

A New Orleans jazz funeral starts with a solemn march and sad notes from musicians who accompany mourners and the deceased to the cemetery. All is still when the procession reaches the grave for the sermon which often warns of the devil and urges the mourners to be true to their hearts, not to their wallets. As the sermon ends, but before anyone can say, "Amen," the group of mourners stirs. Jazz lives! The band stops crying, starts laughing and struts back to town on the happy beat of "Oh, But on the Third Day!" [From a Review of Wynton Marsalis, "Majesty of the Blues"]

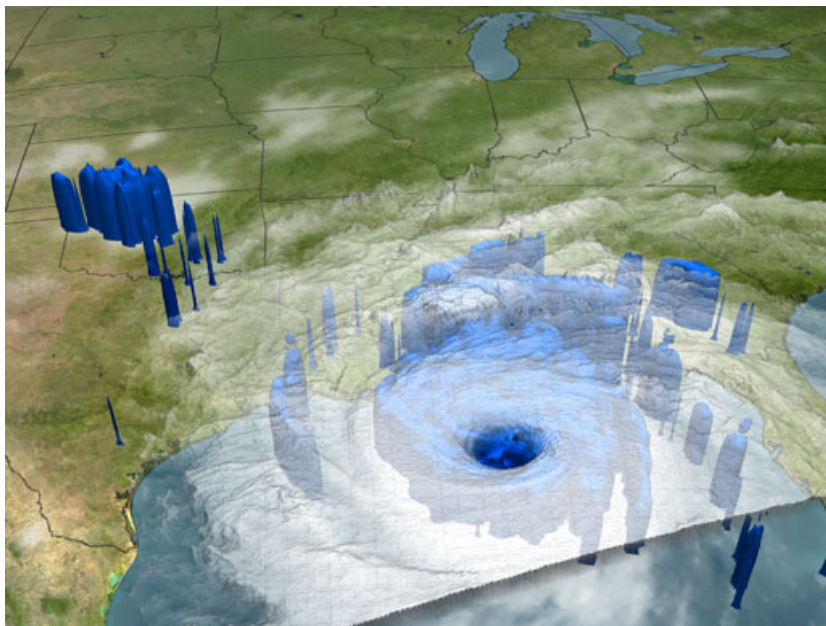
"History does not repeat itself, but it rhymes." (Mark Twain)

The Challenges of Sudden Natural Disasters for Land Administration and Management: The Case of the Hurricane Katrina in New Orleans

Prepared from contributions by

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11 April, 2008



This is an image of Hurricane Katrina on Sunday, August 28, 2005 at 10:25 PM EDT as seen by the Tropical Rainfall Measuring Mission ([TRMM](http://trmm.gsfc.nasa.gov/)) satellite's Precipitation Radar, which looks underneath of the storm's clouds to reveal the underlying rain structure.

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Prologue:

This report concerns how people and institutions dealt with land issues which emerged after the hurricanes Katrina/Rita hit the greater New Orleans area in 2005. It is one of seven case studies stimulated by the UN-Habitat on the impacts of sudden natural disasters on land issues in seven different countries:

	Country	Region	Type of Disaster	Year
1	Pakistan	South Asia	Earthquake	2005
2	Gujarat, India	South Asia	Earthquake	2001
3	Indonesia	Asia-Pacific	Tsunami	2004
4	Honduras	LAC	Hurricane Mitch	1998
5	Grenada	LAC	Hurricane Ivan	2004
6	Mozambique	Africa	Recurrent Floods	2001, etc
7	New Orleans, USA	North America	Hurricane Katrina	2005

There is a large literature on the impacts of Hurricanes Katrina/Rita on the Gulf Coast of the U.S. Within this body of literature, we focus this case study on the impacts of Katrina/Rita on land issues in greater New Orleans.

Luckily Katherine Davey, Joe Thome and I had worked together at the University of Wisconsin's Land Tenure Center, and when I told them I was going to do this study, they introduced me to Richard Campanella of Tulane University and John Lovett of Loyola University in New Orleans. I subsequently learned of the work on land and property issues post Katrina by David Marcello, Bill Quigley, Amy Koritz, James Perry, Nathalie Walker, Monique Hardin, Paul Tuttle, Keith Twitchell, Annie Clark, Kali Akuno, Ommeed Sathe, and Davida Finger. Diane Yentel of the National Low Income Housing Coalition, Amy Liu and Allison Plyer of the Brookings Institution, and Lucinda Flowers of UNITY of Greater New Orleans introduced me to several of these and to other insightful people and provided a number of key publications.

The contributions to this study by Davida Finger, John Lovett, and David Marcello are drawn from lengthier treatments of the same and related subject matters in their articles for the just published Loyola Law Review symposium issue on post-Katrina and post-Rita impacts¹.

To benefit from the substantial work already done on land issues post Katrina in New Orleans by these people, we invited them to contribute to the case study. We started their involvement by discussing the conceptual paper, "A Strategy for Addressing Property Rights Issues" contained in the Tools Annex to structure the main themes of the case study. We adapted the definition of the term "land" in the New Orleans urban and peri-urban context to include parcels and permanent constructions subject to rules about access to and use of this real (or immovable) property. That conceptual paper also helped break the theme of the case study into four smaller pieces about the impacts of the Katrina/Rita disaster: 1) on security of land tenure ownership and subsidiary rights; 2) on the access to land by disadvantaged sectors

¹ 53 Loyola Law Review 719 (2008)

of the population; 3) on the availability of land to future generation; and 4) on the legal and institutional framework for the administration of property rights in land.

During the period November 25-December 12, 2007, this New Orleans group met in various venues and discussed the objectives of the seven case studies concerning land and natural disasters, and how different people viewed the impacts of Katrina/Rita on land issues in New Orleans. We prepared an outline of the case study and began to work.

I undertook to do the study myself of land records administration as an aspect of tenure security, but others took on the other major pieces of the case study identified in the outline. Everyone made time in their busy schedules to produce their analyses by January 22, 2008.

We agreed that in the time allowed for this study, we could not do an adequate job on the land use sustainability theme, which is vital to the survival of New Orleans. Urban expansion and oil extraction have reduced the area and health of wetlands over many decades. Katrina itself destroyed significant wetlands bordering the city. Storm surges are more violent today and will be more damaging in the future due to the dramatic loss of wetlands which in the past have in some measure help protect the city from storms coming from the Gulf. Through the work of Richard Campanella we introduce this theme in this case study, but do not do it justice.

A second major environmental effect of Katrina which we do not cover well was the mountains of debris produced from the destruction of housing, businesses and other infrastructure. That debris had to be moved and deposited in land fills, which now contain potentially toxic substances waiting to poison future generations of people, plants, and animals.

These environmental topics should be explored in greater detail in a separate study.

We also have not been able to do an adequate job exploring the topic of civic engagement in land issues. Several aspects of this topic should be explored in greater detail than is done in this report, including: (1) an analysis of the dynamics of the explosion of different forms of that engagement, (2) studies of particular neighborhoods and how they have organized to deal with post Katrina to understand why some responded energetically while others have languished, and (3) a study of the role of the Times-Picayune in informing and shaping civic engagement in land issues in New Orleans.

Our case study deals with the effects of a tremendous hurricane on land and property in a well established city, port facility and cultural center in the United States. The effects of the hurricanes of 2005 covered a much wider area than the metropolitan area of New Orleans, but we tried to focus our case study on the city of New Orleans, within the Gulf region, within the State of Louisiana, and within the federal governmental structure of the United States.

While doing this case study, we decided to prepare materials which would also be of use in Louisiana, and in particular in New Orleans, to help prepare for the next big storm, as well as being useful for comparing with the other six case studies in other parts of the world. We wanted to assemble and produce written materials which can be used for workshops, courses and discussions about how the people of New Orleans have responded to the challenges of Katrina and about how they could better deal with land issues after future disasters.

We also have discussed the idea of creating a network of people and institutions in New Orleans for helping to deal with the impacts of future hurricanes on the Gulf Coast by building on the group of people who contributed to this study and who are specialists in different land issues. Such people could affiliate with the network, perhaps in the form of a think tank, to provide time and resources for them to reflect on their work. Such an institution would also

help assemble key people in the event of a future disaster like that of Katrina/Rita to seek solutions more rapidly and which would be better informed from previous experiences and analyses of those experiences.

Finally, while the resources which have been mobilized within the U.S. to deal with the land issues exposed by the Katrina/Rita disaster may exceed those mobilized to deal with disasters in other places, we are convinced that the lessons learned in New Orleans about how to deal with these issues are relevant to dealing with land issues faced by other people in other places and times. We also think that we can provide some historical “rhymes” for future disaster recoveries in greater New Orleans through this case study.

I edited the individual analyses and tried to weave them into a single manuscript. This editing may have produced errors of fact or interpretation, which are my responsibility. Statements, representations and opinions expressed or implied in this report are not necessarily those of the UN-Habitat nor of organizations employing the respective contributors to the report. Neither can I say that all of the contributors agree with all of what we have put into the report.

David Stanfield, January, 2008

Executive Summary

Storm surges resulting from a Category 3 hurricane, Katrina, flooded, damaged and destroyed thousands of homes and businesses in the city of New Orleans, as well as throughout the Gulf Coast. This case study focuses on how the people of New Orleans dealt with land issues produced by this catastrophic event.

By the term “land issues” we mean the challenges for finding emergency housing for displaced families in the days and weeks immediately after the storm. We also mean the debates around devising appropriate programs for rebuilding the city over the longer term.

Both the emergency and the restoration phases of New Orleans, State and Federal responses to the Katrina disaster uncovered racial, class and gender divisions over access to shelter and employment. The flooding and wind damages produced from the storms in New Orleans affected nearly all neighborhoods, but the poorer and blacker neighborhoods of the city, in particular the Ninth Ward, suffered disproportionately heavy damage and population displacement.

Particularly troubling been the treatment of renters of private housing who faced a much reduced supply of affordable housing even two years after the storm. Equally troubling has been the treatment afforded to the residents of public housing, mostly poor and black, female headed households, who were displaced from their homes followed by the demolition of these buildings without provision of adequate housing alternatives.

The disaster also exposed the risks of urban development in a very sensitive environment made even more vulnerable due to the gradual destruction of wetlands which had protected the city in its early days of existence. The history of the development of peri-urban lands particularly during the post war period, saw the expansion of housing developments into areas potentially exposed to flooding from storm surges, while other built up areas subsided as pumping of subsurface water out of the urban areas produced gradual sinking of those areas. When Katrina hit, the flooding damages were much greater than they would have been without these developments.

Katrina also exposed strains in the legal and administrative structure for dealing with landlord tenant relations whose agreements proved subject to cancellations and conflicts. Successions and inheritances also proved to be problematic after Katrina, particularly for poorer families who had avoided the costs and complexities of the legal requirements for handling the estates of deceased family members, leaving the present occupants of properties without legally valid documentation of their rights.

The administration of property records which has long been criticized as being expensive, inefficient, and difficult for the public to access, after Katrina was addressed by the legislature for some limited but significant reforms. Archiving also was improved by removing the bound acts from basement facilities and placed in more secure environments.

The underlying political disaster exposed by an extensive natural disaster has been the growing awareness of the fundamental flaws in the public policies advocated by certain socio/economic groups for the privatization of public services and for the reliance on market mechanisms for the allocation of resources in all instances. This political model has proven woefully inadequate for dealing with the serious challenges which Katrina has presented. The Road Home program designed to assist the owners of damaged properties to either repair their properties or transfer them to the city for re-development, proved very poorly designed and disastrously implemented through a private firm—ICF. But even if that program had been well designed and implemented, the assumption that homeowners individually, through their market transactions using Road Home grants, would quickly and efficiently rebuild their homes and businesses proved unrealistic. Markets in labor, capital and materials simply have not responded adequately, and the lack of city plans about where and how to rebuild added to the spectacular market failures.

For renters, the responses in terms of recovering their housing have been mostly inadequate. Programs to encourage large and small scale developers to rebuild affordable rental housing have failed to produce anywhere near the needed rental housing.

This situation is made even more problematic by the ending of the federal program for emergency housing in trailers, and by the cost and other weakness in the trailer option, such as the discovery of formaldehyde contamination. Poorer families displaced from their housing by the storm, either from homes they owned or rented, and housed in trailers on an emergency basis, in a context of high costs of rebuilding and renting, are being squeezed out of the city into an unknown fate.

Years of neglect of the public infrastructure combined with the failures of the political model for market based recovery and with the inefficiencies of the private design and management of recovery programs to produce great public dissatisfaction over how the emergency and restoration phases have been handled.

Federal programs for dealing with massive disasters have proven inadequate, leading to calls for the reform of federal legislation and the reformulation particularly of housing programs to handle the unsatisfied needs of large numbers of displaced families.

At the local level, the public frustration with local, state and federal disaster response programs has led to the search for a third path: community led planning for and implementation of emergency responses and restoration programs. Community energies and creativeness have been the bright spots in the gradual restoration of New Orleans, including the public spaces vital for the cultural foundations of that city.

The future of New Orleans will depend on how well a new model for citizen-government relations functions, and on how successful that model is in dealing with the racial, class and gender divisions which have long afflicted that great city, and whether the balance of ecological forces can be re-established to allow for a modern port city to function safely.

The case study is organized in the following way. The first sections describe briefly the social, economic and environmental status of the city prior to the storm. The following

sections describe the storm and its effects on the people of New Orleans. How the city, state and federal government were constructed and the influence of the Norquist doctrine on public policies for dealing with a major natural disaster are then analyzed.

Sections then describe and analyze the emergency and restoration programs which have been launched, particularly those affecting home owners, renters, users of public spaces, and public housing occupants.

The legal and administrative framework for dealing with land and property relations is also analyzed. This framework was strained by the storm, leading to certain reforms or the need for reforms, some of which have not yet been completed.

The study ends its empirical and analytical discussions with a presentation of community participatory planning and implementation of recovery programs, including a comparison of the New Orleans experiences with this option with those of rural communities affected by the Indian Ocean tsunami.

To facilitate moving the analytical conclusions of the study into action, we develop two final sections of the report:

- (1) Recommendations for getting better prepared for the next big storm in New Orleans which also serve as guidelines for the dealing with such a disaster, which can be compared with similar guidelines produced in the other six experiences with sudden natural disasters
- (2) Tools developed in the post Katrina context which are practical methods to achieve defined objectives for dealing effectively with land issues. We present some of the tools developed in the “Tools Annex”.

1. Introduction

Sudden natural disasters such as droughts, floods, hurricanes, windstorms, earthquakes and volcanic eruptions can seriously affect human societies. On our planet there have been 6,367 such destructive natural disasters between 1974 and 2003, with disturbing impacts on human populations: over 2 million deaths (75% of which occurred in Asia alone); 5.1 billion people affected; 182 million homeless; and damages estimated at USD 1.38 trillion.²

The UN-Habitat has launched seven detailed country studies documenting how land issues were addressed following a sudden natural disaster.

The implications of the Katrina hurricane of August, 2005 for land issues in the city of New Orleans in the state of Louisiana, USA, is the subject of this document. The goal of the study is to contribute to developing a set of clear, simple guidelines for future addressing of land issues in the aftermath of sudden natural disasters. The guidelines will be supported by a toolkit of proven tools and methodologies to support implementation in the field. Ultimately, the guidelines and toolkit will be endorsed by the main UN Agencies involved with land, tenure and property issues following sudden natural disasters.

Sudden natural disasters typically affect people's relations to immovable properties—their "tenure"—in various ways:

- 1) Displacement of people from their places of residence and work;
- 2) Damage or destruction of their homes and work places;
- 2) Destruction or damaging of documents and customs which help protect the rights of people to lands and buildings;
- 3) Severe disruption of fragile environments which contribute to the sustainable uses of land resources;
- 4) Destruction or damaging of properties used for public services which require collective coordination of many people and groups. Schools, clinics, parks and recreation areas, sewage treatment, networks of electricity generation, gas and electric distribution, potable water treatment and distribution experience severe strains.
- 5) Disruption of routine procedures of land administration of local agencies, such as recording of property rights documentation, land use planning, land taxation, property records management, and mortgage based lending. Land administration agency staff are typically displaced and procedures are altered or unable to be followed; important leadership may be physically lacking for many crucial days or weeks.

These effects occur in the context of the place affected by the sudden natural disaster—a place whose physical characteristics make it more or less vulnerable to the onslaught of the disaster and whose social and political structure conditions the differential effects as well as the abilities of people to recover from the physical effects of the disaster.

Disasters typically do not strike countries they strike places – regions, neighborhoods, communities. This seemingly obvious distinction has three implications for

² Guha-Sapir, Hargitt and Hoyois (2004) Thirty Years of Natural Disasters: The Numbers, CRED, Presses Universitaires de Louvain, p. 14

intergovernmental relations and the governmental policies that will shape the recovery³. First, the physical geography of disasters rarely matches the legal boundaries that divide space. While Hurricane Katrina is widely perceived as a New Orleans disaster, this is legally speaking incorrect. Katrina wrought severe devastation in multiple parishes, including Orleans, St. Tammany, Jefferson, and multiple states – with some of the most severe damage inflicted all across the Gulf Coast of Mississippi. This means that disaster relief will be crucially shaped by the personal relations among different political players, the respective devolution among various levels of government, and the relationship between the federal government actors and those at state and local levels. A second implication, with rare exceptions, is that the geographic impact of any disaster will usually represent only a small portion of the overall landmass of a nation, state or other similar political subdivision. In a representative form of government, this will naturally create tension between the majority of unaffected citizens and those most acutely affected. A third and more subtle implication is that the ideologies and perception of government – at state, local and federal levels - will influence the approach to recovery, with little regard to the unique physical challenges that certain places face.

These themes are explored in the remainder of this case study of the Katrina hurricane disaster and how New Orleans has dealt with land issues which emerged in its aftermath.

1.1 Geographic and Social Topography of the City of New Orleans⁴

The vast majority of New Orleanians in the late nineteenth century remained inhabitants of the higher natural levees along the course of the Mississippi River. Lower-lying swamps and marshlands bordering these levees and close to Lake Pontchartrain remained mostly undeveloped because of their high soil-moisture content, flood potential, and open communication with adjacent water bodies during times of high water. So close was the relationship between elevation and urban development that city maps of New Orleans in the late 19th century can double for topographic maps.⁵

This relationship changed as engineering technology advanced and government policy changed. The federalization of Mississippi River flood control (1879) and the role of the U.S. Army Corps of Engineers (USACE) in levee construction and other forms of flood control along the length of the river, new levee construction along Lake Pontchartrain, and municipal improvements during the Progressive Era (1890s-1920s) diminished the perceived risk of river and lake flooding while ameliorating public-health conditions regarding potable water, drainage, and sewerage. A sophisticated municipal drainage system, designed and installed during 1893-1915, removed standing water from the backswamp and allowed for urban expansion toward Lake Pontchartrain. To prevent storm surges from entering these new lakeside suburbs, 2000 new acres of manmade land, averaging 1.5 to 2 meters above lake level, were created along the lakeshore during 1926-1934. Modern suburbs, such as

³ These notions come from the paper by Ommeed Sathe, 2008, for this case study.

⁴ The section is based on Richard Campanella, “Land-Use Planning in Post-Katrina New Orleans: Geographical Context, Challenges, and Decisions”, 2008, manuscript for the Case Study. Most articles cited in Section 1.2 and Section 4 are available through Lexis-Nexis, www.jstor.org, <http://scholar.google.com>, ScienceDirect, and other online sources.

⁵ Richard Campanella, *Geographies of New Orleans: Urban Fabrics Before the Storm* (Lafayette, Louisiana: Center for Louisiana Studies, 2006), and *Time and Place in New Orleans: Past Geographies in the Present Day* (Gretna, Louisiana: Pelican Publishing Company, 2002).

Broadmoor, Navarre, Lakeview, and Gentilly, arose during the early 20th century, many of them with racist deed covenants explicitly excluding black renters or owners. New Orleans expanded dramatically toward Lake Pontchartrain between the world wars, confident that flood control and drainage technology had neutralized the hydrological and topographical threats of the previous century. “The entire institutional structure of the city was complicit” in the ensuing urbanization of the lowlands, wrote local historian John Magill; “developers promoted expansion, newspapers heralded it, the City Planning Commission encouraged it, the city built streetcars to service it, [and] the banks and insurance companies underwrote the financing.”⁶

The perception of safety ignored the fact that new navigation canals (such as the circa-1920 Industrial Canal, the circa-1930s Intracoastal Waterway, and circa-1960 Mississippi-River Gulf Outlet Canal) and outfall canals (dug for drainage during the 1870s to 1910s) scored and scarred the delicate deltaic soils, dangerously inviting gulf waters into the heart of the levee-ringed metropolis.

The false sense of security also ignored the fact that levee-protected New Orleans had subsided substantially. River-deposited sediments occupy a volume bloated by water content; when drained, the soil volume contracts, particles settle under their own weight and fill in air pockets, and organic matter disintegrates, vacating more space for compaction. Crustal sinking, tectonic activity, and overburden (buildings, roads, vegetation) also play roles in soil subsidence. A natural process in a deltaic plain, subsidence is normally counterbalanced by incoming sediment-laden floodwaters. But the same levees that spared New Orleanians the annual problem of river floods also starved it of the accompanying sediments needed to keep the delta in equilibrium. As a result, former marshes sunk as much as 3-4 meters. Land that once sloped gradually from as high as 3-5 meters to the level of the sea in 1700 formed, by 2000, a series of topographic bowls *straddling* the level of the sea, half above, half below.⁷

Additionally, the perception of safety failed to account for the fact that coastal Louisiana had lost over 4000 square kilometers of marsh since the 1930s, a pace of about 60-90 square miles per year. Five interrelated reasons explain why. First and foremost, the leveeing of the Mississippi and other natural waterways has deprived the marshes of replenishing flood-borne sediments. Second, an extensive network of navigation and oil and gas channels servicing the rapidly expanding network of oil and gas wells formed extensive marsh/water interfaces and thus more opportunities for erosion. Third, existing soils drained of their water content are subsiding under their own weight. Fourth, ocean waters are gradually rising. Finally, the dying of coastal saltwater-marsh grasses (“brown marsh”), destroyed by invasive nutria, salinity, or droughts, renders the dwindling land surface even more delicate. Coastal erosion makes New Orleans more vulnerable to hurricanes because every 4.3 horizontal kilometers of wetland loss allows about 30 additional vertical centimeters of seawater to surge inland. Some researchers put the ratio at 1.6 kilometers to 30 centimeters.

When Hurricane Betsy struck the New Orleans region in September 1965, navigation canals and urbanization of low-lying areas contributed substantially to flood damage in the Ninth Ward and parts of Gentilly and New Orleans East. State-wide, Betsy killed 81 Louisianans, injured 17,600, and caused \$372 million in damage, about one-third of which were in New

⁶ John Magill, “A Conspiracy of Complicity.” *Louisiana Cultural Vistas* 17, No.3 (Fall 2006), 43.

⁷ Richard Campanella, *Geographies of New Orleans: Urban Fabrics Before the Storm* (Lafayette, Louisiana: Center for Louisiana Studies, 2006), and *Time and Place in New Orleans: Past Geographies in the Present Day* (Gretna, Louisiana: Pelican Publishing Company, 2002).

Orleans. The storm prompted Congress to authorize the Flood Control Act of 1965, which included the Lake Pontchartrain and Vicinity Hurricane Protection Project. This effort entailed the raising and construction of hurricane-protection levees, flood walls, and gates (to what is now categorized as a Category-3 level storm) to protect developed areas as well as adjacent marshes. The envisioned new flood protection, never fully executed, increased real estate values and attracted developers. During the oil-boom years that followed, over 75,000 homes were built in places such as New Orleans East, most of them on concrete slabs at grade level rather than raised on brick piers (as is traditional to Gulf Coast architecture). The episode demonstrated the so-called “levee effect” first identified by geographer Gilbert White in 1945: flood-control structures paradoxically *increase* flood damages, by luring homebuyers into flood plains.⁸ Hurricane Katrina illustrated White’s observation forty years after Hurricane Betsy.

1. 2 New Orleans Before the Storm

Pre-Katrina New Orleans had developed into an economic and cultural jewel of the United States. Economically, Louisiana is one of the top producers of crude oil in the U.S. (generating 27 percent of U.S. supply) and of that, the New Orleans region contains 42.5 percent of the state’s refining capacity. The New Orleans area also has four deepwater ports connected to a system of railroads, highways, and inter-coastal waterways. This network of logistics fosters one of the busiest ports in the country, both receiving and moving goods to other parts of the U.S. and, in turn, shipping exports around the globe. The city’s historic architecture and European streetscape, as well as its music, arts, festivals, and culinary attractions make for a popular tourist and convention destination.

The ethnic, racial, and cultural diversity of New Orleans is also unique among American cities, and represents an essential part of its identity and heritage.

Finally, Louisianans and New Orleanians in particular are incredibly committed and loyal to their community and state, having built strong ties and deep roots. In 2000, 80 percent of Louisianans were born and raised in the state, the highest nativity rate in the country⁹.

At the same time, New Orleans has been plagued with highly concentrated poverty and race and class divisions.

In 2000, the New Orleans region was the sixth poorest among the 100 largest U.S. metropolitan areas, with 18 percent of its population living in poverty. Additionally, the city ranked second among the 50 largest cities in its level of concentrated poverty: 38 percent of the city’s low-income residents—or 50,000 poor persons—in 2000 lived in neighborhoods where 40 percent or more of the residents were poor.

In these 47 high-poverty neighborhoods, the average household income was just half that of the rest of the city, the share of single parent households was high, and the education levels were low.

⁸ Gilbert Fowler White. *Human Adjustment to Floods*. (Ph.D. dissertation, University of Chicago, 1942, published 1945), 2

⁹ Data for this and the following two paragraphs come from Amy Liu, (August, 2006), “Building a Better New Orleans: A Review of and Plan for Progress One Year after Hurricane Katrina. Brookings Institution, p. 4

Families living in these neighborhoods are often cut off from jobs, market investment, and grocery stores. Residents are often exposed to high levels of crime, and they experience high levels of stress and anxiety. Low-income students are often clustered in poor-performing schools. And the city and taxpayers bear the burden of the costs of such neighborhoods, often paying for related police and other services from a weakened tax base¹⁰.

Pre-Katrina New Orleans was afflicted by racial tensions. In 2000, the vast majority of African Americans in the city (82 percent) lived in all-black neighborhoods, a stark contrast to the racially-integrated days of New Orleans in the 1960s. The median household income for African Americans was just \$21,461, less than half that of whites. Only 13 percent of black adults possessed a college degree, while 48 percent of whites did. This racial and economic gap persists in home-ownership as well, with 15 percent more whites owning their homes than blacks.

Finally, more than one-third of African-Americans lacked access to a car, compared with only 15 percent of whites, partly explaining the evacuation difficulties faced by some prior to the storm¹¹.

These trends have not occurred by accident. Beginning in the 1940s, federal investments and policies, with the aid of local decision-makers, created dense and isolated public housing complexes, clustered together in the poorest neighborhoods. While this was true for many other older cities in the U.S., New Orleans is emblematic of this type of urban development. The Housing Authority of New Orleans (HANO), the first public housing agency in the country after World War II, purposefully decided to create four all-black public housing developments and two all-white public housing developments. In many cases, the all black developments replaced neighborhoods that were once home to a mix of whites, blacks, and Creoles.

The onset of suburbanization, fueled by federal investments in highways like I-10, only further concentrated low income families and people of color in the city as families moved to suburban parishes, widening the region's racial and economic disparities¹².

1.3 Municipal/Parish Governance and Land

The State of Louisiana is divided administratively into parishes and municipalities. Figure 1 shows the parishes most affected by Hurricane Katrina.

The jurisdiction of the City of New Orleans is coterminous with the boundaries of the Parish of Orleans, bordered by the Parishes of St. Bernard, Jefferson, Saint Tammany and Plaquemines Parishes.

¹⁰ Alan Berube and Bruce Katz, "Katrina's Window: Confronting Concentrated Poverty across America" (Washington: Brookings Institution, 2005).

¹¹ Brookings Institution Metropolitan Policy Program, "New Orleans after the Storm: Lessons from the Past, a Plan for the Future" (Washington: Brookings Institution, 2005).

¹² Ibid.

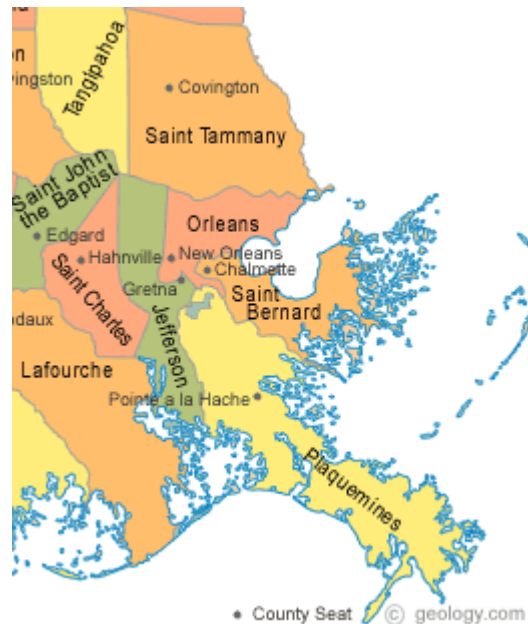


Figure 1: Louisiana Parishes Most Affected by Hurricane Katrina, August, 2005

New Orleans city/parish is divided into seven Municipal Districts, each represented on the City Council and each having an assessor for assessment of property subject to ad valorem taxation.

The City Council of New Orleans and the Mayor of the City are the main governance institutions of New Orleans, elected for four year terms, although there are appointed entities such as the City Planning Commission and the Vieux Carre Commission which are influential in modifying the land use patterns of the city.

The New Orleans Redevelopment Authority (NORA)¹³ provides institutional guidance for the administration of real property assets which it acquires, and provides general information to the public on interactions with NORA concerning real property. There are at the present time seven different potential sources of real property for acquisition by NORA: 1) transfers of tax adjudicated properties from the City of New Orleans, 2) expropriations completed prior to 2006; 3) expropriations completed subsequent to 2006; 4) transfers of properties acquired by the Road Home Corporation; 5) transfers of property interests by the City of New Orleans resulting from code enforcement liens; 6) as a bidder at public auctions of property (which might have arrived there as a consequence of judicial foreclosure, tax sales, or code auction and 7) direct market purchases by NORA.

Concerning the administration of real property records¹⁴, New Orleans has always held a special status in the state. Louisiana law provides for the elected offices of the Clerk of the Civil District Court (separate in Orleans Parish from the Clerk of the Criminal District Court), the Register of Conveyances, and the Recorder of Mortgages whose jurisdictions are the Orleans Parish. While the Clerk of the Civil District Court has not had administrative

¹³ New Orleans Redevelopment Authority, "Priorities, Policies and Procedures for the Acquisition and Transfer of Real Property", As approved by the Board of Commissioners on April 23, 2007

¹⁴ See David Stanfield, "Administration of Immovable Property Records in New Orleans", report prepared for the Case Study, 2008, for a detailed discussion of this topic.

authority over the elected Register of Conveyances and the elected Recorder of Mortgages which maintain indexes of conveyances and mortgages respectively in Orleans Parish, budgets of these two agencies come from the judiciary.

The uniqueness of the Parish of New Orleans in terms of the relative autonomy of the administrators of conveyances and mortgages is further emphasized by the Legislature's creation in 1867 of the Notarial Archives only in New Orleans under the authority of the Custodian of Notarial Archives who is appointed by the Governor. In New Orleans, individual notarial offices prior to that date operated as the official repositories of notarial acts documenting legal transactions in real property. But from 1867 until 1970, while notaries in Orleans Parish continued to archive their most current records, they were obliged to turn their older records into the Notarial Archives at prescribed intervals. Therefore, in order to retrieve an act of conveyance or mortgage prepared before 1970, one must have the name of the notary who created it and the date on which it was created.

After July, 1970, notarial acts in Orleans Parish are filed directly in the Notarial Archives and receive a Notarial Archives number for identification purposes.

Throughout Louisiana's recent history the Parish Clerks of Courts in all other Parishes exercised the responsibilities of the recorder of mortgages, the register of conveyances, and document archive. In the Parish of Orleans, these three functions have been kept as separate administrative offices under the authority of an elected Recorder, an elected Register, and a Custodian appointed by the Governor.

A fourth agency which participates in the administration of immovable property records in New Orleans—although not a legal repository of those records—is the Real Estate and Records Division of the City's Department of Property Management. This office maintains a map of all land parcels in the city, and an associated file of basic information about each parcel such as the Notarial Archive's number, notary name, and dates of transactions affecting the ownership of each property. People who know where their properties are on the comprehensive parcel map, use this information as a key to find documents archived in the N.A. pertaining to their properties.

A fifth agency relevant to real property records is the Assessor, an elected official responsible for the ad valorem assessment of real properties in his/her parish. New Orleans has seven assessors, each responsible for one of the seven Municipal Districts of the city. The assessors receive a copy of every act of conveyance affecting ownership from the Register of Conveyances as well as a copy of the abstract of each act of conveyance from that office. This office has physically cut and pasted these abstracts into the property cards for each property providing a history of the conveyances affecting ownership.

1.4 The Roles of Federal/State Governance Institutions in Disaster Situations

The debate in the US about the appropriate roles of the federal, state and local governments in the overall society has long roots. The great floods of the Mississippi River in 1927 due to almost continual and massive precipitation in the Mississippi River catchment for an entire year produced massive damages to land and people all along the river in mid 1927. According to the political views of the time, these damages were initially to be dealt with

through private efforts of those affected by the disaster assisted by private humanitarian organizations such as the Red Cross. But the capacities of local people and the Red Cross were soon overwhelmed by the dimensions of the flooding.

Herbert Hoover who was the Secretary of Commerce in the administration of President Calvin Coolidge attempted to redefine the role of the federal government in such massive disasters. Instead of almost complete federal non-involvement, his idea was that the federal government should act as the coordinator of efforts by the country's largest banks and corporations to provide emergency assistance and to assist with subsequent reconstruction. In part due to the limited success of this re-definition of federal government responsibilities in dealing with the effects of disasters, the federal government's involvement in rebuilding and extension of the flood control mechanisms, particularly the levees, greatly expanded after 1927 to new levels. The Flood Control Act of 1928 advocated by governors and congressional delegations from states affected by the flooding basically "declared that the federal government took full responsibility for the Mississippi River."¹⁵

1.4.1 Federal Legislation on Disasters: The Stafford Act¹⁶

Over two years have passed since Hurricane Katrina devastated the Gulf Coast on August 29, 2005, yet today tens of thousands of people from the Gulf Coast remain displaced across the nation, and those who have returned to their home cities continue to suffer tremendous burdens associated with the disaster. Land rights in the aftermath of Hurricane Katrina have taken on a heightened urgency as a result of a governmental reconstruction agenda that favors private development and is in many senses not sufficiently responsive to Gulf Coast residents in need of assistance to return to the places they call home.

In the United States, federal responses to national emergencies and disasters are governed by the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, which was enacted in 1974 and has been periodically amended. The Act provides the President with broad discretionary authority and establishes legal immunity for federal actions or inactions related to the exercise of that discretion (42 USC §5148 and §5191). Thus, the Act places the primary responsibility for disasters on state governments and does not recognize the legal right of an individual to any disaster assistance.

In 1998, the United Nations established the Guiding Principles on Internal Displacement, which are based on human rights laws and standards and are designed to protect the human rights of an estimated 50 million people around the world who have been uprooted from their communities by a natural or man-made disaster, but remain in their countries. The Guiding Principles address the three phases of displacement by recognizing that national governments should: (1) prevent the conditions that can cause displacement; (2) provide humanitarian assistance to and protect the human rights of displaced persons; and (3) support displaced persons to voluntarily return, resettle, or reintegrate. Although the Guiding Principles are not binding law, they have been repeatedly affirmed by member countries of the United Nations, including the United States. In fact, the United States has welcomed the fact that countries

¹⁵ John M. Barry, *Rising Tide: The Great Mississippi Flood of 1927 and How it Changed America*. New York: Simon and Schuster, 1998, p. 407.

¹⁶ Based on a paper by Nathalie Walker & Monique Harden, Co-Directors of Advocates for Environmental Human Rights, New Orleans, www.ehumanrights.org, "Returning Home after Hurricane Katrina: The Stafford Act or Human Rights" January, 2008.

have adopted the Guiding Principles into their national legal systems,¹⁷ and the current Bush administration has called for “wider international recognition of the U.N. Guiding Principles on Internal Displacement as a useful framework for dealing with internal displacement.”¹⁸

Notwithstanding U.S. support for the Guiding Principles, the failure of the federal government to implement them comprehensively in the aftermath of Hurricane Katrina has raised a legal issue regarding treaty compliance. After a formal review of the U.S. government’s response to Hurricane Katrina, the U.N. Human Rights Committee called on the U.S. government “to review its policies and practices to ensure the full implementation of its obligation [under the International Covenant on Civil and Political Rights] to protect life and prohibit discrimination, whether direct or indirect, as well as the United Nations Guiding Principles on Internal Displacement, in the areas of disaster prevention and preparedness, emergency assistance and relief measures.”¹⁹ Thus, the issue of whether the U.S. government implements the Guiding Principles is directly tied to whether it is in compliance with the International Covenant on Civil and Political Rights, which was ratified by the U.S. in 1994.

As a practical matter, the Guiding Principles could be implemented pursuant to the discretionary powers established by the Stafford Act and federal waivers of provisions contained in or promulgated under the Act, which are contrary to the Guiding Principles. However, it would be more effective to adopt the Guiding Principles as legal obligations of the federal government in order to ensure accountability and predictability regarding the human rights protections of individuals displaced by a disaster.

- **Why the Stafford Act Has Created Poor Outcomes for Gulf Coast Residents**

It is important to recognize that the Act may well be good enough for dealing with disasters which do *not* overwhelm state and local authorities. Considered broadly, the Act creates a disaster response system in which primary responsibility falls to state and local governments, which can request federal support²⁰. The federal government, acting through the President, has discretion to provide requested support. The Act provides for administrative procedures to facilitate federal responses to state requests for assistance, and in many instances conditions and limits such discretionary federal assistance.

However, there are only two things the Act unconditionally requires the federal government to do. First, when a disaster involves a subject under which the Constitution or US law vests exclusive responsibility with the federal government, the federal government must take primary responsibility for responding²¹. In all other instances federal government’s assistance is entirely discretionary. This lack of federal responsibility and accountability is underscored by the Act’s immunity provision, which holds the federal government harmless from liability for performance or failure to perform discretionary functions under the Act²². The lack of accountability lies at the heart of much of the post-hurricane failures of federal government

¹⁷ United Nations, Commission on Human Rights, Resolution 2003/51, Apr. 23, 2003; United Nations, General Assembly, Resolution 54/167, Dec. 17, 1999.

¹⁸ United Nations, General Assembly, Resolution 60/1, Oct. 24, 2005.

¹⁹ UN Human Rights Committee, United States of America: Concluding Observations, 87th Session, July 10-27, 2006.

²⁰ See 42 U.S.C. 5121, et seq.

²¹ 42 U.S.C. 5191(b)

²² 42 U.S.C. 5148

responses to the massive damages produced by Katrina. While the courts have held that immunity does not extend beyond the Act, and that persons can sue for violations of the U.S Constitution, the fact remains that under the Act, the widely perceived failures of government to adequately respond to the needs of those suffering from the Gulf Coast disaster is, for the most part, perfectly legal.

The second federal obligation is not to discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in providing relief and assistance²³. A recent amendment to the Act also prohibits discrimination on the basis of disability and English language proficiency.

The Act is related to the perceived failures of Gulf Coast governmental responses in several respects. First, such a massive disaster requires a comprehensive, centralized, integrated recovery program with massive resources the scope of which can only be provided by the federal government, but the Act does not require anything remotely approaching such a strategy. Second, the Act's delegation of responsibility to states and the process for state requests for federal help have led to confusion and delay in governmental responsibility, with essential assistance delayed and in many instances ignored. Third, the Act creates no individual right to assistance and no process for governmental accountability, leaving Gulf Coast residents few avenues of legal recourse for relief. Fourth, the Act does not address the specific material and humanitarian needs of residents for restoring their lives and communities.

- **Why the Guiding Principles Would Present Better Outcomes for Gulf Coast Residents**

The crises that many Gulf Coast residents who survived Hurricane Katrina are facing are predictable negative outcomes that arise from massive population displacements. It is these negative outcomes – prolonged displacement, loss of housing and economic opportunities, separation from family members, set backs in education and health care, disenfranchisement from voting and other political participation, exploitation and abuse of women, children, and the elderly, ethnic cleansing and discrimination, and the lack of governmental accountability – that the Guiding Principles were designed to avoid. The Guiding Principles, while not legally binding, are widely accepted standards for disaster response. In fact, the US Government has encouraged all other nations to follow the principles in formulating disaster recovery policy, and many nations have done so.

The comparative analysis below of the Guiding Principles and the Stafford Act demonstrates that the Guiding Principles serve as a sound basis for a just, anti-racist, and sustainable recovery, while the Stafford Act is not an adequate legal framework for such an outcome.

Recovery Issue	Robert T. Stafford Disaster Relief and Emergency Act	United Nations' Principles on Displacement	Guiding Internal
Should the federal government have primary responsibility for disaster recovery?	No. States have primary responsibility for disaster recovery. The federal government's responsibility is	Yes. National governments have the primary duty and responsibility to provide protection and humanitarian	

²³ 42 U.S.C. 5151

	<p>limited to matters under exclusive federal control as established by the US Constitution or federal law. All other federal responses to a disaster are discretionary acts that are completely immune from lawsuits (42 USC §5191 and §5148).</p>	<p>assistance to people who are displaced by a natural or man-made disaster (Principles 3 & 25).</p>
Should the federal government be required to take precautions that can prevent displacement?	<p>No. The federal government has the discretion to assist in the development of state mitigation plans and emergency preparedness programs. It is also at the federal government's discretion whether to warn the public of hazards and reduce immediate threats to life, property, public safety, and health (42 USC §5165 and §5170b).</p>	<p>Yes. It is the obligation of national governments to prevent the conditions that can cause displacement (Principle 5).</p>
Should people who have been displaced by a disaster have a right to humanitarian assistance and assistance to either return to their residences or resettle?	<p>No. Individuals do not have a legal right to assistance. The federal government is not even required to provide essential assistance, which includes emergency medical care, shelter, clearing roads and bridges, demolition of unsafe buildings, dissemination of health and safety information, and reduction of immediate life-threatening risks (42 USC §5170b).</p>	<p>Yes. All displaced persons have the right to request and receive protection and humanitarian assistance from governmental authorities as well as the right to voluntarily return or resettle in safety and with dignity (Principles 3, 25 & 28).</p>
Should the federal government be required to ensure that displaced people can meaningfully participate in governmental decisions affecting recovery?	<p>No. The Act does not require or address voting or civic participation; nor does the Act require or address participation of displaced persons in recovery planning and management.</p>	<p>Yes. Displaced persons have the right to vote and participate in governmental and public affairs. National governments have the obligation to make special efforts to ensure the full participation of displaced persons in planning and management of return, resettlement, and reintegration (Principles 22 & 28).</p>

Should displaced people be protected from governmental actions that result in discriminatory impacts?

No. Although the federal government is prohibited from discriminating on the basis of race, color, nationality, disability, or English language proficiency (42 USC §5151 and Katrina Reform Act §689(a)), courts have limited this obligation to only prohibit an intentional act of discrimination, not an act that results in a discriminatory impact.

Yes. Displacement that is aimed at or results in “ethnic cleansing” or altering the racial, ethnic, or religious composition of the affected population is prohibited. Displaced persons have the right to governmental assistance and protection that does not intentionally discriminate or result in a discriminatory impact based on race, color, nationality, sex, age, economic status, disability, political opinion, ethnic or social origin, disability, property, or birth status (Principles 4, 6, 18 & 24).

Should displaced people have the right to housing, education, and healthcare?

No. Any housing assistance is provided at the discretion of the federal government (42 USC §5174(b)). Temporary housing assistance cannot exceed a period of 18 months (42 USC §5174(c)). Temporary educational facilities can be provided at the discretion of the federal government (42 USC §5170b.a.3.D). Emergency medical care and reduction of immediate threats to life and health can be provided at the discretion of the federal government (42 USC §5170b.a.3.D). The rebuilding of medical facilities is also discretionary (42 USC §5172).

Yes. Displaced persons have the right to housing that requires governments to provide temporary housing for the duration of the displacement, and support for the rebuilding of permanent homes; education that requires governments to make education and training facilities available as soon as conditions permit; and medical services, including psychological and social services (Principles 18, 19, 23, 28 & 29).

For critically important needs arising from a massive disaster, the Stafford Act does not mandate recovery, while the Guiding Principles address these needs in order to ensure recovery and prevent human rights abuses that are linked to displacement.

The right to land in the post-Hurricane Katrina experience cannot be defined as the mere possession of a spot of earth. Inherent in such a right is belonging to a place that provides one with communal support and social development, culture, tradition, and identity. The displacement from the places that one calls home can only be rectified by implementing the United Nations’ Guiding Principles on Internal Displacement. Unfortunately, the US

Government has only supported the Guiding Principles in international contexts,²⁴ while moving forward with a reconstruction agenda that favors private development under the assumption of normally functioning markets of the places that displaced Gulf Coast residents call home. To protect land rights, it would be preferable that the Guiding Principles be fully applied in the United States so that any person who has the misfortune of displacement can voluntarily return home.

1.4.2 The Norquist Doctrine

The Stafford Act essentially gives the President and US Congress the discretion to decide how to use federal resources in the cases of disasters. Some Presidential administrations and Congress can decide to be more active and to stress certain political priorities, while others can decide to implement few of the Act's provisions or do so within strict limitations.

The debates about the extent of governmental involvement in addressing the problems of the nation have ebbed and flowed, at times favoring more governmental involvement and at times favoring less. It is instructive to consider the words of the first Republican post war President, Dwight Eisenhower on this debate:

Now it is true that I believe this country is following a dangerous trend when it permits too great a degree of centralization of governmental functions. I oppose this--in some instances the fight is a rather desperate one. But to attain any success it is quite clear that the Federal government cannot avoid or escape responsibilities which the mass of the people firmly believe should be undertaken by it. The political processes of our country are such that if a rule of reason is not applied in this effort, we will lose everything--even to a possible and drastic change in the Constitution. This is what I mean by my constant insistence upon "moderation" in government. Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history. There is a tiny splinter group, of course, that believes you can do these things. Among them are H. L. Hunt (you possibly know his background), a few other Texas oil millionaires, and an occasional politician or business man from other areas. Their number is negligible and they are stupid²⁵.

At the time of Katrina, the US Presidency and Congress were controlled by elements of the Republican Party which were dedicated to enacting policies to drastically restrict the role of the federal government in national life, in many senses reverting back to the notions of federal non-involvement prevalent during the time of President Coolidge, 25 years prior to the Eisenhower administration.

- This orientation to dramatically restrict governmental involvement in dealing with severe national problems was recently described by the influential Grover Norquist in

²⁴ See *supra* n. 1. See also US State Department, *USAID Assistance to Internally Displaced Persons Policy*, Oct. 2004.

²⁵ Eisenhower, Dwight D. Personal and confidential communication to Edgar Newton Eisenhower, 8 November 1954. In *The Papers of Dwight David Eisenhower*, ed. L. Galambos and D. van Ee, doc. 1147. World Wide Web facsimile by The Dwight D. Eisenhower Memorial Commission of the print edition; Baltimore, MD: The Johns Hopkins University Press, 1996, <http://www.eisenhowermemorial.org/presidential-papers/first-term/documents/1147.cfm>

these terms: "My goal is to cut government in half in twenty-five years, to get it down to the size where we can drown it in the bathtub." This orientation produced in the Bush administration and in budgets produced by the US congress under the influence of such policy convictions systematic actions which affected federal agencies relevant to post disaster recovery (such as FEMA, HUD, EPA, ACE).

Of course these tendencies at the federal level do not determine all aspects of how programs emerge and are implemented at the State and local government levels. Disorganized or feuding state and local officials allow for the federal tendencies to be more influential than they may otherwise have been. Certainly Louisiana could have designed differently the main disaster response program, "The Road Home" (described below in Section 5). New Orleans could have supplied more planning focus and could have been, and still could be, more attentive to community organizations. But they at least initially did not correct the paths indicated by the federal government.

While understandable from the point of view of the political priorities of the implementers of the Norquist doctrine at the federal level, the minimalist view of government was risky in that the administration and congress might be held responsible, as President Eisenhower observed, when the federal government failed to respond adequately at least in the court of public opinion to such disasters as Katrina. The administration's fall-back position when faced with public criticism for inaction was to use these failures of government as justification for the continued privatization of governmental functions through the contracting of large for-profit corporations for distributing humanitarian and for reconstruction assistance. Evidence of the perceived incompetence of federal agency administrators attempting to implement the Norquist doctrine could be presented to the public to justify further weakening of the federal agencies with responsibilities for dealing with disasters.

The preference for contracting of for-profit corporations to deal with humanitarian assistance and with planning for recovery efforts and the actual implementation of these efforts moved such companies into the operational control of the post-disaster humanitarian and rebuilding programs. The implications of this strategy are explored in more detail in subsequent sections.

In instances when these privatization initiatives failed to receive congressional support and federal agencies appeared poised to receive funding and expanded mandates, the Norquist group moved to create new programs and agencies responsible directly to them, outside of the established agencies such as Housing and Urban Development which had already established procedures for assisting people with affordable housing, and with connections to civic groups and popular organizations for encouraging their involvement in recovery efforts.

Faced with the Katrina disaster, a team headed by Edwin Meese, the former Attorney General under President Reagan, advocated a version of this Norquist approach to government minimization within two weeks after Katrina's landfall. They published the following policy prescriptions (direct quotes are italicized)²⁶ for responding to the Katrina disaster, which influenced federal, state and local government responses:

²⁶ Edwin Meese, III, Stuart M. Butler, and Kim R. Holmes, *From Tragedy to Triumph: Principled Solutions for Rebuilding Lives and Communities*, Washington D.C.: Heritage Foundation, Special Report No. 5, September, 2005

- Principle: Limited federal government involvement.

Policy: The federal government should provide support and assistance only in those situations that are beyond the capabilities of state and local governments and the private sector. State and local governments must retain their primary role as first responders to disasters. The federal government should avoid federalizing state and local first response agencies and activities.

Programs influenced: Federal agencies waited for state and local government proposals

- Principle: Provide assistance to individuals

Policy: Federal financial aid, when necessary, should be provided in a manner that promotes accountability, flexibility, and creativity. In general, tools such as tax credits and voucher programs, which allow individuals and families to direct funds, should be utilized to encourage private-sector innovation and sensitivity to individual needs and preferences.

Programs influenced:

Community Development Block Grants favored to States for subsequent distribution to individuals

Infrastructure (water, roads, electricity, telecommunications) investments were not funded

FEMA direct assistance programs were launched very slowly and with unwieldy regulations. There were repeated administration attempts to cancel FEMA programs, although most were negated through political pressure.

- Principle: Eliminate or reduce governmental regulations at all levels of government

Policy: Consistent with genuine health and safety needs, red tape should be reduced or eliminated to speed up private-sector investment and initiative in the rebuilding of facilities and the restoration of businesses. Regulations that are barriers to putting people back to work should be suspended or, at a minimum, streamlined.

Programs influenced:

Presidential suspension of labor protection legislation
Presidential suspension of environmental regulations

- Principle: Develop new programs and do not use existing procedures

Policy: Congress should reorder its spending priorities, not just add new money while other money is being wasted. Now is the time to shift resources to their most important uses and away from lower-priority uses to use taxpayer dollars more effectively. It is critical that America focus on building capabilities for responding to a catastrophic disaster, not on catering to the wish lists of cities, parishes or counties, states, and stakeholders.

Programs influenced:

Use of FEMA to deliver emergency housing assistance rather than established HUD agency staff and procedures.

- Principle: Government at all levels should contract private companies to administer assistance

Policy: Private entrepreneurial activity and vision, not bureaucratic government, must be the engine to rebuild. New approaches to public policy issues such as enhanced choice in public school education should be the norm, not the exception. New Orleans and other ravaged cities will look different a decade from now, even though they will retain their individual essence. The critical need now is to encourage investors and entrepreneurs to seek new opportunities within these cities. Bureaucrats cannot do that. The key is to encourage private-sector creativity—for example, by declaring New Orleans and other severely damaged areas “Opportunity Zones” in which capital gains tax on investments is eliminated and regulations eliminated or simplified.

Programs influenced: Halliburton was awarded a contract through the U.S. Navy for storm cleanup. Louisiana’s Road Home rebuilding program contracted to ICF.

In the weeks following Hurricane Katrina, the Bush administration adopted an agenda based in large part on the Norquist doctrine that prioritized governmental subsidies and economic incentives for the private development of land in the Gulf Coast. For this study, this philosophy of privatization when applied to disaster recovery takes two main forms: 1) the management of recovery efforts by private, for profit corporations; and 2) the distribution of recovery funds to individuals, leaving their decision making about the disposition of recovery funds to take effect through the operation of the market.

The recovery problems explored in the remainder of this study cannot be attributed exclusively to the poverty of this philosophy. Recovery problems are certainly not entirely due to an ideological commitment to privatization such as that of the Norquist doctrine. Part of the blame for slow and ineffective relief and recovery has to be laid at the feet of governmental agencies at the federal, state and local levels that cannot execute programs effectively, are unwilling to acknowledge their shortcomings, and try to evade accountability. Another part has to be shared by the limitations of private for-profit corporations contracted to take on the responsibilities of government. Those problems, unfortunately, reach across the political party divide and extend from the lowest to the most exalted levels of public officialdom.

The search for another way has led the people of New Orleans to explore alternative roads that may be better taken, especially that of community based design and administration of humanitarian and rebuilding assistance under the guidance and support of a re-built governmental structure which gives priority to infrastructure rebuilding and inclusive planning as well as direct assistance for rebuilding of housing and public spaces. The dialogue between governmental bodies and the community they serve is critical, if public policy is to reflect community values and to help assure that recovery incorporates the energies of people organizing to help rebuild their communities.

This road has its difficulties which must be recognized and managed. For example, the political support of the City’s decision to demolish public housing, and the resistance of some

communities to allow trailers to house displaced families are signals that communities can contain elements antithetical to equitable and environmentally sustainable solutions to land issues which emerge post-disaster.

The remainder of this study explores implications of relentless privatization of disaster recovery, governmental ineptitude and the emergence of a new way of dealing with disaster recovery, with a special focus on land issues.

2. Katrina and Its Impacts

2.1 Arrival

Hurricane Katrina made landfall as a powerful Category 3 storm at 6:10 AM CDT on Monday, August 29 in Plaquemines Parish, Louisiana. The massive storm continued to move north, rolling over portions of the Louisiana coast before its eye at the center of a hurricane approximately 107 miles in diameter came ashore near the mouth of the Pearl River in Mississippi. At the time, Hurricane Katrina had sustained winds over 115 mph and reported gusts as high as 130 mph.

Hurricane Katrina generated violent waves and a massive storm surge before colliding with the Gulf Coast. According to the National Oceanic and Atmospheric Administration (NOAA), Hurricane Katrina produced a storm surge as high as twenty-seven feet in Louisiana and Mississippi. Surge waters flooded over six miles inland in many parts of coastal Mississippi and up to twelve miles inland along rivers and bays.

Four weeks later another hurricane, Rita, smashed into the same region.²⁷ The two storms caused nearly 1,500 deaths, destroyed or severely damaged more than 204,700 homes and 19,000 businesses, and left approximately \$25 billion in insured losses in their wake.²⁸ Louisiana's housing stock sustained unprecedented damage that displaced hundreds of thousands of residents from their homes: "Hurricane Katrina and the flooding that followed forced some 770,000 people from their homes along the Gulf Coast" in what may be characterized as "the largest internal migration since the Dust Bowl of the 1930s."²⁹ "In one terrible season of storms, an estimated 300,000 homes had been destroyed or made unlivable."³⁰

President George W. Bush described this hurricane as "one of the worst natural disasters in our Nation's history."

According to NOAA, "entire coastal communities were obliterated, some left with little more than the foundations upon which homes, businesses, government facilities, and other

²⁷ Douglas Brinkley, *The Great Deluge: Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast* (William Morrow 2006); Jere Longman and Michael Brick, *Rage and Ruin In Town Jarred By Rita's Punch*, *The New York Times*, September 26, 2005; Peter Applebome and Ralph Blumenthal, *With Storms Behind Them, Gulf Residents Begin Piecing Their Lives Together*, *The New York Times*, September 27, 2005.

²⁸ See website of the Louisiana Recovery Authority: <http://www.lra.louisiana.gov> (last visited April 8, 2007). See also Fannie Mae, "Helping the Gulf Coast Recover" at 2: *Id.*

²⁹ See a report prepared by the Fannie Mae Foundation, FANNIE MAE, *HELPING THE GULF COAST RECOVER 2* (2007), available at http://www.fanniemae.com/media/pdf/FannieMaeGulfCoastReport_final.pdf (last visited December 27, 2007).

³⁰ *Ibid.*

historical buildings once stood.” Destroyed homes, beached vessels, collapsed bridges, uprooted trees, and other debris littered the ground and blocked waterways³¹.

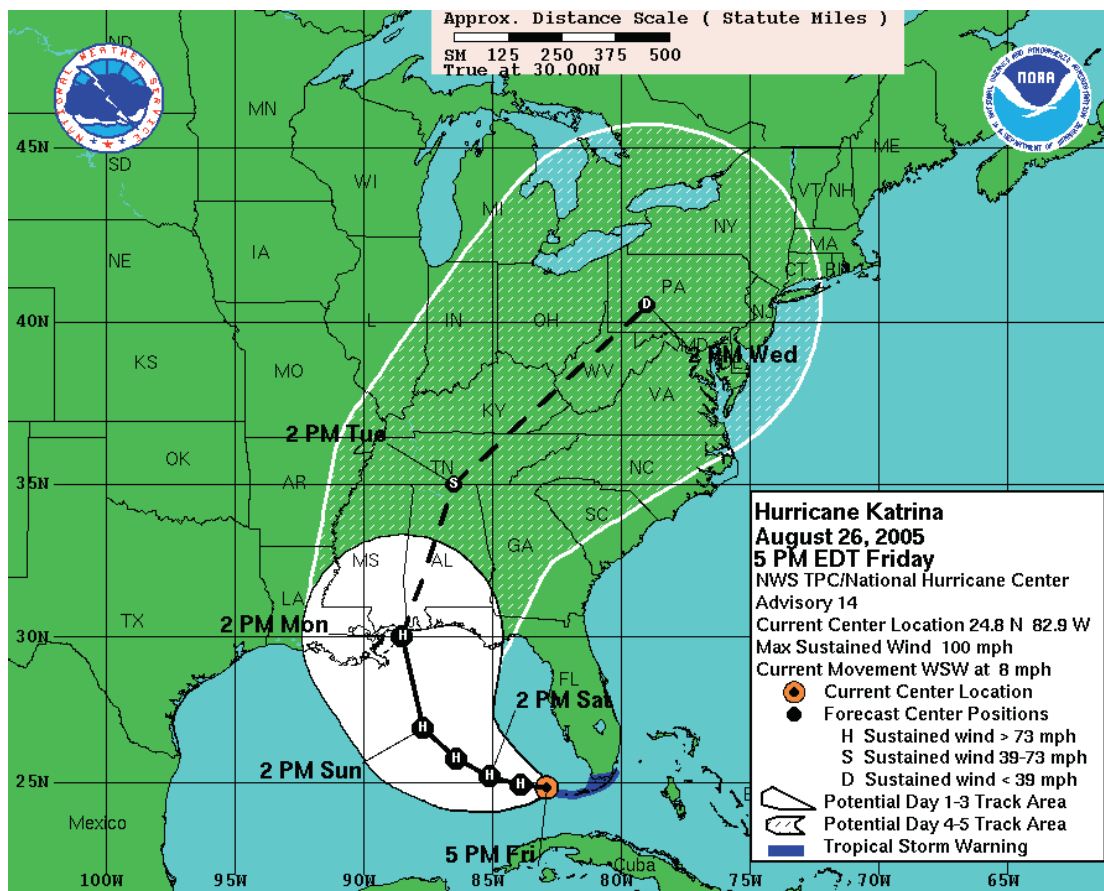


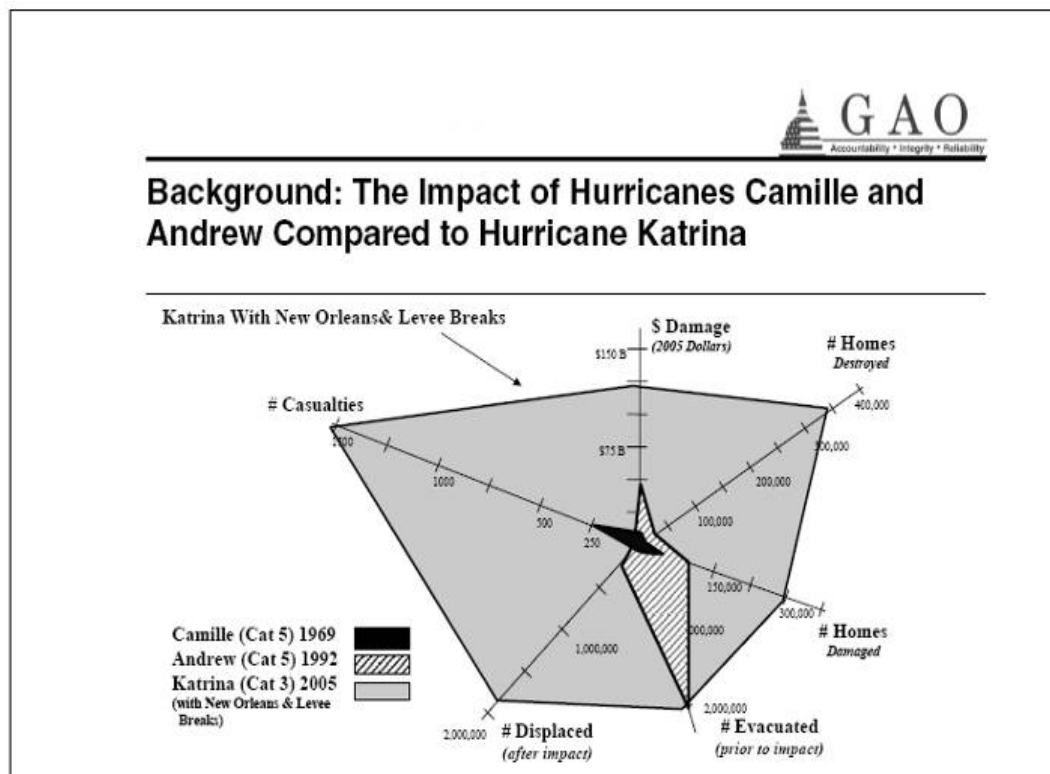
Figure 2: Predicted Path of Hurricane Katrina³²

Katrina greatly exceeded two recent hurricanes in the damages it produced (see Figure 3):

³¹ Francis Townsend, Assistant to the President for Homeland Security and Counter Terrorism, “The Federal Response to Hurricane Katrina: Lessons Learned”. February 23, 2006. p. 33

³² Townsend, op. cit., p. 23

Figure 3: Comparison of Katrina with Other Hurricanes



Source: U.S. GAO Report to Congressional Committees: Preliminary Information on Rebuilding Efforts in the Gulf Coast, June 2007 <http://www.gao.gov/new.items/d07809r.pdf>

The damages to people's homes from the hurricanes Katrina and Rita were most severely felt by the population of the Gulf Region. Hurricane Wilma hit southern Florida in October, 2005, but did not produce significant effects in Louisiana. Table 1 shows the housing damages of these storms.

Over 322,500 housing units in the Gulf Region suffered major or severe damage.

- About half of the damaged homes in the Gulf Coast region were owner-occupied, and half were occupied by renters.
- Of the owner-occupied homes, about half had flood and hazard insurance, and half did not have any insurance or only insurance against hazards and none covering damages from floods.
- Most of the renter-occupied homes were single family houses, although almost 20% of the damaged rental units were large, multifamily apartment buildings.

Table 1: Housing Unit Damage from Hurricane Katrina (plus Rita) in the Gulf Region

FEMA Housing Unit Damage Estimates as of February 12, 2006
Hurricanes Katrina, Rita, and Wilma: Total Housing Units with Damage

	Owner Housing Units Insurance Status		Occupied Owner Subtotal		Renter-Occupied Housing Units Type of Structure Where Unit Located			Total Housing Units- Major or Severe Damage
	Flood and Hazard	None or Hazard only		Single Family	Multifamily- Small (less than 10)	Multifamily- Large (10 or more)	Renter Subtotal	
Total Housing Units with Major or Severe Flood or Wind Damage	86,925	77,754	164,679	116,395	13,014	28,488	157,897	322,576
Percent of Total Damaged			51.1				48.9	100
Percentages of Subtotals	52.8	47.2	100	73.7	8.2	18.0	100	

Source: CURRENT HOUSING UNIT DAMAGE ESTIMATES: HURRICANES KATRINA, RITA, AND WILMA, February 12, 2006. Data from FEMA Individual Assistance Registrants and Small Business Administration Disaster Loan Applications. Analysis by the U.S. Department of Housing and Urban Development's Office of Policy Development and Research

Katrina/Rita's effects on Louisiana housing is shown in Table 2.

- In Louisiana, there were 204,737 housing units with major or severe damages.
- About 60% of the damaged homes were owner-occupied, and 40% were occupied by renters.
- Of the owner-occupied homes, about 60% had flood and hazard insurance, and about 40% did not have any insurance or only insurance against hazards and none covering damages from floods.
- A higher percentage of renter-occupied homes were in multifamily buildings than in the Gulf Region as a whole.
- The damaged owner-occupied homes represented about 11% of all owner-occupied homes in Louisiana, while the damaged rented housing units represented about 16% of all such units in the State. The storms had a higher impact on rental units than on owner-occupied homes.

Table 2: Housing Damages in Louisiana

FEMA Housing Unit Damage Estimates as of February 12, 2006

Louisiana Total Housing Unit Damage

	Owner Occupied Housing Units Insurance Status		Owner Subtotal	Renter-Occupied Housing Units Type of Structure Where Unit Located				Renter Subtotal	Total Housing Units-Major or Severe Damage
	Flood and Hazard	None or Hazard only		Single Family	Multifamily-Small (less than 10)	Multifamily-Large (10 or more)			
Total Housing Units with Major or Severe Flood or Wind Damage	71,755	50,837	122,592	52,640	10,040	19,465		82,145	204,737
Percent of Total Damaged			59.9					40.1	100
Percent of Sub-totals	58.5	41.5	100	64.1	12.2	23.7		100	
Census 2000 Estimate			1,125,135					530,918	1,656,053
Percent with Major or Severe Damage			10.9					15.5	12.4

Source: See Table 1.

2.2 Katrina and the People of New Orleans³³

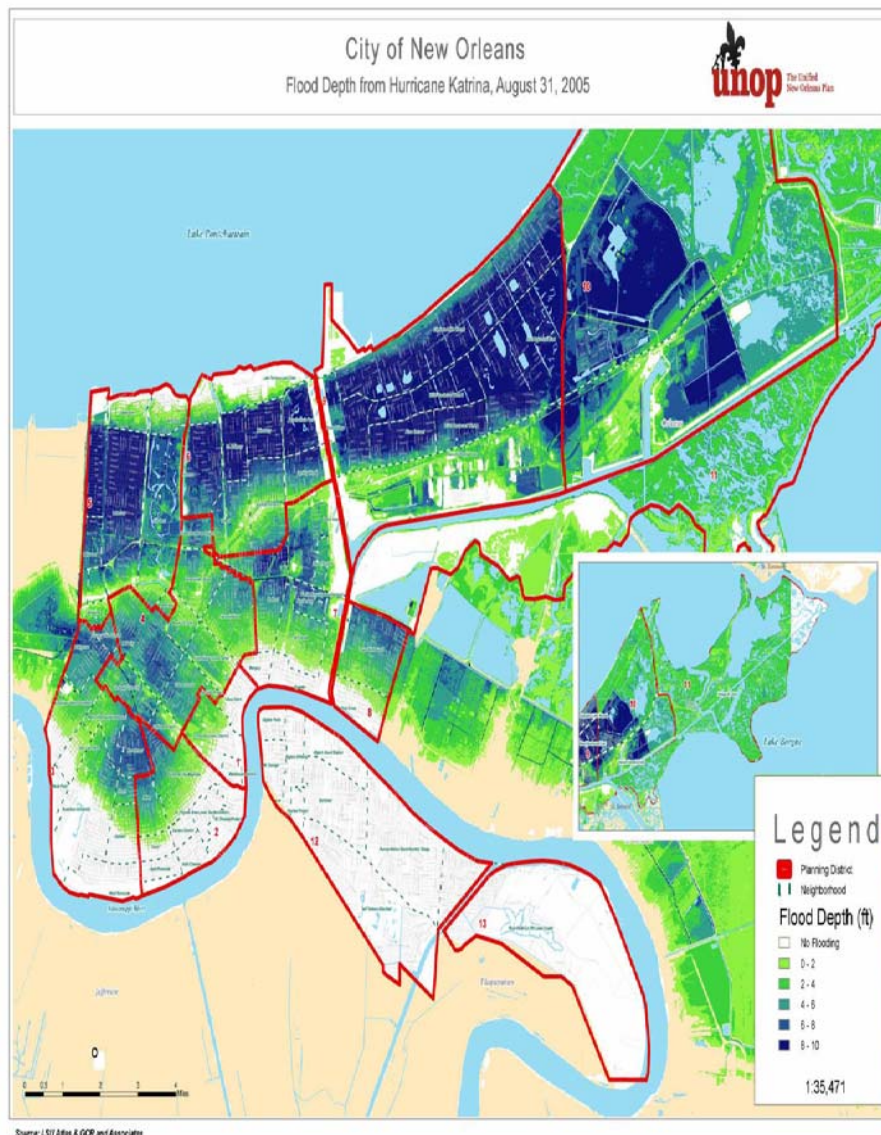
At 1AM on Monday, August 29, 2005, Hurricane Katrina's low barometric pressure and high winds raised gulf waters and blew them northwestwardly into the funnel formed by the Mississippi River--Gulf Outlet Canal (MR-GO) and Intracoastal Waterway (ICWW) canals in New Orleans. The tide overwhelmed the guide levees of the MR-GO at 4:30AM; two hours later, those of the ICWW failed, pouring brackish water into low-lying New Orleans East. As the storm made landfall, water pressure stressed the levees of the Industrial Canal; a small breach opened at 6:50AM and started to flood the city's Ninth Ward's upper side. About an hour later, the levee on the lower side of the canal failed spectacularly, sending a violent torrent of water and an errant barge into the Lower Ninth Ward. Over the next hour, those waters were joined by the surge which previously overwhelmed the guide levees of the navigation canals; together, they submerged St. Bernard Parish and the Lower Ninth Ward with three to four meters of salt water.

³³ This section is adapted from "New Orleans After the Storm: Lessons from the Past, a Plan for the Future", Brookings Institution, October, 2005.

Narrow drainage canals near the lakefront bore the pressure of rising waters on Lake Pontchartrain. Small breaches opened up on the London Avenue Canal and started to flood Gentilly and the areas east of City Park. At 9:45AM, high water pressure undermined the 17th Street Canal levee and inundated Lakeview, while the two London Avenue Canal breaches widened and put almost the entire lakefront under water. People perished by the hundreds, oftentimes drowning in their own homes, across thousands of blocks in a major American metropolis.³⁴

Yet most New Orleanians, both evacuated and within the city, retired Monday night believing that New Orleans had “dodged the bullet.” It was not until Tuesday that they learned about the multiple levee failures, and a jolting new truth—one that, in fact, was as old as the city itself: the flood-protection and drainage system had *not* neutralized topography; New Orleans’ ancient geographies of risk, supposedly subjugated by technology a century ago, came rushing back to life. The bowl was filling up and would not stop until the end of the week, when the surge flushed back out to the sea and the crest of the deluge followed. The de-watering slowed once the water level within the city matched sea level; at that point the water had to be pumped out, a process that would take until mid-October. In early September 2005, a city routinely predicted to become among the world’s greatest was reduced to a few thousand people, a wrecked infrastructure, and no economy.

³⁴ This chronology is based on various sources compiled by journalist Bob Marshall and graphical artist Dan Swenson. Bob Marshall, “City’s Fate Sealed in Hours: Timeline Maps Course of post-Katrina Deluge.” *The Times-Picayune*, May 14, 2006, A-1.



The storm left behind an estimated 50 million cubic yards of debris to be removed from the New Orleans area. Over 200,000 persons were displaced from greater New Orleans alone.³⁵

The development of the city in the decades preceding Katrina resulted in differential impacts of the disaster: minority residents, poor people, and renters were all more likely to reside in the flood zone than white residents, better-off people, or those who owned their homes. The socio-economic divisions were sharp, but at the same time the flooding affected all groups:

Race/ethnicity. The region's racial geography ensured that those areas hit hardest by the flood were disproportionately non-white. Overall, blacks and other minority residents made up 58 percent of those whose neighborhoods were flooded, though they encompassed just 45 percent of the metropolitan population. Whites made up just 42 percent of those who lived in neighborhoods that flooded.

³⁵Ibid., p. 6

In New Orleans the racial differences in neighborhoods which experienced flooding cleavage were more pronounced. The flooded areas there were 80 percent non-white.

Class. Similarly, the region's income and poverty disparities which influenced settlement patterns resulted differential disaster impacts: those who resided in the flood zone across the metropolitan area were poorer than those who lived on higher ground, and lived more often in areas of extreme poverty. The average household income in areas that were flooded hovered at just \$44,500 in 2000. By comparison households living outside the flood zone earned average incomes of about \$53,000.

In Orleans Parish (which comprises the City of New Orleans) the average income reached only \$38,263 in the flooded areas, compared to \$55,000 in the areas not flooded. The fate of the region's neighborhoods of concentrated poverty was even more telling. Thirty eight of the metropolitan area's 49 extreme poverty census tracts were flooded. Moreover, all of the extreme poverty tracts that were flooded were located within the city of New Orleans. Altogether, more than 41,000 poor people—virtually all of them black—lived in extreme poverty census tracts.

There were important differences among the well off neighborhoods and among the poorer neighborhoods—some of the former were flooded and some of the latter escaped flood damage.

Affected Families. Finally, the metropolitan area's sharp geographical differences in household type and well-being influenced Katrina's effects: those who lived in flooded areas were less likely to own their homes and more likely to live in rental apartments, and included many children living in single-parent households.

Just 53 percent of those living in the flood zone before the hurricane owned their homes, whereas in neighborhoods that did not flood 69 percent owned their homes. Conversely, nearly half (47.3 percent) of those who lived in the flooded areas of the metro were renters, compared to just 31 percent of those in drier areas. To that extent, Katrina represents a renter's crisis, as well as a homeowner's one. Fully 56 percent (or 108,000) of the region's rental units lay in the flood zone, compared to 39 percent (120,000) of the metro area's owner-occupied homes.

But the patterns varied by parish. In Orleans Parish, the share of rental units was almost exactly the same in flooded and dry areas. However, in Jefferson Parish the rental units were far more prevalent in the submerged areas. Forty three percent of the housing units in Jefferson Parish's flood zone were rental units, but only 32 percent were rentals in areas that did not flood.

Over 55% of the 188,251 housing units in Orleans Parish suffered major or severe damage according to FEMA's 2006 estimate. In Jefferson Parish less than 20% of its 176,254 housing units suffered major or severe damage from the storms.

Likewise, 46 percent of all the children who were living in flooded areas when Katrina hit had only one parent, compared to 31 percent in dry areas. All told, 57,300 children whose neighborhoods were flooded had only one parent.

In sum, how Hurricane Katrina affected particular New Orleanians and their neighborhoods depended intimately on where they lived, and that owed heavily to the metropolitan area's troubling social, economic, and land-use trends in recent decades.

The region's racial and income disparities across geography and topography placed blacks and poor people disproportionately in the flood zone. The region's unbalanced patterns of sprawl and concentrated poverty reinforced that pattern and placed thousands of suburbanites in harm's way along the lakefront corridor.

The disastrous impact of Hurricane Katrina in 2005 was not inevitable. It represented instead an intersection of weather and water with a man-made social and racial topography that had been created over decades.

3. Institutional Responses to the Disaster in the Gulf Region

A large number of government agencies and programs became relevant to the recovery from the devastation wreaked by the hurricanes Katrina/Rita. Some were new, some already existed and adapted their efforts to the new challenges. Housing became a central theme.

3.1 Some Government Agencies, Terms, and Programs³⁶

LRA–Louisiana Recovery Authority

The Louisiana Recovery Authority is the planning and coordinating body that was created in the aftermath of hurricanes Katrina and Rita to plan—in collaboration with local, state, and federal agencies—for the long and short-term recovery and rebuilding of Louisiana. The LRA Board of Directors assists Governor Kathleen Babineaux Blanco in leadership of the recovery process. The board recommends policy, planning, and resource allocation affecting programs and services for the recovery. In 2005 and 2006 Congress approved \$10.4 billion in Community Development Block Grant funds for recovery in Louisiana. The LRA designated uses of these funds through The Road Home program. The recovery programs outlined in the Road Home are administered by the Disaster Recovery Unit of the Office of Community Development. [Louisiana Recovery Authority, “Mission,” retrieved from <http://www.lra.louisiana.gov/>]

LHFA–Louisiana Housing Finance Agency³⁷

The Louisiana Housing Finance Agency's mission is to provide decent, safe, and affordable housing opportunities for every low- and moderate income Louisianan, with special focus on first-time homeowners, certified teachers, seniors, the disabled, and single parents. These programs are funded primarily through the housing tax credits allocated by the IRS. Additional agency funding comes from various federal and state sources. LHFA is governed by a 15-member board: the secretary of the Department of Social Services, the state treasurer, one member appointed by the president of the Senate, one member appointed by the Speaker of the House, and 11 members (appointed by the governor) representing various housing sectors and the public.

³⁶ **Policy Link**, “Bringing Louisiana Renters Home: An Evaluation of the 2006-2007 Gulf Opportunity Zone Rental Housing Restoration Program”, June, 2007.

³⁷ Louisiana Housing Finance Authority, “About LHFA,” retrieved from <http://www.lhfa.state.la.us/>

NORA--New Orleans Redevelopment Authority

An agency created pursuant to state statute and governed by its own statutorily created Board of Directors, with the responsibility of guiding the administration of real properties which it acquires. It is expected that NORA will manage properties which it acquires from the Road Home program or directly from the City of New Orleans.

OCD--Office of Community Development³⁸

The primary goal of the Office of Community Development (OCD) is to improve the quality of life for the citizens of Louisiana, mainly through the use of Community Development Block Grant (CDBG) funds from the federal government. In 2005 and 2006 Congress approved \$10.4 billion in CDBG funds for Louisiana's Road Home program. The Disaster Recovery Unit of the OCD administers these funds.³ The majority of the funds have been allocated to housing recovery through three programs—a Homeowners Program, a multifamily rental program, and a Small Owners program.

GO Zone--Gulf Opportunity Zone

The Gulf Opportunity Zone Act of 2005 (HR 4440 passed by Congress on Dec. 16, 2005, and signed by President Bush on Dec. 21, 2005) establishes tax incentives and bond provisions to rebuild the local and regional economies devastated by hurricanes Katrina and Rita. The act is commonly referred to as the "GO Zone Act."⁴ The act awarded \$170 million in Low Income Housing Tax Credits (extended over 10 years to total \$1.7 billion) to fund rehab or new construction of affordable rental housing in Louisiana. [The Louisiana Gulf Opportunity Zone Business Recovery Guide, "What is the GO Zone?" retrieved from http://www.gozoneguide.com/story_2.html].

CDBG--Community Development Block Grant³⁹

CDBG is a federal entitlement program administered by the U.S. Department of Housing and Urban Development's Community Planning and Development Office. CDBG provides flexible funds to improve communities' housing and economic development opportunities—principally for persons with low and moderate incomes.

LIHTC--Low Income Housing Tax Credit

LIHTC is a federal housing program that provides a corporate tax credit for investment in income-restricted rental housing. Housing developments receiving tax credits must restrict at least 20 percent of units to households at 50 percent of area median income (AMI) or less or at least 40 percent of units to households at 60 percent of AMI or less. The tax credit program is administered by each state's housing finance agency.

PSH--Permanent Supportive Housing

PSH is housing coupled with supportive services that is affordable to extremely low-income special needs populations—including seniors, people with disabilities, and people at risk of homelessness.

³⁸ State of Louisiana, Division of Administration, "Disaster Recovery Section." *Office of Community Development*, retrieved from <http://www.doa.louisiana.gov/cdbg/drhome.htm>.

³⁹ Community Housing by Pacific Retirement Services, "Glossary," retrieved from <http://www.senioraffordablehousing.org/development/glossary>.

3.2 Temporary Emergency Housing in the Gulf Region⁴⁰

Hurricane Katrina displaced approximately one million Gulf Coast residents. Though about half of the evacuees returned to their homes within days of the storm, two months after the storm found nearly 500,000 displaced families living in, or transitioning to, rental housing subsidized by the federal government, while another 50,000--100,000 remained in temporary housing.

The approximate cost of the federal provision of *temporary* housing for displaced families totaled at least \$3.8 billion. Temporary housing included:

Shelters

In the weeks that immediately followed Katrina, most families were housed in Red Cross shelters. Although total costs are still not determined, the Red Cross has estimated that the overall bill would amount to about \$513 million.

Trailer and Mobile-Homes

Nearly \$3 billion has gone to trailer and mobile-home communities, which includes costs associated with: (a) constructing new trailer/mobile-homes, (b) shipping and transporting each unit, (c) renting land for the trailer park communities, (d) extending and installing water, sewer, and other utility infrastructure to these communities, (e) maintaining the homes and community; and (e) deactivating the communities once such temporary housing is no longer needed.

Nearly all of the land leased to build these communities is in sparsely populated suburban and exurban areas in Louisiana and Mississippi.

Hotels

A large number of displaced families have also been housed in hotels. About 53,000 people were housed in hotels although the number varied over time. Housing displaced families in subsidized hotel rooms was originally managed by the Red Cross, which estimates that it spent about \$225 million. Unlike the shelters it managed, the Red Cross was fully reimbursed for these costs.

Cruise Ships

Approximately \$236 million was spent housing evacuees and emergency workers in cruise ships. No data is available that speaks to the total number of families that have been housed in cruise ships, but approximately 2,881 cabins were occupied shortly after Katrina.

3.3 Trailers as Emergency Housing in New Orleans⁴¹

⁴⁰ This section is based on Bruce Katz, Amy Liu, Matt Fellowes and Mia Mabanta, "Housing Families Displaced by Katrina: A Review of the Federal Response to Date", Brookings Institution, November, 2005. The figures cited are preliminary, but give an indication of the dimensions of the various emergency housing programs launched to deal with the housing needs of people displaced by Katrina.

⁴¹ Section 3.3 is based on a paper by Davida Finger, FEMA Trailers: An Emergency Response and Objections by Local Jurisdictions, January, 2008.

3.3.1 Introduction

Throughout New Orleans neighborhoods, homes and apartments were severely damaged or entirely demolished by storm surges. With a serious post-storm housing shortage, market rental rates for habitable apartments became prohibitively high. Under such conditions, FEMA offered trailers to satisfy their duty to provide emergency housing at no cost to those families who qualified and who remained certified under FEMA's stringent requirements.

Some FEMA trailers are installed on the private property of homeowners, usually on lawns and sometimes in driveways next to the house. There are also numerous FEMA operated trailer parks where many storm victims are currently living. Although several types and sizes of manufactured structures have been installed throughout the Gulf Coast region, most are mass-produced one bedroom travel trailers. These typical two hundred and forty square foot FEMA trailers are designed to accommodate two adults and two children. There are larger trailers and other manufactured structures that can accommodate larger families.

The standard FEMA trailer consists of a master bedroom with a standard size bed, a living area with kitchen and stove, bunk beds, and a bathroom with shower. Each trailer is equipped with electricity, air conditioning, indoor heating, running cold and hot water, a propane-operated stove and oven, a small microwave oven, a large refrigerator, and a few pieces of fixed furniture attached to the floor, usually a sofa bed, a small table, and two chairs. Most FEMA trailers are identical mass-produced travel trailers. There are only a handful of FEMA trailer designs, so that nearly all trailers have the same general layout.

The trailer parks operated by FEMA range from small lots, consisting of a dozen trailers in the parking lots of office buildings and supermarkets scattered throughout the region, to several massive parks occupying large plots of land with hundreds of trailers. The larger parks are typically surrounded by a chain-link fence and brightly lit at night. FEMA has also provided police security and controlled access to the larger parks.

3.3.2 Trailer Controversies

From the beginning, FEMA trailers were controversial.⁴² Costing over \$60,000 each, FEMA trailers have indeed proved to be an expensive and problematic solution to the housing crisis that continues in the post-hurricane Gulf South. Initially, there were significant obstacles for displaced people to receive trailers. FEMA failed to provide a dedicated phone line for people wanting to apply for trailers. Displaced residents were required to wait for FEMA to contact them to determine eligibility. Long delays were inexplicable and very frustrating.

According to Brookings Institution, six weeks after Hurricane Katrina made landfall, 22,847 people remained in emergency shelters, while 576,136 people were living in motels, and 6,306 individuals were living on cruise ships. At this time, only 7,819 travel trailers and mobile homes had been occupied.

⁴² Housing assistance is part of the assistance available to individuals and households provided by FEMA under the Stafford Act, 42 U.S.C. § 5174. One form of assistance is temporary housing assistance, which may take the form of either financial assistance or direct assistance. 42 U.S.C. § 5174(c)(1). Direct assistance consists of rent-free occupancy in federally-provided temporary housing. 44 C.F.R. § 206.117(b)(1)(ii). The primary way FEMA has chosen to provide direct housing assistance to eligible individuals and households in Louisiana is by providing purchased or leased travel trailers and mobile homes.

As of December 30, 2005, hundreds of thousands of people remained on waiting lists for trailers and mobile homes. Only 53,429 trailers had been occupied to date.

As of March 15, 2006 about 19 months after Katrina, families continued to wait for needed trailers and mobile homes. 90,547 had been occupied.

On July 25, 2006 – The Sierra Club released results from its findings of FEMA trailers: 83% of the trailers tested show a high level of formaldehyde, a toxic gas that could pose both immediate and long-term health risks

On August 1, 2006 – Travel trailers and mobile homes reached their peak occupancy rate in the areas affected by Katrina/Rita: 119,625 were occupied.

Even when FEMA trailers became available, local land use regulations were utilized from the onset to prevent the placement of FEMA trailers in particular areas. In Louisiana, by December 2005, over half of the parishes had barred the creation of trailer parks and many other local jurisdictions enacted rules to regulate placement. Then, revelations about toxic levels of formaldehyde, long-known by the agency, became publicly available revealing that the significant health risks associated with formaldehyde levels inside the 240 square feet of living space that it had provided to approximately 75,000 Louisiana families.

In contrast to the slow pace of FEMA trailer arrival, local jurisdictions throughout hurricane impacted areas began a swift process of enacting and enforcing local zoning rules to facilitate FEMA trailer removal. FEMA recognized the critical and ongoing need for temporary housing by authorizing an extension of its emergency housing assistance program through March 2009.⁴³ At a time when few safe and affordable rental units were available and most had not received the federal rebuilding dollars to even begin rebuilding their homes, local jurisdictions' removal procedures were premature. FEMA did not object to local removal procedures and despite its duty to provide emergency housing and commitment through 2009, cooperated with local jurisdictions to craft removal procedures.

Notably, within New Orleans, the local jurisdiction has not forced trailer removal. In late 2007, FEMA itself announced a phased closure of group and commercial sites without offering any meaningful explanation on how trailer residents would secure housing in the all too difficult housing market with an already explosive homeless population.

This section focuses on the experiences with FEMA trailer removal in Jefferson Parish, a neighboring parish to Orleans to which many Orleans displaced people went to get temporary housing. Due in part to local residents' fears about the impacts of temporary housing, particularly trailers on property values and community coherence, and a distrust of the new occupants of temporary housing, and a lingering prejudice against rental housing in general, Jefferson Parish Council became quite negative to the occupants of such housing. The influential people in Jefferson Parish apparently preferred to disregard the ongoing housing crisis and FEMA's recertification of housing assistance, and passed an ordinance ordering the removal of all FEMA trailers and all other forms of temporary housing by March 31, 2007. Loyola Law School's Katrina Clinic handled hundreds of requests for assistance from Jefferson Parish residents who did not understand removal procedures, how to request

⁴³ The FEMA rental assistance program transitioned to a FEMA-HUD Disaster Housing Assistance Program (DHAP) in September 2007.

extensions, and how to appeal the Parish's denial of their request for extension. The Katrina Clinic continues to this day to work with residents who were displaced by the Parish's FEMA trailer removal program who are now homeless.

3.3.3 Background: Jefferson Parish

FEMA trailers were assigned and/or leased to individuals whose homes were hurricane-ravaged, including those in and around Jefferson Parish. In Louisiana, the majority of the 350,000 people living in hurricane damaged areas were from the City of New Orleans with an additional 175,000 people affected in adjacent Jefferson Parish. Approximately 70% of the Orleans Parish population lived in damaged areas and more than 38% of the residents of Jefferson Parish lived in damaged areas.

Jefferson Parish lost 13,972 rental units as a result of the hurricanes. The Parish used low income housing tax credits to rebuild only about 8.8 percent of those units, resulting in a shortfall of 12,745 rental units for low income residents. Jefferson Parish actually worked to block the construction of rental housing, including a 200 unit complex for the elderly in Tarrytown. The Parish also worked to prevent the construction of a complex for the elderly in Marrero, and the City of Westwego imposed a moratorium on all multifamily construction. All told, Jefferson Parish has been rebuilding less than one tenth of rental units lost, has resisted tax credit developments in the Parish, and is pushing to limit the building of multifamily homes in many areas, which increases housing barriers for former renters.

3.3.4 Local Procedures: Removal

Following widespread destruction to residential homes in the wake of Hurricane Katrina, Jefferson Parish Ordinance No. 22632, adopted on November 16, 2005 allowed temporary placement of housing units on private property until January 1, 2006, subject to review and extension by the Jefferson Parish Council every 90 days but not past March 31, 2007. This ordinance allowed the temporary placement of housing units, mainly FEMA trailers, on private property, regardless of zoning regulations. No building permit was required for temporary housing units provided by FEMA and installed in accordance with federal regulations.

On February 28, 2007, Jefferson Parish passed Ordinance 23006 and in doing so, initiated a program for removing FEMA trailers from the Parish. Ordinance 23006 defined a limited category of persons who could apply for an extension and retain their trailers. Under the plain language of the Ordinance, homeowners with trailers placed anywhere other than on their home property in Jefferson Parish, were excluded from the right to temporary placement of FEMA trailers in Jefferson Parish. Non-property owners, namely renters, were not eligible for extensions under Ordinance 22632. Additionally, those who were pre-Katrina homeowners outside of Jefferson Parish did not qualify for an extension to keep their FEMA trailer in Jefferson Parish under Ordinance 22632, nor do those who owned homes in Jefferson Parish pre-Katrina but do not have their trailers sited on their own property.

In order to qualify for an extension under Ordinance 23006, property owners were required to show that their home remains damaged and uninhabitable as a result of Hurricanes Katrina and/or Hurricane Rita and the: 1) Applicant was insured prior to the disaster and has not yet received insurance proceeds from the insurer; 2) Applicant has received insurance proceeds but has applied for and is awaiting further financial assistance from the Louisiana Recovery

Authority or FEMA Hazard Mitigation Grant Program; 3) Applicant has received insurance proceeds and/or further financial assistance from the Louisiana Recovery Authority and is awaiting for repairs to be commenced or completed by a duly licensed contractor, or 4) Applicant is otherwise participating in the FEMA Hazard Mitigation Grant Program.

Ordinance 23006 explained that the Jefferson Parish attorney would review all requests for extensions on the placement of trailers and had unfettered discretion to grant or deny such requests. The ordinance provided criteria for evaluating when an extension may be granted, but did not explain when extension applications were due, how to submit the application to the Parish Attorney, or specify the documentation required to prove that the applicant was qualified for an extension under the Ordinance. Ordinance 23006 did mention a hearing procedure before an Administrative Law Judge (ALJ) to object, but did not include information about the right to appeal to a state court.

In response to the Katrina Clinic's complaint letters, the Parish offered more explanation about the extension process, the details of which had not been included in information given to applicants. In a March 29, 2007 letter, the Parish explained that inspectors will issue citations or violation notices if the Parish Attorney has not granted an extension; residents can clear the violation within 10 days or go before the ALJ and; after that, residents were entitled to an appeal to the state court. The March 29, 2007 letter does not explain, however, how a violation could be cleared or the standards that would be used to make the decision that a violation has been cleared. Most importantly, this notice was never sent to the residents themselves.

Indeed, the response from the Parish to residents was a letter granting an extension, denying an extension, or asking the resident for more information. Residents who received letters from the Parish Attorney denying their request for extension received no explanation of the reason for their particular denial. The denial letters state only that the request does not meet the original FEMA requirements to obtain a trailer and/or does not meet Jefferson Parish Ordinance requirements to keep a trailer on the requested premises. The denial letter did not give information about appeal or hearings.

Applicants for extensions to keep a trailer in Jefferson Parish waited in an agonizing limbo for a decision from the Parish attorney about whether or not they would receive an extension and keep their housing. Some individuals believed that because months went by without a response to their request for an extension from Jefferson Parish that their request had been rejected, and removed their FEMA trailers. Jefferson Parish admitted that its response to those applying for extensions was slow. With no published guidelines, standards or procedures for granting an extension, the Parish forced removal of thousands of FEMA trailers, including the trailers of individuals clearly entitled to an extension under the Ordinance.

In instances where the Parish did request more information from residents, it did not give applicants notices regarding what kind of specific documentation is acceptable. The Parish also did not give a timeframe for residents to submit additional documentation. Residents who received letters from the Parish Attorney asking the resident for more information believed that if they could not supply the additional information—including specifics about the contractors who would repair their homes and the source of funding for repairs when Road Home had not yet been awarded—that they could not keep their FEMA trailer. When this information could not be provided, the Parish denied requests for extensions. For

homeowners entitled to the extension, the Parish required documentation from the Road Home Program. The Road Home Program, however, could not reliably and timely provide such information.

At least 3,000 individuals applied to the Parish for extensions to keep their FEMA trailers. With this large number of requests for extension and the public attention on the difficulties those in FEMA trailers were facing in finding safe and affordable housing, the Parish issued a press release on March 14, 2007 extending the deadline to apply for an extension of their right to keep a trailer to March 31, 2007. The Parish did not provide individualized notice of the new extension date nor did it give individualized notice of the extension process, including the documentation required to obtain an extension. The Parish generally referred residents to its website for explanation. The website did not provide additional/detailed information regarding appeal mechanism. All told, the Parish is believed to have granted a total of approximately 200 requests for extension.

Until May 2007, the Parish's denial letters to applicants failed to mention the right to a hearing or to a state court appeal. In late May 2007, the Parish began explaining the right to a hearing and state court appeal in some of its denial letters to applicants. However, these denial letters still failed to state the reason for denial of the request to keep the FEMA trailer.

While Ordinance 23006 plainly stated that the landowner will receive the Notice of Violation, even non-property owners received Violation Notices. So individuals in FEMA trailers who failed to remove the trailer and relocate were issued citations with a \$500 daily fine and called before an administrative hearing judge when the trailer was not removed.

3.3.5 Impact: Stories from Jefferson Parish

Betty & Ernest P.: Homeowners from New Orleans

Before Hurricane Katrina, Betty and Ernest P. lived in their home in New Orleans, which was severely damaged by Hurricane Katrina. Betty & Ernest P, ages 89 and 99 respectively, were life-long residents of New Orleans. The P's FEMA trailer was located on their daughter's property in Jefferson Parish. The P's daughter and her family fully approve of the continued placement of their elderly parent's trailer on their property and FEMA has recertified the P's for continuing housing assistance.

The P's raised twelve children in Orleans Parish; their children and extended family were scattered by Hurricane Katrina. Ernest P. was a Dixie land jazz musician throughout his adult life as a resident of the Greater New Orleans area. Mr. P. is also a veteran and served in the military. Mr. P. is no longer able to care for himself and the three post-hurricane moves he and Mrs. P. made were unsettling. Mrs. P., with assistance from her children, cares for Mr. P. After several post-hurricane moves, Mr. P. had become increasingly agitated and it took time to readjust to each new surroundings.

The P's submitted a request for an extension to keep their trailer on February 13, 2007, which explained the disabilities and medical problems the elderly P's faced. On March 15, 2007, Jefferson Parish denied the P's request and notified the P's that they should remove their FEMA trailer. On April 11, 2007, the P's submitted a letter to the Parish asking that it reconsider its denial explaining the hardship that eviction from the FEMA trailer would cause the elderly couple. On April 17, 2006, the Parish responded to this letter, but refused to

change its position with regard to the P's trailer. On June 14, the P's submitted another letter describing again the disabilities the P's face and asking the Parish to grant them an extension to keep the FEMA trailer as a reasonable accommodation to their disabilities. The Parish did not respond.

In some respects the P's were fortunate because they had some insurance through Louisiana Citizens. The proceeds of their policy were used to demolish a section of their home that shifted from its pillars, to completely gut the house, and to shore and level the existing structure. The P's daughter assisted them in completing and submitting their Road Home Program application on the first day applications were being accepted. While the P's eventually closed with the Road Home Program, they need time to finish rebuilding their home. Without their FEMA trailer, they will have no place to live while they rebuild. After numerous citations with statements about daily fines accruing, the P's daughter signed an agreement allowing the Parish to make arrangements to remove the P's FEMA trailer. The parish delivered such agreements without any explanatory letter to an undisclosed number of homes throughout the parish.

The P's now live in their daughter's home—in cramped quarters along with her family and her husband's family—as they await the rebuilding of their own home in New Orleans. The move was very difficult for Mr. P. who turned 100 in his FEMA trailer a few months before they were forced to move again.

Debbie M.: Renter from Jefferson Parish

Debbie M. is a life-long resident of Jefferson Parish where she worked as a nurse and lived in a rented apartment that was badly damaged by Hurricane Katrina. Her daughter was diagnosed with an inoperable brain tumor just after the hurricane and died in the FEMA trailer where she was living with her mother and 7 year old daughter. Their FEMA trailer was located on Debbie M.'s brother's property in Jefferson Parish; he welcomed the FEMA trailer's continued placement on his home property. Debbie M. cared for her daughter through her death even as she was suffering from fast escalating macular degeneration, which rendered her legally blind in a short period of time.

Despite repeated requests for an extension because she had been unable to locate affordable alternative housing for her and her granddaughter, the Parish called Ms. M before an administrative hearing officer when she failed to remove the trailer in response to its citation. Ms. M. brought the ashes of her deceased daughter to the hearing in the cardboard box she stored them in because she was unable to afford an urn. The Parish attorney objected to any extension under the rationale that local laws did not permit pre-Katrina renters to continue living in the FEMA trailer. The neighborhood group spoke out against the placement of FEMA trailers in their community because of the unsightly reminders of the hurricane and because of the detrimental impact on property values. Despite these objections, the hearing officer granted Ms. M. an extension of three weeks to make alternative housing arrangements and waived court costs if she met the deadline.

Ms. M. found alternative housing on her approximately six hundred dollar monthly income and was fortunate enough to be able to relocate in a matter of weeks following the hearing; she is now located some distance from her brother which is difficult because she cannot drive due to her blindness. She called FEMA for removal of the trailer. Approximately six months later, FEMA has still not picked up the trailer.

3.3.6 Conclusion about FEMA trailers

FEMA trailers have been important for meeting the emergency housing needs of thousands of New Orleans households. However, for those who could not relocate out of the trailers, circumstances have been quite difficult in the unforgiving post-Katrina housing market. Formaldehyde poisoning remains a concern for many people. The trailers themselves are susceptible to wind damage, should another storm hit the area. Some local governments as exemplified by the Jefferson Parish Council, have opposed the longer term placing of trailers in their jurisdictions.

Some of these difficulties could be reduced in the future by considering the “Katrina Cottage” option for temporary emergency housing. One architect produced a design for a traditional-style cottage of 300-square-foot that can be constructed faster than a FEMA trailer for less than \$35,000 (FEMA trailers range in cost from \$60,000 to \$100,000 each, depending on the model). The houses are built with fiber-cement siding and crimped metal roofs. They are more attractive alternatives to the sterile FEMA trailers, and can ultimately be incorporated into long-term rebuilding plans as guest houses or studios.

Families in FEMA trailers have been placed into compromised living situations because of premature cut-off of the trailer program at the local level coupled with FEMA’s failure to assist families displaced by local ordinances even when the federal agency had already re-certified those trailer occupants for continued assistance through the travel trailer program. Meanwhile, Louisiana’s program to distribute federal rebuilding dollars—the Road Home Program—has had serious delays, further exacerbating the rebuilding crisis and the need for continued placement of FEMA’s emergency housing. The emergency housing responses at the federal, state, and local levels must be coordinated to provide meaningful post-disaster housing assistance. As it stands, removal of FEMA trailers well before the restoration of the rental market and before most recipients of Road Home funds have had a chance to rebuild homes has left countless living in sub-standard housing.

3.4 Longer Term Emergency Housing⁴⁴

There have been at least three emergency housing programs financed by the federal government and administered by FEMA which make use of the nation’s permanent housing stock. These include:

FEMA’s Individual and Households Program (IHP)

Through the IHP program, the administration has provided at least 488,000 households in the Gulf Region with rental assistance. Standard Rental Assistance is provided to applicants once inspectors determine that an applicant’s residence is uninhabitable. Benefits are based on the local Fair Market Rent (FMR) where the applicant is living, and are paid-out in two-month increments while home repairs are being completed. Recipients directly get the benefits, which cannot exceed \$26,200 or more than 18 months of assistance.

Transitional Rental Assistance is an enhanced program for a select group of Katrina evacuees providing benefits without a prior-inspection of their residence. Recipients receive a three-month benefit valued at \$2,358—the national FMR average. Benefits can be renewed every

⁴⁴ This section is also based on Katz et. al, op.cit.

three months for up to 18 months and cannot exceed \$26,200. In both types of rental assistance programs, FEMA benefits cannot be used to pay for security deposits or utility bills. The full cash benefit must be used for rent, and recipients must provide proof of payment before benefits are renewed.

In addition to the rental assistance program, FEMA is also administering the Other Needs Assistance Program through IHP. This assistance can be used for home repairs not covered by insurance, building a house to replace a residence destroyed by an emergency, and a variety of other expenses including medical, dental, funeral, transportation, and moving and storage costs associated with a disaster. Recipients of either rental assistance program can also apply for this assistance, but any assistance provided through the Other Needs Assistance Program counts against the \$26,200 cap.

Approximately 878,267 households have been approved for IHP assistance. Of that total, 652,057 are in Louisiana, 192,010 are in Mississippi, and 34,200 are in Alabama.

Spending on IHP assistance has reached \$3.11 billion—households from Louisiana have received \$2.4 billion, Mississippians have received \$628 million, and households from Alabama have received \$79 million.

Federally Owned or Rented Housing

Approximately 12,000 families have been housed in FEMA-subsidized housing, which includes apartments leased by the federal government and extant federally owned housing. This is a new program, not pursued in past disaster recovery efforts. There is no estimated data available on the costs associated with this program, nor the location of these housing units.

Vouchers

An unknown number of vouchers have been awarded to displaced individuals through the Katrina Disaster Housing Assistance Program (KDHP)—a temporary U.S. Department of Housing and Urban Development (HUD) program serving as a more restrictive version of the housing subsidies provided under Section 8 of the Housing Act. Recipients of this voucher are limited to those displaced individuals who were already receiving vouchers, previous HUD customers, or already homeless before Katrina made landfall. Although there is no information about the number of recipients, we estimate that only a small percentage of displaced individuals will receive this assistance because the housing needs of many former HUD clients had already been met. For instance, many such families were either placed in unoccupied units of federally-assisted housing developments in other cities or were put on the top of waiting lists to receive Section 8 vouchers.

Finally, it is important to point out that several cities sponsored their own voucher programs, under the assumption that FEMA will later reimburse them. Houston, for instance, has awarded over 30,000 vouchers and is paying the utility bills of all recipients. FEMA has now partnered with Houston, and applicants are now being awarded federal rental assistance

4. Prioritization of Areas for Permanent Rebuilding—Creative “Plandemonium”⁴⁵

⁴⁵ This section is based on the paper prepared by Richard Campanella for this case study.

Less than a quarter of New Orleanians returned to their homes during the autumn of 2005. They encountered damaged homes, flakey utilities, fetid refrigerators, military curfews, and limited services—and these were the lucky ones who did not flood. Citizens also encountered a spirited public discourse about the future of the city. Given limited resources and the lessons of Katrina, where should the city rebuild? Should the city look to its past and prioritize rebuilding the higher natural levees? Should low-lying neighborhoods be closed down? Land-use questions became the most polemical issues of the day.⁴⁶

4.1 First steps toward rebuilding

To help address the litany of problems, Mayor C. Ray Nagin formed, on September 30, 2005, the Bring New Orleans Back (BNOB) Commission⁴⁷. Committees and sub-committees tackled a wide range of topics, but one topped the list and inspired the most passionate response: Should the city's urban "footprint"—particularly its twentieth-century sprawl into low-lying areas adjacent to surge-prone water bodies—be "shrunk" to keep people out of harm's way? Or should the entire footprint "come back," in the understanding that federal levee failure, not nature, ultimately caused the deluge? That fundamental question fell under the domain of the BNOB's Urban Planning Committee (sometimes referred to as the Land Use Committee).

One researcher sketched out a methodology to address the footprint question. It involved measuring four important variables—residents' desire to return, structural safety, historical and architectural significance, and environmental and geographical safety—and mapping out the results, to inform decisions on neighborhoods' futures. The methodology was presented to the Urban Planning Committee and published as a guest editorial in the *Times-Picayune*, precisely as representatives from the Urban Land Institute arrived in town to advise the BNOB Commission on, among other things, the footprint issue.⁴⁸

ULI members debated the methodology but decided not to endorse it, because of the difficulty of measuring the first variable (desire to return). The proposal did, however, help frame the footprint question as a balancing act between undeniable scientific realities on one hand, and cherished cultural and humanistic values on the other. Subsequent public meetings with capacity crowds and long lines of testifiers proved that balancing act weighed heavily on everyone's mind. "In a city that has seen a resurgence of civic activism since" Katrina, wrote the *Times-Picayune*,

more than 200 people attended the [ULI] meeting to voice their opinions about what shape New Orleans should take in the future. The resounding refrain: Learn from our history. Many residents told the 37-member Urban Land Institute panel to use

⁴⁶ The following material by Richard Campanella is scheduled to be published as "'Bring Your Own Chairs': Civic Engagement in Postdiluvian New Orleans," in *Civic Engagement in the Wake of Katrina*, edited by Amy Koritz and George Sanchez, University of Michigan Press, upcoming 2008-2009.

⁴⁷ The Bring New Orleans Back Commission "Urban Planning Committee: Action Plan For New Orleans" report is available www.bringneworleansback.org

⁴⁸ This essay was later published in the *Journal of Architectural Education*. Richard Campanella, "A Proposed Reconstruction Methodology for New Orleans." *Journal of Architectural Education*, Vol. 60, Issue 1, September 2006.

the original footprint of the city—along the Mississippi river and its high ridges—as a guide for land use.⁴⁹

Those two hundred people, however, mostly resided on the same “high ridges” they recommended for prioritization. Residents of low-lying areas, which mostly flooded, were sparsely represented at the meeting, but nevertheless managed to engage through political representatives, the Internet, and commuting. Their stance (shared by many in higher areas) was firm: the entire city will return; the footprint will remain precisely as before the storm.

When the ULI finally issued its recommendations to the BNOB Commission⁵⁰, it gently advocated footprint shrinkage through the allocation of recovery investments first to the highest and least-damaged areas, and only later to the depopulated flooded region. The news hit the front page of the *Times-Picayune* in the form of an intentionally confusing map of three purple-shaded “investment zones,” in which “Investment Zone A,” despite its optimistic label, was recommended for, at best, delayed rebuilding, and possibly for conversion to green space.⁵¹

Public reaction was hostile. “Don't Write Us Off, Residents Warn; Urban Land Institute Report Takes a Beating,” read the headlines after the recommendations sunk in. The article continued,

Elected officials and residents from New Orleans' hardest-hit areas on Monday responded with skepticism and, at times, outright hostility to a controversial proposal to eliminate their neighborhoods from post-Katrina rebuilding efforts.

Even Mayor Ray Nagin...said he is reserving judgment on [whether] to abandon, at least for the near term, some of the city's lowest-lying ground.... During the meeting, Nagin reiterated his intention to ultimately "rebuild all of New Orleans...."

[City Council member Cynthia] Willard Lewis spoke with particular disdain for ULI's "color-coded maps" which divide the city into three "investment zones:" areas to be rehabilitated immediately, areas to be developed partially, or areas to be re-evaluated as potential sites for mass buyouts and future green space. Those maps, she said, are "causing people to lose hope," and others to stay away.⁵²

Mayor Nagin found himself in a bind, since the ULI's advice was aimed specifically for the benefit of his BNOB Commission. He assured agitated citizens that “once the

⁴⁹ Martha Carr, “Citizens pack rebirth forum; Experts urged to use N.O. history as guide,” *The Times-Picayune*, November 15, 2005, Metro, page 1.

⁵⁰ The Urban Land Institute report “New Orleans, Louisiana: A Strategy for Rebuilding—an Advisory Services Program Report,” is available at <http://www.uli.org>

⁵¹ Urban Land Institute. New Orleans, Louisiana: a strategy for rebuilding—an Advisory Services Program Report, November 12-18, 2005. Map, p. 45 of PowerPoint file.

⁵² Frank Donze, “Don't Write Us Off, Residents Warn; Urban Land Institute Report Takes a Beating,” *The Times-Picayune*, November 29, 2005, page 1.

recommendations are finalized...it will be up to the commission members and the community to evaluate it, kick the tires, say we like this and we don't like this....”⁵³

The ULI report, as well as similar consultation from the Philadelphia-based design firm Wallace, Roberts & Todd, became gist for further rounds of highly attended and increasingly raucous BNOB meetings during December 2005 and into the new year. Finally, on January 11, 2006, the Urban Planning Committee of the BNOB Commission unveiled its final recommendations. Like the ULI, the group communicated its findings through a hefty PowerPoint presentation. Entitled *Action Plan for New Orleans: The New American City*, the 69-page presentation’s dizzying array of proclamations, factoids, bulletized lists, graphics, and platitudes seemed eager to placate all sides while sacrificing lucidity in the process. Audience members hungry for a clear answer to the footprint question grew agitated at the recommendation of a moratorium on building permits for certain heavily damaged neighborhoods until May 2006. During those four months, residents themselves would have to demonstrate their neighborhood’s “viability”—a recommendation that cleverly placed the burden of proving neighborhood wherewithal on the backs of the most vocal full-footprint proponents.

Further insight on the BNOB Commission’s position on the footprint question came in the form of a map, halfway through the presentation, entitled “Parks and Open Space Plan.” It depicted Orleans Parish with the usual cartographic overlays of street networks and water bodies. At the bottom of its legend was a dashed-green line symbol indicating “Areas for Future Parkland,” which corresponded to a series of six large circles sprinkled throughout certain low-lying residential neighborhoods.

The next morning, the *Times-Picayune* featured the map on its front page. The newspaper’s adaptation transformed the dashed circles, which cartographically suggested a certain level of conjecture and abstraction, into semi-opaque green dots labeled as “approximate areas expected to become parks and green space.” The dots spanned so much terrain with such apparent cartographic confidence that many readers interpreted them to represent discrete polygons, rather than dimensionless abstractions merely suggesting some neighborhood parks. Just as citizens in November seized upon the ULI’s “purple investment zone” map as the parapraxis of that organization’s underlying footprint philosophy, citizens now clutched this “Green Dot Map” as the Freudian slip of the BNOB Commission’s hidden agenda. The response was livid. One man said to committee chairman Joseph Canizaro, whose status as a major real estate investor was not viewed as coincidental by skeptical citizens, “Mr. Joe Canizaro, I don’t know you, but I hate you. You’ve been in the background trying to scheme to get our land!”⁵⁴

“4 MONTHS TO DECIDE,” blared the *Times-Picayune* headline; “Nagin panel says hardest hit areas must prove viability; City’s footprint may shrink.”⁵⁵ The infamous “Green Dot Map” entered the local lexicon, motivating vexed and worried residents of heavily damaged neighborhoods to demonstrate “viability” and save their neighborhoods. *Green space* became a dirty word in postdiluvian New Orleans.

⁵³ Frank Donze, *id.*, page 1.

⁵⁴ Gordon Russell and Frank Donze, “Rebuilding proposal gets mixed reception; critics vocal, but many prefer to watch and wait.” *Times-Picayune* January 12, 2006, page 1.

⁵⁵ Frank Donze and Gordon Russell, “4 MONTHS TO DECIDE: Nagin panel says hardest hit areas must prove viability; City’s footprint may shrink; full buyouts proposed for those forced to move; New housing to be developed in vast swaths of New Orleans’ higher ground,” *Times-Picayune*, January 11, 2006, page 1.

What ensued, starting in late January 2006, was one of the most remarkable episodes of civic engagement in recent American history. Scores of grass-roots neighborhood associations, civic groups, and homeowners associations formed organically, sans professional expertise and usually with zero funding. Despite their tenuous life circumstances and other responsibilities, New Orleanians by the thousands joined forces with their neighbors and volunteered to take stock of their communities; document local history, assets, resources, and problems; and plan solutions for the future.

In some cases, such as the stellar Broadmoor Improvement Association, professional help arrived from outside (Harvard University), and funding aided the planning process. Many associations eventually produced fine neighborhood plans, and, perhaps more importantly, empowered their members to meet their neighbors and learn about their environs, past and future, to degrees unimaginable a year earlier.

In an editorial on “the Curse of the Green Dot,” *Times-Picayune* columnist Stephanie Grace reflected on the episode. “You know the Green Dot,” she reminded her readers.

In a move that will go down as one of the great miscalculations of post-Katrina planning, [the ULI and BNOB Commission] designated the off-limits areas with green dots. Around town, people picked up the paper that morning and saw, for the first time, that their neighborhoods could be slated for demolition. To say they didn't take the news well is an understatement.

“People felt threatened when they saw the green dot,” LaToya Cantrell, president of the Broadmoor Improvement Association, would say months later. “All hell broke loose”....

City Councilwoman Cynthia Willard-Lewis, who represents the hard-hit Lower 9th Ward and Eastern New Orleans, said the green dots made many of her African-American constituents flash back to the civil rights era, thinking they would need to fight for equal access all over again. *The maps, she said soon after they were unveiled, “are causing people to lose hope.”*⁵⁶

Ironically, the very recommendations that motivated the grass-roots association formation—the Green Dot Map, the permit moratorium, and threat of “green spacing” if neighborhood viability were not demonstrated by May 2006—ended up torpedoing the very commission that issued them. Mayor Nagin, embroiled in an election campaign that garnered national interest, rejected the advice of his own BNOB Commission. Fatally undermined despite its worthwhile contributions beyond the footprint issue, the BNOB Commission disbanded unceremoniously. Footprint shrinkage became a radioactive topic among the mayoral candidates; anyone who supported the concept risked losing the votes of tens of thousands of flood victims. Engaged citizens and their representatives had, for better or worse, yelled the footprint question off the table.

⁵⁶ Stephanie Grace, “Will plan lift the Curse of the Green Dot?,” *The Times-Picayune*, April 1, 2007, Metro-Editorial, page 7 (emphasis added).

4.2 Deciding Not to Decide

After Mayor Nagin cinched reelection in the closely watched race, the footprint debate largely disappeared from public discourse. The mayor's "laissez faire" repopulation and rebuilding stance, which was more of a default position than an articulated strategy, settled the footprint question by saying, in essence, *let people return and rebuild as they can and as they wish, and we'll act on the patterns as they fall in place*. Federal complicity bore responsibility as well: FEMA's updated Advisory Base Flood Elevation maps—which drive flood insurance availability and rates—turned out to be largely the same as the old 1984 flood maps, thus seemingly communicating federal endorsement (as well as actuarial encouragement) to homeowners deliberating on whether to rebuild in low-lying areas. Road Home monies imparted no special incentive to do otherwise, and no federal compensation fund awaited those homeowners and businesses that would have been affected by a hypothetical footprint-shrinkage decision.

The entire city *could* come back, but what that city would look and function like still remained an open question. Additional planning efforts would ensue, provoking more civic engagement from meeting-weary New Orleanians.

The New Orleans City Council, historically competitive with the mayor's office and concerned about losing ground to Mayor Nagin's BNOB Commission, belatedly launched its own planning effort. "With more and more New Orleans neighborhoods launching post-Katrina planning efforts on their own," wrote the *Times-Picayune*, "the City Council is trying to bring some order and overall direction to the process."⁵⁷ It hired Paul Lambert and Shelia Danzey from Miami, Florida, to convene citizens throughout the flooded region and draw up a series of neighborhood plans. The Lambert-Danzey-City Council effort scheduled meetings simultaneously with scores of neighborhood associations, even as the public still mulled over the findings of the earlier BNOB and ULI efforts. Some wags described the overlapping efforts as "plandemonium."

Adding to the confusion was yet another planning effort, this one paid for by private foundation monies. The Unified New Orleans Plan (UNOP) endeavored to "weave together" and fill in the gaps of all previous plans by producing a series of "district plans" and a citywide plan for not just the flooded areas, but the entire city. The UNOP effort initially met resistance from council members who favored their own Lambert-Danzey planning team, while the grass-roots neighborhood associations (staffed almost entirely by local volunteers with everything to lose rather than paid out-of-town professionals) expressed impatient skepticism for all of the above. Civically engaged citizens grew cynical, not because of lack of commitment but because too many uncoordinated efforts and competing meetings chased too few tangible resources for honest-to-goodness problem solving.

UNOP's ample resources nevertheless empowered it to arrange three "Community Congress" mega-events in December 2006 and January 2007. Thousands of citizens gathered in the Morial Convention Center, linked through satellite feeds with groups of displaced New Orleanians in Atlanta, Dallas, and Houston, to discuss and vote on priorities using real-time electronic balloting. UNOP's resultant *Citywide Strategic Recovery and Rebuilding Plan*, as well as a plethora of district plans, hit the streets in draft form in early 2007, about the same

⁵⁷ Bruce Egger, "N.O. is paying consultants to help neighborhoods plan; Advisers will work to build consensus." *The Times-Picayune*, April 10, 2006, Metro page 1.

time that Mayor Nagin appointed world-renowned disaster recovery expert Dr. Edward Blakely as chief of the city's Office of Recovery Management. In March 2007, Blakely unveiled yet another plan—of 17 “re-build,” “re-develop,” and “re-new” nodes throughout the city, marking spots for intensive infrastructure investment. Strikingly more focused and modest than the grandiose visions of earlier plans, Blakely's plan aimed

to encourage commercial investment—and with it stabilize neighborhoods—rather than defining areas that are off-limits to rebuilding. One such previous plan, advanced in early 2006 by Mayor Ray Nagin's Bring New Orleans Back Commission and backed by the widely respected Urban Land Institute, drew howls from residents who found their neighborhoods represented on maps by green dots that denoted redevelopment as perpetual green space.⁵⁸

Once again, citizens engaged, calling meetings among themselves to discuss Blakely's proposal. While a general consensus of support for Blakely's plan emerged, citizens wondered how it might affect parallel planning efforts. Would their civic engagement be for naught? Officials assured citizens that all other ideas—offered by the BNOB, the ULI, the Lambert-Danzey, the UNOP, and particularly the myriad grass-roots groups—will guide and inform final land-use and resource-allocation decisions.

4.3 Land-Use Planning Beyond the Footprint Debate

Land-use planning in the wake of Hurricane Katrina shifted from the original, radical, visionary “footprint” discourse of 2005-2006 to a lumbering, bureaucratic, nuts-and-bolts process of 2007-2008, guided by programmatic policies and agency officials. Chief among these were the Louisiana Road Home Program's options to flooded homeowners, to either rebuild their properties or sell them to the state. As many as 17,000 homeowners throughout southern Louisiana are expected to take the buy-out, of which 80 percent are in Orleans and St. Bernard parishes. With the footprint controversy settled, now the land-use question shifted to address the thousands of “holes” in that full footprint. What will become of the bought-out parcels?

The Louisiana Recovery Authority established the Louisiana Land Trust (LLT) to receive titles to the properties. As of early 2008, the Louisiana Land Trust is scheduled to start turning over ownership from the State of Louisiana to the New Orleans Redevelopment Authority, a semi-autonomous agency of the city government with a history of low funding and a lacklustre track record. NORA will decide among four options for every property: (1) repair or rebuild the structure for market-rate housing; (2) repair or rebuild for affordable housing (required to constitute 25 percent of all LLT properties), (3) convert the lot to green space or parkland, or (4) clear the lot and enroll the land in the “Lot Next Door” program, in which adjacent homeowners who opted to rebuild may purchase neighboring lots which had been bought out.

As many as 7,000 Katrina-flooded buy-out properties are likely to fall into NORA's jurisdiction, plus another 10,000 blighted houses and possibly 15,000 additional substandard and tax-delinquent houses. This city agency is charged with momentous decisions influencing

⁵⁸ Michelle Krupa and Gordon Russell, “N.O. post-K blueprint unveiled; Plan puts most cash in east, Lower 9th,” *Times-Picayune*, March 29, 2007, page 1.

the future land use of Orleans Parish. Because the properties are spatially dispersed across the city, the one decision NORA cannot make is to close down certain far-flung, low-lying neighborhoods and concentrate their efforts in higher, inland areas. Nevertheless, many properties falling in NORA's jurisdiction will tend to cluster in certain areas, affording the agency "the ability to revitalize a neighborhood."⁵⁹ To do this, NORA and other city government officials promise to make use of the various planning ideas and projects envisioned by citizens and planners in the wake of Hurricane Katrina.

4.4 Land-Use Planning Beyond New Orleans

Hurricane Katrina brought newfound urgency to the geo-physical deterioration of southeastern Louisiana. The coastal land loss from hurricanes Katrina and Rita in 2005 totaled nearly 600 square kilometers throughout southern Louisiana, or roughly ten years' worth of loss in two days. Nearly half came from the relatively small land area east of the lowermost Mississippi River, the buffer needed most for the protection of metropolitan New Orleans.

To solve this crisis, river diversions, siphons, crevasses, and "third deltas" may be deployed to recreate the historical tendency of the Mississippi to overflow and replenish the coastal wetlands with fresh water and sediment, without the deleterious effects of flooding. The Caernarvon (1991) and Davis Pond (2002) diversions have been successfully pushing back the salt water wedge and creating some new land in the eroding wetlands.

More massive river diversions and uncontrolled crevasses are needed, but will still fall short of saving the coast. Reason: the Mississippi bears far less sediment than it did in historical times. Sediment levels in the river today are sixty to eighty percent less than in historical times, because numerous dams and locks built upriver and on the sediment-bearing western tributaries since World War II have trapped vast quantities of the best suspended sediment load (sand), while the remaining particles spill out uselessly as bedload on the continental shelf. To make up the difference, sediment-mining operations are needed locally to deliver this valuable resource from the river's bedload or from offshore deposits to the coast's fraying land surface. Siphons, diversions, and crevasses must be situated to disperse the sediments across the wetlands and fertilize them with the river's nutrient-rich fresh water.

Global warming and sea-level rise threatens levee-encircled New Orleans as it does all coastal cities. It does not, however, spell doom for the Louisiana coastal region on which the city depends. Unlike other coastal cities, Louisiana possesses something to fight sea-level rise: the Mississippi River and its land-building capacity. River diversions and sediment siphoning, if done at the requisite magnitude, can build up coastal marshes even upon rising seas. The current pace of rise, however, is troubling, as is the dearth of riverine sediments and slow bureaucratic execution of major coastal restoration projects.

Hurricanes Katrina and Rita convinced many coastal scientists and managers that radical solutions are needed sooner rather than later if coastal Louisiana and New Orleans are to be saved. Rerouting the Mississippi to create a new bird's foot delta in the Breton Sound, once an extremist proposal, is now recommended publicly by many experts.

⁵⁹ Joe Williams, as quoted by David Winkler-Schmit, "The Long Road Ahead: The New Orleans Redevelopment Authority—NORA—is finally getting enough money to do its job. Is the agency ready?" *Gambit Weekly*, December 18, 2007, pages 9-11.

4.5 Post-Katrina Land-Use Planning in Perspective

Decisions of this magnitude may ironically spell death for some of the very cultures and landscapes—namely in lower Plaquemines Parish—they are intended to save. Declaring some areas off-limits to building for the sake of coastal restoration gives hope to people in other areas, but spells doom for those native to that area. Indeed, many of the land-use controversies of post-Katrina New Orleans and coastal Louisiana can be captured by observing where stakeholders draw their “build / no-build line”—that is, the theoretical line on a map separating areas recommended for rebuilding from those deemed best returned to nature.⁶⁰

One philosophy recommends the total abandonment of the metropolis. Its advocates essentially draw the build / no-build line at the metropolis’ upper boundary, somewhere between rural St. Charles Parish and urbanized Jefferson Parish, or above Lake Pontchartrain’s northern shore. “Abandonists” tend to be pragmatic and fiscally conservative; for them it is a rational question of hard science, hard dollars, and body counts. In making their case, they cite only the gloomiest scientific data on subsidence, coastal erosion, and sea-level rise, and dismiss humanist and cultural arguments as “emotional” or “nostalgic.” Abandonists almost always have nothing to lose personally if New Orleans does disappear, and feel no obligation to propose financial compensation plans for those who do. They are loathed by New Orleanians, but occupy a seat at the table in the national discourse.

At the opposite end are those who advocate maintaining the urban footprint at all costs. Unlike abandonists, “maintainers” see this as primarily a humanist and cultural question, rather than a scientific or engineering one. To be against maintaining all neighborhoods is to be against people and against culture—worse yet, against *certain* peoples and *certain* cultures. Maintainers tend to be passionate, oftentimes angry, and for good reason: many are flood victims and have everything to lose if the build / no-build line crosses their homes. If a levee can be built well enough to protect *them*, they reason, why not extend it around *us*? Ignoring scientific data and fiscal constraints, maintainers push the build / no-build line beyond the rural fringes of St. Bernard Parish, even all the way to the Gulf of Mexico.

In between these policy prescriptions fall the “concessionists,” usually aficionados of the city, particularly its historical heart, and oftentimes residents of its un-flooded sections. Concessionists struggle to balance troubling scientific data with treasured social and cultural resources. Their answer: concede certain low-lying modern subdivisions to nature—areas which, incidentally, they never found structurally appealing in the first place—and increase the population density and flood protection in the higher, historically significant areas. Concessionists argue that, in the long run, this would reduce costs, minimize grief, protect the environment, and save lives. Concessionists sometimes failed to recognize, however, that conceding neighborhoods itself costs money, in the form of fair and immediate compensation to homeowners.

Sensitive to accusations of elitism, concessionists soften their message with careful word-smithing and confusing maps, as evidenced by the aforementioned ULI “purple investment zone map” and the BNOB Commission’s “green dot map.” They place their build / no-build line somewhere between those of the abandonists and the maintainers—sometimes near the

⁶⁰ Richard Campanella, “Geography, philosophy, and the build/no-build Line.” *Technology in Society: An International Journal*, 29 (2007) 169–172.

Industrial Canal, sometimes between the Metairie / Gentilly Ridge and the lakefront, usually to the exclusion of the distant, charmless, low-lying subdivisions of New Orleans East. Concessionists enjoy support among many educated professionals who live on high ground, but encounter fierce resistance from maintainers, who accuse them of being, at best, unrealistic utopian dreamers, and at worst, elitist, classist, racist land-grabbers.

Reports that rural, isolated lower Plaquemines Parish—home to only 14,000 people, or two percent of the region’s population—may not receive full funding for levee maintenance seems to have spawned a fourth philosophy: push the build / no-build line down just past Belle Chasse, the only major community in upper Plaquemines Parish that adjoins the metropolitan area. Advocates include city dwellers, both concessionists and maintainers, who stand to benefit from the abandonment of lower Plaquemines because it would clear the path for aggressive coastal restoration while reducing the price tag on their own protection. Their advice to the longtime residents of those marshes is ironically similar to what abandonists say to *all* residents of southeastern Louisiana: *move to higher ground*.

Thus, social, cultural, and humanistic values, plus a sense of personal investment, tend to push the build / no-build line in a downriver direction, while scientific and financial values nudge the line upriver.

It remains to be seen how far downriver that line will be drawn into lower Plaquemines Parish. In metro New Orleans, however, the maintainers clearly prevailed in drawing the build / no-build line along the existing, pre-Katrina urban edge. Whether that line gets erased and redrawn again—by concessionists or by abandonists—will be determined by the insurance industry, by mortgage companies, by property values, by federal intervention, by disappointed residents forced to re-address their initial post-Katrina rebuilding stance, and ultimately, by nature.

5. Rebuilding after Katrina: The Road Home Program for Home Owners⁶¹

Katrina was an extraordinary act of nature, but some would argue that it resulted in the most extraordinary manmade—not “natural”⁶²—disaster in the history of New Orleans. Long before Katrina ever made landfall, design failures by the Corps of Engineers,⁶³ Congressional

⁶¹For a more comprehensive treatment of the issues treated in this section, and other related themes, see David A. Marcello, “Housing Redevelopment Strategies in the Wake of Katrina and Anti-Kelo Constitutional Amendments: Mapping a Path Through the Landscape of Disaster”, 53 Loy. L. Review 762 (2008)

⁶²See “The ERP Report: What Went Wrong and Why” in *Civil Engineering* (June 2007) at 56: “[M]uch of the destruction was the result of engineering and engineering-related policy failures.” The article (hereinafter, “ERP Report”) summarizes findings of the Hurricane Katrina External Review Panel, which was convened by the American Society of Civil Engineers at the request of the Corps of Engineers to conduct an in-depth peer review. The full report, “The New Orleans Hurricane Protection System: What Went Wrong and Why,” is available by mail from ASCE Book Orders, P.O. Box 79404, Baltimore, MD 21279-0404 or by phone: (800) 548-2723.

⁶³The Corps based its design on a “standard project hurricane (SPH)” that used “meteorological parameters at the low end of the range of 101 to 111 mph”; “[d]id not evaluate the hurricane protection system for the effects of a more severe storm”; “[d]id not update its SPH meteorological parameters when the National Weather Service issued revised numbers in 1979”; and “[d]id not improve previously designed and constructed components of the hurricane protection system to match updated design criteria.” ERP Report at 74. Despite widespread recognition that “the entire New Orleans region is subsiding,” the Corps’ “designers and engineers did not build in an allowance for subsidence”; as a consequence, some “levees and floodwalls [were] up to 3 ft. (0.9 m) lower than the original design.” Id. at 75. The ERP Report concluded that “questionable engineering

funding failures,⁶⁴ and the fragmentation of responsibility among parochial levee protection bodies⁶⁵ laid the awful groundwork (literally) for catastrophic levee failures and consequential losses in life and property. Since many of the miscalculations were attributable to agencies or officials of the federal government, Louisiana was entirely justified in turning to the federal government for assistance in the recovery process. The United States Congress ultimately responded to the state's entreaties with multiple appropriations, approving billions of dollars to reimburse property owners for their losses.

The State of Louisiana opted to administer the federal housing recovery funds through the Road Home Program, which was created by Governor Kathleen Blanco, the Louisiana Recovery Authority (LRA), and the Office of Community Development (OCD) with the approval of the Louisiana Legislature.⁶⁶ According to the OCD website,

The Road Home is a collection of housing programs designed to help residents of Louisiana affected by Hurricane Katrina or Rita get back into their homes as quickly and fairly as possible. This groundbreaking program represents the largest single housing recovery program in U.S. history.⁶⁷

Louisiana opted to "privatize" much of the administration of the Road Home Program under a contract with ICF International.⁶⁸

The Road Home offered eligible homeowners an opportunity to receive up to \$150,000 in compensation for their losses and gave homeowners three compensation options: (1) Repair and stay in their homes; (2) Sell to the Road Home and purchase another home in Louisiana; (3) Sell the home and choose not to remain a homeowner in Louisiana.⁶⁹ Homeowners who chose the third option faced up to a 40% reduction in pre-storm value; the penalty sought to encourage continued homeownership in Louisiana.

Options 2 and 3 promised to put multiple properties into public ownership, and the state regarded those properties as prime assets in the housing redevelopment process. "Road Home" properties acquired as a result of Options 2 and 3 will come to the state in a negotiated transfer from property owners⁷⁰ who receive Road Home monies and in turn

decisions were made for the New Orleans hurricane protection system. Margins of safety were too low in designing the levees. Improper datums were used in construction. The standard project hurricane was not updated." *Id.* at 76.

⁶⁴ "Because of the Congressional budgeting process, the stream of funding for the New Orleans hurricane protection system was irregular, at best. If a project was not sufficiently funded, the Corps was often required to delay implementation or to scale back the project.

"This 'push-pull' mechanism for the funding of critical life safety structures such as the New Orleans hurricane protection system is essentially flawed." ERP Report at 76.

⁶⁵ "The Corps acts as the 'engineer' on behalf of the levee districts. However, the Corps's position is that it cannot do anything that a local sponsor (in this case, a levee district) does not approve. Several key Corps attempts to implement system-wide solutions were often met by fierce local opposition and were not approved." ERP Report at 75.

⁶⁶ See <http://www.doa.louisiana.gov/cdbg/DRHousing.htm> (last visited December 31, 2007).

⁶⁷ *Id.*

⁶⁸ See the company's website at <http://www.icfi.com/> (last visited December 31, 2007).

⁶⁹ See "Frequent Questions" at The Road Home website: <http://www.road2la.org/homeowner/faqs.htm> (last visited December 31, 2007).

⁷⁰ David Hammer, *Road Home seldom leading out of state; Most plan to use grants to rebuild, not to relocate*, The Times-Picayune, January 19, 2007 at A-1.

surrender their title to the Road Home Corporation.⁷¹ These properties will come into ownership of the Road Home Program⁷² with far fewer burdens than those encumbering expropriated⁷³ or tax-delinquent properties, thereby making the Road Home properties far more attractive targets for redevelopment.

5.1 Land Banking in the Road Home Program

The Road Home Program intends to transfer properties that it acquires within the Parish of Orleans to the City of New Orleans, which in turn has announced its intention to place them with the New Orleans Redevelopment Authority (NORA) in a “land bank” for redevelopment.⁷⁴ A land bank that consists of properties acquired through the Road Home Program presents far more promising opportunities for redevelopment than would a land bank consisting of expropriated and adjudicated properties. NORA will not have to deal with the 18-36 month redemptive period, for example, as it would for adjudicated properties.⁷⁵ Nor will NORA be constrained by a thirty-year restriction in its resale of Road Home properties, as would be the case in disposing of expropriated properties.⁷⁶ NORA will simply need to repair Road Home properties and offer them for resale, enjoying some confidence that in most cases the title transaction handled by the Road Home Program will deliver to NORA a property on which title insurance can be secured by a subsequent purchaser. Taken as a whole, these considerations make *Road Home properties* a higher priority and more inviting prospect for “land banking” and redevelopment than the costly and time-consuming *expropriated* and *tax adjudicated* properties.

“Land banking” sounds like a superb redevelopment strategy, and it can be⁷⁷—but not if it consists mostly of consolidating the ownership of many troubled properties in a single public agency, like NORA. This is not the first time NORA has announced its intention to “land

⁷¹ LA. REV. STAT. ANN. § 40:600.61, *et seq.*, establishes the Road Home as a nonprofit corporation, separate from state government but subject to the Public Records Law, Open Meetings Act, and Code of Governmental Ethics.

⁷² See the Road Home website at <http://www.road2la.org/> for eligibility criteria, a current accounting of applications received and funds disbursed, answers to Frequently Asked Questions, policies and procedures, and other useful information.

⁷³ Expropriation is defined as a “governmental taking or modification of an individual’s property rights, esp. by eminent domain; CONDEMNATION.” See BLACK’S LAW DICTIONARY 621 (8th ed. 2004).

⁷⁴ *Id.*; Laura Maggi, *Lawmakers provide directions to Road Home; Land bank, NORA to handle properties*, The Times-Picayune, June 19, 2006 at A-2.

⁷⁵ LA. CONST. art. VII § 25 imposes a three-year redemption period (18 months for abandoned and blighted properties) during which the original tax-delinquent property owner can redeem the property by paying past-due taxes and penalties. This constitutional redemption period poses a major obstacle to the redevelopment of properties acquired at a tax sale, because most new owners will put off making any improvements to the property until expiration of the redemption period.

⁷⁶ LA. CONST. art. I, § 4(H) prohibits the expropriating entity from disposing of expropriated property that has been held for less than 30 years without first offering it for sale at its then-current fair market value to the original owner, the owner’s heirs, or successors-in-interest and provides further that it may thereafter be offered for sale only by competitive public bid. These restrictions undermine the use of expropriation to assemble large tracts of land, clear the site, make infrastructure improvements, and return it to the private sector for redevelopment.

⁷⁷ See, for example, EDWARD J. BLAKELY & TED K. BRADSHAW, *PLANNING LOCAL ECONOMIC DEVELOPMENT: THEORY AND PRACTICE* 181-82 (Sage Publications 3d ed. 2002) (noting the usefulness of land banking and particular modes of land banking that have succeeded in some communities). Frank S. Alexander, “Land Bank Strategies for Renewing Urban Law,” 14 J. Afford. Housing & Comm. Dev. Law 140 (Winter, 2005); Frank S. Alexander, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks* (Local Initiatives Support Corporation & Fannie Mae Foundation 2005).

bank” properties for redevelopment.⁷⁸ Earlier efforts yielded few or no successes in terms of rehabilitated properties. Consolidation is the relatively easy part of the “land banking” process. What’s more challenging is the ability to rehabilitate those decimated properties, release them from public ownership, and return them to productive private uses. We should evaluate the efficacy of “land banking” not by the boldness of its front-end acquisition strategies, but rather by its ability on the back-end to move those properties out of public ownership and back into private commerce. Creating a “land bank” that consists mostly of expropriated and adjudicated properties may prove to be a formula for failure rather than a strategy for returning rehabilitated housing to the private sector.

5.2 Problems Implementing the Road Home

Despite obvious advantages in how they are acquired, Road Home properties face their own considerable challenges, which are attributable to the program’s troubled administration and its excruciatingly slow progress in processing applications submitted by Louisiana homeowners. ICF International took over operation of the Road Home Program in June 2006. An in-depth article by *The Times-Picayune* newspaper eight months later detailed just how quickly concerns had arisen among state officials about the company’s ability to perform, then how consistently those concerns were vindicated by the company’s poor performance.⁷⁹

The public became aware of problems on August 21, 2006, when ICF opened its phone lines to accept grant applications, and the system—staffed to handle up to 6,000 calls per day—crashed under the weight of 32,000 calls in the first three days of operation.⁸⁰ Telephone staffing problems persisted: “Of 100,000 calls made to the state’s toll-free help line by Oct. 1, more than 26,000 were terminated because people hung up before an agent was available, a rate more than five times the acceptable level spelled out in the West contract.”⁸¹ Nor were in-person appearances more successful: In October, ICF said applicants had to wait at least a month to book appointments at six of the program’s ten centers; by November, two-month waits were common.⁸² In addition to insufficient staffing, ICF operations were plagued by multiple verification requirements⁸³ and by the complexity of coordinating activities among more than a dozen subcontractors.⁸⁴

⁷⁸ See, e.g., the discussion of NORA’s Real Estate Acquisition Landbank Mechanism (“REALM”) in Kristine B. Kendrick, “Land Banks and Land Assembly: Survey of Law Used to Acquire and Rehabilitate Abandoned and Blighted Property in the City of New Orleans” at 14, an unpublished memorandum prepared for the American Bar Association Forum on Affordable Housing and Community Development Law, May 26-27, 2005: Washington, D.C. (copy on file with the author)(hereinafter, “Kendrick Memorandum”).

⁷⁹ See Jeffrey Meitrodt, *Understaffed and Overwhelmed: The firm administering Louisiana’s Road Home program has consistently underestimated the magnitude of the task, records show*, in *The Times-Picayune*, January 28, 2007 at A-1 (hereinafter, *Understaffed and Overwhelmed*), noting that “hundreds of e-mail messages and documents [showed] state officials fretting privately over the company’s bungled efforts almost from the moment its \$756 million contract kicked in in June” and finding that “ICF [made] critical misjudgments almost every step of the way, typically by failing to bring sufficient staff resources to bear as applicants move through the process.”

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ State officials “were so worried about designing a fraud-proof program that it is now loaded down with ‘excessive’ verification requirements, such as multiple identification checks and title searches for homeowners who have already furnished up-to-date mortgage and title records.” As a result, “the screening process is more stringent in Louisiana, which has 10 levels of verification, than in Mississippi, which has four . . .” *Id.*

⁸⁴ *Id.*

ICF closings proved painfully slow in delivering money to homeowners. By October 2006, more than 53,000 homeowners had applied, but only 11 had received their money.⁸⁵ By mid-November, the pool of applicants had grown to 77,000, but only 28 recipients had their checks.⁸⁶ Mid-December data revealed that out of 89,000 applicants, 85 had closed on their award amounts—fewer than .001%!⁸⁷ State legislators were so incensed that they unanimously approved separate House⁸⁸ and Senate⁸⁹ resolutions calling on the Division of Administration to immediately terminate the ICF contract and to pursue all legal avenues for recouping funds paid to ICF.⁹⁰ Both chambers also approved by unanimous votes a concurrent resolution calling for state and federal authorities to investigate ICF.⁹¹

The company's attempts to placate authorities only exacerbated the frustration. Immediately after approval of the legislative resolutions in mid-December, a senior company official personally assured the Louisiana Recovery Authority⁹² (LRA) that ICF would be handing out 500 grants per day by January, 2007 then had to back off that commitment 25 days later after only 68 more closings (an average of 2.7 per day) brought the “grand total” of approvals to 153 out of 97,167 homeowner applications.⁹³ By late January, 2007 ICF had “issued grant money to fewer than 250 of about 100,000 applicants” and was “being decried as a fiasco comparable in its ineptitude to FEMA itself.”⁹⁴ *The Times-Picayune* reported that for January, the company had averaged approximately “seven closings a day, and ICF doesn't expect to reach 500 closings a day until May.”⁹⁵

In February 2007, ICF and LRA officials were embarrassed by disclosures that they had been giving “dead wrong” information to homeowners because they “apparently misunderstood the assignment policy from the beginning.”⁹⁶ A month later, the Legislative Auditor issued a report that “found the counselors at Road Home housing centers often don't have formal procedures and give out inconsistent information when they meet with homeowners”⁹⁷

By the end of March 2007, 5,444 applicants out of 120,680 had held their grant closings—up significantly over the January figures but still less than half of the state's goal for that

⁸⁵ *Id.*

⁸⁶ Ed Anderson, *Faster work vowed on grants; Blanco dissatisfied with Road Home pace*, *The Times-Picayune*, November 16, 2006 at A-3.

⁸⁷ Bill Barrow, *ICF may let cash flow as appeals ironed out; Ideas for improving Road Home aired out at Governor's Mansion*, *The Times-Picayune*, December 20, 2006 at A-1.

⁸⁸ HR 17 of the Second Extraordinary Session of 2006.

⁸⁹ SR 26 of the Second Extraordinary Session of 2006.

⁹⁰ *Recovery company dismissal sought; House, Senate pass separate resolutions*, *The Times-Picayune*, December 16, 2006.

⁹¹ HCR 34 of the Second Extraordinary Session of 2006. *Id.*

⁹² LA. REV. STAT. ANN. § 49:220.1, *et seq.* (West 2007).

⁹³ Ed Anderson, *Recovery grants forecast retracted; ICF official backs off 500-a-day estimate*, *The Times-Picayune*, January 11, 2007 at A-1.

⁹⁴ *Understaffed and Overwhelmed*, *The Times-Picayune*, January 28, 2007.

⁹⁵ *Id.*

⁹⁶ David Hammer, *Policy snarl adds to Road Home detours; Officials do about-face on transfer of grants from owners to buyers*, *The Times-Picayune*, February 27, 2007 at A-1.

⁹⁷ David Hammer, *Audit finds uneven Road; Counselors give out inconsistent info*, *The Times-Picayune*, April 3, 2007 at A-1. For the specific findings of the audit, see STEVE THERIOT, LOUISIANA LEGISLATIVE AUDITOR, ROAD HOME PROGRAM PRE-CLOSING PROCESS: PERFORMANCE AUDIT (Audit Control # 40070006) 3-7 (2007), available at [http://app1.la.state.la.us/PublicReports.nsf/586D89F06776B0DC8625730C006EF43D/\\$FILE/000011F1.pdf](http://app1.la.state.la.us/PublicReports.nsf/586D89F06776B0DC8625730C006EF43D/$FILE/000011F1.pdf) (last visited Dec. 26, 2007) (noting that “[p]re-closing does not have sufficient procedures that detail how advisors should review and prepare pre-closing files,” and that advisors have difficulty keeping up with Road Home policy updates from day to day).

month.⁹⁸ Affixing her name to the extraordinarily troubled “Governor Kathleen Babineaux Blanco Road Home Program” undoubtedly contributed to the incumbent’s decision that she would not seek a second term in the fall 2007 elections.⁹⁹

When would the Road Home Program finally begin to acquire and transfer sufficient numbers of properties to make a dent in the disaster landscape of New Orleans? That answer remained elusive as Katrina’s second anniversary drew near. Repeated efforts to “tweak” the program into efficient operation were not encouraging,¹⁰⁰ at least in part because as originally drafted, the ICF contract contained no provision for performance goals¹⁰¹ nor any penalties for poor performance.¹⁰² Penalties and performance standards ultimately were added to the contract, but without consulting the LRA, whose housing chairman criticized the new standards as “ambiguously worded” and characterized the penalties as “light.”¹⁰³ A newspaper editorial agreed, calling upon the governor to “replace the recent agreement with meaningful parameters and real fines” and asserting that “so-called penalties in last week’s agreement are an outright capitulation to ICF and a disservice to homeowners waiting for rebuilding aid more than 19 months after Hurricane Katrina.”¹⁰⁴

By the beginning of May 2007, the Road Home Program had distributed 10,000 grants and paid out nearly \$750,000,000, leaving approximately 120,000 applicants in the pipeline and leading to the recognition that the program lacked sufficient funds to compensate all affected homeowners.¹⁰⁵ As a result of the projected revenue shortfall, the Road Home announced at the end of May that it would give homeowners only two more months, until July 31, 2007, to apply and would then stop accepting applications.¹⁰⁶ Soon thereafter, the Legislative Auditor

⁹⁸ *Id.*

⁹⁹ Editorial, *Governor puts the State first*, The Times-Picayune, March 22, 2007 at B-6.

¹⁰⁰ Bill Barrow, *ICF may let cash flow as appeals ironed out: Ideas for Improving Road Home aired out at Governor’s Mansion*, The Times-Picayune, December 20, 2006; David Hammer, *Road Home shifts stance on funding appraisals; Some homeowners have footed the bill*, The Times-Picayune, February 21, 2007; Bruce Alpert, *State yields to feds: Road Home to give cash upfront; Original rules of program violated HUD’s regulations*, The Times-Picayune, March 21, 2007.

¹⁰¹ *Blighted Hope*, The Times-Picayune, January 28, 2007.

¹⁰² David Hammer, *Rental Road Home gets rolling; Officials promise it will work quickly*, The Times-Picayune, January 31, 2007 at A-1.

¹⁰³ David Hammer, *Penalties for ICF tardiness ‘seem light,’ LRA says; Agency was never consulted about deal*, The Times-Picayune, April 19, 2007 at A-4.

¹⁰⁴ Editorial: *Setting the bar too low*, The Times-Picayune, April 22, 2007, also observed that the new performance standard of 10,000 closings per month “should improve the Road Home’s pathetic pace but could still leave some applicants waiting for their grant until March 2008. The Blanco administration cannot truly think that’s fast enough.” As it happens, the actual closing date will be several months later, sometime in August or September 2008: “Even at that rate, the last grants won’t be delivered until September 2008—three years after Katrina hit. That’s already way too long, and iCF and the state need to substantially accelerate the Road Home’s pace.” Editorial: *A must-reach benchmark*, The Times-Picayune, December 9, 2007 at B-6.

¹⁰⁵ “If the Road Home keeps paying out homeowner grants at the current rate—and all the remaining applicants qualify for compensation—the state aid program could be more than \$3 billion short, state officials said.” See David Hammer, *Road Home going broke, Blanco aide says: At this rate, looming shortfall will reach billions of dollars*, The Times-Picayune, May 2, 2007 at A-1, quoting the governor’s liaison to the Road Home Program, “There’s no question we’re going to run out of money.”

¹⁰⁶ David Hammer, *Road Home closing door July 31: Deadline to apply set as shortfall looms*, The Times-Picayune, May 30, 2007 at A-1. As June approached, “more than 140,000 homeowners had applied. If the daily application rate stays the same through July 31, the program will have recorded more than 156,000 applications before the cutoff.” *Id.* at A-5. The Louisiana Recovery Authority used “creative budgeting to set the shortfall at \$2.9 billion. . . . If that FEMA money doesn’t come through, the shortfall would be at least \$4.7 billion.” *Id.*

estimated that the Road Home deficit totaled \$5 billion¹⁰⁷ adding to the pressure from local, state, and federal officials that ultimately forced Governor Blanco to commit surplus state funds as a first step in closing the funding gap.¹⁰⁸ Four months later as state leaders prepared to seek additional funding from federal officials, the estimated shortfall had increased to \$6.6 billion.¹⁰⁹

The Road Home finally obtained the necessary funds to overcome its shortfall when Congressional negotiators agreed in November 2007 to add \$3 billion to a Department of Defense appropriation bill.¹¹⁰ Slightly more than one month before she was due to leave office, Governor Blanco announced that, “The Road Home is fully funded.”¹¹¹ The program traveled a troubled fiscal road from June 2006, when it was originally designed “to cover 114,000 storm-ravaged homeowners at a cost of \$7.5 billion,” until arriving at the end of 2007, when “the highest-cost scenario is that 159,417 homeowners will get grants, at an average of \$65,688 per grant, for a total program cost of \$11.1 billion”¹¹²

Notwithstanding the heartening progress on funding, the Road Home Program found itself by December 2007 only at the mid-point in its distribution of grants, with approximately 80,000 applications processed and roughly 80,000 more to be processed; at a rate of 10,000 per month, that pace would not lead to closure until August 2008 or later.¹¹³

5.3 Limited Impact on Housing Redevelopment

Even as the Road Home Program began to produce properties for redevelopment, they remained insufficient to provide NORA with broad-based redevelopment opportunities, because far more homeowners chose to retain their homes and rebuild rather than sell them to the state:

Though more than 140,000 applications have been submitted to the Road Home program, as of June 7, only 47,645 applicants had reached the point where they had designated which option they would pursue. The vast majority of those applicants opted for Option 1, which allows them to keep their home and rebuild it. Only 5,657 said they planned to pursue Option 2 [sell, but stay in Louisiana].¹¹⁴

¹⁰⁷ See Bill Barrow, *Road Home gap hits \$5 billion: State feeling pressure to kick in money*, The Times-Picayune, June 1, 2007 at A-1. See also website of the Legislative Auditor for a copy of the May 31, 2007 report entitled “Analysis of Road Home Program Fiscal Shortfall”:

[http://app1.la.state.la.us/PublicReports.nsf/42D303A7BAB099DE862572F0004785B0/\\$FILE/000010F6.pdf](http://app1.la.state.la.us/PublicReports.nsf/42D303A7BAB099DE862572F0004785B0/$FILE/000010F6.pdf)

¹⁰⁸ David Hammer, *Governor offers cash for gap in Road Home: Up to \$700 million in state money floated*, The Times-Picayune, June 3, 2007 at A-1. The LRA followed the Governor’s lead by reallocating “\$577.5 million in federal block grants, previously slated for infrastructure repairs, to the beleaguered Road Home program, boosting to \$1 billion the state’s contribution to addressing a shortfall now estimated at \$4.4 billion.” Michelle Krupa, *LRS feeds Road Home kitty: \$1 billion figure is key for Congress*, The Times-Picayune, June 26, 2007 at A-1.

¹⁰⁹ David Hammer, *Road Home shortfall \$1 billion higher: State says it could reach \$6.6 billion*, The Times-Picayune, September 22, 2007 at A-1.

¹¹⁰ David Hammer, *Road Home bailout tucked in defense bill: \$3 billion would keep program afloat longer, but hurdle looms*, The Times-Picayune, November 7, 2007 at A-1.

¹¹¹ David Hammer, *Road Home program can afford its grants: About 6,000 fewer applicants than expected meet deadline*, The Times-Picayune, December 8, 2007 at A-1.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Option 1 getting the most attention*, The Times-Picayune, June 24, 2007, at E-1.

Four months later, the percentage of homeowners choosing Option 2 had declined from June's 11.8% to just 8.75% by mid-October.¹¹⁵ Orleans Parish reflected a modestly higher 11.3% who selected Option 2.¹¹⁶ The Road Home Program does not control how many homeowners will elect to sell their properties under Option 2 and accordingly cannot assure that large numbers of homes will ever be acquired by the Road Home and transferred to NORA.¹¹⁷ As the end of 2007 drew near, the Road Home estimated that "6,000 to 9,000 buyouts could be in Orleans Parish when the Road Home process is done,"¹¹⁸ thus delivering into local control only a small percentage of the damaged homes in New Orleans.

Ironically, the relatively few properties that did come under control of the Road Home Program by Katrina's two-year anniversary languished in a state of limbo, awaiting transfer to the City and adding to perceptions of housing distress in New Orleans because they were not properly maintained.¹¹⁹ When Road Home properties are finally transferred to the City, the process of maintaining them and ultimately putting them back into commerce will become a local responsibility "that could take 10 years and cost more than \$15 million a year."¹²⁰

5.4 Interaction with Applicants

The Road Home's pace of progress two years after Katrina¹²¹ could fairly be described as—at best—rather too deliberate,¹²² and its interaction with the public is still not user-friendly.¹²³

¹¹⁵ See the Road Home website report on "Weekly Detailed Statistics as of October 15, 2007" at <http://www.road2la.org/newsroom/stats.htm> (last visited on October 22, 2007), indicating that 8,853 homeowners had selected Option 2 out of 101,103 total benefit options selected.

¹¹⁶ The Road Home Program Update as of October 11, 2007 regarding "Use of Funds by Parish of Damaged Residence" indicated that 5,146 homeowners in Orleans Parish had elected Option 2 out of a total 45,663 Orleans homeowners who had selected a benefit option. *Id.*

¹¹⁷ Adding Option 3 (people who choose to sell and move out of Louisiana) brings to 11% the statewide percentage of homeowners transferring ownership to the Road Home Program. *Id.*

¹¹⁸ David Hammer, *N.O. airs plans for Road Home lots: 10-year strategy may cost millions*, The Times-Picayune, November 28, 2007 at A-1.

¹¹⁹ David Hammer, *Road Home to tidy up sites: Maintenance woes grow with buyouts*, The Times-Picayune, August 15, 2007 at A-1.

¹²⁰ David Hammer, *N.O. airs plans for Road Home lots: 10-year strategy may cost millions*, The Times-Picayune, November 28, 2007 at A-1.

¹²¹ More than twelve months after the Road Home Program was publicly launched, it met its first contractually mandated goal of 50,000 closings on August 31, 2007. David Hammer, *Road Home hits contract benchmark for first time: ICF cranks out 50,000 closings, but logjams still dog program*, The Times-Picayune, September 3, 2007 at A-1.

¹²² In response to the relentless drumbeat of criticism, two separate consultants were hired to review the troubled implementation process and recommend improvements: the Office of Community Development retained KMPG in July 2007 for up to \$376,142 (*Id.*); the Louisiana Recovery Authority contracted in August 2007 with the RAND Corporation for \$49,000. "LRA Contracts with Nationally Recognized Firm to Conduct Independent Review of Road Home Operations: RAND Corporation to begin work in Louisiana immediately" at info@louisianarecoveryauthority.org (last visited on August 25, 2007).

¹²³ See 'Notes from the Microcosm' in text box.

Notes from the Microcosm

I accompanied a 75-year-old Road Home recipient to her May 17, 2007 closing. The “closer” presented us with 17 legal-size pages printed in type too small to be read by my client, flipped through them with a peremptory description of the contents, then asked for her signature, all within five minutes of our arrival. When we asked why a 30% penalty was imposed on her benefits and what right of appeal she would have after signing the documents, we were invited to step out and review the documents while the closer met with other recipients.

We did so and concluded that my client would have 90 days after the closing to pursue an appeal. We returned to the meeting at our next opportunity, half an hour later. The closer presented multiple pages for my client to sign, then checked off two boxes and presented for signature a final document entitled “Acknowledgment Form: Receipt of Instructions for Filing an Appeal.” The first box acknowledged that this was my client’s first closing on a Road Home grant, which was accurate and was of no moment. The second box (checked by the closer without consulting my client) read, “I do not anticipate any challenge to my current award.” We pointed out that she did have questions about how her grant had been calculated, and the closer asked, “Do you want to meet with a Road Home representative or complete this closing?” When I stated that she had the right to do both—complete the closing and pursue an appeal if she chose to do so—the closer grudgingly scratched out the checkmark in the second box and instead checked the fifth, more appropriate box: “I have a concern about my award calculation and would like to have my grant amount reviewed by the Resolution Team.” (See “Acknowledgment Form” on file with the law review.) After the closing, we met with a member of the Road Home Resolution Team who answered all of our questions satisfactorily.

Astoundingly, an applicant who was accompanied by counsel, who insisted on time to review the documents, and who clearly had questions about her grant award, faced an attempt by the closer to waive her appeal rights with a “routine” checkmark and without even a hint of consultation! What happens to people who go in without a lawyer or who don’t speak up when confronted with documents they don’t understand?

The macrocosm was no better. A newspaper article published a month-and-a-half later reported on the ill effects of “a state contractor’s marathon effort to close 900 grants in a single day,” when “scores of applicants, including elderly people in wheelchairs and parents with young children, lingered for hours in a line that spilled outside the New Orleans Marriott Metairie at Lakeway under what was at times a blazing sun.” Daniel Monteverde, *Hundreds wait in the heat for Road Home closings: Contractor tries to give out 900 grants in a single day*, The Times-Picayune, July 1, 2007 at A-1. An ICF spokeswoman said that “the large-scale closing was not an attempt by the company to meet its June quota of 10,000 scheduled closings” and that “so many closings were scheduled for Saturday simply to get money into more applicants’ hands”; but “an eastern New Orleans resident who waited in line with his father for more than two hours” questioned the wisdom and necessity of that strategy: “It’s been two years” since Katrina, he said. “What’s another four or five days, or a week or two?” id.

One of the Road Home’s most aggravating features (and one of its most disturbing aspects from a due process perspective) was its relentless resistance to communicating in writing with applicants:

Some applicants report that they spent months in the Road Home’s dispute resolution process, handled entirely over the phone, and suddenly found out the program considered their case resolved, without ever notifying them or explaining the resolution—or seeking their agreement.¹²⁴

When the Chair of LRA’s Housing Committee called it “unacceptable not to provide written statements of dispute resolutions and grant commitments,” the state agreed to change its procedures—but then announced that the “new Road Home policy guaranteeing written

¹²⁴ David Hammer, *Road Home fails to provide letters: Omission persists despite LRA’s prodding*, The Times-Picayune, November 28, 2007 at A-1.

notification of ‘critical changes’ to a homeowner’s application wouldn’t take effect” until the following year.¹²⁵ Newspaper editorials¹²⁶ and op-ed writers¹²⁷ so strenuously excoriated the program’s exclusive reliance on oral communication that, at the end of 2007, state officials announced a change in Road Home procedures:

Responding to pressure from housing advocates, the state Office of Community Development and the Louisiana Recovery Authority said Road Home will begin sending important decisions and notices to applicants in writing starting Jan. 1. Previously, many applicants complained that program staffers designated many disputed cases as “resolved,” without telling them or explaining the reasons.

In the new year, Road Home will have to put in writing all grant award commitments; details about dispute resolution decisions; any requested information about an application’s status; details of any information found to be missing from an application; and all supporting documentation used to determine pre-storm values and estimated costs of damage.¹²⁸

A newspaper editorial celebrated implementation of the “written communication” policy while also bemoaning the delay in adopting it: “It’s unfortunate that state officials had to be browbeaten into correcting what most everyone else saw as flaws in the Road Home.”¹²⁹

Even as the New Year dawned with news that the Road Home had met its benchmark of 90,000 closings¹³⁰ by the end of 2007, a newspaper editorial hammered the “maddening bureaucracy” that had “applicants trapped in Road Home purgatory” and said “Reaching the benchmark indicates that the Road Home is less awful now than when it was handing out only a few thousand grants a month.”¹³¹ Continued complaints from applicants¹³² led to the institution of a caseworker system in January 2008, assigning approximately 500 Road Home employees to serve as dedicated case managers for “applicants who have been stuck in the homeowner assistance program for more than 90 days.”¹³³ State officials claimed that “the new customer service effort would satisfy a contractual requirement for an ombudsman,” but the Chair of LRA’s Housing Task Force disagreed: “You call it an ombudsman’s program,

¹²⁵ *Id.*

¹²⁶ *Editorial: Put it in writing*, The Times-Picayune, November 30, 2007 at B-__:

No credible organization would conduct even cursory transactions without a paper record. Yet the Road Home program wants Louisiana homeowners to forego written notices when it comes to grant disputes and simply take the word of a program staffer over the phone. That’s an unacceptable position that seems conveniently designed to skirt accountability. . . . This can’t continue.

¹²⁷ Jarvis DeBerry, *Talk is cheap*, The Times-Picayune at B-9: Committing things to the printed page happens not to be the Road Home’s way. . . . Giving applicants written notification of their status or a detailed explanation of how their disputes have been resolved would take too much time and delay the disbursement of money, those officials claim. Perhaps if Gutenberg were printing the notices. But we live in a computerized age. Just about everything that’s knowledge can be printed—and quickly. The problem—for ICF, at least—is that which is printed is less easily denied.

¹²⁸ David Hammer, *La. Road Home makes changes: Decisions in writing have been key issue*, The Times-Picayune, December 22, 2007 at A-1.

¹²⁹ *Editorial: Common sense wins*, The Times-Picayune, December 28, 2007 at B-__.

¹³⁰ David Hammer, *Road Home meets target for closings: Agency hopes to be 90% done by the middle of this year*, The Times-Picayune, January 1, 2008 at A-1.

¹³¹ *Editorial: Right these wrongs*, The Times-Picayune, January 1, 2008 at B-6.

¹³² David Hammer, *New Orleans resident left wondering if promises made in the wake of Katrina will ever be kept*, The Times-Picayune, December 30, 2007 at a-1.

¹³³ David Hammer, *Road Home will add case workers: Customer service now is focus for LRA*, The Times-Picayune, January 5, 2008 at B-1.

but it's really just a case-management program.”¹³⁴ Another task force member observed that “the contract calls on ICF to develop a true ombudsman program and case management is a basic service the program should have offered from the beginning.”¹³⁵

5.5 The Community Connection—Hammering Out Local Involvement¹³⁶

Since its inception, the Road Home which was targeted at providing homeowner assistance, has failed in its most fundamental sense: its unwillingness to absorb the wisdom of local community disaster response and housing assistance agencies in the development of their policies and program parameters. This unwillingness has led to the creation of a homeowner assistance program that has been unresponsive to many of the pressing needs of the community. The unresponsiveness of the program has also hindered the organic recovery response that was characteristic of many communities who have been the victims of repetitive natural disasters. Homeowners have exhausted their personal resources which helped fill many of the gaps in the past. Foundations that have supported post-disaster community revitalization in the past and invested a substantial amount of resources in response to the 2005 storms have also slowed down their giving as all await the influx of Road Home grants. Examples abound of instances where the incorporation of community input would have led to the creation of a more equitable and inclusive program from the start.

A good example of vulnerable, low income homeowners—those who owned mobile homes—was a group who attended a recovery planning conference on January 17, 2006. At this meeting, policymakers learned of their needs but when drafting the original Road Home program they deliberately excluded mobile homeowners. This effectively left out thousands who were located in many coastal parishes. The first Road Home action plan approved in the summer of 2006 stated: “Owners of Mobile Homes: To qualify for homeowner assistance, the owner of a manufactured home or mobile home must also own the land on which the damaged home was located.”

Subsequently, after months of advocacy, in December 2006 this policy was modified to read: “Owners of Mobile Homes: Owners of a site built home, manufactured home or mobile homes may also be eligible for assistance regardless of whether they own the land on which the damaged home was located, to be determined by criteria developed in order to ensure ownership and immobilization of the structure.”

Establishing a program in a vacuum without the engaged input of community groups and residents has created a climate of constant change in the program as policymakers concede incremental program changes only after intense political pressure is applied. Furthermore, the need to constantly and aggressively advocate for basic program rights has severely taxed community groups and while simultaneously forcing them to play a de-facto case management role since the program's inception.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Based on a paper by Dominique Duval-Diop, PhD., *Senior Associate*, PolicyLink, “Sustainable Community Recovery Hindered By Ineffective Implementation of the Road Home Program.”, January, 2008

5.5.1 Nonprofits and Road Home Assistance—Local Organizations Pressed into Service

Throughout the well-documented difficulties in developing and implementing the Road Home program¹³⁷, community-based nonprofit organizations and faith-based groups have played a significant yet unsung role in providing critical assistance to homeowners navigating the application, award, and appeals processes. Through individual interviews or in group settings, the Louisiana Disaster Recovery Foundation, Oxfam America, and PolicyLink collected data from numerous organizations that have been providing services directly to applicants to the Road Home program. These organizations represent a small slice of the overall set of nonprofits that have already committed staff time and programmatic resources to the Road Home Program.

Nonprofit organizations and faith-based groups have provided the majority of their services to those applicants with the least access to outside resources, helping them navigate the Road Home processes. Served populations include:

- Low- to moderate-income households
- African Americans, Vietnamese Americans, Native Americans and other minority groups
- The elderly and/or disabled
- Underinsured households
- Those with limited education and low literacy levels.

The range of assistance has included:

- Addressing general confusion: making the program, application and appeal processes understandable and accessible
- Providing step-by-step assistance during the application stage
- Offering decision-making guidance, given the more than 100 changes in Road Home policies
- Acting as advocates and resource persons to ensure progress toward award letters and closings
- Providing relevant legal assistance, especially regarding
 - Succession issues
 - Missing documents
 - Appeals for errors
- Monitoring to ensure consistent and fair judgments
- Providing assistance with appeals if necessary
- Offering construction guidance and protecting against contractor fraud
- Providing financial counseling and literacy; improving financial management of awards

Deadlines such as the July 31, 2007 deadline for final application submittals and December 1, 2007 for scheduling of first appointments have possibly shut out potential program beneficiaries. Many of those shut out from the program's benefits are likely to be low-to-

¹³⁷ Hammer, David. "Road Home firm working to repair its appeals process: Earlier report found serious ICF failures." *Times Picayune*. Tuesday, June 05, 2007. Newspaper articles such as this one and several audits produced by the Louisiana Legislative Auditor (<http://www.lla.state.la.us/>) have extensively documented the program's failings.

moderate income households who have the least access to other resources such as the internet or reliable phone access. At each of these deadlines, phone systems were unable to handle the magnitude of calls attempted, preventing many from meeting those deadlines. Some of applicants sent in paper applications that were misplaced by Road Home program staff, and others have literacy challenges that make understanding the myriad rules, procedures, documentation requirements an intimidating if not impossible task. These households require specialized assistance in identifying options for housing and in navigating the program. Furthermore, there will be significant needs in the low-income communities regarding housing and decisions to rebuild even after checks have been issued.

Nonprofits anticipate that the post-award phase will prove especially challenging for these vulnerable populations. Some already report starting to offer services to ensure that awards are effectively used and result in safe, adequate housing. All expressed the concern that such services must grow in scope and depth, and may need to be sustained over a significant time period, to ensure that low-to-moderate awardees are successfully using the awards to rebuild. However, these needs have not been anticipated by program administrators who are entirely focused on disbursing checks and increasing the number of closings. Issues include:

- Fiscal management and budgeting. Many of these homeowners will need to strengthen their financial literacy skills to wisely manage this level of expenditures, especially with funds sometimes restricted to certain purposes. A growing number of homeowners may also be faced with serious financial issues, such as foreclosure or bankruptcy, in the coming months.
- Identification of appropriate financing and protection against predatory lending. Some households may still need to access additional funds in order to rebuild successfully, and education and counseling will be necessary to ensure homeowners are utilizing instruments that are most advantageous to them, and that they are not taking on undue risk.
- Construction guidance and assistance. Households require assistance in identifying appropriate and trustworthy contractors, connections to other nonprofits and faith-based groups that are able to provide construction labor and expertise, and counseling and advocacy regarding timing and cost.
- Education, advocacy, and assistance with contractor fraud claims. Given their inexperience in managing funds and contractor relationships, these populations will be at particular risk for contractor fraud.
- Legal counsel and assistance with award errors, appeals and resolutions, title issues, missing or inadequate documentation. These issues continue to surface through the post-award phase.
- Time limits on use of Road Home awards. The Road Home Program's covenant agreement requires that homeowners rebuild in one year. Counseling services will be integral in ensuring homeowners can meet these requirements, since the program will not provide such counseling; community based nonprofits can access additional resources, support, and oversight to ensure these covenants are upheld.

Most nonprofit organizations who responded to the gaps left by the program have developed their Road Home services out of necessity. Despite the outreach and counseling services built into ICF's contract to administer the program, these organizations have been deluged with requests from low-income homeowners concerned about the full and fair consideration of their applications. Most are trusted by the community to provide unbiased and well-informed assistance. Some organizations have reported that all of the people turning to them

for assistance have received advice from Road Home staff, yet failed to get consistent, clear, and understandable information and guidance relevant to their particular situations.

This experience confirms what has already been documented by the Louisiana Legislative Auditor: that accurate and consistent information is generally missing from the counseling delivered by Road Home advisors. Most community-based nonprofits report that their clients have turned to them because of a high level of frustration when trying to find ICF staff who truly understand the changing rules and can communicate them in a meaningful and comprehensible way.

Lack of cultural competency by Road Home staff compounds this problem. Low- to moderate-income households, the elderly, and minority homeowners often have limited financial capacity; are unaccustomed to working with complex financial formulas and rules; and may have low levels of literacy and education. Many find that their personal circumstances surface issues that complicate the application, approval, and post-award process.

Complexities arise, for example, when detailing insurance proceeds correctly or understanding the rules regarding accessibility improvements for disabled and elderly people. Imperfect documentation of succession and title increases complications. Inadequate training, combined with limited transient knowledge and relationships, give ICF staff only a superficial understanding of these applicants' special situations, leading to an inability to "speak their language."

Such limited cultural competency continues to have serious consequences as the program enters its post-award phase. It is imperative that services are in place to ensure that low-to-moderate income households are able to rebuild within the time period dictated by the program's covenants, or faced increased risk to foreclosure or other financial difficulties.

As proven through experience, many local nonprofits have the trust of disadvantaged constituencies, understand the peculiarities of their situation and the policies that apply, and know how to effectively build relationships, communicate complicated information, and offer relevant guidance. Their involvement is crucial if the state is to hold true to its pledge from the Road Home Action Plan to "repair and rebuild quality housing in neighborhoods that are safe to live in" and ensuring that "households with special needs such as the elderly and those with disabilities are provided housing opportunities."

5.5.2 Scope of need

The qualitative evidence provided by nonprofits regarding the special difficulties encountered by these vulnerable populations is confirmed by an analysis completed by PolicyLink regarding Road Home applications and awards as of May 18, 2007 and closings as of April 21, 2007. The analysis demonstrates that in parishes with the greatest number of applications and awards, program clients with higher income were more likely to have received option letters from the Road Home Program than low-to-moderate (LMI) households. The inability of the LMI households which manage to reach the award stage and attempt to rebuild have been demonstrated in Orleans, Plaquemines, St. Bernard, and Cameron parishes; for these households, difficulties remain in accessing and navigating the program. (Since the data did not provide sub-population numbers for the elderly and minority groups, a complete analysis regarding these sub-groups could not be fully completed.)

Table 3: Status of LMI Applicants versus Non-LMI Applicants

Parish	# of Non-LMI Applications	% Non-LMI Awards to Applications	# of LMI Applications	% LMI Awards to Applications
Calcasieu	3,095	31.9%	239	38.0%
Cameron	1,119	69.4%	593	45.8%
Jefferson	8,900	46.0%	1,374	40.6%
Orleans	28,349	78.7%	9,161	53.2%
Plaquemines	2,156	76.9%	412	34.1%
Saint Bernard	9,340	82.9%	2,230	54.0%
Saint Tammany	5,425	60.7%	993	47.0%
Terrebone	702	45.9%	253	49.7%
Vermilion	1,001	62.3%	162	50.0%

Source: Data obtained from the State, current as of May 18, 2007.

A reasonable estimate of the need for continued services regarding access and post-award assistance can be based on the low-to-moderate income, African American, and elderly applicants. In the data provided by OCD, these demographic categories overlap. Without individual level data, it is difficult to derive exact numbers. However, an initial estimate might fall in the range of 19,165 (number of elderly) to 43,886 (number of African Americans).

While LMI homeowners receiving awards have closed at rates twice that of non-LMI homeowners, nonprofits report that LMI homeowners need continued counseling for second closings and regarding disparities in award-to-closing numbers. In the legislative audit on the pre-closing process, many errors were uncovered in documentation that could lead to incorrect award amounts. Since low-income homeowners are closing more quickly, they may be more susceptible to receiving erroneous compensation amounts.

In addition, the rate of closings anticipates that the state will be in jeopardy regarding the requirement that 50% of its CDBG funds benefit low to moderate income populations. Of the \$1.54 billion distributed through the Road Home, \$835 million have gone to non-LMI and \$709 million to LMI households. The LMI portion represents 46% of the current total, but this is skewed because LMIs have been closing almost twice as fast. Because of the large disparity in application numbers (76% non-LMI, 24% LMI), it seems imperative that the state provide for additional services to LMI homeowners to ensure that it will meet its CDBG obligations.

The need for transparency has increased as the volume of applicants rose tremendously when the July 31, 2007 deadline was reached. Unfortunately, PolicyLink has been unable to conduct a current analysis of applicants going through the process because state administrators have been unwilling to provide a continued flow of the data. Giving nonprofits continued access to data will help support their continued efforts to address the needs of the most vulnerable.

5.5.3 Lack of Transparency a Major Barrier

The failures of the Road Home program and ICF International have extensive implications that effect program effectiveness, efficiency and fairness. Of particular concern to many nonprofit and faith-based community groups are systematic efforts to withhold information, denying homeowners the ability to make responsible decisions in their recovery.

Lack of transparency regarding written confirmation of decisions made at key moments of the Road Home application process has led to thousands of stalled applications. Furthermore, the denial of documentation and consistent, written communication to applicants impedes their ability to make informed decisions and progress through the process of recovery.

Transparency not only increases efficiency, it is also an ethical issue. Government institutions and program must be held to the same standard of accountability that it imposed on applicants to the Road Home program. At the wider program level, the Road Home has not or has been slow to provide easy, online access to public records, to answer public disclosure requests, and to give applicants access to their personal case files. To eliminate the lack of transparency, more stringent disclosure requirements must be established including:

- Requiring the Office of Community Development (OCD) to post its quarterly reports on CDBG funding to HUD online;
- Establishing a well staffed ombudsman office outside of OCD and ICF to address lack of transparency in individual case files as well as providing a community liaison team that serves as a direct pipeline of information for all community advocates working on case-specific problems;
- Requiring OCD commit to provide greater staff capacity to respond to Public Disclosure requests;
- Establishing a community advocate-informed online, accessible, interactive system for 1) program level data that permits public download of data at different geographic levels for different demographic groups and 2) public records (policies, HUD waiver requests etc.); and
- Establishing sunshine laws in cooperation with community advocates regarding the Road Home program processes and procedures

5.5.4 Compensation and Capacity

ICF is being compensated to provide counseling and other services that many nonprofits are being forced to perform or complement because of ICF's inadequacies and the special needs of these vulnerable populations. These community-based nonprofits have had to use private dollars to fund their activities. In some cases, they have diverted funds and staff from other programs. Providing counseling for Road Home applicants has cost them the ability to engage in other urgent recovery issues on behalf of program participants, including:

- Counseling and advocacy regarding the cost and availability of homeowners insurance
- Counseling and advocacy regarding foreclosures
- Assistance on lingering issues with FEMA reimbursements
- Advocacy and development of adequate rental availability for displaced and vulnerable populations

- Development of partnerships and assistance and education regarding predatory lenders and predatory lending practices
- Legal assistance regarding other property losses and recovery decisions.

Community-based nonprofits have been forced to provide services with their own resources for which ICF is being compensated by the State of Louisiana. Many are now close to the breaking point of available resources, yet they anticipate that they will need to expand their services significantly in the post-award phase if low-to-moderate homeowners are to use their awards to successfully rebuild. From their clients' perspective, nonprofits are providing these services much more effectively and consistently than ICF. Nonprofits also experience a significant opportunity cost in that they are unable to attend to other pressing needs necessitated by the recovery.

Nonprofits involved in these activities report dedicating between 10%-45% of their staff and resources to Road Home issues. Costs for such programs range from \$60,000 to \$150,000 annually. With the equivalent of just .5FTE-2FTE staff, they are able to manage up to 200-300 cases, though closings are still very limited; 15% of closings are the maximum reported by an organization. We estimate that there is at least one group, and sometimes several, working in each affected parish, with several staff members within organizations providing some type of assistance. It is these groups, with their on-the-ground experience and expertise, who have navigated the ever changing Road Home program, in spite of the 124 policy changes that the Louisiana legislative auditor recently uncovered.

Furthermore, community foundations such as the Louisiana Disaster Recovery Foundation have also allocated resources to support Road Home applicants at the expense of funding other activities that would complement the Road Home housing assistance program. Based on these preliminary surveys, nonprofits are offering their services in a highly efficient manner. Application and award processes for this particular population are requiring more processing time. It is apparent that they will require specialized assistance as the program moves to the post-award phase. Nonprofits can meet these needs effectively and efficiently.

5.5.5 Effective Utilization of Community groups

To maximize applicant access to the program, provide post-award assistance critical to the effective use of grants, and ensure equitable distribution of Road Home funds to its neediest applicants, community based nonprofits and faith-based groups have urged state policymakers at the Louisiana Recovery Authority and program administrators at the Office of Community Development to set aside funds for Louisiana-based nonprofits to provide direct assistance to Road Home applicants. This investment will strengthen the ability of the program to serve low-to-moderate income households, the elderly and the disabled by utilizing local community institutions proven to be capable and efficient stewards of donated resources, and whose missions are directly focused on long-term rebuilding of healthy, sustainable Louisiana communities and households.

By the time the Road Home program has disbursed its funds and its awards have been used, it seems likely that more than 20,000 of the state's most vulnerable families affected by the storms will be in need of services described above. This estimate, arrived at prior to the July 31, 2007 application deadline should be greatly increased given the over 185,000 applications that have been received. Many of these households will likely have multiple needs, and it is very difficult to anticipate the length of time – given constraints of construction labor and

materials – that will be required for completion. The most cost-effective way to ensure equity and successful utilization of the program by low-to-moderate income, elderly, and minority households is to utilize the knowledge, expertise, and strengths of the local nonprofit sector.

This investment is critical, given the special difficulties that low-income households are anticipated to face in the post-award phase while rebuilding and given the time limits required by Road Home covenants. To date, less than \$5 million has been allocated to a handful of nonprofits. This amount should be greatly enhanced and a commitment must be made to provide technical assistance to nonprofits who may require it.

Such compensation to the sector will ensure that state meets its obligation that 50% of these CDBG funds benefit low-to-moderate income households. Yet an aggregate dollar amount is only a start – providing these services will ensure that the final outcome meets the program’s real intent: material improvements in the lives and communities of those receiving the awards. As clearly indicated by the number of applicants who might benefit from these services referenced above, the capacity provided by current OCD contracts to community-based agencies will fall far short of addressing the true scope of the need.

Compensation to the sector is also an issue of fairness. Nonprofits are shifting private funds and staff resources from other pressing issues to fill gaps left by the program’s contractor.

We also recommend that a portion of program funds be set aside for data collection and analysis by contracted nonprofits, to demonstrate who is benefiting from the services being provided and the sort of issues that they are encountering. Such data will be important in understanding the success of the program in meeting the needs of its most vulnerable populations, and in recommending necessary course corrections and policy changes to improve services.

Providing support to the sector in this way will build indigenous capacity within the state, capacity that will remain here and address additional issues as the recovery unfolds. These community groups will continue to work to improve the opportunities available to low-to-moderate income, elderly, and minority groups after the recovery is completed.

5.6 Post-Hurricane Housing Demolition in New Orleans¹³⁸

“Some demolitions aid redevelopment by clearing lots of structures that cannot be rehabilitated. Others weaken the integrity of neighborhoods by replacing good quality structures with vacant lots prone to trash and weeds. Because new construction is often more expensive than renovation, demolitions may also impede redevelopment by increasing redevelopment costs.”¹³⁹

¹³⁸ Based on a paper for this case study by Davida Finger, Loyola University of New Orleans, College of Law, “Post-Hurricane Demolition in the City of New Orleans: When is a House No Longer a Home?”, January, 2008.

¹³⁹ Bureau of Government Research, The Future of N.O.’s Blight Programs, available at, <http://www.bgr.org/>.

Post-hurricane, City demolition procedures are caught between a struggle for expediency and the need for accuracy. With early estimates that over a quarter of the total pre-Katrina number of City of New Orleans homes would probably have to be demolished, the City initially still promised that houses would not be torn down until there was actually “public nuisance” or “blight”.¹⁴⁰ The U.S. Army Corps of Engineers was charged with taking the lead on demolition issues; private contractors were hired to conduct property inspections and complete the structural assessments that were used to justify the issuance of demolition permits and the cost was borne by the Federal Emergency Management Authority.¹⁴¹

The City, struggling to define what *nuisance* and *blight* would actually mean in the post-Katrina landscape, began an endless process of property condemnation that, as of the date of this publication, has still not been resolved. New laws enacted with an eye to remediation and demolition of residences and rental properties have not settled basic questions: which properties should be demolished and what pre-demolition procedures will be utilized.¹⁴²

5.6.1 Background

In late December 2005—just months after the devastating hurricanes—the City announced large-scale plans for involuntary demolition of approximately 2500 homes.¹⁴³ Fearing that homes would be cleared without input from homeowners, residents swiftly filed for injunctive relief to stop demolition before many had an opportunity to return, let alone begin attempts to rebuild and decide whether their property was beyond repair.¹⁴⁴ On January 13, 2006, the *Kirk* lawsuit was settled: demolition could not proceed without the City first given specific notice to property owners—notice was required to explain that homeowners had an opportunity to contest the demolition decision through a written dispute mechanism to the City’s Department of Safety & Permits. The *Kirk* Consent Decree was valid for one year.

On March 7, 2006, the first demolition of a flooded home began with cadaver dogs having sniffed around the property in the week prior to beginning demolition.¹⁴⁵ Homeowner Herbert Warren Jr., a retired longshoreman raised 8 children in the simple, white, wood-framed, one-story home where he lived for 44 years, watched demolition of his home begin.¹⁴⁶ Work was delayed on demolition day when no City employee appeared to give final authorizations.¹⁴⁷

After this initial demolition received publicity, intense communication and logistical difficulties escalated. Homeowners learned that despite written objections to demolitions and notification to the City of their intent to rebuild, the City actually required more documentation, such as proof from a structural engineer on the integrity of a house, before a home would be removed from the demolition list.¹⁴⁸

¹⁴⁰ Adam Nossiter, *Thousands of Demolitions are Likely in New Orleans*, NEW YORK TIMES, Oct. 23, 2005.

¹⁴¹ *Id.*

¹⁴² M.C.S. 26-261 (Ordinance Nos. 22203, 22243, 22355); 26-262 (Ordinance 22356); 26-263 (Ordinance 22249, 22763).

¹⁴³ Gordon Russell, *City Inspections Complete*, TIMES PICAYUNE (Dec. 23, 2005).

¹⁴⁴ *Kirk et al v. City of New Orleans*, E.D. La. CV 06-0024 (filed

¹⁴⁵ Adam Nossiter, *Demolition of Katrina-Destroyed Homes Begins*, NEW YORK TIMES, Mar. 7, 2006.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Delores Jones, *Who Makes the Rules on Demolition of Houses*, TIMES PICAYUNE, May 19, 2006, Metro-Editorial.

Then, on April 20, 2006, months after the *Kirk* agreement was finalized, the New Orleans City Council proposed a policy that removed notice provisions and cut off opportunities to object to demolition.¹⁴⁹ Passed along with standards and deadlines for remediation, this ordinance allowed demolition without any corresponding provisions for notice or hearings with a caveat for a review processing committee to be set up for hardship cases and possible exceptions. Certain properties in the City's Ninth Ward neighborhood were deemed hardship cases and exceptions.¹⁵⁰

5.6.2 Good Neighbor Ordinance

With mounting pressure for the City to provide quality control on the errors and objections regarding property demolition, in late August 2006 the City agreed with community leaders and advocates that more procedural protections were necessary prior to demolition. In what became known as the Good Neighbor Ordinance, new and critically important procedural protections guaranteed notice and opportunity to be heard on opposition to demolition—at an administrative hearing with a written decision to follow.¹⁵¹ The first notice of violation to homeowners provided referral to community groups for assistance with remediation. A second notice of violation to homeowners provided details about the administrative hearing. For further objection after the administrative proceeding, regular appeal rights to civil district court would follow.

The Good Neighbor Ordinance required mold remediation, cleaning, gutting and properly securing the premises, and removing all public nuisance and/or blight violations within 30 days from the notice date. This ordinance also included a “hardship exemption” for those who were in line to receive financing for mold remediation and/or gutting (who would receive a 60 day grace period), for those who agreed to voluntary demolition, and for those over age 65 with property in the lower Ninth Ward.

5.6.3 Imminent Health Threat Ordinance

On February 1, 2007, just weeks after expiration of the *Kirk* Consent Decree, the depth of problems on the question of demolition took shape with the adoption of a new ordinance and enactment of a new law known as the Imminent Health Threat Ordinance. Emergency condemnation and subsequent demolition without any hearing was authorized for breach of the following requirements for a home to be in conformity with “public health, safety, and welfare”:

- (1) Inside of home gutted and contents removed;
- (2) Grass cut in front, back and side yards;
- (3) All doors shut and secured; and
- (4) All windows shut and secured.¹⁵²

¹⁴⁹ Ordinance No. 22203 MCS, adopted April 20, 2006, and re-designated with Ordinances 22243 MCS and 22355 MCS as Section 26-261.

¹⁵⁰ See Ordinances 22243 and 22355.

¹⁵¹ Ordinance No. 22356, adopted Aug. 25, 2006 and enacting a new Section designated as 26-263, which was re-designated as M.C.S. 26-262 to maintain numerical code continuity.

¹⁵² M.C.S. 26-263 (City Ordinance 22499, adopted Aug. 25, 2006 enacted Sec. 26-264, which was re-designated as 26-26 to maintain numerical Code CONTINUITY).

With the City's explanation that its intent in enacting a new law was to expedite remediation or demolition, it dropped the previous pre-demolition, Good Neighbor protections including the requirement of administrative hearing for objections to demolition were heard before a neutral decision-maker. Actual procedures for lodging objections under the new ordinance were not clear. Indeed, not only could the City now demolish or gut property within 30 days of citing it as an "imminent health threat" under this new ordinance, but also, the City authorized itself to place a lien on the property for the cost of work so that involuntary demolitions could be billed to the homeowner.

Homes throughout the City of New Orleans, including those in the Ninth Ward, were widely cited as actual health threats under the Imminent Health Threat ordinance for the above described violations, which included overgrown yards. The City did not make a comprehensive list of properties under the Imminent Health Threat ordinance available or document those already demolished under the new ordinance.¹⁵³

The City looked at the new ordinance as one strongly favoring expediency. "This ordinance allows us to move faster in demolishing structures and removing the threat to the public health," said Anthony Faciane, Deputy Chief for Development. "Our code enforcement officers are identifying properties everyday. We are positioning our resources to quickly demolish or remediate these structures after the 30-day waiting period."¹⁵⁴ On the other hand, critics noted strong objections, focusing on inaccuracy of descriptions of threats to public health, haphazard enforcement, a confusing and inconsistent notification process, and lack of clear recourse to save condemned properties.¹⁵⁵

More specifically, in making inquiries and attempting to lodge written objections to demolition orders, property owners were bounced between the City Department of Safety & Permits and Code Enforcement. Even City officials seemed confused. While the plain language of the Imminent Health Threat ordinance required that property owners submit photographic evidence to the Office of Code Enforcement, City Council member Cynthia Hedge-Morrell, who sponsored the new ordinance, stated that property owners should submit pictures to their council member.¹⁵⁶ Property owners were asked for proof beyond that which the new law required such as mold inspection, mold remediation, secured doors and windows, cut grass, and photographs of the property, inside and out.¹⁵⁷ The City's standards for removing property from its demolition lists were not made known and in many cases, the City simply offered verbal confirmation without written proof of removal of a home from the demolition list.

With City officials citing concerns about public safety while simultaneously acknowledging that the City's process of condemning homes was "not perfect", people had "slipped through

¹⁵³ Michelle Krupa, *Teardowns are Halted Temporarily: Owners Get Chance to Challenge Demolitions*, TIMES PICAYUNE, Aug. 22, 2007, at Metro.

¹⁵⁴ David Robinson Morris, City of New Orleans Newsletter, *Imminent Health Threat Property Demos Dangerous Property Structures in 30 Days*, Vol. II, Issue III, April 2007, available at, <http://www.cityofno.com/portal.aspx?tabid=98>.

¹⁵⁵ Michelle Krupa, *N.O. Tear-Down Law is Raising Questions*, TIMES PICAYUNE, May 8, 2007.

¹⁵⁶ Michelle Krupa & Lolis Eric Elie, *They've Guttered Their Houses and Nay Even Live in Them, but Some N.O. Homeowners Still Get Notices of Demolition, and Their Anger is Growing*, TIMES PICAYUNE, Aug. 10, 2007.

¹⁵⁷ ROBERT TEIXEIRA, *IT'S A WRECKING BALL*, TIMES PICAYUNE, Aug. 11, 2007, at Metro-Editorial.

the cracks,” and that the process must be “slowed”,¹⁵⁸ dismayed property owners continued to find their gutted and move-in condition homes on the City’s demolition lists or worse--actually demolished. Individual stories from those with demolitions of rebuilt or soon to be rebuilt homes poured in to community groups and advocates, such as the following:

Ida Belle Joshua worked hard to take care of her two-story house in the Lower Ninth Ward, even after Hurricane Katrina flooded it up to the roof and forced her into exile 150 miles away.

She spent \$5,000 to have the brick house gutted, \$275 to clean it and then went to City Hall on July 5 to make sure 2611 Forstall St. wasn’t on a list of derelict properties facing demolition because of storm damage. Two city employees assured her that the house was safe, she says.

Two days later, her nephew called. He had gone by the property to mow the lawn. But the house where Ms. Joshua and her late husband had raised three children was gone. It had been knocked down by the city. Since then, she has been trying to get an explanation, but with no luck.

“I’m a 79-year-old senior citizen, crippled and can’t travel, and I can’t pay anybody,” she says. “I will be dead and gone by the time I get any recourse from the city. It’s a travesty.”¹⁵⁹

Chanel Dubose, lifelong New Orleanian found her house on the City’s Imminent Health Threat list. Now facing pending demolition having spent \$90,000 in post-Katrina repairs, the Duboses’ struggled to save their now rebuilt home from City demolition when, two years prior, they had saved approximately 25 others through rescues in their fishing boat after the storm.¹⁶⁰

On August 15, 2007, at a protest at New Israel Baptist Church in the Ninth Ward, ministers and community leaders challenged “unwarranted demolition”, called on the City to halt demolitions, and asked the City for due process before demolition.¹⁶¹ On the same day, the City adopted yet another ordinance—this one to amend the Imminent Health Threat Ordinance—adding a piece of what was put once in place a year prior in the Good Neighbor Ordinance—the right to object in writing to a pending demolition—this time to the City’s Office of Code Enforcement, a required written response within 15 days from receipt of code violations from the City, and a new step introduced becoming a final review of properties 48 hours prior to the scheduled demolition date to be completed by the Office of Code Enforcement.

¹⁵⁸ Becky Bohrer, *New Orleans Homeowners Angered by Fumbling Demolition Program*, Associated Press, Aug. 12, 2007; Rick Brooks, *Katrina Survivors Face New Threat: City Demolition*, WALL STREET JOURNAL, Aug. 9, 2007.

¹⁵⁹ Rick Brooks, *Katrina Survivors Face New Threat: City Demolition*, WALL STREET JOURNAL, Aug. 9, 2007.

¹⁶⁰ *Id.*

¹⁶¹ N.O. Ministers Call City-Ordered Housing Demolitions Illegal, Times Picayune, Aug 15, 2007, at News.

Later in August, the City apparently issued a four day moratorium during which residents were given an opportunity to bring documentation regarding their home to City officials. It remains unclear how this moratorium was publicized.

At the end of August 2007, coinciding with the second anniversary of Hurricane Katrina, the U.S. Army Corps of Engineers announced that it was stopping its demolition work in the City.¹⁶² Confusion reigned as the deadline approached for the City to tell federal authorities which properties were slated for demolition approached. After that deadline, the City would be required to fund demolition and wait for reimbursement from FEMA.

Advocates and community group leaders closely analyzed information from individual property owners cited under the Imminent Health Threat Ordinance and revealed widespread deficiencies in the information. For example:

- cited homes did not uniformly receive notice on the building itself,
- newspaper notices were not complete,
- displaced homeowners reported that their mail forwarding did not carry notices from the City regarding demolition;
- unlike property tax assessment documents (which were mailed to updated addresses), notices about demolition were mailed to the addresses of damaged and likely still unoccupied homes.

On August 24, 2007, more than a year and a half after the *Kirk* case, another federal lawsuit against the City was filed to stop demolitions without meaningful notice and an opportunity to be heard, pre-demolition.¹⁶³ Residents, including Ms. Idabelle Joshua, asked for a return to the Good Neighbor policy where these protections, including pre-demolition administrative hearings, were once in place.¹⁶⁴ And having had a year of experience with property owners' real concerns about implementation of policy, the *Joshua* lawsuit is also seeking revamped procedures inside City Hall so that written complaints are timely accepted and processed and guidelines for granting requests are made known.

On September 29, 2007, with the Corps' "demolition mission" scheduled to end the next day, the City issued a Request for Proposal for private companies to bid for City managed demolition contracts on structural demolitions with an original closing at the end of October 2007.¹⁶⁵ The contract, as described in the City's RFP, requires that the private contractor "erect and maintain a durable placard at the site marking the site for demolition" and that "no structure will be demolished without the presence of a City representative".¹⁶⁶ FEMA stated that it would pay its own contractor to work with the City to supervise and document demolition work.¹⁶⁷

¹⁶² Joe Gyan, *FEMA to Fund N.O. Demolitions*, TIMES PICAYUNE, Nov. 20, 2007, at Sec. A.

¹⁶³ *Joshua et al v. City of New Orleans*, E.D. La. 07-4205..

¹⁶⁴ Michelle Krupa, *N.O. Tear-Down Law is Raising Questions*, TIMES PICAYUNE, May 8, 2007.

¹⁶⁵ City of New Orleans, Invitation to Bid, Proposal No. 3001-00378; Closing bid date was extended to Nov. 6, 2007 and then to Nov. 16, 2007

¹⁶⁶ *Id.* at 5.

¹⁶⁷ Joe Gyan, *FEMA to Fund N.O. Demolitions*, TIMES PICAYUNE, Nov. 20, 2007, at Sec. A.

5.6.4 Demolitions: Looking Forward

The recent settlement of the *Joshua* lawsuit requires the City to implement revised notice procedures and re-instate pre-demolition hearings—before impartial, non-City employee, hearing officers.¹⁶⁸ Overall—the public’s understanding of demolition procedures is compromised by numerous, varied, and ill-defined policies implemented after the hurricane disasters taken together with a failure to provide comprehensive oversight on these issues. A recent Times Picayune editorial aptly summarized the situation: “When dilapidated homes that everyone wants torn down are untouched but homes that are being repaired are threatened with the wrecking ball, something is wrong.”¹⁶⁹

Months after Cheryl Dubose first learned that her house was on the City’s pending demolition list and after numerous visits to City Hall to demonstrate that her home was actually rebuilt, the City issued a demolition permit to level the house. Then, in mid-December, 2007, the Dubose’s electrical wires were cut—the precursor to demolition. And, with the home nearly fully restored, the City’s damage estimate in December 2007 listed the Duboses’ home as 88 per cent damaged when, in January 2006 and prior to the completed repairs, the City listed it as only as 37 per cent damaged.¹⁷⁰ Mistakes abound.

The Bureau of Government Research, pointing to inconsistent application of the Imminent Health Threat Ordinance, “with some sound buildings being condemned while some unsound buildings mysteriously escape condemnation” and a “lack of clear standards” in even the amended ordinance, proposed that the City implement provisions found in the International Property Maintenance Code,¹⁷¹ which includes pre-demolition hearing procedures.¹⁷² Indeed, with hearing procedures now securely in place in a court approved consent decree, the City must make serious efforts to favor accuracy over expediency, implement necessary pre-demolition procedures, and demand best practices throughout the identification of properties for demolition

5.7 Conclusions about Rebuilding of Owned Properties

In response to political pressure at various points throughout the implementation of the Road Home program, state policymakers have consistently responded by building the capacity of the Road Home contractor, ICF International. The most recent example of this is the move to add 500 ICF employees to do case management to help applicants who have lingered in the program.¹⁷³

¹⁶⁸ See Consent Decree, filed January 25, 2008; Michelle Krupa, New Orleans Demolition Rules Overhauled, TIMES PICAYUNE, Jan. 26, 2007.

¹⁶⁹ Editorial, *Keep Our Character Intact*, TIMES PICAYUNE, Jan. 7, 2008.

¹⁷⁰ Michelle Krupa, *City Inflating Damage, Lawsuit Says*, TIMES PICAYUNE, Dec. 19, 2007; Original damage assessments on file with the author and available at velocityhall.com.

¹⁷¹ *Supra.*, at 1.

¹⁷² IPMC at Section 110.

¹⁷³ This policy decision was announced by the Office of Community Development at the Louisiana Recovery Authority Housing Taskforce Meeting on January 4, 2008. Applicants who have lingered in the system are targeted by this effort. Such a move requires the allocation of more resources to recruit and hire staff and to train them as well. Nonprofits who are already advocating on the behalf of Road Home applicants have acquired an intimate knowledge of the workings of the program and are already assisting homeowners who fall within the targeted group. They would have been an ideal partner in this effort.

This response and other lack appreciation of the historic knowledge and experience of disaster recovery in a state with repetitive disasters resulting in:

- complex and difficult-to-navigate programs developed in a vacuum; and
- lack of collaboration with parallel processes at the local level such as long term recovery committees.

Ineffective execution of programs have stifled rather than enhanced the organic recovery process and community ingenuity. Prevention of the renaissance of sustainable and resilient communities eliminates the benefit of communities being able to initiate and invest in their own recovery and redevelopment. The state should recognize the wisdom, hard-won expertise, and dedication of community and faith based groups by investing in their sustainability because they will remain long after the Road Home is dismantled but rebuilding needs persist. Any future investments in the recovery of the state of Louisiana and its devastated parishes must also occur in an open and transparent manner that demonstrates true accountability.

5.8 Some Remaining Questions about Road Home

What accounted for the implementation problems that afflicted the Road Home program from its inception in May 2006 and throughout its operation extending into 2008? Is the Road Home experience a unique commentary on Louisiana, or may we draw broader conclusions that would be applicable elsewhere? Are the program's problems a commentary on the inefficiency of government, on the "privatization" of public services, or a little bit of both? Definitive answers to these and other questions must await later studies based on final program data, but some preliminary conclusions can be drawn based on what is currently known.

Some problems of implementation are attributable to the sheer size of the program, which is expected by its conclusion to have processed grants totaling more than \$11 billion for almost 160,000 applicants. The contractor, ICF International, consistently failed to appreciate the magnitude of its challenges, under-estimating from the outset the number of callers who inundated its phone system during the first several weeks and understaffing the file managers who were responsible for processing applications thereafter. ICF moved far too slowly in adding essential personnel and in instituting needed services, such as the case management system that it introduced only in January 2008, more than a year-and-a-half after receiving its Road Home contract.

The State of Louisiana contributed to implementation problems by insisting on multiple levels of verification requirements that were intended to safeguard the program from abuse and safeguard the state's reputation against allegations of corruption; those excessive verification requirements introduced delays and administrative complexities that generated near-universal frustration among applicants. Louisiana also unwisely executed with ICF a contract that initially contained no performance benchmarks or penalties for inadequate performance. When state officials belatedly added penalties and performance standards after a storm of criticism from the press and public, the maximum amount of \$150,000 was widely dismissed with derision as far too small to motivate compliance, considering the amounts involved in ICF's multi-billion dollar contract.

State officials also failed to project the program's financial needs and, as a consequence, had to return repeatedly to the U.S. Congress for additional billions of dollars to fund the

anticipated shortfall. A series of news articles about the program's financial inadequacies contributed to public perceptions of incompetence and generated great anxiety among applicants, forcing some to settle for less than the total amounts to which they might have been entitled in order to avoid being "zeroed" on their grants.¹⁷⁴

The state also suffered from a political dynamic that had a Democratic Governor of Louisiana and Mayor of New Orleans beseeching the highly partisan Republican President, Congress, and Recovery Czar for billions of dollars needed to recover from the federal levee disaster that generated flooding in the first place. Similar political influences may have contributed to a foot-dragging response by federal housing officials, who still had not re-opened numerous low-income housing developments more than two years after Katrina struck; the tens of thousands of public housing residents who were thus discouraged from returning were overwhelmingly Democratic in their party affiliation.

Many of the foregoing problems were predictable and might be expected to occur in jurisdictions other than Louisiana. The size and complexity of the housing recovery program, inadequate staffing and financial projections, even the partisan sniping—all might be anticipated in the wake of a disaster of comparable proportions in many other locations around the globe.

But the relentless inability of the contractor ICF to staff and administer the program competently after a year and a half, the state's failure to impose adequate penalties and performance standards in its contract with ICF, the tendency of state officials in the Office of Community Development to align themselves in solidarity with ICF rather than to assert vigorously the interests of program applicants—all of these were avoidable and must, to that extent, be laid at the door of Louisiana officials. They constitute vivid examples of what "not to do" in administering a recovery program through a private contractor.

As for appropriateness of contracting a private firm to administer such an extensive program of humanitarian assistance and rebuilding of homes, Louisiana's experience does not constitute a proper "test" of the proposition. In a properly elaborated privatization process, the contract for services would be far more rigorous than Louisiana's contract with ICF International and would include specific performance standards, substantial and escalating penalties, plus formal opportunities for citizen complaints and participation in periodic evaluations of the contractor's performance. The contractor's incentives revolve around the maximization of profits, which probably influenced the inadequate staffing and preparation of the poorly devised proposal in the first place. In such a complicated situation without clearly defined products, contracting a profit maximization firm to "implement" seems destined for disaster. It is hard to imagine a worse result than the private contractor ICF inflicted on Louisiana's damaged and displaced citizens.

On the other hand, given the considerable inadequacies of government demonstrated repeatedly in the aftermath of Katrina, due in part to the "drown the government" policies of

¹⁷⁴ Letters to the Editor: *Waiting for balance of grant—and phone calls*, The Times-Picayune, December 27, 2007 at B- (expressing the writer's frustration, "I am one of those people who was pressured into accepting part of my grant money. . . . At the time rumors were flying that the Road Home program would be running out of money, and, like so many others, I needed to begin repairing my home, so I accepted the offer.").

the elements within the federal and state political classes (--lack of funding, --inadequate staff training, --placing of anti-program oriented administrators with no experience or commitment to the programs they were to administer) we cannot conclude that direct government administration of the Road Home program would have produced better results.

The verdict with regard to “privatization” as a strategy for the administration of disaster recovery might best be characterized as a “hung jury” at least until there is a wider acceptance of the critical roles of government in dealing with massive natural disasters, and of the need to invest in improving governmental capabilities to take the lead in interacting with the public, re-establishing infrastructure (water, electricity, sewage, roads, schools, clinics) for the support of private housing reconstruction. Under such conditions contracting of private, for-profit companies for specific services may be effective, with strict monitoring and control.

As a final observation, we might note that many of the most stunning successes in Louisiana’s recovery process to date were attributable not to government or to private companies, but to citizen organizations. Small-scale responses by neighborhood associations began almost immediately to bring back devastated areas. New professionals, many of them young people at the beginning of their careers, were attracted to the state by its recovery challenges and are doing their part to restore and improve local schools, health care systems, and businesses. Many others contributed to the recovery process as volunteers, some arriving from out of state to rebuild housing and clear storm debris—often as members of a faith-based community. Churches, neighborhood associations, and local businesses have proved to be among the most reliable and accomplished actors in recovery efforts. Their achievements might serve as a reminder that in the post-disaster planning process, “Small is beautiful.”

6. Housing for Renters

Before Hurricanes Katrina and Rita, the Governor’s Solutions to Poverty Network of community leaders identified quality affordable housing as a need in every region of the state. Yet in 2004, the state had comparatively little experience, infrastructure, or resources with which to foster a robust program for affordable housing development. Just as leaders were buckling down to address the challenge, the hurricanes and breached levees destroyed or severely damaged more than 200,000 homes. What had been an ongoing crisis in the state became an extreme emergency.

Nearly two years later, most people who lost their homes are still at a loss. Of the 200,000 units in Louisiana with major or severe damage from hurricanes Katrina and Rita, 82,000 (40 percent) were rental units.¹⁷⁵ Renters face a complex and sometimes overlooked dilemma in returning to their homes and communities. Over half of these lost rental units were affordable to households making less than 80 percent of the area median income (AMI),¹⁷⁶ either through government subsidy programs or simply by being low-cost units. These households—the majority with household members working in a low-wage economy—have little recourse for securing housing today. The massive loss of affordable housing has

¹⁷⁵ Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development, “Current Housing Unit Damage Estimates, Hurricanes Katrina, Rita and Wilma,” (Washington, DC: FEMA and HUD, 2006).

¹⁷⁶ Greg Rigamer, Affordable Housing Needs in Louisiana retrieved from <http://www.gcr1.com/lhfa/website/Introduction.aspx>.

exacerbated the pre-storm reality of high housing burdens on many low-income families. The result has significantly increased the need for deeply affordable units. With rents increasing as much as 40 to 200 percent since the storms,¹⁷⁷ few apartments are affordable to people making less than the median income for the area.¹⁷⁸ In June 2007, FEMA estimated over 13,000 families were still in group trailer sites, and 31,000 families were still reliant on temporary housing assistance in distant cities.¹⁷⁹

Congress set aside both flexible Community Development Block grant funds and Low Income Housing Tax Credits as a way to foster rebuilding of rental housing that meets the needs of diverse Louisianans. Two programs established by Congress and shaped by the Louisiana Recovery Authority's (LRA) Road Home program are specifically directed at replacing a portion of this lost rental housing:

- 1) The multifamily (large) rental program, administered by the Louisiana Housing Finance Agency (LHFA) received a special \$170 million allocation of Low Income Housing Tax Credits (LIHTC)¹⁸⁰ in the years 2006-2008 to spur housing redevelopment through incentives provided to private developers. The LIHTC funds have been coupled with approximately \$594 million of Community Development Block Grant (CDBG) dollars in a "piggyback" arrangement to help engage private developers and builders to produce multi-family housing to serve lower income and special needs populations.¹⁸¹
- 2) The second rental housing program is the Small Owner program, administered by the Office of Community Development (OCD), which helps rehabilitate damaged single to four-plex properties that are offered for lower rents.¹⁸²

6.1 Multi-Family (Large) Apartment Building Development Program

The Louisiana Recovery Authority set the following goals¹⁸³ for the large rental program that combines Low Income Housing Tax Credits and Community Development Block Grant piggyback funds:

- Create 18,000 to 33,000 housing units

¹⁷⁷ Jeffrey Meitrodt, "Rising Rents," The Times-Picayune 15 Oct. 2006. Amy Liu et al., "Special Edition of the Katrina Index: A One-Year Review of Key Indicators of Recovery in Post-Storm New Orleans," (Washington, DC: Brookings Institute, 2006) 1. United States, U.S. Department of Housing and Urban Development, Economic and Housing *Market Conditions Pre- and Post-Katrina: A Comprehensive Market Analysis Special Report*, (Washington, DC: PDR, 2006) 15.

¹⁷⁸ One major indication of increasing market rents is the federal setting of Fair Market Rents (FMR). HUD User, "Fair Market Rents," *Data Sets*, retrieved from <http://www.huduser.org/datasets/fmr.html>.

¹⁷⁹ Of these trailer sites, approximately 13,000 are on public land. FEMA, "Federal Funding Tops Billions as Louisiana Recovers," *Disaster Information*, retrieved from <http://www.fema.gov/news/newsrelease.fema?id=33506>.

¹⁸⁰ From here referred to as GO Zone Tax Credits. The GO Zone includes 37 parishes that sustained damages from Hurricanes Katrina and Rita in 2005.

¹⁸¹ The piggyback funds were administered by the Office of Community Development in conjunction with the LHFA.

¹⁸² The Small Landlord Repair Program makes loan awards through six rounds of applications starting in May 2007.

¹⁸³ Louisiana Office of Community Development, Division of Administration and the Louisiana Recovery Authority, "The Road Home Housing Programs Action Plan Amendment of Disaster Recovery Funds," retrieved from http://www.doa.la.gov/cdbg/dr/plans/Amend1-RoadHome-Approved_06_05_11.pdf.

- Allocate credits and CDBG piggyback funds proportionally to restore rental housing loss in the most heavily damaged parishes

The Louisiana Housing Finance Agency apportioned the Low Income Housing Tax Credits through three competitive rounds in 2006 and 2007. The first two rounds of allocations in 2006 did not prioritize the deeper affordability goals or target areas with the heaviest damage in their scoring criteria. The agency, however, modified the requirements for funding in each round in response to advocates and developers. All the credits for the final round (2007-2008) were allocated in the eight most damaged parishes,¹⁸⁴ and were coupled with additional funding from the Community Development Block Grant (CDBG) program to achieve goals related to the development of specific types of housing—mixed-income, deeply affordable, and permanent supportive housing.

Overall, the allocations for 2006-2008 LIHTC projects will create 14,957¹⁸⁵ apartments and homes—replacing one-fifth of the rental housing damaged or destroyed by Hurricanes Katrina and Rita.

Establishing replacement housing goals and allocation programs and awarding funds was an enormous undertaking for all agencies involved. Before Katrina and Rita, the LHFA awarded approximately \$8 million annually in LIHTC; over the last year and a half, it awarded \$167 million. These important first steps are only one part of an evolving challenge in restoring quality rental homes for Louisiana residents. This section examines ongoing challenges facing the development of these GO Zone developments, as well as other rental housing developments in the future in the state. It also makes recommendations specific to targeted levels of government or agencies that can aid in addressing the challenges.

6.1.1 Insufficient Funding

Louisiana has not received adequate federal housing funding to redevelop rental housing in the state. Although the GO Zone tax credits allocated will create an unprecedented amount of affordable housing for the state, it will only replace one-fifth of the housing units lost in the hurricanes of 2005. To ensure the healthy redevelopment of the state and the region, more housing monies must be allocated to rebuild housing in the Gulf Coast, especially in those regions that suffered the most damage from the storms.

Recommendations on Federal Resources

U.S. Congress: *Allocate more federal resources to help restore the formerly subsidized rental housing units in the state. HB 1227, to be taken up by the Senate in June, 2007, can address a portion of these needs.* Increasing the House legislation authorizing 4,500 Project based Section 8 vouchers to 25,000 Project Based Section 8 vouchers can close a substantial portion of the existing gap in need between extremely low income displaced households and replacement housing that will serve them. Additional Low Income Housing Tax Credits can continue to engage private developers in bringing quality housing to the state. An additional \$100 million allocation of LIHTC would allow Louisiana to rebuild at least half of the more than 80,000 lost rental units.

¹⁸⁴ The eight most heavily damaged parishes are: Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermillion. Louisiana Office of Community Development, Division of Administration, and Louisiana Recovery Authority, "Proposed Action Plan for the Use of Disaster Recovery Funds Allocated by P.L. 109-234." November 30, 2006.

¹⁸⁵ These numbers include allocations from two rounds of funding in 2006, including reprocessed projects (projects funded prior to the storm that returned traditional tax credits in exchange for GO Zone credits) and projects funded in the 2007-2008 funding round.

LHFA: Reallocate any credits returned by developers to other projects awaiting funding in the areas of highest damage. Due to the shortage of funds, many high quality proposals remain unfunded. Any tax credits that are returned to the agency should be targeted to the eight most damaged parishes to help finance these projects in the areas of heaviest need.

Allow New Orleans developments to qualify for future LIHTCs.¹⁸⁶ Due to the New Orleans metro region's high damage, current allocations will only rebuild 14 percent of the rental housing lost. Future applications for tax credits should allow qualified developments in the New Orleans region as a testament to the importance of rebuilding such a vital part of the state.

6.1.2 Parish Opposition to Housing Projects

There has been significant opposition in a number of parishes, mostly in the New Orleans metro region, to multifamily tax credit developments—as well as to the idea of affordable housing in general.

In three of the most heavily damaged parishes—Jefferson, Orleans, and St. Tammany—portions of the parish have either threatened or enacted moratoriums on permitting or building multifamily housing, thus threatening current and future projects. Jefferson Parish officials threatened a zoning change on potential development sites,¹⁸⁷ and introduced state legislation to require local approval, creating a chilling effect among developers who suffer financial losses, and seek to move to more welcoming parishes—often characterized by a higher concentration of subsidized housing. Similar local actions triggered an investigation by the U.S. Department of Justice in 2005 for possible fair housing violations.

¹⁸⁶ The eight most damaged parishes, including those in the New Orleans metro area, are excluded from the current 2007 Per Capita QAP.

¹⁸⁷ Such an action has stopped the development of a 200-unit senior housing project by Volunteers of America in Terrytown. Although the group received LIHTC to create housing for seniors in Jefferson Parish, a zoning change was initiated that would place infeasible time restraints on the project, which caused Volunteers of America to withdraw their proposal. Although the zoning change was not brought to the city council/planning commission, the mere threat of such a change can often times be enough to significantly reduce the chance that developers will apply for projects in jurisdictions that create such hurdles. Terrytown is not the only jurisdiction in Jefferson Parish to put up blockades to multi-family housing. Westwego, across the river from Uptown New Orleans, rather than battling developments already sited in their jurisdiction, have passed a moratorium on multifamily permits to prevent future development. It is particularly disheartening that Jefferson Parish, which lost almost 14,000 rental units in Katrina and is currently only rebuilding 1,200 is making all types of multifamily rebuilding difficult or impossible—and increasing the barriers to return for former renters in the parish. In St. Tammany, areas in and around Slidell have passed a six-month ban on multifamily building permits—both in commercial areas and in the entire surrounding area to the south east of Slidell. St. Tammany not only was designated one of most heavily damaged parishes in the GO Zone, but is also a receiving parish, and was undergoing a population boom even pre-hurricanes. Banning multifamily permits in an area with increasing population growth is severely limiting for a parish looking to expand economically.

UPDATE JAN 2008: INCREASED NIMBYism and the Lot Next Door Program

Communities have continued to fight multi-family developments in their neighborhoods and many have enlisted the support of their represented officials to create special districts or zoning aimed at preventing these developments from going forward.

Additionally, a new fear has arisen. As the state of Louisiana comes into possession of a large number of properties from families who sold their house to the state, some neighborhood groups are advocating for the local jurisdictions to award properties to neighbors prior to packing them for redevelopment.

While there is a strong push to create mixed income developments in poorer neighborhoods, more affluent groups are blocking mixed income housing in their own communities which effectively denies the return of the working families that need housing to come home.

The 'Lot Next Door' program, which allows adjacent property owners right of first refusal on a state owned property, has the potential to help the city curb blight in redeveloping neighborhoods, there are also some serious concerns in the equitable application of this program across the city.

Prior to Katrina, over 50% of New Orleans residents made under 80% of the area median income. Many of these families lived in neighborhoods with housing of low appraisal values and hence low Road Home grants that are not sufficient to rebuild housing in these neighborhoods. These neighborhoods are struggling to rebuild.

At the same time many affluent neighborhoods recently have taken actions to reduce or block affordability by down-zoning or blocking building permits for new housing. These neighborhoods cannot further take advantage of excluding affordability in their neighborhoods by having all properties from the LLT funnel into the 'Lot Next Door' Program. The city and state should not reward affluent neighborhoods by allowing them to increase their property values through the lot next door while simultaneously blocking affordable housing in their neighborhoods.

Recommendations

State Legislature: *Oppose HB 223, which requires approval of the parish governing authority before LHFA can take action to approve tax credits or other housing programs in any parish.* This bill will unduly allow jurisdictions to block projects based solely on income of potential residents, concentrating developments for lower-income Louisianans, rather than spreading new, quality affordable housing to all corners of the state with residents who are in need.

Develop a comprehensive state housing plan and pass a fair share bill to help implement it. Many states require local jurisdictions to plan for their relative share of affordable housing or to have a minimum threshold of such housing in their jurisdiction. The Inclusionary Zoning Subcommittee of the House Municipal Committee studied this issue in 2007 and recommended action to ensure that each municipality provides housing choice for its seniors, residents with disabilities, and service sector workers. Such a bill could help distribute opportunity housing across Louisiana.

Allow zoning overrides. When developers have acted in good faith, siting projects on properly zoned land and abiding by local codes and design, and the local jurisdiction makes moves to change zoning in order to prevent affordable housing to be built, a state appeals board should be able to grant developers zoning overrides. This would mirror an effective Massachusetts policy.¹⁸⁸

LHFA: Embark on a statewide education campaign. A great deal of local resistance to affordable housing emanates from myths and misunderstanding. A public awareness campaign could help Louisianans realize that affordable housing is for teachers, working families, seniors, and other key members of the community and has been proven not to lower property values or increase crime.

Mandate high quality design for developments. Many complaints around affordable housing result from communities' past experience with poorly designed and shoddily constructed developments. The LHFA can mandate design standards in line with current national building practices that create affordable housing developments that are indistinguishable from market rate units and provide safe and healthy homes for their inhabitants. To secure quality projects, developers with histories of high quality development can be prioritized while those with poor records should be ineligible for funding.

6.1.3 Lack of Comprehensive Housing Policies

The state of Louisiana lacks a comprehensive set of housing policies that includes goals, sets benchmarks, and unifies commitment to quality housing development to serve diverse housing needs. The absence of such policies results in inconsistent approaches by different levels of government.

Through the GO Zone rental housing program, the LRA and LHFA laid out a plan for the development of mixed-income housing—a development practice now common across the United States, but with little precedent in Louisiana. While the agencies did incentivize market integration with subsidized housing, they did not sufficiently prioritize those developers seeking to serve deeper affordability and special needs populations—leaving more vulnerable populations underserved.

Recommendations

LHFA: To ensure that quality housing results from tax credit developments, the agency must reward projects sited near services, schools, transportation, and job opportunities.

This would reverse historic trends for Louisiana of siting its tax credit projects in high poverty neighborhoods. Extra points for quality design and energy efficiency standards will foster livable, affordable housing. LHFA should work to consistently develop these types of projects.

¹⁸⁸ Chapter 40B is a Massachusetts state statute which enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. The program allows the developer (nonprofit organizations or limited-dividend companies) a right of appeal if the local zoning board rejects the project or imposes conditions that are uneconomic. Source: Citizen's Housing and Planning Association, "Fact Sheet on Chapter 40B, The State's Affordable Housing Zoning Law," (Massachusetts; 2006) 1.

Consistently create economic integration in the developments themselves and in the neighborhoods in which they are located. Housing agencies generally evaluate housing need statewide and structure capital outlays relative to the needs. The LHFA has taken steps this year to evaluate the complex and multidimensional housing needs in Louisiana and outline goals to address these needs. A broader framework should guide the LHFA's use of the tools at its disposal—the QAP¹⁸⁹, the housing trust fund, and bond financing—to incentivize projects that meet these goals. The LHFA started this approach in its 2007–2008 GO Zone QAP, creating incentives and pools for mixed-income developments, deeper affordability, and permanent supportive housing. This targeting, while not perfect, should inform each subsequent QAP to continue moving towards creating ideal housing, rather than starting from scratch with each allocation round. The agency should set aside pools or grant the greatest scoring advantage to projects that serve the most vulnerable populations to ensure that permanent supportive housing and deeply affordable and accessible housing are developed across the state.

LRA and OCD: To ensure that the unmet goals of the Road Home program for deeply affordable rental housing restoration can be delivered, the remaining piggyback funds should be reserved solely for this purpose.

6.1.4 Weak Management of Housing Complexes

A major concern of housing advocates, neighborhood groups, and residents has been the management and monitoring of multifamily affordable development, including maintenance, physical upkeep, and affordability levels. With so many new developments slated for the next few years, systems must be put in place to ensure that these buildings continue to provide quality and affordable housing over time.

Recommendations

LHFA: Require maintenance and management training. Preventative solutions to management issues will provide the largest return on investment and best results for all stakeholders, especially those living in tax credit properties. Community-based models of best management practices that involve residents in maintaining the quality of developments are especially compelling and relevant.

Help develop, support, and work with local complaint review boards that have enforcement capacity. In the past, residents and neighbors had no recourse if a property was not properly managed. The LHFA can work with local jurisdictions to create affordable housing boards that can manage and enforce quality standards on multifamily developments.

Stabilize financial and physical building integrity over time. Through structured monitoring of building component lifecycles and adjusting replacement reserves as necessary, developments can better manage their capital and operating budgets to keep up the quality of the development over the life of the project.¹⁹⁰

¹⁸⁹ QAP—Qualified Allocation Plan. Housing finance agencies such as the LHFA require a Qualified Allocation Plan from developers who wish to be considered for LIHTC allocations. The QAP includes a scoring mechanism that allows the housing finance agency to rank development projects and allocate funding accordingly.

¹⁹⁰ The Michigan State Housing Development Authority has established a program to be in close communication with building stakeholders in order to best prioritize housing maintenance investments and preserve a high quality of life at developments.

6.1.5 Lack of affordable housing

The state has shown an inability to develop deep levels of affordability at the scale needed, coupled with significant loss of low-cost market rate housing and of affordable units in public housing redevelopments leaves a significant gap in the availability of deeper affordability.

It is historically difficult to reach deep levels of affordability in housing without layering government subsidies—like the layering of CDBG funding with LIHTC in the Road Home program. The LHFA must continue to act as a lead agency to target development that serves those in need of deeply affordable units. The LHFA has also recognized and acknowledged that reaching deeper affordability was a major goal for the GO Zone funding and one outlined in its recent strategic plan. The legislature, governor, and local housing agencies should work together to develop financial resources for multifamily development beyond Low-Income Housing Tax Credits.

This is especially true in Orleans parish where the redevelopment of Lafitte, St. Bernard, BW Cooper, and CJ Peete will result in the loss of deeply affordable units that previously existed in these developments.

Recommendations

U.S. Congress: Amend and pass the Senate version of HB 1227—*The Gulf Coast Hurricane Recovery Act*—and include funding to match the one-to-one replacement of public housing. HB1227 currently contains the right provision to ensure the one-to-one replacement of public housing units in redevelopment of these sites. It is important to clarify that this refers not to only to the number of actual housing units, but to the affordability of these units. The appropriations to date have only provided funds to replace one quarter of damaged units. Sufficient funding to ensure that the homes that support the most economically vulnerable residents can be replaced must be appropriated in conjunction with this bill.”

State Legislature: Dedicate consistent and yearly revenue to a state housing trust fund to finance deeper affordability. Louisiana legislatively established a trust fund in 2003, but there has been no significant investment on either a one-time or yearly basis, rendering the fund unproductive. Ongoing revenue streams could include: real estate transfer taxes, property taxes, developer fees, tax increment funds, and unclaimed property interest. Surplus monies could help capitalize the fund in coming years through annual allocations.

Create a state housing bond. Although the Road Home is the largest federal housing program in history, the funding sources allocated will not restore even two-fifths of the rental housing damaged or destroyed in the 2005 hurricanes. Future federal investments in affordable housing in Louisiana will be critical. The state must dedicate resources to buttress federal funding to reach its affordable housing goals and meet the housing needs of citizens.

LHFA: Dedicate a significant portion of the housing trust fund towards efforts to gain deeper levels of affordability. A housing trust fund has the ability to finance a variety of housing initiatives, from first time homeownership programs to gap financing for developers to create deeply affordable housing. While there are many worthwhile uses for these dollars, there are very few other sources of funding for developers to create deeply affordable units.

Assign critical points in scoring to developments reaching deeper affordability. The LHFA has acknowledged the need to create housing through Low-Income Housing Tax Credits that are affordable to citizens outside of the 50 to 60 percent of AMI range. In keeping with this goal, the LHFA can use the QAP to reward creative developers that secure additional funding to generate deeply affordable units. With critical points in the QAP to prioritize mixed-income, deeply affordable housing, mission-driven developers will do the difficult work of leveraging other funding sources to create these units and serve more vulnerable residents.

6.1.6 Special Needs Populations

There is a need to further address special needs populations. Louisiana has a diverse group of citizens in need of safe, quality, affordable housing. Nearly one in five Louisianans are disabled¹⁹¹ and the state's population of senior citizens is continuing to grow as baby boomers retire. These residents have been significantly helped by developments funded by the LHFA, still represent a huge need that is not addressed by traditional housing development of all types.

Recommendations

LHFA: Dedicate a special funding pool to address affordability, permanent supportive housing, and accessibility. Although the LHFA is moving away from funding pools, it is currently difficult for developments that address specific needs in the state to compete with more mainstream projects. Complicated financing and competition from larger developers currently put quality smaller projects behind larger developments without permanent supportive housing.

Assign critical points in scoring to projects that will fill PSH needs. Beyond a specialized pool, developments meeting the difficult to reach needs of these citizens should be given critical points in the QAP in order to spur creative developments and integrate these units into the majority of developments.

6.1.7 Small and mid-size developers

There has been an unequal playing field for small and mid sized firms to compete for project contracts. One outcome of the 2007-2008 GO Zone QAP allocations was the disadvantage of small to mid-size non-profits or private developers to compete with large-scale developers.¹⁹² Although an incentive for substantial developers was not included in the Final 2007 Per Capita QAP, a 15-point incentive was proposed with the justification of trying to ensure high quality developments. As pointed out by many commissioners, simply being a larger-scale developer does not necessarily guarantee better developments. Instead of giving added points

¹⁹¹ U.S. Census, "Louisiana," State and County Quick Facts retrieved from <http://quickfacts.census.gov/qfd/states/22000.html>.

¹⁹² In order for a developer to qualify to build a mixed-income project and receive significant incentive points and CDBG piggyback funding in the 2007-2008 GO Zone round, they had to qualify as a "substantial developer" or one that has experience developing at least 300 market rate or mixed-income housing units. Therefore smaller firms without as much experience were automatically barred from applying to create a mixed-income development. Part of the reasoning behind the weighted advantage to large firms was the thinking that large developers have more experience with mixed-income developments and would therefore be more likely to bring these developments to completion. This also resulted in many of the mixed-income projects being larger sized developments, as many substantial developers only develop larger scale projects (over 100 units). Out of 21 projects in the Mixed-income Pool in the 2007-2008 GO Zone Round, only five were under 100 units and the average size of a development was 180 units.

for being a more established firm, incentive points for demonstrating high-quality developments no matter the size, rather than number of units could be used to more effectively reach the goal of higher-quality developments.

Additionally, the potential benefits of developing a robust small and mid-size local development community in Louisiana have not been fully explored. There has been some movement to support locally-owned developers through a small point incentive in the QAP for being a Louisiana developer (10 points), but it is a small incentive and does not necessarily prioritize smaller firms. Fostering the growth of local smaller-sized firms helps overall business growth in Louisiana and also is in line with the LHFA's strategic planning goal of "fostering the growth of disadvantaged businesses throughout its programs and selection criteria." Smaller businesses and non-profit developers are often rooted in neighborhoods and communities and bring other benefits as well. Smaller developers and non-profits generally understand the history of the communities they are developing in and have relationships with citizens and local groups that can be used to create a project that is welcomed by community members instead of protested and eventually blocked like some recent developments that have received credit allocations. These organizations often offer other services like child care centers, workforce training, and other benefits and can help encourage neighborhood integration and quality management.

Recommendations

LHFA: *Create a separate pool for smaller nonprofits or innovative private developers that meet different needs than larger-scale developers.* Nonprofits and certain private developers often times take risks and create projects that meet unique needs in communities or provide new solutions to longtime housing problems. These developments often fill gaps in housing need that are difficult to integrate into larger developments. Building the capacity of nonprofit developers will strengthen the civic infrastructure of Louisiana, as evidenced in over 30 other states.

6.1.8 Limited transparency

There is a need for continued and improved transparency and stakeholder engagement. The LHFA has made major strides in the past 18 months in improving citizen access to information and engaging in a more meaningful public participation process. The steps that have been taken so far are the beginning of a process of truly engaging community in decision making and development.

Recommendations

LHFA: *Consistent and holistic public input process.* The LHFA needs to better comply with the Louisiana Administrative Procedures Act, which guarantees due process, especially regarding adequate notice and equal time for all community members to be heard. Community voices and strategies need to be integrated into the entire development process, from the formulation of program policy to the final acceptance.

Improved information sharing. The LHFA's new website is one tool that should be put to use in sharing information from the agency. By making public documents easy to access, the LHFA will continue to build trust among constituencies and reduce barriers to affordable housing development.

Annual convening of stakeholders for critique of state housing programs. Quality housing policies are built over time with input from all stakeholders in the process. As is done in many other states, the LHFA should develop and strengthen relationships with all stakeholders through an annual convention to educate and develop policies and procedures around affordable housing development.

Require plans and schematics in allocation applications. Although the current QAP requires that all proposals meet state building codes, the LHFA can and should go further to guarantee high quality developments that are positive additions to neighborhoods. Many other states require preliminary building elevations and site plans to secure quality design and help with neighborhood integration. The current requirement of 45 days prior to commencement of construction is too short a window for community input and community design integration.

6.1.9 Conclusions about Programs for Multi-family rental housing

The LHFA, LRA, and OCD successfully met some of the Road Home rental housing goals—through broad geographic distribution, through proportionally allocating credits to places of damage, and through encouraging mixes of incomes. These agencies fell short of overall goals in terms of number of replacement houses (due largely to escalating costs in the region), number of deeply affordable houses, and permanent supportive housing. While effectively allocating funds to restore two-fifths of what was damaged or destroyed, clearly more is needed. The federal government should allocate more resources in the pending Senate companion to HB 1227 passed by the House in March. The state agencies should use the resources still at their command to meet the shortfalls to the most vulnerable populations, and should continue strengthening the practices initiated with GO Zone resources to fairly distribute affordable housing across regions, to better connect housing to other vital services, and to ensure that all communities provide housing choice to their workers, their seniors, and their vulnerable residents with special needs.

6.2 Louisiana's Small Scale Landlord Assistance Programs

One model of how government might respond to the destruction of rental housing in a community affected by a natural disaster is presented by Louisiana's *Small Rental Property Repair Program* whose primary goal is to induce the region's once ubiquitous small landlords to restore rental properties. In essence, it is a program of induced or incentivized rent control.

Funded with \$869 million in federal Community Block Grant Development (CDBG) funds, this program offers zero-percent interest and potentially forgivable loans to landlords who own small rental properties of ten or fewer units, if they agree to make their units affordable to low- to moderate-income tenants.¹⁹³ The amount of the potential loan increases from

¹⁹³ See THE LOUISIANA RECOVERY AUTHORITY, THE ROAD HOME AFFORDABLE RENTAL HOUSING AND ELIGIBILITY OF MOBILE HOME OWNERS ACTION PLAN AMENDMENT FOR DISASTER RECOVERY FUNDS 3-8 (2006), available at http://www.doa.la.gov/cdbg/dr/plans/Amend%204%20Rental_MobileHomes-Approved-By-Legis.pdf [hereinafter AFFORDABLE HOUSING AMENDMENT]; LOUISIANA RECOVERY AUTHORITY, THE ROAD HOME HOUSING PROGRAMS ACTION PLAN AMENDMENT FOR DISASTER RECOVERY FUNDS at 19-24 (2006), available at http://www.doa.la.gov/cdbg/dr/plans/Amend1-RoadHome-Approved_06_05_11.pdf [hereinafter ACTION PLAN]. See also Associated Press, *Landlords to Split \$869M in Recovery Funds*, NEW ORLEANS CITY BUSINESS, Jan. 26, 2007, available at www.neworleanscitybusiness.com/uptotheminute.cfm?recID=8563 (explaining details of first round of small landlord program funding).

\$25,000 to \$100,000 per unit depending on the degree of affordability from market rate rents that the landlord is willing to accept (*i.e.*, affordable to renters with 50%, 65% or 80% of the area's medium income (AMI)).¹⁹⁴ The loan will be completely forgiven if the landlord keeps the rent caps in place for a full ten years or longer for a non-profit owner.¹⁹⁵ Louisiana hopes to rebuild 18,000 units over the course of the next several years through this program.¹⁹⁶

Crucially, though, the loan proceeds awarded under this program will not be given to participating landlords at the outset to finance construction of the new or renovated units. Instead, they will only be disbursed after the landlords have completed construction, the structures have been inspected for compliance with new building codes and to make sure the units contain all the features that the landlords have promised, and finally when qualified low and moderate income tenants have been found to rent the units.¹⁹⁷ In other words, the loans will not be "construction" loans at all, but "permanent" loans, or to be more precise, "lock-in take-out" loans, backed by a firm commitment from the Louisiana Recovery Authority (LRA) to lend, but which actually only reimburse landlords who finance construction with their own funds or which replace construction loans obtained by landlords in the private market.¹⁹⁸

During the first round of this program, which was completed in the late spring of 2007, \$202 million in CDBG funds were provisionally "awarded" to approximately 2,700 applicants.¹⁹⁹ All together these awards are supposed to help restore more than 5,000 units in 13 hurricane-affected parishes across South Louisiana, and of these, more than 4,000 are to be rented at affordable rates for low to moderate tenants.²⁰⁰ More than 3,700 restored units are located in Orleans Parish, and of these, more than 2,700 should be affordable or subsidized units.²⁰¹ A second round of applications, which closed on July 31, 2007, again "awarded" more than \$375 million in conditional grants to additional rental property owners, with the goal of creating 8,261 units in 5,032 different properties.²⁰² While the first round was only open to "small" one-to four-unit rental property owners who owned no more than 20 rental properties, the second round is also open to middle-sized owners who own between 21 and 100 units and to new owners, as long as they are Louisiana residents who have purchased property since the storms.²⁰³

¹⁹⁴ AFFORDABLE HOUSING AMENDMENT, *supra* note 183, at 6-7; ROAD HOME, SMALL RENTAL PROPERTY OWNERS, FUNDING, *available at* <http://www.road2la.org/rental/funding.htm> [hereinafter ROAD HOME FUNDING] (providing overview of funding process).

¹⁹⁵ AFFORDABLE HOUSING AMENDMENT, *supra* note 184; *see also* ROAD HOME FUNDING, *supra* note 184.

¹⁹⁶ AFFORDABLE HOUSING AMENDMENT, *supra* note 183, at 6; Associated Press, *supra* note 183.

¹⁹⁷ ROUND 2 SMALL RENTAL PROPERTY PROGRAM APPLICATION HANDBOOK 3, 5-6 (on file with Tennessee Law Review); SMALL RENTAL PROPERTY PROGRAM, SMALL OWNER & OWNER OCCUPANT ROUND 1 APPLICATION HANDBOOK 6, 9 (on file with Tennessee Law Review); *see also* David Winkler-Schmit, *Stuck on Stuck*, GAMBIT WEEKLY, Nov. 13, 2007, at 21-22 (reporting on structure of program).

¹⁹⁸ *See* ROBIN PAUL MALLOY & JAMES CHARLES SMITH, REAL ESTATE TRANSACTIONS: PROBLEMS, CASES, AND MATERIALS 523-27 (2002) (discussing differences between construction and permanent loans in commercial real estate development and explaining a "lock in take out" loan, which is effectively what the Small Rental Property Repair Program is offering to small scale landlords in Louisiana).

¹⁹⁹ ROAD HOME, ROUND 1 WRAP UP REPORT (May 21, 2007), *available at* <http://www.road2la.org/rental/resources.htm> (follow "Round 1 Wrap-Up Report" hyperlink).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² ROAD HOME, SMALL RENTAL PROPERTY OWNERS, ROUND 2, *available at* http://www.road2la.org/rental/round2_announcement.htm.

²⁰³ ROAD HOME, ELIGIBILITY FOR THE SMALL RENTAL PROPERTY PROGRAM, *available at* <http://www.road2la.org/rental/eligibility.htm>.

6.2.1 Results of the Small Scale Landlord Assistance Program

At the outset, small “mom and pop” landlords enthusiastically signed up for the program in large numbers.²⁰⁴ If these landlords do actually build anywhere close to the 10,000 and 18,000 units that the LRA originally anticipated,²⁰⁵ then the program’s designers might rightfully boast that they have avoided the alleged downside of coercive rent control programs—primarily the risk that rent limits reduce incentives for property owners to build new rental housing or maintain existing rental units.²⁰⁶

Unfortunately, though, the results of the Small Rental Property Repair Program so far indicate that it may prove to be a costly and disappointing failure. The program’s policy of structuring its loans as “permanent” or “take out” loans to be awarded only after an applicant completes construction of a planned unit, passes numerous inspections and locates a qualified tenant has crippled the program’s effectiveness. By the end of 2007, not a single unit of affordable rental housing had been built with program funds, approximately two-thirds of those who received “conditional award” letters had dropped out of the program both state-wide and in New Orleans, and less than 300 landlords had been issued commitment letters across the entire state.²⁰⁷

The primary explanation for the program’s poor performance seems to be that the small “mom and pop” landlords the program was designed to aid simply lack the income, credit histories, other assets, and financial sophistication necessary to obtain loans to finance the construction of the units they envisioned. Despite the program’s intention for its commitment letters to serve as “ironclad” guarantees that the program will step in and make the final take out loan once the landlord’s project is complete, lenders are still using traditional underwriting standards to determine whether to make the initial construction loan in the first

²⁰⁴ *Id.*

²⁰⁵ Although 18,000 units was the original production goal of the Small Rental Program, Rounds 1 and 2 of the program are estimated to fund approximately 10,500 units, assuming all the projects are completed. See BUREAU OF GOVERNMENTAL RESEARCH, CEMENTING IMBALANCE: A POST-KATRINA ANALYSIS OF THE REGIONAL DISTRIBUTION OF SUBSIDIZED RENTAL HOUSING 359, at 6, tbl.2. (Aug. 2007), available at http://www.bgr.org/BGR%20Reports/Cementing%20Imbalance/Cementing_Imbalance-_Regional_Housing.pdf.

²⁰⁶ See ANTHONY DOWNS, RESIDENTIAL RENT CONTROLS: AN EVALUATION 1-2 (1988) (suggesting that rental control is only justifiable if demand for housing has risen sharply and construction of new housing units is legally restricted to conserve resources for some other purpose—e.g., a war effort—and these two conditions are expected to last for some time); Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741, 767-70 (1988) (claiming that rent control statutes “depress the future total return of any investment,” reduce investment itself, and “exacerbate [] housing shortages”). Epstein further asserts that in absence of rent controls, housing markets respond quickly to supply and demand disequilibrium after disasters like the 1906 San Francisco earthquake. *Id.* But see Curtis J. Berger, *Home is Where the Heart Is: A Brief Reply to Professor Epstein*, 54 BROOK. L. REV. 1239, 1246-47 (1989) (suggesting that empirical support for criticism of rent control is inconclusive because housing shortage is the condition that justifies imposition of rent control in the first place and because abandonment rates are often high in cities without rent control as well).

²⁰⁷ Winkler-Schmit, *supra* note 187, at 24-25. The LRA reports that only 857 of the original 2,693 landlords who initially received conditional awards statewide in Round 1 are still active in the “due diligence” stage and that only 294 have progressed to the “commitment letter stage.” THE ROAD HOME, WEEK 78 SITUATION AND PIPELINE REPORT 4, 18 (Jan. 3, 2008), available at <http://www.road2la.org/newsroom/pipeline.htm> (follow “Situation and Pipeline Report” hyperlink for 11/6/07) [hereinafter WEEKLY PIPELINE REPORT]. According to the LRA, 850 of the applicants from Round 1 have reportedly been transferred to Round 2. Winkler-Schmit, *supra* note 187, at 24.

place.²⁰⁸ And because so many landlords are poor, elderly, and usually lack much significant monthly income and now rental income, they simply cannot meet the local participating banks' lending standards.²⁰⁹ This terrible "catch 22" was produced by the program designers' apparent assumption that small scale landlords would have ready access to construction loans just like large scale developers and apartment complex owners. In short, it seems to be a classic illustration of the failure of a government program to appreciate the significance of economies of scale. The program might well have worked for at least mid size or large scale developers who could access construction loans, but not the typical New Orleans landlord who owned a few rental properties which provided enough rental income to supplement otherwise modest income sources.

If the current prognosis for the Small Rental Property Repair Program does not change and the program does nothing to increase the supply of affordable housing in the region, some critics will claim that traditional rent control should have been implemented—at least temporarily—in the immediate aftermath of Katrina. These critics will observe that rent control policies in the United States were initially created in response to emergency housing situations—particularly housing shortages resulting from World War I and II.²¹⁰ They might also note that after Katrina and Rita, the Louisiana legislature itself acknowledged that sometimes more invasive government intervention in residential real estate markets is justifiable in that it explicitly recognized for the first time the need for—and permitted local governments to enact—inclusionary zoning laws.²¹¹

6.2.2 Recommendation about the Small Scale Landlord Assistance Program

Louisiana's *Small Rental Property Repair Program* has not yet achieved much success in restoring affordable housing in the Greater New Orleans area. This does not mean that governments or non-governmental actors should give up on trying to provide incentives or stimuli to small scale landlords to repair and restore the apartments they formerly owned and offered on the rental market. Governments and non-governmental actors would be wiser to invest resources in programs that provide direct, low interest or no-interest loans to small scale landlords up front, whose proceeds could be used immediately to start construction and renovation of residential units. The goal of achieving affordability could be accomplished by making the loans partially or entirely forgivable (*i.e.*, turning them into grants) if landlords can establish, once construction is complete, that they have complied with building, health and safety codes and that they have leased the refurbished units at rents that are affordable to tenants at various rungs of the economic ladder.

This approach would entail more risk, of course, at the outset for the providers of these loans, but it is likely to provide much higher return in terms of actual construction and renovation of affordable units by small scale landlords. The risk of landlord opportunism could be limited

²⁰⁸ Winkler-Schmit, *supra* note 187, at 24-25.

²⁰⁹ *Id.*

²¹⁰ See, e.g., *Block v. Hirsch*, 256 U.S. 135, 157 (1921) (upholding first rent control statute enacted in Washington, D.C. during the First World War (citing *Munn v. Illinois* 94 U.S. 113 (1876))); Peter Salsich, *State and Local Regulation Promoting Affordable Housing*, in *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 73, 110 (Tim Iglesias & Rochelle E. Lento eds., 2005) (stating that "one of the earliest forms of land use regulation to preserve housing affordability is rent control").

²¹¹ 2006 La. Acts No. 810, § 1 (effective July 1, 2006) (enacting the Louisiana Inclusionary Zoning and Workforce Affordable Housing Act, codified at LA. REV. STAT. ANN. §§ 33:5001-33:5003 (Supp. 2006)).

by careful monitoring of the end product of construction and by careful monitoring of the affordability of the rents charged and the income levels of tenants. Field testing would be required. But unless the sponsors of programs like this are willing to take some risk, the chance of stimulating the restoration of affordable housing by small scale landlords with programs like the *Small Rental Property Repair Program* is negligible.

7. Public Housing

7.1 Introduction

One of the most unfortunate consequences of sudden disasters and catastrophes for effective land administration and management is the exploitation by political forces in a society of the political and socio-economic power imbalances these events often uncover and even intensify. In numerous cases throughout the world, sudden disasters have resulted in the removal of some marginalized groups--indigenous peoples, ethnic, racial, and religious minorities, and the economically disadvantaged--from lands deemed optimal for economic development or strategic military use. Examples of this phenomenon come from the impacted regions of Indonesia and Sri Lanka from the 2004 Tsunami, and the impacted regions of Honduras and Nicaragua impacted by Hurricane Mitch in 1998²¹².

New Orleans, tragically, has been a major site of contested politics and socio-cultural and economic interests following the calamity of Hurricane Katrina. Perhaps the clearest example of this political contest has been located in the struggle over public housing.

Pre-Hurricane, the Housing Authority of New Orleans (HANO) via United States Department of Housing and Urban Development (HUD) management and funding provided approximately 5,000 physical housing units to low-income New Orleanians. The units were offered at a discounted determined by tenants' ability to pay.

The sad stage for the public housing struggle was publicly set on September 9th, 2005 (after Katrina's devastation had become clear) when Baton Rouge based Republican Congressman Richard Baker, stated:

*"We finally cleaned up public housing in New Orleans. We couldn't do it, but God did."*²¹³

Contextualized in the historical dynamics of racial discrimination against people of African descent in the United States in general and New Orleans in particular, this statement reflects a complex political interplay between race, politics, and place (land). Given that public housing in New Orleans was overwhelmingly, if not completely, occupied by African Americans, particularly African American single parent mothers and their children prior to Hurricane Katrina, it leaves one to seriously question the intent of Congressman Baker's statements: Who is the "we" that "cleaned up" public housing? Why did "they" need to "clean it up"?

²¹² See Jeffrey T. Jackson, "The Globalizers: Development Workers in Action", published by John Hopkins University Press, 2007.

²¹³ See Charles Babington, "Some GOP legislators hit jarring notes in addressing Katrina" Washington Post Saturday, September 10th, 2005. See <http://www.washingtonpost.com/wpdyn/content/article/2005/09/09/AR2005090901930.html>. See also Naomi Klein, "The Shock Doctrine: the Rise of Disaster Capitalism", published by Metropolitan Books, 2007.

Why couldn't they "clean it up" before Hurricane Katrina? Who's political, economic, and social interests would this "clean up" serve? What should be the fate of those who are "cleansed" from their homes? And who should have the right to make that determination?

7.2 The political and ideological subtext

In the two years since Hurricane Katrina, these politically charged, but fundamental, questions pertaining to the administration and management of public housing in New Orleans have been answered almost exclusively by a narrow set of political and economic interests. These interests were briefly described in Section 3 as expressed in the Norquist doctrine, although other labels have been applied. As applied to public housing this doctrine has been under the macro-management of the George W. Bush Presidential Administration through the auspices of the Department of Housing and Urban Development (HUD) and its Director, Alphonse Jackson. Although it is historically common in the United States for various political parties and administrations to dole out various favors, economic and political, to their benefactors and supporters, what has been particularly unique and profoundly disturbing about the Bush Administration's handling of the Katrina crisis in general, and its public housing policies in particular, has been its strict adherence to a set of policies driven to reinforce a particular "ideological" worldview²¹⁴ rather than help meet the stated and documented needs of those displaced by the disaster.

These ideological perspectives have influenced the Bush Administrations policy decisions regarding public housing instituted by HUD, some Federal Court Judges, and most recently, in some pronouncements of the Mayor and City Council of New Orleans itself.

7.3 The Ideological imperative in Action

Following Hurricane Katrina, over 80% of the City of New Orleans was flooded. Of the five major public housing development projects in current use before the Hurricane – including the BW Cooper, CJ Peete, the Iberville, Lafitte, and the St. Bernard – three sustained a minor degree of flood damage, i.e. the Cooper, Peete, and St. Bernard public housing complexes. None of these three complexes received any significant damage beyond their first floors (most being three or more floors). Two complexes, however, i.e. the Iberville and Lafitte complexes, sustained little to no flood damage whatsoever.

These basic facts are cited to provide a contextual narrative of the actual physical conditions relative to the potentiality of immediate inhabitation of these apartments and facilities after the flood. Given these facts, it has been consistently argued by many former residents of these facilities and their legal and social advocates, that these facilities could have been reopened immediately, or at worst, within a matter of three to six months of rehabilitation to return and re-house their former residents or other Internally Displaced Persons (IDPs) from the city and region.

²¹⁴ See Elizabeth Martinez and Arnoldo Garcia, "What is Neo-liberalism? A brief Definition", February 26th, 2000, published by Global Exchange. See <http://www.globalexchange.org/campaigns/econ101/neoliberalDefined.html>. See also David Harvey, "Neo-liberalism: a brief history", published by Oxford University Press, 2005. See also Irving Kristol, "The Neo-conservative Persuasion".

In contravention of these requests, HUD, and its local subsidiary, the Housing Authority of New Orleans (HANO), which officially administer these lands and facilities, chose to board up and seal off all but one of these public housing developments, i.e the Iberville complex (which was officially opened for residency in January 2006). However, it had been used as a Police station through mid-September 2005 and subsequently occupied by several of its former residents immediately following their evacuation of the premises). In the face of the dire need for housing by hundreds of thousands of IDPs, why did HUD (and HANO) make this decision?

The primary arguments used by HUD officials, particularly its Secretary Alphonse Jackson, is that HUD a) does not want to restore “concentrations of poverty” to the City, and b) that it wants to encourage former residents to become homeowners, following the narrative of President Bush’s “Ownership Society” initiatives. Politically the image in the minds of many people, whether deserved or not, is that public housing complexes have been plagued by crime and gang violence. This leads many people to support the closing of these complexes as a means for reducing crime and gang violence.

Exactly how the closing of potentially habitable public housing complexes will achieve these laudable goals has not been laid out. This lack of a clear implementation program that will achieve these goals and protect the rights of the families displaced from the public housing complexes raises the suspicion that other, unstated goals are more important, namely that profit and political partisanship in the service of ideology underlie the decision to close the bulk of the public housing complexes.

Concerning the profit motive, it is important to note that each of the primary public housing developments occupies what are considered to be areas of “prime real-estate” to corporate developers. Take for example the Iberville and Lafitte public housing projects. Both are strategically located adjacent to the historic French Quarter and Downtown New Orleans. The French Quarter and CBD (Central Business District) constitute central economic engines of the City of New Orleans based on tourism and its related industries, particularly the hotel and gaming industries. The redevelopment of the public housing units into either condominiums or hotel resorts represents the potential for private entrepreneurs and investors to make significant profits over the next 5 to 10 years and beyond through the development and investment cycle of – demolitions, redevelopment, and reopening as new opportunities for profit generating ventures. The logic for the other three re-development efforts is more centered on equity enhancement and management in more middle to upper income residential areas, such as the Garden District and Lakeview areas which are in close proximity.

On the question of political partisanship, inferences are more difficult to lay out clearly and establish irrefutable evidence about such inferences. However, there are instances of Alphonso Jackson, the Director of HUD, being charged with allowing political factors to influence his decisions. He has been under Federal investigation, in part allegedly for providing preferential treatment to contractors friendly to President Bush and the Republican Party. Also, on April 28th, 2006, Jackson publicly stated that he cancelled a HUD contract on the basis that the contractor stated that he disliked President Bush. He is alleged to have also made statements to senior HUD officials under his supervision to consider the supporters of the President when granting discretionary contracts²¹⁵.

²¹⁵ See “Probe finds Jackson urged favoritism in HUD Contracts”, Washington Post, Friday, September 22, 2006 by Elizabeth Williamson at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/21/AR2006092101628.html>.

While these accusations are in dispute, they do fuel suspicions about the political motives of the closing of public housing. As stated earlier, not only were the public housing projects overwhelmingly comprised of working class African Americans, they were also overwhelmingly Democratic in their political alignment. More African Americans since the New Deal Administration of President Roosevelt in the 1930's and 40's, have tended to vote Democratic. New Orleans, and the public housing residents in particular, are no exception to this historic trend.

Therefore, the aim of “cleansing” the public housing projects of its African American residency, could be serving two general partisan political purposes:

1. Such actions could weaken the electoral base of the local Democratic Party.
2. They also could favor those segments of local society less identified with that Party who would profit from the re-developments.

7.4 Practical Implications

There are three practical implications relative to the administration and management of public housing land following a sudden disaster stemming from the decision by HUD, and reinforced by the New Orleans City Council and Mayor C. Ray Nagin on Thursday, December 20th, 2007 to tear down most of the public housing complexes:

1. A considerable amount of publicly held and entrusted land will be privatized.
2. These lands and the facilities built upon them will be regulated and controlled by private interests and market forces, that are not required to adhere to the same standards of civil and human rights laws legislated to fight against racial and other forms of discrimination historically prevalent in US housing markets.
3. Tens of thousands of African American residents of public housing will lose their low-income subsidies and placement within the public housing system.

The overall long-term impacts of these developments for the City of New Orleans and the continuation of the unique socio-cultural legacy are extremely hard to predict. Their impacts on the former residents of these complexes are clearer—they have no place to live. What also appears to be clear is that Alphonso Jackson's prophetic statement in 2005, that New Orleans is “not going to be as black as it was for a long time, if ever again”²¹⁶, may become a self-fulfilled prophecy.

HUD's plan and Jackson's comments were the impetus for what has become a protracted battle yet unresolved. The battle has proceeded on two fronts: grassroots activism and legal challenges.

Citizens, particularly public housing residents, dug into the trenches to fight for the right to return. Public housing activists regularly think back to Jackson's comments for inspiration as they struggle for affordable housing. Housing advocates were insistent that if they had anything to do with it, all citizens, including public housing residents, would have the opportunity and the right to return to New Orleans. Residents and allies have engaged in a

²¹⁶ Quoted by Mike Davis in “Gentrifying Disaster”. Printed in Mother Jones magazine online, October 25, 2005. See http://www.motherjones.com/commentary/columns/2005/10/gentrifying_disaster.html.

variety of tactics to ensure residents' right to return, from direct actions like entering condemned complexes, cleaning up units, and then occupying their former homes until forcibly removed to organizing busloads of former residents to travel from diaspora cities like Atlanta and Houston in order to have their voices heard at public meetings about the fate of New Orleans public housing.

Legal strategies have not been as successful²¹⁷. One lawsuit demanded that HUD/HANO reopen public housing and allow residents to return²¹⁸. After an initial success at getting the case accepted for trial, it was dismissed.

However, in December of 2006, the Greater New Orleans Fair Housing Action Center and a named plaintiff filed suit against HANO and partner developer Historic Restorations Inc., for conspiring to refuse former tenants of the St. Thomas public housing development in violation of a 2003 HUD fair housing enforcement agreement.²¹⁹ The suit was settled in July of 2007 with a stinging order from Judge Peter Beer.²²⁰ Beer commented:

*This Court believes that the 'us first' attitude of HANO and HRI/River Gardens, who spent excessive amounts of time and expense serving their own management, created an un-level playing field for former St. Thomas residents.....The scorn and incompetence visited upon those citizens in such perilous need set a new low for federally-supported agencies, whose very reason for existence was to provide decent low-income housing*²²¹.

While advocates have been successful in slowing and/or stopping HUD/HANO's attempt to demolish public housing, there has been no progress towards reopening units slated for demolition. The result is that thousands of residents who would otherwise return, remain at homes away from home awaiting progress on the public housing front.

Affordable housing is at a critical point along the Gulf Coast. Over 50,000 families still living in tiny FEMA trailers are being systematically pressured to leave those trailers. Over 90,000 homeowners in Louisiana are still waiting to receive federal recovery funds from the Road Home. In New Orleans, hundreds of the estimated 12,000 homeless have taken up residence in small tents across the street from City Hall and under the I-10 highway overpasses.

What is at stake with the demolition of public housing in New Orleans is more than just the loss of public housing units: it severely constrains the availability of affordable housing in New Orleans for the foreseeable future. Without access to affordable housing, thousands of working class New Orleanians will be denied their human right to return to the city where they had lived and where many had worked prior to the storm.

7.5 Recommendations

²¹⁷ http://www.nlihc.org/detail/article.cfm?article_id=2018

²¹⁸ id.

²¹⁹ http://findarticles.com/p/articles/mi_qn4200/is_20061206/ai_n16894296

²²⁰ <http://www.gnofairhousing.org/pdfs/beerorder.pdf>

²²¹ id.

The case of public housing in New Orleans following Hurricane Katrina indicates the strong need for international monitoring and enforcement mechanisms in the arena of land administration and management oversight following sudden-disaster crises, particularly as these crises impact various marginalized peoples and populations such as African Americans cited in this case of public housing.

Although the US Government is traditionally very reluctant to apply international human rights and humanitarian standards in domestic cases, various agencies of the government have produced highly relevant policy recommendations that are substantively relevant to address the overall crisis in New Orleans the Gulf Coast, including questions of justice and equity as it relates to land management and use. The most relevant of these policies is the USAID Assistance to Internally Displaced Persons Policy. This policy statement can be located at www.usaid.gov/policy/ads/200/200mbc.pdf, and is reproduced in the Tools Annex 5 of this paper. The US government should be strongly encouraged to apply these policies and recommendations to future sudden-disasters wherever they incur, and should also be encouraged to adhere to these standards as they relate to Katrina and Rita IDPs.

The most comprehensive set of recommendations which have been produced to date that address the need for justice and equity on the question of the management and administration of public housing are those of the National Low Income Housing Coalition from their “Principles for Redevelopment of Public Housing Damaged by Hurricanes Katrina and Rita” statement produced on October 11th, 2006²²².

8. Katrina and Property Records Administration

The documentation of rights to real properties which is archived in the Notarial Archives in New Orleans provides the legal basis for proving the validity of transactions involving rights to real estate. The Louisiana Public Records Doctrine holds that a transaction which is not documented, indexed and archived in the Notarial Archives has no legal effect²²³.

The offices of Register of Conveyances, Recorder of Mortgages, and Real Estate and Records provide essential indexing and abstracting of these documents in order to facilitate the location of acts which describe transactions pertaining to real property.

Seven assessors maintain maps and property files for the ad valorem valuation of all real estate in New Orleans.

8.1 Impacts of Katrina on the Administration of Property Records²²⁴

Damages to the archived conveyance and mortgage documents were serious for 5,000 volumes of the 60,000 volumes in the Notarial Archives. Fortunately, these 5,000 volumes were freeze dried and recovered.

²²² This document is also reproduced in the Tools Annex to this study, and in the web site: <http://www.nlihc.org/template/page.cfm?id=72>.

²²³ See Hon. Mitchell Landrieu, Chairman, Governor’s Study Commission for the Custodian of Notarial Records—Parish of Orleans, May, 1989 for a description of this doctrine and its implications.

²²⁴ See Stanfield, “The Administration of Immovable Property Records”, op.cit, 2008 for more details.

The risk of losing these paper documents through flood or fire had been of long concern. The decision had already been made prior to the Katrina/Rita disaster to copy notarial acts into digital form through scanning, and create a digital extract-indexing system. However the disaster did give the effort to modernize the administration of these records greater public support as people realized the importance of these archives for recovering their property documents and for proving their ownership. The public became more aware of the susceptibility of the archives to physical damage and destruction.

The Katrina/Rita destruction of office equipment also permitted the upgrading of information technology to the latest and most powerful equipment and software in the three traditional offices. Little investment has been made in the Real Estate and Records Division, although there was a plan devised 10 years ago for constructing a GIS based on the records of this office.

Katrina/Rita also crystallized the calls for reform of the property records administration system, making it more professional and transparent through the consolidation of the three document administration offices (Archives, Conveyances and Mortgages) under the Clerk of Courts as is done in other Parishes of the State. Exactly how this consolidation will affect actual procedures is not yet defined either in broad outline or in detail, but is the subject of study since the Clerk must present a consolidation plan to the Legislature by January 1, 2008. The involvement of the Real Estate and Records files and maps in the consolidated system, however, is not yet of priority.

In the Division of Real Estate and Records, the Katrina/Rita disaster did not damage the records, but did disrupt the established staffing patterns which were already inadequate leading to the present inability to update and maintain the map based property records information system.

8.2 Property tax administration²²⁵

The administration of property taxation involves the mapping of land parcels and the filing of information about each parcel which is relevant to its ad valorem assessment.

8.2.1 Background of property tax administration in New Orleans

In Orleans Parish, seven assessors compose a board of assessors. One assessor is elected from each municipal district of New Orleans, and each must be a resident of the district from which he is elected; all serve four-year terms. The primary duty of the assessors is assessment of property subject to ad valorem taxation in their respective Districts.

Each assessor maintains a map showing the location of each property in his/her District, in addition to identifying each property according to Square and Lot number as is done for legal descriptions in conveyance Acts prepared by notaries. The Register of Conveyances sends a copy of each conveyance to the appropriate Assessor in whose District a property is located. The assessors organize files so that there is one folder containing all information, including conveyances, relevant to the assessment of a particular property, as distinct from the files maintained by the N.A. which are organized in the time order in which the documents are received.

²²⁵ See Stanfield, op.cit, 2008 for more details on this topic.

8.2.2. Property Tax Assessments²²⁶

One of the most significant systemic changes in property relationships that occurred in the wake of Hurricane Katrina concerned property tax assessments. For many years prior to Katrina, *ad valorem* taxes (property taxes) were chronically under-assessed in Orleans Parish. The primary cause of this under-assessment was Orleans Parish's unique, constitutionally protected assessor system in which the parish elected seven assessors with each assessor responsible for determining the assessed value of taxable property in his or her own district. Because each assessor was interested in maintaining their elected position and the considerable political power it provided, each assessor had an incentive to keep the assessed value of the properties in his or her district as low as possible, particularly for constituents who visited his or her office frequently or made sizeable contributions to the assessor's re-election campaigns or those of his or her political allies.

The result of this system was that properties that had not been sold for many years maintained stable and low property tax assessments even though the actual fair market value of the properties had increased dramatically. The only time the assessment on a particular property was seriously readjusted to match its actual fair market value was when an actual sale of the property occurred at which time the local assessor had no choice but to properly reassess the property. The product of this system was widespread and dramatically unfair discrepancies between assessments for roughly equivalent properties depending on how long the property had stayed in one family and how politically connected the property owner was and the owner's degree of political support for an assessor.²²⁷

Although there had been legislative efforts to change Louisiana law to reform this system prior to Katrina, all of those efforts had failed in the face of opposition from the politically powerful Orleans Parish assessors and in the face of widespread voter and taxpayer apathy. All of this changed after Hurricane Katrina, though, as a result of several factors. First, local citizen activists pushed for a constitutional amendment that was approved by the legislature in the summer of 2006 and approved by the voters state-wide and in Orleans Parish in November 2006 to consolidate Orleans Parish's seven elected assessors into one elected assessor.²²⁸ This constitutional amendment means that once the current assessors finish their current terms in 2010, Orleans Parish will only have one elected assessor like every other parish in the state. This major constitutional change eliminated or at least sharply curtailed the assessor's powerful incentive to under-assess properties.

Second, a slate of reform candidates ran for the various assessor offices in the spring of 2006. Although only one of these candidates (Nancy Marshall) was elected, the demand for change was palpable and probably encouraged the other assessors to rethink their old self-interested practices. Third, the Louisiana Tax Commission, which oversees the work of parish level assessors across the state, required the Orleans Parish assessors to take more seriously their statutorily mandated responsibility of re-assessing all property within their jurisdiction every four years and to address the inequities discovered by a groundbreaking series of *Times*

²²⁶ This section is based on John Lovett, the paper prepared for this case study by John A. Lovett, Associate Professor of Law, Loyola University New Orleans College of Law, "Contributions for United Nations Case Study on the Effects of Hurricane Katrina on Land Tenure and Property Relationships in New Orleans", January, 2008.

²²⁷ This history was chronicled in a series of articles published by the New Orleans Times-Picayune in April 2004. See Gordon Russell, *Dubious Value*, TIMES PICAYUNE, April 4-6, 2004, A1.

²²⁸ LA. CONST. ART. 7, § 24 (West. Supp. 2007) (as amended by Acts 2006, No. 863, No. 1; approved at statewide election held November 7, 2006).

Picayune articles in 2004. Finally, the assessors then implemented computer assisted mass-appraisal software for the first to systematically reassess all Orleans Parish taxable properties in their quadrennial reassessment.²²⁹

The result of the new re-assessment, made public in the late summer of 2007, was a dramatic increase in assessments for properties all across the City of New Orleans. Initially, assessed value of New Orleans' real estate was estimated to have jumped 55% according to preliminary tax rolls.²³⁰ Unfortunately, the reliance on mass-appraisal computer programs which did not account for the unique variability of property values on a lot by lot basis in New Orleans and the rush to complete a complete overhaul in such a short period produced property tax assessments for some properties that were probably far higher than their actual fair market value, particularly in light of New Orleans' depressed real estate market in many neighborhoods where many properties remained unsold as individuals and families decided to relocate elsewhere and the city's economic recovery had not yet firmly taken hold.

After many property owners were frustrated in their initial efforts to challenge property tax assessments through the standard appeal process of meeting with their assessors individually after the yearly assessments were published, the New Orleans City Council set up a special appeal procedure in which a local law firm was hired to manage over 6,000 appeals. The result of this appeal process was that a significant number of property owners were able to have their sharp upward reassessments scaled back (roughly 4,000 out of the 6,000 who appealed). At the end of this reassessment process, though, the total assessed values of real estate in the City, after all adjustments and homestead exemptions were factored in, was still 38% higher than it had been before the process started.²³¹

As a result of this huge increase in the assessed value of real estate, the City Council responded by rolling back the real estate tax millages in the City and thus effectively cut the real estate tax rate 27%, meaning that the large spike in the assessed values for many properties would not necessarily produce larger tax bills and that some property owners, who had more recently purchased their homes or property, actually saw reductions in their tax bills.²³² Moreover, the new tax assessments undoubtedly spread the tax burden much more evenly and fairly across the city's property owners and made the City of New Orleans' tax rates competitive with its immediate suburban neighbor of Jefferson Parish for the first time in years and actually made its rates substantially lower than affluent St. Tammany Parish on Lake Ponchartrain's north shore.²³³

This entire episode demonstrates how grass-roots, community led activism, combined with serious enforcement of statutory obligations by a state oversight commission, can result in a significant change in property relationships, a change that results in a much fairer distribution of the responsibilities and burdens of property ownership.

²²⁹ The responsibilities of the Louisiana Tax Commission and the assessors are detailed in LA. CONST. ART. 7, § 18 (West. Supp. 2007) and La. Rev. Stat. § 47:1837 (West. Supp. 2007).

²³⁰ Gordon Russell, *Assessed Values Jump by 55%*, TIMES PICAYUNE, Aug. 3, 2007.

²³¹ Gordon Russell, *N.O. Property Tax Rates Set to Fall in 2008*, TIMES PICAYUNE, Oct. 19, 2007.

²³² Gordon Russell, *N.O. Tax Rate Dives 27%*, TIMES PICAYUNE, Dec. 1, 2007.

²³³ *Id.*

9. Katrina and Property Relationships

The overall focus of this chapter is on the *resiliency* of property relationships stressed by a sudden natural disaster exemplified by Katrina. By resiliency, we mean the ability of members or participants in a property relationship to rebuild or renew common resources to which they are tied after an event like Hurricane Katrina damages, destroys or undermines those resources. We define the concept of resiliency empirically by considering (i) the speed with which common resources and property relationships are rebuilt, (ii) the degree to which democratic decision making and consensus are used to accomplish rebuilding decisions, (iii) the degree to which property regimes are able to spread risk and call upon exogenous institutional and financial resources to rebuild after a disaster, (iv) the degree to which property regimes allow for participants to take advantage of economies of scale in rebuilding and restoring common resources, (v) the degree to which property regimes facilitate *exit* in ways that encourage trust and cooperation and honor past commitments, and finally (vi) the degree to which property regimes facilitate *entrance* and re-entrance for those seeking to join or re-join common resource communities and the degree to which property regimes spread access to resources more widely and equitably after a disaster.²³⁴

9.1 Successions²³⁵

New Orleans does not have as transient a population as do other US cities. According to the 2000 Census, 77% of the city's residents were Louisiana born, a ratio that is remarkably high in its own right but that is also relatively high in comparison to other similarly sized Southern cities according to geographer Richard Campanella.

In greater New Orleans there is also a high incidence of home ownership, around 61% of homes being owned by their occupants, although in the flooded areas of the city, which also averaged a population of 80% black Americans, owner-occupation of homes was only 34% in the 2000 census. Due to the tradition of "double-houses" (known as shotguns) in the poorer areas of the city, it seems likely that the census estimates of owner-occupation of houses is lower than it is in reality, since such houses even with one half occupied by owners, were not classified as owner-occupied.

For many houses in the city, particularly in the poorer areas, many families neglect to process the transfer of ownership rights on the death of one or more of the owners of such properties. Many heirs in possession do not have the documentation of their rights to properties, since they have not followed procedures to acquire that documentation. Typically after an event like Katrina, they also do not have the documentation of their parents or grandparents due to damaged family archives.

Even for families which have carried out the legally prescribed procedures for the succession of heirs in the places of the deceased owners, the documentation of these rights often has been swept away.

²³⁴ For a detailed elaboration of these normative criteria for measuring resiliency of property regimes' ability to respond to radical change, see John A. Lovett, Associate Professor of Law, Loyola University New Orleans College of Law. *Property and Radically Changed Circumstances*, 74 Tenn. L. Rev. 463 483-95 (2007).

²³⁵ Based on an interview with Paul Tuttle, New Orleans Legal Assistance (NOLAC), by D. Stanfield

Rebuilding of homes damaged by the hurricane requires the bundling of funds and energies of the heirs in that task. Katrina rebuilding assistance has been targeted to those heirs who could prove their ownership of the damaged properties, and that proof requires resolution of the succession question. Insured owners had to prove their ownership to collect on damage claims. The State's Road Home program with grants offered to owners of damaged properties motivated another group of owners to prove ownership through updating and legalizing successions.

Incomplete successions are usually embroiled in complex family histories. Ancestors of many of the pre-Katrina landholders in the Lower 9th Ward, for example, mostly began in the 30s to buy land no one else wanted, largely swamp land from large plantations on the outskirts of the city. Typically the buyers acquired large plots, with big gardens. They built double houses, with the parents on one side and children's families on the other. These properties were not usually mortgaged, at least through formal loans with mortgage lenders. According to the 2000 Census, in the Lower 9th Ward, 55% of the owners of homes did not have a mortgage compared with 33% of homeowners without mortgages for the city as a whole. Some owners had some minimal property insurance, but not many. Nearly everyone paid their property taxes, however. The point is that there was not much need to sort out inheritances legally with all the costs involved in that process.

Out of these original peri-urban household plots, two or three generations of successions of heirs emerged, many without updating title. There were few if any pressures on the heirs from anyone contesting title, and they had little interest in using the properties commercially, either to sell or to mortgage to acquire loans from banks. Owners may have borrowed money from private lenders, however, who did not demand clear legal title as a guarantee.

Most people do not know of the legal requirements for carrying out a legal succession. Some believe that the eldest automatically inherit. Others do not know that any adopted children or legitimate children from various marriages have rights of inheritance.

Post Katrina, there is a need to get successions formalized. Private attorneys normally help people get their succession documents in order, but the charge substantial fees of \$3,000-5,000 dollars.

The standard procedure for legalizing successions is for the heirs to prepare evidence of the ownership of their owning ancestors by getting copies of their acts of purchase from the Notarial Archives. The heirs with the assistance of an attorney then prepare a statement of who are the legal heirs of the original owners, using family records (wills, birth, death and marriage certificates) and consulting with published obituaries.

Three documents are prepared:

- Petition of the heirs to judge for the identification of heirs.
- Affidavit of the heirs, sworn as being correct, signed and notarized
- Description of the value of the property (the legislature approved the suspension of inheritance tax on successions for deaths which occurred 2004 or later. There is a standard \$25,000 exemption for each heir).

These documents are then presented to a judge to review. Once the judge is satisfied with the completeness of the documentation, he signs a Judgment of Possession which the attorney or

the heirs file with the Notarial Archives. The Judgment can be contested at any time within a 30 year period.

The Road Home program initially required that the possessors of properties who requested disaster related assistance had to have legal title or a Judgment of Possession for inherited property to qualify for that assistance. But that requirement proved to exclude many people from assistance who could qualify only if lengthy and costly procedures were completed.

The Road Home eventually agreed to change that requirement for intestate successions for petitioners who were rebuilding and accepted an affidavit signed and sworn by all heirs as to their status as heirs. These arrangements have only been accepted for R.H. petitioners. The affidavits prepared for the R.H. which are not subject to a judicial review, generally would not be accepted by Louisiana Title companies, as legal proof of ownership. For this reason, if the possessors of properties wish to sell the damaged properties to the R.H., they must follow the standard legal procedures for clarifying successions.

The acceptance of affidavits by the Road Home program instead of judgments of possessions to qualify for program assistance does not serve to allow people who would not inherit the property under Louisiana law to get Road Home grants. It just allows the rightful heirs to show ownership and qualify for assistance without the time and expense of filing a succession. The changes do not help those who would not qualify for legally executed successions, but have been in possession of the property for many years and are considered as owners by others in the community or by other members of their families.

R.H. also has agreed for judges to approve an administrator acting for all heirs in order to access R.H. funds. This change in the R.H. procedures is the authorization of an heir of a deceased person to be named as an administrator and empowered to sign the R.H. covenants for the other co-heirs. This procedure is important because many people have co-heirs who cannot be tracked down. This is a common problem when successions have not been done for several generations.

The Road Home also now allows for the surviving spouse to sign the Road Home covenants without the participation of the "naked owners" (children) including minors and disabled heirs. Under Louisiana law, a spouse of a deceased person who dies intestate has only a usufruct right to the deceased person's share of the marital property, with children automatically inheriting ownership in equal parts. This change by the Road Home project also has support in Louisiana law, which says that a holder of a usufruct rights (right to use a property) can act alone to take care of the property. It took some time for Road Home administrators to accept that this was in fact the law in Louisiana.

People who have lived in the property for a long time but who are not legal heirs are out of luck. This situation often occurs with "common law wives" (who are not recognized in Louisiana) as well as illegitimate children.

According to Notarial Archives, since June 11, 2007 (when that office initiated its digital scanning and archiving system) through December 6, 2007 there have been 1,281 Judgments of Possession and 15,552 Road Home Covenants archived. Extrapolating for the entire year of 2007, there may have been over 2,400 Judgments of Possession archived and more than 30,000 Road Home Covenants prepared and archived. It seems that some progress has been

made in documenting inheritances, some as formal successions ending in Judgments of Possession and others as affidavits allowing some form of R.H. assistance.

Even if NGOs such as Legal Assistance can assume most of the costs of providing legal advice for the preparation of the documents for low income people, there are some costs which have been difficult to cover. For example, there are costs for filing affidavits and judgments at the N.A. These costs can be quite high for families who wish to consolidate ownership of properties into heirs who actually possess the properties through donation or merely symbolic sale of the interests of non-possessory heirs to one or two heirs who want to retain possession of the property. In such cases the city collects a document tax of \$325 for each donation or sale. For a family of 20 heirs, mostly scattered and poor, they would have to cover the costs of coming to agreement about donations or symbolic sales plus come up with \$6,500 to pay this tax. This requirement is a strong disincentive to reduce the high degree of ownership fragmentation and an incentive to avoid succession proceedings.

Most categories of owners can eventually prove their ownership, although a major remaining problem are cases of multiple co-owners who cannot be located or who will not cooperate in the rebuilding process. For example, the Road Home may allow only two co-heirs to sign the Affidavit of ownership, but they will then require every single co-owner listed in the affidavit to sign the final covenants before completing a grant. Road Home has this requirement because Louisiana law requires the consent of all co-owners to make major changes to the property, no matter how small an ownership share the person has. This provision has proven to be a major obstacle for many people.

One possible change in the law could be to allow those with a majority ownership share to manage or sell the property without the consent of the owners with minority shares. Multiple co-heirs to a property holding the majority of ownership shares could then do a "partial succession" to be put in possession of their own shares of the property, and if they have more than 50% ownership, they could then move ahead with the rebuilding or sale. A mechanism could then be set up to allow the minority co-owners to contest the management or sale of the property by petitioning the court. It would be similar to appointing one person as administrator of the succession since co-heirs can contest what is being done by the administrator. If the property was sold, the shares of the missing co-owners could be kept in a court account until they were claimed. A less radical change would be to allow the management of the property but not the sale.

The above would be major changes in the Louisiana civil law tradition, however, and would presumably meet with much resistance from those who seek to protect minority co-owners. However, since Louisiana law tends to fractionalize ownership, it should have a countervailing mechanism to allow for centralized management of the property under certain conditions. Even pre-Katrina, many abandoned and blighted homes in New Orleans could be traced to the problem of multiple co-owners who could not be found or could not agree on the management or sale of the property. It is likely that there will emerge many more such houses because of the storm.

Another option for consideration is to introduce the concept of Transfer on Death for the transmission of rights through a deed upon death of the owner, rather than going through probate. It used to be true that the will was the only mechanism for specifying beneficiaries to receive interests in real or personal property at the owner's death. Wills require the burdensome formality of attestation and must be probated, a process requiring expense and

often significant delay. Mechanisms to transfer personal property immediately upon death are well established. Owners of life insurance policies, pension accounts, bank accounts, and securities can designate one or more beneficiaries to receive the asset(s) upon the owner's death without the need for probate. Eight states in the U.S. have extended the benefits of TOD registration to land. In these states, an owner of land may, in a deed, designate a beneficiary to receive the land immediately upon the owner's death. Such a mechanism would reduce the costs of successions and perhaps encourage heirs to legalize them and avoid the confusions that have emerged due to lack of legal documentation of the rights to land held by heirs²³⁶.

Changes in law should be seriously considered to deal with at least some of the problems of succession.

9.2 The Resiliency and Vulnerability of Landlord and Tenant Relationships²³⁷

The relationship between a landlord and a tenant, a lessor and lessee, can be understood as an essentially *voluntary* and *finite* relationship²³⁸. The duration may be relatively short—as in a month to month or year long residential lease—or it might be much longer—as in a commercial or ground lease. Although there is always the possibility of renewal of the lease for another term, under Anglo-American common law the tenant is understood as holding a finite possessory interest, either for the lease term, or if the lease is at will until either landlord or tenant elects to terminate. The landlord is understood as holding a kind of reversionary interest of some longer duration. In the civil law, leases are understood to be essentially contractual in nature, a bilateral agreement between lessor and lessee, rather than a transfer of a possessory estate in land.

9.2.1 Katrina and Leases

When a landlord and tenant encounter an event like Hurricane Katrina which produces radically changed circumstances, it is not easy to predict whether the relationship will survive. Resiliency will often depend on the degree of care the parties took to plan for such an event by engaging *ex ante* in detailed lease negotiation and drafting. Resiliency will also depend on the nature of the relationship itself, the surrounding market conditions, and the degree to which the parties see themselves as participating in a mutually interdependent relationship or one of relative independence, seeking only their own personal advantage.

Research into how landlord and tenant relationships have been affected by Hurricane Katrina reveals several broad trends.²³⁹ First, in the commercial lease arena, it is important to observe that because of the uncertainties and frequently harsh consequences of common law and civil law default rules, the vast majority of commercial landlords and tenants tend to draft

²³⁶ See the recommendations by the National Conference of Commissioners for Uniform State Laws, at: http://www.nccusl.org/nccusl/Scope&Program/TODRealProp_ScopeRqst_051906.pdf

²³⁷ Based on the paper prepared for this case study by John A. Lovett, Associate Professor of Law, Loyola University New Orleans College of Law, "Contributions for United Nations Case Study on the Effects of Hurricane Katrina on Land Tenure and Property Relationships in New Orleans", January, 2008..

²³⁸ For a detailed elaboration of these normative criteria for measuring resiliency of property regimes' ability to respond to radical change, see John A. Lovett, *Property and Radically Changed Circumstances*, 74 Tenn. L. Rev. 385 (2007).

²³⁹ See Lovett, , *ibid*, at 416-20, 425-26.

detailed lease clauses that address the rights and obligations of either party in the event that the leased property is seriously damaged by a casualty causing event such as a hurricane. These provisions will typically assign responsibility for repair of the leased premises to one party depending on the level of destruction to the improvements, will often provide for rights of termination in the event of complete destruction, and will usually designate which party is responsible for maintaining commercial property insurance and specify how insurance proceeds are to be distributed in the event of a covered loss. This kind of private ordering tends to make common law principles or statutory default rules relatively unimportant.²⁴⁰

Moreover, as a result of this extensive private ordering, litigation and reported disputes about repair obligations and termination rights in the commercial lease context have been relatively rare post-Katrina. When such disputes have arisen, courts have tended to enforce contract terms strictly despite the radical change brought by Hurricane Katrina. In one recent case involving a commercial lease that specifically required the tenant—a regional cafeteria chain—to repair and reconstruct the leased improvements damaged by a casualty and provided for rent abatement while the premises were unfit for occupancy, the court held that the landlord was justified in evicting the tenant six months after Hurricane Katrina severely damaged the leased premises. The court found that the tenant had enjoyed more than enough time to decide whether to repair the premises and actually commence those repairs, even though it had been busy repairing 46 out of its 52 other restaurants that had been damaged as a result of Hurricanes Katrina, Rita and Jeanne in 2005.²⁴¹ In other cases courts have similarly enforced contractual provisions of ground leases and required commercial tenants to repair or reconstruct major improvements that were partially or totally destroyed by Katrina.²⁴²

In commercial lease situations in which the leased premises were not damaged but landlords and tenants faced radically different market conditions as a result of Hurricane Katrina, another unexpected phenomenon has developed—some landlords have sought to accommodate long term commercial tenants rather than terminate leases. In a market like New Orleans' French Quarter, for instance, where the post-Katrina decline in tourism caused many commercial tenants' revenues to fall dramatically, some landlords resisted terminating leases, even though their tenants were potentially in default on rent, because they were unsure that a replacement tenant could easily be found. Instead of terminating the leases, it appears that some landlords cut back on rent obligations to give their commercial tenants a chance to survive the downturn in the tourism industry. This was particularly true if the tenant could still be counted on to at least pay the quickly rising premiums for commercial property insurance.²⁴³ In short, it seems that even when the rights and responsibilities of commercial landlords and tenants are carefully negotiated, these parties sometimes will try to accommodate each other's needs when they are both threatened by the economic dislocation caused by an event like Hurricane Katrina.

In residential leases, we see an entirely different set of issues and trends. Here, careful *ex ante* negotiation about repair, reconstruction, and lease termination rights is much less likely

²⁴⁰ See 1 MILTON R. FRIEDMAN & PATRICK A. RANDOLPH, JR., FRIEDMAN ON LEASES §§ 9.1-9.12 (5th ed. 2004).

²⁴¹ Carrolton Central Plaza Associates v. Piccadilly Restaurants, LLC., 952 So.2d 756 (La. Ct. App. 4 Cir. 2007).

²⁴² Schwegmann Family Trust No.2 v. KFC National Management Co., 2007 WL 60971, * 3-4 (E.D. La., Jan. 5, 2007); Tetra Technologies v. Louisiana Fruit Co., 2007 WL 54814, * 6 (E.D. La. Jan. 5, 2007).

²⁴³ Lovett, *Property and Radically Changed Circumstances*, *supra* note 1, at 420-25.

to occur. Consequently, residential tenants in particular will often rely on statutory rules designed to offer them some minimal level of protection in the event that their apartments or homes are rendered uninhabitable because of some major casualty or if they are denied access because of some unexpected contingency such as a mandatory evacuation order. While a residential tenant is not likely to be responsible for repairing a damaged apartment, and in fact will likely be able to abandon the premises or terminate the lease if the apartment is no longer habitable, residential tenants may have little leverage to demand that a recalcitrant landlord make the repairs that would enable him to return to his home.

In Louisiana (and to some extent in Mississippi as well) this predicament arises because even though a landlord has a statutorily implied duty to maintain the premises in a habitable condition, the tenant is not allowed to remain in possession of the leased premises and withhold rent from the lessor to put economic pressure on the lessor to make major necessary repairs. This leaves a residential tenant who cannot afford to make the repairs himself without any meaningful remedies other than to move out.²⁴⁴ In fact, in Louisiana the tenant can stay in possession and withhold rent only if the landlord refuses to make requested necessary repairs *and* the tenant pays for the reasonable costs of the repairs himself.²⁴⁵ This remedy is of limited value, of course, if the cost of repairs are beyond the tenant's means. In Mississippi, the rule is essentially the same, but the tenant can only make repairs and deduct rent if the cost of repairs is less than one month's rent.²⁴⁶

Finally, as numerous journalists and legal academics have pointed out, summary eviction rules can be and have been quite easily manipulated by residential landlords eager to terminate leases for apartments that were not seriously damaged by Hurricane Katrina. Even though these rules are designed to provide some minimal due process protection for tenants, landlords' ability to manipulate them with relative ease allowed them to exit from their lease obligations and seize new market opportunities to charge higher rents to new tenants. Meanwhile their tenants, who were often displaced from New Orleans at great distances and often had trouble communicating with their landlords, could not gain access to their apartments to recover their belongings before they were removed and were frustrated in their attempts to renew their rent payments and revive their leases.²⁴⁷ Of course, sometimes tenants are less than diligent in their efforts to find their landlords and maintain their lease payments even when their apartments become accessible. And often, and as one recent case shows, both the landlord and the tenant each share some blame for the collapse of their lease relationship.²⁴⁸ What an examination of residential landlord and tenant relationships reveals in general, though, is that the residential landlord usually has considerably stronger opportunities to exit from an existing lease and enter new lease relationships, whereas residential tenants, especially low to moderate income ones, are particularly vulnerable to eviction and have trouble regaining access to affordable housing once it is lost.

9.2.2 Status of Residential Rental Markets in the New Orleans Area

²⁴⁴ See Lovett, *Property and Radically Changed Circumstances*, *supra* note 1, at 420-25.

²⁴⁵ LA. CIV. CODE ANN. art. 2694 (West, 2004).

²⁴⁶ MISS. CODE ANN. § 89-8-13(2) and 89-8-15 (Lexis 1999).

²⁴⁷ See Erin Bohacek, Comment, A Disastrous Effect: Hurricane Katrina's Impact on Louisiana Landlord-Tenant Law and the Need for Legislative and Judicial Action, 52 Loy. L. Rev. 877, 880-81, 898-904 (2206); Lovett, *Property and Radically Changed Circumstances*, *supra* note 1, at 421. 427-31.

²⁴⁸ *Sciacca v. Ives*, 952 So.2d 762 (La. Ct. App. 4 Cir. 2007).

With this picture of background default rules, contractual arrangements, and procedural safeguards in mind, it is worth examining what has actually happened to the residential rental market in the first months and the first two years after Hurricane Katrina hit the New Orleans region. Although data is not yet available to analyze this market as comprehensively as one might like, several recent reports reveal the market conditions that have begun to emerge.

The residential rental sector has undoubtedly passed through an initial crisis stage marked by extreme housing shortages and sharp rent increases but may now be returning to a new equilibrium. According to a *Times Picayune* analysis of advertisements for more than 1400 apartments and houses across the New Orleans metropolitan area published in October 2006, fourteen months after Katrina, rents had increased by roughly 70%—from slightly over \$800 per month pre-Katrina to \$1,357 per month at the time of the study, although it was not clear whether these figures represented average or median rents or applied to small, large, or average-sized apartments.²⁴⁹ A more thoroughly documented study prepared by the University of New Orleans confirms that residential rents did increase post-Katrina but reports that the average rental increase for the entire metropolitan area was only 27.62% (from \$747 to \$954 per month).²⁵⁰ This immediate increase was felt most acutely in the city of New Orleans (Orleans Parish) where there was an immediate post-storm rent increase of 42%, because rents there were relatively affordable prior to Katrina due to its once comparatively large supply of inexpensive housing.²⁵¹

This dramatic increase in residential rents in the metropolitan area immediately after Katrina was attributable to several causes. First, the supply of rental housing was drastically reduced all across the region as a result of hurricane damage, and particularly in the city of New Orleans, where approximately 50,000 rental units were either destroyed or suffered damage, including some 40,000 low rent units.²⁵² Second, a sudden influx of as many as 30,000 temporary construction workers into the city increased demand at the same time that supply

²⁴⁹ Jeffrey Meitrodt, *Rising Rent*, TIMES-PICAYUNE, Oct. 15, 2006, at A8. To illustrate the temporary disappearance of affordable rental units, Meitrodt noted that only nine apartments were available for \$500 or less per month in the early fall of 2006, compared to 243 in 2005. *Id.*

²⁵⁰ IVAN J. MIESTCHOVICH, UNIV. OF NEW ORLEANS REAL ESTATE MKT. DATA CTR. & CTR. FOR ECON. DEV., 39 METROPOLITAN NEW ORLEANS REAL ESTATE MARKET ANALYSIS 92 (2007). See also Ivan J. Miestchovich, Jr., *New Orleans Metro Single Family and Multi-Family Overview*, UNO/LATTER & BLUM ECONOMIC OUTLOOK AND REAL ESTATE FORECAST Seminar 71 (Mar. 8, 2007) [hereinafter *Multi-Family Overview*].

²⁵¹ MIESTCHOVICH, *supra* note 13, at 66; see also United States Census Bureau, 2004 American Community Survey, New Orleans City, Louisiana, Selected Housing Characteristics 3, available at http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=16000US2255000&-qr_name=ACS_2004_EST_G00_DP4&-gc_url=&-ds_name=ACS_2004_EST_G00_&-_lang=en&-redoLog=false (noting that in 2004 in Orleans Parish the medium rent was only \$566, 35,219 units rented for less than \$500, and 69,479 units rented for less than \$750—more than two-thirds of the entire parish wide market of 95,910 renter occupied units); Meitrodt, *supra* note 236, at A8 (documenting widespread availability of apartments for less than \$500 according to Pre-Katrina census figures—one-third of the total market).

²⁵² Meitrodt, *supra* note 12, at A8 (reporting that Katrina destroyed or severely damaged more than 43,000 rental units in Orleans Parish alone, or almost one half (45%) of its entire rental housing stock); see also OFFICE OF GULF COAST REBUILDING (OCGR), CURRENT HOUSING UNIT DAMAGE ESTIMATES: HURRICANES KATRINA, RITA AND WILMA, Feb. 12, 2006, at 23, available at http://www.dhs.gov/xlibrary/assets/GulfCoast_HousingDamageEstimates_021206.pdf [hereinafter OGCR HOUSING DAMAGE ESTIMATES] (estimating that the total number of rental units destroyed or that suffered some kind of damage from either flood or wind in Orleans Parish exceeded 53,000, including 42,071 in the FEMA 100 year flood plain and 11,400 outside of the flood plain and estimating that most of these units either suffered major or severe damage or were destroyed); William P. Quigley, *Obstacle to Opportunity: Housing that Working and Poor People Can Afford in New Orleans Since Katrina*, 42 WAKE FOREST L. REV. 393, 399 (2007) (reporting 51,000 units damaged or destroyed).

was reduced.²⁵³ Third, landlords with heavily damaged but uninsured or underinsured properties attempted to pass on repair costs and anticipated increased property insurance costs to tenants.²⁵⁴ Unfortunately, no hard data evaluating the relative importance of these factors currently exists.

During the fall of 2006 and continuing throughout 2007, however, thousands of apartments were repaired, many construction workers began to leave the region, and families temporarily forced into apartments while their own houses were being repaired began to move back home. As a result, rental rates actually began to fall in some areas and stabilize in the metropolitan area as whole, indicating that demand and supply were beginning to reach a new equilibrium. Indeed, an unscientific survey of advertised apartments undertaken by one law professor and an assistant over a three day period in late January 2007 revealed that over 600 apartment units were listed as available, with rents ranging from as low as \$475 per month to as high as more than \$3,000 per month. Furthermore, rents for typical one- and two-bedroom apartments averaged \$813 and \$1,129 per month respectively.²⁵⁵ In spring 2007, the University of New Orleans Real Estate Market Data Center confirmed these unscientific findings by documenting that rents had been essentially flat across the metropolitan region in the fall of 2006 rising only .02%, that rents had only risen 5.5% in Orleans Parish during this period, and that the immediate post-Katrina occupancy rate of 95.3% fell to 91.9% in the fall of 2006 for the entire metropolitan area.²⁵⁶

Another gauge of the residential rental market that is consistent with the more modest measurements of the University of New Orleans is the “Fair Market Rent History” for the New Orleans MSA, compiled by the U.S. Department of Housing and Urban Development (HUD). HUD’s data reveals a striking 39% rise in the fair market rent from 2005 to 2006 for a standard two bedroom apartment, when renters and displaced homeowners initially competed for the reduced rental housing available immediately after the storm, but shows a much more modest 4% rise from 2006 to 2007, and predicts an even more modest rise of 2.2% from 2007 to 2008.²⁵⁷ In absolute terms, the fair market rent for a typical two bedroom apartment has thus risen a total of 46% from a relatively affordable \$676 per month before the storm to a new plateau centered at \$990 per month, with similarly scaled increases for smaller and larger apartments.²⁵⁸ Several privately conducted analyses of the rental market released in the fall of 2007 also confirm these broad trends and demonstrate that rental rates are indeed stabilizing and in fact may actually be declining in some areas of the New Orleans metropolitan area.²⁵⁹ In short, although residential rents are generally higher than they were

²⁵³ Meitrodt, *supra* note 12, at A8.

²⁵⁴ *Id.* According to the UNO report, apartment owners in post-Katrina New Orleans have been confronted with property insurance premium increases of anywhere from 200% to 400%. MIESTCHOVICH, *supra* note 13, at 57.

²⁵⁵ Report compiled by John A. Lovett and Sam Steinmetz.

²⁵⁶ MIESTCHOVICH, *supra* note 13, at 65-68; *Multi-Family Overview*, *supra* note 13, at 71.

²⁵⁷ AMY LIU & ALLISON PLYER, THE NEW ORLEANS INDEX: SECOND ANNIVERSARY SPECIAL EDITION, A REVIEW OF KEY INDICATORS OF RECOVERY TWO YEARS AFTER KATRINA, 6, app. B, tbl.12 (Aug. 2007) [hereinafter LIU & PLYER], (discussing and illustrating HUD data on fair market rents through 2007); THE BROOKINGS INSTITUTION & THE GREATER NEW ORLEANS COMMUNITY DATA CENTER, THE NEW ORLEANS INDEX: TRACKING RECOVERY OF NEW ORLEANS & THE METRO AREA, 7, 25, tbl.11 (Nov.13, 2007) [hereinafter NEW ORLEANS INDEX: NOV. 2007] (providing same information through 2008).

²⁵⁸ LIU & PLYER, *supra* note 20, at 6, app. B, tbl.12.

²⁵⁹ Greg Thomas, *Apartment Rebound*, TIMES-PICAYUNE, Oct.14, 2007, at E1, E2 (reporting on increased construction and renovation of damaged units in multi-family apartment complexes across the metro area and resulting slowdown in rent increases); Greg Thomas, *Rental Rates Fall with Demand*, TIMES-PICAYUNE, Sept. 9, 2007, available at 2007 WLNR 17604605 [hereinafter Thomas, *Rental Rates Fall*] (reporting that rental rates

before the storm, the real problem in the residential rental market is no longer an absolute shortage of rental housing, but a mismatch between the housing available and those who are looking to rent—particularly workers hoping to return to the city but who have either not yet landed jobs or whose still relatively low wages and uncertain credit status make them risky prospective tenants for landlords worried about paying their bills.²⁶⁰

What all of these findings suggest is that although property relationships for landlord and tenant in the wake of Hurricane Katrina were relatively robust and sturdy for commercial landlords and tenants bound to each other in long-term leases with carefully drafted, often interlinking duties and responsibilities for repair, maintenance, and insurance obligations, landlord and tenant relationships were much more precarious for displaced residential tenants who are easily evicted and who have been forced to wait on uncertain market forces and imperfect government programs to restore affordable housing options.

9.2.3 Recommendations for landlord-tenant relations

We recommend several tools or strategies that public or non-governmental actors might consider deploying in response to future disasters that produce circumstances of radical change like Hurricane Katrina. One word of caution, though. These recommendations are geared primarily toward a fairly well developed property system. Different tools and strategies might be more appropriate to assist communities with less formalized and less developed property law and property relationships.

- **Stronger Remedies for Breach of Implied Warranty and Access to Legal Counsel in Matters Involving Shelter**

Residential tenants often find themselves in positions of relative vulnerability in their property relationships with landlords. One strategy that could be used to equalize these relationships and give residential tenants more meaningful participation and control would be to adopt legal reforms to strengthen tenants' remedies in response to a breach of a landlord's implied warranty of habitability. First, tenants need to be clearly given the right to withhold rent and remain in possession of the leased premises when faced with landlords who refuses to make repairs necessary to render their premises habitable. Although a few limitations on the right to withhold rent might be appropriate (*i.e.*, giving the landlord a reasonable time to make the needed repairs), tenants need a practical way of achieving some leverage over recalcitrant tenants and the right to withhold rent is probably the easiest remedy for tenants to understand and use. Merely giving the tenant an option to abandon the leased premises is inadequate.

Second, tenants should be able to demand specific performance of a landlord's duty to perform necessary repairs. Although many common law courts have historically been reluctant to use their equitable powers to order specific performance in cases involving leases or other contracts, housing courts could use new forms of computer technology to monitor

are still 27 percent higher metro-wide but that significant softening in rental demand is occurring in many areas and relying largely on data supplied by Larry G. Schedler & Associates).

²⁶⁰ See Meitrodt, *supra* note 12, at A8; Thomas, *Rental Rates Fall*, *supra* note 22 (reporting that many landlords are actually lowering rents below levels that meet their higher insurance and rehabbing costs because renters with relatively low wage jobs cannot afford higher rents).

landlords' success in repairing damaged rental housing and to determine whether individual landlords are engaging in chronic patterns of neglect with respect to multiple units.²⁶¹

Third, courts should be encouraged to impose stiff monetary damage awards against landlords who breach their responsibilities under the implied warranty of habitability. Courts should likewise be encouraged to recognize the full scope of collateral economic losses a tenant might suffer when a landlord callously evicts a tenant or fails to repair an apartment and leaves a tenant without any alternative housing choices.

Of course, all of these legal remedies are predicated on residential tenants having access to legal counsel who can assist them in negotiating with landlords and taking formal legal action when necessary. Consequently, just as the American Bar Association has recently recommended, one crucial tool for helping residential tenants in a post-disaster situation would be to fund programs to provide, or urge governments to provide, legal counsel as “a matter of right at public expense” in cases involving shelter.²⁶²

- **Eviction Moratoria**

Tenants often can be subjected to summary eviction procedures with remarkable ease in a post-disaster environment. Consequently, policy makers and legislators should urge local, state or even national governments to adopt short to medium term eviction moratoria in the wake of a disaster. These moratoria should be fine-tuned, however, and should provide avenues for landlords who can show that they have made meaningful attempts to contact tenants and have confidently ascertained that their tenants no longer intend to return to the leased premises to terminate the old landlord-tenant relationship and re-let to a new tenant. In general, eviction procedures should be adapted to provide more protection for tenants in a post-disaster environment for at least enough time that most tenants have an opportunity to return to the community and establish some line of communication with their landlords. This cautionary period might last just a few months in situations in which communities and transportation and communication links are re-established fairly quickly but might last longer in situations where infrastructure is much more heavily damaged.²⁶³

9.3 Mortgagor and Mortgagee Relationships: Surprising Resiliency²⁶⁴

Just as with a lease, a mortgage creates a *voluntary* property relationship that normally has a well defined *finite* duration, even though its term may be subject to early termination in the event of pre-payment by the mortgagor or foreclosure by the mortgagee resulting from a borrower default. When an event brings about radically changed circumstances—for example when a hurricane destroys or damages the improvements that often constitute a large part of a mortgagee's collateral and causes widespread economic dislocation in a community—a number of problems may arise for both parties to the relationship. These questions can be relatively simple: What should happen if the borrower temporarily becomes

²⁶¹ See generally Mary Marsh Zulack, *If You Prompt Them, They Will Rule: The Warranty of Habitability Meets the New Court Information Systems*, 40 JOHN MARSHALL L. REV. 395 (2007).

²⁶² Mary Spector, *Tenant Stories: Obstacles and Challenges Facing Tenants Today*, 40. JOHN MARSHALL L. REV. 407 (2007); AMERICAN BAR ASSOCIATION, TASK FORCE ON ACCESS TO CIVIL JUSTICE, REPORT OF THE HOUSE OF DELEGATES 1 (2006).

²⁶³ See generally Bohacek, *supra* note 10; Lovett, *supra* note 10, at 421, 427-31.

²⁶⁴ This section is based on the report prepared by John A. Lovett for this Case Study.

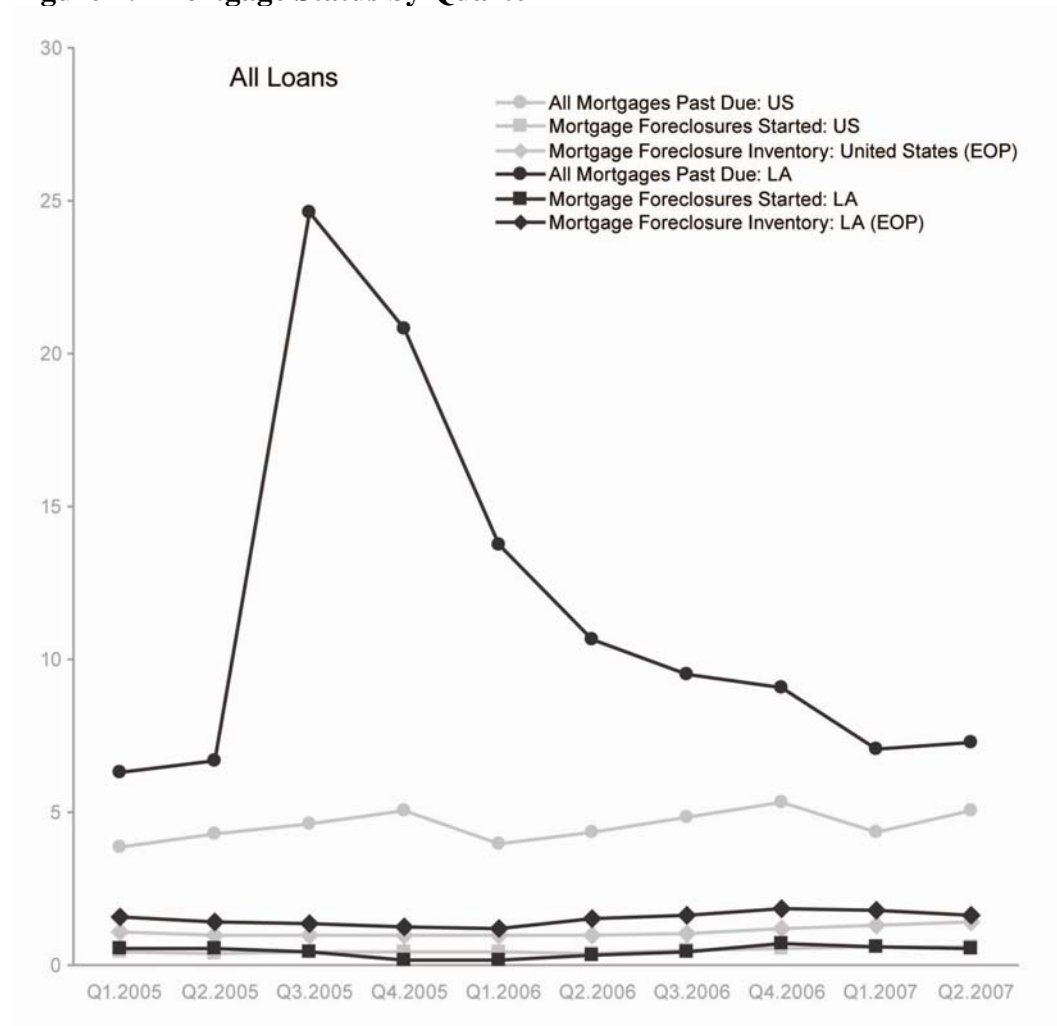
delinquent in making his mortgage payments because she loses her job or is displaced from her home because her children's schools are closed? And they can be more complex: Does the mortgagor have a duty to rebuild the damaged real estate? Who has control over insurance proceeds, the mortgagor or the mortgagee? Can a mortgagee insist that insurance proceeds be applied to pay down the mortgage instead of being used for rebuilding?

In the aftermath of the 2005 Hurricane season, many politicians and observers expected to see a veritable wave of mortgage foreclosures sweep across the Gulf Coast, especially in the areas of Southeast Louisiana and the Mississippi Gulf Coast hard hit by Katrina. The assumption was that borrowers, either due to job losses or the need to pay for replacement housing or to replace other essential items of personal property, would not be able to make their mortgage payments. In addition, it was assumed that foreclosing mortgage holders would end up with large inventories of heavily damaged mortgaged properties whose post-storm values would be far less than their pre-storm values. One of the most ambitious Gulf Coast recovery plans proposed in the United States Congress was largely premised on this fear of a crisis in mortgage relationships and was designed primarily to provide an equitable buy-out plan that would benefit borrowers and lenders in roughly equal ways.²⁶⁵

In the end, this foreclosure and mortgage crisis never materialized even though the number of borrowers who became temporarily delinquent on their mortgage payments did shoot up dramatically in the months after the hurricanes. In fact, despite the dramatic rise in mortgage loan delinquency in Louisiana and Mississippi, for the remainder of 2005 and for practically all of 2006 foreclosure rates in both states remained remarkably low—in fact lower than or at most equal to their pre-Katrina foreclosure rates. As the following graph demonstrates, this remarkable and surprising resiliency in mortgagor-mortgagee relationships that began right after Katrina has continued well into 2007, with mortgage foreclosure starts and inventories for all loans remaining stable in Louisiana through the second quarter of the year.

²⁶⁵ LOUISIANA RECOVERY CORPORATION ACT, H.R. 4100, 109 Cong. (2005); John A. Lovett, *Rebuilding A Region: Housing Recovery Efforts in the Wake of Katrina and Rita*, 20 PROB. & PROP. 49, 51 (Sept./Oct. 2006).

Figure 4: Mortgage Status by Quarter



Note: The all loans figure is not the sum of conventional and subprime.

Source: Mortgage Bankers Association, National Delinquency Survey. Reprinted with permission of the Greater New Orleans Community Data Center <gnocdc.org>.

In the greater New Orleans metropolitan area the actual number of foreclosures that occurred in all of 2006 was only one third of the lowest annual number of foreclosures in the last 20 years. In Orleans Parish the foreclosure numbers were even lower on a relative basis.²⁶⁶ A recently published study of mortgage foreclosure in post-Katrina New Orleans based on an examination of writs leading to foreclosure filed in the Orleans Parish Recorder of Mortgages confirms the general trends reported above. Despite higher rates of residential mortgage defaults in the affected area, there was, in fact, a reduction in the rate of foreclosure activity in the year following Katrina in Orleans Parish.²⁶⁷

What accounts for this apparent and surprising resiliency in mortgage relationships? Five factors help explain the relative sturdiness and resiliency of these relationships.

²⁶⁶ For more detailed statistics, see Lovett, *Property and Radically Changed Circumstances*, *supra* note 1, at 436-38.

²⁶⁷ A. Brooke Overby, *Mortgage Foreclosure in Post-Katrina New Orleans*, 48 B.C. L. REV. 851, 859-865 (2007).

9.3.1 Healthy Private Ordering and Enlisting Exogenous Resources *Ex Ante*

At the outset, mortgagors and mortgagees' consistent practices of private ordering in anticipation of the risk of mortgaged property destruction and of enlisting exogenous financial resources (insurance) to aid in responding to radical change has made these relationships sturdier and more long-lasting than alarmists initially predicted. One reason for these practices is that almost all conventional home mortgage documents require a borrower to insure encumbered improvements on the mortgaged property against fire and a wide variety of other hazards.²⁶⁸ Moreover, if the borrower fails to comply with this covenant, mortgage documents generally permit "force-placing" insurance, in which the mortgagee obtains property insurance on its own and charges the cost to the borrower, even if its cost is more expensive than what the borrower might have obtained on his own.²⁶⁹ This nearly universal practice of contractually stipulating responsibility for insuring the mortgaged property helped assure that at least some external financial resources were available for rebuilding most damaged or destroyed homes that were the subject of a conventional mortgage. In this sense, homeowners entwined in a property relationship with a mortgagee actually benefited from their obligation to insure the mortgaged property.

9.3.2 Compliance with Federal Flood Insurance Requirements

A second related reason the Gulf Coast did not experience a large wave of foreclosures is that federal regulation played a constructive role in making flood insurance more readily available for properties at risk of flooding. Under the National Flood Insurance Program (NFIP), borrowers whose homes are located in federally designated flood plains and who obtain mortgage loans issued by federally insured financial institutions are required to obtain flood insurance to protect at least the outstanding loan balance from damage caused by flooding.²⁷⁰ Additionally, some local and national lenders required flood insurance policies even for homes not in the designated flood plain—enough flood insurance, for example, to cover up to 80% of the value of the home rather than just the outstanding loan balance.²⁷¹ As a result of widespread compliance with these policies at least \$15.7 billion in NFIP-supported flood insurance proceeds flowed to the region after the 2005 hurricanes, undoubtedly enabling many homeowner-mortgagors either to begin rebuilding or at least to pay off their

²⁶⁸ See GRANT S. NELSON & DALE A. WHITMAN, *REAL ESTATE FINANCE LAW* § 4.13 (4th ed. 2001); see also Patrick A. Randolph, Jr., *A Mortgagee's Interest in Casualty Loss Proceeds: Evolving Rules and Risks*, 32 REAL PROP. PROB. & TR. J. 1 (1997) (indicating that recent decisions have limited the freedom exercised by mortgagees at common law "to deal with insurance purchased by the borrower as if the insurance were the mortgagee's own").

²⁶⁹ NELSON & WHITMAN, *supra* note 46, § 4.13, at 162. In some cases, however, a lender may decide not to declare a commercial borrower in default of an insurance clause in a mortgage if the lender is convinced that that borrower has sufficient cash reserves to pay a typical casualty loss and the cost of property insurance is so prohibitive that it might otherwise push the borrower into insolvency. Rebecca Mowbray, *Business Owners Getting Relief on Rates*, TIMES PICAYUNE, Jan. 13, 2008.

²⁷⁰ 42 U.S.C. § 4012a (2000 and Supp. 2007); Oliver A. Houck, *Rising Water: The National Flood Insurance Program and Louisiana*, 60 TUL. L. REV. 61, 74 (1985); see FARBER & CHEN, *supra* note 29, at 178-79.

²⁷¹ See Rebecca Mowbray, *Flood Insurance Requirement Proves Shrewd*, TIMES-PICAYUNE, Mar. 19, 2006, at A13 [hereinafter Mowbray, *Insurance Requirement*] (reporting on conservative policies of one local savings and loan to mandate big flood insurance policies for all its New Orleans area borrowers and on policy of Fannie Mae to require enough flood insurance to cover the unpaid principal balance or 80% of the home's value).

mortgages.²⁷² Of course, some homeowner-mortgagors were significantly underinsured for flood damage. These homeowners, however, tended to own more valuable homes that had appreciated significantly in recent years, and thus they had often failed to purchase enough flood insurance to cover the actual cost of rebuilding or simply did not realize they could buy excess coverage beyond the standard \$250,000 federally-supported policy amount.²⁷³

9.3.3 Standardization of Mortgage Documentation

A third significant factor accounting for mortgagor-mortgagee resiliency stems from the standardization of home mortgage documents resulting from the dramatic growth of the secondary mortgage market and a related movement toward homeowner-friendly policies regarding application of insurance proceeds after a casualty.²⁷⁴ Today almost all conventional mortgage documents for single-family home loans originating from institutional lenders and anticipating sale into the secondary mortgage market provide that in the event of a covered loss, the insurance proceeds may be applied to restoration or repair of the mortgaged property as long as (1) restoration or repair is economically feasible and (2) the lender's security is not lessened or impaired.²⁷⁵ This contractual stipulation reinforces borrowers' common sense expectation that an insurance policy whose premiums they have paid will enable them to rebuild. More importantly, this common contractual term deviates from the majority jurisprudential default rule favoring unconstrained lender discretion on the application of insurance proceeds.²⁷⁶ As a result, a typical institutional home loan mortgage holder must allow the proceeds of an insurance policy to be used for rebuilding after a casualty.²⁷⁷

The beneficial effect of this widespread set of contractual terms after the hurricanes of 2005 cannot be underestimated. Just as with a typical construction loan, most residential mortgage holders seem to have only required that insurance proceeds resulting from hurricane damage be placed into escrow accounts and have been willing to disburse the funds as progress on

²⁷² *Gulf Coast Rebuilding*, *supra* note 84, at 13; *see also* Jeffrey Meitrodt & Rebecca Mowbray, *After Katrina, Pundits Criticized New Orleans Claiming Too Many Residents Had No Flood Insurance*, *TIMES-PICAYUNE*, Mar. 19, 2006, at A1. According to the article, Louisiana had the highest level of NFIP participation of any state in the nation, 64% of Louisiana homes that sustained hurricane related flood damage were covered by flood insurance, participation in the program was even stronger in New Orleans where 67% of homeowners had flood insurance, and over \$12 billion in flood insurance proceeds had flowed into Louisiana by February 2006 and were expected to reach \$13.8 billion. *Id.* at A11 (depicting projected payments based on data provided by National Flood Insurance Program).

²⁷³ Although the maximum amount of coverage under a NFIP sponsored flood insurance policy is \$250,000 for a single family home, additional coverage can be purchased for higher premiums. *See* Mowbray, *Insurance Requirement*, *supra* note 49.

²⁷⁴ *See* John A. Lovett, *Doctrines of Waste in a Landscape of Waste*, 72 *MO. L. REV.* 1209, 1220-27 (discussing this factor in greater depth).

²⁷⁵ NELSON & WHITMAN, *supra* note 46, § 4.15, at 167 (quoting Federal Home Loan Mortgage Corp. Deed of Trust Form, available at www.freddiemac.com/uniform/pdf/3006.pdf). *But cf.* Randolph, *supra* note 46, at 15, 20 (showing that mortgage documents governing unconventional seller financing or commercial loans typically grant the mortgagee unfettered discretion to apply insurance proceeds to the outstanding loan balance or to restoration of the mortgaged property).

²⁷⁶ *See* NELSON & WHITMAN, *supra* note 46, § 4.15, at 168-71 (critiquing majority rule and articulating rationales for pro-mortgagor rule stated in RESTATEMENT (THIRD) OF PROP. MORTGAGES § 4.7(b) (1997) and in *Schoolcraft v. Ross*, 146 Cal. Rptr. 57 (Cal. Ct. App. 1978)). *But see* Randolph, *supra* note 46, at 15-21 (arguing in favor of majority rule supporting lender discretion at least in commercial cases and non-institutional home lender cases).

²⁷⁷ *See* NELSON & WHITMAN, *supra* note 46, § 4.15, at 167; Randolph, *supra* note 46, at 15, 20.

rebuilding is accomplished.²⁷⁸ As a result, many mortgagor-homeowners have been able to access insurance proceeds to rebuild homes destroyed or severely damaged by Katrina and Rita, even though mortgagee-lenders might have plausibly asserted in some cases that restoration of mortgaged property was not economically feasible or would have lessened the mortgagee's security, at least in heavily damaged areas where property values declined precipitously.

Of course, some homeowner-mortgagors may have voluntarily chosen to apply their insurance proceeds to pay down or completely pay off their mortgages, perhaps to free themselves from any further debt obligation in the face of their own uncertainty about whether to rebuild, or perhaps because they sought to refinance their debt at lower interest rates. Others, no doubt, felt constrained to pay off under the heavy burden of paying for substitute rental housing even as they struggled to rebuild. Others may have succumbed to unwarranted pressure from less sympathetic mortgage holders who were not honoring the spirit of the new lending norm. Yet on the whole, the widespread use of homeowner-friendly insurance application clauses in residential mortgage documents undoubtedly helped avoid foreclosure and facilitated rebuilding.

9.3.4 Risk-Spreading for Secondary Mortgage Market and Forbearance Policies

The fourth major reason for the relative resiliency of mortgagor-mortgagee relationships originates in the risk-spreading structure of the current home loan mortgage industry itself.²⁷⁹ Even with the substantial insurance proceeds that were potentially available to repair damaged homes or pay down loan balances, many borrowers undoubtedly found themselves in precarious potential default situations after the hurricanes. For example, storm-induced unemployment would have produced great financial strains, especially while homeowners waited for insurance claims to be settled and paid. Yet the extraordinary risk-spreading capacity of the secondary residential mortgage market enabled mortgage holders to forebear patiently on thousands of technically delinquent mortgage loans.²⁸⁰ Immediately after the storm's destruction, for instance, Freddie Mac, formerly called the Federal Home Loan Mortgage Corporation (FHLMC), a federally chartered corporation that buys mortgages from banks and other lenders, implemented a blanket moratorium on foreclosures in all Louisiana parishes affected by Hurricanes Katrina and Rita that lasted until August 31, 2006 and further allowed almost 18,000 borrowers to delay the resumption of their mortgage payments.²⁸¹ As a result of these policies, less than 1% of Freddie Mac's borrowers had been foreclosed on as of January 2007.²⁸² Fannie Mae, formerly called the Federal National Mortgage Association (FMNA), an even bigger government-supported buyer and bundler of mortgages in the

²⁷⁸ See *Bean v. Prevatt*, 935 So. 2d 557, 560 (Fla. Dist. Ct. App. 2006) (commenting on this widespread practice in Florida in the wake of Hurricane Wilma).

²⁷⁹ See NELSON & WHITMAN, *supra* note 46, § 11.3. See generally Robin Paul Malloy, *The Secondary Mortgage Market: A Catalyst for Change in Real Estate Transactions*, 39 SW. L.J. 991 (1986) (providing an overview of the development of the secondary mortgage market).

²⁸⁰ See generally FINANCIAL SERVICES ROUNDTABLE, *Accelerating the Katrina Recovery: An Interim Report* by the Blue Ribbon Commission on Mega-catastrophes of the Financial Services Roundtable 27-28 (Oct. 25, 2006), available at <http://www.fsround.org/publications/pdfs/KATRINAFinalDocument.pdf> (reporting on mortgage industry's forbearance practices after Katrina and Rita); MALLOY & SMITH, *supra* note 29, at 623 (elaborating on how the development of the secondary market enables lenders to "diversify their investment portfolios" across geographic borders and thus reduce the risk of localized economic downturns).

²⁸¹ Mary Judice, *La. Sees Surge in Mortgage Defaults*, TIMES-PICAYUNE, Jan. 14, 2007, at E1, E4.

²⁸² *Id.* at E1.

secondary market, also implemented a foreclosure moratorium lasting until August 31, 2006 and provided 35,000 borrowers extra time (up to seven months) to re-commence payments after the storms.²⁸³ Because most locally originated loans had been sold into the secondary market, the well-diversified mortgage holders—especially the large government supported entities like Fannie Mae and Freddie Mac—could institute these generous forbearance plans, enabling many mortgagors to re-establish their lives, re-establish employment, undertake the painstaking process of making insurance claims, and ultimately either resume payment or entirely pay off their mortgages with insurance proceeds.

9.3.5 Mortgagee Self-Interest

Finally, and undoubtedly, some degree of simple mortgagee self-interest also accounts for the absence of numerous foreclosures on the Gulf Coast after Katrina and Rita. If mortgage holders had commenced large numbers of foreclosures, the results would surely not have been very fruitful given that so much mortgaged property was heavily damaged and given that property values, in flooded areas at least, were suddenly lowered. To the extent that foreclosure sales could have been achieved at all, those sales would have brought in low prices and left mortgagees trying to collect large deficiency judgments against stressed out and financially weakened borrowers—a prospect that few mortgagees would have relished. Other lenders may have also preferred generous workout packages that would have at least preserved favorable interest rates rather than force borrowers into pre-payment situations through threatened foreclosures.

9.3.6 Mississippi's Foreclosure Moratorium

It should be noted here that the State of Mississippi activated a decades old mortgage foreclosure statute after Katrina in an effort to protect homeowner mortgagors on the Mississippi Gulf Coast after Katrina.²⁸⁴ This statute aims to accomplish two primary goals. First, it requires a foreclosing lender to use judicial foreclosure process rather than a non-judicial power of sale foreclosure process, and thus provides borrowers with more judicial protection in the event of a foreclosure. Second, it allows the borrower-mortgagor to delay a foreclosure proceeding for a two year period if the mortgagor meets certain statutory requirements and can continue to meet his carrying costs for the loan, including paying the interest due on the loan.²⁸⁵ Because of the structural weaknesses of the second form of protection (the statute essentially just allows the borrower to convert his loan to an *interest-only* loan for the two year period), it is likely that the market based responses described above were probably more significant in preventing epidemic foreclosures in Mississippi than this statutory intervention, although it no doubt provided some relief to Mississippi borrowers.

In the end, it is not clear which of these factors predominated—mortgagee self-interest in requiring property insurance and avoiding unprofitable foreclosures, federal flood insurance requirements, the standardization of favorable insurance proceed application clauses in mortgage documents, or the risk-spreading structure of the secondary mortgage market itself that permitted generous forbearance practices. Rather, it is likely that all of these factors

²⁸³ *Id.* at E4; Mary Judice, *Lenders Try Not to Foreclose in N.O.*, TIMES-PICAYUNE, Feb.21, 2006, at A1; FINANCIAL SERVICES ROUNDTABLE, INTERIM REPORT, *supra* note 58, at 27-28. For further details on the implementation and benefits of the government supported entities' forbearance policies and foreclosure moratoria see Overby, *supra* note 45, at 885-87, esp. n. 163.

²⁸⁴ Miss. Code Ann. §§ 89-1-3-1 to 329 (1999).

²⁸⁵ See Overby, *supra* note 45, at 881-83 (analyzing effect of Mississippi statute).

combined to enable mortgagors and mortgagees to ride out the radical change wrought by Katrina and Rita with surprising stability and continued interdependence.

9.3.7 Recommendation Concerning Mortgages

As we have seen, relationships between homeowner-mortgagors and mortgage holders in the New Orleans area and on the Gulf Coast have proven to be much more resilient than many observers and policy makers initially anticipated. As a result, one final policy tool that we recommend is for governments and non-governmental actors to provide increased access to responsible, nationally standardized, fixed-term home mortgage loans so more low-to-moderate income individuals and families can move from the relative vulnerability of landlord-tenant relationships to the relative stability of mortgagor-mortgagee relationships.

Of course, as recent experience in the rest of the United States has shown, pushing low and moderate income individuals into heavy borrowing through “sub-prime” mortgages is not a smart policy. But programs could be designed (and there are many models available) to provide individuals or families that can show some stable employment and credit history with grants or soft-second mortgages (*i.e.*, forgivable loans) to obtain enough money for significant down-payments. These individuals could then be offered relatively low interest, fixed rate mortgages on modestly priced homes and thereby obtain a measure of economic security that would provide numerous positive spill-over effects on recovering communities. The mortgage documentation for these loans should comport with new national norms that are focused on borrower-lender cooperation toward the goal of maintaining the mortgaged property in good condition and on providing the borrower with the opportunity to build equity over the long-term.

10. Evolution of Intergovernmental Relations and Policies post Katrina²⁸⁶

This section argues that the specific allocation of recovery funds after Katrina – particularly the forms of assistance, the disproportionate share of assistance to certain states and regions - and the choice of programmatic interventions reflect both the market-oriented and anti-corruption ideologies that dominated the federal agenda and the complex relationships among the various federal, state and local government decision makers. The section begins by briefly surveying the political landscape and the related ideological landscape (10.1, 10.2). It then examines Community Development Block Grants (CDBG) and Federal Emergency Management Agency (FEMA) public assistance programs in detail followed by an analysis of the politics of the Road Home program (10.3 and 10.4). The section ends by striving to explain the fundamental, and largely predictable, market imbalances that have undermined many of the recovery initiatives that relied on market incentives (10.5). Finally, 5 key lessons about structuring assistance and reconstruction can be gleaned from New Orleans’ experience (10.6).

10.1 Personal relationships among different government actors

This initial section explores three relationships within the American federal system, and potentially any other country where government powers and duties are similarly shared and

²⁸⁶ This section is based on the paper for this case study by Ommeed Sathe, “Ideology, Relationships and Recovery”, January, 2008.

delegated: (i) federal government to the two affected states, (ii) federal government to local entities, (iii) and state government to local entities that shaped the recovery.

10.1.1 Federal government's treatment of Louisiana and Mississippi

Hurricane Katrina's most visible damage occurred in greater New Orleans, Louisiana. The eye of Katrina, however, passed over Mississippi's Gulf Coast to the east of New Orleans, while the eye of the second storm—Hurricane Rita—passed over Lake Charles on the western edge of Louisiana, so the storms actually inflicted severe damage from Florida to Texas. Examining the differences in treatment among the respective states, particularly between Louisiana and Mississippi, provides a window into the inter-governmental relations that have shaped recovery policies and funding. As background, it is important to note that Katrina occurred when the federal government had both a Republican President and Republican Congress.

The State of Mississippi is led by a prominent Republican governor, Haley Barbour, who has long been considered a potential candidate for national office.²⁸⁷ Prior to becoming Governor, he was White House political director and head of the Republican National Committee. For many observers, Katrina was his opportunity to be for Mississippi what Rudy Giuliani had been for New York City following the September 11th attacks and many have praised Barbour as “the only figure to come out of Katrina ahead.”²⁸⁸ Louisiana, by contrast, was governed by a comparatively unconnected Democratic governor, Kathleen Blanco, who had narrowly defeated a rising star of the Republican Party, Bobby Jindal. These different political party affiliations of the two governors created an inevitable tension in the extent of the federal response to these disasters that was best captured by the disgraced head of FEMA Michael Brown:

"Unbeknownst to me, certain people in the White House were thinking, 'We had to federalize Louisiana because she's a white, female Democratic governor and we have a chance to rub her nose in it. We can't do it to Haley because Haley's a white male Republican governor. And we can't do a thing to him,'"²⁸⁹

In the immediate aftermath this led to President Bush's reported offer of the “full force of every federal relief agency”²⁹⁰ and the corresponding removal of all local control in Louisiana, while Governor Barbour was instead provided with the option to lead coordinated recovery efforts.

The difference in respective political strength between the two states was even more acute when it came to funding battles at the federal level. In addition to Barbour's long ties to Washington, Mississippi was also represented by two extremely powerful republican Senators, Thad Cochran and Trent Lott. At the time of Katrina, Senator Cochran was head of the powerful Senate Appropriations Committee, and therefore responsible for authorizing all federal spending bills. After Louisiana's initial request for \$250 billion had been met with

²⁸⁷ “A harder look at Haley Barbour's post-Katrina miracle,” Salon.com, May 25, 2007

²⁸⁸ Larry Sabato, national political commentator as quoted in USA Today, September 12, 2005, “Governors handle crisis in own way.” http://www.usatoday.com/news/nation/2005-09-12-two-governors_x.htm

²⁸⁹ Michael Browns remarks at the Metropolitan College of New York, January 21, 2007. He uses the term “federalize” to refer to the retention of control over assistance and reconstruction funds by federal agencies.

²⁹⁰ The Times of London, “Warnings were loud and clear – but still city drowned,” September 8, 2005. http://www.timesonline.co.uk/article/0,,23889-1770245_2,00.html

complete resistance, Cochran was able to get a smaller bill passed by refusing to authorize future appropriations for the Iraq war without the inclusion of aid to the devastated Gulf region. Senator Lott was the former Republican Majority Leader and his home had been destroyed by Katrina. He too served as a vocal proponent of Katrina assistance for Mississippi and helped convince many conservatives to vote for the assistance package.

Louisiana's senior U.S. Senator, on the other hand, was Mary Landrieu, who had been originally elected by less than 6000 votes in a campaign which her opponent charged was plagued by massive voter fraud. She was re-elected by 40,000 votes (out of over 1.3 million votes cast in each election). In both cases, New Orleans provided the margin of victory. Louisiana's other U.S. Senator, Republican David Vitter, was elected in 2004 and was therefore one of the most junior senators in Congress at the time of Katrina. Vitter's surprisingly large margin of victory, and Louisiana's gradual drift towards the Republican Party, made Landrieu, in the eyes of many Republicans, the most vulnerable Democratic Party senator in the entire country.²⁹¹

These respective federal political relations were reflected in the final distribution of assistance. According to figures compiled as of August 2007, of the \$114.3 billion dollars that had been allocated by the federal government towards recovery efforts Louisiana has received only \$60.2 billion (53%), despite suffering 75% of the damage.²⁹² The bulk of the remaining \$54 billion has been received by Mississippi. Moreover, these figures actually overstate Louisiana's share since they include \$7.1 billion that went to levee repairs, whose defrayed maintenance costs were a previous federal obligation, and over \$10 billion that went into National Flood Insurance payouts, which were contractual payments for which homeowners had been paying premiums. In Mississippi, by contrast, a far greater share of the state's money was available for discretionary uses.

10.1.2 The Federal government's approach to the local government in New Orleans

Despite Mississippi's disproportionate share of recovery funds, there is no question that the global salience of the disaster was largely due to the devastation it wrought on New Orleans. New Orleans was the most visited, most devastated and, to be fair, most photogenic of the various devastated locations. In addition, because its disaster lasted across many days it became the poster child for ineffective governance at the federal, state and local levels. At the same time, its rehabilitation also held an opportunity to rehabilitate the reputations of the various federal, state and local actors that had been blamed for the disaster.

The most immediate ambiguity following Katrina was whether New Orleans, as a political subdivision, would lead its own recovery. In the days following Katrina, Mayor Nagin beseeched the federal government to provide additional resources directly to the local level. He portrayed this process as the culmination of a long-standing commitment in American Federalism, particularly within the Republican Party, to devolve resources to the local level. In these efforts he was supported by the President's narrative of relief, which stressed "that the vision and plans for rebuilding the entire Gulf Coast should take a "bottom-up"

²⁹¹ See, for example, <http://thehill.com/leading-the-news/louisiana-treasurer-announces-landrieu-challenge-2007-11-29.html>

²⁹² See, attached Federal Funds Memo prepared by the City of New Orleans for complete breakdown of figures. Please note that these figures have been recently increased by approximately \$ 4 billion dollars most of which went to support the Road Home program.

approach.”²⁹³ This perception was furthered by meetings with the White House in which Mayor Nagin and prominent Republican fundraisers were promised that aid would flow directly to the city without passing through the state.²⁹⁴ These lobbying efforts also pointed to New York City, which had largely received all its assistance directly, without state intervention.

Nevertheless, in the end, pragmatic and political concerns outweighed the ideal of local control. Unlike New York City, where all the damage was limited to a single municipality within a single state, Katrina and Rita had devastated a large swath of territory across multiple states. As such, any decision to give aid directly to New Orleans would have triggered similar requests by numerous other municipal governments. This possibility was particularly troubling to the White House since it wanted to provide Mississippi’s Governor Haley Barbour with considerable resources and autonomy. To bypass Governor Blanco in favor of New Orleans would have made it considerably harder to work with Governor Barbour.

Delegating aid to New Orleans would have also brought with it additional administrative concerns. Under most existing federal programs, such as FEMA and CDBG, the implementing and auditing agency is generally the state. To shift resources to New Orleans directly would have required creating compliance procedures and adjusting the level of oversight. In addition, it likely would have required the creation of a new federal funding source, whose life could far exceed the current crisis. Finally, there were prudential reasons to be concerned with any localities’ ability to administer the complex array of programs needed to foster recovery, particularly one with the same history of mismanagement as New Orleans.

In the end these factors led to the choice to run the recovery primarily through the affected states. That choice would bring the simmering quarrel between Governor Blanco and Mayor Nagin to center stage.

10.1.3 New Orleans Relationship to Louisiana State Government

Mayor Ray Nagin was elected mayor of New Orleans in 2002 as a reform candidate with no prior political experience. He was heavily supported by the white community, garnering nearly 85 % of their vote as compared to 40% of the black community. His election was also heavily backed by the business community, where he was seen as a moderate Democrat. In 2003, during Governor Blanco’s re-election bid, Nagin made a surprising choice to cross party lines and support Bobby Jindal, who was the Republican candidate for Governor. At the time he made this endorsement, Jindal had a large lead in the polls and was widely favored. Blanco, however, managed to reverse this advantage at the last minute, largely by winning traditionally conservative parishes in the North and by leveraging support from the southwestern portion of the state in which she was born.

Following Blanco’s victory and continuing throughout post Katrina reconstruction, the relationship between the two has been strained. In a press conference immediately after Katrina, Nagin blasted the governor for her lack of cooperation with the federal government

²⁹³ Remarks of Donald Powell, coordinator for the Gulf Coast Rebuilding, to Senate Subcommittee on Homeland Security and Government Affairs, May 24, 2007

http://www.dhs.gov/xprepresp/programs/gc_1187964338912.shtm

²⁹⁴ Comments by LRA Board members.

and pushed to have the state's National Guard federalized.²⁹⁵ In later interviews, Blanco has pushed back at Nagin, placing blame for the recovery's slow pace squarely on his shoulders.²⁹⁶

One particular way in which their controversy has played out is in the choice to aggregate Hurricane Katrina with Hurricane Rita, which damaged the southwest portion of the state as well. In so doing, significant amounts of recovery funds have been shifted to the Southwest portion of the state and away from New Orleans. As of August 2007, \$60.2 billion in federal assistance was directed to Louisiana, of which \$35.1 billion went to National Flood Insurance payouts and emergency disaster relief, which includes FEMA rental support for displaced people, debris removal and emergency protective measures. That left a remaining \$25.1 billion, over which the Governor had more discretion. Of these funds, only \$13.7 billion (54%) will be directed to New Orleans Parish and only \$632 million has been earmarked (later increased to \$926 million) for New Orleans city government functions. The remainder of the \$13.7 billion is primarily New Orleans' share of the more than \$16 billion (later increased to close to \$20 billion) dollars that went to levee repairs and the Road Home Program.

10.2 The Ideology of Recovery

Relations among governments are shaped not only by personal relations and institutional arrangements of power but by the ideologies that animate these bodies. Following Katrina's devastation, there were two widely shared concerns that motivated government actions and choices regarding program implementation. The first was an emphasis on a market driven recovery and the second was a constant fear of corruption.

10.2.1 Market Driven Recovery

Before delving into specific programs, it is vital to acknowledge the widely shared anti-government philosophy that animated much of the framework for recovery. According to President Bush's initial speech from Jackson Square in New Orleans soon after Katrina, the appropriate response to Katrina was to "provide immediate incentives for job-creating investment, tax relief for small businesses, incentives to businesses to create jobs, and loans and loan guarantees for small businesses, including minority-owned enterprises, to get them up and running again."²⁹⁷ Notably absent from this vision was any role for direct government intervention. It also presents a rather bizarre view in which the bulk of incentives go towards business and job creation rather than rebuilding housing, hospitals or commercial infrastructure. As shocking as it may seem, until the creation of the Alternative Housing Pilot Program ("AHPP") in early 2007, which provided funds to build "Katrina" cottages, not a single federal dollar had been allocated towards the direct construction of housing. Even with this program, only \$75 million has been allocated towards the State of Louisiana, in contrast to the \$225 million to Mississippi, and not a single project has been initiated in New Orleans.²⁹⁸

²⁹⁵ Douglas Brinkley, *The Great Deluge*, Harper-Collins, 2007, p. 568

²⁹⁶ Sally Forman, *The Eye of the Storm*, Harper-Collins 2007 p. 213

²⁹⁷ Remarks of President George W. Bush at Jackson Square, New Orleans, LA, September 15, 2005. See <http://www.cnn.com/2005/POLITICS/09/15/bush.main/index.html> for a summary of the speech.

²⁹⁸ In fact, only \$300 million was allocated towards these efforts under the Katrina Cottages program, of which only \$75 million were allocated to Louisiana and none has yet been spent.

Mayor Nagin has been equally adamant in his support for a “market driven recovery,” in which “government investment should follow citizen investment.”²⁹⁹ This market focus allowed the Mayor to avoid the issue of whether government should attempt to shrink the city’s footprint following the devastating storms. Avoiding this debate was crucial in the political environment of 2005 and 2006, during which the topic had become an electrified third rail in local politics. Ironically, it was the Mayor who had appointed most of the representatives to the Bring New Orleans Back Commission, which, in conjunction with experts from the Urban Land Institute, had proposed the most prominent plan arguing to shrink the footprint of the city and launched the resulting firestorm. Nevertheless, it is clear that the Mayor’s emphasis on market relief is more than a politically expedient decision. He has not utilized, admittedly limited local resources, for direct investments in the construction of housing and the initial round of target projects in the city have primarily focused on re-establishing commercial corridors.³⁰⁰

Utilizing the market to rebuild the city has also been seen as an antidote to the prevailing fear of corruption and mismanagement that is discussed in the next section. Ironically, these “market actors” have often utilized far greater resources for administrative overhead than public actors. To give a simple example, CDBG caps government administration costs on project implementation at 5%. By contrast the federal Low Income Housing Tax Credit program incurs up to a 10% developer and syndication fee on their projects. This is before even mentioning the nearly \$1 billion that ICF, the private contractor managing Road Home properties, has received.

10.2.2 Preventing Corruption

Government corruption, as in many developing countries, has been a long-standing taint on state and local governments in Louisiana. In the last few years alone, the former Governor Edwin Edwards, the previous three state insurance commissioners, and the head of the New Orleans City Council have all been prosecuted for corruption. In addition, both Senator Vitter and Congressman William Jefferson have been implicated in serious scandals. Given this background, it has not been surprising that the threat of corruption has made federal officials cautious in providing funding to the region and insistent on auditing and review processes.³⁰¹ In Governor Blanco’s words “the federal government is not going to allow us to write checks overnight... There will be lots of approving and accountability.”

A more subtle reaction to the culture of corruption has come from the Mayor himself. Mayor Nagin ran his election campaign on an anti-corruption platform and was given some credit during his first term for aggressively pursuing corruption.³⁰² Mayor Nagin ran his first election campaign on an anti-corruption platform, and his desire to avoid charges of

²⁹⁹ Remarks of Mayor Ray Nagin, March 21, 2006. <http://www.cnn.com/2006/US/03/21/new.orleans/index.html>

³⁰⁰ Please see <http://www.cityofno.com/portal.aspx?tabid=95> for a complete synopsis of the initial 17 target zones.

³⁰¹ See e.g., “Some fear corruption scandal could hinder N.O. recovery aid,” Times Picayune, August 12, 2007 or History of Corruption in Louisiana Stirs Fears That Aid Will Go Astray, New York Times, Sept 27, 2005. See also Donald Powell in his testimony before Senate Subcommittee on Homeland Security and Government Affairs, May 24, 2007, stating that “This Administration also understands the importance of being good stewards of the substantial amounts of taxpayer money that have been spent on this effort. We rely on State, local, and Congressional oversight and accountability mechanisms in place to assist in the protection of the American taxpayer. If Americans see their tax dollars being ill spent, their support - which is critical -will wane.”

³⁰² www.governing.com/textbook/nagin.htm

corruption directed at his administration may account to some extent for why he has repeatedly refused to interpret the City Charter with any flexibility. The City Charter does not contain any emergency provisions and one of its potentially most restrictive provisions stops the city from letting a contract without the funds allocated. This has been interpreted by the New Orleans City Attorney's Office to prevent signing contracts to initiate reimbursement-eligible projects, without having the funds upfront. This interpretation has significantly slowed the recovery but has been justified on the grounds that interpreting the Charter with any flexibility is not permissible without risking charges of corruption. Of course such an interpretation also explains delays in getting anything done by reference to legal obstacles rather than having to take measures to more effectively administer the city's recovery.

Governor Blanco, who also ran on an anti-corruption platform, has made similarly restrictive interpretations of program guidelines in part to avoid even the appearance of impropriety. By contrast, most politicians following a disaster have freely used exigency justifications to speed recovery efforts. It is clear that both approaches have benefits and drawbacks, but it is undeniable that every figure in this process has insisted on unprecedented levels of bureaucratic rigor even when local administrative capacities were quite weak, which considerably slowed the process of recovery.

The next section examines in more detail the intersection of policy, relationships and ideology by examining two significant forms of aid to the region.

10.3 CDBG and FEMA assistance

Of the approximately \$926 million that is expected to be earmarked to the city government of New Orleans, nearly two-thirds has been CDBG and FEMA funds. These funds are among the most highly restricted forms of government aid and the choice to rely on these funds was clearly influenced by a fear of corruption and mismanagement. At the same time, these funds' regulations are often Byzantine and but with some flexibility built in through the issuance of waivers by program administrators. This has left tremendous discretion in the hands of federal and state officials whose decisions have reflected existing political dynamics. This section of the paper examines CDBG and FEMA and the intricate interaction between their interpretation of their restrictions and program scope.

CDBG's and FEMA's most onerous restriction on their funds is their simplest, namely that they can only be used to reimburse local government expenditures on disaster recovery. For New Orleans, this restriction creates a tremendous challenge for a severely wounded city of having to raise huge amounts capital before the city can spend it and submit for reimbursement. Given its devastated tax base and long history of economic difficulty, New Orleans has a very poor (junk bond) credit rating, which makes borrowing costs exorbitant. In addition, both the City Charter and state regulations require the city to undergo extensive review and identify a defined repayment stream to support any borrowing, which is extremely difficult since the city has pledged all its potentially flexible streams to secure loans for immediate disaster assistance.³⁰³

³⁰³ To date the city has only been made eligible for \$233 million in funds of which \$200 million of these funds were loans from the federal and state government.

In such circumstances, a logical source of funds for lending to the city would have been the state, which had a multi-billion surplus in 2006, due to record tax revenues on oil extraction. However, the lingering pattern of animus between Mayor Nagin and the state and the related fear of corruption delayed such a loan until the end of 2007.

FEMA's approach to reimbursement exacerbates the difficulty in raising funds from private sources. In a conventional FEMA reimbursement program funds can only be spent on activities to bring a building or structure back to its pre-disaster condition. Therefore, if a building was dilapidated prior to the disaster, FEMA will only pay the costs to restore a dilapidated building to its dilapidated pre-storm state, regardless of what is actually re-built. Determining the amount of rehabilitation that is eligible for FEMA reimbursement is an intricate process fraught with delay. Furthermore FEMA tends to use a conservative methodology to estimate both replacement and lost cost, which generally requires multiple appeals before an assessment even close to fair value is achieved. The net effect of these regulations is to add significant uncertainty to the repayment process, since the federal government will often deny significant amounts of the claim for reimbursement. In turn, this uncertainty scares off lenders and makes it harder to raise the initial funds needed to initiate the process.

An additional consequence of CDBG's reimbursement process is that it often places states in direct conflict with localities. CDBG funds have a narrowly defined set of objectives, primarily anti-poverty activities, for which they can be used. However, many of these restrictions are more flexible (subject to waiver) than FEMA programs and are only enforced via future audits. Under the program guidelines it is the State that is responsible for interpretation of rules and certifying local entities use of these funds. If a later audit detects a problem, it is the state that is responsible for reimbursing the federal government. Because the state is responsible for any negative audit findings in New Orleans, the state's audit of New Orleans actually tends to involve far greater scrutiny than the federal program would require.

Long delays in making decisions about funding have been influenced by the lingering distrust between Mayor Nagin and Gov. Blanco and between Gov. Blanco and the federal government. One frequent yet perverse phenomenon has been federal officials claiming that certain provisions should not apply (in response to local pressure) but refusing to actually make these commitments in writing, which is what the state claims it will need to be protected from future audits.

This same tension extends not only to reimbursement issues but to actual choices in structuring programs with CDBG. As mentioned above, state and federal officials have considerable flexibility in interpreting CDBG regulations, eligible activity restrictions and required documentation. However, the fear of *ex post* invalidation has continually led the State to take strained, often highly restrictive, interpretations of the regulations. For example, CDBG money must be spent on one of three national objectives, one of which is the prevention and elimination of slums and blight. After Katrina, the entire city of New Orleans was plagued by devastated structures, vacant neighborhoods and widespread disinvestment.

It would have not been a stretch of imagination to treat any project in the entire city as reducing slum and blight and in fact the federal head of Disaster Programs at HUD, which

manages the CDBG program, supported such an interpretation.³⁰⁴ However, the auditors in charge of the program, who had been tasked with interpreting projects for the state, refused to sign off on that interpretation unless there was an official declaration by the federal government, which did not occur. Instead they have asked for an individualized assessment on each proposed project.

The discretion inherent in the program has also produced distinct differences in approach between Mississippi and Louisiana. In Mississippi, where all programs were driven by the state and there were few “principal-agent” tensions, funds have been spent incredibly quickly with little regard for CDBG programmatic requirements. This is most stark in Mississippi’s failure to comply with one of CDBG’s most important requirements that at least 50% of the funds be spent for the benefit of low and moderate income families. According to early estimates, barely 10% of Mississippi’s funds will be spent in this manner. However, the State was extremely confident due to Haley Barbour’s close relationship with the Republican Party and President Bush that it will receive a waiver from this requirement and that the federal government will not attempt to recoup any of these funds. By contrast, Governor Blanco’s tenuous relationship with Washington made her administration wary of federal administrative rulings and the state in turn imposed heightened requirements on New Orleans.

The thicket of CDBG regulations become even more constrictive when one attempts to implement actual programs. In the wake of Katrina’s devastation, a central need of the recovery was naturally the rehabilitation of structures. Among the programs created at the state level, in part to offset the imbalance in the Road Home program towards homeowners, was a Small Landlord Assistance Program. Under this program Landlords agreed to maintain affordable rents for 10 years in exchange for state financial assistance in rehabilitating their structures. However, the program could not provide direct assistance to landlords to perform rehabilitation because of an interpretation of CDBG guidelines regarding environmental reviews. According to HUD regulators, if the CDBG action was treated as rehabilitation, that action would have been subject to review for compliance with historic district standards, population displacement and other criteria. These would have taken at least three months to complete on a property and would have made the administration of 7000 grants shockingly complex. To work around this problem, the program provided forgivable first mortgages (intended to pay off the construction loans to rehabilitate the structure) to any qualified owner who agreed to keep rents low. This action was treated as financial assistance and subject to far less strenuous review procedures.³⁰⁵

However, potential participants have found it extremely difficult to get financing because the state money is only provided upon completion, leaving banks to face the construction completion risk. To add even more to the immensity of the task, when the State attempted to create a technical assistance programs to help landlords complete construction, the CDBG guidelines were interpreted as making this action sufficient to trigger a complete environmental review on any property for which they provided assistance. These regulations should never have been invoked or interpreted that way in the first place, and particularly so because once invoked, they could not be waived.

³⁰⁴ Remarks by Federal HUD officials, September 2007.

³⁰⁵ The Road Home program was eventually forced to eliminate a number of requirements requiring recipients of financial assistance to rehabilitate structures, in part, because it made the program look more like rehab and less like compensation.

10.4 The Politics of Preference for the Road Home Program

The implementation of the Road Home program in New Orleans as described in Section 5 of this study has been something of a debacle. However, the program's ideological genesis was probably fatally flawed, and may not have been salvageable by even a perfect implementation. The fatal flaw in design was the assumption that market forces alone would bring success.

The Road Home program was shaped by a strong belief that individual homeowners as opposed to cities or neighborhoods should direct the recovery. This anti-government logic was succinctly described by Donald Powell, commonly referred to as the Federal Recovery Czar, in his testimony before Congress about letting individuals plan for their rebuilding of their individual homes:

“The President has made it abundantly clear that ... Rebuilding should be an exercise in coordinated, thoughtful, and prudent planning, but not centralized planning”³⁰⁶

Avoiding government's central planning function was seen as making the process less prone to mismanagement and corruption. Focusing assistance on individual homeowners also dovetailed perfectly with the market orientation of the Bush Administrations approach to recovery.. It was implicitly assumed that market choices, made by countless individuals, would be better than any form of collective action either governmental or community. The Road Home program also avoided any difficult conversations regarding where rebuilding should take place as individuals were presumed to be rational agents who could elect to sell their property to the state in lieu of rebuilding.

Assuming individual decision making would assure market perfection in post Katrina conditions also dispensed with working out which level of government, federal, state or local, should lead recovery. This was particularly appealing to Mayor Nagin due to distrust between him and Governor Blanco, and to the Bush Administration which did not want to strengthen Governor Blanco.

Finally, even if the Louisiana political leadership had preferred an approach different from the market based one built into Road Home, they had great difficulty in gaining political traction at the federal level. From their perspective, Louisiana's easiest approach to secure federal recovery funding was to parallel efforts designed by Haley Barbour in Mississippi rather than push for policies calibrated to deal with Louisiana conditions.³⁰⁷

The problem with adopting much of Mississippi's approach to reconstruction was that the difference between the two states in the nature of damage was significant. Mississippi had been devastated primarily by wind and rain from the hurricane, whereas New Orleans and Louisiana had primarily been damaged by levee breaches, storm surge flooding and the bathtub effect (i.e. houses sitting in water for weeks while the city's pumping system was restored). This meant that the devastation in Mississippi was (i) geographically homogenous; (ii) usually covered by conventional homeowner's insurance policies (which cover wind and not flood damage) and (iii) resulted in a total destruction of the prior structure. In New

³⁰⁶ Remarks of Donald Powell, coordinator for the Gulf Coast Rebuilding, to Senate Subcommittee on Homeland Security and Government Affairs, May 24, 2007

³⁰⁷ “Road Home Eyeing Mississippi System,” New Orleans Times Picayune, Coleman Warner, March 28, 2007

Orleans by contrast damage (i) varied acutely by the terrain of the neighborhood and elevation of structures, with a number of homes on ridges being entirely unaffected; (ii) occurred mostly from water rather than wind and therefore was accessible only to owners of buildings covered by flood insurance,³⁰⁸ (iii) left structures behind that were potentially salvageable, or alternatively still in need of costly demolition (and a long condemnation process) when they could not be salvaged. The result was that New Orleans has had a patchwork quilt of stable homes, rebuilding homes, decaying homes and abandoned homes all mixed together. The properties available for development have been widely scattered and in general the recovery has been a massive rehabilitation effort rather than one created by new construction. This has exacerbated many of the market difficulties described below, in particular because few large private entities focus on rehabilitation, and left the city with a largely uncoordinated pattern of redevelopment, crying out for some form of city wide planning.

10.5 Market Failures Doom Road Home

The Road Home program and many of the other recovery efforts that relied on the “market” were undermined by predictable market failures in post Katrina conditions. The first crucial market failure was an insufficient recognition that rebuilding costs – both financial and in terms of time – would rise significantly as the effort got underway. In the aftermath of any disaster, rebuilding costs will spike dramatically due to an immediate shortage of materials, labor and an urgent demand for crucial rebuilding projects. Such constraints are exacerbated by the scope of Katrina devastation which eliminated many of the affordable housing options that might have housed out-of-state labor brought in to help with the rebuilding. The net effect of these changes, assuming an owner can find reputable personnel, is that it costs approximately \$150,000 to build even a simple 1200 square foot home. For an owner without additional insurance proceeds, these simple homes are the only thing they could conceivably build with the Road Home’s maximum grant. These construction costs also make it impossible for families earning less than \$60,000, 120% of the area’s median income, to afford new construction without some form of a subsidy.³⁰⁹ This means that displaced renters who did not receive assistance and out-of-state workers who might help on rebuilding projects cannot find housing in the area.

A second larger flaw of the Road Home market orientation was that it blurred the distinction between compensation motives and rebuilding motives. Under the program guidelines, grants were calculated based on the difference between the pre-Katrina value of a property and the amount of insurance payments that a homeowner received. However, throughout the city and particularly in areas like the Lower Ninth Ward, there were countless homeowners who owned older homes, often passed down for generations, which were located in poor neighborhoods. These homes appraised for \$60,000-\$100,000 prior to the storm, which meant that the homeowner’s maximum potential award was less than the cost of rebuilding a new home, which was what was required in most cases due to the devastation from the storm.

These older homeowners were also the least likely to have homeowner’s insurance and therefore they were entirely dependent on the Road Home program for any immediate cash flow. The long delay in closing Road Home assistance has forced these individuals to consume any savings they once had, thereby making it even harder to fill the gap between

³⁰⁸ Flood Insurance had only been required in a few of the areas that actually did flood.

³⁰⁹ Area Median Income according to HUD is \$52,200

new construction and their awards. These shortfalls were further exacerbated by the deterioration in homeowner credit following the storm, and later by the on-going American credit crunch. This has made it difficult to find banks willing to lend to poorer individuals to fill any rebuilding financing gaps.

By contrast in wealthy areas, homeowners often received huge insurance awards immediately after the storm and additional road home compensation for any uninsured losses. Not only did this program provide more compensation than wealthy owners would have needed to rebuild, but it also perversely weakened their neighborhoods. Many homeowners in wealthy areas agreed to sell their property to the State even with the resulting diminishment in their Road Home award. For them, the State's purchase program created an easy way to cash out of their property and usually leave town. In theory, the State could have placed these properties back into commerce; however the ICF's long delay in closing transactions has left these properties in limbo as they slowly decay without any entity responsible for their maintenance. This has left pockets of blighted homes in formerly affluent neighborhoods, which weakens property values and discourages homeowners from rebuilding. Moreover, once the ICF does close on these transactions there will be a huge supply of properties to sell, which, if dumped on the market, will further weaken property prices for the homeowners who remained.

A third more subtle market failure was the response of the homeowner's insurance providers. They raised rates dramatically following Katrina, in many instances increasing rates five-fold. On a standard \$150,000 home premiums soared from \$600/month to \$3000/month. This had the same effect as increasing the cost of this home by \$40,000. The oddity of this increase was that Katrina, at least in New Orleans, was almost entirely a water event and not a wind event. In America, wind insurance is provided by private insurance; whereas water risk is covered by the National Flood Insurance program, which has only made limited changes in flood premiums in New Orleans. A second oddity is that insurance products are designed to build up sufficient reserves to cover the insured event. In theory, the actuarial risk of a storm following Katrina should have been the same as the actuarial risk of a storm prior to Katrina.

The explanation for the insurance industry's rate increases lies deep in its industrial structure and, surprisingly, is not driven by profit making motives. Insurance companies only lend money when they are able to get some form of reinsurance on their policies. This process has the effect of concentrating exposure to disasters among a limited set of carriers. Regardless of actuarial risks these carriers have total exposure concerns and are reluctant to bear even remote losses that could bankrupt the firm. According to one published article, most entities will require four times the actuarial premium to bear massive "tail losses" such as disaster risk.³¹⁰ As a result, reinsurance companies have refused to provide coverage on policies issued in the Gulf. In turn, local affiliates have raised rates to attempt to actually drive away business. This behavior ripples out to the housing market because it distort affordability even further, as what was once a \$150,000 home requires the same cash flow as a \$190,000 home.

³¹⁰ Michael Lewis, "Natures Casino," New York Times Magazine, August 26, 2007. Tail losses are essentially those losses that are so extreme in magnitude that if they occur they will wipe out the assets of the risk bearing agency, but simultaneously so rare that actuarial premiums (i.e. magnitude/risk of occurrence) will not provide adequate compensation.

10.6 Lessons about institutional relations to take away from the recovery efforts

New Orleans' experience recovering from Hurricane Katrina provides many lessons for responding to future disasters:

- 1) Federal and state assistance is not the same thing as cash. Spending money is therefore much harder than it seems, particularly if aid is provided only on a reimbursement basis.
- 2) Place matters. The Road Home program was a better policy to respond to Mississippi's conditions than it was to Louisiana's conditions.
- 3) Market distortions are inevitable after a disaster. Replacement cost will increase, insurance will dry up and credit standards may tighten. To rely primarily on market forces to guide recovery seems destined for failure.
- 4) Collective action at the governmental and community levels is essential. Homeowners and markets need signals and clear priorities from government and those investments should respond to community priorities. These governmental-community alignments about rebuilding priorities should lead and not follow individual consumer choices
- 5) The structure of intergovernmental relations, both formal and informal, will often dictate the policy environment and unduly limit the choices of recovery to actions inappropriate for the sustained future development of the city.

11. Katrina and Civic Involvement in Land Issues

As shown in Sections 4, 5, and 6 the involvement of communities in rebuilding the connections of people to land in New Orleans has been both a positive and a problematic aspect of the recovery from the disastrous effects of the hurricanes Katrina and Rita. In this section we focus on ideas for the positive institutionalization of civic involvement in dealing with the serious land tenure issues facing greater New Orleans.

11.1 Building Civic Involvement in New Orleans Land Use Decisions³¹¹

Prior to the August 2005 arrival of Hurricane Katrina, citizen engagement in city government decision-making in New Orleans was very low. Voter turnout for some elections fell below 20%. Public meetings convened to obtain citizen input on government plans and actions were sparsely attended, leaving vast numbers of residents completely disconnected from government decision-making.

The best example of this failure to engage citizens is work conducted by the city of New Orleans to develop a Master Plan and revise its Comprehensive Zoning Ordinance (CZO). This work commenced in 1995 with work on the city's Land Use Plan and was still under way ten years later when Katrina put a complete halt to the process.

Typical outreach to citizens for public meetings usually involved no more than putting a notice in the legal notices section of the local newspaper, which are seldom read by most

³¹¹ Based on the paper by Keith Twitchell, "Civic Involvement in New Orleans Land Use Decisions", prepared for the UN Katrina study, January, 2008. Mr. Twitchell is President of the Committee for a Better New Orleans/Metropolitan Area Committee (CBNO/MAC).

citizens. Minimal if any effort was made to work with neighborhood associations, or to generate media coverage that might have alerted more citizens to public input meetings. No attempt at all was made to utilize cable access channels, even though a 2003 study found that 78% of New Orleans residents used cable access to garner information about city government activities.³¹²

Compounding the lack of serious outreach was the deep distrust New Orleanians had developed towards city government. At worst, citizens believed government was rife with corruption; at best, they simply believed that government was going to do whatever it wanted, regardless of whether or not citizens provided their input. This was evidenced by 2000 survey of citizens that indicated that only 19% of New Orleans residents believed city government would make their lives better.³¹³

Consequently, a turnout of twenty citizens for a public input was considered a success by city government agencies; it was not uncommon for a mere three or four people to attend such meetings, and it was not unheard of for no citizens to show up for a published input meeting.

One exception to this general rule – though hardly an example of widespread citizen engagement – was a process conducted by the Committee for a Better New Orleans/Metropolitan Area Committee (CBNO/MAC) in spring of 2004. Seeking citizen input for a model for a formal citizen participation program for New Orleans, CBNO/MAC attracted a total of approximately 300 citizens to seven public meetings. However, this effort was supported by radio and print advertising as well as free media coverage, including a television appearance by the City Council president.

In short, pre-Katrina New Orleans suffered from a very disengaged citizenry and little effort on the part of city government to bring citizens to the table to get their input.

The extraordinary destruction wrought by the post-Katrina levee failures in New Orleans produced a radical change in the level of citizen engagement in the city. People found themselves fighting for the survival of their homes and their neighborhoods – and found that coming together as citizens greatly enhanced their chances of surviving.

One important aspect of this engagement is that property owners have been much more engaged in post-Katrina citizen participation activities than renters. They have a lot more invested and therefore a lot more to lose. However, renters, especially those belonging to specific tenant groups, have also participated; some renters have also participated in neighborhood association meetings and/or official city meetings, such as those conducted during the Unified New Orleans Plan (UNOP) process³¹⁴. The question of how to engage a higher percentage of renters in a situation like post-Katrina New Orleans remains unanswered, and in the present context, is further complicated by the fact that renters who had to leave the city to find a place to live have been much slower to return to New Orleans after the storm than have property owners.

³¹² Lee, Dr. Silas, (September 2003), “Customer Service Survey”, Committee for a Better New Orleans/Metropolitan Area Committee, New Orleans, LA.

³¹³ Lee, Dr. Silas, (July 2000), “Baseline Poll”, Committee for a Better New Orleans, New Orleans, LA.

³¹⁴ AmericaSpeaks, (January 2007), *Report on Community Congress III*, AmericaSpeaks, Washington, DC.

While follow-on to the UNOP was an uneven effort, and citizen participation in the early stages was far less than acceptable, an effort was made in later stages to be much more widely inclusive. In a way, a slingshot effect was produced: insubstantial outreach efforts in the early stages of UNOP created significant concern among citizens; when this was combined with greatly increased outreach in later stages, a true surge of citizen participation was produced, including displaced citizens.

Moreover, it appears that the people of New Orleans, once awakened to the opportunities to have their voices heard by city government, are at least for now very interested in remaining engaged. At the final Community Congress of UNOP, 93% of citizens stated that they wished to remain engaged;³¹⁵ the final UNOP document includes a specific, clarion call for a permanent, formal citizen participation program (see Tools Annex 6 for a description of this program); and two of the thirteen individual planning districts attached a draft model citizen participation program developed by CBNO/MAC to their district plans.

The overall result of this sequence of events, which lasted from November 2005 through January 2007, was a hugely increased level of civic engagement compared to pre-Katrina New Orleans. While myriad factors – ranging from levels of devastation to socio-economic strata to rates of recovery to cultural differences – have caused the levels of engagement to vary from neighborhood to neighborhood, every single corner of the city has more involvement now than pre-Katrina. Existing neighborhood associations see much higher turnout at meetings, and new associations have sprung up in every district of the city³¹⁶. City Planning Commission and City Council meetings are frequently packed (and frequently contentious), and several developers have pulled unpopular proposals in the face of neighborhood opposition.

Two major questions stand out at this point. The first is, “What are the present and future impacts of increased citizen participation on land use and development decisions?” The second is, “How can this higher level of civic engagement be sustained and institutionalized?”

In New Orleans, the City Council generally has the last say in zoning, land use and development decisions. These decisions can be appealed to the courts, though such appeals are rare and rarely successful; additionally, the administration can hold up implementation of these decisions through permitting and other procedural moves. But the decisions themselves are the purview of the Council, and their decisions are generally followed.

In the absence of a formal mechanism for garnering citizen input, Council members must rely on input directly received from individual citizens in order to make informed decisions. Letters, phone calls and emails are all used to communicate with Council members; however, Council meetings are the most open and public opportunities for citizen input. Unfortunately, when such decisions are contentious and controversial, the Council meetings become raucous, lengthy and frequently divisive. Further, regular citizens are restricted to three-minute comments. All of this calls into question the validity and value of citizen input received in these circumstances.

³¹⁵ Ibid.

³¹⁶ Neighborhood Partnership Network, (December 2007), personal communication based on field work.

In terms of the impact of citizen input on Council land use and development decisions, at present results are very mixed. In the recent case of the complex and emotional decisions regarding the demolition of public housing complexes, all seven Council members announced prior to the public meeting that they had made up their minds. Conversely, in the case of a proposed coffee shop that neighbors vehemently opposed, the Council gave preliminary approval but then changed its mind, and the application was withdrawn.

In short, while the volume (both in terms of quantity and loudness) of citizen input provided to City Council is considerably greater now than it was in pre-Katrina New Orleans, the results do not seem to be significantly different in terms of public input clearly impacting Council decision-making.

Since citizens will quickly become very frustrated if they do not feel their voices are being heard, and will likely begin to disengage soon after reaching this state, one of the most urgent questions facing New Orleans in the aftermath of Katrina is how to sustain the greatly increased levels of public participation; another is how to make this participation informed, clear and effective in terms of generating input for city government.

The answer to both these questions is the design and implementation of a permanent, formal Citizen Participation Program (CPP), as called for in the UNOP documents. Cities like Portland (OR), Atlanta, Dayton (OH), and Birmingham (AL) – as well as many others around the country – have well-established and effective CPPs. Not only do these programs greatly enhance the ability of citizens and government to work together, they are also training grounds for future civic leaders (the current mayor of Birmingham came up through that city's CPP) and even tend to increase voter participation rates.

A very brief, simple description of a formal Citizen Participation Program is that it brings people together in officially sanctioned neighborhood groups to discuss quality of life issues that impact their neighborhoods. Some cities restrict the formal mandate of the CPP just to zoning and land use, while others allow virtually any type of issue to be considered. Almost all CPPs include a second tier – usually with paid staff – that brings a number of neighborhood groups together; often this entity becomes the primary communications point between citizens and government. A few models include a third, citywide tier. In all CPPs, citizen input that comes up through the program is formally communicated to city government for consideration in its decision-making, though the amount of weight given to the input varies greatly from city to city.

While CBNO/MAC had reached the point of a complete model CPP prior to Katrina, the organization and its partners are currently engaged in a completely new, citizen-driven effort to design a New Orleans CPP from scratch³¹⁷. The primary reason for this is, with so many more people interested and engaged now than before, it would be in contradiction to the very essence of citizen participation not to give a much larger number of citizens an opportunity to be part of the CPP design process from the beginning. Therefore, the old model is being used only for information purposes, and a completely new citizen process is being convened.

This will include several rounds of citizen meetings, each preceded by substantial outreach efforts (including outreach and special input mechanism for citizens who remain displaced from the city). A citizen steering committee will be formed to oversee the process, while

³¹⁷ See Tools Annex XX for a description of this model.

community groups such as CBNO/MAC and the Neighborhood Partnership Network (NPN) will provide resources, staffing and the necessary legwork to complete the process. After enough citizen input is gathered, a completely new draft model will be prepared, and submitted back to the citizens for review. Once the model is finalized, citizens will also be asked for guidance on implementation, including such questions as funding sources and the formal linkage to city government. Ultimately, the New Orleans CPP will be passed in legislative form by the City Council, and hopefully imbedded permanently in the City Charter.

This work is expected to be completed by mid-2009. The goal is to engage several thousand New Orleanians in the design and implementation of the CPP, so that they will be completely ready to take ownership of it from the day it is launched.

In the aftermath of Hurricane Katrina, New Orleans has some extraordinary opportunities to revitalize and reinvent itself. In this situation, civic infrastructure is perhaps even more important than physical infrastructure, and a formal Citizen Participation Program will ensure that the people of this great city will once and forever have a meaningful voice in setting priorities and making decisions about land use and development in their neighborhoods.

11.2 Rebuilding Rights to Public Space and Cultural Heritage³¹⁸

Silas Lee, a sociologist at Xavier University in New Orleans observed, “Anyone who loses a component of their culture is like losing an immediate family member, a part of your soul, the essence of what makes your community³¹⁹”. He is commenting on the importance of cultural practices to the social fabric of New Orleans neighborhoods and the anxiety many New Orleans residents felt following the floods of 2005 that those practices, and with them their shared identity as a community, would be lost. While disaster planning may rightly focus on the “emergency response” phase of recovery, ensuring that displaced and endangered people have the means to survive and that basic services are quickly restored, the second phase of recovery, what Vale and Campanella term “restoration,” is likewise important. Resilience in cities struck by disasters is as much a function of symbolic processes attached to public narratives of renewal, memorializing loss, and the attachments of individuals to place as it is of physical rebuilding: “rebuilding cities fundamentally entails reconnecting severed familial, social, and religious networks of survivors³²⁰”. It was in fact such networks that did the heavy lifting of supporting communities struggling to recover in New Orleans. Among the poor and working class of the city, these networks were integrally tied to neighborhood-based cultural practices—churches, Mardi Gras Indian groups, Social and Pleasure Clubs.

11.2.1 Cultural Networks.

The inability of federal, state, and local government, as well as national non-profit organizations to tap into these pre-existing networks as a tool for reaching and supporting some of the most vulnerable populations in New Orleans, slowed recovery efforts and

³¹⁸ Based on a paper prepared for this case study by Amy Koritz, Tulane University, “Rebuilding Rights to Public Space and Cultural Heritage”, December, 2007

³¹⁹ Donze, Frank (2007) “More than Memories” Times-Picayune (New Orleans)

³²⁰ Vale, Lawrence J. and Thomas J. Campanella (2005). The Resilient City: How Modern Cities Recover from Disaster. Oxford and New York: Oxford University Press, p. 307.

unnecessarily exacerbated distrust and the potential for conflict between authorities and communities.

In a broader context as well, understanding the cultural practices of poor communities provides disaster planners with knowledge that can speed recovery by ensuring that these communities have voice and agency in mapping their futures. While culture is often thought of as a fossilized set of traditions, it is also the way in which communities create and transmit a shared vision of and pathway towards a future. Culture involves not only the preservation of a past, but also the capacity to aspire to a future³²¹. In New Orleans, cultural traditions and practices following the Katrina disaster enabled collective grieving and memorialization of those who suffered. These traditions and practices also symbolized a community's ability to return to normalcy, and reclaimed public spaces disrupted or defiled by the floods.

11.2.2 New Orleans Cultural Practices

Although Mardi Gras is the most widely known of the traditional cultural practices of New Orleans, and is perhaps most closely associated with the city's identity by outsiders and an attraction for visitors, this is not a celebration deeply embedded in the culture of those communities most damaged by the 2005 floods.

Despite its controversy in some quarters, however, the decision to hold Mardi Gras in 2006 was not simply an economic one made to benefit the tourism industry. Because the balls and parades associated with this holiday have deep historical and symbolic roots in the self-understanding of the city's elites, this was also a public gesture reclaiming that identity. Away from the affluent homes of those participating in old-line Mardi Gras krewes, however, are a range of homologous practices that likewise use access to public streets as a means of displaying and affirming communal solidarity and identity.

The Mardi Gras Indians and the Social and Pleasure Clubs provide the most common forms of collective cultural expression among the poor and working class African American communities of New Orleans. Dating back at least a hundred years, these organizations and their rituals provide social stability, dignity, and visibility to groups that have for generations suffered from the oppressive racism of the city's social and economic structure.

The Mardi Gras Indians consist of numerous neighborhood-based tribes or gangs with a common internal structure that assigns hierarchical roles within the organization (Chief, Spy Boy, Wildman, etc.). The Indians spend the year, and thousands of dollars, sewing intricate beaded and feathered suits that were traditionally worn only twice a year, on Mardi Gras and St. Joseph's day. On those days the gangs come out in the streets, singing traditional songs, parading along a route decided by the Chief, and engaging in ritual confrontations with other groups of Indians. These practices are passed down within families and have had a profound impact on New Orleans music and iconography. Because the Indians at one point in their history engaged in violent confrontations, and because they often parade in the street without benefit of permits and licenses, however, there is also a history of confrontation with the authorities.

³²¹ Appadurai, Arjun (2004). "The Capacity to Aspire: Culture and the Terms of Recognition." Culture and Public Action. Stanford: Stanford University Press.

The Social Aid and Pleasure Clubs are African American benevolent associations that also have a history of parading without official sanction, resulting in similar tensions. These organizations were created to ensure a proper burial to their members, and gave rise to the ritual procession known as the Jazz Funeral. Each club parades one Sunday during the year, following a route generally unpublicized outside the community and involving stops at locally significant houses and businesses. The clubs hire brass bands to provide music and are followed by a crowd of unofficial participants known as the second-line. These dancing followers can number in the thousands, and their prominence has led the entire procession to be called a second-line³²² (Regis). The roots of this practice in the memorial procession of the jazz funeral ground it in one of the most important collective expressions of communal identity in any culture, how it grieves its dead.

11.2.3 Use of public space

Well before Hurricane Katrina demonstrated the inadequacy of flood protection in New Orleans and devastated many of the communities that sustained and nurtured these cultural traditions, conflicts erupted periodically between the police and both Mardi Gras Indians and Social and Pleasure Clubs³²³. Although the city of New Orleans marketed images of second-line parades world-wide to attract visitors, it had failed to create public policies that acknowledged and respected the authentic practices of these groups. In consequence, unresolved issues regarding the use of public space re-emerged as residents returned to the city in 2006.

These issues involved conflict over three central concerns. First, the police and their political superiors associated gatherings of large numbers of low-income African American citizens with violence. In their attempts to prevent such gatherings and thus, in their eyes, to maintain public order, they instigated frequent confrontations with the elders and tradition-bearers of these communities—that is, with the very people who provided their neighborhoods with social stability and internal discipline. This problem came to a head shortly before the hurricane, when the Big Chief of the Yellow Pocahontas Indian gang, Tootie Montana, collapsed and died in the New Orleans City Council Chambers while objecting to the police disruption of a March 19, 2005 Indian gathering³²⁴ (Perlstein). Both Indian gatherings and second-line parades have been disrupted in this fashion, both have also, at times, provided occasions for attendees to settle scores—violence at these gatherings is not unheard of. Neither, however, is it the norm.

Second, licensing and permitting policies posed sometimes insurmountable obstacles to the legal practice of cultural traditions. Following Hurricane Katrina, the political leadership of the city did not seek to enable the return of cultural uses of public space that might allow communities to restore their social fabric, but rather to increase the cost and bureaucratic hurdles attendant on the legal practice of these traditions. The fees for licenses and permits for the use of the public streets by Social and Pleasure Clubs increased exponentially, with one group, the Original Pigeontown Steppers, being charged \$7,560. A public outcry led to

³²² Regis, Helen (2001). "Blackness and the Politics of Memory in the New Orleans Second Line." American Ethnologist 28.4.

³²³ Blumfeld, Larry (2007) "Not Wash Away: The Fight for New Orleans Culture Continues One Parade at a Time" Village Voice (New York).

³²⁴ Perlstein, Michael (2005). "Chief of Chiefs Dies at Meeting." Time-Picayune

this fee being reduced, but the issue ended up in court, with the ACLU filing suit in support of the claims of inequitable fees by seventeen Clubs (Blumenfeld). This suit was finally settled out of court in a manner favorable to the Clubs, but the fundamental policy question of how to permit culturally important informal uses of public space has yet to be resolved.

In fact, this issue again surfaced on October 1, 2007, when two well-know musicians were arrested in the Treme neighborhood for parading without a permit. This incident occurred during a memorial procession for a fellow musician from the neighborhood. Long time residents understand that this manner of honoring the dead is deeply ingrained in their common traditions, and they respect the use of public space in their neighborhood for these processions. As an Op-Ed column by local journalist Jarvis De Barry explained, reflecting on a 2001 memorial parade in his neighborhood: “Had the crowd of people following the trumpeter down the center of Treme Street secured a parading permit? No more than you’d secure a permit to send a card to a bereaved friend or express your sorrow with a phone call³²⁵.” The police disruption of this gathering continues the longstanding pattern of conflict between communal uses and governmental control of public space already discussed. In Treme, however, demographic changes have exacerbated the problem, increasing long-time residents’ fear for the future of this and other cultural traditions that define the identity of their community. Because of its location close to the French Quarter and its supply of historic, relatively undamaged, housing, Treme is gentrifying.

Policy makers and planners, however, have failed to address the consequences of such demographic changes for neighborhood cultures. In Treme, as in other neighborhoods that suffered only moderate damage from the hurricane and floods, more affluent citizens have begun to buy and renovate property. As in any gentrifying neighborhood, conflicts can arise between the behavioral norms and expectations of newcomers and those of the original residents. The large number of historic buildings in the older, less flood-prone areas of the city has made such circumstances more likely, and policy makers have failed to plan for the tensions that would arise as a result. Preserving the cultural practices and traditions nurtured and sustained within less well-off African American communities is receiving considerably less attention than preserving the historic housing stock of communities that might attract more affluent buyers.

11.2.4 Lessons Learned about Cultural Networks Post Katrina

Some of the lessons learned by the communities and political leaders about cultural networks post Katrina include:

- Supporting the return of community cultural practices should be integrated into recovery planning, including setting procedures for accommodating the use of public spaces for these purposes
- Recovery workers should seek out and assist tradition-bearers in reestablishing contact with their communities and constituencies. They are often leaders in their communities, know where the greatest needs are, and can help stabilize frayed social networks

³²⁵ De Barry, Jarvis (2007). “Who’s Disturbing the Peace in Treme?” [Times-Picayune](#).

- Potential conflicts among groups seeking to use public spaces, or coming into new contact with each other with differing expectations concerning appropriate uses of public space should be anticipated and planned for.
- Government policies regarding licensing and permitting of public gatherings should reflect the importance of such gatherings for repairing a damaged social fabric and allow for flexibility in their application
- Resources should be earmarked for and directed to neighborhood-level cultural expression as part of a recovery effort. Planners should avoid approaching cultural sector recovery purely in economic terms (tourism, museums, and large organizations and institutions such as symphonies)
- Major changes in the demographic make-up of communities should be anticipated and their impact on socially sustaining cultural practices mitigated

11.3 Lessons Learned by Grassroots Katrina and Tsunami Social Justice Activists³²⁶

"This would never happen in our country. If this happened in India, there would be a revolution!"

A December 26, 2004 earthquake in the Indian Ocean measuring 9.3 in magnitude sparked-off a series of devastating tsunamis that killed over 230,000 people and made millions homeless. Along the affected coast of India community organizations have struggled in the face of unprecedented problems to try to recover and rebuild.

In early 2007, a group of Gulf Coast community activists toured hundreds of miles of coastal communities in Tamil Nadu, along the southern coast of India devastated by the 2004 tsunami. They met with Indian community members to discuss common challenges and strategies to rebuild their communities and to discuss what lessons could be learned from their two experiences.

The two groups merged into a delegation which together visited numerous villages up and down the Indian coast and listened to hundreds of people describe how the tsunami and its aftermath continue to impact them. They listened to displaced families as they sat on woven mats in steaming thatched huts as the temperatures passed 105 degrees Fahrenheit. An entire fishing community told their story under towering palm trees backed by the brilliant blue Bay of Bengal of the Indian Ocean. The delegates ate rice, yogurt and fish off of banana leaves with our fingers while they visited with one village. Others shared what happened as they walked in the blazing sun through fields of women and men digging dirt with shovels and pails to construct a new road.

³²⁶This section is based on a trip report by Bill Quigley, Loyola University of New Orleans Law School

The delegates shared the experiences of their gulf coast communities and the massive and continuing human rights violations perpetrated against Katrina survivors both at home and internally displaced. After finding out that police fired weapons to turn away fleeing people trying to escape across the Mississippi river in New Orleans, the continuing displacement of hundreds of thousands, and the government's determination to demolish thousands of usable public housing apartments, the Indian delegates were incredulous. One said "This would never happen in our country. If this happened in India, there would be a revolution!"

Many experiences were similar in the two places on opposite sides of the world. Governments, on all levels, have and continue to fail to assist the damaged populations. The needs of poor and working people have been neglected in both places. Incredible incompetence and apparent lack of sustained concern have combined to aggravate and amplify the effects of the disasters. It is primarily through the efforts of small voluntary organizations that any real progress is being made.

The delegates released a joint Tsunami-Katrina statement at the end of their trip summarizing lessons learned:

We agree that our communities have each been the victims of disaster capitalism. After each of our disasters, the tremendous loss and suffering of our people have been seized upon as opportunities for profit by commercial and financial interests. The rebuilding processes have been driven not by the needs of the people, but by economic and corporate interests which have neglected and over-ridden the needs and perspectives of local communities.

Second, we agree that technological and bureaucratic planning for disasters is not enough. Communities at risk of disaster must be respected and involved in all preparations for disaster. While we recognize the important responsibility of government in preparing for disaster, we have seen the failures of preparation that is based on technology alone. We have also seen the failures of bureaucratic and professional planners. These failures will continue until the communities themselves are given a priority in preparing and shaping and executing planning for disasters. All preparation must be sensitive to community needs and traditions.

Third, before, during, and after disasters, the needs of the least powerful must be made a priority. This is nearly the opposite of what has been occurring. These needs include the full implementation of human rights to housing, land, occupation and livelihood, freedom from discrimination, and the right to return.

Fourth, we insist on gender equity. Our experiences have clearly shown us that there is a systematic violation of the rights of women in every phase of disasters. In planning, preparation, evacuation, distribution of relief, rebuilding, the right to return, and in every phase of policy and decision making, the presence and participation and value of the role of women have been seriously inadequate. The human rights of women must be immediately respected as their suffering and disrespect continues today in both our countries.

Fifth, we demand accountability and transparency. Anyone who is raising, taking, or spending money in the name of our communities must be accountable to our people.

We call specifically for our governments, our NGOs and our non-profits to let our communities know how much has been raised, how much has been spent, how all funds have been spent, and each organization, corporation, governmental unit or person who receives any funds. Our communities must participate in all these decisions. In order to have true community directed participation, we insist on our rights to accountability and transparency.

There is much to be gained from exchanges such as this one. People are battling for the very lives of their traditional communities and need each other's ideas and support. Activists and support groups cannot afford fragmentation. They cannot afford to consider one group more worthy or deserving than others. In the US, stronger linkages are required between the needs of coastal Louisiana and coastal Mississippi and the urban needs of the New Orleans metro area. Nationally, the local organizations need to strengthen their alliances with other communities fighting similar battles for achieving social and economic justice. Internationally, groups have much to learn from each other and must build much better solidarity. The Indian delegates told the Katrina ones that if they had known what was going on after Katrina they would have demonstrated in front of the U.S. Embassy in India demanding the U.S. government respect the human rights of its citizens. It is a tactic of political and economic elites to divide and conquer popular initiatives; it is the job of such initiatives to connect and conquer.

An important lesson is that community groups must insist on rebuilding their own communities. In India, there are examples where the communities decided how to rebuild, chose to use local materials, and demanded and won the right for local people to do the rebuilding so they could learn new skills. The Katrina delegates were shocked to find that many more new homes have already been built in India for their displaced families than in the U.S. Non governmental agencies and non-profits, many with the best intentions in the U.S. have come to our communities and have not accomplished as much as they should have accomplished. They and the government must be held accountable. India is trying. Communities in the Gulf Coast of the US have much to learn from them.

There is a universal need after the trauma of disasters for what the Indian activists call "psycho-social counseling." This need continues now and will continue until it is met. Recovery is not only about the physical aspects of rebuilding a place to stay or finding a job or getting some compensation. It is also about relationships. On the gulf coast in the US and India there are hundreds of thousands of people who continue to deeply suffer the traumas of these disasters. They cannot "get over it" without trained assistance. The same is true in India. However, the Indians are training volunteer community counselors to help villages and organizations identify the non-physical effects and to help people and communities heal.

In India the caste system creates invisible divisions and tens of millions of invisible people. Dalits, or untouchables, built magnificent temples as slave laborers but are met with violence if they try to enter the temples their ancestors built. In the US systems of color discrimination create invisible people. No just solutions are possible without directly confronting the continuing existence and legacies of these systems.

At the same time, economic lines have been sharply drawn in both nations. In the U.S. it is property ownership that draws the line. Two people who lived in different halves of the same house for the same number of years are treated dramatically differently if one owns the house and the other rents. Property owners may get up to \$150,000 in compensation in Mississippi

and Louisiana – renters receive nothing. In India, fisherfolk are eligible for compensation for their lost boats and new housing. Those who worked on the boats for the owner are entitled to nothing. Like most economic injustices, these artificial human distinctions, often codified into unjust laws by those who profit from them, must be challenged and dismantled. Shared economic class issues must be a point of unity, across lines of caste and race.

In both countries, the intersection of race (or caste), gender, and economic status defines who tend to be left out of the repair and rebuilding. In both countries the disabled were left behind at every step. This exclusion of groups is not an accident of nature. These are all human decisions and can and must be reversed.

An important part of solidarity with people devastated by natural disasters is to keep reminding each other and organizations that action cannot be confused with progress. After a disaster, everyone is very busy. People are subject to countless planning meetings and consultations as people try to participate in rebuilding their communities. But the test of all actions should be – "Does this help build, expand, or defend a movement towards justice?" If it does not, it must be re-thought. Because unless there is progress toward building a more just world, the next disaster will prey on the victims of injustice just as much as these did. Economic and social equity is the best way to reduce the impacts of disaster.

Disaster victims in both the US and India are crippled, confused, and buried beneath bureaucratic paperwork demands. The approach in both countries is that one must prove they are eligible and worthy of assistance. Legal requirements and administrative schemes choke the distribution of help.

Right, not charity is the common demand. Human rights, not bureaucratic eligibility criteria, must be the foundation for relief, recovery and rebuilding. People have human rights to food and shelter and the opportunity and assistance necessary to live a life of dignity. The government must respect and implement human rights. The degradations and delays and disrespect of eligibility applications for basic human necessities must cease. Human rights must be the shared basis for going forward. Internationally, if the bottom of the North can link up with the bottom of the South, human rights will be a shared language.

When disaster hits, there is a natural urge to work around the clock to try to set things right. After a few weeks or months, it will become clear that is not sustainable. Working 24 hours a day is going to make you as crazy as the government. No one likes a crank – even if they are working for justice.

Building communities of resistance and working for human development is long-term work. Love is a tremendous source of energy. But we have to love ourselves as well so we can keep living this resistance with others. We have and will continue to make mistakes. We have to get back up, dust ourselves off, forgive ourselves and others, and get back to working in community to create a more just world.

It is important to laugh too. Remember that the last job held by the person that President Bush put in charge of disasters for the entire US government was as head of an association of dancing horses! We can't make this stuff up.

We have to love and laugh along with our tears and rage and keep learning new lessons.

The final and best piece of advice given to the Katrina delegates was from T. Peter, head of the Kerala Fish Workers Association. Their organization has struggled with elected officials, private companies, and the caste system in all phases of life. He leaned over, his dark face split by a broad smile, and told the Katrina delegates what they in the U.S. should be doing to bring about justice for the gulf coast: "Less meeting, more fighting!" And so community groups will meet and fight to the best of their abilities to meet the challenges of post Katrina.

12. Lessons to take away from the recovery efforts in New Orleans

The post-disaster situation is truly a crisis, embodying the elements of both "danger" and "opportunity". The people of greater New Orleans have been simultaneously challenged and invited to respond to disastrous circumstances.

Much of the focus in New Orleans (as in any physically devastated region) has been on responding to the physical challenges, but equally in play are the "systemic" reforms that might have been unthinkable before the disaster. Katrina has brought into discussion some fundamental issues of any democracy:

--How to achieve greater citizen participation in governmental decision making?

--How to foster greater transparency in government?

--How to create effective anti-corruption mechanisms (such as the recently launched Ethics Review Board and Office of Inspector General)?

--How to reform systems by which the government procures goods and services (particularly professional services) to assure transparency and participation by nongovernmental stakeholders?

--How to reform the land use planning process to institute more collaborative planning among commercial interests, government, and neighborhood associations?

These systemic changes need to be the focus of attention particularly in the "restoration"³²⁷ phase of post-disaster recovery.

Below, we briefly summarize some of the lessons learned about dealing with land issues post Katrina:

- 1) The policy environment affects the direction and impacts of rebuilding. The structure of intergovernmental relations, both formal and informal, often influences that environment.

³²⁷ Lawrence Vale and Thomas Campanella in their book *The Resilient City: How Modern Cities Recover from Disasters*, pp. 337-338 build on an earlier National Science Foundation study and identify four typical phases of post disaster recovery: 1) Emergency phase during which the focus is on attending to the dead and injured and removing debris; 2) Restoration phase entails the re-establishment of urban services, return of refugees, repair of less damaged buildings, and commitment to the subsequent programs and investments; 3) Replacement-reconstruction of the damaged capital stock and return of the population and gross economic activity to pre-disaster levels; and 4) Betterment re-construction, long term investments in institutions and improvements superior to pre-disaster conditions. See Tool Annex 3 for a graphic description of this model of recovery.

--Katrina has shown that the Norquist doctrine of radical privatization with its dual focus on (1) replacing government with private, for-profit corporations and (2) a reliance on market forces to guide rebuilding is profoundly defective.

--Profit maximization as the driving force behind private company decision-making is not always compatible with the responsibility for designing and management of humanitarian assistance after a major disaster, nor should this model be used for controlling the rebuilding after such a major disaster.

--Market distortions are inevitable after a major disaster. Property values fluctuate substantially; wages rise dramatically at least for a while and fluctuate. Replacement cost increase; insurance dries up; and credit standards tighten. Rebuilding resources cannot be channeled primarily on the basis of market transactions, but must focus first on prioritization of infrastructure investments, and then on homeowner/renter rebuilding assistance. This whole situation demonstrates the non-viability of letting market forces solely drive the recovery. A doctrinaire commitment to the market driven approach almost guarantees the greatest number of losers and may well be the slowest method to recovery.

2) There must be constant vigilance for identifying and eliminating partisan political decisions which negatively impact rebuilding of housing, particularly that of the disadvantaged sectors of the population of New Orleans.

3) Emergency responses need some fixing:

--The established procedures and administrative structures for providing emergency housing vouchers should be used, rather than create new forms and administrative structures.

-- Temporary housing (such as trailers) should be placed on the properties of the displaced families, or as near to them as possible, in situations where the properties can be repaired.

--Rather than investing significant resources in substandard temporary emergency housing such as trailers, which have serious toxicity problems from formaldehyde and can be unsafe in high winds, there should also be a focus on investing "temporary housing dollars" in situations where major rebuilding is required.. Such a solution could lead to sustainable housing such as pre-fabricated and modular homes.

--The likely community opposition to the long term location of temporary housing in their communities for people displaced from other places needs constant discussion, open communication and transparent decision making at the local level.

--Private insurance companies are severely strained after a massive and destructive disaster. There should be a program to assist people in dealing with their insurance companies, and being aware of their right to access processes like arbitration. Also, there needs to be separate adjustment of wind and flood claims--some insurance companies combine adjustments and transfer wind damage (for which they would have been responsible) to flood damage covered by the federal government.

4) Defects in the legal framework need to be corrected, such as:

- A mechanism is needed for grouping of heir interests in handling of successions.
- Serious consideration should be given to adopting the Transfer on Death deed to use where appropriate to simplify successions (See Tools Annex 8)
- Protections are insufficient for tenants in rental contracts.
- Mortgage procedures should be reformed and standardized.
- Reform is needed of the federal housing rebuilding legislation (Stafford Act in particular) to protect the rights of the displaced.
- Public housing legislation needs amendment to protect the rights of the tenants.
- Better formulation is needed of clear and fair procedures for the demolition of damaged buildings and the compensation of their owners.

5) The main state program to distribute federal rebuilding dollars, known as the Road Home Program, has to be re-formulated to make it responsive to community needs.

- Community groups with insights into the real rebuilding needs of their neighborhoods should be included in both planning for and feedback at all levels of this program.
- The state should include meaningful enforcement mechanisms including community monitoring in its contracts with private for-profit companies hired to distribute federal rebuilding dollars.

6) Programs to give incentives to private developers to build affordable housing for rent need special attention:

- Require local jurisdictions to plan for their relative share of affordable housing or to have a minimum threshold of such housing of high quality in their jurisdiction, but allow for State over-riding local zoning under emergency situations.
- A public awareness campaign is needed to make the general public aware that affordable housing is for teachers, working families, seniors, and other key members of the community, and that such housing does not necessarily lower property values or increase crime.
- Community-based models of monitoring and best management practices for housing developments that involve residents in maintaining the quality of developments are especially compelling and relevant.
- Increase affordable housing (1) by federal matching funding for one-to-one replacement of damaged public housing, and (2) by funding a state housing trust fund and housing bond to finance building affordable housing.
- In housing financing, create a separate financial pool for smaller nonprofit organizations or innovative private developers that meet different needs than larger-scale developers.

7) Assistance to small scale landlords

--Invest resources in programs that provide direct, low interest or no-interest loans to small scale landlords up front, whose proceeds could be used immediately to start construction and renovation of residential units.

- 8) The system for administration of immovable property records must be made more professional, efficient and effective at meeting the needs of the general public and the property development professions.

This system must provide people with documentation of their titles to real estate quickly and cheaply. The high cost of getting title documents is a plague for many poor property owners.

- 9) Drawing the line of the new urban footprint of New Orleans has not been finalized.

In metro New Orleans, those citizens and leaders advocating the return of the entire city, including the lowest-lying and highest-risk neighborhoods, prevailed in the contentious postdiluvian debate about redrawing New Orleans' urban footprint. Whether that full footprint can achieve civic, cultural, economic, and ecological sustainability will be determined community consultations by the insurance industry, by mortgage companies, by property values, by municipal infrastructure investments, by the public school systems, by the level of success or failure in rebuilding levees, closing canals, and restoring the coast, and ultimately, by nature.

- 10) Displaced people seeking stability should be offered buy-outs soon after disaster.

Policy makers should not be surprised to see citizens clamoring paradoxically to return to the very situations and areas of environmental hazard that were damaged or destroyed by the disaster. Such victims are often in the worst possible position to accept radical land-use changes, even if it means increasing their future safety; they seek instead stability and normalcy, and that often means returning to live in risk. Generous buy-out programs, offered as soon as possible after the disaster and before citizens start rebuilding, may be the best way to intervene in this cycle.

- 11) Effective collective action is essential in all phases of the response to a sudden natural disaster:

--Key governmental agencies must be professionalized, modernized, and organized for maximizing community—government linkages, particularly those dealing with land use planning, land records administration and implementation of humanitarian and development programs.

--Homeowners, renters and markets need investments, planning signals and clear priorities from government-community alignments about priorities, and those investments should lead not follow individual consumer choices.

--Strengthening of community organizations to contribute, guide and monitor rebuilding is essential.

Leadership is needed to bring people together for hard, realistic conversations about the footprint of the city. The abject failure to reach a consensus on this

issue in New Orleans has been a serious impediment to rebuilding, causing a significant dilution of scant resources and creating little pockets -- or even individual -- "urban pioneers" who may ultimately find that their substantial rebuilding investment is simply not tenable.

-- Stronger linkages are required between the needs of coastal Louisiana and coastal Mississippi and the urban needs of the New Orleans metro area. Nationally, local organizations need to strengthen their alliances with other communities fighting similar battles for achieving social and economic justice. Internationally, groups have much to learn from each other and must build much better solidarity.

--Community groups must insist on rebuilding their own communities: how to rebuild, what local materials to use, and doing the rebuilding to learn new skills.

--Non governmental agencies and non-profits must be held accountable to the communities they serve.

--Rebuilding cultural networks and assuring their access to public space is essential.

-- The capacity of everyday people to come together and find solutions to problems at the neighborhood and community level should never be underestimated. Some badly damaged neighborhoods in greater New Orleans were self-organizing within six months of the hurricane. Other areas had no capacity for this organization and needed as much support as possible; but in all cases, if given the right information and tools, the people were immensely capable of making good decisions, setting clear priorities and charting their own futures. Government's job, more than anything else, is to facilitate these community conversations (including providing comprehensive, realistic information and the asking of hard questions) and then as much as possible, to apply the resources according the clear vision of the citizens.

12) After a prudent time following a sudden natural disaster such as Katrina, as the "restoration" phase is drawing to a close, an assessment should be done of the ways that local and regional governmental agencies and community organizations have dealt with the land issues uncovered by a sudden natural disaster like Katrina/Rita. This assessment should be subject to community and governmental discussion and critique, and recommendations adopted on how to apply the lessons learned and how to learn new ones.

13) Based on the participation of people in the assessment, a network of people should be created to provide rapid planning advice in the event of a future sudden natural disaster.

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Tools Annex

Tool 1: A Strategy for Addressing Property Rights Issues³²⁸

1. PROPERTY RIGHTS IN CRISIS

Property rights in land are critically important for the functioning of societies. Stability and certainty of property ownership and associated rights form the foundation of financial and political security. In many countries, however, property rights are in crisis. As rights to land become uncertain and insecure, society becomes polarized into the propertied and the property-less, and land resources spiral downward into degradation and waste. Laws related to private and public property are often vague, undemocratic, and biased. It is often difficult if not impossible to find basic information about how land and natural resources are used, and by whom. Land records are often incomplete and/or inaccurate, boundaries are often disputed, and neighbor often challenges neighbor for access to land, water, and other natural resources. Disadvantaged groups lack rights to property depriving them of the fundamental source of economic and political power in a democratic society. Neglect of the social agreement over property rights creates flash-points for tribal, ethnic, class and religious tensions to ignite. Governments are often unable to resolve these property disputes, much less address their root causes. For many people, these conflicts are not settled in courts but with violence that frequently expands internationally.

These issues, even where latent, create disincentives for investments and pressures for the more capable people to migrate in search of opportunities. When conflicts erupt they create violence which may lead to internal destabilization and sometimes civil war. These conflicts can spill over international borders and destabilize regions.

For nations struggling to return to stability, three of the key tasks in post-conflict reconstruction are land access, clarification of property rights, and the protection of the land and water resources.

2. PROPERTY RIGHTS ADMINISTRATION

Changing and conflicting definitions of property rights in nations in crisis form a fertile ground for the roots of terror and war to sprout into violence and destruction. Property rights issues are emerging in response to rapid population growth, urbanization, distorted expansion of market economies, feeble democratization, and environmental crises as water shortages and land degradation spiral out of control. Policies and programs to deal with the property rights in these conditions often focus on a single element in the puzzle, when only a broader strategy can be successful. Cases of successful administration of property rights somehow

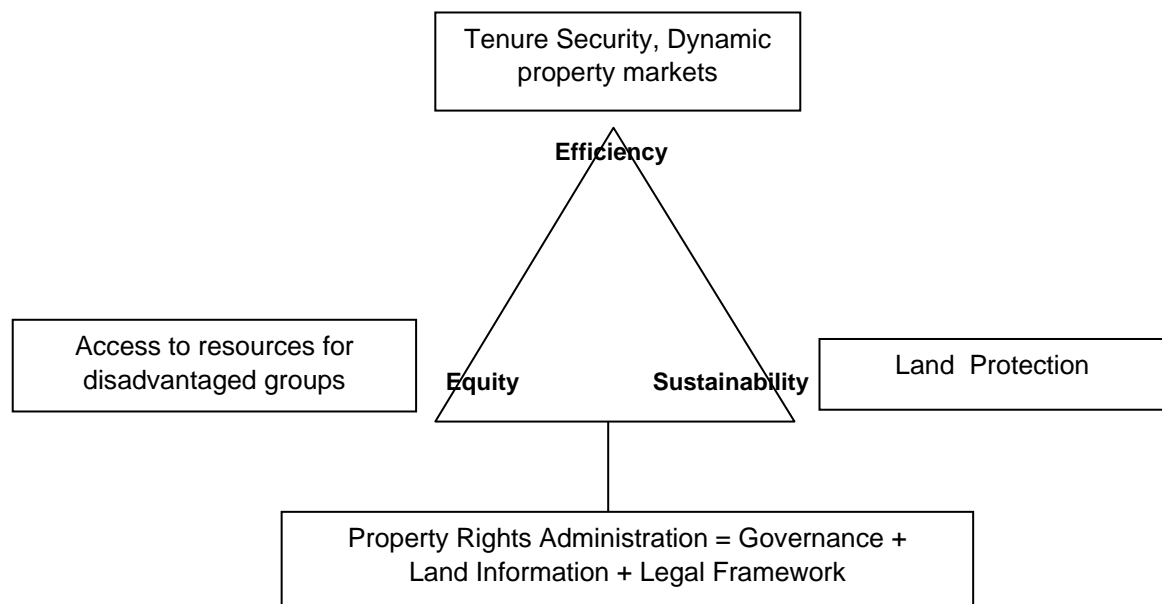
³²⁸ This paper is a summary of discussions at the Land Tenure Center, University of Wisconsin, as well as experiences of Terra Institute projects.

manage to balance the three competing imperatives of improving security by which land is held, protecting land and water resources, and providing access to land by the disadvantaged:

1. Where market oriented economies are weak or just emerging, one imperative of land administration is: make the exercise of land rights more secure, by improving formal titles and the tradability through such efforts as the massive privatization programs of the former socialist countries and the titling, registry-cadastre modernization, and land market programs of nearly all market-oriented countries. These efforts support the goal of economic efficiency of use of land and buildings and the linking of capital to these assets through mortgage markets. Political movements deriving from concerns with the environment and from the demands of disadvantaged frequently challenge these programs.
2. Where the land and water resources are degraded or are being dangerously degraded, a second land policy imperative is to improve the management and protection of land resources to assure access of future generations. Improving environmental conditions through restrictions on the use of the land resources, however, has often run into ethnic conflicts at the local level and the economic interests pressuring for more exploitative uses of the land. The fundamental task is to help populations work out agreements over natural resource exploitation which are sustainable through a mixture of community resource management, alternative income sources, enforcement mechanisms and conflict resolution techniques. Such programs often restrict the rights of land owners, limiting the scope of their “ownership”. Such programs also often restrict the access of disadvantaged and privileged groups to land and water resources.
3. Where the gap between rich and poor, or between one ethnic group and another, or between those benefiting from patriarchal social and legal structures and those desiring gender equity, the third imperative is to improve the access to land by disadvantaged groups (the poor, women in some regions, ethnic groups, refugees). Agrarian reforms and rural land banks have been used to shift the management of land from “latifundistas” to peasant farmers. Affordable housing programs are directed toward the poor. Women’s rights in land are secured through education and legal programs. Such programs tend to support the goal of social equity in land management. However, this trend has encountered strong resistance from the ethnic and economic groups that could be obliged to share some of their privileges with the disadvantaged groups to be favored. Also, where political opposition to asset redistribution is strong, opening up forests and other fragile eco-systems for human settlement in order to provide access to land for the landless is very tempting, and in conflict with conservation programs.

Balancing these imperatives is mediated by the capacities of local and central government and civil society for defining and resolving property rights issues, the availability of information about land use and property rights and the legal framework (formal and informal) that brings some predictability into the ways people react to the implementation of the often competing property rights imperatives. See Figure 5.

Figure 5: Triangle of imperatives in property rights administration



This trio of policy imperatives revolving around property rights creates compelling new challenges for land administration institutions at the national and local levels to mediate among the diverse interests in land. The nature of the challenge varies from place to place.

The foundation of property rights administration is comprised of three elements:

- 1) the capacity to govern, to incorporate diverse economic and political interests in dialogue and design of programs to resolve priority property rights issues,
- 2) the availability of suitable information about the capabilities and use land and the holders of rights to the land, and
- 3) the legal framework, the rules which the society devises to handle the competing property rights imperatives, including formal expression of these rules in laws and regulations, as well as the customs which people devise about the exercise of property rights and the responsibilities of the holders of these rights.

3. Illustrative Set of Objectives and Activities for Improving Property Rights Administration

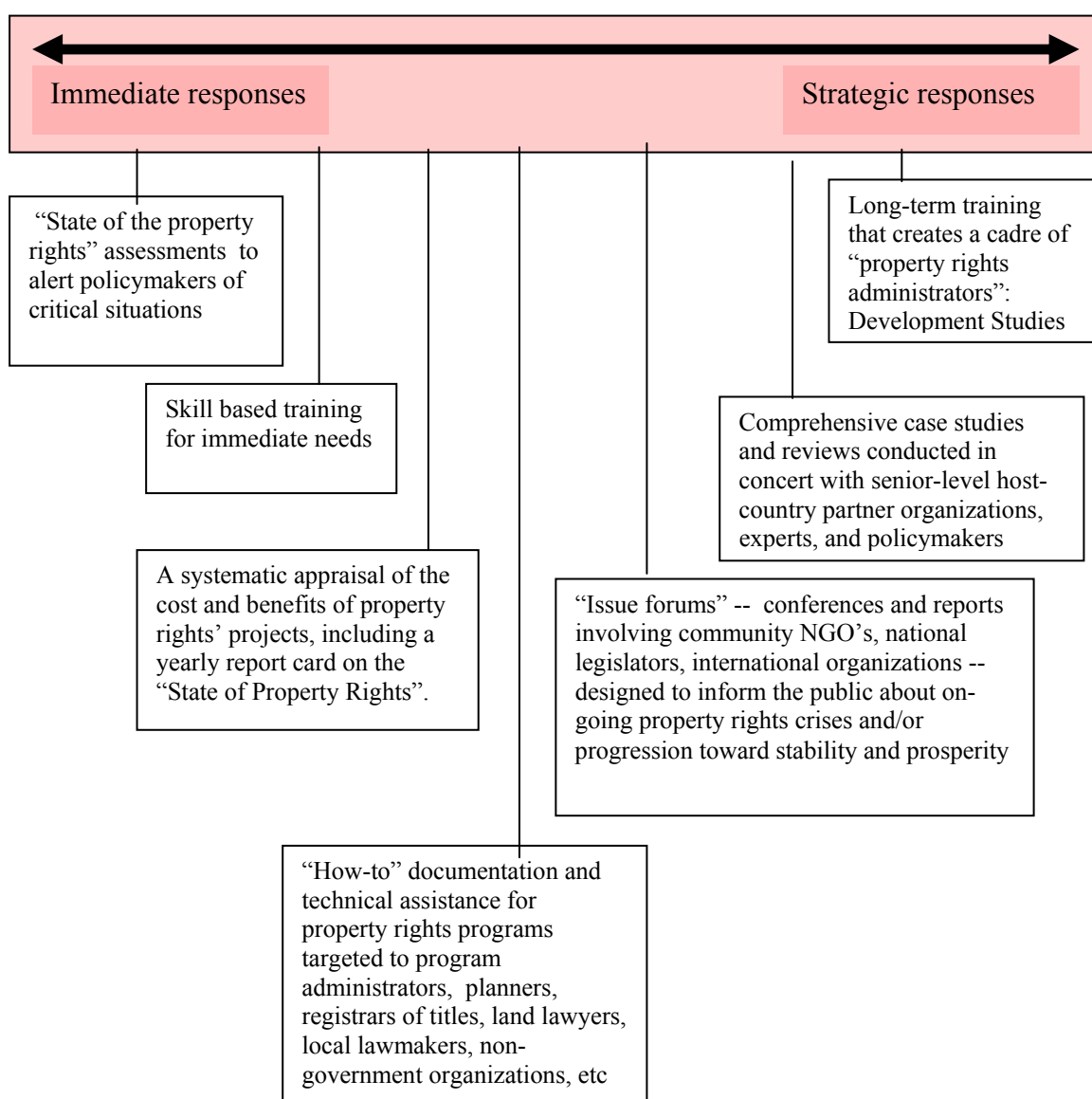
Allocating millions of dollars of emergency aid is not the solution for the property rights crisis. Thoughtful, comprehensive and well adapted programs to local conditions are needed that contain both immediate response and long term solutions so that nations and people in crisis become secure and prosperous.

The broad question is: how can countries effectively re-orient property rights administration institutions to achieve broad goals of economic development, social equity and environmentally sustainable development under the pressure of competing agendas and policy imperatives to property rights in land?

There is no single formula to answer this question. Countries engage in programs to deal with the property rights crisis in a variety of ways, with a variety of objectives, such as:

- ▶ clear and formalized land rights;
- ▶ robust and more marketable land tenure instruments;
- ▶ practical and enforceable regulations on land use land rights;
- ▶ modern, affordable and accessible public land administration services, especially the legal recording of rights to land;
- ▶ affordable access by the disadvantaged to land for housing and food production;
- ▶ reasonable and achievable building regulations for low-income housing;
- ▶ protection of fragile environments.

People have to identify the roots of the property rights crisis in their countries, and then devise solutions and implement them. People have to have the capacity for such actions. The building blocks of a capacity building program for improving property rights administration can include:



A stable balancing of property right's imperatives in particular places at specific times that leads to prosperity is fundamental to a vibrant, just and sustainable global economic and political system. Continual strengthening of the capacity for this successful balancing

competing property rights imperatives in particular places and times is an investment of crucial importance.

Tool 2: Forms and methods to assess damage to housing

Methodology for Assessing Housing Unit Damage due to Katrina, Rita, and Wilma: February 12, 2006

From: CURRENT HOUSING UNIT DAMAGE ESTIMATES HURRICANES KATRINA, RITA, AND WILMA, February 12, 2006

Data from FEMA Individual Assistance Registrants and Small Business Administration Disaster Loan Applications. Analysis by the U.S. Department of Housing and Urban Development's Office of Policy Development and Research

See the original paper for the data tables.

The estimates of housing unit damage in these tables are largely based on direct inspection of housing units by FEMA to determine eligibility for FEMA housing assistance. These inspections were conducted between the time of each of the three Hurricanes and February 12, 2006. Only occupants of housing units are eligible for FEMA housing assistance. As such, these data do not reflect other types of damaged housing units, such as pre-disaster vacant units and summer or second homes.

Because it is possible for multiple individuals to register for FEMA housing assistance for the same housing unit, these data reflect a complicated set of procedures to identify individual housing units. For example, if a husband and wife both registered, or if an owner and their boarder both registered for the housing unit, we only counted the housing unit once.

Definitions

Level of Damage

For most properties, FEMA contract inspectors make a direct assessment of housing unit damage. For some of the units impacted by Hurricane Katrina, FEMA did not do direct inspections, but made some assumed level of damage based on the flood depth of a housing unit in some portions of Orleans, St. Bernard, and Jefferson Parishes and to a much lesser extent in some of the flood inundated areas of Mississippi.

FEMA inspects properties to determine eligibility for real property and personal property assistance. FEMA real property assistance is determined as the cost to make repairs to make the home habitable. If a home is less than 50 percent damaged, FEMA will provide up to \$5,200 in repair assistance for damage not covered by insurance. If damage is greater than 50 percent FEMA will provide \$10,500 in repair assistance for damage not covered by insurance. FEMA will make similar assessments for personal property damage.

Because FEMA only provides reimbursement at three levels, less than \$5,200, \$5,200, and \$10,500, this analysis categorizes the inspection results into three categories:

Minor Damage:

- Property inspection finds damage less than \$5,200; or

- If no real property inspection, personal property damage of less than \$5,195.76; or
- If no direct inspection, remote sensing finds water depth of 6 inches to 1 foot (for portions of Orleans, St. Bernard, and Jefferson Parish); or

Major Damage:

- Property inspection finds damage greater than or equal to \$5,200 and less than \$30,000; or
- If real property inspection used the inspection default of \$5,200; or
- If no real property inspection, personal property damage of greater than or equal to \$5,195.76 but less than \$30,000; or
- If no real property inspection and personal property used the inspection default of \$5,195.76; or
- If no direct inspection, remote sensing finds water depth of 1 foot to 2 feet (for portions of Orleans, St. Bernard, and Jefferson Parish); or

Severe Damage:

- Property inspection finds damage greater than or equal to \$30,000; or
- If real property inspection used the inspection default of \$10,500; or
- If no real property inspection, personal property damage of greater than or equal to \$30,000; or
- If no real property inspection and personal property used the inspection default of \$10,391.51; or
- If no direct inspection, remote sensing finds water depth of 2 feet or greater (for portions of Orleans, St. Bernard, and Jefferson Parish); or

Small Business Administration (SBA) Median Verified Loss

A subset of FEMA registrants with real property damage applied to the Small Business Administration for a loan to assist with repairing their property. If the applicant meets some income and credit thresholds, SBA will have a contract inspector make a detailed assessment of the real property loss due to the disaster (referred to as “verified loss”). This assessment is generally more precise than the FEMA inspections.

I

n the tables, SBA Median Verified Loss refers to the median “verified loss” estimate by the SBA inspectors for units assessed by the FEMA inspector to have either “major damage” or “severe damage”. This SBA inspection helps provide context as to what “major” and “severe” damage mean in the local context. That is, “severe damage” due to wind may be different than “severe damage” due to a storm surge. The SBA data extract was from early January 2006.

Damage Inspections

The minor, major, severe designation is from the FEMA inspection protocols and was somewhat subjective. FEMA inspectors were inspecting for how much it would cost to get a person back into their home, not bring the home to code. That is, it is not how much it would cost to replace the roof, but rather how much would it cost to put a tarp on it. To that extent, FEMA would pay up to \$5,200 to get someone back into their house. If more than \$5,200 in damage, FEMA would simply pay \$5,200, unless the inspector thought the home was more than 50% damaged, and in that case the family would receive \$10,500. For analysis purposes, these dollar ELIGIBILITY thresholds were used to determine minor, major and severe damage. Less than \$5,200 = minor; \$5,200 = major; \$10,500 = severe. It is worth noting that FEMA has its own methodology for determining minor, major, and severe that are not tied to the dollar amounts but instead refer to the degree of specific types of damage (such as number of square feet of damaged roofing), but the HUD analysis opted not to use the FEMA designations because it was not available for every unit while the dollar eligibility was.

In respect to the SBA inspections. SBA inspections are intended to estimate how much it should cost to fully repair the home (to code). As such, they are a more complete inspection. SBA inspections, however, are only done for people who (i) apply for an SBA home disaster loan AND (ii) meet some basic eligibility requirements in respect to ability to pay the loan (income and credit score). As such,

not all homes are inspected by SBA. However, since SBA is a more complete inspection with a more detailed dollar estimate of actual repair, to the extent that homes have both a FEMA and SBA inspection, it is possible to get a sense of how much “major” damage actually means in terms of dollar repair within a small geography (census block).

Tenure

Owner-Occupied Housing Units & Renter-Occupied Housing Units. When individuals registered for FEMA assistance, they were asked if they were a renter or an owner. In approximately 10 percent of cases, there was no tenure indicated. These tables assume those individuals not indicating tenure were owner-occupants.

Type of Damage

These tables break out damage into two categories, homes with any flood damage, and homes with no flood damage. If a home had flood damage as well as other types of damage, it is categorized as having flood damage. Most homes without flood damage had damage related to wind. Flood damage was determined if FEMA inspectors indicated damage was due to flooding or if the damage estimate was from remote sensing (which based damage on flood depth).

Flood Plain Status

Each housing unit was geo-coded to determine if it was in or outside of a FEMA 100-year flood zone, as determined using Q3 flood maps with flood zone designations of “A” or “V”.

Insurance Status

Insurance status was determined by FEMA data if the registrant indicated having hazard or flood insurance. For a very few cases, there was no information on insurance status and “no insurance” was assumed.

Structure Type

Structure type is determined using United State Postal Service Delivery Point Bar Code (DBPC).

If DPBC equals the last two numbers of the address, then the unit was categorized as singlefamily (one-unit). Generally, units in row houses were considered single-family. If the unit was not single-family, then it was assumed to be in a multifamily structure (more than one unit at an address). The size of the multifamily structure was determined by adding all registrant housing units from the same address. In some cases, trailer parks were also determined to be “multifamily”.

Double Counting

There is risk for double counting in these data. A number of procedures were implemented to reduce this double counting but some double counting may remain. Those procedures were as follows:

- Only include records with a FEMA inspection. If remote sensing inspection, only include cases where a grant was provided or the FEMA data indicate that the owner or renter had flood insurance.
- If there were duplicate registrant numbers, then the record with highest FEMA damage rating is retained
- If there were duplicate records for a single-family property, then the record with highest FEMA damage rating was retained. If one registrant was owner and other was renter, the owner was retained. Single-family records were considered to be duplicate for the same property if USPS zip9 plus DPBC were the same.
- If there were duplicate records for a multifamily unit, then the record with the highest

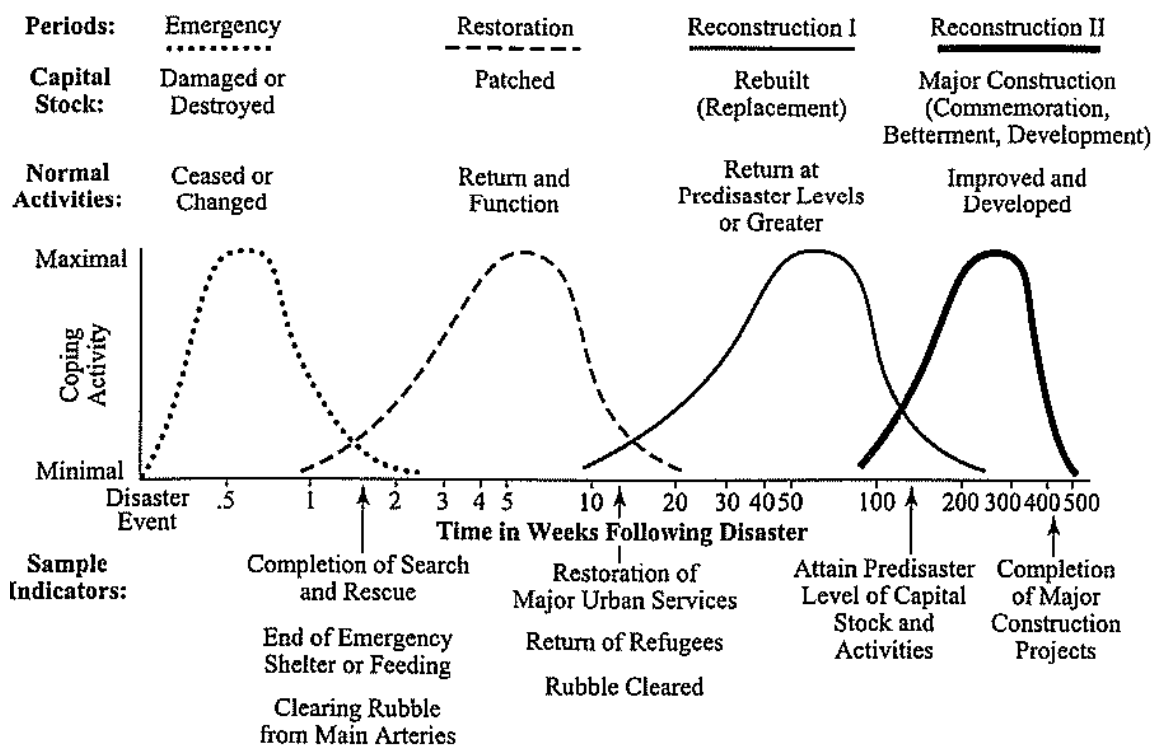
damage rating was retained. Multifamily records were considered to be duplicate if the last name and address were the same.

Undercounting

There is also a risk for undercounting. These data do not count vacant homes or second homes. They also will not include properties that have not yet had a FEMA inspection, although FEMA reports that most inspections were completed at the time of the February 12, 2006 extract used for this analysis. Finally, if an individual did not register with FEMA, their damage would not be counted.

Tool 3: A Model of Disaster Recovery

Redrawn by Lawrence Vale and Thomas Campanella in *The Resilient City: How Modern Cities Recover from Disasters*, pp. 337-338, Oxford University Press, 2005, from J. Eugene Hass et. al. (eds) *Reconstruction Following Disaster* Cambridge, Mass, MIT Press, 1977.



Tool 4: Recommendations for rebuilding public housing

Principles for Redevelopment of Public Housing Damaged by Hurricanes Katrina and Rita

The need for rental housing affordable to the lowest income people is acute in the communities affected by Hurricanes Katrina and Rita. *HUD and local public housing authorities (PHA) have an obligation to repair and reopen as much public housing as possible as soon as possible.*

Some public housing in the Gulf Coast affected areas has been reoccupied by its residents or the residents never evacuated. Given the acute shortage of rental housing that is affordable to the lowest income people in the Gulf Coast affected areas, *HUD should declare a moratorium on any demolition, disposition, or redevelopment of public housing that is currently occupied in the Gulf Coast affected areas for the foreseeable future.*

However, for those *public housing buildings that are currently closed and where it is independently determined that partial or complete redevelopment is required* to assure the long term sustainability of housing affordable to the people who lived there prior to evacuation, the following principles should apply.

1. No redevelopment of public housing damaged by Hurricanes Katrina and Rita will result in a net loss of the number of physical publicly assisted rental units, including accessible units, that were in the jurisdiction prior to Katrina or Rita nor will any redevelopment result in a net loss of any rental housing units that were in the jurisdiction prior to Katrina and Rita that are affordable and targeted to extremely low income households. New development will not decrease the number of rental units with three or four bedrooms needed by large families.
2. Redevelopment must take place with all deliberate speed, so that residents can return home and reoccupy units as soon as possible.
3. All residents of public housing in good standing at the time of evacuation must have the absolute right to return to a publicly assisted housing unit that is at least comparable to, and preferably an improvement of, the unit from which the household evacuated.
4. If the exact unit from which the household evacuated is not habitable, the household must be offered the following choices:
 - for a household living outside of the jurisdiction where its public housing unit is located:
 - the household can continue to occupy the unit it is currently in with guaranteed continued Disaster Voucher assistance (DVP) until such time as its new unit in its home jurisdiction is ready for occupancy. If the PHA in the jurisdiction where the household is now living is not participating in DVP, HUD shall provide an alternative means by which the household can participate in DVP. HUD shall obtain an extension of the 18 month limitation on use of DVP assistance.
 - the household can return to its home jurisdiction and reside in another rental unit that the PHA will provide (either public housing or private housing rented with continued Disaster Voucher assistance) until such time as its new unit is ready for occupancy. HUD shall obtain an extension of the 18 month limitation on use of DVP assistance.
 - the household can opt to receive a portable Housing Choice Voucher (HCV) and give up its lease on its public housing unit. If at a later point, a household who has given up its public housing lease returns to its original jurisdiction and wishes to live

in public housing, the household will be given a preference on the public housing waiting list.

- for a household living in the jurisdiction where its public housing unit is located:
 - the household can continue to occupy the unit it is currently in with guaranteed continued Disaster Voucher assistance until such time as its new unit in its home jurisdiction is ready for occupancy. HUD shall obtain an extension of the 18 month limitation on use of DVP assistance.
 - the household can opt to receive a portable Housing Choice Voucher and give up its lease on its public housing unit. If at a later point, a household who has given up its public housing lease returns to its original jurisdiction and wishes to live in public housing, the household will be given a preference on the public housing waiting list.
5. Every displaced public housing head of household must be informed of his or her housing choices now and provided with appropriate counseling and other support services needed to make the best possible choice for his or her household. If the household has reconfigured, the current head of household must be provided with the appropriate counseling.
 6. Every displaced adult public housing resident, wherever he or she may be, whose household makes the choice to return to redeveloped public housing must be offered a genuine opportunity to be an active participant in the redevelopment planning including the design of the new homes and projects.
 7. When a household gives up a lease, thereby creating a public housing vacancy, the PHA must first offer the unit to another displaced public housing household and then go its waiting list if there are no other displaced public housing households who are interested. The offer of a unit shall be on the same conditions as outlined in #4 above. If the PHA exhausts all names of displaced public housing households who want to return and of applicants on its waiting list and still has vacancies, it must open up a new round of applications and offer eligible applicants the same choices outlined in #4 above until all vacancies are filled.
 8. HUD must provide or assure sufficient funding to fully implement these requirements.
 9. HUD must provide all public housing households displaced by Hurricanes Katrina and Rita with timely and complete information about these and other policies and about the status of public housing redevelopment in the jurisdictions from which they evacuated.

October 11, 2006

Catholic Charities USA

Consortium for Citizens with Disabilities Housing Task Force

ENPHRONT (Everywhere Now Public Housing Residents Organizing Nationally Together)

Enterprise Community Partners

Florida Legal Services
From the Lake to the River: The New Orleans Coalition for Legal Aid and Disaster Relief
Lawyers Committee for Civil Rights Under Law
National AIDS Housing Coalition
National Alliance to End Homelessness
National Community Reinvestment Coalition
National Fair Housing Alliance
National Housing Conference
National Housing Law Project
National Housing Trust
National Law Center on Homelessness and Poverty
National Low Income Housing Coalition
New Orleans Legal Assistance
New Orleans Neighborhood Development Collaborative
Oxfam America
PolicyLink
Providence Community Housing, New Orleans
Technical Assistance Collaborative
Texas Low Income Housing Information Service
U.S. Jesuit Conference

Tool 5: USAID policy for displaced persons

www.usaid.gov/policy/ads/200/200mbc.pdf

Tool 6: Unified New Orleans Plan (UNOP)--Citizen Participation

The following text is taken from Section 4, pages 14 and 15 of the Citywide Strategic Recovery and Rebuilding Plan – Final Draft, dated January 28, 2007.

The citizens of New Orleans have invested their time, their hearts and their vision in creating a plan for their neighborhoods and their city. In return, the City must now and forever invest in its citizens as shareholders in the Plan and as stakeholders in the City.

New Orleans now has an educated army of “citizen-planners” who have found their voices and worked tirelessly over the many months of planning. They can provide a meaningful voice in implementing their plan and guiding all future government policy-setting and decision-making. Neighborhood residents need to be involved as their plans go forward: to ensure that their spending priorities are followed, that their neighborhoods revitalize as they envision, that their city becomes a vibrant home with opportunity for all.

With development comes opportunity; with development also comes social and civic responsibilities. Going forward, neighborhoods, developers and the City must act as partners in determining the site, scope and nature of major development projects. All such projects should include community benefit agreements for the common good of the community and the City.

A formal process for citizen engagement must be developed and implemented to facilitate neighborhood recovery and future development, and to ensure that citizens continue to have a voice in the City's future. Cities as diverse as Birmingham, New York, Atlanta and Portland have formal citizen participation programs that involve residents in formal decision-making development and decision-making; such a program must be established in New Orleans, with a legal mandate and a formal role in making decisions on land use, zoning and quality of life issues that impact citizens and neighborhoods. Linkages to both the City Council and City Planning Commission need to be explicit. Several organizational models exist in New Orleans and many new proposals were developed as part of the District Plans. All these need to be considered in developing the ultimate structure that links neighborhood community groups with City recovery governance. Citizens must be involved in the final design and implementation of a citizen participation program and it is recommended that a steering committee be formed to assist with the effort. It should be comprised of the Mayor's Office, City Council and CPC leaders as well as representatives of community groups and expert advisors. The City should also provide training and technical assistance to nascent community organizations (in particular the Community Development Corporations) emerging from the recovery planning processes. This might be accomplished through partnerships with national organizations, such as the Enterprise Foundation, and universities.

Also, as part of the recovery, regular, up-to-date information about the status of recovery must be made publicly available in order for residents, businesses, and investors to make individual and collective judgments about the recovery process. Additionally, formal opportunities must be created for the citizens of New Orleans to come together on a regular basis to review the progress of their City's recovery and shift rebuilding priorities. New Orleanians who have not been able to move back to the City must have an opportunity to remain involved and have a continuing voice in rebuilding.

Tool 7: Draft Model for Citizen Participation Program

This draft model was assembled by Committee for a Better New Orleans/Metropolitan Area Committee (CBNO/MAC) in October 2004. The beginnings of the model came from a full year of national research, including site visits to Portland (OR), Washington (DC), Chicago, and Birmingham (AL), as well as attendance at numerous public participation conferences. Following this research, CBNO/MAC conducted a series of public meetings in March and April 2004; the extensive citizen input acquired at these meetings is the primary basis for this model.

Mission Statement

The mission of the Citizen Participation Program (CPP) is to enable citizens to have a greater say in city government decision-making and priority setting, and to give government officials an effective means for communicating with the people. The CPP will provide an additional tool for citizens and city officials to communicate with each other and work together. Ultimately, the CPP is a vehicle for each individual citizen to have a direct impact on the policies and actions of city government.

Structure

The CPP will have a three-tiered structure, with Neighborhood Councils, Community Coalitions comprised of representatives from the Neighborhood Councils, and a citywide Citizen's Voice Council comprised of representatives from each Community Coalition.

Neighborhood Councils

Existing neighborhood associations will form the basis of the Neighborhood Council tier. In areas where no viable neighborhood association presently exists, the two preferred options are to expand existing neighborhood associations to include such areas, or to establish new Neighborhood Councils. In areas where association boundaries overlap, an attempt will be made to negotiate new, non-overlapping boundaries. In a few places, very small adjacent neighborhood associations will be asked to consider merging. Ultimately, a full city map that indicates the accepted boundaries for all the Neighborhood Councils will be prepared and kept updated.

Neighborhood Councils will be nonprofit organizations, with monthly meetings, and will establish their own bylaws, although they must conform with a few guidelines that will be standard throughout the CPP (see Membership below). They will elect their own officers, board members and representatives to the Community Coalitions. Officers and board members will be required to attend a CPP training session. Officers and board members will be held accountable for their Neighborhood Councils in the following areas:

- Neighborhood Councils must follow their own bylaws.
- Neighborhood Councils must follow CPP guidelines.
- Neighborhood Councils shall be subject to normal public meeting laws.
- Neighborhood Councils must demonstrate legitimate neighborhood participation in meetings and decision-making.

- Neighborhood Councils must demonstrate that they have taken significant outreach efforts in order to ensure that they are legitimately representative of a neighborhood, as reflected in their membership.

Neighborhood Councils will receive logistical and other support from staff at the Community Coalition level. They will not receive regular funding through the CPP, although some funds may be available through the Community Coalitions (see Funding).

Community Coalitions

Approximately seven to ten Community Coalitions will be established by general region of the city (i.e., Lakeview, Lower Ninth, Gentilly, etc.). Every Neighborhood Council within the region of a particular Community Coalition will send one representative to the Community Coalition. Uniform bylaws will be set for all the Community Coalitions, which will also be nonprofit organizations, and they will elect their own officers and representatives to the citywide Citizen's Voice Council. They will be able to set up committees on issues as they see fit. They will meet every other month.

The Community Coalitions will be the chief conduit for information to and from city government and the CPP. Therefore, a major role of the Community Coalition will be to feed information, accurately and promptly, to the Neighborhood Councils, and conversely, to gather input from the Neighborhood Councils to convey to city government. In addition, when the city wishes or is required to hold public input meetings, city departments and agencies will partner with the Community Coalitions to organize, publicize and conduct such meetings. Community Coalitions will also serve as arbitrators among Neighborhood Councils in their area, and should be the environment for resolving any disputes between or within Neighborhood Councils.

The Community Coalitions will have a small staff, including an Executive Director, who will be hired by each Coalition. The Executive Director will conduct the meetings, although he/she will not have voting rights. Staff members will be required to complete specific CPP training. Staff qualifications will include conflict resolution, facilitation skills, organizational skills, communications skills, and experience in community organizations and activism. Staff responsibilities will include supporting the Neighborhood Councils within their area, maintaining communication with city government, and maintaining a high level of organization within the CPP structure. Staff members will frequently attend Neighborhood Council meetings, and do presentations on various issues and questions facing the neighborhoods; they will also help arrange for city officials to speak at meetings. They will work with the Neighborhood Councils on outreach, communications, organizational issues, programs, and some training and fundraising. Staff will also compile an annual report for each Community Coalition.

Citizen's Voice Council

This body shall consist of two representatives from each Community Coalition. It will meet at least once per year, with provisions for calling additional meetings. The annual meeting will be attended by the Mayor and City Council, along with other top officials such as department heads.

The Citizen's Voice Council will be a nonprofit organization. Its bylaws will be established through the CPP process. It will elect its own officers. The overall Director of the CPP will

be responsible for organizational matters related to the Citizen's Voice Council (see Administration below).

The Citizen's Voice Council will replace the Master Plan Advisory Council.

Membership

Participation in the CPP is free to all qualified citizens aged 16 or older. Neighborhood Councils may ask for voluntary membership dues, but are not be allowed to charge mandatory dues.

Membership in the Neighborhood Councils shall be available to:

- Residents of the neighborhood
- Property owners in the neighborhood
- Owners of businesses in the neighborhood
- People who work in the neighborhood; however, they will be non-voting members
- Representatives from institutions in the neighborhood, such as schools, churches, etc.; however, they will be non-voting members

Individuals will have to provide some acceptable proof of meeting one or more of the above membership requirements. All members of a Neighborhood Council, except as noted above, will have full voting rights. A uniform document of participants' rights and responsibilities will be prepared for use throughout the CPP.

Funding

Funding for the CPP will come from a variety of sources; however, the primary source will be the City of New Orleans. The funds will come from a dedicated source; possible CPP funding sources include a property tax millage or an annual assessment on Sewerage and Water Board bills. The funding source must not be a part of the annual budget process and therefore subject to review and renewal each fiscal year.

Funding through the CPP will be primarily directed to the Community Coalitions. They in turn may use funds to support the Neighborhood Councils, for programs, outreach, communications, etc. They may also offer certain "grants" for special projects to the Neighborhood Councils. Community Coalitions must prepare annual budgets, which will be approved by the Coalition members and the CPP Executive Administrator.

As nonprofit organizations, both the Neighborhood Councils and the Community Coalitions are free to seek grants. Corporations, foundations, the government, and individuals may be solicited for funding; however, grants to any entity within the CPP must be free of any potential conflict with the core mission of the CPP. Community Coalitions are allowed to bid on certain government contracts that are congruent with their work; examples might include citizen trainings, communications projects, citizen organization projects, etc.

In addition, the overall CPP Administrator may seek grants and other funding for the Program, again with the restriction that any such funding must be free of potential conflicts.

Administration

The CPP will be overseen by a full-time Executive Administrator. This person, and his/her office, shall be a distinct department within New Orleans city government. The Council of University Presidents will nominate three individuals for this position; the Mayor will then select one nominee, and the choice will be confirmed by the City Council, by a simple majority vote. In order to remove the Executive Administrator from his/her post, the Mayor will have to submit a recommendation to terminate to the City Council, which must pass the recommendation with a minimum of five votes.

The Executive Administrator and CPP office will be responsible for overall administration of the CPP, including matters such as insurance, legislative issues, development of staff and volunteer training programs, overall organization and operations. The Executive Directors of the Community Coalitions will meet regularly with the Executive Administrator. Community Coalitions may also request meetings with the Executive Administrator at any time; such requests shall be honored promptly.

Neighborhood Councils will have minimal direct interaction with the Executive Administrator and CPP office, excepting that a procedure shall be developed for addressing grievances between a Neighborhood Council and its Community Coalition.

Overall, the CPP must be kept as independent from city government and city politics as possible, while maintaining a strong and formal link to government policy-setting and operations.

Mandate/Legal Status

The Citizen Participation Program shall be codified in a legal document, and shall be formally adopted as part of the New Orleans City Charter.

All tiers of the CPP have the right to address any issues facing the city, as long as there is some clear tie to their geographic area. The primary focus, especially at the Neighborhood Council, will be livability and quality of life issues.

Specifically, all zoning and land use issues, including all development or redevelopment plans, that impact a neighborhood shall be brought to the Neighborhood Council(s) impacted by such issues. This shall include land uses permitted by zoning, especially if they involve new construction. A mechanism will be constructed through which such issues are brought to the Neighborhood Councils for formal review, with established routing and time frames. Information presented to the Neighborhood Councils shall be warranted to be comprehensive and accurate; violations of this policy shall be cause for overturning any future permits and approvals. This review by the Neighborhood Councils shall occur before any such issues or plans are brought before the City Planning Commission or City Council, and any permits are issued. As part of this mechanism, thorough and valid notification processes shall be developed. The developer or city agency pursuing the issue or development shall bear full responsibility for the notification process; and proof that notification was made, and that the Neighborhood Council review took place (including official meeting minutes), or that the

Neighborhood Council declined to make such review, shall be required before any permits may be issued or approvals granted.

Decisions brought forth from the Neighborhood Councils shall, at every further step of the formal review process (i.e., City Planning Commission, Safety and Permits, City Council), be considered “rebuttable decisions”, meaning that if a city government entity acts in opposition to a decision of the Neighborhood Council, the rationale for such decision shall be presented in writing to the Neighborhood Council(s) from which the original decision emanated. Furthermore, in such cases, a thirty-day period shall be established before such decisions can go into effect, during which time the Neighborhood Councils shall have the right to pursue any other avenue of recourse. To facilitate this, a formal appeal process should be established and codified in the CPP legislation.

Similarly, any city department or agency contemplating major policy moves or activities shall be required to notify the Community Coalition(s) for the geographic areas impacted by their actions, which will often require notification of all the Community Coalitions; they in turn will notify the Neighborhood Councils, who will discuss and, if so desired, vote on any recommendation. Such notice shall be provided no less than 45 days prior to making a final decision on the proposed action (to accommodate the monthly meeting schedule of the Neighborhood Councils). Neighborhood Councils will have the right to respond in writing to any departmental/agency proposals. If the proposed action is taken over the objections of a Neighborhood Council or Councils, the department or agency shall be required to provide a written rationale for why it took the action in the face of the objection, in the process countering the objection.

Additionally, the Neighborhood Councils and Community Coalitions shall have the right to raise issues of concern to them and have their concerns brought before the appropriate city government entities. Among the specific issues that the CPP may address include:

- Transportation/parking
- Access
- Neighborhood character
- Public safety
- Crime
- Trash
- Zoning
- Economic impact of a proposal
- Environmental issues
- Hazardous materials
- Neighborhood infrastructure
- Education
- The direction and use of tax revenues, especially those generated within a neighborhood
- City budget priorities

All city department heads shall be required to document any communications sent to and received from the CPP, and their responses to CPP input and decisions. Such documentation will be presented as part of the annual departmental budget process.

In addition, approval for all future elements of the Master Plan, and mandatory reviews of the individual elements of the Master Plan, shall go through the Community Coalitions of the CPP, and all official public input meetings for all city government departments and agencies shall be organized in partnership with the Community Coalitions. Review of the city's Five-Year Plan shall likewise be conducted through the CPP.

The CPP shall conduct an annual needs and resources audit. Every Neighborhood Council will participate in this audit, which will be directed by the Executive Administrator and CPP office. The results of this audit will be presented to the Mayor and City Council in due time for consideration in the city's annual budgetary process. As part of this process, the CPP should develop a "community scorecard" for use by the Neighborhood Councils and Community Coalitions. Also, individual Neighborhood Councils will be encouraged to develop neighborhood plans, and shall be supported by the CPP and other relevant government agencies in any legitimate effort to do so.

Outreach, Communications & Training

Ongoing efforts to reach every possible citizen in New Orleans must be at the core of the CPP. The effort must be broad-based, and must employ every possible means, traditional and non-traditional. Widespread and diverse participation in the CPP must be a top priority.

Outreach must include scheduling Neighborhood Council meetings at the most convenient possible times; providing transportation or transportation vouchers to the meetings; providing day care and/or homework assistance at the meetings; and making the meetings themselves as valuable as possible, including auxiliary programs ranging from informational (i.e., public health, Crimestoppers, adult education, etc.) to entertainment such as movies and music. Incentives to get people to attend meetings, such as providing meals, should be considered.

Communication about the CPP, its meetings and its projects should be widespread, targeted and distributed through every available means. Among the methods used to communicate about the CPP should be cable access television, newsletters, flyers, door-to-door volunteer efforts (under a block captain structure), telephone trees, e-mail, and church bulletins and other church communications. A CPP hotline phone number should be established and published widely. Participation in meetings and programs should always be tracked, and participants should be asked for their input on communications, programs, scheduling, etc.

Newsletters, both printed and electronic, should be prepared and distributed to all CPP participants on a quarterly basis. These would be the responsibility of the Community Coalitions, and should include individual sections for each Neighborhood Council within the Community Coalition's area. Content would include reports on meetings and activities, as well as information on important issues. Advertising could be solicited to help pay for the costs of the newsletters. The newsletters might also be able to serve as official communications organs for the city, which would then share the costs of producing and disbursing them.

Training of CPP participants will be essential to the Program's success. All officers and board members are mandated to go through a specific training. In addition, a variety of trainings should be offered to all participants, on topics such as effective participation in meetings, conflict resolution, the workings of city government, available government

programs, etc. In addition, background information on all issues brought before the CPP should be provided.

As part of the training materials (which should be prepared, at least initially, in the central CPP office), a “how-to” guide should be prepared for the Neighborhood Councils. These guides would include all official CPP guidelines; the legal mandate of the CPP; information on how to run meetings and otherwise operate the Neighborhood Councils; information on how to work with city government; etc.

Tool 8: Deed for Transfer of Property on Death of the Owner

Mechanisms to transfer personal property immediately upon death are well established in the laws of US States. Owners of life insurance policies, pension accounts, bank accounts, and securities can designate one or more beneficiaries to receive the asset(s) upon the owner’s death without the need for probate.

It used to be true that the will was the only mechanism for specifying beneficiaries to receive interests in real or personal property at the owner’s death.¹ Wills require the burdensome formality of attestation and must be probated, a process requiring expense and often significant delay. Eight U.S. states have extended the benefits of TOD registration to land. In these states, an owner of land may, in a deed, designate a beneficiary to receive the land immediately upon the owner’s death. The Law Revision Commission in a ninth state, California, has begun a study of whether to authorize such beneficiary deeds.

A study of a proposal to the National Conference of Commissioners for Uniform State Laws to prepare model legislation for making this idea functional and uniform across all states can be found at:

http://www.nccusl.org/nccusl/Scope&Program/TODRealProp_ScopeRqst_051906.pdf

Tool 9: Legal Assistance

1. Loyola Law School Katrina Clinic

To assist families negatively affected by Katrina, Loyola Law School formed the Katrina Clinic. That clinic provides free legal assistance to families which request it, and also represents families in their interactions with agencies involved in the emergency and restoration phases of hurricane recovery.

For example, the Clinic handled hundreds of requests for assistance from Jefferson Parish residents who did not understand FEMA trailer removal procedures, how to request extensions, and how to appeal the Parish’s denial of their request for extension. The Katrina clinic continues to this day to work with residents who were displaced by the Parish’s FEMA trailer removal program who are now homeless.

In response to the Katrina Clinic's complaint letters, the Parish offered more explanation about the extension process, the details of which had not been included in information given to applicants.

2. New Orleans Legal Assistance Corporation (NOLAC)

New Orleans Legal Assistance Corporation expanded its services after Katrina with volunteer attorneys from various firms. Legal Assistance did not normally help people with legalizing successions before Katrina. There was no demand for such assistance. Rather more attention was placed on family matters. After Katrina, however, due to insurance claims and the requirements of FEMA, families became motivated to complete the successions legally. Legal Assistance has a contract with the Road Home program to offer free legal advice for the preparation of the documents for low income people, another contract with American Association of Retired Persons (AARP) for assisting people over 50 years old. L.A. subsequently got a contract with FEMA to provide legal assistance to Katrina victims,

Private attorneys normally help people get their succession documents in order, but with substantial fees of \$3,000-5,000 dollars. To help the poorer families, in the first days after the emergency passed, Legal Assistance got volunteers from legal firms in North Carolina, who interviewed families and helped them prepare succession documents. About 150 families were helped in this way. Subsequently Legal Assistance has helped approximately 400 families through the efforts of volunteers and lawyers paid through the Road Home and AARP contracts. Another 250 cases are being processed.

Tool 10: Independent Monitor/Auditor of Recovery Programs

The State of Louisiana has an independent Legislative Auditor which reports to the legislature. In the case of the Katrina recovery programs, that Auditor investigated the implementation of the Road Home Program done by the private firm ICF, and reported that accurate and consistent information had been generally missing from the counseling delivered by Road Home advisors, and other even more serious failings of the management of that program by ICF.

Tool 11: Good Neighbor Ordinance for Blighted Housing Demolition

In January, 2008 after months of wrangling and public complaints about the slowness of demolitions of blighted properties on the one hand and about the arbitrariness of demolitions on the other, New Orleans City Council members demanded changes in the way the city, particularly its Housing Conservation District Review Committee, screens applications to demolish buildings in many old neighborhoods.

Councilwoman Jackie Clarkson and others said haphazard procedures and a lack of safeguards have led to the unjustified razing of structurally sound buildings that owners were

trying to renovate, while many blighted buildings that should be torn down remain untouched.

Clarkson introduced an ordinance that would rename and reorganize the housing review committee, change its membership, make its meetings more accessible to the public and set new rules for notifying owners of properties targeted for destruction.

Clarkson indicated that she was not trying to stop the demolition of truly blighted buildings. But she said she thinks the way the review committee has operated may violate property owners' legal rights.

Her proposed law would change the committee's name to the Neighborhood Conservation District Committee and revise the membership to include one member named by each of the five district council members, plus representatives of the Office of Code Enforcement, the Landmarks Commission, the Planning Commission and the Health Department.

The law would direct the committee to meet in the council chamber rather than in a meeting room in the Safety and Permits offices. It would require the mailing of notices of demolition requests to property owners and the posting of notices on the buildings in question.

Tool 12: Freeze Drying of Water Damaged Property Documents

About 5,000 bound volumes of documents were damaged by sewage backups due to Katrina. The Custodian of Notarial Archives with authority over these archives moved quickly in the days after the storm to contract with a Chicago firm to send refrigerated trucks to New Orleans. He also convinced the security agencies to allow those trucks access to the city center where the archives were located, where the bound volumes were loaded, frozen, and taken to Chicago for special processing and drying. No documents were lost. However, due to the sewage back up, the volumes retained a certain odor once returned to the re-opened archives. Staff to this day have to handle them with plastic gloves on their hands, and then disinfect their hands with special cleaning fluids. The title search people refer to these volumes as “poo-poo volumes”.

Tool 13: Assessment Procedures for Computer Assisted Mass Appraisal of Property Values

One of the most significant systemic changes in property relationships that occurred in the wake of Hurricane Katrina concerned property tax assessments. For many years prior to Katrina, *ad valorem* taxes (property taxes) were chronically under-assessed in Orleans Parish.

The result of this system was that properties that had not been sold for many years maintained stable and low property tax assessments even though the actual fair market value of the properties had increased dramatically. The only time the assessment on a particular property was seriously readjusted to match its actual fair market value was when an actual sale of the property occurred at which time the local assessor had no choice but to properly reassess the property. The product of this system was widespread and dramatically unfair discrepancies between assessments for roughly equivalent properties depending on how long the property

had stayed in one family and how politically connected the property owner was and the owner's degree of political support for an assessor.

After Katrina local citizen activists pushed for reform of the property tax system, particularly the ad valorem assessments. The Louisiana Tax Commission, which oversees the work of parish level assessors across the state, required the Orleans Parish assessors to take more seriously their statutorily mandated responsibility of re-assessing all property within their jurisdiction every four years and to address the inequities discovered by a groundbreaking series of *Times Picayune* articles in 2004. Finally, the assessors then implemented computer assisted mass-appraisal software for the first to systematically reassess all Orleans Parish taxable properties in their quadrennial reassessment.

Tool 14: Relaxation of Laws to Facilitate Reconstruction

The Case Study discusses various opportunities in the implementation of the Road Home and other assistance programs for the issuance of waivers allowing emergency procedures which under normal conditions would not be allowed. Unfortunately in most cases these opportunities were not taken, for whatever reason. In future disasters, however, the needed waivers should be clearly identified and steps taken to get them in place quickly.

There are examples of changes being made in legal procedures, however. The Road Home program administrators initially required that the possessors of properties who requested disaster related assistance had to have legal title or a Judgment of Possession for inherited property to qualify for that assistance. But that requirement proved to exclude many people from assistance who could qualify only if lengthy and costly procedures were completed.

The Road Home eventually agreed to change that requirement for intestate successions for petitioners who were rebuilding and accepted an affidavit signed and sworn by all heirs as to their status as heirs. These arrangements have only been accepted for R.H. petitioners, however.

Road Home administrators also have agreed for judges to approve an administrator of an estate acting for all heirs in order to access R.H. funds. This change in the R.H. procedures is the authorization of an heir of a deceased person to be named as an administrator and empowered to sign the R.H. covenants for the other co-heirs. This procedure is important because many people have co-heirs who cannot be tracked down. This is a common problem when successions have not been done for several generations.

The Road Home also now allows for the surviving spouse to sign the Road Home covenants without the participation of the "naked owners" (children) including minors and disabled heirs. Under Louisiana law, a spouse of a deceased person who dies intestate has only a usufruct right to the deceased person's share of the marital property, with children automatically inheriting ownership in equal parts. This change by the Road Home project also has support in Louisiana law, which says that a holder of a usufruct rights (right to use a property) can act alone to take care of the property. It took some time for Road Home administrators to accept that this was in fact the law in Louisiana.