

Office of Community Development
Disaster Recovery Unit
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

November 13, 2018

Mr. Stanley Gimont
Director
Office of Block Grant Assistance
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 7178
Washington, D.C. 20410-7000

RE: Isle de Jean Charles Eligible Activity and National Objective Waiver and Alternative Requirement Request

Mr. Gimont:

The State of Louisiana, Office of Community Development (OCD or the state) is requesting a waiver of 24 CFR 570.201(a) and the Housing and Community Development Act of 1974 to allow an alternative eligible activity and national objectives when acquiring a deed restriction on property on Isle de Jean Charles (the Island). This waiver is necessary to allow the state to meet the objectives of the grant of reducing risk on the Island while simultaneously accommodating the need for current property owners to have continued access to their properties and the existing structures for ceremonial, cultural, historic and recreational uses for the finite remaining life of the Island.

Fundamentally, in order to be allowable under 2 CFR 200.403 and 200.404, costs paid with CDBG-NDR funds must be necessary and reasonable to carry out the objectives of the grant. The primary objective of the grant for the Resettlement of Isle de Jean Charles- both defined by the state in its application to HUD for National Disaster Resilience funding and by HUD in its approval of funding for the project- is to provide assistance to allow families to voluntarily relocate from the high risk Island property to a lower-risk area. Families living on the Island may choose to either relocate to a community developed by the state or receive assistance for purchasing a home in another lower risk area. From a cost reasonableness perspective, in order to provide assistance for families to relocate, those families have to relocate. Furthermore, the relocation assistance was awarded to the state because there is a local, state and federal understanding that it is no longer safe or sustainable to live in the high risk conditions faced on the Island; therefore, it is neither necessary nor reasonable to allow the same families or other families to continue to live on those

high risk properties, putting themselves in harm's way and/or requiring additional public assistance in the future.

As the state specified in its application to HUD, it is critical to allow property owners continued access to their Island properties for ceremonial, cultural, historic and recreational purposes for the remaining life of their properties. The importance of the Island land to the resettling community cannot be overstated, given the current residents' direct socioeconomic and cultural dependence on the Island and the historical experiences of many of the Island residents' ancestors. Over 95% of the Island has eroded into the Gulf since the 1950s and unless there is another storm event that could expedite this timeline, the state anticipates the remaining land will erode into the Gulf of Mexico within the next fifty years. The lack of long term viability of the Island presents a definitive end date to when residents will have access to the Island, and presents a compelling justification for allowing the current residents to continue to have limited access to their Island properties after they have relocated to their new homes.

The state understands that from a CDBG-NDR perspective, this type of activity would more traditionally operate as a buyout program. The term buyout refers to acquisition of properties located in a floodway, floodplain or "Disaster Risk Reduction Areas" that is intended to reduce risk from future flooding. It is the state's understanding from the alternative requirements related to a buyout activity that under a traditional buyout program, the state could acquire either fee simple title or a deed restriction through an easement (servitude, in Louisiana) of high-risk properties. However, in order to comply with the terms of a buyout activity, the acquisition would result in the property being "dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices."¹

Under the traditional buyout construct, it is the state's understanding that eligible participants would not be able to have continued access and basic maintenance of the structures on the property for the remaining life of the land. Without the ability to have access to the existing structures for personal ceremonial, cultural, historic and recreational purposes, the state understands that this program would be unacceptable to Island property owners and would likely result in significantly reduced program participation.

In order to accommodate both the cost reasonableness need of having a legal mechanism for enforcing the fundamental relocation purpose of the grant, as well as the need for current residents to have continued access to their properties for limited uses for the finite remaining life of the Island, the state submitting an alternative requirement and waiver request of 24 CFR 570.201(a) to the Department.

The state understands that qualifying an acquisition activity under one of the CDBG-NDR national objectives depends on the use of the acquired real property following its acquisition. The waiver of 24 CFR 570.201(a) and the Housing and Community Development Act of 1974 to allow an alternative requirement for the eligible activity, national objective and end use of a property acquired with CDBG-NDR funds. The state is requesting a waiver to allow the state or its designee to acquire

¹ Federal Register Notice, FR-5989-N-01

Mr. Stanley Gimont
November 13, 2018
3 | Page

real property on the Island through a voluntary acquisition process and to allow the homeowners to continue to own and maintain their property as currently built, with specific and enforceable restrictions on future development or improvements on the property.

- The national objective of LMI Housing or Urgent Need will be achieved through the successful relocation of the grantee to the new community or new, lower risk home.
- The final eligible activity, and final disposition, of the use restricted real property on the Island is to encumber the land in a manner that reduces the risk from future flooding of permanent residences, and to allow the property owners to use the land for cultural, recreational and historic purposes that includes limited use and maintenance of existing structures. No new construction is allowable on the acquired property. These structures are not to be used as permanent residences and the structures are not eligible for future public assistance. These restrictions are in place for the remaining life of the acquired land.

Monitoring and Enforcing Use Restrictions

The program will include two options for applicants. If all persons with an interest in the property are willing to sign the program documents, a deed restriction- which constitutes a form of real property acquisition under CDBG regulations- will be implemented that allows the state to enforce property restrictions which limit the use of the property, prohibiting among other uses primary residency. If only a portion of the persons with an interest in the property are signing the program documents, then the state may instead utilize a non-acquisition legal document (lien or mortgage) which uses the partial ownership interest to secure the applicant's obligations under the grant agreement, which mirrors the restrictions of the deed restriction.

The state's monitoring of compliance with the restrictions will be multi-faceted, including working with utility providers to monitor usage, receiving information from the postal service on mail delivery, checking ad valorem tax rolls to confirm the property is not claimed as a residence by any owner, requesting notifications from local government on requests for any building permitting on subject properties and notification to appropriate local, state and federal agencies that the properties are not eligible to receive additional public funding for disaster recovery or other purposes.

Enforcement through deed restrictions will be for specific performance. Use of the mortgage or lien instrument will require, in the event that compliance is not voluntarily forthcoming, enforcement of the security instrument. In the event that the state, or its designee, through this process becomes the sole owner of the property, the property will be converted to open space uses only.

Sincerely,



Patrick W. Forbes, P.E.
Executive Director