



## JEAN CHARLES CHOCTAW NATION

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**RE: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7 against the Louisiana Division of Administration, Office of Community Development for Discriminatory Implementation of the Federally Funded Isle de Jean Charles Resettlement Program.**

Dear Secretary Fudge and Director Banis,

On behalf of the Jean Charles Choctaw Nation, formerly known as the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw (“the Tribe”), EarthRights International writes to file this complaint under Title VI of the Civil Rights Act of 1964 and its implementing regulations (“Title VI”). We request that the United States Department of Housing and Urban Development (HUD) investigate the Louisiana Office of Community Development’s (OCD) implementation of the Isle de Jean Charles Resettlement Program<sup>1</sup> (“Resettlement Program”) because it both evinces a discriminatory intent and has had a demonstrable disparate impact on the Jean Charles Choctaw Nation, an Indigenous Tribe. We also request that HUD seek assurances that OCD will rectify its discriminatory behavior and reform its practices to better incorporate Tribal priorities into the ongoing resettlement efforts.

### INTRODUCTION

The Jean Charles Choctaw Nation are considered the first climate refugees in the United States.<sup>2</sup> After centuries of discriminatory forced relocation, rejection of Tribal sovereignty, and denial of educational and land ownership rights, climate change poses the latest existential threat to the Jean Charles Choctaw Nation. Forced to relocate from their ancestral lands on the Isle de Jean Charles (“the Isle” or “the Island”) in southern Louisiana, the Jean Charles Choctaw Nation conceived of and spearheaded the original plans for the Resettlement Program which aimed to reunite the Tribe and promote climate resilience for their community. The Resettlement Program for current and former residents of the Isle to a new site (“the New Isle”) has been repeatedly characterized and praised as an example of a successful joint federal-state government effort to respond to the threat of sea-level rise and climate change.

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<sup>1</sup> The Jean Charles Choctaw Nation was known as the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw when the Resettlement Program was designed and initially implemented.

<sup>2</sup> Sean Breslin, *Louisiana Tribe Officially Becomes America’s First Climate Refugees*, The Weather Channel (Feb. 22, 2016), <https://weather.com/news/climate/news/biloxi-chitimacha-choctaw-indians-climate-refugees>.

Contrary to these characterizations, members of the Jean Charles Choctaw Nation, the original intended beneficiaries of the Resettlement Program, have been subjected to serious and ongoing racial and ethnic discrimination in resettlement decision making by OCD, the state agency implementing the Tribe's resettlement. Once OCD received HUD funding, it drastically changed the Resettlement Program, shifting from a Tribe-led reunification of the Jean Charles Choctaw Nation in a resilient new life-place to a cost-cutting and bare bones relocation of Isle residents. OCD made these changes unilaterally, cutting Tribal leadership out of decision making and failing to meaningfully include Tribal members or provide language support for members with limited English proficiency. Among OCD's changes, some of the most harmful have been downgrading the Tribe's status as a grant beneficiary to that of a mere stakeholder, creating stricter eligibility requirements for Tribal members who were displaced before 2012, requiring participants to sign away their rights to Island properties, and removing many of the disaster resilience and cultural aspects of the Resettlement Program. The actual construction of homes on the New Isle has been shoddy, with residents already reporting drainage and sewage issues and flood vulnerability. Additionally, the State and Terrebonne Parish have taken actions to pressure Indigenous residents of Isle de Jean Charles to surrender control of their Island properties while protecting the Island for continued use by corporate, non-Native interests.

OCD's actions have resulted in Tribal members feeling compelled to accept substandard homes without critical disaster resilience components since they first started moving to the New Isle in September 2022. These issues continue to persist with the construction of new homes that began in June 2023. If nothing changes, OCD is building a new community that is vulnerable to flooding, that fails to incorporate Tribal culture, and that will likely leave residents worse off than before while handing over their former homeland to non-Native corporate interests. OCD's implementation of the Resettlement Program in this manner is both indicative of discriminatory intent and has resulted in unlawful disparate impact to the Jean Charles Choctaw Nation. Additionally, OCD misrepresented the State's plans for the future of Isle de Jean Charles to justify unprecedented, draconian restrictions on Tribal members' use of their Island properties. These restrictions notably only apply to Resettlement Program participants – not non-residential property owners – and have opened the door to private touristic development of Isle de Jean Charles. Additionally, now that most Tribal members are displaced from the Island, the State and Parish have invested millions in infrastructure in and around the Island to protect these new recreational facilities, which are owned almost exclusively by non-Natives.

OCD's discriminatory actions violate Title VI and HUD's Title VI implementing regulations. The Tribe requests that HUD pursue remedies to cure OCD's Title VI violations, including requiring that OCD restore the Tribe as a full decision maker in the resettlement, deliver on the vision of the Tribe's original resettlement proposal, and correct problems with existing homes on the New Isle to provide promised disaster resilience. The Tribe also requests that the federal government develop a new framework for climate relocation, in consultation with the Tribe and other affected communities, to ensure that the discrimination the Tribe experienced from OCD is not repeated. As climate relocation becomes the reality for many vulnerable communities around the country, the federal government must take the measures needed to make the resettlement of the Jean Charles Choctaw Nation right, both to protect the Tribe's cultural survival and to make meaningful the Biden Administration's commitment to climate justice for the many communities who will require relocation assistance in the coming years.

## PARTIES

### I. Complainant

The Jean Charles Choctaw Nation is a Louisiana-recognized Indigenous Tribe comprising of approximately 775 members of Biloxi, Chitimacha, and Choctaw ancestry.<sup>3</sup> The Tribe traditionally inhabited the Isle de Jean Charles in the bayou on the boundary between South Terrebonne and Lafourche Parishes.<sup>4</sup>

For the Tribal elders remembering their childhoods, the Island was paradise.<sup>5</sup> It was lush and provided everything the community needed to live.<sup>6</sup> Most members sustained themselves through fishing and trapping.<sup>7</sup> It was a quiet, peaceful place where the Tribal community could live safely together and maintain their cultural heritage.<sup>8</sup> Ensuring younger Tribal members have a relationship to the Island, even though it is no longer safe to live there, is critical to cultural survival.<sup>9</sup>

Although the Chitimacha have lived in what is now coastal Louisiana for millennia, the Biloxi and Choctaw trace their history in Louisiana to the Indian Removal Act of 1830.<sup>10</sup> This overtly discriminatory law expelled tens of thousands of Indigenous Peoples from the southeastern United States, forcing them to migrate west.<sup>11</sup> Thousands died along the subsequent journey, commonly known as the “Trail of Tears.”<sup>12</sup> The Indian Removal Act resulted in the ethnic cleansing and cultural erasure of Indigenous Peoples from the southeastern United States.<sup>13</sup> The year after the Removal Act was signed into law, the U.S. Government and representatives from the Choctaw Nation ratified the Treaty of Dancing Rabbit Creek, which turned over 11 million acres of the Choctaw Nation to the United States and led many Choctaw nationals to relocate to the west, including to southern Louisiana.<sup>14</sup> Biloxi and Choctaw,

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<sup>3</sup> Declaration of Elder Chief Albert Naquin ¶¶ 6, 28 [hereinafter “Naquin Declaration”].

<sup>4</sup> *The Island*, JEAN CHARLES CHOCTAW NATION, <http://www.isledejeancharles.com/island> (last accessed May 1, 2023).

<sup>5</sup> Declaration of Chief Deme Naquin Jr. ¶ 6 [hereinafter “Naquin Jr. Declaration”].

<sup>6</sup> *Id.*; Naquin Declaration ¶ 7.

<sup>7</sup> Naquin Jr. Declaration ¶ 6; Naquin Declaration ¶ 7.

<sup>8</sup> Naquin Jr. Declaration ¶ 8.

<sup>9</sup> *Id.* ¶ 9; Naquin Declaration ¶ 44.

<sup>10</sup> *The Island*, JEAN CHARLES CHOCTAW NATION, <http://www.isledejeancharles.com/island> (last accessed May 1, 2023) (“For our Island people, it is more than simply a place to live. It is the epicenter of our Tribe and traditions. It is where our ancestors survived after being displaced by Indian Removal Act-era policies and where we cultivated what has become a unique part of Louisiana culture.”)

<sup>11</sup> Expert Declaration of Alessandra Jerolleman Declaration ¶¶ 6-7 [hereinafter “Jerolleman Declaration”].

<sup>12</sup> Nicky Michael, Beverly Jean Smith & William Lowe, *Reclaiming Social Justice and Human Rights: The 1830 Indian Removal Act and the Ethnic Cleansing of Native American Tribes*, 8 J. OF HEALTH AND HUMAN EXPERIENCE 25, 26 (2021) (“Over one-fourth died on the forced death marches of the 1830s. By any United Nations standard, these actions can be equated with genocide and ethnic cleansing.”); Russel Thornton, *Cherokee Population Losses During the Trail of Tears: A New Perspective and a New Estimate*, 31 Ethnohistory 289-300 (1984).

<sup>13</sup> See Gary Clayton Anderson, *Ethnic Cleansing and the Indian: The Crime that Should Haunt America*, University of Oklahoma Press (2014); John P. Bowes, *American Indian Removal beyond the Removal Act*, 1 NATIVE AMERICAN AND INDIGENOUS STUDIES 65 (Spring 2014).

<sup>14</sup> Jerolleman Declaration ¶ 7.

including the ancestors of the Jean Charles Choctaw Nation, found refuge in Louisiana’s bayous where they were physically and socially isolated from the rest of the State.<sup>15</sup>

The Jean Charles Choctaw Nation has been seeking federal recognition since the 1980s.<sup>16</sup> The administrative federal recognition process is time-consuming, burdensome, and expensive. Onerous records requirements for a community that has been historically denied record-keeping resources, including the right to education, makes fulfillment of the criteria for recognition effectively impossible.<sup>17</sup> While federally-recognized Tribes can work directly with the Bureau of Indian Affairs and other federal agencies to access funding and expand education and other opportunities for their members,<sup>18</sup> the federal government’s refusal to recognize the Jean Charles Choctaw Nation means they must rely on State and local governments to access federal funding. This has left the Tribe vulnerable to the discriminatory behavior of Louisiana state agencies.

## II. Federal Funding Recipient

The Louisiana Office of Community Development is an office within the Division of Administration. According to its mission statement, OCD “creates a safer and stronger Louisiana by leading the state’s disaster recovery and long-term community resilience planning efforts through innovation, partnerships and best practices.”<sup>19</sup> OCD is the state agency leading the Isle de Jean Charles Resettlement.

## JURISDICTION

Title VI prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin.<sup>20</sup> Once an entity receives funding from HUD it must comply with Title VI and HUD’s Title VI regulations.<sup>21</sup> Under Title VI, HUD has a responsibility to ensure that its funds are not used to subsidize discrimination. HUD must investigate and resolve complaints that allege HUD-funded recipients are violating its Title VI implementing regulations.<sup>22</sup>

Based on statutory and regulatory mandates, HUD considers four jurisdictional requirements before it decides to accept a Title VI complaint for further investigation. This Complaint meets all four of those requirements.

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<sup>15</sup> JULIE K. MALDONADO, *SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE: STANDING ON VANISHING LAND IN COASTAL LOUISIANA* 63 (Routledge, 2019); *The Island*, JEAN CHARLES CHOCTAW NATION, <http://www.isledejeancharles.com/island> (last accessed May 1, 2023).

<sup>16</sup> Jerolleman Declaration ¶¶ 18-19; UNITED NATIONS, *COMPLAINT ON RIGHTS OF INDIGENOUS PEOPLES IN ADDRESSING CLIMATE-FORCED DISPLACEMENT* 5 (Jan 15, 2020) [hereinafter “UNITED NATIONS COMPLAINT”].

<sup>17</sup> Jerolleman Declaration ¶ 19-21.

<sup>18</sup> *Id.* ¶ 26.

<sup>19</sup> *Office of Community Development*, LA. DIV. OF ADMIN., <https://www.doa.la.gov/oa/ocd/> (last accessed Dec. 18, 2023).

<sup>20</sup> 42 U.S.C. § 2000d.

<sup>21</sup> U.S. DEP’T OF JUST. TITLE VI LEGAL MANUAL § V 9-10.

<sup>22</sup> 24 C.F.R. § 1.7(c) (2011).

First, the complaint alleges a discriminatory act that violates HUD’s nondiscrimination regulations.<sup>23</sup> As explained below, the Tribe alleges that OCD is violating the agency’s Title VI regulations by unilaterally changing the Jean Charles Choctaw Nation’s Tribe-led Resettlement Program in a manner that effectively forces Tribal members to move into newly constructed homes that are structurally unsound on a New Isle that lacks critical disaster and cultural resilience protections, excludes the Tribe from decision making, and deprives Tribal members from accessing the benefits of the Resettlement Program. The State has also deliberately prohibited Tribal members from returning to the Island while at the same time making unprecedented investments to promote and secure property development on the Island by non-Native owners. OCD is acting with knowledge of these harms – which disparately affect members of the Jean Charles Choctaw Nation – and with a discriminatory purpose. OCD’s acts and omissions have caused, and will continue to cause, violations of Tribal members’ Title VI rights.

Second, the Complaint identifies a recipient of HUD financial assistance.<sup>24</sup> OCD regularly receives federal grants and loans from HUD. In 2016, as part of the National Disaster Resilience Competition, OCD received \$48.3 million in HUD Community Development Block Grants for the Resettlement Program at issue in this complaint.<sup>25</sup> The Resettlement Program is a small portion of the vast sums of federal money Louisiana receives to fund coastal protection and restoration strategies.<sup>26</sup> In 2016, OCD also received \$39.75 million from HUD to develop the Louisiana Strategic Adaptations for Future Environments – the state’s plan for climate adaptation and resilience in coastal communities.<sup>27</sup> HUD also provided Louisiana’s Division of Administration, OCD’s parent agency, with \$601 million in fiscal year 2022.<sup>28</sup> This amount represented 97.5 percent of the Division’s federal funding that year.<sup>29</sup> OCD anticipated at least another \$22.8 million from HUD’s Community Development Block Grants for the 2023 fiscal year.<sup>30</sup>

Third, the Complaint was submitted within 180 days of the alleged act of discrimination.<sup>31</sup> Construction most recently started on a new set of homes on June 29, 2023 at the new site using Resettlement Program funds.<sup>32</sup> New homes being constructed on the new site

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<sup>23</sup> 24 C.F.R. § 1.7(b) (2011).

<sup>24</sup> 24 C.F.R. § 1.2(f) (2011).

<sup>25</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM 2 (June 9, 2020), [https://isledejeancharles.la.gov/sites/default/files/public/Isle de Jean Charles-Background-and-Overview-1-28-21.pdf](https://isledejeancharles.la.gov/sites/default/files/public/Isle%20de%20Jean%20Charles-Background-and-Overview-1-28-21.pdf).

<sup>26</sup> See, e.g., CONG. RSCH. SERV., RL46195, GULF OF MEXICO ENERGY SECURITY ACT (GOMESA): BACKGROUND AND CURRENT ISSUES (Dec. 21, 2022), <https://crsreports.congress.gov/product/pdf/R/R46195> (reporting that Louisiana received \$567 million for coastal restoration and environmental projects from GOMESA alone from FY 2009 to FY 2022).

<sup>27</sup> *Our Land Our Water: A Regional Approach to Adaptation*, La. Strategic Adaptations for Future Environments 25 (Apr. 2019), <https://s3.amazonaws.com/lasafe/Final+Adaptation+Strategies/Regional+Adaptation+Strategy.pdf>.

<sup>28</sup> Treas., *Recipient Profile: Louisiana Division of Administration*, USASPENDING.ORG (2023), <https://www.usaspending.gov/recipient/bad7f0c0-46d7-ad4d-2ff7-8f647ae1de1b-R/2022>.

<sup>29</sup> *Id.*

<sup>30</sup> STATE OF LA., DIV. OF ADMIN., & OFF. OF CMTY. DEV., APPLICATION PACKAGE: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM PUBLIC FACILITIES FY 2023 at 1, <https://doa.louisiana.gov/media/pqjf3lpu/fy-2023-cdbg-public-facilities-application-1.pdf>.

<sup>31</sup> 24 C.F.R. § 1.7(b) (2011).

<sup>32</sup> Naquin Jr. Declaration ¶ 12.

continue to be plagued by structural issues that make them prone to damage during natural disasters, including a failure to ensure that all homes are constructed on pilings, and some new homes have already experienced flooding and have visible engineering issues.<sup>33</sup> Given that OCD's institutional mission is centered on disaster resilience, Tribal members contend that they have been subjected to discrimination within the last 180 days both in the construction and planning of new homes, and in the continued failure of OCD to implement other disaster resilience components of the plan. Federal agencies, including HUD, also recognize that the timing requirement is satisfied if the complainants challenge a continuing policy or practice of discrimination.<sup>34</sup> The Resettlement Program's discriminatory eligibility criteria continue to restrict Tribal members' ability to access the Program's benefits. Because the Resettlement Program is ongoing, HUD can also consider this Complaint through its continual authority to periodically review recipients' programs for Title VI compliance.<sup>35</sup>

Finally, the Complaint must be, and is, in writing.<sup>36</sup> HUD should therefore exercise its jurisdiction and investigate OCD's discriminatory conduct alleged in this Complaint.

## FACTUAL BACKGROUND

### I. Coastal land loss and severe storms are forcibly displacing the Jean Charles Choctaw Nation from their ancestral home on the Isle.

The climate crisis has led Louisiana to become one of the most endangered states in the country.<sup>37</sup> Louisiana's barrier shoreline is experiencing the highest rates of sea level rise and subsidence<sup>38</sup> in the United States,<sup>39</sup> and Louisiana contains the greatest proportion of land within flood hazard zones – 50.65% – of any state.<sup>40</sup> While Louisiana faces a severe threat from climate change and the resulting sea level rise, the Jean Charles Choctaw Nation experiences unique and disparate danger.<sup>41</sup> The rapid land loss on the Isle can be attributed to sea level rise, damage from severe storms, and coastal erosion exacerbated by large-scale projects such as oil and gas operations.

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<sup>33</sup> Julie Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*, DESMOG (Sept. 8, 2022), <https://www.desmog.com/2022/09/08/isle-de-jean-charles-relocation-new-isle-climate-change/>.

<sup>34</sup> See, e.g., *Title VIII Complaint Intake, Investigation, and Conciliation Handbook*, U.S. DEP'T OF HOUS. AND URBAN DEV. (2005), [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/ftheo/80241](https://www.hud.gov/program_offices/administration/hudclips/handbooks/ftheo/80241); *Case Resolution Manual*, EPA (2021), [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual\\_.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

<sup>35</sup> 24 C.F.R. § 1.7(a) (2011).

<sup>36</sup> *Id.*

<sup>37</sup> Jake Bittle, *Louisiana's landmark climate adaptation program is running out of time*, GRIST (May 26, 2023), <https://grist.org/extreme-weather/louisiana-coastal-master-plan-cpra-adaptation/>.

<sup>38</sup> Subsidence is defined as "the gradual caving in or sinking of an area of land."

<sup>39</sup> UNITED NATIONS COMPLAINT at 18 (citing Halle Parker, *Its Sinking Land and Climate Change*, HOUMA COURIER (June 19, 2019), <https://www.houmatoday.com/news/20190610/its-sinking-land-and-climate-change>; 2017 Master Plan app. C2-1; COASTAL PROT. & RESTORATION AUTH., BARRIER ISLAND STATUS REPORT FY 2020 ANNUAL PLAN 22 (2017), <http://coastal.la.gov/wp-content/uploads/2017/04/AppB-FY20-Barrier-Island-Report.pdf>).

<sup>40</sup> Charlie Lai, *The Worst States for Climate Change in the U.S.*, EARTH.ORG (Aug. 10, 2022), <https://earth.org/worst-states-for-climate-change>.

<sup>41</sup> See, e.g. Naquin Jr. Declaration ¶ 7; Naquin Declaration ¶¶ 24-29.

### **A. The Jean Charles Choctaw Nation has experienced significant land loss and population migration.**

Terrebonne Parish, where the Isle is located, has lost 502 square miles of wetlands since 1932.<sup>42</sup> In the next 50 years, sea level in the Parish will increase between 2.85 and 4.85 feet.<sup>43</sup> Studies conducted by Tribal leaders have found that the Isle is losing land at a rate twice that of Terrebonne Parish at large.<sup>44</sup> In 1955, the Isle consisted of 22,000 acres.<sup>45</sup> By 2015, the Isle's land mass decreased by 98%.<sup>46</sup> Today, only 320 acres remain.<sup>47</sup>

Severe weather events have displaced Tribal members and caused the widespread destruction of homes and infrastructure on the Isle. Between 2002 and 2014, storms and flooding forced over 200 people to flee.<sup>48</sup> The shrinking land mass and loss of protective barriers have made the Isle extremely vulnerable to hurricanes and tropical storms. For example, in 2005, Hurricanes Katrina and Rita brought eight-foot floodwaters, leaving homes moldy and dilapidated.<sup>49</sup> In 2008, Hurricanes Gustav and Ike flooded Tribal buildings and homes again, damaging almost every home in the community, as well as the Island Road.<sup>50</sup> When the Island Road – the only thoroughfare on and off the Island – is flooded, residents are unable to get to their places of employment, take their kids to school, access emergency and medical services, or have any other contact off the Island.<sup>51</sup> FEMA has stated that it will no longer repair the road – leaving residents vulnerable during all-too-frequent severe storms.<sup>52</sup>

From 2010 until 2019, 11 more storms hit the Isle, each causing widespread flooding and property damage.<sup>53</sup> In 2021, Hurricane Ida destroyed most of the remaining homes on the Island and damaged the fire station, leaving about 10 Tribal citizens living on the Island.<sup>54</sup>

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<sup>42</sup> UNITED NATIONS COMPLAINT at 18 (Jan 15, 2020) (citing *Habitat Loss*, BARATARIA-TERREBONNE NATIONAL ESTUARY PROGRAM, <https://btnep.org/estuaryissues/habitat-loss/> (last accessed Dec. 21, 2023)).

<sup>43</sup> *Id.* at 19 (Jan 15, 2020) (citing Halle Parker, *Its Sinking Land and Climate Change*, HOUMA COURIER (June 19, 2019), <https://www.houmatoday.com/news/20190610/its-sinking-land-and-climate-change>).

<sup>44</sup> Devon N. Parfait & Rónadh Cox, *Land Loss Rates for Indigenous Tribal Lands in Southern Louisiana Are Higher than Overall Regional Rates*, 52 Abstracts with Programs No. 6 (2020).

<sup>45</sup> STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION 105 (Oct. 27, 2015), [http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf).

<sup>46</sup> Ted Jackson, *On the Louisiana Coast, a Native Community Sinks Slowly into the Sea*, YALE SCH. OF THE ENV'T: ENV'T 360 (Mar. 15, 2018), <https://e360.yale.edu/features/on-louisiana-coast-a-native-community-sinks-slowly-into-the-sea-isle-de-jean-charles>.

<sup>47</sup> *Isle de Jean Charles Resettlement*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/> (last accessed Dec. 18, 2023).

<sup>48</sup> Nathan Jessee, *Reshaping Louisiana's Coastal Frontier: Managed Retreat as Colonial Decontextualization*, 29(1) J. OF POL. ECOLOGY 277, 287 (2022), <https://doi.org/10.2458/jpe.2835>.

<sup>49</sup> Naquin Declaration ¶ 24.

<sup>50</sup> *Id.* ¶ 25; Naquin Jr. Declaration ¶ 5.

<sup>51</sup> Naquin Declaration ¶ 27; Naquin Jr. Declaration ¶ 4 (“I kept missing work because the Island Road would flood when we would get South winds. The salt floodwater was too high to cross and I would be unable to travel off the Island to get to work”).

<sup>52</sup> Naquin Declaration ¶ 27.

<sup>53</sup> UNITED NATIONS COMPLAINT at 26-27.

<sup>54</sup> Naquin Declaration ¶ 28.

**B. Louisiana has contributed to the coastal erosion through its efforts to change, control, and develop the coast.**

For over a century, the State has led and enabled the drastic modification of Louisiana's coast to protect corporate interests and White landowners through an elaborate system of levees, canals, and sediment diversions, almost entirely without Indigenous voices and irrespective of Indigenous priorities.

The overhaul of coastal Louisiana's ecosystem began with the Swamp Land Acts of 1849, 1850, and 1860.<sup>55</sup> These laws allowed the federal government to transfer unsold swampland to state governments, which could sell the land to private owners to fund flood control measures.<sup>56</sup> Tribal lands were vulnerable to expropriation through the Swamp Land Acts, which treated any property that was not recorded as unsold, because Indigenous Peoples faced substantial barriers to formal property ownership, including racially discriminatory limitations on property ownership, language and educational barriers to accessing courts, state laws preventing intermarriage with Native Americans and preventing mixed-race children from inheriting property, and lack of federal recognition.<sup>57</sup> Starting in the late 19<sup>th</sup> Century, Louisiana opened its forests to the lumber industry, rising from the nation's thirtieth-largest timber-producing state in the 1880s to its third largest by 1920.<sup>58</sup> This timber boom caused widespread deforestation, including in the wetland cypress forests of southeastern Louisiana.<sup>59</sup> These forests are valuable buttresses against erosion, but today span less than half the acreage they covered in 1880.<sup>60</sup>

Around the turn of the century, and especially after the Great Mississippi Flood of 1927, Louisiana began constructing a system of levees, dams, and reservoirs along the Mississippi River.<sup>61</sup> This river management system aimed to better control the river's flow and seasonal flooding to protect the private and predominately White interests in the land upriver of the Tribal communities. Kerry St. Pe, the former Executive Director of the Barataria-Terrebonne National Estuary Program, described the State's efforts accordingly: "Big corporations, big land corporations, agricultural corporations wanted their land protected. So it got protected."<sup>62</sup> The river management system deprived the coastal regions of much-needed sediment and freshwater,

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<sup>55</sup> Swamp Land Act of 1849: La. Acts 1849, No. 124; Swamp Land Act of 1850: La. Acts 1850, No. 62; Swamp Land Act of 1860: La. Acts 1860, No. 54.

<sup>56</sup> MALDONADO, SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE at 66.

<sup>57</sup> Jerolleman Declaration ¶¶ 30-33.

<sup>58</sup> David Johnson, *Preserving Louisiana's Southern Forest Heritage*, 64 PARISHES (2023) <https://64parishes.org/preserving-louisianas-southern-forest-heritage>.

<sup>59</sup> See Faimon A. Roberts III, *Project aims to replant Louisiana's disappearing swamps with new strain of cypress*, NOLA (April 25, 2018), [https://www.nola.com/news/environment/project-aims-to-replant-louisianas-disappearing-swamps-with-new-strain-of-cypress/article\\_95026a0b-bf3b-5d35-aa4e-178e0abb0a18.html](https://www.nola.com/news/environment/project-aims-to-replant-louisianas-disappearing-swamps-with-new-strain-of-cypress/article_95026a0b-bf3b-5d35-aa4e-178e0abb0a18.html) (detailing how the State uses bald cypress trees as buffers against sea level rise and erosion). See also Morgan Erickson-Davis, *Louisiana cypress mulch industry devastates old-growth forests*, MONGABAY NEWS (November 5, 2008), <https://news.mongabay.com/2008/11/louisiana-cypress-mulch-industry-devastates-old-growth-forests>.

<sup>60</sup> Morgan Erickson-Davis, *Louisiana cypress mulch industry devastates old-growth forests*, MONGABAY NEWS (Nov. 5, 2008), <https://news.mongabay.com/2008/11/louisiana-cypress-mulch-industry-devastates-old-growth-forests> ("In the mid-1800s, Louisiana boasted over two million acres of cypress-tupelo swamps; currently, fewer than half that number currently exist").

<sup>61</sup> MALDONADO, SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE at 67.

<sup>62</sup> *Id.*



which replenish the land surrounding the Isle, contributing to flooding, erosion, and saltwater intrusion on the Isle.<sup>63</sup>

The greatest state-induced changes to the landscape, however, came from the aggressive expansion of the State's oil and gas industry.<sup>64</sup> Since the discovery of oil and gas in the early 1900s, the oil and gas industry has dredged canals on the Louisiana coastline for access to drilling wells, pipelines, and transportation lanes.<sup>65</sup> Louisiana facilitated this activity by issuing permits for canal construction and oil wells. Today, more than 20,000 kilometers of canals cut through coastal Louisiana.<sup>66</sup> These canals exacerbate coastal erosion, enable saltwater intrusion, kill flora, and stifle drainage.<sup>67</sup> Louisiana has resisted Tribal calls to backfill the access canals for decades.<sup>68</sup>

The arrival of the oil and gas industry in Louisiana continued a pattern of state-sponsored displacement and expropriation of Tribal lands. Many Tribes on Louisiana's coast, including the Jean Charles Choctaw Nation, trace their lineage to the Cherokee, Choctaw, Creek, Seminole, Chickasaw, and other Tribal Nations that were forcibly displaced from their ancestral lands through the 1830 Indian Removal Act, militia and military violence, and treaties.<sup>69</sup> Tribal members who settled in coastal Louisiana remained relatively undisturbed until the discovery of oil and gas in the early 1900s.<sup>70</sup> Oil and gas companies, with State support, engaged in procedural land theft, using legal processes to acquire mineral rights and land rights from Tribal members who were either unaware that such processes were happening or who lacked the English literacy to be aware of and respond to printed notices – processes some scholars and Tribal leaders have referred to as a modern-day Trail of Tears.<sup>71</sup> After the 1920s, the majority of the Jean Charles Choctaw Nation's ancestral lands were legally acquired by oil and gas companies LL&E and LaTerre through such processes, enabled by the State's earlier expropriation of Tribal lands through the Swamp Land Acts.<sup>72</sup>

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<sup>63</sup> Jesse, *Reshaping Louisiana's Coastal Frontier* at 282.

<sup>64</sup> As recently as the 1960s, Tribal elders have claimed oil and gas representatives took advantage of language barriers and illiteracy in the region and coercively acquired land through title transfers from Indigenous Peoples, including residents of Isle de Jean Charles. MALDONADO, *SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE* at 74. *See also* Jesse, *Reshaping Louisiana's Coastal Frontier* at 282.

<sup>65</sup> MALDONADO, *SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE* at 69.

<sup>66</sup> Jesse, *Reshaping Louisiana's Coastal Frontier* at 282.

<sup>67</sup> *Id.*

<sup>68</sup> Lorena O'Neil, *Louisiana's Coastline Is Crumbling. These Tribes Know How to Save It*, ROLLING STONE (Apr. 6, 2023), <https://www.rollingstone.com/politics/politics-features/louisiana-indigenous-tribes-fighting-climate-change-protecting-coastal-lands-1234696553/> (referencing Tribal efforts to lobby to the State to pursue a canal backfilling approach). *See also* Julie Dermansky, *Biden's Call to Increase LNG Export Capacity on Gulf Coast is Tantamount to Sarah Palin's Call to 'Drill Baby Drill' According to Environmental Advocates*, DESMOG (Apr. 4, 2022), <https://www.desmog.com/2022/04/04/louisiana-oil-gas-export-fracking-pollution-ldeq-lng-venture-global-commonwealth/> (detailing Tribal opposition, and State support, for the new Commonwealth LNG export facility).

<sup>69</sup> Jerolleman Declaration ¶¶ 6-7.

<sup>70</sup> *Id.* ¶ 8.

<sup>71</sup> *Id.* ¶¶ 8-9.

<sup>72</sup> *Id.* ¶ 31.

The State's historic and ongoing support for fossil fuel exploitation, through permitting new oil and gas projects,<sup>73</sup> continues despite the threat of climate change.<sup>74</sup> One study estimates that between 1900 and 2017, the State issued permits for more than 35,000 oil and gas wells.<sup>75</sup> These choices, made in the face of a clear and looming crisis, demonstrate the State's indifference to the existential threat facing Tribes in coastal Louisiana.

Even the State's efforts to build disaster resilience and restore the coast have enabled the continuation of industry while sidelining the needs of Tribes and other vulnerable coastal communities. Louisiana's modern coastal protection strategy harms and disregards Tribal communities by focusing coastal activities on protecting a "working coast" valued for its economic productivity.<sup>76</sup> This approach has prioritized large scale projects that enable continued operations of the oil and gas industry and safeguard elite interests while sacrificing coastal communities in vulnerable areas – who are disproportionately Indigenous Peoples and Black, Southeast Asian, and Hispanic communities.<sup>77</sup>

The Jean Charles Choctaw Nation has experienced firsthand the consequences of the State's prioritization of large scale projects that fail to adequately consider impacts on vulnerable communities. One of the most consequential projects for the Tribe is the Morganza-to-the-Gulf Flood Protection System. While this project is led by the U.S. Army Corps of Engineers, it required Louisiana's approval and funding,<sup>78</sup> and the State has included the project in every iteration of its Coastal Master Plan – the State's comprehensive five-year strategy for prioritizing coastal protection activities.<sup>79</sup> If built, Morganza-to-the-Gulf will feature approximately 98 miles of earthen levee and floodgates in Terrebonne and Lafourche Parishes.<sup>80</sup> This system protects majority White cities such as Houma and Thibodaux,<sup>81</sup> as well as Port Fourchon, the State's

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<sup>73</sup> Lorena O'Neil, *Louisiana's Coastline Is Crumbling. These Tribes Know How to Save It*, ROLLING STONE (Apr. 6, 2023), <https://www.rollingstone.com/politics/politics-features/louisiana-indigenous-tribes-fighting-climate-change-protecting-coastal-lands-1234696553/> (referencing Tribal efforts to lobby to the State to pursue a canal backfilling approach). See also Dermansky, *Biden's Call to Increase LNG Export Capacity on Gulf Coast is Tantamount to Sarah Palin's Call to 'Drill Baby Drill' According to Environmental Advocates* (detailing Tribal opposition, and State support, for the new Commonwealth LNG export facility).

<sup>74</sup> See, e.g., *Louisiana oil and gas drilling permits on the rise*, GREATER BATON ROUGE INDUS. REP. (Aug. 30, 2022), <https://www.businessreport.com/industry/louisiana-oil-and-gas-drilling-permits-on-the-rise>.

<sup>75</sup> Eugene Turner and Giovanna McCleanachan, *Reversing Wetland Death from 35,000 cuts: Opportunities to Restore Louisiana's Dredged Canals*, 13(12) PLOS ONE 5-6 (Dec. 14, 2018), <https://doi.org/10.1371/journal.pone.0207717>.

<sup>76</sup> Simone Domingue, *Constructing the Bigger Picture: How Power and Hegemony Shape Climate Adaptation Injustices in Coastal Louisiana*, Thesis submitted to the Faculty of the Graduate School of the University of Colorado 79-86 (2021).

<sup>77</sup> *Id.*

<sup>78</sup> COASTAL PROT. & RESTORATION AUTH., LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST APP. B., 127 (2012); COASTAL PROT. & RESTORATION AUTH., LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST APP. G 117 (2017); COASTAL PROT. & RESTORATION AUTH. LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST 76 (2023).

<sup>79</sup> *Id.*

<sup>80</sup> *Summary of the Morganza to the Gulf of Mexico, Louisiana Final Post Authorization Change Report*, U.S. ARMY CORPS OF ENGINEERS (May 2013), <https://www.mvn.usace.army.mil/Portals/56/docs/PD/Projects/MTG/M2GPACReportMay2013.pdf>.

<sup>81</sup> Houma, Louisiana was 58.24% White as of the 2020 census. *Decennial Census, Houma city Louisiana, Hispanic or Latino, and Not Hispanic or Latino By Race*, U.S. CENSUS BUREAU, <https://data.census.gov/table?g=160XX00US2236255&tid=DECENNIALPL2020.P2> (last accessed Dec. 21, 2023).

southernmost port, and oil infrastructure. However, the Army Corps chose to exclude the Isle from the protection zone – leaving residents extremely vulnerable to flooding and storms.<sup>82</sup> The Army Corps based its decision on an economic value-driven cost-benefit analysis, influenced by its determination that there was no naturally occurring ocean ridge close enough to the Isle to support a levee.<sup>83</sup> This was not the case; the Tribe informed the Army Corps of the existence of an ocean ridge close enough to the Isle that could support a levee.<sup>84</sup> Although decades passed between the project’s design and the initiation of construction, neither the Army Corps nor the State ever adjusted the project based on this traditional environmental knowledge to protect the Isle.<sup>85</sup> In the final report approving the project published in 2013, the Environmental Protection Agency found that “the USACE does not describe when it determined that hurricane risk reduction for the residents of Isle de Jean Charles was cost prohibitive and whether options other than buyouts were developed or considered.”<sup>86</sup>

Morganza-to-the-Gulf does not simply sacrifice the Isle to the impacts of climate change – it increases the danger to the Isle. The project will inundate the Isle de Jean Charles with residual water, creating more flooding on the Isle than if a levee had never been constructed.<sup>87</sup> In the face of these existential threats, the Jean Charles Choctaw Nation made the difficult decision that the Isle was no longer a sustainable life place for the Tribe – making them among the country’s first climate refugees.<sup>88</sup>

## **II. The Jean Charles Choctaw Nation developed the Resettlement Program, which HUD funded, to ensure the Tribe’s cultural survival and disaster resilience.**

After making the difficult decision to relocate, the Jean Charles Choctaw Nation invested substantial time and resources to develop a Tribe-led Resettlement Program.<sup>89</sup> The Tribe worked for over a decade to design a “New Isle” that would provide a new life-place where the Tribe could reunite, with the explicit intent of ensuring long-term disaster resilience for Tribal members.<sup>90</sup> The Tribe’s vision for the New Isle included a community center focused on disaster and cultural resiliency, a museum, gathering areas, childcare, healthcare and educational spaces,

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Thibodaux, Louisiana was 53.8% White as of the 2020 census. *Decennial Census, Thibodaux city Louisiana, Hispanic or Latino, and Not Hispanic or Latino By Race*, U.S. CENSUS BUREAU, <https://data.census.gov/table?g=160XX00US2275425&tid=DECENNIALPL2020.P2> (last accessed Dec. 21, 2023).

<sup>82</sup> Ltr. from Dr. James Johnson, Chief, Planning Division – Office of Deputy Commanding General for Civil Works, U.S. Army Corps of Engineers, to Honorable Albert P. Naquin, Chief, Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw (Feb. 9, 2000).

<sup>83</sup> Naquin Declaration ¶ 32.

<sup>84</sup> *Id.* ¶ 33.

<sup>85</sup> Charquia Wright, *Unmasking Western Science: Challenging the Army Corps of Engineer’s Rejection of the Isle de Jean Charles Tribal Environmental Knowledge under APA Arbitrary and Capricious Review*, UCLA LAW REVIEW (Mar. 26, 2020), <https://www.uclalawreview.org/unmasking-western-science-challenging-the-army-corps-of-engineers-rejection-of-the-isle-de-jean-charles-tribal-environmental-knowledge-under-apa-arbitrary-and-capricious-review/>.

<sup>86</sup> The Assistant Secretary of the Army, *Morganza to the Gulf of Mexico, LA, Final Revised Programmatic Environmental Impact Statement* 293 (2013).

<sup>87</sup> *Id.* at 79-81.

<sup>88</sup> Naquin Declaration ¶ 36.

<sup>89</sup> Naquin Jr. Declaration ¶ 9.

<sup>90</sup> Naquin Declaration ¶ 44.

community gardens, a library, a seed-saving program, a market, and safe housing.<sup>91</sup> This vision incorporated many climate adaptation strategies through building design, site planning, and restoration of the land, while also honoring Tribal livelihoods and lifeways.<sup>92</sup> Crucially, the Tribe saw the New Isle as a place to reunite Island citizens and the diaspora of Tribal members who had been previously forced to leave due to severe storms and flooding – protecting the Tribe’s cultural survival by keeping the community together to honor and preserve the Tribe’s history and traditions for future generations.<sup>93</sup> Tribal sovereignty, self-sufficiency, and community safety were core values guiding the resettlement.<sup>94</sup>

Discrimination and barriers to funding impeded the Tribe’s relocation efforts. In 2002, the Army Corps of Engineers was going to relocate the Tribal community, but cancelled the project when the Tribe could not get 100 percent participation in the resettlement.<sup>95</sup> In 2009, Terrebonne Parish had \$10 million designated to relocate the Tribe and had identified property on which to build 108 modular homes.<sup>96</sup> However, when the Parish Council held a community meeting to finalize the resettlement, residents of the predominantly White development near where the Tribal community was slated to resettle protested.<sup>97</sup> The Parish cancelled the resettlement, never providing the Tribe with a justification.<sup>98</sup>

Around 2012, the Tribe began working with the Lowlander Center, a nonprofit with expertise in disaster and climate resilient community design in coastal Louisiana, on the Tribe’s resettlement vision.<sup>99</sup> In 2014, the Tribe and Lowlander Center identified another funding opportunity for the Tribe’s resettlement proposal: HUD’s National Disaster Resilience Competition (NDRC) to fund “disaster recovery and long-term community resilience” in states and localities that experienced major disasters between 2011 and 2013.<sup>100</sup> The Isle was eligible for NDRC funding because of the harm it experienced from Hurricane Isaac in 2012. However, the Tribe was not eligible to apply directly to the NDRC competition because they are not a federally recognized Tribe.<sup>101</sup> Therefore, Lowlander Center and the Tribe approached OCD to discuss an NDRC application.<sup>102</sup> OCD agreed to apply for a Tribe-led resettlement of the Jean Charles Choctaw Nation as part of the State of Louisiana’s NDRC application, using a resettlement proposal the Tribe and Lowlander Center had previously developed for a different funding opportunity.<sup>103</sup>

The Tribe’s proposal through OCD was successful. In 2016, HUD awarded the State of Louisiana a NDRC grant of \$92.6 million, \$48.3 million of which was for the Tribe’s

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<sup>91</sup> *Id.* ¶ 46.

<sup>92</sup> Jerolleman Declaration ¶ 10.

<sup>93</sup> Naquin Declaration ¶ 44.

<sup>94</sup> *Id.*; Naquin Declaration Jr. ¶¶ 9-10, 18.

<sup>95</sup> Naquin Declaration ¶¶ 37-39.

<sup>96</sup> *Id.* ¶ 40.

<sup>97</sup> *Id.* ¶ 41.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* ¶ 42.

<sup>100</sup> *Id.* ¶ 43; *National Disaster Resilience*, HUD (Nov. 18, 2020), [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/ndr](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/ndr).

<sup>101</sup> Naquin Declaration ¶ 43.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* ¶ 42.

Resettlement Program.<sup>104</sup> Years later, during a call with Lowlander Center, HUD officials expressed that they wished the NDRC competition had been designed differently so that non-federally recognized Tribes could have applied directly.<sup>105</sup> But by then it was far too late.<sup>106</sup>

### **III. OCD's unilateral changes to the Resettlement Program have effectively erased the Jean Charles Choctaw Nation and frustrated the purpose of HUD's grant.**

After receiving the NDRC grant, OCD radically transformed the Tribe's Resettlement Program, changing its focus from a Tribe-led resettlement of the Jean Charles Choctaw Nation focused on disaster and cultural resiliency to a bare boned relocation of Isle de Jean Charles residents that has consistently focused on cost-cutting over long-term resilience.<sup>107</sup> This decision to overhaul the Resettlement Program takes advantage of the resources the Tribe invested in designing the New Isle as a resilient new life-place where the Tribe could be reunified.<sup>108</sup>

OCD's new Resettlement Program altered the original proposal in numerous ways – frustrating the Tribe's and HUD's intent for the grant. OCD has changed: (1) the role of the Jean Charles Choctaw Nation; (2) disaster and climate resilience components of the program, including the critical necessity that all new homes are structurally protected from climate threats; (3) eligibility criteria and requirements for participation in the Resettlement; and (4) cultural components in the design plans. OCD's alterations have harmed the Jean Charles Choctaw Nation by effectively forcing Tribal members to accept homes that are not structurally sound and leave Tribal members vulnerable to climate threats, restricting Tribal members' access to federal funding, eliminating avenues for cultural revitalization, ignoring the Tribe's sovereignty, and erasing decades of the Tribe's work.

#### **A. OCD downgraded Jean Charles Choctaw Nation from a beneficiary of the grant to a mere stakeholder, erasing the Tribe's role in the Resettlement.**

The original Resettlement Program proposal, which HUD approved, identified the Jean Charles Choctaw Nation as a beneficiary of the grant.<sup>109</sup> In 2018, however, OCD revised the Resettlement Program's language to say that the NDRC grant was awarded *only* to the State, not the State in conjunction with the Tribe.<sup>110</sup> OCD's Resettlement Plan states that the resettlement has no affiliation with any Tribal or religious organizations "by federal law and the state's desire."<sup>111</sup> OCD omitted documents that identify the Jean Charles Choctaw Nation as

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<sup>104</sup> *State of Louisiana Non-Substantial Amendment No. 4 Clarification of Program Activities for the Utilization of Community Development Block Grant Funds Under the National Disaster Resilience Competition (NDRC) Louisiana's Strategic Adaptations for Future Environments (LA Safe)*, State of La. Div. of Admin. Off. of Cmty. Dev., Disaster Recovery Unit (Nov. 9, 2018), [https://www.doa.la.gov/media/1bmhb4sv/approved\\_ndr\\_lasafe\\_non-substantialamendment-4.pdf](https://www.doa.la.gov/media/1bmhb4sv/approved_ndr_lasafe_non-substantialamendment-4.pdf).

<sup>105</sup> Naquin Declaration ¶ 48.

<sup>106</sup> *Id.*

<sup>107</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*; Naquin Jr. Declaration ¶ 18.

<sup>108</sup> Naquin Jr. Declaration ¶ 11.

<sup>109</sup> Naquin Declaration ¶ 45.

<sup>110</sup> *Id.* ¶ 50.

<sup>111</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM at 4.

beneficiaries from the website, including the 2015 resettlement prospectus, the NDRC application, and action plans.<sup>112</sup> The website contains no references to the Tribe's contributions to the successful NDRC application nor to the fifteen years of pre-NDRC Tribal resettlement planning.<sup>113</sup>

OCD did not seek HUD approval when changing the Tribe's beneficiary status, in direct violation of HUD's requirements.<sup>114</sup> The grant regulations require HUD approval for substantial grant amendments, including "any change in program benefit, beneficiaries, or eligibility criteria."<sup>115</sup> Eliminating the Tribe's beneficiary status clearly qualifies as a substantial amendment under this definition; OCD eliminated the Tribe's special position as a beneficiary who is entitled to funding, instead treating the Tribe as one of many stakeholders.<sup>116</sup> The change also laid the foundation for OCD's unilateral modifications to the Resettlement Program and the resulting harm to Tribal members, discussed below.

Moreover, this downgrading demonstrates OCD's disregard for the Tribe's sovereignty and discriminatory treatment of the Tribe. In downgrading the Tribe's status, OCD erased decades of the Jean Charles Choctaw Nation's work, including drafting the original project proposal.<sup>117</sup> Without the Tribe's efforts, OCD likely would not have received the \$48.3 million awarded for the Resettlement Program, and may not have received any NDRC funding.<sup>118</sup>

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<sup>112</sup> *National Disaster Resilience Competition: Grantee Profiles*, U.S. DEP'T HOUS. & URB. DEV (Jan. 2016), <https://www.hud.gov/sites/documents/NDRCGRANTPROF.PDF>. See also Jessee, *Reshaping Louisiana's Coastal Frontier* at 285.

<sup>113</sup> See *Isle de Jean Charles Resettlement*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/> (last accessed Dec. 19, 2023).

<sup>114</sup> See Naquin Declaration ¶ 50.

<sup>115</sup> Federal Register, Vol. 81, No. 109, Tuesday, June 7, 2016, Notice of National Disaster Resilience Competition Grant Requirements g(i) ("Substantial Amendments. The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the Phase 1 or Phase 2 application that would result in a change of more than 5 points in the score for Capacity or Soundness of Approach factors, any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or reallocation of more than \$1 million, or the addition or deletion of an eligible activity. Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as "nonsubstantial amendments." For substantial amendments, Grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. If the substantial amendment criteria are triggered, HUD will review the proposed change against the rating factors and threshold criteria and consider whether the application, inclusive of the proposed change, would continue to score in the fundable range.")

<sup>116</sup> See Naquin Declaration ¶ 50; Jerolleman Declaration ¶ 27.

<sup>117</sup> See Naquin Declaration ¶¶ 50-51.

<sup>118</sup> *State of Louisiana Non-Substantial Amendment No. 4 Clarification of Program Activities for the Utilization of Community Development Block Grant Funds Under the National Disaster Resilience Competition (NDRC) Louisiana's Strategic Adaptations for Future Environments (LA Safe)*, STATE OF LA. DIV. OF ADMIN. OFF. OF CMTY. DEV. DISASTER RECOVERY UNIT (Nov. 9, 2018), [https://www.doa.la.gov/media/1bmhb4sv/approved\\_ndr\\_lasafe\\_non-substantialamendment-4.pdf](https://www.doa.la.gov/media/1bmhb4sv/approved_ndr_lasafe_non-substantialamendment-4.pdf).

## **B. OCD removed disaster and climate resilience components from New Isle design, disregarding the desires of both the Tribe and HUD.**

Tribal members considered flood and disaster resilience to be of paramount importance in New Isle site selection and home construction.<sup>119</sup> Accordingly, the proposal the Tribe submitted – and that HUD approved – incorporated resilience as a core value. The Tribe’s NDRC grant proposal described the New Isle as a pilot site for climate change relocation and innovation.<sup>120</sup> Officials from HUD and the Rockefeller Foundation, which also financed the NDRC grants, noted the plan’s green and climate resilient design, coupled with the Tribal-led process, when awarding the grant.<sup>121</sup> OCD was aware of the importance of disaster resilience in the resettlement; discussions between OCD and the State of Louisiana in 2016 recognized that HUD emphasized resilience, making sure that Tribal members were “above base flood elevation” and that “[h]ousing will be resilient.”<sup>122</sup>

Yet, OCD’s implementation of the Resettlement has not adequately taken disaster resiliency into account. First, OCD failed to select a resilient site.<sup>123</sup> OCD affirmed to Tribal members in 2017 and in 2018 that flood risk was an essential component of site selection.<sup>124</sup> However, the site OCD ultimately selected for the New Isle has already experienced flooding and is at risk of future flooding.<sup>125</sup> As discussed below, OCD selected the new site without including the Tribe in final decision making or even notifying the Tribe that the State had purchased the land.<sup>126</sup>

Second, OCD has failed to build resilient homes in the New Isle.<sup>127</sup> The initial plan for housing stated that “[h]ouses will be elevated on pilings, exceeding 4 feet above 50-year base flood elevation” and that the houses would be designed to the “Fortified for Safer Living Standard, a code plus standard developed by the Insurance Institute for Building and Home Safety (IIBHS), the highest standard existing.”<sup>128</sup> In reality, homes built on the new site, including the homes that began construction on June 29, 2023,<sup>129</sup> have been poorly constructed without the components needed to minimize the risk of flooding and ensure that those who are relocated are adequately protected against natural disasters.<sup>130</sup> For example, the homes actually

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<sup>119</sup> See Naquin Declaration ¶ 44.

<sup>120</sup> Jerolleman Declaration ¶ 10.

<sup>121</sup> *Id.* ¶ 13.

<sup>122</sup> CDBG, Uniform Act, Procurement Training session with OCD and PanAmerican Engineers, December 7, 2016 at Water Life Museum at 3.

<sup>123</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>124</sup> March 14, 2017–Resettlement Conference Call; Isle de Jean Charles (IDJC) Resettlement Permanent Relocation & Homeownership Assistance Program (Option A) (Sept. 16, 2018).

<sup>125</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>126</sup> Naquin Declaration ¶ 52.

<sup>127</sup> Naquin Jr. Declaration ¶ 16 (“I learned from Tribal members that the walls (are cracking, wiring is hanging loose, the floors are rotten, the drainage is poor, and at least two rafters broke”).

<sup>128</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER 29 (Oct. 27, 2015) (on file with author).

<sup>129</sup> Jerolleman Declaration ¶ 15.

<sup>130</sup> Naquin Jr. Declaration ¶ 16.

constructed on the New Isle are only minimally elevated – not built on pilings as promised – and have not met the highest building standards laid out in the Tribe’s original plan.<sup>131</sup> New homes have sewage and drainage issues due to problems with how the land was prepared, and Tribal members have reported cases where “standing water covers their roads and lawns after even a regular downpour.”<sup>132</sup> One resident observed on the day that Tribal members were moving into homes, “there’s a void underneath the houses that is filled with water – like a complete lake over there.”<sup>133</sup> OCD failed to provide independent home inspections, instead relying on a third-party company that played a role in the project, and did not give home buyers the opportunity to accompany the home inspectors through their potential new homes.<sup>134</sup>

Third, OCD has still failed to adhere to the Tribe’s vision for a community center, which would provide a community shelter in line with FEMA standards in the event of a natural disaster.<sup>135</sup> Without these disaster resiliency components, OCD’s resettlement implementation fails to create the long-term resiliency that was core to the Tribe’s vision for the New Isle and runs counter to OCD’s organizational mission and the explicit purpose of the NDRC grant.<sup>136</sup>

Fourth, OCD also scrapped green components of the New Isle design. The original proposal called for homes to be powered by a new solar farm and solar panels, providing clean, affordable energy for the New Isle while also generating income for residents.<sup>137</sup> However, OCD decided not to build the solar infrastructure, stating that the initial infrastructure costs were too high and that using energy efficient technologies in the new homes would sufficiently reduce utility costs.<sup>138</sup> OCD’s decision undermines the climate-friendly focus of the Resettlement Program and NDRC grant. Additionally, it will likely place financial strain on New Isle residents; even if the new homes utilize energy efficient technologies, the homes are larger than most homes on Isle de Jean Charles and therefore may incur higher utility costs.<sup>139</sup>

### **C. OCD imposed requirements for participation in the Resettlement that restricted Tribal members’ access to the benefits of the grant.**

The Jean Charles Choctaw Nation intended for the Resettlement Program to benefit the entire Tribe, including Tribal members who had lived on the Isle in 1960 but have since relocated, in order to reunite the Tribe in their new life-place and provide for their cultural survival.<sup>140</sup> At the same time, they intended to maintain ongoing stewardship of Isle de Jean

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<sup>131</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER at 28.

<sup>136</sup> Federal Register, Vol. 81, No. 109, Tuesday, June 7, 2016, Notice of National Disaster Resilience Competition Grant Requirements.

<sup>137</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER at 23.

<sup>138</sup> *Frequently Asked Questions*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/frequently-asked-questions#q40> (last accessed Dec. 18, 2023).

<sup>139</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>140</sup> STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION 105 (Oct. 27, 2015),



Charles – their ancestral lands, landscapes, and waterways.<sup>141</sup> The original proposal provided for the Isle to “be protected and maintained by our [Tribal] members, even if uninhabitable, as stewards of our ancestral territory.”<sup>142</sup> OCD imposed requirements for participation in the Resettlement that undermined both goals.

OCD altered the Resettlement Program’s eligibility requirements,<sup>143</sup> making it more difficult for Tribal members who had moved prior to 2012 to qualify for resettlement and access the benefits of the NDRC grant.<sup>144</sup> Under OCD’s revised requirements, these previous residents must have lived in specific Program-defined parishes on August 28, 2012, must demonstrate financial ability to build a new home at the resettlement site – although OCD states it will support participants in identifying potential financing options – and are “prioritized based on when they lived on the island.”<sup>145</sup> For Tribal members living in the diaspora who were displaced by the years of storm damage and other climate change-imposed harm that have battered the Isle repeatedly, these eligibility requirements make their ability to participate in the resettlement uncertain at best. Some members are excluded altogether, undermining the Tribe’s core value of reunification in the New Isle.<sup>146</sup>

Additionally, in 2019, OCD unilaterally amended the Resettlement Program to require all participants to sign a Homeowner Assistance Agreement.<sup>147</sup> OCD framed this agreement as a unique solution to HUD’s traditional requirement that relocation participants participate in a buyout of their endangered homes before resettling that would allow Tribal members to maintain cultural ties with their ancestral homeland on Isle de Jean Charles.<sup>148</sup> While OCD’s homeownership agreement did enable Tribal members to maintain some property rights on the Island, it also imposed significant limitations on how Tribal members who relocate to the New Isle can inhabit and use their properties on the Island. Specifically, signees cannot sell their property to anyone without approval by OCD or another entity approved by the agency.<sup>149</sup> They also cannot use their Island property as a residence, they cannot rent or lease their Island property, they cannot apply for disaster assistance funds for their Island property, and they

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[http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf); Ltr. from Tribal Leaders to Tania Reneaum Panszi, Exec Sec. of Inter-Am. Comm’n H.R., Ex. 2: Naquin Declaration at 31; Jessee, *Reshaping Louisiana’s Coastal Frontier* at 288.

<sup>141</sup> Naquin Declaration ¶ 46.

<sup>142</sup> *Id.*

<sup>143</sup> *About the Isle de Jean Charles Resettlement*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/about-isle-de-jean-charles-resettlement> (last accessed Aug. 31, 2023). *See also* Isle de Jean Charles Resettlement Application Stages, State of La. Div. of Admin. Off. of Cmty. Dev. (June 2020), [https://isledejeancharles.la.gov/sites/default/files/public/Isle de Jean Charles-Program-Application-Stages-6-20.pdf](https://isledejeancharles.la.gov/sites/default/files/public/Isle%20de%20Jean%20Charles-Program-Application-Stages-6-20.pdf).

<sup>144</sup> Jessee, *Reshaping Louisiana’s Coastal Frontier* at 288; Naquin Jr. Declaration ¶ 13.

<sup>145</sup> *About the Isle de Jean Charles Resettlement*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/about-isle-de-jean-charles-resettlement> (last accessed Aug. 31, 2023).

<sup>146</sup> Declaration of Chantel Comardelle Declaration ¶ 27 [hereinafter “Comardelle Declaration”].

<sup>147</sup> Naquin Declaration ¶ 50.

<sup>148</sup> Ltr. from Patrick Forbes, Executive Dir., La. Off. of Cmty. Dev., to Stanley Gimont, Dir., HUD Off. of Block Grant Assistance, on Isle de Jean Charles Eligible Activity and National Objective Waiver and Alternative Requirement Request (Nov. 13, 2018), [https://coscda.org/wp-content/uploads/2021/08/Isle-de-Jean-Charles-Eligible-Activity-and-National-Objective-Waiver-and-Alternative-Requirement-Request\\_20181113.pdf](https://coscda.org/wp-content/uploads/2021/08/Isle-de-Jean-Charles-Eligible-Activity-and-National-Objective-Waiver-and-Alternative-Requirement-Request_20181113.pdf) [hereinafter “OCD Alternative Requirement Request Letter”].

<sup>149</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM at 2.

cannot make or allow for substantial repairs to their Island properties.<sup>150</sup> OCD committed to closely monitor displaced Island residents' adherence to these restrictions, including through monitoring utility usage, postal service deliveries, property tax payments, building permits and disaster recovery applications.<sup>151</sup> The agency argued that this limited, ongoing access to Isle de Jean Charles would continue only until the "definitive end date" when the Island's "remaining land will erode into the Gulf of Mexico within the next fifty years."<sup>152</sup>

As a result, while relocated Tribal members technically still own their Island properties, these provisions effectively guarantee their Island properties will fall into ruin. The aftermath of Hurricanes Barry and Ida have demonstrated that the inevitable consequence of these restrictions is that the properties will quickly become unusable and uninhabitable, as Island residents are legally barred by OCD from repairing unavoidable damage from increasingly severe hurricanes.<sup>153</sup> The Tribe was and remains particularly concerned about these requirements; an inability to repair or improve any property on the Isle significantly impedes the Tribe's ability to conduct culturally important activities, such as having ceremonies or maintaining properties associated with historical burial grounds.<sup>154</sup> As discussed below, OCD did not provide Tribal leaders a meaningful opportunity to shape the homeownership restrictions and has largely ignored the Tribe's concerns.<sup>155</sup>

#### **D. OCD has minimized cultural components of the New Isle and has made decisions undermining the resettlement goal of Tribal cultural survival.**

When Tribal members flee the Isle, they are separated from their culture, their way of life, and their ancestral home. As Tribal members continue to flee, it harms the entire Tribe's sense of community, which has been "physically and culturally [] torn apart with the scattering of members."<sup>156</sup> In approaching the State, the Tribe made it clear that the purpose of the NDRC application was "for a Tribe-led resettlement" to reunite the Tribe.<sup>157</sup> The original goal of the proposal was to design the resettlement around ensuring Tribal continuity: "an opportunity for the Tribe to rebuild their homes and secure their culture on safe ground."<sup>158</sup> Profiling grantees in 2016, HUD highlighted that the purpose of the Isle de Jean Charles Resettlement was to create a "resilient and historically-contextual" community.<sup>159</sup>

The resettlement proposal integrated important traditional and cultural aspects, and focused on creating new relationships between the Tribal members and "the new life-place" for the Jean Charles Choctaw Nation.<sup>160</sup> For example, the original proposal included building a

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<sup>150</sup> *Id.*

<sup>151</sup> OCD Alternative Requirement Request Letter.

<sup>152</sup> *Id.*

<sup>153</sup> *See* Naquin Declaration ¶ 57.

<sup>154</sup> Naquin Declaration ¶ 46.

<sup>155</sup> Comardelle Declaration ¶¶ 26-27.

<sup>156</sup> STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION 106-07 (Oct. 27, 2015), [http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> National Disaster Resilience Competition, Grantee Profiles at 7.

<sup>160</sup> Naquin Declaration ¶ 46.

community center that would serve both “as an anchor and gathering place for the tribe”<sup>161</sup> and as an integral component of the disaster-resilience of the community.<sup>162</sup> The community center was “extremely important to the community for commerce and for the preservation and invigoration of culture” and as a symbol of “the presence of the tribal heritage.”<sup>163</sup> The original Resettlement Program also planned for a “museum, gathering areas, childcare, healthcare and educational spaces, community gardens, library, a seed-saving program, market, [and] safe housing for tribal members on the Isle as well as those who have already relocated.”<sup>164</sup>

Since taking over the resettlement, OCD has removed many of these Tribal cultural elements. Although OCD’s plan still alludes to some “cultural components,” it provides vague references and unspecific “goals.”<sup>165</sup> Additionally, OCD has disrespected the Tribe’s vision for a community atmosphere embedded in traditional culture and lifeways. For example, OCD officials informed Tribal leaders that they were in conversation with large corporate grocery stores for the new Isle.<sup>166</sup> When leaders expressed that they wanted a Tribally-owned community market instead, OCD officials responded that a large corporate grocery store was what they needed and they should be happy with it.<sup>167</sup>

The new Eligibility Requirements also frustrate the original proposal’s cultural reunification purpose by excluding some Tribal members, as described above.<sup>168</sup> OCD now claims that “from the outset, the state’s expressed purpose has been to provide all current, permanent residents with relocation options that reflect the values of the Isle de Jean Charles people.”<sup>169</sup> However, this is inconsistent with OCD’s statements in its 2017 action plan that “cultural resilience” was an important purpose of the Resettlement Program.<sup>170</sup>

Cultural resilience requires that the Tribe is reunified and that all Tribal members are eligible for inclusion. OCD’s alterations prevent Tribal members from reconnecting as a community.<sup>171</sup> This has a negative impact on all members of the Tribe, even those who receive resettlement funding. By changing the eligibility requirements, OCD has redirected funding that HUD and OCD originally intended to serve the Tribe’s cultural revitalization.

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<sup>161</sup> STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION 107 (Oct. 27, 2015), [http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf).

<sup>162</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER at 28.

<sup>163</sup> *Id.* at 25.

<sup>164</sup> Naquin Declaration ¶ 46.

<sup>165</sup> *Isle de Jean Charles Resettlement: Homebuyer Assistance Program - Program Policies*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM 7 (Nov. 10, 2020), [https://isledejeancharles.la.gov/sites/default/files/public/IsledeJeanCharles%20Policies\\_For%20Publishing\\_20201110v2.pdf](https://isledejeancharles.la.gov/sites/default/files/public/IsledeJeanCharles%20Policies_For%20Publishing_20201110v2.pdf).

<sup>166</sup> Naquin Jr. Declaration ¶ 17.

<sup>167</sup> *Id.*

<sup>168</sup> *About the Isle de Jean Charles Resettlement*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM, <https://isledejeancharles.la.gov/about-isle-de-jean-charles-resettlement> (last accessed May 1, 2023); *see also* *Isle de Jean Charles Resettlement Application Stages*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM (June 2020), [https://isledejeancharles.la.gov/sites/default/files/public/Isle de Jean Charles-Program-Application-Stages-6-20.pdf](https://isledejeancharles.la.gov/sites/default/files/public/Isle%20de%20Jean%20Charles-Program-Application-Stages-6-20.pdf).

<sup>169</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM at 2.

<sup>170</sup> Jesse, *Reshaping Louisiana’s Coastal Frontier* at 285.

<sup>171</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER at 11.

**IV. OCD has consistently ignored Tribal sovereignty, disrespected Tribal leadership, and excluded the Tribe from resettlement decision making.**

**A. OCD officials have made discriminatory statements towards Tribal leadership and proceeded in a culturally inappropriate manner.**

On top of downgrading the Tribe's status to that of a mere stakeholder in the resettlement, OCD disrespected the Jean Charles Choctaw Nation by explicitly denying the Tribe's sovereignty. Tribal leaders reported that OCD officials were dismissive in their body language and tone when Tribal members expressed a desire to have their Tribal sovereignty respected.<sup>172</sup> An exchange between a Tribal leader and OCD official during a community meeting held on October 8, 2016, highlights OCD's disrespect of the Tribe's sovereignty.<sup>173</sup> When the Tribal leader asked whether the Tribe has the right to self-determination as provided by the United Nations Declaration on the Rights of Indigenous Peoples, which the United States officially supports,<sup>174</sup> the OCD official was dismissive and responded that self-determination does not apply to the Tribe.<sup>175</sup> The Tribal leader wrote about the exchange in the post-meeting evaluation: "I believe you accomplished the same as Christopher Columbus. You succeeded in taking the Native American culture out of a project."<sup>176</sup>

Examples of statements from OCD officials that ignore Tribal sovereignty and cultural rights abound. In a 2019 letter to the Tribe, OCD again outright rejected that the Tribe has a right to sovereignty.<sup>177</sup> Tribal leaders also reported that OCD officials responded to their concerns about how OCD's changes to the Resettlement Program harmed Tribal culture by saying that the Tribe could go get a new culture.<sup>178</sup>

OCD also continuously violated Tribal sovereignty by disrespecting Tribal leadership. OCD officials stated that Tribal leadership did not speak for all Island residents and intentionally designed processes that involved Tribal members directly while circumventing Tribal leadership, even when members explicitly asked to have the Tribal leadership involved.<sup>179</sup> Such exclusion is concerning considering that not all Tribal members are fluent in English and are more comfortable communicating in Indian French.<sup>180</sup> Moreover, in an interview, OCD Executive Director Patrick Forbes stated, after noting that Chief Albert Naquin no longer lived on Isle de Jean Charles: "Chief Naquin sent a letter asking that this project be canceled, but I'm not sure how that makes him a stakeholder in this process now. I'm not sure how I characterize his participation in our process as being in good faith."<sup>181</sup> This statement ignores the significance of

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<sup>172</sup> Comardelle Declaration ¶ 14.

<sup>173</sup> *Id.*

<sup>174</sup> Press Release, U.S. Dep't of State, Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples (Jan. 12, 2011), <https://2009-2017.state.gov/s/srgia/154553.htm>.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*; Concordia, LLC et al., *IDJC Report Data Gathering & Engagement Phase* at p. B-7 (Nov. 28, 2016).

<sup>177</sup> Naquin Declaration ¶ 53.

<sup>178</sup> *Id.* ¶ 49.

<sup>179</sup> Jerolleman Declaration ¶ 27; Comardelle Declaration ¶ 15.

<sup>180</sup> Comardelle Declaration ¶ 15.

<sup>181</sup> Julie Dermansky, *Isle de Jean Charles Tribe Turns Down Funds to Relocate First US 'Climate Refugees' as Louisiana Buys Land Anyway*, DESMOG (Jan. 11, 2019), <https://www.desmog.com/2019/01/11/isle-de-jean-charles-tribe-turns-down-funds-relocate-climate-refugees-louisiana/>.

the role of a Tribal chief; as Chief of the Jean Charles Choctaw Nation, Chief Albert Naquin spoke for all the constituents of the Tribe.<sup>182</sup> OCD’s refusal to work with Chief Albert Naquin thus violates Indigenous sovereignty. To question whether he was even a stakeholder in the Tribe’s resettlement is profoundly disrespectful. This disregard also ignores Chief Albert Naquin’s role in the design of the resettlement and development of a successful NDRC application.<sup>183</sup>

Further, when OCD officials consulted with the Tribe, they failed to refer to the Jean Charles Choctaw Nation by its preferred name at the time – “Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw” – omitting the “Isle de Jean Charles” and referring to the Tribe only as “the Band of Biloxi-Chitimacha-Choctaw Tribe.”<sup>184</sup> In doing so, OCD officials “discursively sever[ed] the Tribe from their home” and denied the Tribe its right to determine even its own name.<sup>185</sup>

OCD has also consistently proceeded in a culturally insensitive manner. Having endured centuries of state-sponsored discrimination and prioritization of industry over Tribal interests, Tribal members have a deep distrust of the federal, Louisiana, and local governments.<sup>186</sup> OCD failed to carry out the resettlement in a manner that recognized and addressed this distrust. At the closing for the first houses on the New Isle, Tribal members moving into new houses were only provided one set of English documents to sign, in contrast to normal practice where there is a set of documents for both the buyer and the seller.<sup>187</sup> Officials said that a second set of copies would be made and not altered.<sup>188</sup> However, in light of the exploitive history of land treaties and other documents provided by the U.S. government to Indigenous Peoples, Chief Albert Naquin – who was present at the signing as a witness for a Tribal member – saw the failure to provide a second set of documents at the closing as indicative of the lack of cultural sensitivity that has pervaded the State’s entire handling of the resettlement.<sup>189</sup> Demonstrating similar disregard for cultural context, Mathew Sanders, OCD’s Isle de Jean Charles project lead, published an article about Resettlement Program participants in 2018 titled “Don’t Label Them Climate Change Refugees, Says a Louisiana Planner, They’re Pioneers” – ignoring the genocidal violence that colonial pioneers enacted against Indigenous Peoples.<sup>190</sup>

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<sup>182</sup> *Id.*; see Naquin Declaration ¶¶ 4; Naquin Jr. Declaration ¶¶ 3, 10.

<sup>183</sup> Naquin Declaration ¶¶ 37-44.

<sup>184</sup> Jesse, *Reshaping Louisiana’s Coastal Frontier* at 286.

<sup>185</sup> *Id.*

<sup>186</sup> Video Interview with Chief Devon Parfait and Elder Chief Shirell Parfait-Dardar of the Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw (Apr. 10, 2023).

<sup>187</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Mathew D. Sanders, *Don’t Label Them Climate Change Refugees, Says a Louisiana Planner, They’re Pioneers*, COMMON EDGE (Aug. 23, 2018), <https://commonedge.org/dont-label-them-climate-change-refugees-says-a-louisiana-planner-theyre-pioneers/>.

## **B. OCD has excluded Tribal members from decision making, harming Tribal interests.**

Throughout the resettlement process, OCD has rejected the Tribe's requests for consultation and ignored structural barriers to participation. This lack of consultation contradicts the terms OCD committed to in the original Resettlement Program proposal, which stated that: "Tribal community input, vision and leadership will be core to all phases of the design of a site that meets current and future needs and desires while tracking previous Island life, resources and infrastructure to the maximum feasible [extent]."<sup>191</sup>

OCD failed to consult with the Tribe concerning several significant decisions that impacted the Tribe. For example, OCD made the final decision on the location of the New Isle without the involvement of the Tribe.<sup>192</sup> As the Tribe and the Lowlander Center had communicated to OCD, the site selection decision was particularly important to the Tribe, as it would be "the new life-place" where they could "secure their culture on safe ground."<sup>193</sup> Yet, OCD did not center the Tribe's vision in site selection.<sup>194</sup> In fact, while the Tribe participated in some site visits in the period leading up to the site selection decision, OCD did not involve the Tribe in the final site selection decision.<sup>195</sup> Rather, the Tribe first learned that OCD had chosen the New Isle site – the location of the Tribe's new life-place – from the newspaper.<sup>196</sup> In response, the Tribe issued a press release explaining the origins of the Resettlement Program and the ways OCD's current plan diverged, and sent a list of desired changes to the State.<sup>197</sup> The State responded rejecting all of the Tribe's requests, including their request that OCD respect their Tribal sovereignty.<sup>198</sup> OCD has consistently proceeded with New Isle decisions without informing Tribal leadership. More recently, the Jericho Road Episcopal Housing Initiative hosted a "groundbreaking ceremony" for the New Isle de Jean Charles Phase II site on June 29, 2023.<sup>199</sup> OCD did not inform Tribal leaders of this groundbreaking, including Deme Naquin Jr., the Chief of the Jean Charles Choctaw Nation;<sup>200</sup> they found out about it in a flyer from the construction company.<sup>201</sup> Additionally, there are concerns that the new round of homes will not be affordable for Tribal members who live on a fixed income.<sup>202</sup>

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<sup>191</sup> STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION, 106-07 (Oct. 27, 2015), [http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf).

<sup>192</sup> *Jessee, Reshaping Louisiana's Coastal Frontier* at 292.

<sup>193</sup> *Resettlement as a Resilience Strategy and the Case of Isle de Jean Charles*, LOWLANDER CENTER at 17-18.

<sup>194</sup> Naquin Declaration ¶ 52.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* ¶ 53.

<sup>198</sup> *Id.*

<sup>199</sup> Naquin Jr. Declaration ¶ 12.

<sup>200</sup> *Id.* ¶¶ 1-2, 12.

<sup>201</sup> *Id.* ¶ 12.

<sup>202</sup> *Id.* ¶¶ 14-15.

Additionally, OCD unilaterally created a steering committee in 2018 to oversee the Resettlement Program without first gathering any input from the Tribe,<sup>203</sup> and then proceeded to ignore feedback from the committee that would have helped address Tribal members' concerns.<sup>204</sup> Tribal Executive Secretary Chantel Comardelle represented the Tribe on the committee, along with representatives from the Governor's Office, Parish, and Isle residents.<sup>205</sup> Although the steering committee was supposed to be consulted on the structure of the Resettlement Program, OCD did not meaningfully incorporate the steering committee's feedback into its decisions.<sup>206</sup> As discussed above, the mortgage restrictions limiting Tribal members' property rights to their Isle residences were a serious concern for the Tribe. When OCD presented the mortgage terms to the steering committee for feedback, the committee had a lengthy discussion and generated many ideas for improvement.<sup>207</sup> However, OCD ignored this feedback and sent the committee a lengthy document outlining the mortgage terms the following day, too quickly to have seriously considered the committee's suggestions.<sup>208</sup> Frustrated with the process and concerned that Isle residents were at risk of losing their ancestral homes, the Tribe hosted a meeting with OCD in October 2018 to advocate for better mortgage terms, and also invited their State Representatives to attend.<sup>209</sup> Tensions escalated at the meeting, and the steering committee did not meet again.<sup>210</sup>

OCD also repeatedly rejected several Tribal members' requests for participation. In 2019, the Tribe met with Parish officials and formulated a list of desired changes to the Resettlement Program, many of which related to consultation.<sup>211</sup> OCD rejected these proposed changes.<sup>212</sup> Later that year, OCD again substantially amended the Resettlement Program without first seeking Tribal input.<sup>213</sup>

Even where OCD has sought consultation from Tribal members, it has failed to do so in a meaningful manner. For example, in 2016, OCD conducted six months of "Data Gathering and Engagement" ("Phase I" of the Resettlement), where planners and subcontractors assessed land use and physical infrastructure on the Isle.<sup>214</sup> OCD claimed that this survey provided opportunities for consultation. However, the survey methodologies failed to make the consultation meaningful. The survey only contained interviews with "10 of 26 households," and was inconsistent; some interviews lasted "60-90 minutes" and were during organized meetings, while others were much shorter and disorganized, "potentially introducing a sampling bias."<sup>215</sup> Additionally, land assessments taken as a part of the survey ignored use of Indigenous

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<sup>203</sup> *Community Master Planning and Program Development for the Isle de Jean Charles Resettlement*, State of La. Div. of Admin. Off. of Cmty. Dev. 7 (Nov. 10, 2020), [https://isledejeancharles.la.gov/sites/default/files/public/Isle de Jean Charles\\_Phase2Report\\_7-21-21.pdf](https://isledejeancharles.la.gov/sites/default/files/public/Isle%20de%20Jean%20Charles_Phase2Report_7-21-21.pdf).

<sup>204</sup> Comardelle Declaration ¶¶ 23-25.

<sup>205</sup> *Id.* ¶ 23.

<sup>206</sup> *Id.* ¶¶ 24-25.

<sup>207</sup> *Id.* ¶ 26.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* ¶ 27.

<sup>210</sup> *Id.*

<sup>211</sup> *See* Naquin Declaration ¶ 53.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* ¶ 54.

<sup>214</sup> *Jessee, Reshaping Louisiana's Coastal Frontier* at 292.

<sup>215</sup> *Id.*

knowledge and failed to account for cultural values.<sup>216</sup> The survey did not include any participation by or outreach to individuals who had already fled the Isle.<sup>217</sup>

### **C. OCD failed to address structural barriers to Tribal participation, compounding the Tribe’s exclusion.**

Tribal members face structural barriers to participation that exacerbate their exclusion from OCD’s decision making. These barriers today are inseparable from the history of governmental persecution and discrimination against the Tribe. Despite the Tribe’s relative isolation, Louisiana persecuted the Tribe and other Indigenous Peoples in the bayous. In 1890, Louisiana passed the first of its Jim Crow-era racial segregation laws.<sup>218</sup> These laws generally treated Indigenous People as “colored” and mandated their segregation in schools and churches. In the mid-1900s, signs went up in Terrebonne Parish declaring “No Indians,” “No Colored Allowed,” and “Whites Only.”<sup>219</sup> The State barred Indigenous children from attending “Whites only” schools for decades, even after the Supreme Court’s 1954 decision in *Brown v. Board of Education*.<sup>220</sup> During the summer of 1962, over 50 Indigenous students tried unsuccessfully to enroll at all-White schools in Terrebonne Parish.<sup>221</sup> These students faced discrimination by Terrebonne Parish School Board officials, including the superintendent of 40 years who wrote his master’s thesis on the “So-Called Indians of Terrebonne Parish.” These rejected students, including Elder Chief Albert Naquin and his brother, had to force the Terrebonne Parish public school system to integrate through litigation.<sup>222</sup>

Indigenous Peoples in coastal Louisiana continue to face barriers to education, including a lack of nearby secondary education and inconsistent road access.<sup>223</sup> As a result, many elders in Tribes on Louisiana’s coast lacked formal education or education beyond sixth grade and have limited English, speaking predominantly Indian French.<sup>224</sup> Compounding these barriers to educational access, the Terrebonne Parish School Board voted in 2021 to close Pointe-aux-Chenes Elementary School, the school that Tribal members in Terrebonne Parish attended after court-ordered integration.<sup>225</sup> Pointe-aux-Chenes Elementary had the highest ratio of Indigenous

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<sup>216</sup> *Id.*

<sup>217</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM at 6; Jesse, *Reshaping Louisiana’s Coastal Frontier* at 292.

<sup>218</sup> Act of May 12, 1890, No. 111, 1890 La. Acts. 152, *invalidated by Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>219</sup> MALDONADO, *SEEKING JUSTICE IN AN ENERGY SACRIFICE ZONE* at 65.

<sup>220</sup> Kimberly Krupa, “So-Called Indians” *Stand Up and Fight: How a Jim Crow Suit Thrust a Louisiana School System into the Civil Rights Movement*, 51 J. OF THE LA. HIST. ASS’N. 171, 173 (2010).

<sup>221</sup> *See id.*

<sup>222</sup> *Id.*; Naquin Declaration ¶ 14.

<sup>223</sup> For example, Louisiana recently shut down schools serving Indigenous students, like Pointe-Aux-Chenes Elementary School, due to a lack of enrollment following hurricanes. *See* Apps Mandar Bichu, *Native American Schools on Louisiana Gulf Coast Struggle to Reopen in Wake of Hurricane Ida*, NW. UNIV. MEDILL SCH. OF JOURNALISM (Apr. 1, 2022), <https://news.medill.northwestern.edu/chicago/native-american-schools-on-louisiana-gulf-coast-struggle-to-reopen-in-wake-of-hurricane-ida>.

<sup>224</sup> Jerolleman Declaration ¶ 34.

<sup>225</sup> Naquin Declaration ¶¶ 15-16.



students – 70 percent – of any elementary school in the State of Louisiana.<sup>226</sup> The School Board decided to close the school without consulting affected Tribes.<sup>227</sup>

Louisiana’s longstanding exclusion of Tribal communities from educational opportunities prevents Tribal members from fully utilizing the conventional forms of public participation that OCD used in the resettlement process. For instance, Tribal members who lack access to formal education and have limited English proficiency face challenges when producing proposals and other written materials, and when responding to OCD’s highly technical reports and briefings.<sup>228</sup> Yet OCD largely relied upon conventional forms of public participation and did not engage in culturally appropriate consultation with the Tribe or otherwise create sufficient avenues for Tribal participation in resettlement decision making.<sup>229</sup>

Tribal members face additional challenges to engaging in OCD’s conventional forms of public participation. The Isle’s remote location makes it difficult for Tribal representatives to attend regional public meetings. As discussed above, Tribal communities live in remote locations because they fled state-sanctioned genocide in the 19<sup>th</sup> Century.<sup>230</sup> Tribal members often have sporadic internet access, especially after storms.<sup>231</sup> The lack of consistent internet access makes it challenging for Tribal representatives to submit comments online, yet OCD relied on a digital public comment process for some of the consultation procedures on the selection of the new site – despite having full knowledge of the Tribe’s communication barriers.<sup>232</sup> Any consultation needed to address these barriers in order to effectively engage Tribal members, and OCD should have acted with heightened due diligence to reach Tribal members in this context.

In the limited consultations that occurred, OCD ignored the presence of these barriers and failed to take measures to ensure Tribal members can meaningfully participate. Before OCD visited the Isle, Tribal leadership asked if they could be notified of all community meetings so that they could offer to accompany Tribal members, interpret, and provide explanations.<sup>233</sup> However, OCD disregarded these requests and traveled to the Island without informing Tribal leadership or bringing a translator, despite being forewarned about the language barrier.<sup>234</sup> State officials used technical English language in these meetings, preventing the community from participating effectively.<sup>235</sup> Tribal members reported being asked to sign documents that they could not read, and stated they were not provided with a copy of the documents afterwards.<sup>236</sup> OCD asked Tribal members to make vital decisions about their homes and access to their ancestral lands without the support needed to make fully informed decisions, or even the documentation required to know exactly what they had signed. Transparency and opportunities

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<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Comardelle Declaration ¶ 15.

<sup>229</sup> *Id.* ¶¶ 15-21.

<sup>230</sup> Jerolleman Declaration ¶ 8.

<sup>231</sup> Comardelle Declaration ¶ 19.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* ¶¶ 15-18.

<sup>234</sup> *Id.* ¶ 15.

<sup>235</sup> *Id.* ¶¶ 16-17.

<sup>236</sup> *Id.* ¶ 16; Jerolleman Declaration ¶ 39.

for participation were particularly important for the Tribe, as much of the property of the Island is family property shared amongst multiple family members.<sup>237</sup>

**V. While OCD continues to implement its Resettlement Program in a discriminatory manner, State and Parish government are facilitating new private development on the Isle.**

As a result of OCD's actions after receiving the NDRC grant, the New Isle fails to provide the resilient life place the Tribe worked so hard to realize, and which was the purpose of HUD's grant. The Tribe sent letters to OCD, the Louisiana Governor's Office, and HUD outlining concerns and requesting an investigation, but received no response.<sup>238</sup> Given these failures, the Tribe has disassociated itself from OCD's resettlement; in October 2018, the Tribe wrote to Stan Gimont, director of the Office of Block Grant Assistance at HUD, recommending that OCD return the grant funds to the NDRC grant committee.<sup>239</sup> The Tribe is now working to achieve its own Resettlement Program, without State involvement.<sup>240</sup>

Despite the Tribe's withdrawal, OCD has continued the resettlement in a manner that does not meet the Program's original disaster resiliency and Tribal cultural goals, and is likely leaving people who relocate worse off due to the inadequate conditions of new houses. Additionally, Tribal leaders are concerned that, because homes on the New Isle are larger and theoretically more valuable than those on Isle de Jean Charles – although structural issues and the lack of disaster resilience protection mean the homes are potentially valueless in the long-run – Tribal members who participate in the resettlement will face high property taxes and home insurance costs.<sup>241</sup> As Louisiana State Representative Tanner Magee, whose district includes Isle de Jean Charles, wrote, “[t]his has morphed into the State trying to see how good of a development it believes it can construct under its own definitions of what it should look like. Currently, the project is heading towards building a community that a significant portion of the Isle de Jean Charles community doesn't want to move to . . . and potentially leaves a portion of the Isle de Jean Charles community with no home at all.”<sup>242</sup>

At the same time that OCD is continuing to develop a New Isle that is incompatible with the Tribe's vision of a resilient new life-place, new development on Isle de Jean Charles threatens further displacement of the Tribe and denial of cultural rights. As discussed above, resettlement participants were required to cede Island property rights to the State.<sup>243</sup> In return, the Tribe understood that their ancestral homeland would be left to the forces of nature.<sup>244</sup> However,

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<sup>237</sup> Comardelle Declaration ¶ 18.

<sup>238</sup> Naquin Declaration ¶ 37.

<sup>239</sup> Dermansky, *Isle de Jean Charles Tribe Turns Down Funds to Relocate First US 'Climate Refugees' as Louisiana Buys Land Anyway*.

<sup>240</sup> *Id.*

<sup>241</sup> Dermansky, *Isle de Jean Charles Community Members Moved into the First Federally Funded Resettlement Project in Louisiana Despite Visible Engineering Issues*.

<sup>242</sup> Dermansky, *Isle de Jean Charles Tribe Turns Down Funds to Relocate First US 'Climate Refugees' as Louisiana Buys Land Anyway*.

<sup>243</sup> Comardelle Declaration ¶¶ 26-27.

<sup>244</sup> Nathan Jessee, *Tribal Leaders Raise 'Serious Concerns' About Plans to Turn Their Shrinking Louisiana Island Home Into a 'Sportsman's Paradise'*, DESMOG (July 23, 2021), <https://www.desmog.com/2021/07/23/isle-de-jean-charles-tribe-louisiana-sportsmans-paradise/>.

it now appears that the Isle is being repurposed as a “sportsman’s paradise,” as private and corporate landowners build recreational and touristic “fishing camps” on the Isle.<sup>245</sup> Dozens of private owners have sold properties on the Island in recent years, and several new camps have been built since Hurricane Ida in 2021.<sup>246</sup> The Island continues to host a Marina, which sees regular recreational business.<sup>247</sup> Additionally, a recent development for fishing camps was announced by private developers in 2021.<sup>248</sup> Upon public outcry, the plan was withdrawn. However, camp owners continue to use the properties for recreational purposes, leasing the land from Dupont Corporation.<sup>249</sup>

The State and Parish governments are facilitating this new development by non-Natives.<sup>250</sup> The State and Parish continue to play a central role in displacing Tribal members from their traditional homelands, which has paved the way for the Isle’s conversion into a sportsman’s paradise. As detailed above, federal and State decisions to leave the Isle out of flood protection measures and disinvest in road infrastructure effectively forced the Tribe to seek relocation.<sup>251</sup> Compounding this disinvestment, Terrebonne Parish voted to close the Pointe-aux-Chenes Elementary School, which served children on the Isle and was 70 percent Indigenous, in April 2021.<sup>252</sup> Shortly thereafter, the Tribe learned that the school was going to be sold to a sporting organization,<sup>253</sup> though it was eventually sold instead to the Pointe-au-Chien Indian Tribe as part of the settlement of a two-year legal battle in federal court over the school closure.<sup>254</sup>

The State’s and Parish’s intent to facilitate private development by non-Natives on the Island has been further evidenced in a variety of other recent State and Parish decisions and millions worth of infrastructure investments. Contradicting previous claims from FEMA in 2002 and the State in its NDRC application that Island Road would no longer be repaired, Terrebonne Parish completed a multimillion project to build an unprecedented rock levee on Island Road in November 2020.<sup>255</sup> Additionally, the State’s department of Wildlife and Fisheries invested \$3 million in a project constructing five fishing piers and small parking lots on Island Road in

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<sup>245</sup> *Id.*

<sup>246</sup> Will McGrew & Jonathan Olivier, *In the New Isle*, COUNTRY ROADS MAGAZINE, <https://countryroadsmagazine.com/art-and-culture/people-places/new-isle-isle-de-jean-charles/>.

<sup>247</sup> Colin Campo, *Isle de Jean Charles residents reflect on storm, future*, HOUMA TODAY (Aug. 30, 2020), <https://www.houmatoday.com/story/news/local/2020/08/30/isle-de-jean-charles-residents-reflect-storm-future/567360002/>.

<sup>248</sup> Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home Into a ‘Sportsman’s Paradise.’*

<sup>249</sup> The Courier & Daily Comet, *Company drops plans for subdivision on Isle de Jean Charles*, HOUMA TODAY (Aug. 22, 2021), <https://www.houmatoday.com/story/news/2021/08/22/company-drops-plans-subdivision-isle-de-jean-charles/8229713002/>.

<sup>250</sup> *Id.*

<sup>251</sup> See Naquin Declaration ¶ 36.

<sup>252</sup> Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home Into a ‘Sportsman’s Paradise.’*

<sup>253</sup> *Id.*

<sup>254</sup> Jonathan Olivier, *Pointe-au-Chien Indian Tribe buys community’s former elementary school*, TÉLÉ-LOUISIANE (Sept. 15, 2023), <https://telelouisiane.com/journal/pointe-au-chien-indian-tribe-buys-communitys-former-elementary-school>.

<sup>255</sup> Terrebonne Parish, *Island Road Project*, INTERNET ARCHIVE (May 13, 2021), [https://archive.org/details/tpcgla-Island\\_Road\\_Project](https://archive.org/details/tpcgla-Island_Road_Project).

November 2020.<sup>256</sup> The State’s Coastal Protection and Restoration Agency has invested over \$40 million in marsh creation to protect Island Road.<sup>257</sup> As recently as January 2023, the agency justified this investment as an effort to reinforce “the sole route of hurricane evacuation for the Isle de Jean Charles community,” which now largely consists of fishing camp owners.<sup>258</sup>

In addition to these new investments, Parish-level entities of the State continue to expend significant funds annually to protect and maintain the Island for continued touristic development – in contradiction to claims made by the State to HUD in its NDRC application and subsequent correspondence.<sup>259</sup> These services include water, sewage, fire protection, and, critically, maintenance of the ring levee that prevents the Island from being submerged by the Gulf.<sup>260</sup> Since 2000, the ring levee has cost the Parish and Parish’s Levee and Conservation District (TLCD) over \$3 million to build and maintain.<sup>261</sup> Most recently, TLCD expended \$500,000 in federal money in 2012 to reinforce the levee.<sup>262</sup> In response to a public records request, the TLCD committed to “maintain this protection as long as possible.”<sup>263</sup> It is unclear how much additional funds the Parish government expends each year to maintain the services listed above, from which fishing camp owners continue to benefit.

Tribal leaders experience the disinvestment of Isle de Jean Charles, and the subsequent reinvestment after the State secured Resettlement funding, as a continuation of the long legacy of State-supported land grabs dispossessing Tribes in coastal Louisiana of their ancestral homelands.<sup>264</sup>

## TITLE VI VIOLATIONS

EarthRights International submits this Complaint on behalf of the Jean Charles Choctaw Nation against OCD for violations of Title VI and its implementing regulations. Title VI prohibits federal funding recipients from discriminating against protected groups, through purposeful intent or by engaging in behavior that disproportionately harms them.<sup>265</sup>

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<sup>256</sup> Trey Iles, *Island Road Boat Launch Renovation and Fishing Piers Construction Project at Pointe-aux-Chenes WMA Completed*, La. Wildlife & Fisheries (Dec., 2020), <https://www.wlf.louisiana.gov/news/island-road-boat-launch-renovation-and-fishing-piers-construction-project-at-pointeauxchenes-wma-completed>.

<sup>257</sup> *Island Road Marsh Creation and Nourishment*, La. Coastal Prot. & Restoration Auth., <https://coastal.la.gov/project/island-road-marsh-creation-nourishment/> (last accessed Dec. 19, 2023).

<sup>258</sup> \$64 Million Approved for Two Habitat Restoration Projects in Coastal Louisiana, Nat’l Oceanic & Atmospheric Admin. (Jan. 26, 2023), <https://www.fisheries.noaa.gov/feature-story/64-million-approved-two-habitat-restoration-projects-coastal-louisiana#:~:text=Island%20Road%20Marsh%20Creation%20and,Isle%20de%20Jean%20Charles%20community>.

<sup>259</sup> See OCD Alternative Requirement Request Letter.

<sup>260</sup> Email from Reggie Dupre, Executive Dir., Terrebonne Levee & Conservation Dist., to Caitlin Orgeron, Chief Operating Officer, Télé Louisiane (Sept. 22, 2022) (on file with author) (responding to a public records request).

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home Into a ‘Sportsman’s Paradise.’*

<sup>265</sup> 42 U.S.C. § 2000d.

OCD’s complete redesign of the Resettlement Program – from a Tribe-led proposal to create a resilient new life-place for the Jean Charles Choctaw Nation, to a State-dictated and cost-cutting bare bones relocation of Isle residents – violates Title VI and HUD’s implementing regulations. OCD’s unilateral changes to the Resettlement Program, construction of new homes that are not structurally sound and prone to climate threats, and exclusion of Tribal members and leadership from decision making evince a discriminatory intent and have a demonstrable disparate impact on Tribal members. OCD’s discriminatory treatment of the Tribe has been ongoing since OCD received the grant in 2016, and continues to plague the current stage of the Resettlement as OCD effectively compels participants, including Tribal members, to move into poorly constructed homes that are vulnerable to flooding. There is no justification for these actions.

## I. Legal Background

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin.<sup>266</sup> The statute provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>267</sup> Native Americans are among the racial groups protected from discrimination under Title VI, regardless of federal Tribal recognition.<sup>268</sup>

Title VI itself prohibits policies and practices that are intentionally discriminatory. As the Supreme Court ruled in *Arlington Heights*, a number of factors may serve as “evidentiary source[s]” of discriminatory purpose or intent behind decisions or actions that are facially neutral.<sup>269</sup> These factors include: disparate impact evidence, the historical background of the decision, the sequence of events leading to the decision, departures from normal procedures or substantive conclusions, the legislative or administrative history of the decision, the foreseeability of the decision’s consequences, and history of discriminatory conduct.<sup>270</sup> Multiple cases have found discriminatory intent based on a combination of evidence of foreseeability, disparate impact, and history of state action.<sup>271</sup>

In addition to the fact that disparate impact is potential evidence of discriminatory intent, HUD’s Title VI implementing regulations expressly prohibit facially neutral policies and practices that have an adverse disparate impact on a protected group:

A recipient . . . may not . . . utilize criteria or methods of administration which *have the effect* of subjecting persons to discrimination because of their race, color, or national origin, or *have the effect* of defeating or substantially impairing

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<sup>266</sup> 42 U.S.C. § 2000d.

<sup>267</sup> 42 U.S.C. § 2000d.

<sup>268</sup> 40 C.F.R. § 7.25.

<sup>269</sup> *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 225, 267 (1977).

<sup>270</sup> *Id.* at 266-68; see U.S. DEP’T OF JUST., TITLE VI LEGAL MANUAL § VI at 10.

<sup>271</sup> U.S. DEP’T OF JUST., TITLE VI LEGAL MANUAL § VI at 15 (citing *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016); *Dowdell v. City of Apopka*, 698 F.2d 1181, 1186 (11th Cir. 1983); *United States v. Bannister*, 786 F. Supp. 2d 617, 665-66 (E.D.N.Y. 2010)).

accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.<sup>272</sup>

Disparate impact is therefore in and of itself a Title VI violation under HUD's regulations, as well as probative evidence for drawing an inference of prohibited discriminatory intent through the *Arlington Heights* framework.

To find a disparate impact, HUD must establish: (1) a specific policy or practice at issue; (2) adversity/harm; (3) a distinguishable impact on an individual or group protected under Title VI; and (4) causation between the specific policy or practice and the adverse disparate impact.<sup>273</sup> Once HUD makes such a determination, the burden shifts to the recipient to "demonstrate the existence of a substantial legitimate justification for the policy or practice."<sup>274</sup> If the recipient carries this burden, "a violation is still established if the record shows that the justification offered by the recipient was pretextual . . . [or if] there is an alternative that would achieve the same legitimate objective but with less of a discriminatory effect."<sup>275</sup>

## **II. OCD's unilateral changes to the Resettlement Program disparately impact the Tribe and perpetuate a long legacy of denying Tribal sovereign rights, indicating discriminatory intent in violation of Title VI.**

As in *Arlington Heights*, a number of factors provide constructive evidence that OCD's total transformation of the Resettlement Program from a disaster resilient Tribal reunification to a bare bones and cost-cutting relocation of Isle de Jean Charles residents evinces intentional discrimination. OCD's unilateral changes have disparate impacts on the Tribe and Tribal members. OCD's changes departed from normal procedures, resulting in harm that was both foreseeable and known to OCD. Finally, OCD's actions here continue a pattern of dispossession and erasure of Tribal rights in Louisiana. Taken together, these factors demonstrate that OCD acted with discriminatory intent.

### **A. OCD's changes have caused adverse effects that disparately harm the Tribe and Tribal members.**

As discussed above, OCD has repeatedly modified the Resettlement Program in a manner that has adversely impacted members of the Jean Charles Choctaw Nation and the Tribe as a whole. Establishing adversity for Title VI claims is a low bar.<sup>276</sup> For example, courts have found adversity when members of a protected group are deprived of federal funds and/or benefits.<sup>277</sup> In

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<sup>272</sup> 24 C.F.R. § 1.4(b)(2)(i) (2014) (emphasis added).

<sup>273</sup> U.S. DEP'T OF JUST., TITLE VI LEGAL MANUAL § VII at 9; *New York City Env't Just. All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000); see also *Brown v. Coach Stores, Inc.*, 163 F.3d 706, 712 (2d Cir. 1998); *New York Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir.1995).

<sup>274</sup> U.S. DEP'T OF JUST., TITLE VI LEGAL MANUAL § VII at 6 (citing *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995)).

<sup>275</sup> *Id.* (citing *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993)).

<sup>276</sup> *Id.* at 13.

<sup>277</sup> See *Meek v. Martinez*, 724 F. Supp. 888, 906 (S.D. Fla. 1987); see also *Campaign for Fiscal Equity v. New York*, 86 N.Y.2d 307, 323-24 (1995) (finding adversity when African American students received less state financial aid than their peers).

*Sandoval*, for instance, the Eleventh Circuit concluded that depriving individuals of drivers' licenses adversely affected them in the form of lost economic opportunities, social services, and other quality of life pursuits.<sup>278</sup> The Department of Justice has also recognized that cultural harm, such as limitations on religious practices, is a form of adversity.<sup>279</sup>

OCD's conduct adversely impacts Tribal members in various ways. First, OCD's downgrading of the Tribe's status from grant beneficiary to mere stakeholder erased the Tribe's central role in its own resettlement, denied the Tribe's sovereignty, and paved the way for OCD to unilaterally change the Resettlement Program. Second, OCD's removal of core disaster and climate resiliency components has left Tribal members who participate in the Resettlement Program vulnerable to flooding, living in homes prone to sewage and drainage issues, and at risk of high utility bills – in contrast to the source of income from solar energy generation which the original Resettlement Program provided. Third, OCD's new, stricter eligibility requirements for Tribal members who left the Isle before 2012 prevents Tribal members from accessing federal funds and the benefits of HUD's grant to which they were originally entitled. Additionally, OCD's new eligibility requirement that resettlement participants sign restrictive homeownership agreements forces Tribal members to cede rights to their Isle properties, including the ability to make repairs to and lease their homes, and limits the Tribe's ability to steward its ancestral homelands and maintain cultural traditions. Fourth, OCD's removal of Tribal cultural components from New Isle development and exclusion of Tribal members from the resettlement has deprived the Tribe of the cultural benefits promised in the original Resettlement Program – namely, realization of their vision of a new life-place to reunify the Tribe and ensure cultural survival.

These adverse effects disparately impact the Tribe and Tribal members. According to the Department of Justice's Title VI Legal Manual, "the disparate effect of a recipient's policy or practice is sometimes so obvious or predictable that comparative statistics are unnecessary to draw the requisite connection between the policy and harm to a Title VI protected group."<sup>280</sup> Such is the case here. OCD's denial of funds originally earmarked by HUD for the relocation of the Jean Charles Choctaw Nation and the associated social, cultural, and economic benefits of the Resettlement Program are felt entirely by Tribal members and the Tribe as a whole. The Tribe and Tribal members are the only stakeholders whose cultural survival the Resettlement Program originally promised but no longer offers. Moreover, the Tribe and Tribal members are uniquely harmed by barriers to continued stewardship of their ancestral lands and cultural resources on Isle de Jean Charles.

OCD's modifications are the direct cause of these disparate adverse effects. Without OCD's changes to the Resettlement Program's inclusion criteria, Tribal members who were forced to resettle before 2012 would have been able to reunite with their Tribe, and the Tribe would be able to reestablish a disaster-resilient community that reflects their culture on the New

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<sup>278</sup> *Sandoval v. Hagan*, 197 F.3d 484, 508 (11th Cir. 1999) (holding that lack of drivers' licenses adversely affects individuals in the form of lost economic opportunities, social services, and other quality of life pursuits), *rev'd on other grounds sub nom. Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>279</sup> *United States v. Maricopa Cty.*, 915 F. Supp. 2d 1073, 1081 (D. Ariz. 2012) (holding adversity properly alleged where limited English proficient Latino inmates had diminished access to jail services such as sanitary needs, food, clothing, legal information, and religious services).

<sup>280</sup> U.S. DEP'T OF JUST., TITLE VI LEGAL MANUAL § VII at 19.

Isle. Without OCD's Homeowner Assistance Agreements, relocated Tribal members would maintain control of their Isle properties, ensuring they could continue stewarding their ancestral lands, cultural resources, and sites as long as they remain accessible. OCD's unilateral decisions to reshape the Resettlement Program left Tribal members with flood-prone homes, fewer assets, less self-determination, and more risk than before. Instead of protecting the Tribe from harm, OCD is inhibiting the Tribe's cultural and physical restoration.

### **B. OCD's changes depart from normal procedures.**

Similar OCD relocation programs affecting other populations do not include the property restrictions that OCD imposed on participants in the Resettlement Program through the homeownership agreements. For example, Louisiana's Strategic Adaptations for Future Environments, which also received funds from HUD, provides relocation assistance to seven permanent households that were left out of the Morganza-to-the-Gulf protection system and are also not part of the Isle de Jean Charles Resettlement Program.<sup>281</sup> Unlike the Isle de Jean Charles Resettlement Program, it includes no land use restrictions on participants' use of their previous homes.<sup>282</sup> Had OCD not imposed this unusual eligibility requirement, this major source of tension and distrust between the Tribe and State could have been avoided, and the Tribe's ability to steward ancestral lands and maintain their property rights would not be at risk.

OCD also departed from normal procedures when it unilaterally downgraded the Tribe's beneficiary status. The HUD grant explicitly funded the relocation of the Jean Charles Choctaw Nation using the proposal prepared by the Tribe, developed through over a decade of work. Yet OCD revised the Resettlement Program, claiming that the HUD grant was *only* awarded to the State even though it was awarded to the State in conjunction with the Tribe. Such conduct violates HUD's regulations which require that certain "modifications constitute a substantial amendment requiring HUD approval" including "any change in program benefit, beneficiaries, or eligibility criteria."<sup>283</sup> Additionally, OCD was required to issue a notice that incorporated citizen participation.<sup>284</sup> But OCD never conducted a notice and comment period with respect to

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<sup>281</sup> *State of Louisiana Non-Substantial Amendment No. 4 Clarification of Program Activities for the Utilization of Community Development Block Grant Funds Under the National Disaster Resilience Competition (NDRC) Louisiana's Strategic Adaptations for Future Environments (LA Safe)*, STATE OF LA. DIV. OF ADMIN. OFF. OF CMTY. DEV. DISASTER RECOVERY UNIT (Nov. 9, 2018),

[https://www.doa.la.gov/media/1bmhb4sv/approved\\_ndr\\_lasafe\\_non-substantialamendment-4.pdf](https://www.doa.la.gov/media/1bmhb4sv/approved_ndr_lasafe_non-substantialamendment-4.pdf).

<sup>282</sup> LA. STRATEGIC ADAPTATIONS FOR FUTURE ENV'T TERREBONNE PARISH ADAPTATION STRATEGY 190 (2019), <https://s3.amazonaws.com/lasafe/Final+Adaptation+Strategies/Terrebonne+Parish+Adaptation+Strategy.pdf>.

<sup>283</sup> Federal Register, Vol. 81, No. 109, Tuesday, June 7, 2016, Notice of National Disaster Resilience Competition Grant Requirements g(i).

<sup>284</sup> *Id.* ("Substantial Amendments. The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the Phase 1 or Phase 2 application that would result in a change of more than 5 points in the score for Capacity or Soundness of Approach factors, any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or reallocation of more than \$1 million, or the addition or deletion of an eligible activity. Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as "nonsubstantial amendments." For substantial amendments, Grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. If the substantial amendment criteria are triggered,



changing the Tribe’s beneficiary status. The disregard for public participation is a clear departure from normal procedures when considering how OCD follows this process in other contexts. For example, earlier this year, OCD announced that it was “accepting public comments on an action plan amendment that will modify the amounts and method of distribution for Community Development Block Grant disaster recovery funds in several programs of the Louisiana Watershed Initiative.”<sup>285</sup> Thus, it is clear that OCD is aware of this process but chose not to enact it for a HUD grant that benefitted the Tribe.

**C. These disparate impacts were foreseeable to OCD.**

OCD must have foreseen the harmful consequences of erasing the Jean Charles Choctaw Nation from their own Tribe-led Resettlement Program, in violation of their sovereignty, and of making unilateral changes to the plan that limit the Tribe’s and Tribal members’ access to federal funds and social, cultural, and economic benefits. Even if the agency did not foresee these consequences initially, Tribal leaders repeatedly made their concerns clear to OCD officials from the very beginning of the resettlement process, as described above. Despite the Tribe’s frequent attempts to get OCD to change its practices, OCD did not make meaningful changes to prevent adverse impacts to the Tribe and Tribal members.

**D. OCD’s top-down decision making here continues a long history of the State’s discriminatory approach to coastal development.**

The State of Louisiana is culpable in creating and exacerbating the conditions that require a Tribe-led resettlement from Isle de Jean Charles. As described above, the Jean Charles Choctaw Nation’s ancestors settled in remote coastal communities in Louisiana to escape state violence after being expelled from their ancestral homelands by the Indian Relocation Act and being forced to move west during the Trail of Tears.<sup>286</sup> The State’s subsequent engineering of Louisiana’s waterways and coast to enable natural resource exploitation – particularly oil and gas development – made coastal areas vulnerable to flooding, sea level rise, and subsidence, among other impacts.<sup>287</sup> This development was in part achieved by dispossessing Indigenous Peoples of their lands through “legal” land grabs facilitated by the State.<sup>288</sup> The State’s coastal protection projects have continued to prioritize industry over vulnerable communities, and in the case of the Jean Charles Choctaw Nation, have directly sacrificed their homelands based on an economic-driven cost benefit analysis that ignored Indigenous knowledge.

Now, the Jean Charles Choctaw Nation is experiencing climate change as a continuation of government-sponsored displacement. The Tribe’s Resettlement Program offered an alternative path forward. But instead, the State continued its discriminatory treatment of the Tribe that dispossess them of their ownership rights on the Isle. After many years of being denied

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HUD will review the proposed change against the rating factors and threshold criteria and consider whether the application, inclusive of the proposed change, would continue to score in the fundable range.”)

<sup>285</sup> Press Release, La. Off. of Cmty. Dev., State Accepting Public Comments on MIT Action Plan Amendment 3 for Distribution of Funds in Louisiana Watershed Initiative (Aug. 9, 2023), <https://www.doa.la.gov/media/ygnlcg4n/08-09-2023-mit-apa-3-news-release.pdf>.

<sup>286</sup> Jerolleman Declaration ¶¶ 6-7.

<sup>287</sup> Naquin Declaration ¶¶ 18-29.

<sup>288</sup> Jerolleman Declaration ¶¶ 8-9, 31-32.

infrastructure support from the State to protect Island Road, the only access road to the Isle, the Tribe had to accept that relocation was necessary in part because Island Road could not be protected.<sup>289</sup> The Tribe was also led to believe that, under the Resettlement Program, the Isle would be maintained under Indigenous stewardship in exchange for consenting to the Homeowner Assistance Agreement which required ceding property rights on the Isle.<sup>290</sup> Yet the State made its true intention clear: eradicate Tribal ownership of the Isle in favor of economic development. After the Resettlement Program was well under way, the State moved to invest millions of dollars into creating a rock levee for Island Road and the construction of fishing piers and parking lots for a “sportsman’s paradise.”<sup>291</sup> OCD’s erasure of the Tribe, unilateral changes to the Resettlement Program, and prioritization of corporate interests on the Isle are continuing the same pattern of denying Tribal sovereignty, dispossessing the Tribe of ancestral lands, and threatening Tribal cultural survival.

### **III. OCD’s failure to overcome barriers to Tribal participation evinces discriminatory intent, violating Title VI and its implementing regulations.**

OCD’s exclusion of the Tribe from resettlement decision making – through ignoring Tribal leadership, employing divisive methods of stakeholder engagement, and failing to provide translation and other accessibility measures in its public participation processes – also evinces discriminatory intent under the *Arlington Heights* factors. OCD has adversely impacted the Tribe and Tribal members by depriving them of participation rights afforded by Title VI and its implementing regulations, and these harms uniquely fall on Tribal members. These participation failures depart from normal procedures, were foreseeable, and compound the legacy of educational discrimination and disinvestment that Louisiana Tribes have long experienced.

#### **A. OCD’s failure to include the Tribe in resettlement decision making disparately deprives Tribal members of rights to meaningful participation.**

OCD has consistently failed to consult the Jean Charles Choctaw Nation in Resettlement Program decisions, adversely affecting the Tribe’s rights to consultation and participation – rights that are recognized by courts and fleshed out through agency regulations, policy frameworks, and executive guidance.

#### **1. Applicable Legal Framework on Public Participation**

Consultation and participation are protected legal rights and an integral part of decision-making processes for all community members.<sup>227</sup> HUD requires that state and local government recipients of HUD funding develop citizen participation plans. In Louisiana’s Citizen Participation Plan, developed pursuant to HUD’s requirements, the State commits to:

[T]ake whatever actions are necessary to encourage participation by all citizens, especially the following: Those of low and moderate income, those living in slum and

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<sup>289</sup> Naquin Declaration ¶ 27.

<sup>290</sup> Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home Into a ‘Sportsman’s Paradise.’*

<sup>291</sup> *Id.*

blighted areas and in areas where Community Development Block Grant (CDBG) funds are proposed to be used, those living in predominantly low- and moderate-income neighborhoods, non-English speaking persons, minorities, and those with disabilities.<sup>292</sup>

Language accessibility is central to ensuring these rights to participation. Accordingly, Courts and federal agencies have recognized that failing to provide meaningful participation for people with limited English proficiency constitutes adversity. In *Lau v. Nichols*, the Supreme Court held that a group of Chinese-speaking students had alleged adversity under Title VI when they claimed that a California school district denied them meaningful participation by failing to provide services in Chinese.<sup>293</sup> Likewise, both HUD guidance on ensuring participation for people with limited English proficiency and Executive Order 13166 on improving access for people with limited English proficiency affirm that failure to provide meaningful language access may be a violation of Title VI and subject to legal enforcement.<sup>294</sup> Pursuant to these requirements, OCD has a Language Access Plan for Limited English Proficiency Persons, which applies to projects receiving Louisiana CDBG funds.<sup>295</sup>

On a related note, HUD’s Title VI implementing regulations also require that the funding recipient “take affirmative action to overcome the effects of prior discrimination” and, in the absence of prior discrimination, of “the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.”<sup>296</sup>

Additionally, HUD’s government-to-government Tribal consultation policy requires a “proactive and affirmative process of . . . identifying and seeking input from appropriate Native American governing bodies, community groups, and individuals; and . . . considering their interest as a necessary and integral part of . . . [the] decision-making process.”<sup>297</sup> Although HUD’s policy applies only to consultations with federally recognized Tribes and thus does not bind Louisiana or OCD here, HUD’s principles for Tribal consultation provide useful guidance for state engagement with state-recognized Tribes – particularly where the relevant state entity lacks its own Tribal consultation policy, as is the case with OCD. Therefore, in formally accepting the Jean Charles Choctaw Nation as a State-recognized Tribe, Louisiana should adhere to the same underlying principles in HUD’s policy, including “respect [for] Tribal sovereignty” and recognition that Tribes are “appropriate . . . parties for making policy decisions and managing programs for their constituents”<sup>298</sup>

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<sup>292</sup> *State of Louisiana Citizen Participation Plan*, OFF. OF CMTY. DEV. (2022), <https://www.doa.la.gov/media/obgpok0f/citizen-participation-plan.pdf>.

<sup>293</sup> 414 U.S. 563 (1974).

<sup>294</sup> Exec. Order No. 13166, 65 Fed. Reg. § 50121 (2000); Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. § 2732 (2007).

<sup>295</sup> *Language Access Plan for Limited English Proficiency Persons*, OFF. OF CMTY. DEV. (2022), <https://doa.louisiana.gov/media/tojptz0e/a-58-ocd-language-access-plan.pdf>.

<sup>296</sup> 24 C.F.R. § 1.4(b)(6) (2014).

<sup>297</sup> *Government-to-Government Tribal Consultation Policy*, U.S. DEP’T HOUS. & URB. DEV. (2016), [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/regs/govtogo\\_tcp](https://www.hud.gov/program_offices/public_indian_housing/ih/regs/govtogo_tcp).

<sup>298</sup> *Id.*

## 2. Disparate Impact

OCD failed to meet its obligations to take the measures necessary to ensure that Tribal members – as members of a protected group with primarily low and moderate incomes, some of whom have limited English proficiency – could meaningfully participate in Resettlement Program decision making. Of particular note is the lack of language accessibility measures required under Title VI and HUD’s guidance for Tribal members with limited English proficiency. Tribal leaders informed OCD about language barriers and asked to accompany Tribal members during meetings to provide interpretation assistance.<sup>299</sup> However, OCD did not inform Tribal leaders about meetings, nor did it make other language accommodations.<sup>300</sup> As a result, Tribal members with limited English were unable to meaningfully participate in meetings and through other public participation channels.<sup>301</sup> Tribal members also reported that OCD gave them English-language documents to sign during meetings without translation support, and then did not subsequently provide copies of those documents – forcing them to make important decisions about their homes without full access to information.<sup>302</sup>

OCD’s treatment of Tribal leadership is far from the formal government-to-government engagement intended by HUD’s Tribal consultation policy. OCD officials explicitly stated to a Tribal leader during a community meeting that the right of Tribal sovereignty does not apply to the Jean Charles Choctaw Nation.<sup>303</sup> OCD downgraded the Tribe’s beneficiary status and then cut Tribal leaders out of decision making about the Tribe’s own relocation – violating the Tribe’s sovereignty.<sup>304</sup> And OCD repeatedly failed to notify the Tribe of meetings with Tribal members and important events, such as OCD’s selection of a site for the New Isle and the closing ceremony for the first homes on the New Isle.<sup>305</sup>

OCD’s consultation failures disproportionately impact the Jean Charles Choctaw Nation. As is the case with OCD’s substantive failures, OCD’s exclusion of the Jean Charles Choctaw Nation and demotion of the Tribe’s position poses a unique harm not felt by any other group. By demoting the Jean Charles Choctaw Nation from sole partners to one of many stakeholders, OCD reduced the Jean Charles Choctaw Nation’s, *and no other contributor’s*, ability to meaningfully participate in decisions that affect the Tribe and its members. OCD’s failure to consult the Tribe about decisions that affect the Tribe uniquely impacts the Tribe, and no other parties. OCD’s actions disparately impact the Tribe and Tribal members.

OCD’s actions are the direct cause of the Jean Charles Choctaw Nation’s reduced ability to participate in the decision making process surrounding the Resettlement Program. Were it not for OCD’s changes, the Jean Charles Choctaw Nation would remain the sole beneficiary of

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<sup>299</sup> Comardelle Declaration ¶¶ 15-18.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 19.

<sup>302</sup> Naquin Declaration ¶ 50.

<sup>303</sup> Comardelle Declaration ¶ 14.

<sup>304</sup> Naquin Declaration ¶ 50.

<sup>305</sup> *Id.* ¶ 52.

HUD's NDRC funds as originally stated in the Tribe's and OCD's grant application, and not a mere stakeholder.<sup>306</sup>

OCD's failures to provide the Tribe and Tribal members with their rights to participation are not isolated incidents, but rather demonstrate a clear pattern of OCD's neglect of the Jean Charles Choctaw Nation.<sup>307</sup> Such alteration and implementation of the Resettlement Program "involv[ed] clear overtones of racial discrimination in the administration of governmental affairs . . . resulting in the same evils which characterize an intentional and purposeful disregard of the principle of equal protection of the laws."<sup>308</sup>

### **B. OCD's consultation failures depart from normal procedures.**

OCD has provided measures to overcome barriers to participation affecting other communities, as it is required to do under Louisiana's Citizen Participation Plan and OCD's Language Access Plan.<sup>309</sup> Contrast the accommodations OCD provided to non-English speaking communities to enable their feedback on projects as part of LA SAFE, the State of Louisiana's other NDRC grant-funded project. In addition to holding six parish meetings, OCD held "a seventh meeting to accommodate Vietnamese and Khmer speaking residents across four parishes."<sup>310</sup> No such language accessibility measures were taken to facilitate French- and Indian French-speaking Tribal members' participation in OCD's Isle de Jean Charles Resettlement Program.

### **C. These disparate impacts were foreseeable.**

OCD reasonably should have known that dividing Tribal leaders and members in its consultation processes, failing to provide accessible language support to Tribal members with limited English proficiency, and outright rejecting Tribal sovereignty and the role of Tribal leaders in decision making would have an adverse disparate impact on the Tribe and Tribal members. As discussed above, Tribal leaders informed OCD of the language gaps and other barriers and repeatedly requested consultation, yet OCD did not make the required accommodations. Moreover, OCD should have been aware of the history of State educational discrimination against Indigenous Peoples in Louisiana and should have taken proactive measures to ensure that Tribal members could participate meaningfully.

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<sup>306</sup> See STATE OF LOUISIANA, DISASTER RECOVERY UNIT, OFF. OF CMTY. DEV., DIV. OF ADMIN., NATIONAL DISASTER RESILIENCE COMPETITION PHASE II APPLICATION 15 (Oct. 27, 2015), [http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc\\_pii\\_final\\_eximg-w\\_highlights.pdf](http://www.coastalresettlement.org/uploads/7/2/9/7/72979713/ndrc_pii_final_eximg-w_highlights.pdf) ("This project proposes to resettle a band of Choctaw Native Americans from Isle de Jean Charles in Terrebonne Parish") (emphasis added).

<sup>307</sup> *Vill. of Arlington Heights*, 429 U.S. at 268.

<sup>308</sup> *Hawkins v. Town of Shaw, Miss.*, 461 F.2d 1171, 1174 (5th Cir. 1972).

<sup>309</sup> See *State of Louisiana Citizen Participation Plan*, OFF. OF CMTY. DEV. (2022), <https://www.doa.la.gov/media/obgpok0f/citizen-participation-plan.pdf>; *Language Access Plan for Limited English Proficiency Persons*, OFF. OF CMTY. DEV. (2022), <https://doa.louisiana.gov/media/tojptz0e/a-58-ocd-language-access-plan.pdf>.

<sup>310</sup> LA. STRATEGIC ADAPTATIONS FOR FUTURE ENV'TS, SUMMARY OF STRATEGY DEVELOPMENT AND PROJECT SELECTION 14 (2018), <https://s3.amazonaws.com/lasafe/2018/N-04/2018-Summary-Strategy-Development-Project-Selection.pdf>.

#### **D. OCD's failures build on the State's history of language and educational discrimination against Indigenous Peoples.**

OCD's disregard for incorporating language accessibility for French-speaking Tribal members echoes the State of Louisiana's long and egregious history of language discrimination in public schools and depriving Indigenous Peoples of meaningful education opportunities. Indian French is part of Jean Charles Choctaw Nation's cultural heritage; the Tribe is dedicated to preserving the language in the community.<sup>311</sup> Yet, Tribes that speak Indian French have faced obstacles in obtaining public education in their preferred language. Notably, the Louisiana Constitution of 1921 banned public education taught in French.<sup>312</sup> This ban, which also extended to students speaking French at school, did not end until the State ratified a new constitution in 1974.<sup>313</sup> This discriminatory constitutional clause sought to eradicate an important component of the Tribe's cultural heritage.

In addition to the State prohibiting Indian French at public schools, Terrebonne Parish and the Terrebonne Parish School Board deprived members of the Jean Charles Choctaw Nation of educational opportunities.<sup>314</sup> Before the 1960s, Tribal members were prohibited from attending White schools and had to enroll in "Indian schools" that had fewer resources.<sup>315</sup> Additionally, School Board officials used disparaging language that denied the existence of Tribes in Terrebonne Parish.<sup>316</sup> A former superintendent of the School Board wrote a master's thesis that denigrated Native American students, entitled "So-Called Indians of Terrebonne Parish."<sup>317</sup>

Unfortunately, the School Board continues to deprive Tribal members of school enrollment. On April 13, 2021, Elder Chief Albert Naquin learned that the School Board voted to close Pointe-aux-Chenes Elementary School.<sup>318</sup> The Tribe opposed the school closure yet the School Board made their decision without any tribal consultation.<sup>319</sup> The school closure is also alarming considering how the elementary school has the highest ratio of Native American students of any elementary school in the State of Louisiana.<sup>320</sup>

OCD's failure to adequately include Tribal members in the Resettlement Program and refusal to provide Indian French support services is another painful iteration of State-sanctioned erasure of the Indian French language. Additionally, OCD's conduct fails to take required proactive measures to overcome the long history of Tribal members being denied educational opportunities. Many Tribal elders did not have the opportunity to attend school past the sixth

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<sup>311</sup> Naquin Declaration ¶ 17.

<sup>312</sup> JACQUES HENRY, *THE LOUISIANA FRENCH MOVEMENT, IN FRENCH AND CREOLE IN LOUISIANA* (Albert Valdman ed., 1997), available at [https://doi.org/10.1007/978-1-4757-5278-6\\_7](https://doi.org/10.1007/978-1-4757-5278-6_7).

<sup>313</sup> *Id.*

<sup>314</sup> Naquin Declaration ¶ 13.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* ¶ 13.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.* ¶ 16.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

grade, which in turn led to limited English proficiency.<sup>321</sup> By not providing language accessibility for French-speaking Tribal members, OCD has taken advantage of their limited English proficiency caused by minimal education opportunities provided by the State and local government. This disregard further demonstrates that OCD's mishandling of the Resettlement Program was rife with discriminatory intent.

**IV. The State's facilitation of private development on the Isle and its factual misrepresentation of this situation to Tribal members evince discriminatory intent in violation of Title VI.**

The State and Parish governments' facilitation of the transformation of Isle de Jean Charles into a sportsman's paradise – in stark contrast to the State's representations about the finite future of the Island to HUD – also evinces discriminatory intent under the *Arlington Heights* factors. The State has adversely impacted the Tribe and Tribal members by impairing their ability to steward Tribal lands and maintain connections to important cultural and historical sites. These harms fall disproportionately on Tribal members given the Tribe's unique relationship to Isle de Jean Charles and the cultural sites and resources it supports. The State and Parish governments' prioritization of corporate interests on the Isle continues a long pattern of exploiting Tribal lands for private gain.<sup>322</sup>

**A. The State's facilitation of new development on Isle de Jean Charles disparately impacts the Tribe and Tribal members, and demonstrates unfair treatment in favor of non-Native private development.**

State and Parish governments have enabled the repurposing of Isle de Jean Charles from the Jean Charles Choctaw Nation's homeland to a recreational and touristic destination in two primary ways: first, by effectively displacing the Tribe through refusing to invest in climate resilient infrastructure and forcing Tribal members to cede property rights to the State through the Homeownership Assistance Agreement, and second, by re-investing in protective infrastructure – after disinvesting from Isle infrastructure for years – once Tribal members were mostly gone from the Island.<sup>323</sup>

There is no question that OCD intended to remove Tribal members from Isle de Jean Charles. First, the State presented relocation as unavoidable. While the initial impetus for the Tribe's relocation plan was the Army Corps' decision to exclude the Island from the Morganza-to-the-Gulf flood protection system,<sup>324</sup> the State made no effort to alter this decision. Instead, the State made multiple statements to Island residents and HUD emphasizing that it was inevitable that Tribal members would need to move away from the Island.<sup>325</sup> In the aftermath of receiving HUD grant funds, OCD stated that it made regular visits to convince as many Native American

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<sup>321</sup> Jerolleman Declaration ¶ 34.

<sup>322</sup> *See id.* ¶¶ 6-9.

<sup>323</sup> *See* Jessee, *Tribal Leaders Raise 'Serious Concerns' About Plans to Turn Their Shrinking Louisiana Island Home Into a 'Sportsman's Paradise.'*

<sup>324</sup> Naquin Declaration ¶ 36.

<sup>325</sup> *See* Olga Loginova & Zak Cassel, *Leaving the island: The messy, contentious reality of climate relocation*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 17, 2022), <https://publicintegrity.org/environment/harms-way/leaving-isle-de-jean-charles-climate-relocation/>.

residents of the Island as possible to participate in the relocation program.<sup>326</sup> Then, OCD imposed unprecedented, draconian property use restrictions through its mandatory Homeownership Assistance Agreement that, among other requirements, prevented Tribal members from repairing Island homes – amounting to condemnation of those residences given the severity and frequency of storms that batter the Island.<sup>327</sup>

After almost all Tribal members were displaced and contractually prohibited from living on the Isle, the State and its subdivisions not only allowed but in fact facilitated private development of fishing camps on Isle de Jean Charles by non-Native corporate interests. OCD's property restrictions enabled this transformation. Because the restrictions only apply to resettlement participants, they do not limit property rights of the handful of Tribal families who have refused to resettle or the privately-owned fishing camps that remain on the Island.<sup>328</sup> Therefore, while Tribal members are unable to make repairs to their homes after storms, under the Homeownership Assistance Agreement, corporate property owners have full ability to build and maintain recreational and touristic facilities.<sup>329</sup> To enable this recreational and touristic development, State and Parish governments are now willing to make investments needed to protect the Isle, which they declined to make when it was predominantly inhabited by Tribal members. As described above, Terrebonne Parish and TLCD plan to administer the ring levee around the Island indefinitely, and the State and Parish have invested tens of millions of dollars in protective infrastructure for the Island and reinforcements to Island Road in recent years.<sup>330</sup> This investment reflects a local and State understanding that – in contradiction to the State's assertions that the Island is uninhabitable for the Tribe<sup>331</sup> – corporate interests can benefit from the Island, requiring millions of dollars in public investment and assistance. The only difference is that these property owners are not-Native.

The Tribe and Tribal members have clearly been adversely and disproportionately affected by these State and Parish actions. Tribal members have been forced from their ancestral lands and traditional way of life, have been dislocated from important cultural resources and Tribal sites, and have been forced to cede property rights. At the same time, their ancestral landscapes are being transformed for profit and recreation, changing the traditional character of Isle de Jean Charles and impeding the Tribe's stewardship of the Island. Given the Tribe's unique relationship to Isle de Jean Charles and the State's targeting of Tribal members for relocation, Tribal members and the Tribe as a whole have uniquely suffered while the predominantly non-Native property owners transforming Isle de Jean Charles into a sportsman's paradise benefit.

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<sup>326</sup> *Resettlement of Isle de Jean Charles: Background & Overview*, ISLE DE JEAN CHARLES RESETTLEMENT PROGRAM at 4.

<sup>327</sup> See Naquin Declaration ¶ 57; Comardelle Declaration ¶¶ 26-27.

<sup>328</sup> See Jessee, *Tribal Leaders Raise 'Serious Concerns' About Plans to Turn Their Shrinking Louisiana Island Home Into a 'Sportsman's Paradise.'*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> See OCD Alternative Requirement Request Letter.



**B. The transformation of the Tribe’s homeland into a sportsman’s paradise continues a long history of exploiting Tribal lands for private gain.**

As detailed above, the government and private actors have a long legacy of ongoing dispossession of Tribal lands and displacement through violence, exploitation, and legal land grabs.<sup>332</sup> That the depopulated Isle de Jean Charles is now being developed into a sportsman’s paradise – with millions of dollars of governmental assistance after the federal, state, and local governments sacrificed the Isle to flooding and disinvested from public infrastructure like Island Road and Pointe-aux-Chenes Elementary School – is a chilling continuation of this pattern.<sup>333</sup> After a Houma-Terrebonne Regional Planning Commission Meeting on July 15, 2022 where Dupont Corporation proposed a “minor subdivision” on Isle de Jean Charles that would create seven lots for the company to sell to fishing camp owners, Elder Chief Shirell Parfait-Dardar of Jean Charles Choctaw Nation’s sister Tribe Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw reflected, “It was obvious that they wanted the Natives gone before they began trying to improve the land. Our oppression hasn’t ended in over 500 years. At Thursday’s meeting I cried for our people, for our children and grandchildren.”<sup>334</sup>

**REQUEST FOR RELIEF**

HUD funded the Isle de Jean Charles Resettlement Program in part as a learning opportunity for how to implement community relocation as one solution to the growing crisis of climate displacement.<sup>335</sup> While OCD and other stakeholders continue to tout the Resettlement as a model, the Jean Charles Choctaw Nation has experienced the resettlement as a failure that further imperils their vision for a reunified, resilient new life-place for the Tribe. HUD must now intervene to fulfill the promises originally made to the Tribe, and to achieve the goal of learning lessons for future climate relocations so that OCD’s failures are not repeated.

The Jean Charles Choctaw Nation respectfully requests that HUD:

- a. Accept this Complaint for investigation, investigate OCD’s discriminatory actions, and issue a formal Notice of Noncompliance;
- b. Require the State of Louisiana to provide a transparent account of how the Resettlement Program funds have been allocated;
- c. Directly fund the Jean Charles Choctaw Nation’s Tribe-led Resettlement Program, with funds going directly to the Tribe without State involvement. Or, as an alternative, require that OCD reinstate the Tribe as a beneficiary of OCD’s Resettlement Program. If OCD’s beneficiary status is restored, OCD must be

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<sup>332</sup> Jerolleman Declaration ¶¶ 6-9.

<sup>333</sup> See Jessee, *Tribal Leaders Raise ‘Serious Concerns’ About Plans to Turn Their Shrinking Louisiana Island Home Into a ‘Sportsman’s Paradise.’*

<sup>334</sup> *Id.*

<sup>335</sup> See Olga Loginova & Zak Cassel, *Leaving the island: The messy, contentious reality of climate relocation*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 17, 2022), <https://publicintegrity.org/environment/harms-way/leaving-isle-de-jean-charles-climate-relocation/>.

required to include the Tribe as a joint decision maker in all resettlement decisions;

- d. Require that OCD fulfill the original Resettlement Program plan of a Tribe-led relocation of the Jean Charles Choctaw Nation, as described in the State of Louisiana's NDRC grant application which HUD approved. This includes:
  - i. Providing all Tribal members, including members who were forced from the Island prior to 2012, with no-cost housing in the New Isle;
  - ii. Constructing new homes and other New Isle infrastructure with disaster resilience measures and green components that were contained in the original Resettlement Program plan;
  - iii. Building cultural components from the original plan, including the disaster-resilient community center, powwow grounds, gardens, and a locally-owned market;
- e. Require that OCD address affordability challenges for members moving into New Isle properties, including property taxes, insurance rates, and utility costs. Solutions include subsidizing insurance and utility rates and waiving property taxes on New Isle homes owned by Tribal members;
- f. Require that OCD remove restrictions on Tribal members' use of Island properties contained in the Homeowner Assistance Agreement to ensure that the Tribe can continue to steward ancestral homelands;
- g. Require that OCD correct the disaster-resilience insufficiencies of homes already constructed on the New Isle, including drainage issues and poor construction. Provide all homeowners and potential homeowners the opportunity to walk through properties with independent inspectors;
- h. Compel OCD to provide meaningful participation opportunities for Tribal members, in compliance with Title VI of the Civil Rights Act, including by engaging in government-to-government consultation with the Tribe, informing Tribal leadership of all meetings and giving them the opportunity to accompany Tribal members, and designing participation processes that address language, educational, Internet, and geographic access barriers. Require that OCD follow these participation processes in all engagement with Tribes, both in this Resettlement Program and in future interactions.
- i. Consult with communities that have received federal community relocation assistance, including Jean Charles Choctaw Nation, to create a federal framework and executive order for future community relocations. This framework should address lessons learned from the challenges that the Jean Charles Choctaw Nation experienced working with OCD.

j. Refer these matters to the U.S. Department of Justice for further enforcement.

We appreciate your prompt and thorough consideration of this Complaint.

Respectfully submitted,

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Jean Charles Choctaw Nation

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