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**COMMENTS ON THE *DRAFT PROGRAMMATIC ENVIRONMENTAL ASSESSMENT FOR SITE SELECTION* FOR THE PROPOSED VETERANS AFFAIRS MEDICAL CENTER AND THE LOUISIANA STATE UNIVERSITY ACADEMIC MEDICAL CENTER OF LOUISIANA**

November 14, 2008

Advocates for Environmental Human Rights (“AEHR”) hereby submits comments on the *Draft Programmatic Environmental Assessment for Site Selection* (“Draft PEA”) for the proposed Veterans Affairs Medical Center (“VAMC”) and the Louisiana State University Academic Medical Center of Louisiana (“LSU AMC”).

The Proposed Actions will, in fact, result in adverse impacts on environmental justice communities of concern, as well as disproportionately high and adverse impacts to minority or low-income populations. The perfunctorily described measures offered as mitigation to avoid such impacts are inadequate as a matter of law.

**THE FACTS**

In section 4.4.2.2 the Draft PEA notes that “residents occupying the Tulane/Gravier VAMC and LSU AMC sites, who have been identified as environmental justice communities of concern, would be displaced under the Proposed Actions. This includes approximately 300 persons . . .” The Draft PEA asserts that the “adverse impacts on the displaced residents would be reduced through the use of mitigation measures.” Those mitigation measures consist of:

- provision of replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling;
- provision of “housing of last resort” when comparable decent, safe, and sanitary replacement housing within a displaced person’s financial means cannot be made available; and

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- assisting displaced persons by offering services such as transportation to locate replacement housing, social services or financial referrals, and listings of comparable dwellings.

Based on such mitigation measures, the Draft PEA summarily concludes that “there would be no cumulative adverse impacts on environmental justice communities of concern under the Proposed Actions and no disproportionately high and adverse impacts to minority or low-income populations would be expected.” Draft PEA at 4.4.2.2.

However, the proposed mitigation measures completely ignore the fact that the housing stock in New Orleans is devastated. Pre-Katrina, New Orleans already had an affordable housing shortage. Two-thirds (67%) of extremely low-income households bore housing costs that exceeded 30% of income, considered excessive under federal standards, and more than half (56%) of very low-income households paid more than half their income for housing.<sup>1</sup> Furthermore, according to HUD’s public housing agency plan, the waiting list for public housing was over 8,000 (and that list has been closed since February 2003). In addition, over 16,000 people were on the section 8 waiting list (and that list has been closed since July 2001.)<sup>2</sup>

This housing crisis has erupted into an even greater catastrophe post-Katrina, borne disproportionately by African Americans.<sup>3</sup> Homelessness in New Orleans has doubled since Katrina.<sup>4</sup> The housing stock affected by Katrina is far from being rehabilitated; post-Katrina recovery efforts have done little to rectify the situation. Tens of thousands of people are still in need of housing.

Mitigation which offers assistance in finding replacement housing when such housing does not exist or already has tens of thousands of people waiting for such housing is virtually no mitigation at all. Thus, the assertion that there will be no adverse impacts on the environmental justice communities that will be displaced by the Proposed Actions is factually unsupported and completely without merit.

**Renters.** The current situation for renters remains dire. As a consequence of Hurricane Katrina, 51.34% of renter-occupied homes had major/severe damage.<sup>5</sup> Over half of those lost rental units

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<sup>1</sup> S.J. Popkin, M.A. Turner, and M. Bert, *Rebuilding Affordable Housing in New Orleans: The Challenge of Creating Inclusive Communities*, The Urban Institute (January 2006), available at [http://www.urban.org/UploadedPDF/900914\\_affordable\\_housing.pdf](http://www.urban.org/UploadedPDF/900914_affordable_housing.pdf).

<sup>2</sup> FY 2004 Annual Plan, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.

<sup>3</sup> Tracie L. Washington et al., Nat’l Ass’n for the Advancement of Colored People, *Housing in New Orleans: One Year After Katrina* at 3 (2006), available at [http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/Housing\\_in\\_NOLA.pdf](http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/Housing_in_NOLA.pdf).

<sup>4</sup> Shaila Dewan, *With Resources Scarce, Homelessness Persists in New Orleans*, N.Y. Times at A14 (May 28, 2008).

<sup>5</sup> Louisiana Housing Finance Agency, available at <http://webapps5.lhfa.state.la.us/website/HurricaneAffected.aspx?report=1&parishFIPS=071&chkPopulation=0&chkHurricaneDamage=1>

were affordable to those making less than 80% of the area median income.<sup>6</sup> Just 15 percent of CDBG funding after Katrina was allocated for rebuilding affordable housing/rental units, and no funds were directly targeted to renters.<sup>7</sup> Although the Road Home program, established for owner-occupied homes affected by Katrina, includes a program called the Small Rental Property Program to "provide incentives to property owners to repair their storm damaged, small-scale rental properties," this program has not yielded significant numbers of affordable rentals units.<sup>8</sup>

Just over 1 in 3 affordable damaged rental units in New Orleans will receive recovery assistance, leaving displaced renters critically vulnerable.<sup>9</sup> Of the approximately 24,600 rental homes projected to receive assistance, only 11 % (2,600) are open for occupancy.<sup>10</sup>

The financial vulnerability of small rental property owners, combined with tightening national credit markets, has stalled the small rental repair program.<sup>11</sup> Meant to restore over 10,000 rental homes in damaged neighborhoods, only 82 had been completed and occupied under the program as of August 2008.<sup>12</sup>

The national economic downturn means fewer investors in Low Income Housing Tax Credits, jeopardizing the financing for many of the planned units of multi-family rental housing in New Orleans.<sup>13</sup>

The impending March 2009 end to the Disaster Housing Assistance Program threatens to displace 14,000 residents in the New Orleans metropolitan area who are receiving rental assistance even though affordable housing units are not yet ready for occupancy.<sup>14</sup>

**Homeowners.** The current situation for homeowners in New Orleans is also far from ideal. As a consequence of Hurricane Katrina, in Orleans Parish, 61.05% of all owner occupied homes had

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<sup>6</sup> Annie Clark & Kalima Rose, PolicyLink, *Bringing Louisiana Renters Home* at 9 (2007), available at <http://www.policylink.org/documents/LRHC.pdf>.

<sup>7</sup> Policylink, *Hope Needs Help, Issue Brief: Building a Better New Orleans* at 5 (2007), available at <http://www.policylink.org/HopeNeedsHelp/HopeNeedsHelp.pdf>.

<sup>8</sup> Road Home, *Small Rental Property Owners*, available at <http://road2la.org/rental/default.htm> (last visited Oct. 31, 2008).

<sup>9</sup> PolicyLink, *Bringing Louisiana Renters Home*, *supra* n. 4 at 6.

<sup>10</sup> *Id.*

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

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

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

<sup>14</sup> *Id.*

major/severe damage. Federal funding under the Road Home program for home rebuilding has not met actual rebuilding costs. Over 80% of Road Home recipients rebuilding in place in New Orleans had insufficient resources to cover their damages.<sup>15</sup> On average, homeowners received approximately \$50,000 less than needed to actually rebuild from this program.<sup>16</sup> This shortfall hit highly flooded, historically African American communities particularly hard.<sup>17</sup>

Homeowners continue to face changing rules and arbitrary practices, including long payment delays, reduced grant awards at the time of closing, and deadlines for owners of family property trying to resolve legal title.<sup>18</sup>

Few financing options exist for families facing resource gaps: three years of owing mortgages on uninhabitable property and the resulting additional living expenses have left many households not credit worthy to secure private financing to finish their homes.<sup>19</sup>

### THE LAW

The discussion of mitigation measures in section 4.4.2.2 of the Draft PEA is woefully inadequate as a matter of law. The regulations of the Council on Environmental Quality require a discussion of mitigation measures in environmental assessment documents.<sup>20</sup> Mitigation must be discussed in sufficient detail to ensure that the environmental consequences have been fully evaluated.<sup>21</sup> A conclusory or perfunctory description of mitigation measures, as presented in the Draft PEA, is not acceptable.<sup>22</sup> Without a “reasonably complete discussion” of mitigation measures, neither the agency nor other interested groups or individuals can properly evaluate the severity of the adverse effects of the proposed action.<sup>23</sup> “There must be enough definition to allow for a

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<sup>15</sup> PolicyLink, *Bringing Louisiana Renters Home*, *supra* n. 4 at 7.

<sup>16</sup> Kalima Rose, Annie Clark & Dominique Duval-Diop, PolicyLink, *A Long Way Home: The State of Housing Recovery in Louisiana* at 47 (2008), available at <http://www.policylink.org/threeyearslater/equityatlas.pdf>.

<sup>17</sup> PolicyLink, *Bringing Louisiana Renters Home*, *supra* n. 4 at 7.

<sup>18</sup> *Id.*

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

<sup>20</sup> 40 C.F.R. sections 1502.14(f), 1502.16(h).

<sup>21</sup> *Laguna Greenbelt, Inc. v. United States Dep't of Transp.*, 42 F.3d 517 (9<sup>th</sup> Cir. 1994).

<sup>22</sup> *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372 (9<sup>th</sup> Cir. 1998).

<sup>23</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

meaningful review and evaluation of the plan to ensure that it would be successful.”<sup>24</sup> A mere listing of mitigation measures is not legally sufficient.<sup>25</sup>

The discussion of mitigation measures in the Draft PEA fails on all counts. It is conclusory and perfunctory. There is no “reasonably complete discussion” of how the proposed measures would, in fact, offer any mitigation given the current housing crisis in New Orleans. There is absolutely no reference to this crisis, much less a reasonably complete discussion of how the perfunctorily described mitigation measures could possibly lead to successful mitigation in light of the current catastrophic housing deficiency in New Orleans.

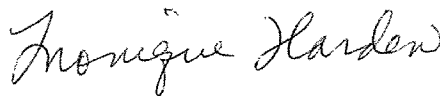
Even assuming *arguendo* that those displaced by the Proposed Actions were able to find homes to purchase or rent, in the post-Katrina market such housing will inevitably be more expensive. However, in that event the proposed mitigation measures indicate only that “replacement housing payments” will be made available for such increased costs. There is no calculation or discussion of what those increased costs are likely to be, nor is there any indication that adequate funds will be set aside for such payments. Accordingly, the discussion of mitigation measures in the Draft PEA is fatally flawed in that there is no factual basis for concluding that the mitigation would be successful.

Furthermore, in the event that comparable replacement housing cannot be found, which is highly likely given the current housing crisis, the mitigation that is offered is “housing of last resort” which is not defined at all in the Draft PEA, yet another example of a critical detail which is entirely missing. In addition, in and of itself, “housing of last resort” hardly sounds appealing, and certainly doesn’t seem to constitute adequate “mitigation.”

In short, the discussion of mitigation measures is woefully inadequate as a matter of law, and the conclusion that there will be “no cumulative adverse impacts on environmental justice communities of concern under the Proposed Actions and no disproportionately high and adverse impacts to minority or low-income populations”<sup>26</sup> is arbitrary and capricious and runs entirely counter to all of the evidence pertaining to the lack of available and affordable housing in New Orleans.



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<sup>24</sup> *Sierra Club v. Flowers*, 423 F. Supp. 2d 1273, 1324 (S.D. Fla. 2006).

<sup>25</sup> *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. Forsgren*, 309 F.3d 1181 (9<sup>th</sup> Cir. 2002).

<sup>26</sup> Draft PEA at 4.4.2.2.

[REDACTED]

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**From:** Mac Ball [REDACTED]  
**Sent:** Monday, November 17, 2008 12:03 PM  
**To:** Peake, James; james.hutter@va.gov  
**Cc:** Sandra Stokes  
**Subject:** Charity Hospital

Dear Sirs:

I have been working as a local architectural consultant to The Foundation for Historical Louisiana and RMJM Hillier, the architectural team that has assessed the feasibility of renovating Charity Hospital as an alternative to demolishing a large tract of the historic downtown area and building a new hospital. The recent study has found that the one million square foot Art Deco landmark structure is sound and an excellent candidate for adaptive reuse to a state of the art medical center.

I urge you to consider holding all decisions on the new VA Hospital site until the new administration is in place and until the issue of renovation vs. new construction is fully vetted. It is clear that LSU does not have sufficient funds for the new complex and, given the economic climate, they are falling further and further behind on this. Placement of the new VA Hospital at the preferred site downtown could mean that the VA will be moored far from the center of medical activity and from the synergy everyone is looking for.

The state of the art restoration of Charity is less expensive and faster than building new. If Charity is chosen as an alternative to what is being put forth, the VA would be better off building on the current LSU site than many blocks away. This issue is critical for New Orleans' recovery and needs further consideration. Again, I ask respectfully that you hold your judgment until the new administration is in place and can give this further thought and research. Thank you for your time.

Sincerely,

Mac Ball  
**Waggoner & Ball Architects**  
New Orleans, LA  
[REDACTED]

