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Sean Reilly

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# Finding Silver Linings

Sean Reilly\*

## INTRODUCTION

We have now passed the second anniversary date of the most catastrophic natural disaster and engineering failure in our nation's history. Hurricane Katrina rolled ashore on August 29, 2005. When the levees failed, New Orleans and Southeast Louisiana would be forever changed. Three weeks later, Hurricane Rita—the third most costly natural disaster in American history—punished Southwest Louisiana.

In addition to the human loss and physical destruction, these two storms held a mirror up to the state, and many did not like the reflection. Rebuild smarter, as well as safer and stronger, became the clarion call. Fundamental policies and institutions should be rethought and reshaped as we emerged from the wreckage. Or to cite LSU Law Center Chancellor Emeritus, John Costonis, this unprecedented catastrophe “has stimulated unprecedented receptivity to fresh ideas and fresh solutions for the problems that the hurricanes mercilessly exposed, but did not create.”<sup>1</sup>

The first section of this article chronicles policy and planning successes and shortcomings since the storms. It celebrates the moments when we seized the opportunity presented by disaster to enact new approaches to old problems. It uncovers lessons to be learned. One such lesson is the need to establish recovery entities that enhance accountability links between policy development and

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\* Member of the Board and Chair of the State and Local Legislative Affairs Committee of the Louisiana Recovery Authority. Member of the Board of the LRA Support Foundation. Chairman, Louisiana Speaks, Inc. Member of the Board of the Public Affairs Research Council of Louisiana. Member of the Louisiana House of Representatives (1988–1996, District 68). J.D. *cum laude*, Harvard Law School. Student, LSU Law Center (fall semester, 1987).

1. John J. Costonis, *Two Years and Counting: Land Use and Louisiana's Post-Katrina Recovery*, 68 LA. L. REV. 349, 349 (2007). This report was funded by the LRA Support Foundation and appears in this volume of the Louisiana Law Review.

program delivery. Another lesson is the importance of early post-disaster leadership in engaging citizens in planning the rebirth of their communities.

The sections that follow focus on three challenging issues that pit the need to change against the tug of the status quo. First, implementation uncertainties confront South Louisiana as it attempts to execute infrastructure projects in alignment with its new regional plan and to alter its development patterns to grow more safely and toward a more sustainable and insurable future. Second, unclear policy direction clouds future recovery of the state's healthcare finance and delivery system. Finally, political tensions and litigation threaten the renewal and reconstruction of public housing in New Orleans.

It is too soon to write the history of the recovery. We are *in medias res*. This writing is necessarily a single snapshot of the state's recovery, a single moment in a long journey. Much progress has been made and more remains to be done. But because of the undeterred spirit of her people, I am optimistic about the state's recovery and as committed as ever to the cause of rebuilding safer, stronger, and smarter.

### I. SEVERAL STEPS FORWARD—ONE STEP BACK

In October of 2005, Governor Blanco created by executive order—later to be enacted in statute—the Louisiana Recovery Authority (LRA).<sup>2</sup> Modeled after the Lower Manhattan Development Corporation,<sup>3</sup> which was created by the state of New

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2. 2005 La. Sess. Law Serv. Exec. Order 2005-63 (West); Louisiana Recovery Authority Act, 2006 La. Acts No. 5 (codified as LA. REV. STAT. ANN. §§ 49:220.1 to .5 (2007)).

3. Like many families in Baton Rouge, we sheltered evacuees and housed responders coming to the state's aid after Katrina. One such boarder in the Reilly home was Stefan Pryor, then Executive Director of the Lower Manhattan Development Corporation. Stefan gave invaluable advice to then Governor Blanco's Chief of Staff Andy Kopplin and myself on structuring the LRA in those early, hectic days. Andy Kopplin, of course, became executive director of the LRA and has worked tirelessly and effectively on all aspects of the recovery. Thanks also to my wife, Jennifer, who hosted those many relief volunteers, and to our children, who to this day wonder why they got to sleep in our bedroom for a month and a half!

York in the aftermath of the September 11, 2001 terrorist attacks on Manhattan, the LRA serves as the state's primary planning and coordinating recovery agency and, as such, is leading one of the most extensive rebuilding efforts in the world. Hurricanes Katrina and Rita claimed almost 1,500 Louisiana lives,<sup>4</sup> destroyed more than 200,000 homes and apartments,<sup>5</sup> and crippled 18,000 businesses<sup>6</sup>—more than thirteen times the per-capita losses suffered in any other domestic catastrophe.<sup>7</sup>

The LRA's staff and thirty-three member board<sup>8</sup>—reflective of the geography, race, and partisanship of the state—has focused on four primary roles in recovery: securing and prioritizing funds from the federal government,<sup>9</sup> setting rebuilding principles and

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4. LA. RECOVERY AUTH., HURRICANE KATRINA ANNIVERSARY DATA FOR LOUISIANA 1 (2006), *available at* [www.lra.louisiana.gov/assets/LouisianaKatrinaAnniversaryData082206.pdf](http://www.lra.louisiana.gov/assets/LouisianaKatrinaAnniversaryData082206.pdf).

5. *Id.* at 9.

6. *Id.* at 3.

7. Comparison among disasters is not an exact science. However, one frequently cited statistic is total FEMA dollar commitment per capita. Until Katrina and Rita, FEMA's costliest disaster was the terrorist attacks of 9/11 at \$390 per capita. Present projected FEMA cost per capita to rebuild post-hurricane Louisiana is \$5,100 and climbing. See LA. RECOVERY AUTH., MOVING BEYOND KATRINA AND RITA: RECOVERY DATA INDICATORS FOR LOUISIANA 3 (2007), *available at* <http://www.lra.louisiana.gov/assets/twoyear/Indicators082107.pdf>.

8. Board Chair Norman Francis received the Presidential Medal of Freedom for his work leading the LRA. Press Release, The White House, Office of the Press Secretary, Citations Recipients of the Presidential Medal of Freedom (Dec. 15, 2006), *available at* <http://www.whitehouse.gov/news/releases/2006/12/print/20061215.html>. Walter Issacson serves as Vice Chair and Chief Washington liaison. A full listing of the Board members can be found at the LRA website and in all of its publications. Louisiana Recovery Authority, Board of Directors, <http://www.lra.louisiana.gov/board.html> (last visited Oct. 19, 2007). Some will be cited in this article for their work as Task Force Chairs; all are volunteer heroes of the recovery.

9. Funding priorities and program execution are not addressed in this article. It is worth noting, however, that the LRA does not have program implementation authority. This disconnect, which divorced responsibility for policy from responsibility for execution, has been cited as a contributing cause of the implementation problems that have plagued the state's housing assistance program known as The Road Home. This may be an important lesson learned for future disaster response. See Michelle Millhollon, *Panel Backs LRA's End*, THE ADVOCATE (Baton Rouge), May 11, 2007, at A1.

policies, leading long-term regional and local planning, and ensuring transparency and accountability in the handling of recovery funds.

To augment its activities and help finance its mission, the LRA created the LRA Support Foundation, a non-profit entity that raised private philanthropic dollars for the hiring of planning consultants and policy experts to advance the recovery.<sup>10</sup>

Charged with advancing policy and planning initiatives that will rebuild Louisiana safer, stronger, and smarter, the LRA and the LRA Support Foundation enjoyed early success.

The LRA was active in the first Special Session of the Legislature called by Governor Blanco in the fall of 2005. One early victory was the enactment of the first uniform statewide residential building code in our state's history.<sup>11</sup> Modeled after the code enacted by Florida after its series of hurricanes, this code will serve the state well when future disasters visit Louisiana's shores and its structures survive. Likewise, in that first special session, the LRA led the charge to have the state take over the failed public education system in New Orleans and create a new model allowing for choice and charter schools in a clear rejection of the pre-storm status quo.<sup>12</sup> LRA leadership also worked to reform certain aspects of the state's business tax structure to help stimulate business activity in the storm-stricken economy and make sure our

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10. The LRA Support Foundation was created as a Supporting Organization within The Baton Rouge Area Foundation (BRAAF). BRAAF's leadership, John Davies and John Spain, and BRAAF's entire team have been pivotal in garnering resources and gathering expertise for the work of the LRA and the LRA Support Foundation. John Laborde serves as Chair of the LRA Support Foundation, and a full listing of its board members can be found at its website and in all of its publications. See LRA Support Foundation, Committee Members, [http://www.lrasupportfoundation.org/site/c.gtJVJdMRIsE/b.1202265/k.A61F/Committee\\_Members.htm](http://www.lrasupportfoundation.org/site/c.gtJVJdMRIsE/b.1202265/k.A61F/Committee_Members.htm). Louisiana's eternal gratitude goes to the many donors who contributed almost \$11 million to the LRA Support Foundation.

11. 2005 La. Acts No. 12. History should record that Governor Blanco and the legislature produced good results in difficult times in the first post-storm Special Session.

12. 2005 La. Acts No. 35. LRA Education Task Force Chair Linda Johnson has been critical to the cause of education reform.

tax code conformed with the recently enacted federal Gulf Opportunity Zone legislation.<sup>13</sup>

Another milestone of that first special session was the creation of the Coastal Protection and Restoration Authority (CPRA) and the Coastal Protection and Restoration Trust Fund (Coastal Trust Fund).<sup>14</sup> For the first time ever, Louisiana's policy on hurricane protection would integrate levees *and* coastal restoration and charge a single entity with design and execution. The CPRA's master plan is complete.<sup>15</sup> It has been well-received and is now being implemented. Moreover, the Coastal Trust Fund helped our congressional delegation make the case in Washington for a larger share of outer continental shelf oil revenues and provides a constitutionally protected vessel for the income's effective expenditure. With both pieces in place—the CPRA and the Coastal Trust fund—a strong accountability link between design and execution of hurricane protection and coastal restoration was thereby established at the state level. The Army Corps of Engineers, of course, has responsibility for the design and construction of many of the levees that comprise CPRA's master plan, so constant vigilance will still be required to maintain clear accountability across state and federal jurisdictions.

Unfortunately, in the second post-storm Special Session of the Legislature in the winter of 2006, the state missed an opportunity to clearly delineate responsibility for its housing recovery programs and strengthen accountability for their delivery. Legislation that would have created the Louisiana Land and

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13. See generally DEP'T OF LA. ECON. DEV., GULF OPPORTUNITY ZONE ACT OF 2005: LOUISIANA ECONOMIC IMPACT (2006), available at <http://www.lided.state.la.us/uploads/pdf/GulfOpportunityZoneActof2005.pdf> (detailing the effect of the legislation on Louisiana). LRA Economic Development Task Force Chair Matt Stuller led this effort.

14. 2005 La. Acts No. 8 (creating the CPRA); 2005 La. Acts No. 69 (proposing a constitutional amendment to Louisiana Constitutional article VII, sections 10, 10.2, and 10.5) (approved by popular vote, allowing certain federal revenues to be dedicated to coastal restoration).

15. COASTAL PROT. & RESTORATION AUTH. OF LA., INTEGRATED ECOSYSTEM RESTORATION AND HURRICANE PROTECTION: LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST (2007). Execution of this plan is enhanced by clear delineation of responsibilities and strong public backing. Full funding, however, remains a challenge.

Housing Trust failed to pass in the waning moments of the session.<sup>16</sup> Managed by housing professionals, this trust would have had primary responsibility for crafting procedures that effectively execute the homeowner and rental assistance programs and contracting with public and private entities for their implementation. This trust would also have served as the sole repository of land sold to the state under its homeowner assistance program, and as such, would have established policies and procedures for the ultimate disposition of those properties. As a result of the failure of this legislation, the state resorted to a patchwork of existing and new agencies to execute its housing programs.<sup>17</sup> Consequently, there have been delays, implementation frustrations, and much finger pointing.

That second Special Session was not without its victories, however. There was a post-storm hue and cry in New Orleans to restructure some of the city's long neglected civic institutions. The LRA worked with reform-minded and change-oriented New Orleanians to consolidate and reform the region's broken and Byzantine system of levee boards.<sup>18</sup> Legislation in that Regular Session also consolidated the New Orleans assessor's offices and the city's fractured system of civil and criminal courts.<sup>19</sup>

In the months that followed, LRA staff worked diligently with Parish officials toward the adoption of the new FEMA Advisory Base Flood Elevation guidelines, and those guidelines have been adopted in every devastated coastal parish. The guidelines require raising new houses and buildings to reduce future flooding. The slogan, "safer, stronger, smarter," was no longer merely rhetorical.

Insurability in coastal Louisiana remains a key factor in its recovery. Enactment of building codes and adherence to the base

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16. S.B. 49, 1st Ex. Sess. (La. 2006).

17. These included, for example, the Division of Administration, the Office of Community Development, ICF International, the Louisiana Housing Finance Agency, The Road Home Corporation (later renamed The Louisiana Land Trust), and the New Orleans Redevelopment Authority.

18. 2006 La. Acts No. 1. State Senator Walter Boasso authored the levee board consolidation legislation. His meetings with Secretary of Transportation John Bradberry, Secretary of Natural Resources Scott Angle, and I contributed to its formulation.

19. 2006 La. Acts No. 863 (consolidating the court system).

flood elevations as lynchpins of risk mitigation has critical long-term implications for the availability and affordability of insurance in the region.

So do other directional aspects of insurance policy. The LRA endorsed and helped advocate the abolition of the state's anachronistic Insurance Rating Commission.<sup>20</sup> The only such commission in the country, its activities had retarded private underwriting in the state. In addition, the LRA Support Foundation funded a study of the Florida Hurricane Catastrophe Fund to determine its suitability for Louisiana.<sup>21</sup> That study helped guide policymakers away from greater state intervention as the answer to Louisiana's insurance problems and toward more market-driven solutions enacted in the 2007 Regular Session of the Legislature. Work remains in this area, but Louisiana's policy direction is clearly and rightly directed at expanding *private* insurance capacity.<sup>22</sup>

In the spring of 2006, the LRA Support Foundation funded successful planning efforts in Calcasieu, Vermillion, and St. Bernard Parishes. Renowned disaster recovery planner Andres Duany led planning workshops—or charrettes—in these communities, giving citizens a voice in the rebuilding of their neighborhoods and helping local elected officials prioritize recovery projects, modernize their land use and zoning codes,

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20. Press Release, Louisiana Recovery Authority, Louisiana Speaks Update: Key Recommendations from Regional Plan Accomplished this Session (Jun. 29, 2007), available at <http://www.lra.louisiana.gov/pr062907laspeaks.html> (expressing support for the Insurance Rating Commission's abolition); 2007 La. Acts No. 459.

21. PARAGON STRATEGIC SOLUTIONS, LOUISIANA RECOVERY AUTHORITY, LOUISIANA CATASTROPHE FUND ANALYSIS (2007). A Catastrophe Fund is a state-backed and run reinsurance pool or re-insurer of last resort—as distinguished from Citizen's Insurance, the state's insurer of last resort.

22. Compare REINSURANCE ASS'N OF AM., GOVERNMENT CATASTROPHE FUNDS: AN IDEA THAT'S BAD FOR AMERICA'S INSURED (2006), available at <http://www.reinsurance.org/files/public/govtcatfunds.pdf>, with Matt Reed, *Florida Overhauls Home Insurance Rules*, USA TODAY, Jan. 26, 2007, at B6, available at [http://www.usatoday.com/money/industries/insurance/2007-01-25-florida-insurance-reforms\\_x.htm?csp=34](http://www.usatoday.com/money/industries/insurance/2007-01-25-florida-insurance-reforms_x.htm?csp=34). Florida has taken a different direction. By greatly expanding the reach of its insurer of last resort and financially interlocking it with the state's Catastrophe Fund, Florida has created what many describe as an actuarial time bomb that poses great potential risk to the state's fiscal future and discourages private underwriting.

develop mitigation strategies, and designate green spaces.<sup>23</sup> Strong leadership from the mayor and other local elected officials during the Lake Charles charrette is particularly noteworthy for bringing that community together and placing the recovery of Lake Charles on an upward trajectory.<sup>24</sup>

An added value of these charrettes came in giving citizens returning to these communities a renewed dream of a shared future together and guidance on where and how safe rebuilding would take place. This process helped many make the decision to move to higher ground. For some this meant moving within their pre-storm parish; for others it meant relocating to a different parish.<sup>25</sup> Regardless of where a former resident chooses to move, early post-disaster planning that aids citizens in their individual recovery choices must be deemed a success.

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23. Copies of these reports and plans can be found at the website of Louisiana Speaks, the primary long-term community planning initiative of the LRA, at [www.louisianaspeaks.org](http://www.louisianaspeaks.org). A true citizen-driven planning effort, thousands contributed to the success of these charrettes, but some deserve special recognition—Elizabeth “Boo” Thomas and her team at the Center for Planning Excellence, and Donna Fraiche, Chair of the LRA’s Long-Term Community Planning Task Force. Two other outstanding planning documents produced by Urban Design Associates for Louisiana Speaks are available on the website, Louisiana Speaks, Pattern Book, <http://www.louisianaspeaks.org/static.html?id=39> (last viewed Oct. 19, 2007), and Louisiana Speaks, Tool Kit, <http://www.louisianaspeaks.org/static.html?id=87> (last viewed Oct. 19, 2007).

24. I had the privilege of addressing the final day’s session of the Lake Charles charrette. Mayor Roach’s leadership was outstanding. At that very meeting, the City Council formally adopted Mayor Roach’s model code and land use recommendations developed during the three week charrette. At its conclusion, the nearly one thousand citizens in attendance broke into spontaneous applause. Lanny Keller, *Rita’s Ruin Make Room for Progress in Lake Charles*, THE ADVOCATE (Baton Rouge), Feb. 14, 2006 at B7. Within months, the city’s voters approved a \$25 million bond issue to implement portions of the plan.

25. For example, current statistics show that roughly a third of St. Bernard homeowners have opted to sell under the Road Home plan and relocate within the state. I was privileged to address the opening and closing sessions of the St. Bernard charrette. St. Bernard was, per capita, the most devastated parish, with virtually every home damaged or destroyed. Understandably, at times the charrette sessions were tense. In the end, citizens expressed gratitude for receiving invaluable advice as they made their personal recovery decisions. And while it has not yet been reflected in the aggregate economic statistics because of population loss, St. Bernard’s recovery plans have it pointed in the right direction.

Unfortunately, the planning process in New Orleans was one of fits and starts.<sup>26</sup> The Unified New Orleans Plan (UNOP) was ultimately developed with funding pulled together with help from the LRA Board and its staff's technical support.<sup>27</sup> UNOP represents one of the largest urban planning efforts ever and has been approved by the New Orleans City Council and the LRA Board. Nonetheless, some view its results as mixed. A May 2007 research report from the New Orleans Bureau of Governmental Research notes that the recovery plan for New Orleans continues to suffer from, among other shortcomings, a "failure to connect flood risk with policy" and the lack of a clear "direction for rebuilding."<sup>28</sup>

Research reports on the status of the recovery published by the Nelson A. Rockefeller Institute of Government and the Public Affairs Research Council of Louisiana (PAR) cite the following lessons to be learned in disaster response:

- The longer a community waits to develop a specific recovery plan, the more likely residents will take matters into their own hands, and the rebuilding will be haphazard.
- Recovery efforts have advanced the most in those communities where officials have provided clear, specific direction and encouraged public input and participation.<sup>29</sup>

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26. Early planning efforts failed to include the Urban Land Institute's plan, which produced a much vilified purple map designating neighborhoods as green spaces without engaging neighborhood residents in the determinations and deliberations. Editorial, *Not Coming Together*, THE TIMES-PICAYUNE (New Orleans), June 18, 2006, at Metro 6. Planning efforts of the mayor's Bring New Orleans Back Commission ultimately never got off the ground due to the mayor's ambivalence and to lack of funding. Karen Turni Bazile, *Residents Discuss Concerns with Council*, THE TIMES-PICAYUNE (New Orleans), June 2, 2004, at Metro 3.

27. The planning process for New Orleans owes much to a leadership grant from The Rockefeller Foundation and hard work by LRA Board Member David Voelker.

28. BUREAU OF GOVERNMENTAL RESEARCH, UNOP REVISITED: AN ANALYSIS OF THE REVISED CITYWIDE PLAN I (2007).

29. KAREN ROWLEY, GULFGOV REPORTS: A YEAR AND A HALF AFTER KATRINA AND RITA, AN UNEVEN RECOVERY vii (2007).

The report concludes that long delayed planning and lack of specific direction from New Orleans officials has hampered the city's recovery.<sup>30</sup>

## II. WALK THE WALK

In the spring of 2006, the LRA Support Foundation funded and launched the most comprehensive post-disaster *regional* planning effort in our nation's history. The impact of the storms was felt from the Texas line to the Pearl River—and while the effects were most obvious in those parishes immediately in the path of destruction, thoughtful planning was also required in “host” parishes further inland with an eye toward big regional transportation infrastructure, coastal protection and restoration, and future living patterns.

The Louisiana Speaks Regional Plan<sup>31</sup> was developed over a year of extensive public input and outreach facilitated and refined by the most respected regional planning team in the country.<sup>32</sup> The plan calls for specific transportation, transit, and infrastructure projects that advance safer and smarter growth for the region. It asks South Louisiana to think about big infrastructure regionally rather than parochially that stops at the parish line. Its recommendations are thorough and thoughtful; its conclusions are profound.

South Louisiana faces a critical choice with regard to future development and infrastructure investments—whether to move toward higher density development and urban infill on higher, safer, and *more insurable* ground, or to continue to sprawl ever farther into harm's way on lower-lying wetlands or otherwise ecologically sensitive and hurricane-vulnerable tracts. Louisiana can steer public and private infrastructure investments in one direction or the other—toward “smart growth” as called for in the Louisiana Speaks Plan or toward the haphazard status quo.

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30. *Id.*

31. LA. RECOVERY AUTH., LOUISIANA SPEAKS REGIONAL PLAN: VISION AND STRATEGIES FOR RECOVERY AND GROWTH IN SOUTH LOUISIANA (2007) [hereinafter LOUISIANA SPEAKS REGIONAL PLAN].

32. The team was lead by Peter Calthorpe and John Fregonese, with guidance and support from Boo Thomas and Donna Fraiche. *See supra* note 23.

The clear challenge for the Louisiana Speaks Plan is implementation. Louisiana does not have an imbedded culture of effective planning at any level. And those local, “home rule,” or other statutes that govern our current zoning and planning are children “of the era of speakeasies, Huey Long, and Herbert Hoover.”<sup>33</sup> The challenge is compounded by a bias against state mandates or “regionalism” that might tread on long established local control over land use and zoning.<sup>34</sup>

To increase the odds of effective implementation, Louisiana Speaks has made the creation of a revamped and more robust Office of State Planning its number one priority. The primary charge of this office would be to drive development in concert with the regional plan. It would be empowered to coordinate and plan state capital outlays and large transportation initiatives as well as provide technical planning assistance and model codes to local jurisdictions. Giving Louisiana Speaks some needed momentum, the legislature passed a concurrent resolution in the 2007 Regular Session calling for a task force to make recommendations for the Office of State Planning and to report back in time to take action in the 2008 Regular Session.<sup>35</sup>

Also increasing the odds of implementation is a group of other key recommendations of Louisiana Speaks that are discernibly “carrot” rather than “stick” in nature. For example, another plan priority is the creation of Model Development and Zoning Codes—but with the proviso that these Codes serve as templates, not dictum.<sup>36</sup> Similarly, the recommendation to establish a Conservation and Mitigation Trust Fund to purchase high-risk and ecologically sensitive land calls not for taking property, but rather, for compensation in the form of voluntary sales or tax incentives if large tract owners allow conservation easements.<sup>37</sup>

As a state, we can change our planning and land use practices to grow “smarter” and in a way that leads us to a safer, stronger future. Public outreach and polling involving over 27,000 citizen

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33. Costonis, *supra* note 1, at 349–50.

34. *Id.* at 5–6.

35. H.R. Con. Res. 229, 2007 Reg. Sess. (La. 2007).

36. LOUISIANA SPEAKS REGIONAL PLAN, *supra* note 31, at 64.

37. *Id.* at 59–61.

responses as part of the Louisiana Speaks process showed overwhelming support for change in our development patterns, including a strong preference for higher density and a willingness to accept certain tradeoffs between property rights and hazard mitigation measures.<sup>38</sup> But we must choose our direction soon, or temptation for business as usual will overwhelm the post-storm momentum for change.

### III. HEAL THYSELF

In light of the damage wrought by Katrina to the healthcare delivery system in New Orleans and the subsequent rippling stresses placed on providers elsewhere in the state,<sup>39</sup> the LRA Support Foundation hired PricewaterhouseCoopers to undertake the most exhaustive analysis ever conducted of the state's healthcare system and to make recommendations on how to bring it back.<sup>40</sup> The findings of the PwC Report are inescapable.

Detrimental to the health of all Louisianans, the state has been running a dual system of healthcare, wherein uninsured patients receive care in a system of ten state-run, Depression-era charity hospitals and insured patients receive care from private providers.<sup>41</sup> Moreover, Louisiana's model of state-run charity hospitals—unique among the fifty states—was in crisis before the storms. Since more than one in five adults in Louisiana lacked health insurance,<sup>42</sup> too many of our citizens were denied primary care, sought it in public emergency rooms, or both.

As a consequence, statistically, our health outcomes, access to care, and levels of care rank at or near the bottom of the fifty states by almost every indication.<sup>43</sup> Louisiana has been deemed the “least healthy state” in the country in rankings published by the

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38. *Id.* at 49–50.

39. *Id.* at 13.

40. PRICEWATERHOUSECOOPERS, REPORT ON LOUISIANA HEALTHCARE DELIVERY AND FINANCING SYSTEM (2006), available at <http://www.lra.louisiana.gov/assets/PwHealthcarereport427061.pdf> [hereinafter PWC REPORT].

41. *Id.* at 21.

42. PUBLIC POLICY RESEARCH LAB, LOUISIANA HEALTH INSURANCE SURVEY 9 (2004).

43. PWC REPORT, *supra* note 40, at 80–87.

United Health Foundation in fifteen of the last seventeen years—in the other two years the state was ranked forty-ninth.<sup>44</sup> These rankings persist in spite of relatively high per capita healthcare expenditures.<sup>45</sup> Compared to other states, Louisiana spends more and gets less for its healthcare dollar.

Louisiana State University is charged with managing our ten state hospitals, together known as the charity system. In addition to its role in providing healthcare to the uninsured, Louisiana's charity system also provides the bulk of the facility-based training and education of medical and allied health professionals, particularly for LSU's medical school and graduate medical education programs. This dual role has taken its toll on both missions. Compounding the dismal health statistics cited above, Louisiana suffered from a lack of primary care physicians in rural and underserved areas and severe shortages of allied health professionals *before* the storms.<sup>46</sup>

The hurricanes exposed these shortcomings and amplified them to crisis levels. Katrina took the two charity and LSU medical school facilities in New Orleans out of commission and, with them, almost 900 acute care beds and one of the state's two level-one trauma centers.<sup>47</sup> Today, the New Orleans region is critically short of doctors and nurses. Moreover, because the state has no ongoing mechanism to reimburse private providers for their care of tens of thousands of uninsureds since the storms, the community and private hospitals in the region are on the brink of fiscal collapse. The governor and the legislature have steered federal funding to private providers to help stem the red ink, but these are band-aids. A systemic solution is required.

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44. PUBLIC AFFAIRS RESEARCH COUNCIL OF LA., INC., REALIGNING CHARITY HEALTH CARE AND MEDICAL EDUCATION IN LOUISIANA 5 (2007), available at [http://www.la-par.org/Publications/PDF/Realigning\\_Charity\\_May\\_2007.pdf](http://www.la-par.org/Publications/PDF/Realigning_Charity_May_2007.pdf) [hereinafter PAR REPORT].

45. *Id.* at 9.

46. *Id.* at 5. Studies also show that the LSU medical school fails to qualify for an estimated \$160 million in available federal funding because its physicians in training are not exposed to Medicare patients who seek their treatment in the private facilities. *Id.* at 18.

47. PWC REPORT, *supra* note 40, at 14, 59.

Both the PwC Report and the PAR Report conclude that Louisiana must reform its system of health care delivery and financing to bring more insurance coverage to its uninsured and allow state allocated federal Medicaid dollars to flow through the patient to whatever qualified healthcare provider the patient chooses—public or private.<sup>48</sup> This would result in better integration of uninsured care across the public and private healthcare sectors and increased access to neighborhood clinics, thereby increasing the availability of more primary and preventive care for our citizens.

PAR also recommends that the LSU Health Sciences Center, rather than operating ten charity model hospitals, focus on running four university research hospitals centering excellence on treatment and research specialties.<sup>49</sup> This would result in better integration of its education mission across public and private providers and a more sustainable patient mix for the system's long-term fiscal health. This model already exists both within the system and within the state at the LSU Health Sciences Center in Shreveport, so it is no great leap to suggest taking this model to the other metro LSU Health Sciences Center facilities and aligning our delivery of medical education and uninsured care with the other forty-nine states. PAR concludes that the remaining state-run charity hospitals should devolve to local control and governance—also more in step with all other states.<sup>50</sup>

Louisiana is at a critical juncture in its healthcare debate. We can choose reform or status quo. This debate is playing out in the controversy over the size and scope of a potential new facility for the LSU Health Sciences Center in New Orleans.<sup>51</sup> But regardless of how the brick and mortar questions are answered, we have no choice but to move to the financial and delivery model advocated above. The best case completion date for a new facility for LSU Medical Center in New Orleans is 2014, and solving the

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48. *Id.* at 20-21. See also PAR REPORT, *supra* note 44, at 2, 3.

49. PAR REPORT, *supra* note 44, at 2, 3.

50. *Id.* at 2-3, 22-24.

51. Healthcare reform has been consistently championed by many LRA Board Members, but none more forcefully than LRA Healthcare Task Force Chair Kim Boyle.

uncompensated care problems facing the region's private providers will not wait. More importantly, our citizens throughout the state should not have to wait for better healthcare.

#### IV. MORE HEAT THAN LIGHT

Katrina and Rita damaged over 80,000 units of rental housing in South Louisiana.<sup>52</sup> The sheer number makes rebuilding daunting enough; but the challenge of bringing back public assistance housing in New Orleans is exponentially greater. In a politically-charged and racially-tense environment where trust is in short supply, a debate is raging between those who would simply patch up the public housing in New Orleans and those who see a historic opportunity to rectify a housing model that has failed tenants and neighborhoods alike. The debate has been characterized by some observers as "build it right or build it fast."<sup>53</sup> However, the underlying philosophical divide between those espousing business as usual and those for rebuilding better runs far deeper.

Again, Katrina merely exposed a dire preexisting condition. Many tenants in New Orleans public housing tolerated conditions that were among the nation's worst. The Housing Authority of New Orleans (HANO) ran a little over 8,400 public housing units, almost eighty percent of which were in nine large projects with vacancy rates, according to U.S. Department of Housing and Urban Development (HUD) numbers, approaching fifty percent.<sup>54</sup> Furthermore, for "more than 30 years, HUD had rated HANO as one of the country's worst-performing housing authorities and the

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52. LA. RECOVERY AUTH., *supra* note 4, at 9.

53. See generally Laura Maggi & Gwen Filosa, *A Grand Scheme for Reinventing Public Housing Is in the Works but Displaced Residents Want Action Now*, THE TIMES-PICAYUNE (New Orleans), Oct. 18, 2006, at National 1 (insightful framing of debate); Richard A. Webster, *A House Divided: Housing Authority of New Orleans*, NEW ORLEANS CITY BUS., Aug. 20, 2007 (providing a sense of political passion and racial intensity enveloping this issue).

54. SUSAN J. POPKIN, MARGERY A. TURNER & MARTHA BURT, THE URBAN INST., *REBUILDING AFFORDABLE HOUSING IN NEW ORLEANS: THE CHALLENGE OF CREATING INCLUSIVE COMMUNITIES 2* (2006), available at [http://www.urban.org/UPLOADEDPDF/900914\\_affordable\\_housing.pdf](http://www.urban.org/UPLOADEDPDF/900914_affordable_housing.pdf).

agency was under HUD receivership at the time of the hurricane.”<sup>55</sup>

The city’s public housing projects isolated tenants from the rest of the city, concentrating poverty and compounding racial segregation.<sup>56</sup> Dating back to the Depression and World War II, these developments were physically dilapidated and, in many cases, pockets of despair and distress before Katrina. Their blight often spilled over into surrounding neighborhoods.<sup>57</sup> Plagued by the full panoply of societal ills—crime, drugs, multigenerational poverty—the old model of federally owned and operated public housing was broken in New Orleans.

The LRA designed its programs to bring back affordable rental housing in a manner that does not recreate the past. While not exclusively targeted at public housing, The LRA’s Housing Task Force looked to successful developments in other cities that have transformed public housing—like the widely acclaimed Eastlake development in Atlanta.<sup>58</sup> Instead of rebuilding a few large projects all destined for very low-income tenants, the goal is a balanced mix of deeply subsidized, affordable, and market rate units run by for-profit and not-for-profit developers in healthy mixed income communities spread throughout the metropolitan region. This way, replicating the excessive pre-storm concentrations of poverty can be avoided.

To finance this type of development, the LRA created its “Piggyback Program” whereby Low Income Housing Tax Credits are added to or “piggybacked” with Community Development Block Grants and awarded to developers in a competitive process administered by the Louisiana Housing Finance Agency. HUD supports this approach, and through HANO has successfully secured Piggyback Program funding and selected several non-profit developers to bring the Eastlake model to four New Orleans

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55. *Id.*

56. *Id.* at 3.

57. *Id.*

58. LRA Housing Task Force Chair Walter Leger and Human Services Chair Dr. Calvin Mackie provided leadership on this issue. On separate occasions both Dr. Mackie and I have visited Eastlake.

public housing complexes, including the St. Bernard housing project adjacent to City Park.<sup>59</sup>

Unfortunately, national and local tenant advocacy groups have a different vision for New Orleans public housing—one of rapidly rehabbing and reoccupying. They cite the need to get former residents back quickly and argue that tenants retain vested leasehold rights. But their fundamental objections run deeper. They simply don't believe the future includes them. Tenant advocates claim that "mixed-income" is euphemistic for gentrification, that former tenants will not have reserved units at affordable rents in new developments.<sup>60</sup> Their opposition to HUD's plans has sparked angry meetings, protests, and lawsuits that threaten to derail the demolition, renewal, and reconstruction of St. Bernard and other housing projects.<sup>61</sup>

A lack of trust between former residents and their advocates on one hand, and HUD officials and their developers on the other, has made reasoned discussion and mediation difficult. While some progress has been made,<sup>62</sup> as this goes to press, many issues remain unresolved. One thing is certain. If New Orleans is to ever fully recover and enjoy a brighter future for all its citizens, rebuilding its public housing to avoid the mistakes of the past must be part of the equation.

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59. I have had the privilege of working with the Forekids! Foundation in New Orleans and BRAF's real estate development affiliate, Commercial Properties Development Corporation, on a compelling vision to bring back the golf facilities in City Park and the adjacent St. Bernard housing project in a fashion directly modeled after the renewal of the Eastlake housing projects and a formerly rundown golf course in central Atlanta. The Eastlake Foundation's golf course now serves as home to the PGA Tour's Tour Championship, and revenues from the event and the golf course help fund community and resident services in the affordable housing development nearby.

60. The River Gardens complex, an earlier mixed-income development that replaced the St. Thomas housing project, enflamed this debate and incited litigation. Maggi & Filosa, *supra* note 53.

61. Laura Maggi, *HUD Considers Phased Redevelopment—Some Public Housing Units Could Reopen*, THE TIMES-PICAYUNE (New Orleans), Dec. 20, 2006, at Metro 1.

62. *Id.*

## CONCLUSION

This has been an opportunity to look back at what has worked and what needs more work. It has been an opportunity to look ahead to the challenges confronting full recovery. And I commend the Louisiana Law Review for devoting this volume to both the broad policy issues and narrow legal questions that bear on our recovery.

Reflecting on the second anniversary of Katrina and Rita, I am certainly proud of the role the Louisiana Recovery Authority has played in bringing our state back to this point. But I am even more proud of the work of the thousands of our citizens who participated in planning charrettes, the thousands of our citizens who have tirelessly volunteered their time and efforts to the recovery, and the hundreds of thousands of South Louisiana residents who labor daily to put their lives and communities back together.

At this point in time, our recovery is not geographically even; indeed, it is the tale of two recoveries. A recent LRA report on job creation and business vitality shows Southwest Louisiana surpassing pre-Rita levels and Southeast Louisiana, notably New Orleans and St. Bernard, still dramatically lagging behind pre-Katrina levels.<sup>63</sup> Nevertheless, I remain optimistic about our shared future in Louisiana.

Tough decisions and unfinished business remain. But as long as we continue to reflect on lessons learned—as long as our hearts and minds remain open to new and better ways—our spirit will prevail.

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63. See generally DEK TERRREL & RYAN BILBO, LA. RECOVERY AUTH., A REPORT ON THE IMPACT OF HURRICANES KATRINA AND RITA ON LOUISIANA BUSINESSES: 2005Q2–2006Q4 (2007), available at [http://www.bus.lsu.edu/centers/ded/PPRL%20report\\_2006Q2\\_FINAL.pdf](http://www.bus.lsu.edu/centers/ded/PPRL%20report_2006Q2_FINAL.pdf).