



BOULDER COUNTY COLLABORATIVE

CDBG-DR

Buyout & Acquisition

Infrastructure Programs

Program Guidelines

For residents affected by the September 2013 flood

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Program Guidelines Overview:

These program guidelines are intended to provide a structure and process for Boulder County's CDBG-DR Buyout and Acquisition Program. Acquisition is described briefly as an eligible activity under the Recover Colorado Infrastructure Grant Program in the Colorado Action Plan for Disaster Recovery v.1.3 (page 59-60):

Additionally CDBG-DR may be used to pay to enhance hazard mitigation projects where those enhancements cannot be funded through HMGP. Eligible activities must be part of the overall recovery and be incorporated into rebuilding activities and could include:

- *Buyout or acquisition and demolition (stick-built homes and mobile homes)*
- *Property elevation*
- *Minor localized flood reduction projects (i.e. detention ponds, increased channel capacity)*
- *Infrastructure improvements or replacement*

Purpose

Buyouts and acquisitions are eligible CDBG-DR program activities, administered in Colorado within the Infrastructure category under the Recover Colorado Infrastructure Grant Program. Funding will be used to purchase properties impacted by the September 2013 rain and flooding disaster event. This funding is necessary because there are properties that were impacted (some even destroyed) that do not qualify for FEMA's Hazard Mitigation Grant Program (HMGP) because they did not meet the benefit cost analysis required by FEMA (typically because the structures had not suffered repetitive losses) or because they were not in a FEMA-regulatory floodplain (and thus did not qualify for one of two waivers FEMA allows from the benefit cost analysis requirement).

The purpose of CDBG-DR funding is to help meet the unmet needs left in the wake of the disaster that are not met through FEMA, private insurance, Small Business Administration loans, or other funding sources. In Boulder County, there is an unmet need that exists to acquire properties in order to remove development from hazardous locations and to assist property owners who did not qualify for FEMA's buyout program or cannot be served by FEMA's buyout program due to inadequate funding.

National Objective

CDBG-DR funds from the U.S. Department of Housing and Urban Development (HUD) must meet one of three National Objectives. The National Objective achieved through Boulder County's Buyout and Acquisition Program will be either serving Low- to Moderate- Income (LMI) households or meeting the Urgent Need of the property owners and the community to remove hazardous structures from harm's way.

LMI includes applicants with a household income at or below 80% area median income, and will be determined on a household rather than area basis. Boulder County will verify income of property owners by collecting Federal tax information (IRS 1040) to demonstrate whether they qualify as an LMI household. In order to demonstrate that LMI households meet the LMI National Objective,

Boulder County will document that LMI households are re-housed following the buyout, as verified either by inspection of the residence or by affidavit from the property owner regarding their new residence.

Urgent Need is defined in the Colorado Action Plan for Disaster Recovery as, "meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs." There is a public need that exists to prevent redevelopment in hazardous locations. Homes in hazardous locations are a threat to homeowners, emergency responders, and everyone who lives downstream or downhill from that home. There is also a need to help homeowners recover financially in order to move to a safer location. All households in the Boulder County Buyout and Acquisition Program that are not LMI will be counted as Urgent Need.

Because buyout and acquisition are a Public Infrastructure activity and because the purpose of the program is risk reduction, household income will not be a determinant for eligibility for the program. Boulder County will, however, collect demographic and income data from property owners to demonstrate that the CDBG-DR requirement to serve a majority of low-to-moderate income families has been satisfied across all CDBG-DR activities.

Program Synopsis

Boulder County will use CDBG-DR funding to purchase properties impacted by the September 2013 flooding that either do not qualify for FEMA’s buyout program or that are not funded by that program due to limited funding. This program will mirror HMGP to the greatest extent possible for the sake of consistency and fairness. Property owners who owned the property at the time of the event will be offered the pre-disaster market value of the property (for buyouts) or current fair market value (for acquisitions) as determined by two independent and state-licensed appraisers.

This is a voluntary program: Boulder County cannot compel a property owner to participate nor will we purchase property through eminent domain proceedings. It is important to remember the program is voluntary for the seller as well as the buyer. Boulder County may not be interested in purchasing property using these funds – for reasons of long-term management, historic preservation concerns, low risk, or sensible resource allocation – even if a homeowner is willing to sell.

Once the property is purchased, the improvements will be removed and the land will be returned to its natural state and will remain in public ownership unless an alternative public use is identified that could be accommodated in a safe manner for future users of the site. Such alternative uses could include recreational areas, community gathering spaces, or public infrastructure.

Eligibility

Any Boulder County property owner impacted by the September 2013 flooding and rain event is eligible to apply to the CDBG-DR Buyout and Acquisition Program. Prioritization will be given to properties with habitable structures that were substantially damaged. Additional prioritization criteria have been established – see below.

If the habitable structure was located within the FEMA-identified floodplain and was substantially damaged, interested property owners were directed by Boulder County to apply first for the FEMA Hazard Mitigation Grant Program for buyout. That application was submitted to the State of Colorado Department of Homeland Security and Emergency Management on August 27, 2014. If there are insufficient funds to purchase all FEMA-eligible properties AND if Boulder County determines significant hazards prevent safe redevelopment of parcels, some FEMA-eligible properties will be included in the CDBG-DR Buyout and Acquisition program. CDBG-DR also may be used for FEMA HMGP local match.

Eligibility Requirements for Buyout:

- Property must be located in the floodplain (FIRM OR locally regulated¹); OR
- Property must be in a Disaster Risk Reduction Area as documented per the parameters below.

Eligibility Requirements for Acquisition:

- Property is located in the floodplain OR in a Disaster Risk Reduction Area AND the property is vacation home; OR
- Property is located in the floodplain OR in a Disaster Risk Reduction Area AND Boulder County intends to retain existing structures or redevelop the property.

Eligible property types for Boulder County’s CDBG-DR Buyout and Acquisition program are:

¹ Boulder County adopted the ability to utilize “best available data” in all development review applications if that data is more specific or more restrictive than the FEMA-adopted floodplain regulations (see 4-601 A.12; 4-806 A.4; 4-806 A.6; and 19-300 C.7 of the Boulder County Land Use Code).

- Single and multi-family residences (both owner occupied and rentals),
- Vacant lots^[2],
- Commercial properties, and
- Property owned by non-profit organizations.

Properties located within a floodway or a floodplain may be purchased as a Buyout activity intended to reduce risk of future flood and hazard impacts to homeowners. Once the property is purchased through the Buyout program, the property must be cleared of all structures and placed into open space for perpetuity. Buyouts will be conducted at 100 percent of pre-storm appraised value, plus associated project costs, minus any duplication of benefits already received. Acquisitions properties will be offered the current fair market value of the property and, according to Federal rules, there will be no duplication of benefits to factor.

Eligibility of Buyouts Outside the Floodplain

Areas susceptible to flooding, landslide, rock falls, wildfire, or other documented hazards are considered Disaster Risk Reduction Areas (DRRAs). Due to locations in a known hazardous areas, properties in DRRAs should not be rehabilitated, re-inhabited or redeveloped for the safety of residents, visitors and surrounding community. In Boulder County, significant housing is located outside of the floodplain but in these areas at high risk of flood, landslide, mudslide or erosion.

Properties in the DRRAs may be purchased at pre-flood value, per clarifying guidance provided by HUD ([80 FR 72102](#)) in November of 2015 which allows communities the option to pursue voluntary buyouts of real property through CDBG-DR funds for the purposes of hazard mitigation in areas defined as DRRAs. Identifiable hazards could include presence or potential for flooding, mudslides, rock fall, subsidence, or other geologic hazard. Designation of a DRRA must meet the following criteria: 1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-DR allocation; 2) the hazard must be a predictable environmental threat to the safety and well-being of property owners, as evidenced by the best available data and science; and 3) the DRRA(s) must be clearly identified so that HUD and the public may easily determine which properties are located within the DRRA(s).

Properties in Disaster Risk Reduction Areas will be identified as such by a certified geologist, engineer or local permitting office, supported with multiple sources of documentation that provides a clear preponderance of evidence that the property meets the definition and specific criteria for high geologic hazard risk. The State of Colorado has developed a DRRA certification form. All grantees must complete the DRRA form to certify the eligibility of the property. Grantees must also retain in files the documentation for each property that they determine meets DRRA criteria. Documentation accompanying the analysis could include, but is not limited to, the following:

- **ATC-20 forms** – This is the rapid damage assessment conducted by Boulder County building inspectors that occurred as soon as the rain stopped falling in September 2013. ATC-20 is a standard form created by the Applied Technology Council for use in disaster response. The standardized form allows building inspectors from other jurisdictions to participate in large-scale disasters without needing to learn jurisdiction-specific software programs or forms. The form enables the assessment team to quickly evaluate a structure immediately following the disaster.
- **Placard status** – As part of the rapid assessment process, Boulder County building inspectors physically posted Red (Unsafe), Orange (Damaged), or Yellow (Affected) placards on structures following the disaster. This was followed up with a detailed letter explaining options to property owners.
- **Photo documentation** – Boulder County has geo-tagged photos linked to our GIS system that provides access to photos taken by Boulder County staff during the rapid assessment process. Staff can also obtain before and after photos from property owners, if we don't already have them. This information allows us to view the condition of many of the worst-hit areas before property owners and public entities began rehabilitating the sites.
- **Maps/GIS layers** – Boulder County has mapping that shows existing regulatory floodplains, interim floodplains (Colorado Water Conservation Board, or CWCB), debris flows (provided by the Colorado Geological Survey),

²The inclusion of vacant lots, including those that never had a structure, may prove essential to meeting the objectives of the Buyout and Acquisition Program by preventing further development in an area prone to flooding, flash flooding, rock slides, landslides, or other hazards.

changes in surface elevations (post-disaster LiDAR), areas of inundation, and more. Indicators of hazard could include steep slopes, unstable soils or other factors as identified.

- **SDE letter** – Substantial Damage Estimates (SDEs) were conducted on the majority of properties on our buyouts and acquisitions list. SDEs are completed through a FEMA/floodplain-specific tool. It documents the extent of damage to a structure using FEMA’s SDE program. Each SDE letter was signed by the Boulder County Chief Building Official and the Boulder County Floodplain Administrator.
- **Hazard Mitigation Review** – Hazard Mitigation Review (HMR) is a process Boulder County Land Use created following the disaster to assess risk and mitigate those risks for property owners seeking to rebuild. Not many buyout property owners signed up for this service because many of them had no intention of rebuilding their homes – the risk was made evident to them already and buyout is their best or only option. However, Boulder County does have HMR determinations for some properties.
- **High Hazard Homes** – Some destroyed homes have been removed already using FEMA or NRCS Emergency Watershed Protection (EWP) funding, as the structural debris posed additional hazards to the community if left in place. Boulder County has access to the findings that justified removal of those structures using federal dollars.
- **Urban Search and Rescue (USAR) data** – USAR provided their data to Boulder County to assist in the rapid assessment in the immediate aftermath of the disaster.
- **Geological Analysis** – The property can be identified in a high risk area as **determined through geologic hazard mapping** developed by the Colorado Geological Survey, or a **report from a certified professional geologist** that documents high geologic hazard risk to the property.

Incentives

Boulder County may also implement the use of financial incentives – the “Acquisition Incentive Plan” – to enable households to incentivize purchase of homes that do not qualify for buyout or DRRR buyout. In sum, Acquisition Incentives can be provided up to pre-flood value that will help homeowners to resettle safely, remain in the community when possible, and contribute to Boulder County’s overall recovery from the disaster, while also ensuring that acquired land will not be redeveloped thus making the community more resilient to future disasters.

Prioritization

Boulder County will use the same prioritization matrix for CDBG-DR properties as is utilized for HMGP properties. Under this system, Boulder County has identified characteristics of properties and damaged structures, and assigned point values in order to objectively evaluate the hazards associated with the property and the benefits of buyout or acquisition for hazard mitigation. We also consider the ability of the structure to be redeveloped on the parcel in a location that is outside of the hazard area. The prioritization matrix includes the following prioritization factors (and associated points):

Prioritization Schedule

Hazard Mitigation, maximum points possible = 15

- Regulatory floodway – 15 points
- Regulatory floodplain – 8 points
- Wildfire – 1 point
- Debris flow, landslide, rock fall hazard – 8 points
- Outside mapped floodplain but high risk from erosion – 8 points
- Non-regulatory mapped floodway – 15 points
- Interim mapped floodplain – 8 points

Damage Sustained/Ability to Rebuild Critical Infrastructure, maximum points possible = 12

- Substantially damaged structure (50%+) – 7 points
- Structure damage between 10-49% – 4 points
- Structure damage less than 10% – 0 points

- Access damaged – 2 points
- Not feasible to meet minimum access standards (e.g. bridge, culvert) – 4 points
- Feasible for access to meet minimum standards – 0 points
- Not reconstructing access prevents future hazard to multiple parcels – 4 points
- OWS, total loss (onsite wastewater system, i.e. septic where no municipal water) – 4 points
- OWS, damage to leach field only – 3 points
- OWS, damage to tank only – 2 points

Other Benefits or Issues, maximum points possible = 10

- Parcel has alternative development location outside hazard area – (-)10pts
- Property is contiguous to or near other public lands, some public benefit – 3 points
- Property is contiguous to or near other public lands, higher public benefit – 5 points
- Buyout or acquisition facilitates hazard mitigation project or creek/watershed realignment – 5-10 points depending on the benefit
- Residence destroyed and already removed through High Hazard Home program – 10 points
- Buyout or acquisition provides protection opportunity for public infrastructure (roads, bridges, etc.) – 4 points

Maximum Award

The maximum award to an individual property owner is the pre-disaster fair market value of the property. This will be determined by averaging two independent pre-disaster appraisals. As part of the process, Boulder County will hire certified appraisers using our standard procurement process for professional services to conduct appraisals of each property where buyout or acquisition has been requested AND Boulder County is interested in purchasing due to hazardous conditions.

LMI households may also receive Temporary Rental Assistance, Housing Counseling, Down-Payment Assistance, or other assistance, depending on those programs' eligibility.

Process for Award and Buyout or Acquisition

All applicants for CDBG-DR must fill out a property owner application. Boulder County has created an application which includes additional forms:

- Voluntary Participation Agreement – Part 1
- Declaration of Lawful Presence
- Duplication of Benefits Affidavit
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Boulder County will also collect a copy of the property owner's most recent 1040 IRS form in order to verify household income. IRS information will be verified according to HUD's income verification guidelines.

Below is an outline of major steps in the Buyout and Acquisition Program.

1. Application – Property owners must complete the Boulder County CDBG-DR Buyout and Acquisition application. The application process will include a Duplication of Benefits review. The LMI review and verification process will be handled by Housing and Human Services CDBG-DR staff.
2. Prioritization – Land Use staff will calculate the prioritization score for each specific property, utilizing the Prioritization criteria defined above. The purpose of the prioritization process is to purchase those properties most damaged, threatened, or hazardous.
3. Duplication of Benefits review
4. Environmental and historic assessment
5. Appraisals (at least two) [county note: Add more here about different appraisals for buyouts v acquisitions.]
6. Offer – For buyouts and DRRA buyouts, Boulder County will follow the same procedure as HMGP to determine the pre-event market value of the property. For acquisition, the offer will be based on current fair market value plus any additional incentive if eligible, minus the duplication of benefits.

7. Appraisal Reconciliation and Revised Offer (if necessary) – See Appraisal Reconciliation section below for more detail.
8. Title work
9. Phase I Environmental Assessment
10. Purchase of the property
11. Removal of improvements and land restoration

Buyout and Acquisition Applicants Who Purchased the Property After the Date of Disaster

Post flood owners receive an offer to purchase the property based on pre-flood fair market value as the basis of their buyout or acquisition with the following limitations and duplication of benefit review:

- Individuals and entities that purchased a flood-impacted home after the date of disaster located in the designated area will be limited to the price the owner paid for the property, not to exceed the pre-flood fair market value. If repairs have been made to the property, eligible repair receipts are added to the post-flood price of the buyout or acquisition.
- Banks that have been deeded the property on a post-flood basis will be limited to the amount of the mortgage balance (amount to pay-off the mortgage). This is the amount that the bank would have received had the owner participated on the Buyout and Acquisition Program.
- Properties that are in foreclosure where the pre-flood owner receives any remaining proceeds of the sale of the property after sale expenses, taxes and liens, receive an award based on the pre-flood fair market value of the property.
- Contract sellers are limited to the amount of the contract balance. This is the amount that the contract seller would have received had the contract buyer participated in the Buyout and Acquisition Program, provided the contract balance is less than the pre-event fair market value. If the contract balance is more than the pre-flood fair market value, the contract seller will be limited to the pre-flood fair market value.
- Trusts, probates and living wills receive an offer based the pre-flood fair market as if the pre-flood owner is participating and subject to a duplication of benefits review. This is the same amount that the trust/probate would have received had the creation of the trust/probate been after the owner themselves signed all the documents necessary to participate in the Buyout and Acquisition Program.
- If a non-profit has received the property by donation on a post-flood basis, they are limited to the appraised value at the time of donation.
- If the property has been acquired by a bankruptcy trustee, the bankruptcy trustee provides the valuation documentation that was used to value the property at the time of the bankruptcy. The award amount is limited to the maximum of the pre-flood fair market value. Or alternatively, if the property is being held in trust with the homeowner remaining the current deed holder, documentation must be provided to demonstrate that the property is still deeded to homeowner but held in trust. If documentation is provided, the applicant receives an award based on the pre-flood fair market value of the property.

Appraisal Reconciliation

Boulder County will follow the same process for appraisal reconciliation as was established for the FEMA Hazard Mitigation Grant Program.

Boulder County will hire two firms (following standard Boulder County procurement and contracting procedures) to conduct two separate, independent appraisals by Colorado-licensed appraisers in order to determine the pre-flood market value of each property, or post-flood if acquisition. Property owners will receive a copy of both appraisals and a formal offer letter to purchase the property. The offered sale price will be the average of the two appraisals. Buyout or acquisition will only occur if both the seller and the buyer (Boulder County) are willing participants in the transaction. Either party may withdraw participation in the program at any time right up to the day of closing.

If the property owner is not satisfied with the purchase price offered, they may, at their expense, hire a third appraiser to conduct a pre-flood fair market valuation of the property. This appraisal must be performed by a Colorado-licensed appraiser and following the Uniform Standards of Professional Appraisal Practice. The effective date of the appraisal shall be September 10, 2013 for Buyouts or the current date for Acquisitions. The three appraisals will be averaged

together to determine the purchase price of the property. If the property owner is not satisfied with the revised purchase price, Boulder County will not pursue the buyout or acquisition. If the appraisal or appraiser does not meet the established standards, Boulder County will not accept the third appraisal, and the initial offer price will stand.

Post-Acquisition/Buyout

Boulder County intends to retain ownership of the land following the buyout or acquisition to prevent redevelopment in locations with known natural hazards. Depending on the circumstances, the county may agree to dispose buyout properties to neighboring property owners in order to ease the long-term burden of ownership and maintenance. If Boulder County decides to pursue this option, we will fully comply with all CDBG-DR rules and regulations, and the properties will have deed restrictions which will prohibit new development.

In the majority of instances, all improvements and structures will be removed, and properties will remain undeveloped in perpetuity. Depending on the location, natural features, and adjacency to existing publically held lands, these properties (or portions of properties) may be used for recreational or open space purposes. In limited circumstances, portions of property may be utilized for other public benefits such as road or bridge improvements, mitigation or for community meeting places, provided these improvements could be made in a way that does not endanger users of the facilities or public or private resources nearby. Boulder County will document that properties are returned to their natural state.



ADDENDUM 1

Boulder County Collaborative CDBG-DR Buyouts & Acquisitions Program Guidelines

July 3, 2018

As of July 2018, all property purchases for the Boulder County Collaborative (BCC) Buyouts & Acquisition Program are complete. This Addendum to the BCC CDBG-DR Buyouts & Acquisitions Program Guidelines clarifies the requirements of the program related to restrictions on future federal disaster assistance funding on buyout/acquisition properties.

In accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by Public Law 106-390 (*\$5170c Hazard Mitigation*), BCC Partnering agencies are prohibited from applying for additional disaster assistance for any purpose from any federal entity in perpetuity with respect to any property acquired, accepted, or from which a structure was removed under the BCC CDBG-DR Buyouts & Acquisitions Program.



ADDENDUM 2

Boulder County Collaborative CDBG-DR Buyouts & Acquisitions Program Guidelines

November 19, 2018

As of July 2018, all property purchases for the Boulder County Collaborative (BCC) Buyouts & Acquisition Program are complete. This Addendum to the BCC CDBG-DR Buyouts & Acquisitions Program Guidelines (Program Guidelines) clarifies the requirements of the program related to Duplication of Benefits review.

In accordance with the Federal Rules at 80 FR 72102 (11/18/2018), Acquisitions properties purchased at the post-disaster fair market value (FMV) by BCC Partnering agencies are not subject to Duplication of Benefits review. Where the Program Guidelines make reference to Duplication of Benefits review, with particularity under the **Process for Award and Buyout or Acquisition** section starting on page 8, such review is applicable to Buyouts applicants and properties purchased at the pre-disaster FMV only.