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**ANATOMY OF A BUYOUT — NEW YORK POST-SUPERSTORM
SANDY**

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In the wake of a natural disaster, government acquisition of damaged properties can reduce homeowners' recovery burden by providing the option to relocate rather than undertake the potentially financially and emotionally exhausting task of rebuilding and preparing for future events. In fact, across the United States, acquisition programs are one of the most commonly used tools to reduce community vulnerability, particularly with respect to flooding and storms.¹ However, the effectiveness and cost of these programs are uneven and depend upon the program's structure.

Following Superstorm Sandy in October, 2012, Governor Cuomo and Mayor Bloomberg announced acquisition programs for New York State and New York City that follow two different models: one a buyout and the other an acquisition redevelopment program. This paper presents a general overview of the differences between the two models, major sources of funding and their constraints on program design, and a description of the design and implementation to date of the New York acquisition programs.

Buyout v Acquisition

The terms buyout and acquisition are often used interchangeably, but they are distinct and serve distinct purposes. Acquisition is the general term and refers to the purchase of private property by government for public use. It is not confined to a particular purpose or end use for the property. Buyout programs, conversely, are a specific subset of acquisition in which private lands are purchased, existing structures demolished, and the land maintained in an undeveloped state for public use in perpetuity. In the wake of Superstorm Sandy, the Department of Housing and Urban Development (HUD) defined a buyout even more narrowly as "acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding."² Both buyout and acquisition programs can be conducted without the consent of the landowners by using eminent domain, but most often they are conducted with voluntary sales from landowners who have recently experienced a natural disaster. The most important distinctions between the two types of programs are the goal of the program and the end use of the acquired land parcels (see Table 1 for other distinctions).

Acquisition programs can be designed for many purposes. Most often, following a disaster, they are intended to purchase damaged parcels from homeowners who are unwilling or unable to rebuild, thereby granting the homeowners the financial resources to relocate to a less vulnerable area.³ The parcels are then re-sold to a developer, who is held to stricter building requirements to make the new structure more resilient to natural threats. Acquisition programs designed in

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¹ See A. SIDERS, MANAGED COASTAL RETREAT HANDBOOK (Columbia Center for Climate Change Law, 2013); THE RISK IS REAL: MITIGATION WORKS, MITIGATION BEST PRACTICES: PUBLIC AND PRIVATE SECTOR BEST PRACTICE STORIES FOR ACQUISITION/BUYOUTS ACTIVITY/PROJECT TYPES IN ALL STATES AND TERRITORIES RELATING TO FLOODING HAZARDS (FEMA, March 25, 2005); NATIONAL WILDLIFE FEDERATION, HIGHER GROUND: A REPORT ON VOLUNTARY PROPERTY BUYOUTS IN THE NATION'S FLOODPLAINS 19 (July 1998).

² HUD, Allocations, Common Application, Waivers, and Alternate Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy, 74to FEDERAL REGISTER 14329, 14345 (March 5, 2013) (hereinafter HUD Guidelines).

³ NATIONAL WILDLIFE FEDERATION, *supra* 1.

this way are intended to maintain similar amounts of housing and a similar local tax base in the affected community. Such programs may also improve the resilience of the community, by requiring developers to meet more stringent mitigation standards, but they will be no more resilient than communities where the original homeowners undertake mitigation programs. The main benefit is to the homeowner who is enabled to relocate.⁴

Table 1. Major distinctions between general acquisition and buyout programs.

	Acquisition	Buyout
Purpose	Any (often to permit disaster-struck homeowners to relocate and new developers to rebuild)	Permanent removal of built structures; creation of public space and natural buffers
Price	Post-Disaster price of home under HUD and FEMA rules; Relocation assistance also permitted	Pre- or Post-Disaster price (most often pre-disaster price + incentive bonus and relocation assistance)
Rebuilding / Redevelopment	Yes	No – except limited circumstances (e.g. flood structures, parks)
Eligible for future federal disaster aid	Yes	No

Buyout programs not only assist individual homeowners but are also intended to improve the resiliency of the entire community in the following ways:

- Reduce exposure by limiting the people and infrastructure located in vulnerable areas;
- Reduce future disaster response costs and flood insurance payments;⁵
- Restore natural buffers such as wetlands in order to reduce future flooding levels;⁶
- Eliminate the need to maintain and repair flood control structures;⁷
- Eliminate or reduce the need for public expenditures on emergency response, garbage collection and other municipal services in the area;⁸ and
- Provide open space for the community.

⁴ See, e.g., DAVID R. GOLDSCHALK ET AL., NATURAL HAZARD MITIGATION: RECASTING DISASTER POLICY AND PLANNING 202, 207–212 (1999); NATIONAL WILDLIFE FEDERATION, *supra* note 1, at 19;

⁵ See *id.*, at 207–212 (1999); Christine A. Fazio & Ethan I. Strell, Government Property Acquisition in Floodplains After Hurricane Sandy, N.Y. LAW JOURNAL, Feb. 28, 2013.

⁶ Buyouts are most often discussed in relation to flooding hazards, and given the recent impact of Sandy, this document also focuses on floods, but buyouts can also be effective to mitigate against mudslides, wildfires, volcanoes, and other natural disasters with a clear hazard area.

⁷ The clearest example of this case is the Wapello Levee District in Iowa, where the entire flood district was purchased and turned into natural wetlands, thereby eliminating the need to spend \$3 million to repair the levees that had repeatedly failed. See BRUCE G. MOUNTAIN, CASE STUDY: HOW A PUBLIC/PRIVATE PARTNERSHIP TRANSFORMED THE FLOOD-DAMAGED LEVEE DISTRICT 8 IN LOUISA COUNTY, IOWA, INTO THE HORSESHOE BEND DIVISION, MARK TWAIN NATIONAL WILDLIFE REFUGE 5 (Oct. 25, 1995)..

⁸ John Crompton, *The Impact of Parks and Open Spaces on Property Values*, 63 CALIFORNIA PARKS AND RECREATION 32 (2007); see also JOHN CROMPTON, THE PROXIMATE PRINCIPLE: THE IMPACT OF PARKS, OPEN SPACES AND WATER FEATURES ON RESIDENTIAL PROPERTY VALUES AND THE PROPERTY TAX BASE (National Research and Parks Association, 2004) (reviewing 50 research studies conducted in 21 states).

Resilience achieved through buyouts can have real economic consequences in addition to improved social resilience. According to FEMA, “voluntary buyouts in the 30 top repetitive loss communities cost \$1 for every \$2 saved in future insurance claims,” an estimate which does not include money saved on actions “such as local flood fighting, evacuation, and rescue and recovery expenses that will not be incurred in the future.”⁹ Acquisition programs do not produce the same results because the new-built homes, even if built to be more resilient, are still vulnerable and may still suffer damage during subsequent events. Buyouts remove such structures entirely, ensuring no repeat damage, and they also benefit the larger community by enabling the creation of natural buffers, areas such as restored wetland or park space, that create spatial separation between buildings and the hazard (as in the case of wildfire) or actively reduce the threat (as in a wetland that soaks up storm and flood waters and thereby reduces or prevents flooding further inland).

In order to achieve these goals, buyouts need to acquire a continuous swatch of land, rather than individual homes in isolated areas. Acquisition programs can be effective even if they purchase individual isolated homes, but buyout programs will be most effective when they purchase entire streets or neighborhoods.

Buyouts may also add value to communities through the development of open spaces, depending upon the purpose the government selects for the acquired parcels. If the government restores the land to wetlands, it may provide ecological benefits by providing habitat for local species. If it creates public parklands, it can provide not only intangible social benefits but also economic profit by increasing the property values of surrounding homes.¹⁰

Federal Funding

Acquisition and buyout programs can be funded entirely through state or local funds, but most often such programs occur after a nationally recognized disaster and use a combination of federal and state funds. The Federal Emergency Management Agency (FEMA) administers programs to help with buyouts under the Stafford Disaster Act, and the Department of Housing and Urban Development (HUD) administers another through Community Development Block Grants (CDBG). These funding sources can reduce the economic burden on the local community. However, the funds also come with guidelines and regulations that may constrain policy makers’ choices on whether to pursue an acquisition or buyout strategy and how to shape their programs.

⁹ FEMA estimates that “every \$1 paid toward mitigation saves an average of \$4 in future disaster-related costs.” *Mitigation Saves Time, Money, and Possibly Lives*, FEMA (Nov. 8, 2006), <http://www.fema.gov/news-release/2006/11/08/mitigation-saves-time-money-and-possibly-lives>, citing MULTHAZARD MITIGATION COUNCIL, NATURAL HAZARD MITIGATION SAVES: AN INDEPENDENT STUDY TO ASSESS THE FUTURE SAVINGS FROM MITIGATION ACTIVITIES (2005), available at http://www.nibs.org/?page=mmc_projects#nhms. See also NATIONAL WILDLIFE FEDERATION, *supra* note 1, at 39.

¹⁰ Mark Correll, Jane Lillydahl, and Larry Singell, *The effect of green belts on residential property values: Some findings on the political economy of open space*, 54 LAND ECONOMICS 207 (1978); see also Sarah Nicholls and John Crompton, *The Impact of Greenways on Property Values: Evidence from Austin, Texas*, 37 JOURNAL OF LEISURE RESEARCH 321, 322 (2005); Margot Lutzenhiser and Netusil Noelwahr, *The effect of open spaces on a home’s sale price*, 19 CONTEMPORARY ECONOMIC POLICY 291 (2001).

FEMA

- The **Hazard Mitigation Grant Program (HMGP)** provides a percentage of total disaster assistance funds for mitigation measures to be implemented during the immediate recovery *after a disaster*. (Discussed in more detail below)
- The **Flood Mitigation Assistance (FMA) Program** provides funding to states and communities for measures that reduce or eliminate the long-term risk of *flood damage* to buildings, manufactured homes and other structures insured under the National Flood Insurance Program (NFIP).
- The **Pre-Disaster Mitigation (PDM) Program** provides competitive grants to states, tribal governments and local governments for cost-effective hazard mitigation that complements a comprehensive mitigation program.

HUD Funding

- **Community Development Block Grants (CDBG)** provide flexible funding to help cities, counties, and States recover from presidentially declared disasters, especially in low-income areas. Funds can be used for a variety of activities, including acquisition of damaged properties. (Discussed below)

A Note on Cost Sharing

FEMA funds may be used to cover 75% of the expenses, but the remaining 25% must come from another source. In some cases, local communities can apply for and use HUD CDBG funding to cover the remaining 25%.¹¹ In other cases, some states and municipalities have imposed property taxes or enacted new sales taxes, the proceeds of which flow into a fund specifically designated for buyouts.¹²

Hazard Mitigation Grant Program (HMGP) (FEMA)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the President to issue major disaster and emergency declarations. This allows federal agencies to provide assistance to states overwhelmed by adverse events. Section 404 of the Act is known as the Hazard Mitigation Grant Program (HMGP) and is one of the primary funding sources for large buyout programs.

HMGP funding is only available to communities in a presidentially declared disaster area. Under the Disaster Mitigation Act of 2000, local communities must have a FEMA-approved Local Mitigation Plan in place in order to receive funding. Individual homeowners may not apply to the program.

HMGP funds may be used for a variety of projects that will reduce or eliminate losses in future disasters. Projects must provide a long-term solution to a problem, for example, permanent elevation of a home to reduce the risk of flood damages as opposed to buying

¹¹ Housing and Community Development Act of 1974, 42 U.S.C. 5301-5320. HUD Guidelines, *supra* note 2, at 14330. “[A]s provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE).” *Id.*

¹² For example, following the devastating 1993 floods of the Mississippi River, the City of Davenport funded a preexisting acquisition program through a local sales tax. See GOLDSCHALK ET AL., *supra* note 5, at 207.

sandbags and pumps to fight the flood. In addition, in order to be considered cost effective, a project's potential savings must be more than the cost of implementing the project.

Examples of HMGP projects include, but are not limited to:

- Acquisition of real property for willing sellers and demolition or relocation of buildings to convert the property to open space use;
- Retrofitting structures and facilities to minimize damages from high winds, earthquake, flood, wildfire, or other natural hazards;
- Localized flood control projects designed specifically to protect critical facilities;
- Post-disaster building code activities that support building code officials during the reconstruction process.

Applying for funding through the HMGP is a multistep process that requires coordination of local, state, and federal officials. A state must demonstrate to FEMA that it has the ability to manage the program, an approved mitigation plan, and a demonstrated commitment to mitigation activities¹³ in order to administer the buyout program. State administration provides the state with greater control and direction, especially the power to review and approval local mitigation plans. However, it also requires state resources that might be scarce during a disaster recovery period. State officials set the priorities for disaster response, and based on these priorities, local officials prepare and collect buyout applications from homeowners, which they then submit to state officials. State officials review the applications and submit them to FEMA,¹⁴ who reviews the applications and determine whether the plan: a) satisfies FEMA's rules, b) is environmentally sound,¹⁵ and c) is a cost-effective use of funds.¹⁶

The HMGP has particular requirements and conditions that must be met in order to secure funding. Among the most important are:

- The buyout must be a **cost-effective measure** that will substantially reduce the risk of future flooding damage;
- Properties must be acquired at **pre-disaster prices**;
- Acquired lands must be **maintained as open public space**, used for recreational purposes, or used for wetlands management practices.¹⁷ This may require local officials to **deed restrict** all property using FEMA's Model Deed Restrictions (available on the FEMA website) and submit a sample deed restriction to FEMA;¹⁸

¹³ 42 U.S.C. § 5170c(c)(2)(A)–(C).

¹⁴ See *Hazard Mitigation Assistance—Property Acquisition (Buyouts)*, FEMA, last updated Dec. 27, 2012, <http://www.fema.gov/application-development-process/hazard-mitigation-assistance-property-acquisition-buyouts> (last visited Aug 14., 2013).

¹⁵ FEMA actions must satisfy the National Environmental Policy Act (NEPA). However, the Sandy Recovery Improvement Act of 2013 created a streamlined environmental review process. See Fazio, *supra* note 5. The Act requires that “adequate resources are devoted to ensure that applicable reviews under” NEPA are completed quickly and that the shortest applicable NEPA process be used for review. Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-2, § 1104, 127 Stat. 4 (2013).

¹⁶ 42 U.S.C. § 5170c(a). For FEMA's cost-benefit analysis tools, see *Benefit-Cost Analysis*, FEMA, last updated Feb. 1, 2013, <http://www.fema.gov/benefit-cost-analysis> (last visited Aug. 14, 2013).

¹⁷ 42 U.S.C. § 5170c(b)(2)(B)(i), (b)(2)(ii)(I)–(III), (b)(2)(iii). See also HUD Guidelines, *supra* note 1, at 14345.

¹⁸ *Required Pre-Award Documents for Mitigation Projects*, FEMA, last updated Mar. 10, 2013, <http://www.fema.gov/application-development-process/required-pre-award-documents-mitigation-projects> (last visited Aug. 14, 2013).

- **No new structure** may be built upon the acquired property, aside from small recreational facilities (picnic coverings, rest rooms) that are functionally related to open space, and flood control structures;¹⁹
- **No future disaster assistance** funds may be applied for or received from the federal government with respect to this property; and
- Buyouts must be **voluntary** in order to use HMGP funds.²⁰

Community Development Block Grant Program (CDBG) (HUD)

Through the CDBG, HUD provides funding to communities to address a range of development needs. The CDBG Disaster Recovery Assistance program is a specific effort through which funds are appropriated by Congress to assist communities to recover from presidentially declared disasters.²¹ Similar to FEMA HMGP, grants are awarded to government agencies, not to individual homeowners, and governments applying for the program must submit an action plan that details the intended purposes, management, and oversight of funds.

Activities must also meet at least one of three national objectives: (1) benefit persons of low and moderate income, (2) aid in the prevention or elimination of slums or blight, or (3) meet other urgent community development needs because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available.²² Examples of CDBG activities include:

- Purchasing damaged properties in a flood plain and relocating residents to safer areas;
- Rehabilitation of homes and buildings damaged by the disaster;
- Buying, constructing, or rehabilitating public facilities such as streets, neighborhood centers, and water, sewer and drainage systems;
- Homeownership activities such as down payment assistance, interest rate subsidies and loan guarantees for disaster victims;
- Helping businesses retain or create jobs in disaster impacted areas; and
- Planning and administration costs (limited to no more than 20 percent of the grant).²³

Following Superstorm Sandy, HUD released specific guidelines on the use of CDBG funds for buyout programs. Unlike HMGP funds, where the government must pay the pre-storm value of the property, CDBG funds allow the administrator to choose whether to use pre- or post-storm value as the purchase price, so long as the price is consistent throughout the program.²⁴ Post-disaster prices will result in lower overall costs for the program, but pre-disaster costs will provide greater assistance to homeowners and potentially result in higher rates of participation in voluntary programs.

¹⁹ 42 U.S.C. § 5170c(b)(2)(ii)(I)–(III); *see also* HUD March 2013 Guidelines, *supra* note 1, at 14345 (stating that flood control structures may be built on acquired land).

²⁰ *Hazard Mitigation Assistance—Property Acquisition (Buyouts)*, *supra* note 14.

²¹ HUD, Community Development Block Grants Disaster Recovery Assistance, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi (last visited, Nov. 13, 2013).

²² *Id.*

²³ *Id.*

²⁴ HUD March 2013 Guidelines, *supra* note 1, at 14345.

HUD CDBG Buyout Guidelines²⁵

a. *Buyout requirements:*

- (1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- (2) No new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; (c) a flood control structure; or (d) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure;
- (3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity in perpetuity;
- (4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses;
- (5) All buyout activities must be classified using the “buyout” activity type in the DRGR system; ...

b. *Redevelopment of acquired properties.*

- (1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a(2), above.
- (2) Grantees may redevelop an acquired property if: (a) the property is not acquired through a buyout program and (b) the purchase price is based on the property’s post-flood fair market value (the pre-flood value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner’s need for additional assistance is documented.
- (3) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.

Federal funds may be available to communities following presidentially recognized disasters through the FEMA-administered HMGP and HUD-administered CDBG programs. However, these programs will place some restrictions on communities’ choices. Specifically, the HMGP limits programs to buyouts rather than acquisition. The CDBG, although allowing acquisition programs, permits payment of post-storm value for the home only, which may reduce participation and increase political resistance to the program.

²⁵ HUD Guidelines, *supra* note 1, at 14345.

NEW YORK BUYOUT AND ACQUISITION

In his January 9, 2013 State of the State address “New York Rising,” New York Governor Andrew Cuomo captured the need for acquisition to be part of a larger recovery effort:

The realities of post-storm recovery present an opportunity for communities and individuals to reevaluate previous decisions about where and how to build or rebuild. This reevaluation will involve taking a hard look at the balance of risk and beneficial use of any particular property. The State will use various strategies to assist home- and business-owners whose properties were damaged in Superstorm Sandy to mitigate for the future or, if they choose to do so, to sell their properties and relocate.²⁶

In that same speech, Governor Cuomo announced his intention to re-create the *NY Home Buyout Program* in New York State to purchase damaged homes and turn the land into natural buffer zones to protect against future storms.²⁷ A few months later, New York City Mayor Michael Bloomberg announced an acquisition program as part of his *Build it Back* effort to purchase and redevelop damaged properties.²⁸ These two programs may appear quite similar, and some media outlets initially referred to both as buyout programs,²⁹ but the distinctions, as discussed above, between buyouts and acquisition programs mean that the two efforts are likely to have very different results.

New York State Buyout

The Cuomo Administration submitted its application for CDBG funds in mid-March, and the plan was approved in April, 2013.³⁰ The plan included proposed projects for housing, economic development, retrofits for infrastructure, community planning, and local government support. Within the housing proposal, the plan included an effort to re-create the *New York State Buyout Program*.³¹

Eligibility

Only one- and two-unit homes are eligible for the NY Home Buyout Program, and only those that were substantially damaged (more than 50% of the value of the home) and are located within the highest risk area along the coast (the FEMA-designated V Zone).³²

²⁶ GOVERNOR ANDREW M. CUOMO, 2013 STATE OF THE STATE ADDRESS: NEW YORK RISING (Jan. 9, 2013), 224 (hereinafter NY Rising).

²⁷ NY Rising, *supra* note 26, at 224-225.

²⁸ Acquisitions in New York City were first discussed by the Bloomberg administration in the February 26, 2013, City Council committee hearing testimony of Brad Gair, director of the city housing recovery office. See Matthew Schuerman, *Bloomberg to Offer Own Sandy Buy-Out Plan, With a Twist*, WNYC NEWS, Mar. 4, 2013. The formal plan was first announced on June 3, 2013 and later included in the city-wide PlaNYC: A Stronger, More Resilient New York, released June 11, 2013. See Dana Rubinstein, *Bloomberg launches a post-hurricane rebuilding effort, acquisition option included*, CAPITAL NEW YORK, June 3, 2013; PLANYC: A STRONGER, MORE RESILIENT NEW YORK (2013).

²⁹ See e.g. Schuerman, *supra* note 28.

³⁰ NEW YORK STATE HOME AND COMMUNITY RENEWAL: OFFICE OF COMMUNITY RENEWAL, STATE OF NEW YORK ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DISASTER RECOVERY, Federal Register Docket No. FR-5696-N-01 (April 2013) (hereinafter NYS CDBG Action Plan).

³¹ *Id.* at 40-41.

³² *Id.* at 40.

Payment

The standard payment offered under the NY Home Buyout Program is 100% of the pre-Sandy fair market value of the home. Certain designated areas are targeted as “Enhanced Buyout” locations, and in these areas homeowners are eligible to receive additional incentives.³³ In order to encourage participation in the program, homeowners in enhanced areas could receive an additional 10% above the pre-storm fair market value of their home. Homeowners that participate in the program and relocate within the same county are eligible for an additional 5%. This incentive serves to “preserve the community” by encouraging relocation within a relatively short distance. In total, therefore, a homeowner could receive 115% of the pre-Sandy fair market value of her home.

Outside of enhanced buyout areas, the state may provide a 10% incentive called a “Group Buyout Incentive” when 2-10 consecutively located properties within the V Zone all agree to participate in the buyout.³⁴ This incentive “may be necessary in certain rare cases to facilitate the reclamation of a concentrated area of high risk and to avoid the patchwork effect of purchasing all but one or two properties inside such a cluster of properties.”³⁵ As discussed above, one of the major benefits of buyout programs is the creation of natural buffers, which require the purchase of contiguous swaths of land rather than isolated purchases. The use of pre-storm fair market value as the purchase price and the additional incentives are intended to encourage participation to maximize the potential for the program to achieve a high participation rate in local areas.

End Use

On property purchased through the state buyout program, existing buildings will be demolished and reconstruction is not permitted.³⁶ The empty parcels are to be maintained as coastal buffer zones, but the plan also permits for “other non-residential/commercial uses,” which are not specified.³⁷ The incentives provided by the program, as described above, are explicitly designed to assist in achieving these end uses:

[T]he State will seek the maximum level of homeowner participation by offering this individual incentive so that as much land as possible within these areas can be returned to and reclaimed by nature, land that will be maintained in perpetuity as coastal buffer zones. This level of incentive was selected in order to ensure that a sufficient incentive is available, as the number of properties involved will need to be significant in these areas to produce the intended outcome.³⁸

Location

From the outset, Governor Cuomo has mentioned the Oakwood Beach community on Staten Island as a starting point for buyouts, but deciding on eligible locations has not been entirely straightforward. Following Superstorm Sandy, in order to gauge initial interest in a buyout, the state launched a pre-registration process for homeowners in need of assistance. By April 2013, the state had received over 7,000 registrations.³⁹ Some 2,500 homeowners, 34% of all

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Demolition costs can also be paid for using CDBG funds. *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 19

registrants, expressed initial interest in a buyout, although the Action Plan predicts that many who expressed initial interest are expected to change their minds and rebuild, “even if [the buyout] is their economic best interest.”⁴⁰ On average, the state expects just 10% of homeowners who are offered a buyout to accept the offer.⁴¹ As a result, the initial Action Plan estimated that the State would conduct between 750 and 1,000 buyouts.⁴²

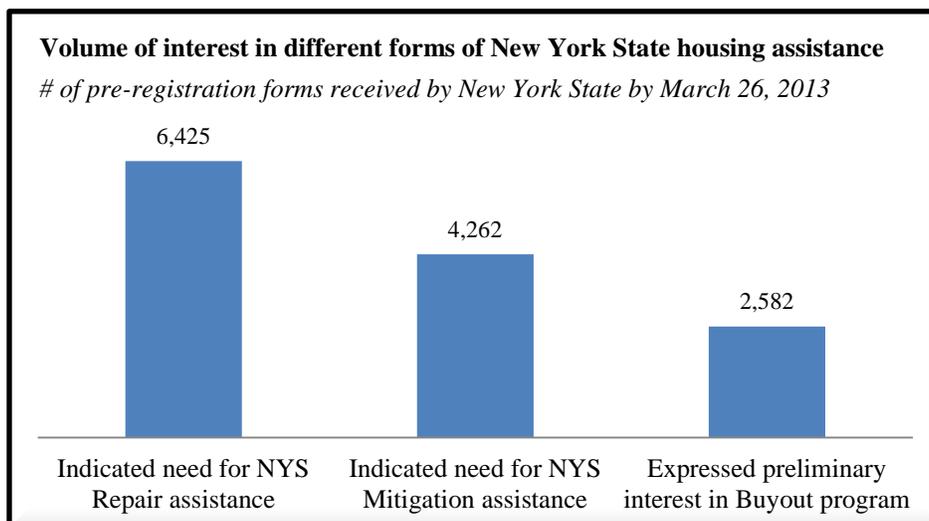


Figure 1. Initial interest expressed in a state buyout program according to pre-registration.⁴³

Of course, these represent only a fraction of the homes that were damaged. Early estimates suggested as many as 9,500 homes were substantially damaged (damaged in excess of 50% of their pre-storm value).⁴⁴

When Governor Cuomo originally announced the intention of the State to conduct a buyout program, he announced the potential to spend up to \$400 million.⁴⁵ However, the CDBG Action Plan submitted by New York State to HUD requested only \$171 million to address immediate needs for the buyout.⁴⁶ According to the plan, “The goal to provide up to \$400 million in funding for buyout purposes remains the same, but it is recognized that this need will be met over time, with additional sources to be identified and deployed.”⁴⁷ The FEMA-administered HMGP, although not included in the initial plan, is noted as a possible source for future administration of the program.⁴⁸

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 46.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., Thomas Kaplan, *Cuomo Seeking Home Buyouts in Flood Zones*, NEW YORK TIMES, Feb. 3, 2013, http://www.nytimes.com/2013/02/04/nyregion/cuomo-seeking-home-buyouts-in-flood-zones.html?_r=0. New York Action Plan, *supra* note 30, at 106.

⁴⁶ New York Action Plan, *supra* note 30, at 106.

⁴⁷ *Id.*

⁴⁸ *Id.*

As for selecting a starting point, Oakwood Beach volunteered itself. As early as January, 2013, owners of 106 homes in Oakwood Beach signed a petition in favor of a buyout (out of a total of 165 homes in the area).⁴⁹ Joe Tirone, a real-estate agent who owned property in Oakwood Beach, headed an Oakwood Beach Buyout Committee that worked with the community to petition the Governor to consider a buyout program in the area. The state agreed,

and in August, it expanded the eligible area to include 300 homes, with the potential to expand up to 510 in total.⁵⁰ The general area is bounded by Tarlton Street to the southwest, Mill Road to the north, and Kissam Avenue to the east, in addition to parcels along Aviston Street, including Riga Street, Dugdale Street, Merkel Place, and Delwit Avenue⁵¹ (see image at left).



MARY GARRISON/STATEN ISLAND ADVANCE

In mid-September, 2013, Joe Tirone was reportedly the first member of the community to receive a written offer.⁵² Although the exact offer amounts have not yet been made public, the offer was in the range of \$400,000.⁵³ The first closures were made in early October, and demolition started a few weeks later.

In early October, the State also began expanding the program to other communities. It sent letters inviting applications from roughly 600 homes in Long Island neighborhoods, including: Lindenhurst, Oakdale, Sayville, Bayport, Patchogue, Mastic Beach, and Flanders section of Riverheads.⁵⁴

Coordination with New York City

New York City initially operated its own acquisition program under the *Build it Back* recovery effort. The New York State CDBG Action Plan specifically notes that “Within New

⁴⁹ See Anjali Athavaley, *Sandy Spurs Call to Buy Up Homes: Most in Hard-Hit Staten Island Enclave Reject Rebuilding*, WALL STREET JOURNAL, Jan. 11, 2013, <http://online.wsj.com/news/articles/SB10001424127887323442804578236082058061460>.

⁵⁰ See New York State Housing Trust Fund Corporation, Public Notice: Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds for Oakwood Beach Recreate NY Home Buyout: Site-Specific Properties Acquisition/Demolition in Oakwood Beach Area, Staten Island, NY, Aug. 2, 2013, <http://www.nyshcr.org/Programs/NYS-CDBG-DR/OakwoodBeach-RichmondCounty-Notice-Finding-NoSignificantImpact08-02-13.pdf>.

⁵¹ *Id.*

⁵² Judy Randall, *Sandy buy-out offers in Staten Island’s Oakwood Beach are ‘on the money’*, SI LIVE, Sep. 13, 2013, http://www.silive.com/news/index.ssf/2013/09/staten_islands_fox_beach_sandy.html.

⁵³ *Id.*

⁵⁴ See Mathew Schuerman, *Cuomo Expands Sandy Buyouts to 600 on Long Island*, WNYC NEWS, Oct. 4, 2013, <http://www.wnyc.org/story/cuomo-expands-sandy-buyouts-600-long-island>.

York City, the City of New York will undertake buyout or acquisition activities, if any, except inside the “V Zone” or in other geographic areas determined jointly in consultation with the City.”⁵⁵ According to a news report by *WNYC News*, citing an interview with an unnamed state official, the state plan was restricted to V Zones within the city because the Bloomberg administration was concerned that a more expansive program would revert too many properties to open space.⁵⁶ As New York City plans to add a million people in the coming years, finding housing for that expansion could be threatened by large buyout programs.

On October 10, Mayor Bloomberg announced the one, and so far only, purchase under the New York City acquisition program. The house in Tottenville belonged to Patricia Dresch, whose husband and teenage daughter died in the home during Superstorm Sandy.⁵⁷ The property will be re-developed with a more storm-resistant home built on the same place.

Just ten days later, New York City and State arrived at a new agreement, in which the State will administer both buyout and acquisition programs.⁵⁸ It is still not entirely clear what this deal means for the funding sources, whether the state will take over all financial responsibility or whether the city will be expected to contribute some of the HUD CDBG funds it was awarded to administer its acquisition program (estimated \$350 million).⁵⁹ The State Action Plan incorporated an option for acquisition, so it should be permitted to undertake both activities, although any properties acquired for redevelopment using CDBG funds would need to be purchased at post-Sandy market values.⁶⁰ The *Staten Island Advance* reports that under the new partnership, the state would acquire homes at the pre-storm value, but it is not clear what funding source the state would use for such an outcome.⁶¹ Properties acquired for redevelopment would be ceded back to the city, and the revenue from sale to a developer would be split between the city and state.⁶²

Conclusion

Federal funding sources for acquisition and buyout programs can provide important assistance to communities recovering from disasters, but those funding sources can also constrain choices. The decision to pursue an acquisition in which property is purchased at post-disaster prices and redeveloped or a buyout in which property is purchased at pre-disaster prices and maintained as a natural buffer against future disasters has major consequences for the community involved. In New York, despite support from communities and the Governor’s administration, the buyout process has been slow and is still relatively small. However, even a small neighborhood purchased and returned to natural wetlands can have a significant impact on the resilience of a larger community to future events.

⁵⁵ New York Action Plan, *supra* note 30, at 40.

⁵⁶ Matthew Schuerman, *Cuomo Offers Sandy Homeowners Less Money in Buyout Program*, WNYC NEWS, April 18, 2013, <http://www.wnyc.org/story/287184-new-york-state-restricts-sandy-buyout-offer>.

⁵⁷ See Erin Durkin, *Widow sells Sandy-ravaged home to NYC in first Build it Back program buy*, NY DAILY NEWS, Oct. 10, 2013, <http://www.nydailynews.com/new-york/sandy-wrecked-home-sale-nyc-rebuilding-program-article-1.1482323>.

⁵⁸ Staten Island Advance Editorial, *Sorting out Sandy responsibilities: State, city agree on buyout, rebuilding duties*, SI Live, Oct. 20, 2013, http://www.silive.com/opinion/editorials/index.ssf/2013/10/sorting_out_sandy_responsibili.html.

⁵⁹ *Id.*

⁶⁰ New York Action Plan, *supra* note 30, at 40.

⁶¹ *Id.*

⁶² Staten Island Advance Editorial, *supra* note 58.