

**TOM MARINO**

10TH DISTRICT, PENNSYLVANIA

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**Congress of the United States**  
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Honorable William Craig Fugate  
Administrator  
Federal Emergency Management Agency  
Federal Center Plaza  
500 C Street, SW,  
Washington, DC 20472

Dear Administrator Fugate,

I would first like to once again thank you for your efforts, and the efforts of the entire Federal Emergency Management Agency (FEMA), during the devastating floods associated with Hurricane Irene and Tropical Storm Lee that occurred one year ago. The flooding that resulted from these storms caused significant damage throughout the region I represent and displaced tens of thousands of people. FEMA's effective response to the disaster has been instrumental in helping recovery efforts. However, as many residents continue to work through the recovery process, an issue has arisen with the Hazard Mitigation Grant Program (HMGP) which substantially hinders the recovery efforts in northeastern Pennsylvania, and I believe threatens the administration of the program as a whole.

In late June, I was contacted by officials in Susquehanna County, Pennsylvania who were notified by FEMA that all properties with a natural gas lease were ineligible for the program because the properties did not meet the open space requirements of 44 CFR 80.19. My office immediately contacted FEMA staff and, ultimately, we were notified that no final decision was reached, additional discussions would be conducted and that guidance would be issued on the matter. On Friday, August 24, it appears that FEMA guidance was issued on the matter, although, to date, I have only received a "summary" of the guidance. Unfortunately, according to the summary, it appears that FEMA has taken the position that a property is ineligible if it has any mineral lease, regardless of whether the lease conveys surface rights or is limited to only subsurface rights.

While I understand the importance of maintaining properties purchased through the buyout program as open space, I believe this guidance significantly overreaches and unnecessarily denies many homeowners access to the critical program. For this reason, I strenuously urge reconsideration of this guidance.

First of all, it is my understanding that some of the mineral leases on the properties at issue do not convey surface rights for mineral extraction which would seem to address the open space requirements. However, the FEMA guidance states that under some circumstances "it is still possible for the leasing company to obtain surface rights under Pennsylvania law." Denying eligibility for the buyout program based on the mere legal possibility of future surface rights is illogical and imprudent. This type of broadly applied standard fails to consider other practical

factors which would preclude surface activities to extract the subsurface minerals, such as state and local set-back requirements and the actual ability of a leaseholder to conduct surface activities on a specific property. Similarly, I am concerned that this guidance does not take into account that many mineral leases date back many years (in some cases decades or even longer), have never been developed, and there is no realistic possibility of future development. Instead, the guidance uses a broad brush that, while it may be simpler to administer, leaves a number of property owners in my district in harm's way.

Furthermore, it does not appear that FEMA has taken into account the challenges that homeowners may face in extinguishing mineral leases. In the case of older leases, the leaseholder may be exceedingly difficult to locate, costing a homeowner time and money. More recent leases may require a homeowner who has lost everything to repay a sum of money to extinguish the rights.

In addition to expressing my opposition to the guidance, I would like clarification on a number of matters.

- 1) In the summary of the guidance my office received, point two (which relates to leases with surface and subsurface rights) states: "To be eligible for acquisition under HMGP, a property owner that has leased subsurface mineral rights to a third party must extinguish the right for the leaseholder to use the surface of the property for the recovery, drilling and/or extraction of subsurface minerals." This statement conflicts with the guidance provided in the third point of the summary which states, "3. For properties with leases/encumbrances that allow subsurface activities only under the lease/encumbrance it is still possible for the leasing company to obtain surface rights under Pennsylvania law and therefore these properties also do not meet FEMA's Open Space requirements under 44 CFR 80.19."
- 2) What was the legal basis for FEMA's decision in #3 of the summary of the guidance which states that, "...it is still possible for the leasing company to obtain surface rights under Pennsylvania law..."? And, did FEMA do an analysis on whether or not this legal authority is being used currently or has been used recently?

As you know, the purpose of the Hazard Mitigation Grant Program is to "reduce or eliminate the losses from future disasters." Property acquisition through this program is an extremely valuable tool in realizing this goal. It is critical that FEMA works to ensure this program continues to be successful in relocating homeowners out of harm's way, protecting the safety of emergency personnel who selflessly put their lives at risk during emergencies, and ensuring that precious taxpayer dollars are not wasted repairing properties that are perpetually damaged during disasters. I urge FEMA to reconsider this guidance and to work with all parties to develop new guidance that accurately address the challenges that may arise under the specific circumstances that have been identified.

Sincerely,



Tom Marino  
Member of Congress