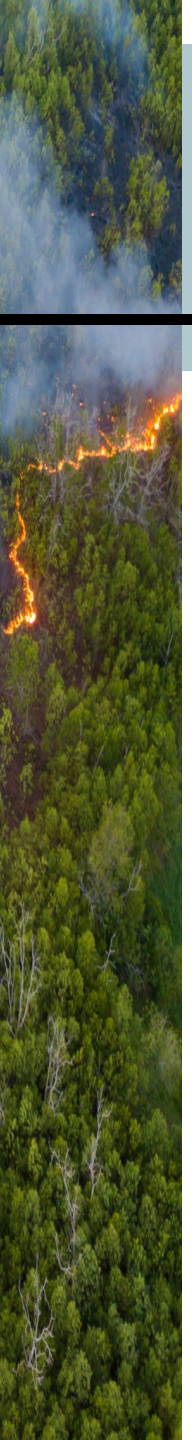
- Coordination with the local community where the buyouts will be proposed is key!
  - Important for communities to weigh benefit of removing high risk property from the housing stock with the loss of tax revenue from those properties as buyout properties cannot have structures rebuilt and must remain open space
  - Important to understand the demographics of the high-risk area to ensure buyouts do not unfairly harm vulnerable populations
- Engage the public once buyout areas are ready to be proposed.
  - Being able to engage the public in the final buyout area locations before their official designation helps the community understand why properties are acquired and left as open space
  - As part of the consideration for designating a buyout area, request public input on proposed uses of open space after the buyouts are complete to better understand the needs of the community (e.g., sports field vs community garden vs flood control)



Buyout Implementation Activities



Application and Intake

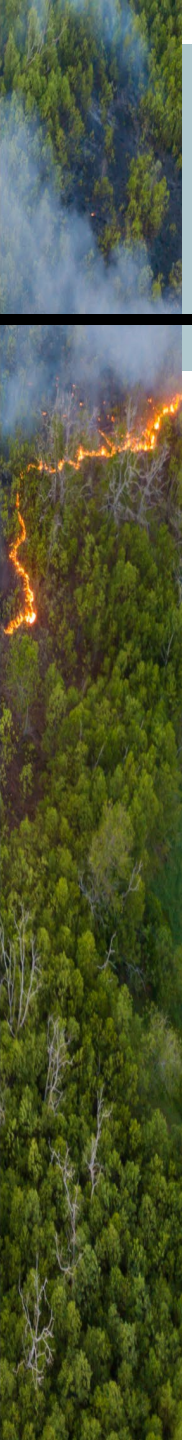


Developing the Application

- The Buyout application needs to capture all information pertinent to the property owner(s), any tenants of the property, and all disaster assistance received
- A list of all the documentation that applicants will need for proof of eligibility should be provided prior to intake appointments
  - Proof of ownership (if required by grantee)
  - Proof of occupancy
  - Any rental agreements with tenants
  - Proof of household income
  - Proof of insurance or disaster assistance received

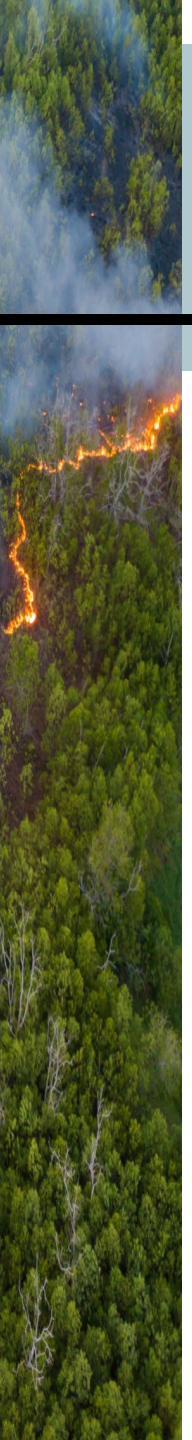


Verifying Eligible Applicants



Environmental Review

- A Buyout acquisition requires environmental clearance of each property before making the Offer to Purchase
  - It is a best practice to undertake a Tiered review process for the buyout program
  - A Tier 1 review can be done on a county-wide basis and the Tier 2 review will be completed on a house-by-house basis
- Properties will also require a Phase I ASTM (American Society for Test and Materials) review to identify previous property uses and identify toxic hazards
- Houses built prior to 1978 require lead-based paint testing
- Houses will also need to be tested for asbestos prior to demolition

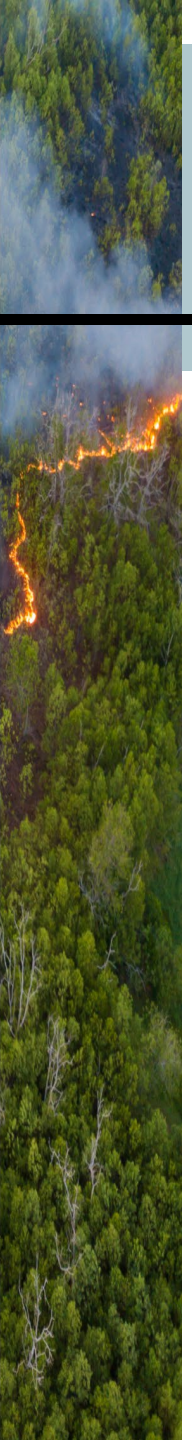


Determining Eligibility and URA Review

- The Buyout policies will have the criteria for determining eligibility and calculating DOB. For example:
  - Did the applicant have to be residing in the property at the time of the disaster?
  - Will the program serve only LMI? If also serving Urgent Need, is there an income limit at 120% or other cap?
- Tenants to the property will be displaced when property is purchased, this will likely trigger the Uniform Relocation Act (49 CFR Part 24)
  - Be prepared to provide all URA notifications and advisory services for all tenants
- Eligibility will also need to be determined for Safe Housing Incentives



Developing Safe Housing Incentives

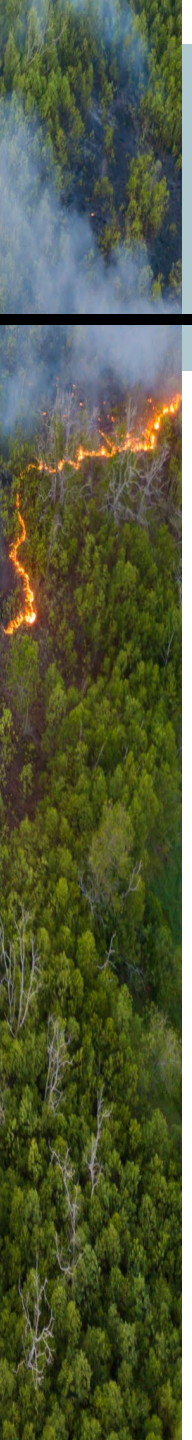


Safe Housing Incentives

- A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community's comprehensive recovery plan
  - Displaced persons fall under the URA and if applicable, must be provided URA assistance
    - In a voluntary buyout, only tenants may be displaced
    - In an involuntary buyout, both property owners and tenants may be displaced
  - Safe Housing incentives can be provided in addition to URA assistance
- A grantee may require the incentive to be used for a particular purpose and may develop a couple of different incentive types (e.g., replacement housing purchase, long-term rental, and/or incentives to remain in same community)
- Grantees must document: how the incentive meets necessary and reasonable, how it meets a national objective, and that the incentives align with Action Plan

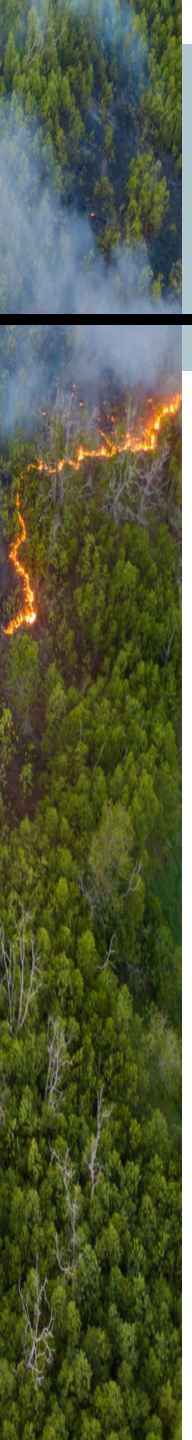


Property Purchase, DOB, and Move-Out Coordination



Making the Offer to Purchase

- The Offer to Purchase is based on the fair market value (FMV) of the home minus any DOB
  - Note: When a property is purchased at the post-disaster FMV, HUD does not consider that valuation to provide any assistance to the property owner (i.e., anyone could have paid that amount so no additional benefit)
- Although no benefits will be duplicated in the purchase, the property owner must still provide a list of all assistance received and the intended purpose of the funds
  - Incentives can have a DOB if for the same purpose as other assistance received (e.g., rental incentive could duplicate previous FEMA rental assistance)
- Ideally, incentives can be made available at the same time the property closes



Property Purchase and Move Coordination

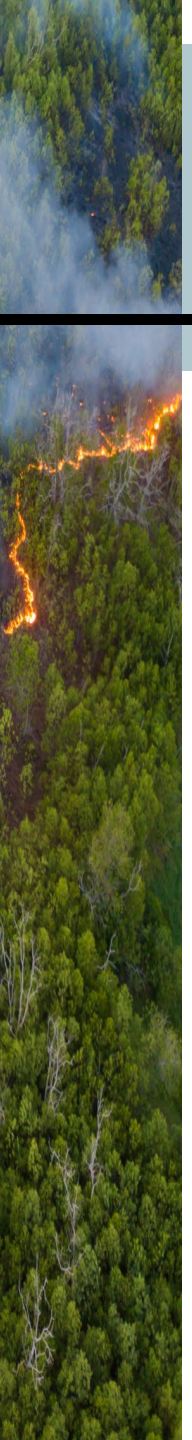
- Once the Offer to Purchase is accepted, it is time to send the 90-day move out notice to any tenants receiving URA
- The property closing must be scheduled in coordination with the owners or tenants moving out
  - Note: If property is purchased while still occupied, the grantee or subrecipient will become the “landlord” for the property until vacated
- Once the property is vacated a vacancy inspection is generally performed to verify the occupants have completely moved out and utilities have been shut off
- After the property is purchased and vacated, the structures are secured until they can be demolished



Post-Buyout Activities



Demolitions

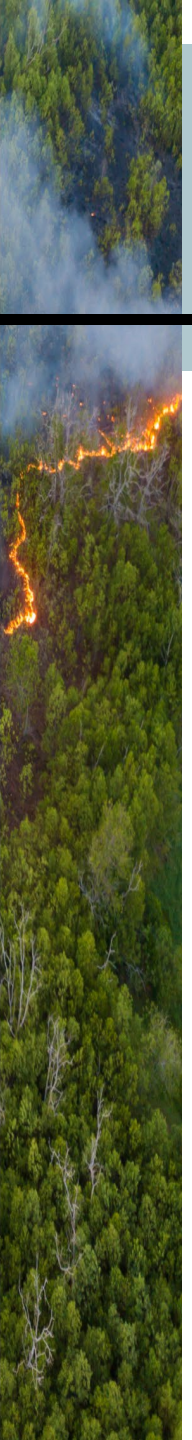


Demolitions

- Demolition tied to buyouts as eligible costs
- Demolition and clearance activities can provide local workforce development opportunities
- Uniform Relocation Act (49 CFR Part 24 and 24 CFR 570.606) and HCDA Section 104(d) requirements
  - One-for-one replacement for lower income housing units due to demolition, typically to be replaced with affordable unit lost
  - Modification of requirement depending on Federal Register Notice waiver
  - Under the Consolidated Notice – waiver includes demolished units that meet the definition of owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation – grantee defines "not suitable for rehab"

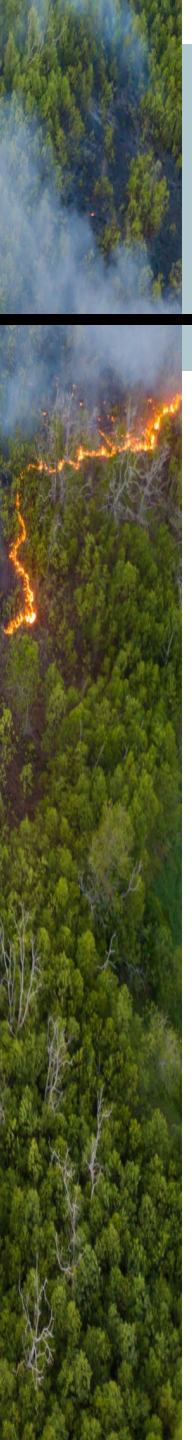


Land Use Requirements



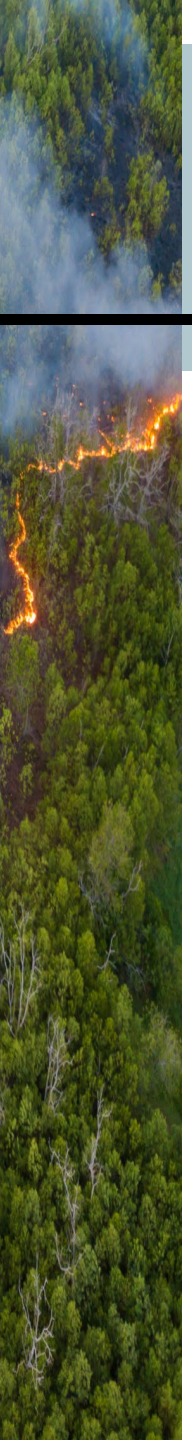
Allowable End Uses

- Property acquired in a CDBG-DR buyout:
  - Must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices
  - Must **NOT** have a new structure erected on them, other than:
    - A public facility that is open on all sides and functionally related to a designated open space (park, campground, outdoor recreation area)
    - A rest room
    - A flood control structure
      - Provided prior approval in writing by local floodplain manager
      - With confirmation it does not reduce valley storage, increase erosive velocities, or increase flood heights on opposite banks or up/downstream



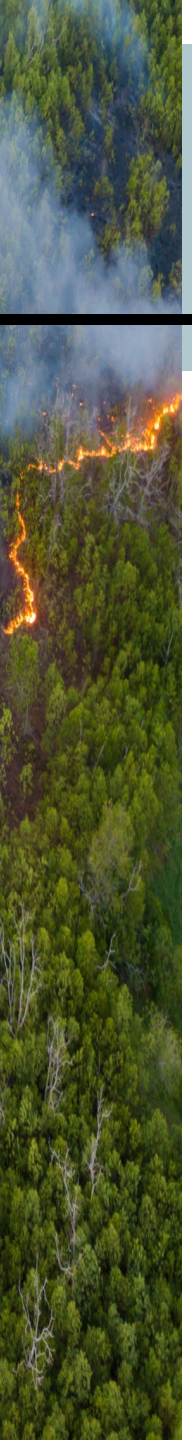
Allowable End Uses

- End Uses May Include
  - Protected open space, shorelines, wetlands, open fields, ecological habitat restoration, wildlife or nature preserves
  - Sports and recreational facilities, parks amenities, passive and active restoration
  - Campgrounds
  - Community gardens
  - Community Memorial
  - Trails and trail systems
  - Use by adjacent owners, provided no structures, subject to a maintenance agreement
  - Agricultural use
  - Watershed management, approved flood storage or overflow areas
  - Other disaster-risk reduction practices



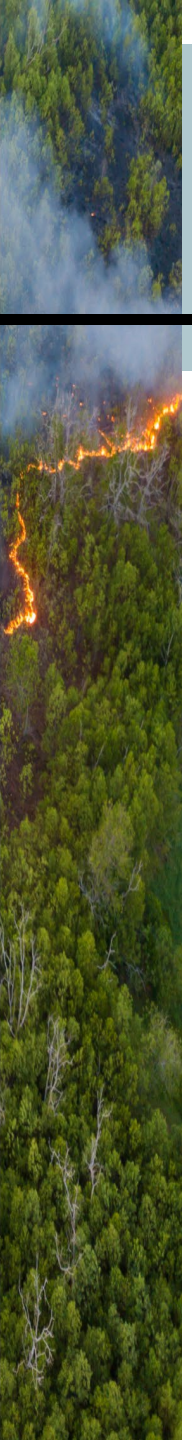
Open Space Management Plan

- Under the Consolidated Notice
  - Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation
  - The plan must establish full transparency about the planned use of acquired properties postbuyout, or the process by which the planned use will be determined and enforced



Features of an Open Space Management Plan

- Articulates a shared vision for use of open space in perpetuity
- Includes statement of policy goals and values
- Functions as a long-term planning tool
- Enables effective engagement and serves a communications tool
- Used as a means of monitoring progress and outcomes
- Increases awareness of community hazards including for members of protected classes, vulnerable populations, and underserved communities
- Reflects responsible and safe standards to reduce future hazard risks
- Articulates Risk Reduction benefits, including through NFIP
- Identifies costs and economic impacts
- Serves as a basis for securing additional funding
- Is informed by and informs other plans
- Recognizes repetitive losses

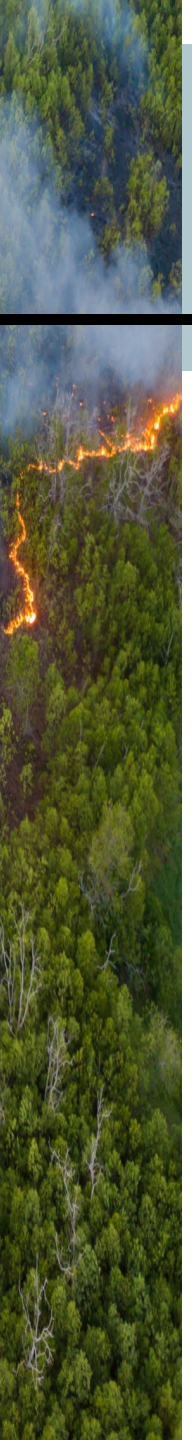


Land Ownership and Disposition Strategies

- The purchasing entity may retain ownership
- The purchasing entity may transfer ownership, such as
  - From a state to a local government
  - From one government entity to another
  - To a land stewardship organization or land trust
  - Adjacent owner
- The purchasing entity may retain ownership but lease lands or offer easements
- Covenants and Deed Restrictions
  - Necessary to ensure use of land for eligible purposes only



Guiding Considerations



Guiding Considerations: Economic

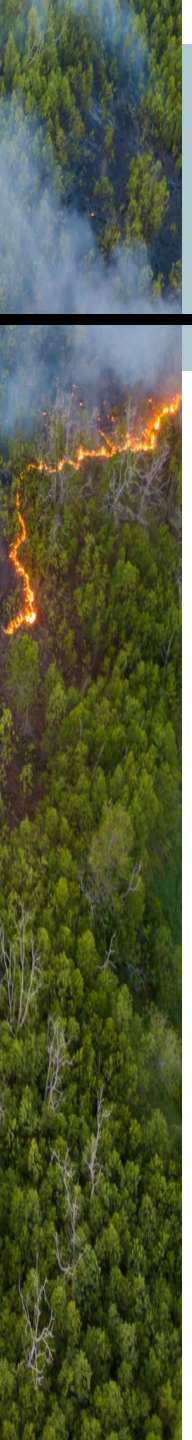
Challenges

- Costs of covering long-term Operations and Maintenance, not eligible for CDBG-DR funding
- Impacts to tax revenue by removing properties from tax rolls
- For residents, once relocated, new lower-risk areas may have additional costs of living (e.g. higher property taxes)
- Costs of demolition, conversion of properties to open space to be borne

Opportunities

- Reduced costs of recovery from future disaster events
- Removal of persons and properties from harm's way
- Coordination with other sources of funding for capital improvements and properties not covered with CDBG-DR funds
- Establish economies of scale

Guiding Considerations: Environmental



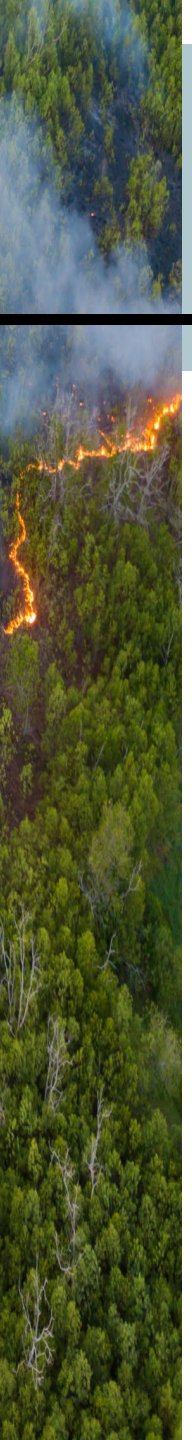
Challenges

- Environmental reviews tied to end use
- Process of clearance of structures, debris removal, site stabilization
- Identification of potential environmental mitigations

Opportunities

- Ecological benefit of protected open space
- Opportunities for wildlife protections
- Public health benefits
- Nature-based solutions, habitat restoration

Guiding Considerations: Social

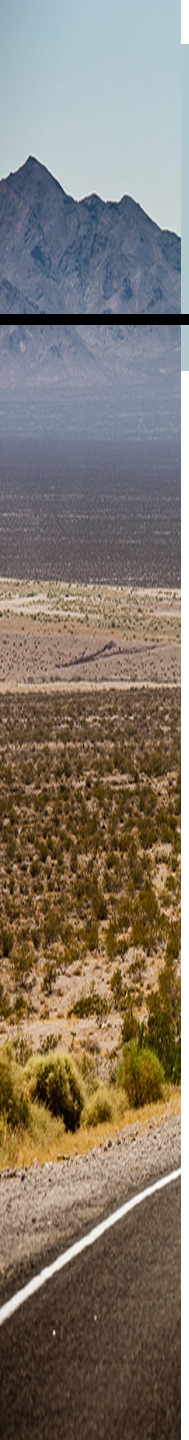


Challenges

- Process of resettlement and relocation
- Potential destabilization of community for those who remain
- Assurances of affordable housing in receiving communities

Opportunities

- Opportunities for engagement, outreach, public participation in the planning process
- Accessibility of open space to the public
- Assistance and support services for that are selling their properties – consideration of elderly residents, transportation, schools and other services – replicating support systems
- Successes with multiple homeowners expressing interest



Key Takeaways

- Buyouts are a critical tool in reducing risk of disaster impacts, especially when done in coordination with existing mitigation plans, funding streams, and engagement with critical community partners
- In designing buyout programs, grantees should make decisions on the method of valuation, determining eligible applicants, offering incentives, and which National Objective to pursue.
- Grantees will want to capture all pertinent information in the application prior to intake appointments: proof of occupancy, existence of tenants, insurance proceeds and other disaster assistance received, and household income.
- Decisions on what to do with properties post-buyout are based on ecological, social, and economic determinations, and require deed restrictions to ensure maintenance of open space in perpetuity.

Resources

- CDBG-DR Toolkit: Buyout Program
  - Lays out Potential Obstacles and Strategies
- Disaster Recovery Demolition Checklist
- CDBG-MIT Buyout Program Guidance and Best Practices

Thank you!

If you have any questions, please feel free to send an email to ODR's Policy Division at ODRPolicyDivision@hud.gov

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