

## **Rethinking the use of CDBG-MIT funds:**

### **Addressing challenges and avoiding environmental harms**

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#### **I. Introduction**

Puerto Rico is at a crossroads. September 2022 marks the 5-year anniversary of Hurricane María—an event that changed the livelihoods of millions of Puerto Ricans in countless ways. As Puerto Rico struggles through recovery, the availability of billions of dollars in Community Development Block Grants for disaster recovery (CDBG-DR) and mitigation (CDBG-MIT) are increasingly shaping planning and decision-making processes. If used properly, these funds present an opportunity for communities to secure decent housing, adequate and resilient infrastructure for the entire archipelago, economic recovery and development, and advance climate adaptation. If misused, these federal funds might serve to perpetuate existing structures of inequality and uneven development, exacerbating longstanding vulnerabilities and causing new ones.

Professional, advocacy, academic, and community groups from across the archipelago have called upon the Government of Puerto Rico to use federal recovery and mitigation funds to address urgent issues of food and water insecurity, the housing and public infrastructure precarity, the critical power grid conditions, the deteriorating health and education sectors, among many other issues that threaten our social and economic security. Yet projects like the extension of the PR-22 highway included in the CDBG-MIT Action Plan, do not reflect the urgency to address these unmet needs or the need for adequate, inclusive, and equitable planning.

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Although not explicitly stated in the CDBG-MIT Action Plan, two (2) document attachments - the proposed mitigation projects and in the projects from the Governor's Office - include the construction of the extension of the toll highway PR-22 from its intersection with PR-2 in the municipality of Hatillo to its intersection with PR-111 in the municipality of Aguadilla. This has caused great concern among local civic sector groups, particularly because of the government's increasing efforts to bypass local environmental and land use laws.

All CDBG-related funds must be used in programs that meet the criteria of at least one of the program's national objectives: (a) benefit low—and moderate—income persons or households; (b) aid and assist in the prevention or elimination of deteriorating areas, such as slums or blights, and (c) meet an urgent need<sup>2</sup>. Yet to date, leading voices of the Puerto Rican civic sector have consistently raised flags during the CDBG-DR and CDBG-MIT action planning processes, mainly regarding ineffective opportunities for community participation, inequitable allocation of funds, and unjust outcomes resulting from recovery programs that fail to differentiate regional needs and might force the displacement of disadvantaged populations<sup>3</sup>.

As the recent devastating experience with Hurricane Fiona has shown, Puerto Rico is not better prepared to face storms than it was five (5) years ago. Effective environmental planning that optimizes our natural resources would have avoided many of the devastation caused by Fiona with massive flooding, land-slides, and damaged infrastructure. This is the time to address the most urgent needs and to invest in projects that advance resilience and sustainability without leaving those most vulnerable behind. Using CDBG-MIT funds to finance projects like the

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<sup>2</sup> Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 169, 45840 (Aug. 30, 2019).

<sup>3</sup> Torres-Cordero, A. (2020). What Is Possible? Policy Options for Long-term Disaster Recovery in Puerto Rico. *Centro Journal*, 32(3).

extension of the toll highway PR-22 is in stark contrast with Puerto Rico’s urgent needs and the core purpose of the funds, which is to “[i]ncrease resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship by lessening the impact of future disasters.”<sup>4</sup>

## **II. Community Development Block Grant Mitigation (CDBG–MIT) Funds and the CDBG-MIT Action Plan**

Due to the catastrophic damages caused by Hurricanes Irma and María to Puerto Rico, the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115–123, approved February 9, 2018), made available \$28 billion in CDBG–DR funds, and directed the Department of Housing and Urban Development (HUD) to allocate not less than \$12 billion for mitigation activities proportional to the amounts that CDBG–DR grantees received for qualifying disasters in 2015, 2016, and 2017. Accordingly, HUD allocated \$8.285 billion in CDBG–MIT funds to the Commonwealth of Puerto Rico for mitigation activities<sup>5</sup>.

The local agency responsible for the administration of these funds is the Puerto Rico Department of Housing (PRDOH). In compliance with the CDBG-MIT Notice<sup>6</sup>, PRDOH drafted and submitted to HUD the Puerto Rico Mitigation Plan (CDBG-MIT Action Plan), which explained the programs that are intended to be financed with the CDBG-MIT funds. On April 19, 2021, HUD approved said plan.

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<sup>4</sup> HUD (2022). CDBG-MIT Overview. <https://www.hudexchange.info/programs/cdbg-mit/overview/>

<sup>5</sup> Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; Commonwealth of Puerto Rico Allocation, 85 Fed. Reg. 17, 4676 (Jan. 27, 2020).

<sup>6</sup> Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 169, 45840 (Aug. 30, 2019).

After the approval of the CDBG-MIT Action Plan, the civil society realized that this plan included in the proposed mitigation projects and in the projects from the Governor's Office, the construction of the extension of the toll highway PR-22 from its intersection with PR-2 in the municipality of Hatillo to its intersection with PR-111 in the municipality of Aguadilla. Therefore, some community-based organizations, like Ciudadanos del Karso, Inc., sent a letter to HUD expressing their concerns about the negative impacts to the environment and the economy of this project.

On July 19, 2022, PRDOH published the draft of the first substantial amendment of the CDBG-MIT Action Plan to receive public comments on the amendments. The Action Plan still included the mentioned construction of the PR-22 highway extension (PR-22 Project). Yet, according to a letter from the PRDOH in response to Ciudadanos del Karso, Inc. letter to HUD, the local agency is not considering the construction of said highway extension nor building this project with CDBG-MIT funds. PRDOH also explained that the incorporation of the PR-22 Project in the CDBG-MIT Action Plan was to comply with its responsibility of including all proposed projects to receive the public comments about these projects. The local agency finally stated that the inclusion of the highway extension does not represent a commitment to building this project.

### **III. The proposed PR-22 highway extension does not comply with HUD's CDBG-MIT requirements**

Despite PRDOH's expressions about not funding the PR-22 Project, the fact of the matter is that this project continues to be incorporated into the CDBG-MIT Action Plan, and it is very concerning. Not only will the PR-22 Project have a serious negative environmental and

economic impact in the northwest region of Puerto Rico, but it also does not comply with the HUD's CDBG-MIT requirements.

The CDBG-MIT Action Plan First Amendment states the importance of developing a more extensive resilient roadway network and highlights that the PR-22 is one of the resilient expressways in Puerto Rico that serves approximately 70% of the population, but does not give any details about why this particular highway is resilient. It also mentions that the improvements of roadways like PR-22 with CDBG-MIT funds will mitigate risks for the majority of Puerto Rico's population, yet it fails to specify the risks that will be mitigated. Therefore, PRDOH contends that CDBG-MIT funds should prioritize transportation projects that will "build new roadways or enhance the Interstate, Primary and Secondary Roadways of Puerto Rico to ensure an Island-wide interconnected resilient roadway network."<sup>7</sup>

Besides the aforementioned explanation about the PR-22 Project, the CDBG-MIT Action Plan First Amendment states that this project aligns with the economic recovery plan<sup>8</sup>. However, in the CDBG-MIT Action Plan First Amendment attachments are two (2) documents, the list of proposed mitigation projects and the Governor's Office projects, that incorporate the PR-22 Project<sup>9</sup>. In summary, these documents simply state that this project is necessary to solve the vehicle flow conditions between the municipalities of Hatillo and Aguadilla, which is detrimental to the economy and development of the northwest region, and that it will improve the connection between the Metropolitan area and the northwest area.

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<sup>7</sup> CDBG-MIT Action Plan Page 160.

<sup>8</sup> CDBG-MIT Action Plan Page 379.

<sup>9</sup> Attachment D and H of the CDBG-MIT Action Plan.

HUD's requirements for the use and management of CDBG-MIT funds are established in the Federal Register Notice, 84 FR 45838. This notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to CDBG-MIT funds. According to the Federal Register Notice, the CDBG-MIT Action Plan must include all the elements required in the notice. Therefore, PRDOH's CDBG-MIT Action Plan and its substantial amendments must comply with the following requirements:

All CDBG-MIT activities **must**: (1) Meet the definition of mitigation activities above; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas (described below); (3) be CDBG-eligible activities under title I of the Housing and Community Development Act of 1974 (HCDA) or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and Covered Projects. **The action plan must describe how funded activities satisfy these requirements.**<sup>10</sup>

*A. PR-22 Project does not comply with the definition of  
Mitigation Activities*

According to the Federal Register Notice, all mitigation activities are defined as "those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters".<sup>11</sup> The CDBG-MIT Action Plan, particularly PR-22 Project, must meet the aforementioned definition. Nevertheless, this proposed project clearly does not comply with the mitigation activities definition. It does not explain in detail how said project will increase resilience to the affected communities, and how it will eliminate the loss of lives and property of the people, if Puerto Rico suffers any natural disaster in the future.

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<sup>10</sup> Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 169, 45840 (Aug. 30, 2019).

<sup>11</sup> *Id.* at 45840.

### ***B. CDBG-MIT Action Plan does not address Mitigation Needs***

The CDBG-MIT Action Plan must also "include a risk-based Mitigation Needs Assessment that identifies and analyzes all significant current and future disaster risks and provides a substantive basis for the activities proposed. To complete this assessment, grantees must consult with other jurisdictions, the private sector and other government agencies."<sup>12</sup> The PR-22 Project incorporated in the CDBG-MIT Action Plan lacks a risk-based mitigation needs assessment. This action plan does not indicate that there are any current and future disaster risks if the PR-22 Project is not built, nor does it analyze how this project will reduce the risk of losing lives and property of the affected communities. Also, it does not provide any information about consultation with other jurisdictions, private sectors, and other government agencies. Due to the large scale of this project, it is imperative that PRDOH consults with the communities and the municipal governments affected by it.

### ***C. PR-22 Project is not an eligible activity under the law.***

The Federal Register Notice also requires that the CDBG-MIT activities be eligible under Title I of the HCDA<sup>13</sup> or otherwise eligible pursuant to a waiver or alternative requirement<sup>14</sup>. Yet, the PR-22 Project does not fall under any CDBG-eligible activity, and the CDBG-MIT Action Plan does not provide enough information to conclude that said project is eligible for a waiver or alternative requirements.

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<sup>12</sup> *Id.*

<sup>13</sup>State Community Development Block Grant Program, Appendix A: The Housing and Community Development Act of 1974 (HCDA) Eligible Activities for States.  
<https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-State-National-Objectives-Eligible-Activities-Appendix-A.pdf>

<sup>14</sup> Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 169, 45840 (Aug. 30, 2019).

***D. PR-22 Project does not meet CDBG requirements.***

Another requirement that the PR-22 Project of the CDBG-MIT Action Plan must comply with is the national objectives of the CDBG program. These objectives are the following: "(a) Providing benefit to low- and moderate-income persons; (b) preventing or eliminating slum and blighting conditions; or (c) addressing a severe and recently arising urgent community welfare or health need<sup>15</sup>." It is evident that the PR-22 Project fails to comply with these requirements, because it does not provide enough information about the proposed project, and the route for the PR-22 Project considered by local government for over a decade affects negatively low and moderate income communities in the municipalities impacted. Furthermore, it will have an immeasurable impact on the environment, especially in the karst region of Puerto Rico. In addition, the PR-22 Project does not: fulfill the Covered Projects criteria of defining the infrastructure project, show long-term efficiency and fiscal sustainability, demonstrate the benefit of the most impacted and distressed areas, among other criteria.<sup>16</sup>

***E. PR-22 Project fails to comply with environmental public policy and statutes***

The PR-22 Project must meet the local and federal environmental public policy and statutes requisites<sup>17</sup>. Every project must also meet the applicable environmental requirements before any CDBG-MIT funds are committed to the activity, which includes an environmental review<sup>18</sup>. Although the proposed projects list attached to the CDBG-MIT Action Plan states that there are several alternative routes for the PR-22 Project, for over a decade the proposed route for this project is supposed to impact Puerto Rico's karst region. As a result, multiple

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<sup>15</sup>*Id.*, at 45838.

<sup>16</sup> *Id.*, at 45841.

<sup>17</sup> *Id.*, at 45839-45840.

<sup>18</sup> *Id.*, at 45850.



communities and environmental community-based organizations have opposed to this project, since it will displace families and businesses and cause great damage to the karst physiography of Puerto Rico<sup>19</sup>.

Puerto Rico's karst region is protected by Act 292-1999<sup>20</sup>. This law was enacted to “protect, preserve, and manage, for the benefit of present and future generations, the karst physiography of Puerto Rico. It constitutes one of our most valued non-renewable natural resources for its geomorphology and for the special ecosystems that develop in it<sup>21</sup>.” The karst physiography fulfills vital functions for the natural and social survival of Puerto Rico, because it houses a large number of species of flora and fauna, stores vast underground water supplies, possess lands of excellent agricultural capabilities, and contains a vast recreational and tourist potential attributable to its natural qualities<sup>22</sup>. Therefore, any activity, including the PR-22 Project, must comply with Act 292-1999 and its regulation<sup>23</sup> that restrains and prohibits some activities in the karst region.

Due to the lack of information about the PR-22 Project in the CDBG-MIT Action Plan, its failure to meet HUD's requirements, and the importance of the karst region, said project clearly violates Act 292-1999. But also, the PR-22 Project infringes Puerto Rico's public policy

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<sup>19</sup>Prioritario para el gobierno ampliar la PR-22, March 2, 2022

<https://www.periodicovision.com/preocupadosdos-por-donde-pasara-ampliacion-de-la-pr-22/>

Expreso hasta Aguadilla causaría grave daño a la agricultura, March 11, 2022

<https://eyboricua.com/noticias/puerto-rico/expreso-hasta-aguadilla-causara-grave-dano-a-la-agricultura/>

Exigen datos sobre supuestas expropiaciones para construcción de expreso Hatillo a Aguadilla, March 14, 2022,

<https://www.metro.pr/noticias/2022/03/14/exigen-datos-sobre-supuestas-expropiaciones-para-construccion-de-expreso-hatillo-a-aguadilla/>

<sup>20</sup> Act for the Protection and Preservation of Puerto Rico's Karst Region, Act No. 292 of 1999, P.R. LAWS ANN. tit. 12, §§ 1151 *et seqs.*

<sup>21</sup> P.R. LAWS ANN. tit. 12, § 1151n.

<sup>22</sup> P.R. LAWS ANN. tit. 12, § 1151n.

<sup>23</sup> Special Regulation and Plan of the Karst Area, July 4, 2014.

that aims for a sustainable development of the territory<sup>24</sup>. This project not only will have serious effects on the environment, but also it will impact the economy of the municipalities from Hatillo to Aguadilla, displace families and local businesses, affect the agricultural sector, and create other social and economical problems<sup>25</sup>.

#### **IV. Externalities of PR-22 Project**

The PR-22 Project will produce negative externalities across Puerto Rico's northern region, potentially displacing hundreds of families and affecting the local business sector. It will also have a devastating impact to the agricultural region, which has implications for the entire archipelago's food security, or lack thereof. Further, the project will severely harm environmental resources and the vast regulating, provisioning, cultural and recreational ecosystem services it provides, all that in addition to limiting Puerto Rico's potential to increase resilience and sustainability.

##### ***A. Potential displacement of families and businesses***

Preliminary studies have suggested that the PR-22 Project might result in the displacement of approximately 500 families<sup>26</sup>. As research consistently shows, more often than not, those that suffer from displacement have lower incomes and heavily rely on their social capital. This project would potentially break the existing social ties of 500 families and cause greater vulnerabilities. Further, the project will also affect local business, either by direct

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<sup>24</sup> Environmental Public Policy Act, ct. No. 416 of 2004, P.R. LAWS ANN. tit. 12, §§ 8001 *et seqs.*

<sup>25</sup> See Miguel Díaz, *Expreso hasta aguadilla causará grave daño a la agricultura*, Eyboricua (March 1, 2022), <https://eyboricua.com/noticias/puerto-rico/expreso-hasta-aguadilla-causara-grave-dano-a-la-agricultura/>; Exigen datos sobre supuestas expropiaciones para construcción de expreso Hatillo a Aguadilla, Metro (March 14, 2022) <https://www.metro.pr/noticias/2022/03/14/exigen-datos-sobre-supuestas-expropiaciones-para-construccion-de-expreso-hatillo-a-aguadilla/>

<sup>26</sup> See Miguel Díaz, *Expreso hasta aguadilla causará grave daño a la agricultura*, Eyboricua (March 1, 2022), <https://eyboricua.com/noticias/puerto-rico/expreso-hasta-aguadilla-causara-grave-dano-a-la-agricultura/>

displacement, during the construction phase which will take years, or after the construction is done, when commuters bypass the local business corridors and districts. CDBG-MIT funds are meant for the opposite; to benefit low—and moderate—income persons or households, not to displace them.

### ***B. Impact to agriculture and food (in)security***

Another great concern with the PR-22 Project is its negative impact on approximately 4,000 acres of land of high agricultural value in that region<sup>27</sup>. The Hatillo region is known for its dairy and cattle farming, which represents one of the most important agricultural sectors of Puerto Rico. In fact, livestock agriculture represents approximately half of Puerto Rico's total agricultural sales, including milk which is the top agricultural commodity in Puerto Rico ([2018 Census of Agriculture](#)). Any impact on local agriculture makes Puerto Rico more dependent to an already vulnerable food supply chain, further exacerbating food insecurity in the archipelago.

### ***C. Impacts to natural resources and ecosystem services***

As mentioned above, a great concern with the PR-22 Project is its negative impact on the northern karst region of Puerto Rico. The northern karst region contains Puerto Rico's most extensive freshwater aquifer, largest continuous expanse of mature forest, and largest coastal wetland, estuary, and underground cave systems ([USDA Forest Service, 2001](#)). An impact of this magnitude to the northern karst will not only go against Act 292-1999 which specifically protects Puerto Rico's karst physiography, but will severely affect the provisional, regulating, and cultural ecosystem services the region provides.

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<sup>27</sup> *Id.*

## **V. Conclusion**

CDBG-MIT funds represent a unique and significant opportunity for Puerto Rico to use this assistance in areas affected by recent hazards and in areas vulnerable to the present and future impacts of climate change. CDBG-MIT funds must support projects of a varying nature to serve Puerto Rico's most important climate adaptation needs, which are many and range from mitigating urban and coastal flooding, improving water storage and management capacities, relocating critical infrastructure and communities at risk, developing affordable housing for vulnerable populations, protecting our natural and cultural resources, advancing the economic resilience of local small and medium businesses, and many others.

The recent devastating experience with Hurricane Fiona has shown that Puerto Rico is not better prepared to face storms than it was five (5) years ago. This raises questions about how federal funds have been used and managed to date, and if the prospective projects reflect Puerto Rico's real urgent needs. Real preparation requires comprehensive planning for climate adaptation at state, regional, and local levels of government.

As Puerto Rico transitions to a long-term recovery, the availability of billions of dollars in CDBG-DR and CDBG-Mitigation or CDBG-MIT funds are increasingly shaping planning and decision-making processes. Hurricane Fiona reminded us we are not ready to face storms, we have not used funds adequately to mitigate risks, and we have not advanced climate adaptation. This is the time to create spaces and opportunities for meaningful and empowering community engagement, to secure an equitable distribution of funds, to address our most urgent needs, and

to invest in projects that advance resilience and sustainability without leaving those most vulnerable behind. Overall, the goal should be to advance a more just and humane recovery.