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Floodplain Management Areawide Compliance Document

New York State Homes & Community Renewal
Office of Community Renewal

Community Development Block Grant Program Disaster Recovery
Housing Assistance Program
1-4 Family Homes

Washington County, NY
Effective Date: September XX, 2013

38-40 State Street, Albany, NY 12207

nyshcr.org

Executive Order 11988: Floodplain Management

New York State Housing and Community Renewal
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This Floodplain Management Areawide Compliance Document meets the requirements of Executive Order 11988: Floodplain Management for numerous unspecified 1-4 unit housing properties in Washington County, New York. The housing properties are participating in the U.S. Department of Urban Development (HUD) Community Development Block Grant Program as administered by the State of New York Action Plan For Community Development Block Grant Program – Disaster Recovery (Program). This Program will be conducted in compliance with Executive Order 11988. It includes the reconstruction, reimbursement, improvement, financing, and use of existing properties located in a floodplain for which approval is required, either from HUD under any applicable HUD program, or from a grant recipient subject to 24 CFR Part 58. This document pertains to activities within the Special Flood Hazard Area (SFHA) as defined by the Federal Emergency Management Agency (FEMA), or its successors, pursuant to the National Flood Insurance Program (NFIP), or a successor program, whether advisory, preliminary, or final.

Description of Proposed Activities

The State of New York was awarded funding, to be administered by the New York State Housing and Community Renewal (HCR), to provide financial assistance to homeowners whose primary residences were substantially damaged by Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee within various New York State Counties, including Washington County. HCR is awarding this funding in accordance with the State of New York Action Plan For Community Development Block Grant Program – Disaster Recovery (Action Plan). The Action Plan provides for, among other things, assistance to owners of substantially damaged 1-4 unit family homes in Washington County, NY within the 100-year floodplain to repair homes, reimburse for repair costs, and mitigate future storm damage (Action Plan Activities). These are the activities that are the subject of this Areawide Compliance Document.

In addition, the Action Plan provides for, among other things, reimbursement assistance to owners of 1-4 unit homes in Washington County, New York (Action Plan Activities). The program description has been amended to include reimbursements for homeowners of 1-4 unit buildings that have started or completed rehabilitation work with personal resources, subject to restrictions in line with applicable laws, regulations, and the 1-4 unit rehabilitation program requirements (e.g., eligibility criteria, grant restrictions). These homeowners will be equally subject to the program's eligibility requirements and restrictions on assistance, and unit prices and labor costs may be subject to caps. In general, priorities for reimbursement will be based upon financial need. Furthermore, applicants seeking reimbursements may be given lower initial priority for processing than applicants who are requesting funds for essential rehabilitation or reconstruction of their homes. All reimbursement is contingent on compliance with Recreate NY

1-4 Unit Rehabilitation requirements and is dependent upon an environmental review as required by the National Environmental Policy Act (NEPA) and HUD regulations.

Executive Order 11988 & 24 CFR Part 55

HUD regulation 24 CFR Part 55 implements Executive Order 11988: for Floodplain Management. The order requires federal agencies (or a state agency implementing a federal funding program) to reduce the loss of life and property caused by floods; minimize impacts of floods on human safety, health, and welfare; and preserve the natural and beneficial functions of floodplains. Under this Order, federal agencies should first look at avoiding all actions in or adversely affecting floodplains unless no practicable alternatives exist. If no practicable alternatives exist, then federal agencies must evaluate the potential effects of the proposed action. In addition, federal agencies are required to demonstrate that all practicable alternatives have resulted in the reduction or elimination of the long- and short-term adverse impacts associated with occupancy and modifications of the floodplain.

Projects located within a floodplain SFHA are subject to Executive Order 11988. Information on where SFHAs are located is available on Flood Insurance Rate Maps (FIRMs) published by FEMA. FEMA uses engineering studies to determine the delineation of these areas or zones subject to flooding. The relevant data source for the SFHA is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final FIRMs. Where no FIRMs exist, floodplain data is estimated based on surface water and elevations of the surrounding area.

The SFHA is the area that would be inundated by a 100-year flood: an area that has a one percent or greater chance of experiencing a flood in any single year. SFHAs are shown on FIRMs as shaded areas labeled with the letter “A” or “V”.

- “V” zones are coastal flood hazard zones subject to wave run-up in addition to storm surge.
- “A” zones include all other special flood hazard areas.
- “VE” zones, “AE” zones, “V” zones, or “A” zones followed by a number are areas with specific flood elevations, known as Base Flood Elevations.
- A zone with the letter “A” or “V” by itself is an appropriately studied flood hazard area without a specific flood elevation.
- Within an “AE” zone or a numbered “A” zone, there may be an area known as the “regulatory floodway,” which is the channel of a river and adjacent land areas which must be reserved to discharge a 100-year flood without causing a rise in flood elevations.

The floodplain (FEMA Zones A, AE, AH, V, & VE) covers large areas of Essex County. Preliminary maps show an estimate of approximately 120,200 acres of floodplain (including surface waters) is mapped within the county boundary. Early calculations estimate that there are approximately 213,800 acres of floodplain (excluding surface waters) within the county. These acreages are preliminary calculations based on currently available data, and are subject to revision as more up-to-date and complete information becomes available.

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24 CFR Part 55.1 (c)

Under 24 CFR Part 55.1 (c), except with respect to actions listed in § 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any critical action located in a coastal high hazard area ("V zone") (a "critical action" is an action such as storage of volatile materials, irreplaceable record storage, or construction of a hospital or nursing home); or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use and complies with the construction standards outlined in HUD Regulations 24 CFR Part 55 (c)(3).

24 CFR Parts 55.11 & 55.20

Under 24 CFR Parts 55.11 (including Table 1) and 55.20, non-critical actions are allowed in A or V zones only if the actions are reviewed in accordance with the 8-step process outlined in 24 CFR Part 55.20. An 8-step process was conducted for the Action Plan Activities within Washington County, as detailed, below.

HCR Approach

In applying Executive Order 11988 and 24 CFR Part 55, HCR's approach is to avoid to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains as a result of the proposed actions. No funding will be committed in a floodway and no "critical actions" will receive funding.

Before funding is allocated to a particular site, the site will be reviewed for compliance with Executive Order 11988 using the following process, which will be documented and kept on file:

- The source of information will be documented on the Site-Specific Checklist.
- Action Plan Activities located within the SFHA, as identified by FEMA maps, have been reviewed in this document, a large-scale 8-Step Process prepared in accordance with 24 CFR Part 55.20.
- HCR or its authorized agent will review the property locations to identify any within a FEMA delineated floodway. Any properties located within a FEMA-delineated floodway are not eligible for the program.
- If the parcel is located within a SFHA and has been substantially damaged or requires substantial improvement (the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred), HCR or its authorized agent will identify the base flood elevation at the site and determine applicable measures (as described below) to mitigate impacts to the floodplain and to the residence.

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Base Flood Elevations

In December 2012, FEMA issued Advisory Base Flood Elevations (ABFEs) through its NFIP. The ABFEs increased the anticipated depth of tidal flooding during the 100-year flood in many areas and increased the area expected to be inundated by such a flood. However, Washington County, New York is not within the December 2012 ABFE mapped area. In areas where preliminary ABFE maps have been developed those maps will govern. In areas where no preliminary ABFE maps exist, FEMA Base Flood Elevations (BFE) data will be referenced for application of the Program within the county.

Required Mitigation Elevations

All development within SFHAs is subject to floodplain development regulations. When a New York State entity funds a project, the New York State Rule 6 NYCRR Part 502 requires that when existing residential structures receive substantial improvements, the lowest floor (including basement) of each building in flood hazard areas must be constructed at least one foot above the base flood elevation. Additionally, the New York State Residential Building Code requires the lowest floor (including basement) of 1-2 family residential buildings classified under that Code to be constructed at least two feet above the base flood elevation. Finally, each participating community has a local law for flood damage prevention that contains specific standards for any development SFHAs. Where no BFE exists, the lowest floor needs to be at least three feet above the highest adjacent grade.

Rehabilitation, reimbursement, and mitigation work to substantially damaged structures conducted under this Program will comply with the strictest elevation requirements in the relevant regulations or codes.

Within an "A" zone, when a base flood elevation is available, the lowest floor, including any basement, must be above the base flood elevation as described above. Elevation may be by means of properly compacted fill, a solid slab foundation, or a "crawl space" foundation that contains permanent openings to let flood waters in and out. Within a coastal "V" zone, structures must be elevated on pilings, columns, or sheer walls, such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor is elevated above the base flood elevation, as described above.

Compliance with these standards will be documented through the building permit and/or elevation certificate, which are required eligibility documents under this Housing Assistance Program.

24 CFR Part 55.20 8-Step Process

Step ONE: Determine if a Proposed Action is in the 100-Year Floodplain

The Action Plan was created in response to severe coastal flooding and storm damage caused by Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee. The Action Plan Activities will address the state's need for safe, adequate, and affordable housing to the affected population within the legal framework of the program.

The Action Plan Activities will provide funding for homeowners who meet the Action Plan requirements within Washington County. At this time, the exact locations of the homeowner

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properties that will participate in this assistance program are unspecified. However, eligible applicants are:

- Homeowners whose primary residence was substantially damaged by the storm within Washington County;
- whose household adjusted gross annual income is less than $250,000.00; and
- who live in a National Flood Insurance Program (NFIP) V or A Zone, as indicated on the FIRM (there are approximately 220,200 acres of floodplains in Washington County). Based on the FEMA Individual Assistance Program (FEMA IA) data, as of April 2013, over 150 owner-occupied and rental homes in Washington County have reported damage. It is expected that many if these residences are within the SFHA.

The Action Plan Activities are necessary to restore storm damaged homes, including rehabilitation, reimbursement, reconstruction, elevation, and/or other mitigation activities within the disturbed area of the previously developed parcel. HCR requires that all property owners whose homes are determined to be "substantially damaged" must rebuild in accordance with the elevation requirements stated above. A structure is considered substantially damaged if the cost of restoration equals or exceeds 50% of the market value of the structure prior to damage.

Once an applicant applies for funding, HCR or its authorized representative will determine if the project parcel is located within the SFHA by viewing the FEMA Base Flood Elevation Map link at www.msc.fema.gov. HCR or its authorized representative will then determine the strictest elevation requirement applicable to the site and ensure that the rehabilitation activities are compliant.

Step TWO: Initiate Public Notice for Early Review of the Proposal

Because the Action Plan Activities are located in the floodplain, HCR must publish an early notice that allows the public input into the decision to provide funding for rehabilitation in this area. Once the early public notice and comment period is complete, HCR will assess, consider, and respond to the comments received individually and collectively for the project file, then proceed to Step Three.

A 15-day "Notice for Early Public Review of a Proposed Activity in a 100-Year Floodplain" was published in **The Post-Star**, on **September 16, 2013**. The 15-day period will expire on **October 1, 2013**. The ad targeted local residents, including those in the floodplain. The notice was also sent to the following state and federal agencies on **September 16, 2013**: Federal Emergency Management Agency (FEMA); U.S Fish and Wildlife Service (USFWS); U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (USACE); National Park Service (NPS); National Oceanic and Atmospheric Administration (NOAA); NOAA Fisheries Service; New York Department Environmental Conservation; New York State Office of Parks, Recreation and Historic Preservation; New Your Department of Transportation; and the New York State Office of Emergency Management. The notice was also sent to Washington County and the towns and villages within Washington County. (See EXHIBIT 1 and 2 for the notice and email to state and federal agencies)

HCR received **insert number of** public comments on this notice. Most of the comments were related to **insert comments regarding comments received**. See EXHIBIT 3 for the list of comments received by HCR and HCR's response to those comments.

Step THREE: Identify and Evaluate Practicable Alternatives

The Program will provide grant awards to eligible homeowners for activities necessary to restore their storm-damaged homes, including rehabilitation, reimbursement, reconstruction, elevation, and/or other mitigation activities within the disturbed area of the previously developed parcels in the floodplain. The Program will benefit homeowners whose primary residences sustained "substantial damage" from Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee. The residence must be located in Washington County. Based on the FEMA Individual Assistance Program (FEMA IA) data, as of April 2013, over 150 owner-occupied and rental properties in Washington County have reported damage. Over 150 homes were damaged from Hurricane Irene. This number accounts for approximately 1% of reported housing damage caused by Hurricane Irene in New York. It is estimated that most of these homes are located in the 100-year floodplain.

The only alternative is to not provide funding for the Action Plan Activities within the floodplain. A 'No Action' alternative would mean that applicants would not receive grant awards under the Action Plan. As a result, these homeowners may not be able to recover from the impacts of the storm events. Furthermore, the applicants would not be provided financial assistance to elevate their homes, and thus their properties would be more vulnerable to future flooding conditions. Therefore, the No Action alternative would neither address the state's need for safe, decent, and affordable housing, nor would it require homes within the floodplain to be elevated to the highest standard for flood protection.

A policy to prohibit any rehabilitation in the floodplain is not considered practicable due to the great number of developed parcels located within the floodplain in the county.

Applicants who choose to rehabilitate in the floodplain using Action Plan funding must adhere to the applicable elevation requirements (as described above) to avoid flood damages.

These alternatives will be re-evaluated in response to any public comments received.

Step FOUR: Identify the Impacts of the Proposed Actions

All applicants for financial assistance will be evaluated for eligibility, in accordance with HUD guidelines. The Program will follow federal policies which ensure that no person may be excluded, denied benefits, or subjected to discrimination on the basis race, color, national origin, religion, sex, familial status, and/or physical or mental handicap under any program funded in whole or in part by federal CDBG-DR funds. CDBG-DR funds from the HUD disaster appropriation may be used for eligible CDBG-DR activities that meet the state CDBG program regulations. However, any appropriation covered by this Action Plan (Public Law 113-2) shall be reviewed for compliance with duplication of benefits guidelines at 42 U.S.C. 5155, which specifically prohibit the use of funds for activities reimbursable by, or for which funds have been made available by FEMA, the Small Business Administration (SBA), or other federal or state sources. Funds may also be used as a matching requirement, share, or contribution for any other federal program, provided all activities are CDBG-DR eligible and in compliance with duplication of benefit guidelines.

The Action Plan Activities benefit homeowners whose "primary residence" sustained "substantial damage" (as defined by HUD) from Hurricane Sandy, Hurricane Irene, and/or Tropical Storm Lee. The funds can only be used for specific disaster-related purposes which include rehabilitation, reimbursement, reconstruction, elevation, and/or other mitigation activities

on previously developed parcels in the floodplain. HUD's own regulations limit what actions can be considered under the Program, including any construction in the floodway. The homes are required to be elevated to the elevation height standards described earlier which represent Best Available Data and the most accurate flood risk. The only exceptions to this requirement are historic structures that are listed on the State or National Registers of Historic Places, which will have elevation height requirements considered on a case-by-case basis.

The Proposed Action allows homeowners to rebuild residential structures, based on the structure's original footprint and its current location, but requires that the home be rebuilt at substantially higher elevation requirements than Base Flood Elevation for most residential buildings. This will require that the home be elevated to the strictest elevation requirements in the relevant regulation or code, as described above. This will provide significant protections for these homes inside the floodplain. All Applicants will also be required to maintain flood insurance up to the NFIP maximum amount as part of this program. Overall, this has a more beneficial impact on the floodplain than the No Action alternative.

As a result of the requirement that homeowners whose houses were substantially damaged and wish to rebuild will be required to elevate their homes to the strictest standard, it is extremely unlikely that there will be a net increase in floodplain development in comparison to pre-Sandy conditions as a result of this program. In addition, the proposed Action Plan Activities would not likely increase floodplain occupancy, as the proposed Action Plan Activities would enable people to return to their homes, but would generally not expand the housing stock relative to conditions prior to Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee.

The impacts of these alternatives will be re-evaluated in response to any public comments received.

Step FIVE: Minimize Threats to Life and Property and to Natural and Beneficial Floodplain Values. Restore and Preserve Natural and Beneficial Floodplain Values.

HCR requires elevation of all substantially damaged structures in the floodplain. When followed, these regulations will reduce the threat of flooding damage to the homes located in the floodplain. The FEMA BFEs represent the best available data.

Homeowners participating in this Program would be required to adhere to the following conditions to minimize the threat to property, minimize losses from flooding and high-wind events, and benefit floodplain values:

1. All proposed reconstruction and repair of substantially damage structures in the floodplain must adhere to the latest (most recent) elevation requirements in accordance with 6 NYCRR Part 502 or the New York State Residential Building Code.

2. All participants in the Recovery Program must carry flood insurance on the subject structure, when mandated, in perpetuity; and

3. In the case of "Coastal High Hazard" areas ("V" or "VE" Zones on the FEMA-issued Maps), the applicant is required to adhere to construction standards, methods and techniques requiring a registered professional engineer to either develop, review or approve, per the associated location, specific Applicant elevation plans that demonstrate that the design meets the current standards for V zones in FEMA regulation 44 CFR Part 60.3 (e) as required by HUD Regulation 24 CFR Part 55.1 (c)(3). Therefore, the

requirements of the Recovery Program will help ensure a minimal adverse impact to the floodplain.

Step SIX: Re-evaluate Alternatives

The No Action alternative would not address the need for safe, decent, and affordable housing, nor would it require homes within the floodplain to be elevated to the highest standard for flood protection. Applicants would not be provided financial assistance to elevate their homes and their properties would be more vulnerable to future flooding conditions.

An award under the Action Plan would require all proposed reconstruction and repair of substantially damage structures in the floodplain to adhere to the latest (most recent) elevation requirements in accordance with 6 NYCRR Part 502 and the New York State Residential Building Code. Therefore, there would be less of an impact upon the floodplain than with the No Action alternative.

The impacts of these alternatives will be re-evaluated in response to any public comments received.

Step SEVEN: Issue Findings and a Public Explanation

It is HCR's determination that there is no better alternative than to providing funding for the Action Plan Activities in the floodplain. This is due to: 1) the need to provide safe, decent and affordable housing; 2) the desire to avoid displacing residents; and 3) the ability to mitigate and minimize impacts on human health, public property and floodplain values. A "Notice of Policy Determination" will be published, in accordance with 24 CFR 55, for a 7-day comment period. The notice will describe the reasons why the project must be located in the floodplain, alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain values. All comments received will be considered**.**

Step EIGHT: Implement the Action

Step eight is implementation of the proposed action. HCR will ensure that all mitigation measures prescribed in the steps above will be adhered to. Furthermore, prior to any buyouts or acquisitions, HCR will conduct a National Environmental Policy Act (NEPA) review in accordance with 24 CFR Part 58 and a New York State Environmental Quality Review Act (SEQR) review in accordance with 6 NYCRR Part 617.

EXHIBIT 1 Copy of Notice Transmitting Notice of Early Public Review and Proof of Publication

EXHIBIT 2 Copy of Notice Transmitting Notice of Final Public Review and Proof of Publication

EXHIBIT 3 Public Comments Received and HCR Response

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EXHIBIT 1 **EARLY NOTICE AND PUBLIC REVIEW OF A PROPOSED ACTIVITY IN A 100-YEAR FLOODPLAIN**

September 16, 2013:

To: All Interested Agencies, Groups & Individuals

This is to give notice that the New York State Homes and Community Renewal (HCR) has conducted an evaluation as required by Executive Order 11988, in accordance with HUD regulations at 24 CFR 55.20 Subpart C, Procedures for Making Determinations on Floodplain Management to determine the potential effect that its activity in the floodplain will have on the human environment for Community Development Block Grant – Disaster Recovery (CDBG-DR) Washington County Housing Assistance Program under Title I of the Housing and Community Development Act of 1974 (PL 93-383). In accordance with the regulations, a Floodplain Management Areawide Compliance Document has been prepared for the CDBG-DR Housing Assistance Program for rehabilitation, reimbursement, and mitigation of 1-4 Unit Family Homes in Washington County.

New York State has been allocated $1.7 Billion of CDBG-DR funds for acquisition, reconstruction, reimbursement, improvement, financing, and use of existing properties in the most impacted municipalities and counties. This funding reflects activity under the first allocation of funds. A significant portion of the current allocation will be used for the renovation of some of the worst damaged properties, including those that are the subject of this Notice. This Notice pertains to the renovation of over 150 damaged homes in Washington County, New York including over 150 homes damaged by Hurricane Irene. It is HCR's expectation that with additional unmet needs assessment the number of housing units in this and other areas to be assisted additional funding will increase. Additional areas will be the subject of additional notices, as needs arise.

There are approximately 220,200 acres of floodplain in Washington County. These acreages are preliminary calculations based on currently available data, and are subject to revision as more up-to-date and complete information becomes available. The tidal floodplains in the State are depicted on two maps: the advisory mapping developed by FEMA, which can be viewed by selecting "FEMA's Interactive ABFE Map" link at www.region2coastal.com/sandy/abfe and the FEMA Base Flood Elevation Map link at www.msc.fema.gov. These maps are not available for all areas.

Homeowners whose property sustained substantial damage will be issued grant awards. These awards will assist in the rehabilitation of damaged homes and reimbursement of prior and ongoing repairs. In order to receive a grant award, the damaged home must be elevated. The height of elevations will be based on current building ordinances and estimated 100 year flood data.

There are three primary purposes for this notice. First, people who may be affected by activities in floodplains and those who have an interest in the protection of the natural environment have an opportunity to express their concerns and provide information about these areas. Second, adequate public notice is an important public education tool. The dissemination of information about floodplains facilitates and enhances Federal efforts to reduce the risks associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in floodplains, it must inform those who may be put at greater or continued risk.

Written comments should be submitted via email and further information can be requested at NYSCDBG_DR_ER@nyshcr.org. Please include "Washington County Floodplain Work Comments" in the subject line. Written comments may also be received by HCR at the following address**:** Attention: Heather Spitzberg, Certifying Officer, NYS Homes and Community Renewal, 38-40 State Street, Hampton Plaza, Albany, NY 12207. Comments may be received by telephone at (518) 486-3379. All comments must be received or postmarked on or before **Tuesday, October 1, 2013.** A full copy of the Floodplain Management Document, including preliminary area maps, can be viewed from Monday – Friday, 9:00 AM - 5:00 PM at NYS Homes and Community Renewal, 38-40 State Street, Hampton Plaza, Albany, NY 12207 or at http://www.nyshcr.org/Programs/NYS-HCR-CDBG-DR/EnvironmentalReview. To inquire about how to apply for benefits under this and other New York State Disaster Relief programs, please call the Recovery Hotline at 1-855-NYS-SANDY, Monday-Friday 8am-8pm. Or, go to www.nysandyhelp.ny.gov

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