

Project 059-ED-724-13 EO 11988 Floodplain Management Determination
***Commercial & Economic Development Initiative within NY State Community Development Block
Grant Disaster Recovery Program***
November 23, 2016

Introduction & Overview

The purpose of Executive Order 11988, Floodplain Management, is “to avoid to the extent possible the long- and short-term adverse impacts associated with occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” This report contains the analysis prescribed by 24 CFR Part 55.

This project involves U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program – Disaster Recovery (CDBG-DR) funding for building repair and rehabilitation for a single business impacted by Superstorm Sandy. The analysis that follows focuses on floodplain impacts, as there are no direct wetland impacts associated with this project. Based on the “non-substantial” level of work, and other case characteristics, it is concluded that there is a reasonable basis to proceed with funding for this project/ activity within floodplain. Moreover, in the [March 5, 2013 Federal Register Notice](#), HUD expressly recognized that “without the return of businesses and jobs to a disaster-impacted area, recovery may be impossible. Therefore, HUD strongly encourages grantees to envision economic revitalization as a cornerstone to a long-term recovery” (78 FR 14335). Thus, alternatives preventing or impeding small business recovery are not considered reasonable alternatives.

Description of Proposed Action & Land Use

The Shores @Atlantic Beach LLC is a beach club located at 1845 Ocean Boulevard, in the Village of Atlantic Beach, Nassau County, NY. Based on County Assessment data, this commercial property is Section 58, Block 030, and Lot 16. The Property Description shows a 1.1552-acre lot. The business disclosed that it is located at the additional address of 2019 Ocean Boulevard, Atlantic Beach, Nassau County, New York. However, the project activities reviewed within this Environmental Review Record (ERR) were only located at 1845 Ocean Boulevard.

The proposed support involves a limited grant award of \$50,000.00 for reimbursement of construction-related activities. The reimbursed construction expense is for shower repairs in the resort’s cabanas near the pool and sand court. In addition, two new spigots were installed: one near the pool and one near the sand court. All construction work proposed for reimbursement was completed before the one-year anniversary of the storm. A previous environmental review for separate activities categorized under 24 CFR 58.35(b)(4) for this Applicant was completed on April 1, 2016 for \$50,000.00 in working capital for property taxes and employee wages, and is included in the environmental review record. Thus, the total combined funding amount for this Applicant is \$100,000.00.

Applicable Regulatory Procedure Per EO 11988

The proposed action corresponds with a noncritical action not excluded under 24 CFR §55.12(b) or (c). Funding is permissible for the use in the floodplain if the proposed action is processed under §55.20 and the findings of the determination are affirmative to suggest that the project may proceed.

Based on online data, including data managed and updated by the U.S. Fish & Wildlife Service (USFWS) and New York Department of Environmental Conservation (NYSDEC), there are no mapped wetlands on the Subject Property. Thus, there was no direct construction (new or existing) in wetlands as a result of the construction activities. Thus, in accordance with the decision-making process set forth in 24 CFR Part 55, this analysis focuses exclusively on floodplains.

According to 24 CFR §55, the completed repair of storm-impacted infrastructure occurred in a community that is in the regular program of the National Flood Insurance Program (NFIP) and the community is currently in good standing. Using the total amount of damage reported after Superstorm Sandy, this project exceeds the substantial damage threshold of 50% in 24 CFR §55.2(b)(10). This is evidenced by Small Business Program materials indicating that all work activities were reported at approximately \$2,098,993.00, while the improved property value data is valued at approximately \$915,600.00. As such, the full eight-step floodplain determination process in §55.20 is required. The following analysis examines each step in a floodplain management determination process

Step 1. Determine Whether the Proposed Action is Located in the 100-year Floodplain (500-year for Critical Actions) or results in New Construction in Wetlands.

The location of the action, per the applicable FEMA flood map Firmette, is within the 100-year floodplain (SFHA - AE Zone). There is an established Base Flood Elevation (BFE) of approximately 15 feet across the Subject Property, and the Subject Property is within the limit of moderate wave action. The limit of moderate wave action (LiMWA) indicates the potential presence of breaking waves ranging between 1.5 to 3 feet high during a flood event within a Zone AE area. The LiMWA exists to alert property owners on the seaward side of the line that their properties may be significantly affected by high-velocity flow associated with breaking waves and debris that can lead to erosion and scouring around foundations. This action did not require a Section 404 permit under the Clean Water Act (see 55.20(a)(1)).

Step 2. Initiate Public Notice for Early Review of Proposal.

Because the proposed project is located in floodplain and wetlands, the Governor's Office of Storm Recovery (GOSR) published an early notice that allowed for public and public agency input on the decision to provide funding for reconstruction and development activities. The early public notice and 15-day comment period is complete. No public comments were received.

The early notice and corresponding 15-day public comment period started on October 17, 2016 with the "Early Notice of a Proposed Activity in a 100-Year Floodplain" being published in Newsday newspaper, with the 15-day period expiring on November 1, 2016. The notice targeted local residents, including those in the floodplain. The notice was also sent to the following state and federal agencies on October 17, 2016: Federal Emergency Management Agency (FEMA); USFWS; U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (USACE); NYSDEC; and New York State Office of Emergency Management. The notice was also sent to Nassau County and the Village of Atlantic Beach. (See **Attachments 1** and **2** of this EO 11988 Floodplain Management Determination for the letter distributed to these agencies and the associated newspaper notice affidavit).

Step 3. Identify and Evaluate Practicable Alternatives to Locating the Proposed Action in a 100-year Floodplain (or 500-year Floodplain if a Critical Action) or Wetland.

The Program is structured to provide eligible businesses with loan or grant assistance for activities necessary to restore storm-damaged businesses, including through damage reimbursements, and support for rehabilitation, reconstruction, elevation, and/ or other mitigation activities. This small business suffered substantial damage during Superstorm Sandy, as such potential alternatives must be considered in order to try and mitigate the amount of damage from future flood events.

One potential alternative is to relocate the business out of the 100-year floodplain; however, this beach resort facility would have difficulty moving to a replacement property outside of the floodplain. Moreover, given the barrier island topography and developed nature of the community, it could be challenging and/or impracticable to secure a feasible alternative location within the community. Additionally, the beach resort serves local and regional recreational and tourism demand and is a type of land use that could be a compatible form of floodplain development. As such, relocation is not considered a viable option.

Another alternative would be for no action to occur, meaning the Applicant would not be receiving grant funds to restore and sustain business. This option means there would be a potential inability for the business to survive rebuilding after the storms. This could greatly impact this business and the surrounding community, as recovery would be greatly impaired due to lack of support. Accordingly, the 'no action' decision would neither support this business's recovery nor help the community recover from the devastating storms.

Due to the number of developed parcels within this community, prohibition of rehabilitation within floodplain is not practicable. Applicants who chose to rebuild substantially damaged structures within floodplain using CDBG-DR grant funds must adhere to the elevation requirements for commercial buildings in order to mitigate or avoid future damages.

The above identified alternatives will be re-evaluated in response to public comments received.

Step 4. Identify & Evaluate the Potential Direct & Indirect Impacts Associated with Occupancy or Modification of the 100-year Floodplain (or 500-year Floodplain for Critical Action) and the Potential Direct & Indirect Support of Floodplain and Wetland Development that Could Result from the Proposed Action.

The focus of floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include consideration of potential for adverse impacts on water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge.

According to the FEMA Report - A Unified National Program for Floodplain Management, two definitions commonly used in evaluating actions in a floodplain are "structural" and "non-structural" activities. Per the report, structural activity is usually intended to mean adjustments that modify the behavior of floodwaters through the use of measures such as public works dams, levees and channel work. Non-structural is usually intended to include all other adjustments (e.g., regulations, insurance, etc.) in the way society acts when occupying or modifying a floodplain. These definitions are used in describing impacts that may arise in association with potential advancement of this case.

Natural moderation of floods

As the applicant's property is one of many developed parcels situated within the 100-year floodplain, the continued occupancy may potentially result in future direct impacts to property during certain severe floods and related natural disasters. However, the direct effects to this property would be no greater than those expected to the other adjacent occupied properties within this floodplain.

Living resources such as flora and fauna

This land use may constitute a type of business where, after flooding, materials used in operations could potentially be released into the environment, thereby having unquantifiable potential to impact water quality maintenance and ecological resources. The potential impact that may arise is that materials used or stored on-site would be caused to be released into the environment, such as a result of wind or floodwaters. However, this would be more likely if there are no non-structural and structural floodproofing techniques in place, such as if materials are not stored in water-tight containers, and/ or said containers break or migrate out of a non-enclosed building due to lack of proper preparation. A qualitative evaluation suggests the potential would be relatively small and if such releases do occur, it is likely as part of a potential area-wide impact. In such an instance, floatable debris could contribute to litter and if there were minor amounts of chemicals used on the Subject Property, floodwaters may induce rapid dilution. Given the nature of this business, the potential for an acute or chronic level of water quality impact from the Subject Property is low.

Impacts to Property & Lives

The action does present potential to impact commercial occupancy of the floodplain, but it does not impact residential structures or directly cause modification of the 100-year floodplain. The project does not alter the floodplain because it does not in any way directly or physically modify the floodplain through new ground disturbance – it only repaired the existing infrastructure. Moreover, supporting the recovery of small businesses is an essential component of recovery in storm-affected communities, as recognized by the March 2013 Federal Register Notice.

Occupancy of this floodplain in this developed area has taken place since World War II. According to Nassau County's Multi-Jurisdictional Hazard Mitigation Plan, 2014, 11.44% of the population (page 70) and 29% of the improved property of Atlantic Beach is located in the 100-year floodplain (page 56), and 98% of the land is in High or Moderate Flood Risk (page 109). Considering the context of the area, this action represents an activity at only one parcel among others that are located within the contiguous floodplain. Thus, funding this project/ activity does constitute indirect continued support of floodplain occupancy and development for this business. In the event of severe flooding and associated natural hazards in the future, there is potential for further damage to this property, business disruption, and impacts to this small business.

The repairs and rehabilitation of the Subject Property sustains area property values and community character within a district and neighborhood that has been settled for a long time. It enables continued viability of this small business, which might otherwise degrade, or cease to exist, without support in rehabilitating facilities, restarting business operations, and/or recouping some revenue lost as a result of the disaster. Similarly, the proposed investment supports the area by sustaining an asset. With sustained operations here, the market will not be disrupted and/or require customers and tenants to travel greater distances. Support to sustain this business also helps ensure a diverse economic base. If this project were not funded, there probably would be other undefined, undesirable indirect impacts to lives and the area economy, on a short- and long-term basis, such as relating to economic multipliers and support that this business provides to surrounding businesses, as it purchases products and services.

Cultural resources such as archaeological, historic & recreational aspects

Per historic maps, the Subject Property was constructed in the 1920's as the Westbury Beach Club. Through the years, this business has maintained the same type of operation and feel from when it was first opened, catering to vacationing club members. There are no recorded historic properties listed on or deemed eligible for the State and National Register of Historic Places adjacent to the Subject Property. Additionally, the New York State Historic Preservation Office confirmed on May 16, 2016 that this project has had no effect on historic resources. Without support, building resources could degrade and there could be loss of development character and identity for the building and the area.

According to the Outdoor Industry Association's two-page fact sheet New York: The Outdoor Recreation Economy, outdoor recreation generates \$338 Billion in consumer spending and 305,000 direct jobs within the State. This is an important sector of the regional economy and the subject business is an example of a constituent part of this aspect of the economic base. It is presumed that market demand for a beach club is strong and if the service here were disrupted, consumer demand could not easily shift to other facilities located in the floodplain because of finite supply.

Agricultural, aquacultural, & forestry resources

The Nassau County area has several agricultural sites located in the flood zone, as well as undeveloped woodlands. There is substantial agriculture and fishing industry in Nassau and Suffolk Counties on Long Island, including aquaculture in the form of oyster farming. While there appears to be a higher concentration of aquaculture on Eastern Long Island, per the 2012 State Comptrollers Report Agriculture in Long Island and Agricultural Production by Commodity Group in Long Island (2007), aquaculture

represents 2.9% of the economy at a \$7.5 million sales revenue. It is possible that if there is a materials release from this property, it could potentially affect natural resources including agricultural and forestry. However, while it is conceivable that flooding of a business like this could be part of a cumulative influence on such resources, the impact attributable to this use could not have been quantitatively derived, and the potential impact, with planning for and practice of non-structural management practices, is considered minor.

Step 5. Where Practicable, Design or Modify the Proposed Action to Minimize the Potential Adverse Impacts To and From the 100-Year Floodplain and to Restore and Preserve its Natural and Beneficial Functions and Values.

Given that proposed rehabilitation funded by this Program is very limited and does not rise to the level of substantial reconstruction, and considering the individual property scale, it is not financially feasible to specify mitigation measures such as elevating the building, dry floodproofing it, or promoting strategic retreat such as through government acquisition. However, it is reasonable to promote business owner awareness of future risks of natural hazards, including flooding, plus the physical, social and economic impacts that potential events could convey, including through potential for future physical damage to property, buildings, supplies, and equipment.

It is reasonable to promote business owner awareness of actions they can take to define and prepare for the impacts of many hazards they may face. There are free resources available to aid such preparedness planning found at the link: <http://www.ready.gov/business>.

Step 6. Reevaluate the Alternatives and Proposed Action.

The relocation alternatives within floodplain would not change the rebuilding requirements and the location of the community on a barrier island means that there are few spaces that are not within floodplain. Additionally, as a beach vacation resort facility, this business is functionally dependent on location within floodplain. The areas that are outside flood zone are impracticable in terms of the businesses' basic requirements to achieve an acceptable level of service as a beach resort. Locations within flood zone are already occupied, and/ or lack the functional space required by such a recreational business, or already serve important purposes such as marine, agriculture, or other recreation pursuits.

The 'no action' alternative would not address the need this business has for rehabilitation of the storm-damaged facilities. Without CBDG-DR funding, the business could potentially be unable to successfully resume and sustain business operations due to financial hardship.

Therefore, the alternatives examined are not considered desirable or possible and the action to fund building rehabilitation and business continuity at this business is still practicable in light of exposure to flood hazards in floodplain, possible adverse impacts on floodplain, the extent to which it may aggravate current hazards to other floodplains, and the potential to disrupt natural and beneficial functions and values of floodplains. Moreover, the March 2013 Notice in the Federal Register strongly recommends that grantees engage in a robust policy for ensuring recovery of small business affected by storm events, as such recovery is essential to the continued vitality of surrounding communities. Thus, alternatives preventing or impeding small business recovery are not considered reasonable alternatives. As such, the impact on a floodplain would be less with this proposed action than with taking the 'no action' or relocation alternatives.

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

Step 7. Issue Findings and Public Explanation.

It is the finding of this report that there is no better alternative than to provide funding for the repairs and rehabilitation at this small business. The location within floodplain cannot be avoided due to requirements

of a beach resort facility and land economics, in terms of the high expected cost of land outside floodplain and the high development costs of relocating the business. However, not funding any actions would mean that this small business would struggle to recover, much less be able to mitigate any future damages. A final notice, formally known as “Notice of Policy Determination” was published in accordance with 24 CFR 55, for a 7-day comment period. (See **Attachments 3 and 4** of this EO 11990 Wetlands Protection and EO 11988 Floodplain Management Determination for the letter distributed to the associated agencies and the associated newspaper notice affidavit). The 7-day comment period started with the Final Notice publishing in the Newsday newspaper on November 23, 2016 and the 7-day period expires December 1, 2016. The notice describes 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.

Step 8. Continuing Responsibility of Responsible Entity & Recipient.

The Governor's Office of Storm Recovery (GOSR), operating under the auspices of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, is the responsible entity. The responsible entity will make available educational materials regarding best practices for businesses located in floodplains. It will also require the business to demonstrate proof of current flood insurance. It is acknowledged there is a continuing responsibility by the responsible entity to ensure, to the extent feasible and necessary, compliance with the steps herein.

Attachment 1

**Notice of Early Public Review
Floodplain Management
Executive Order 11988**

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**EARLY NOTICE OF A PROPOSED ACTIVITY
IN A 100-YEAR FLOODPLAIN**

**The Shores @Atlantic Beach LLC (Project 059-ED-724-13)
1845 Ocean Boulevard, Village of Atlantic Beach
Nassau County, New York 11509
October 17, 2016**

To: All interested Agencies, Groups, and Individuals

This is to give notice that the Governor's Office of Storm Recovery (GOSR), an office of the New York State Housing Trust Fund Corporation (HTFC), has received a request to use Community Development Block Grant – Disaster Recovery (CDBG-DR) funding from the NY Rising Small Business Recovery Program to implement repairs at The Shores @Atlantic Beach LLC (Project 059-ED-724-13) (hereinafter, the "Proposed Activity") and is conducting an evaluation as required by Executive Order 11988 in accordance with U.S. Department of Housing and Urban Renewal (HUD) regulations (24 CFR Part 55). There are three primary purposes for this notice. First, to provide the public an opportunity to express their concerns and share information about the Proposed Activity, including alternative locations outside of the floodplain. Second, adequate public notice is an important public education tool. The dissemination of information about floodplains facilitates and enhances governmental efforts to reduce the risks associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the government determines it will participate in actions taking place in floodplains, it must inform those who may be put at greater or continued risk. Funding for the Proposed Activity will be provided by the HUD CDBG-DR program for storm recovery activities in New York State.

The Proposed Activity is needed to provide subsidy for the repair of damages from Superstorm Sandy and will allow for the business to continue its operations at the Subject Property. The March 5, 2013 Federal Register Notice, HUD expressly recognized that "without the return of businesses and jobs to a disaster-impacted area, recovery may be impossible. Therefore, HUD strongly encourages grantees to envision economic revitalization as a cornerstone to a long-term recovery" (78 FR 14335).

The Proposed Activity entails reimbursement for completed construction involving shower repairs in the resort's cabanas near the pool and sand court. In addition, two new spigots were installed: one near the pool and one near the sand court.

The Proposed Activity will not result in permanent impacts to the approximately 1.2 acres of

100-Year floodplain. This work included modification of existing onsite structures. As such, no new ground disturbance occurred and no new impermeable surfaces were created.

Floodplain maps based on the FEMA Flood Insurance Rate Maps have been prepared and are available for review with additional information at <http://www.stormrecovery.ny.gov/environmental-docs>.

Any individual, group, or agency may submit written comments on the Proposed Activity or request further information by contacting Lori A. Shirley, Certifying Officer, Governor's Office of Storm Recovery, 38-40 State Street, Hampton Plaza, Albany, NY 12207; email: NYSCDBG_DR_ER@nyshr.org. Standard office hours are 9:00 AM to 5:00 PM Monday through Friday. For more information, call (518) 474-0755. All comments received by November 1, 2016 will be considered.

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Attachment 2

**Notice of Early Public Review Affidavit
Floodplain Management
Executive Order 11988**

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NEWSDAY AFFIDAVIT OF PUBLICATION

TECTONIC
PO BOX 37
MOUNTAINVILLE, NY 10953

STATE OF NEW YORK)

Legal Notice No.

0021221547

:SS.:

COUNTY OF SUFFOLK)

Jamie Asuncion of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Monday

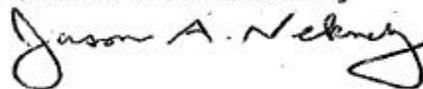
October 17, 2016

Nassau

SWORN to before me this
19 Day of October, 2016.



Jason A. Neknez
Notary Public, State of New York
No. 01NE6219108
Commission Expires 03/22/2018
Qualified in Suffolk County



**Attachment 3
Final Notice
Floodplain Management
Executive Orders 11988**

Note:

The funds are needed immediately to reimburse the Applicant's expenses for completed construction work. As a result, the comment periods for the NOIRROF and Final Notice and Public Review of activity in 100-year floodplain have been combined and will be published in the Newsday Paper on November 23, 2016. The preceding floodplain EO 11988 Floodplain Management Document is open for comment for a period of seven days after the publication on November 23, 2016. **No public comments were received.**

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Attachment 4
Final Notice Affidavit
Floodplain Management
Executive Order 11988

Note:

The funds are needed immediately to reimburse the Applicant's expenses for completed construction work. As a result, the comment periods for the NOIRROF and Final Notice and Public Review of activity in 100-year floodplain have been combined and will be published in the Newsday Paper on November 23, 2016. The preceding floodplain EO 11988 Floodplain Management Document is open for comment for a period of seven days after the publication on November 23, 2016. **No public comments were received.**

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