

April 12, 2006

# Rebuilding after Katrina and Rita

*BOOK II: AN ASSESSMENT OF HOW H.R. 4100, "THE LOUISIANA RECOVERY CORPORATION ACT," ACCORDS WITH ECONOMIC, LEGAL, AND POLITICAL FACTORS*



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# The Figures

Area of Examination <sup>1</sup>	Cost	
<b>Estimated cost of buyouts of residential homes</b> and whatever small commercial properties that might pertain ( <i>the transaction with the homeowner</i> )	\$8.26B	
<b>Estimated cost to resolve mortgages</b> with lenders ( <i>the transaction with the financial institution</i> )	\$3.80B	
	Total Buyout:	<b>\$12.06B</b>
<b>Estimated return on investment</b> the Louisiana Recovery Corporation might obtain through property resale ( <i>basis: 30% of pre-Katrina values</i> )	Resale:	<b>\$6.53B</b>
	Net Cost:	<b>\$5.53B</b>
<b>Cost to Restore Essential Public Services</b>	<b>\$4.56B</b>	
<b>Cost of Environmental Remediation<sup>2</sup></b>	<b>\$0.52B</b>	
<b>Administrative Cost of Establishing and Operating the Louisiana Recovery Corporation</b> ( <i>10 year cumulative cost</i> )	<b>\$0.25B</b>	
<b>Estimated Total Cost Associated with Execution of H.R. 4100:</b>	<b>\$10.86B</b>	

<sup>1</sup> Each of these estimates is discussed in detail and the assumptions and sources described in the main document, below. These estimated costs are based on inputs from members of the Gerson Lehrman Group Councils and other experts and inputs surveyed for their relevant background or expertise..

<sup>2</sup> Organic and structural debris removal and disposal only for residential homes and small commercial properties in Louisiana Parishes of Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Calcasieu, and Cameron. Does not include all other remediation costs that may be necessary for recovery.

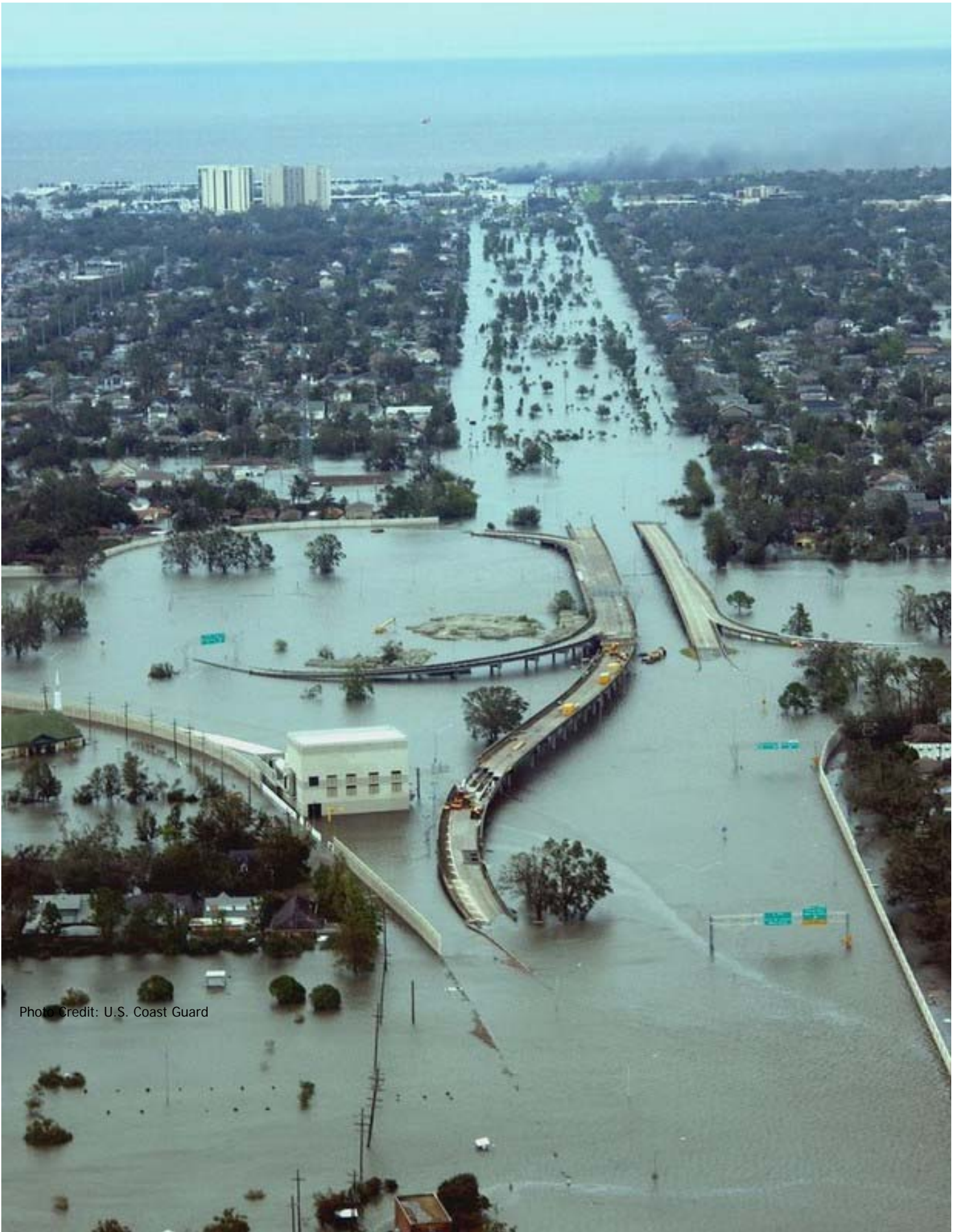


Photo Credit: U.S. Coast Guard

Gerson Lehrman Group (GLG) prepared this report on behalf of Greater New Orleans, Inc. and in conjunction with the Baton Rouge Area Foundation. GLG launched an expansive, intensive and rapid assessment of the costs to rebuild the areas affected by hurricanes Rita and Katrina. The study was framed as a review of H.R. 4100, *"The Louisiana Recovery Corporation Act,"* and not only provides a detailed analysis of the costs and implication of this proposal, but also provides new primary data and analysis that should be relevant for any other recovery plans for Louisiana.

The study examined the costs and return associated with execution of H.R. 4100, its relationship to extant local and federal laws and practice, its relationship to the dynamics in the real estate economy, and an overview analysis of the Act's potential role in the rebuilding of Louisiana following Hurricanes Katrina and Rita.

Over approximately eight weeks, Gerson Lehrman Group produced this multidimensional exploration of the key economic, legal, and real estate issues associated with H.R. 4100.

This study draws from the experience and expertise that resides in the Gerson Lehrman Group Councils and from other experts and relevant inputs surveyed through Gerson Lehrman Group's recruiting and Knowledge Logistics Platform. This report is the result of the collaborative efforts of dozens of Gerson Lehrman Group Council Members and other specialized inputs. By efficiently connecting teams of experts with decision makers through this project, decision makers may be able to respond more quickly to challenges and more creatively to opportunities.

Gerson Lehrman Group's Councils are global networks of executives, physicians, scientists, engineers, attorneys, and other professionals who deliver expertise and decision-making assistance to business, not-for-profit and investment leaders from around the world.

### **MULTIPLE AREAS OF RESEARCH:**

6 GLG Practice Areas—Real Estate, Financial and Business Services, Accounting and Financial Analysis, Geo-political Risk, Energy and Industrials, and Legal, Economic and Regulatory Affairs--investigated the complex issues surrounding post-Katrina and Rita recovery.

Approximately 40 GLG Council Members and over 50 others working on the recovery—including economists, lawyers, remediation specialists and scientists, public accountants, and real estate consultants— provided previously uncollected primary data and / or analysis on various aspects of H.R. 4100.

### **FOCUSED METHODOLOGY:**

GLG Council Members with expertise in the specific fields relevant to each discrete aspect of executing H.R. 4100 provided unique analysis.

Through phone interviews and surveys, GLG collected previously uncollected primary data critical to a number of the core issues surrounding post-Katrina and Rita recovery.

Council Members visited the affected regions to get on-the-ground insights for their research.

Property purchase and buy-back analysis was compiled from nearly 10,000 pieces of current home-level data that had not previously been examined.

# In the Context of: The Real Estate Economy

I

## AREA OF EXAMINATION

- *H.R. 4100 in the context of other legislative proposals*
- *The ability H.R. 4100 may have to rebuild real estate and others effects on the economy*
- *The role of Federal, State and Local government and the Louisiana Recovery Corporation*

**A.** Summary

**B.** Findings

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## METHODOLOGY

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We focused the report by commissioning Washington, DC experts with substantial housing policy experience to draft in-depth answers to questions on the interaction of HR 4100 with other legislative proposals as well as the bill's potential impact on the local real estate economy.

We chose to have our experts provide in-depth responses, as there are several legislative proposals that are under consideration in Congress and in Louisiana—each could affect the local economy in different ways.

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## HIGHLIGHTS OF FINDINGS

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- In-depth review and detailed analysis of HR 4100 and other state and local legislation
- Comparisons and contrasts of HR 4100 and the other legislative proposals, from both policy and political perspectives
- Detailed review of how HR 4100 would enhance, interact, or conflict with efforts to rebuild real estate in the region
- Discussions of how HR 4100 would affect the current dynamics of the real estate industry and economy of New Orleans

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## EXPERTS

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In order to understand the variety of issues surrounding this legislation in Congress and on the local level, we included perspectives from two top Washington, DC experts:

- Respondent X: A key housing lobbyist based in Washington, DC
- Mitch Kider (MK): A prominent Washington, DC real estate/consumer finance attorney with a diverse client base of financial institutions, builders, real estate brokers, and mortgage bankers

A. Executive Summary

A. Findings

**COMPARISON OF H.R. 4100 TO OTHER LEGISLATIVE PROPOSALS**

- HR 4100 creates a new federal agency, the LRC, to redevelop affected areas
  - LRC would purchase existing properties at no less than 60% of pre-hurricane value, and with a cap of \$500,000
  - LRC required to work with state/local officials, but NO eminent domain power
  - Bush Administration does **not** support HR 4100
- Governor Blanco's legislation, Louisiana Senate Bill 49 is a fallback to HR 4100 to channel federal money to region
  - Creates a state-controlled LRC-type entity with no payment cap
- Mayor Nagin's bill would also channel federal money to the region
  - Creates a city-controlled LRC-type entity with ability to pay 100% of the value of affected properties
  - Limited eminent domain authority

**ABILITY OF HR 4100 /ESTABLISHMENT OF LRC TO REBUILD REAL ESTATE AND THE EFFECT ON THE ECONOMY**

- **ADVANTAGES OF HR 4100/LRC**
  - LRC would support rebuilding efforts of commercial and residential property
  - LRC relies on the private sector to rebuild, which would spur economic activity and construction jobs
  - LRC Would stabilize the local market, providing economic incentives for sale of property
  - LRC would be required to consult with local officials to locate and acquire property
- **DRAWBACKS OF HR 4100/LRC**
  - Delays in enacting bill in Congress
  - Developers won't buy land from LRC unless there is a supply of potential purchasers
    - Many residents may not return to New Orleans
  - Requirements in HR 4100 to establish and consults with Local Advisory Boards could increase red tape and extend time for redevelopment

**OVERALL ASSESSMENT OF GOVERNMENT/LRC ROLE**

- At the moment, there is no agreement between Congress, the Administration, and state/local government about their respective roles
- LRC or other entity must provide a proper compensation mechanism for homeowners
- LRC or other entity probably should not have eminent domain power



## DISCUSSION

### HOW DOES HR 4100 COMPARE TO OTHER LEGISLATIVE PROPOSALS TO PROMOTE RECOVERY EFFORTS?

Numerous federal legislative proposals have been introduced to promote recovery efforts in Katrina-impacted areas. Some are very broad in scope dealing with all aspects of the recovery while others are very narrowly targeted to a specific issue or constituency. Most would apply to those communities declared disaster areas by the President in all the states impacted by Katrina (some bills also include hurricanes Wilma and Rita). HR 4100 is specifically targeted to Louisiana and focuses on the redevelopment process by creating a Louisiana Recovery Corporation, a federal entity to facilitate the redevelopment process. (Respondent X)

### LOUISIANA RECOVERY CORPORATION

H.R. 4100 would create a new federal agency, the LRC. The LRC would be capitalized by the issuance of debt securities in an amount not to exceed \$30 billion at any one time, and it would terminate 10 years after the enactment of H.R. 4100.

The mission of the LRC would be to facilitate the economic stabilization and redevelopment of areas in Louisiana that were devastated or significantly distressed by Hurricanes Katrina and Rita. In executing its economic stabilization mandate, the LRC must consult with state and local officials to locate and then acquire residential or commercial real property from the existing owners. Upon the acquisition of the real property, the debt would be paid in full, and all title and interest in the real property would pass to the LRC. Note that such purchases could not be less than 60 percent of the pre-hurricane value of the property, but would be limited to \$500,000. Importantly, the LRC would not have any eminent domain powers.

In executing its redevelopment mandate, the LRC would need to consult with state and local officials and then make the land suitable for sale and development by making improvements on it including, but not limited to, road construction and repair or replacement of water and water infrastructure. Through a competitive bidding process, the LRC would then dispose of the land by packaging the acquired real property in substantial tracts of land.

The bidders would need to demonstrate the following:

1. A capacity to oversee major development projects through a community-based collaborative process
2. Commitment of private capital
3. Effective deployment of federal and state resources to ensure the construction of affordable housing
4. Use of private contractors and subcontractors
5. Use of local corporations and local employees
6. Use of small, disadvantaged business enterprise contractors or subcontractors
7. Scale of development and job creation
8. Increased homeownership

Any entity awarded a contract through this competitive bidding process would need to grant a right of first refusal and an option to obtain an interest in real property of comparable size and location in redeveloped areas to any party previously holding title to the property.

It is worth noting that H.R. 4100 passed approval of the House Financial Services Committee by a 50-9 vote. However, the Bush Administration has publicly announced that it will not support the passage of H.R. 4100. Sen. Mary L. Landrieu (D-LA) recently introduced a counterpart to the Baker Bill in the Senate (S. 2172).

A hearing was held in the Senate Committee on Banking, Housing and Urban Affairs on February 15 to discuss the issue of rebuilding after Hurricane Katrina. Witnesses included Representative Baker, Senators Landrieu and David Vitter (R-LA), Secretary of Housing and Urban Development Alphonso Jackson and Don Powell, Federal Coordinator of Gulf Coast Rebuilding. The hearing highlighted the differences in approach to rebuilding after Hurricane Katrina between the Administration and members of the Louisiana Congressional delegation. The Administration views the Baker bill as a "centralized planning" approach to rebuilding and prefers that state and local governments carry out any redevelopment planning on their own with some financial support from the federal government. Banking Committee Chairman Richard Shelby (R-AL) shares this perspective. Mr. Powell and Secretary Jackson testified in favor of state and local governments using recently appropriated Community Development Block Grant (CDBG) dollars to accomplish the same objectives as those of the Baker bill. Each Katrina-impacted state received a portion of almost \$12 billion in new CDBG money earlier this year and the President has requested additional CDBG dollars as part of his budget supplemental request to fund the war in Iraq and pay for hurricane recovery. Representative Baker and Senators Vitter and Landrieu maintain that a federal framework - such as that suggested in HR 4100 - is necessary to coordinate rebuilding and redevelopment efforts on such a large scale. (Respondent X)

### LOUISIANA HOUSING AND LAND TRUST

Because the White House has publicly denounced the Baker bill, both Governor Blanco and Mayor Nagin have endorsed proposals that would establish an entity with powers similar to those of the LRC. However, their proposals appear to conflict with regard to whether the entity should be controlled by the state as Governor Blanco proposes or the city of New Orleans as Mayor Nagin proposes.

In a speech to the Louisiana Legislature, Governor Blanco outlined her plan for rebuilding housing efforts. Similar to the Baker bill, Louisiana Senate Bill 49 would create an entity that has as its primary mission and purpose the economic stabilization and redevelopment of areas in Louisiana that were devastated or significantly distressed by Hurricane Katrina or Hurricane Rita. This Trust created by Senate Bill 49 would terminate in roughly 10 years. However, unlike the LRC, the Trust would be placed in the office of the governor of Louisiana. Also, unlike the LRC, Governor Blanco wants to fund the Trust with \$5.6 billion in federal funds.

The Trust would negotiate to acquire the title to the real property and compensate any property owner, mortgagee or lien holder with an interest in the real property if the owner does not want to rehabilitate the property or a local jurisdiction determines that rehabilitation of the property is not feasible due to safety, flood control or environmental restoration concerns. While this power is similar to the powers of the LRC, Louisiana Senate Bill 49 does not cap the payment amount. Instead, Louisiana Senate Bill 49 provides that in no case may the payment by the Trust to any person exceed the pre-event fair market value of the property.

In executing its economic stabilization and redevelopment mandate, the Trust would need to adhere to the policy guidelines for rebuilding and recovery set forth by the Louisiana Recovery Authority, and the policies of local and regional planning authorities. In this regard Louisiana Senate Bill 49 differs from H.R. 4100 since it explicitly states the agency upon which the Trust must rely.

With regard to its economic assistance authority and activities, the Trust would need to refer residential property owners to housing resource centers for financial counseling and advice on housing rehabilitation, replacement of damaged homes, selling of flood-damaged properties and land title issues. Note that Louisiana Senate Bill 49 would create Louisiana Housing Recovery Centers. This bill would define such centers as private nonprofit organizations registered with the state housing agency that has the demonstrated capacity to design, site, develop and manage affordable housing and to provide housing counseling and development and assist homeowners in rehabilitation services.

In addition to providing referrals services, the Trust would have the authority to make loans to homeowners who cannot afford to pay their current mortgage. The Trust would pay a part of or all of the mortgage payments in arrears. Finally, the Trust would have the authority to provide loans, gap financing and grants for property owners in areas that have been determined to be suitable for redevelopment by local authorities. All of these powers and the legislative mandate to refer homeowners to counselors differ from the powers of the LRC.

Louisiana Senate Bill 49 is modeled after H.R. 4100. Governor Blanco and her staff have publicly issued statements in support of the creation of the LRC. Governor Blanco has stated, "that Louisiana's housing plan is not complete without Congressman Baker's housing legislation." Accordingly, it appears that Governor Blanco views Louisiana Senate Bill 49

as a backup to H.R. 4100 that could channel federal money to the victims of Hurricanes Katrina and Rita. Louisiana Senate Bill 49 has been sent to the Louisiana Senate floor for a vote.

#### **CRESCENT CITY RECOVERY CORPORATION**

The plan supported by Governor Blanco is making its way through the Louisiana Senate. This plan demonstrates her preference for the creation of an entity that permits the state to have authority to disburse the federal funds given to the state. Such a plan appears to conflict directly with the plan proposed by Mayor Nagin's Bring New Orleans Back Commission.

This commission proposed creating a city-controlled entity that would use the federal funds given to Louisiana to buy and sell houses and redevelop impacted areas. The entity would be called the CCRC, and it would also be responsible for expediting the reconstruction of both residential and commercial properties. According to the report published by the Bring New Orleans Back Commission, the CCRC would have a 10-year life span similar to both the LRC and the Trust.

While the Trust would be created out of a stand-alone piece of state legislation, the Bring New Orleans Back Commission proposed to modify the Baker bill in order to create the CCRC. This modification would give the CCRC the ability to: (i) receive and expend redevelopment funds; (ii) implement a redevelopment plan; (iii) buy and sell property for redevelopment, including the use of eminent domain as a last resort; (iv) issue bonds; and (v) coordinate with and enhance City Planning Commission Capacity. Additionally, the CCRC would have the ability to pay up to 100 percent of the pre-Katrina market value less any insurance proceeds and mortgage to any homeowner in heavily flooded and damaged areas. Obviously, the general powers of the CCRC would be similar to those of both the LRC and the Trust. However, unlike either of these entities, the CCRC would be permitted to use the power of eminent domain in limited circumstances and would be able to buy out homeowners for 100 percent of their pre-Katrina market value.

The CCRC is only a small part of the recommendations suggested by Mayor Nagin's Bring New Orleans Back Commission. The larger issues addressed by the committee include urban planning, education, cultural, infrastructure, government effectiveness, health and social services and economic development. It is widely expected that Mayor Nagin will sign off on these proposals sometime in February.

#### **LOUISIANA HOUSING FINANCE AGENCY**

The Louisiana Recovery Authority and the Louisiana Housing Finance Agency are working to develop a comprehensive statewide housing plan. According to its web site, the Louisiana Housing Finance Agency plans to implement programs assisting with repair and rehabilitation of owner occupied homes and help with restoring the rental housing stock devastated by the storms. The programs will be offered to individuals from core affected areas providing second mortgages up to \$150,000 at below market rates and refinancing opportunities up to Internal Revenue Service limits with qualifying income limits driven by the Area Median Income. The Louisiana Housing Finance Agency is working diligently with key partners to put these programs in place to expedite the release of funds.

#### **LOUISIANA RECOVERY AUTHORITY**

Governor Blanco created the Louisiana Recovery Authority to address recovery issues. The Louisiana Recovery Authority is in the process of creating a recovery and rebuilding plan that will benefit the entire state of Louisiana. Governor Blanco asked the Louisiana Recovery Authority to coordinate recovery efforts in ways that avoided duplication and increased efficiency not simply to recreate what the storms destroyed, but to make the new Louisiana safer, stronger and smarter than ever before. In addition to securing federal hurricane relief funds, the Louisiana Recovery Authority has created new ways to reconnect with evacuees, and it has assisted in giving voice and support to the concerns of residents of Louisiana.

#### **HURRICANE RECOVERY ADVISORY COMMITTEE**

The New Orleans City Council created an Advisory Committee on Hurricane Recovery on September 30, 2005 to devise a strategy for rebuilding New Orleans. The advisory committee must ascertain and recommend how the council should use its authority to facilitate the post-hurricane recovery efforts in New Orleans for the greater good of the city. More specifically, the advisory committee must determine the council's legal options regarding zoning, land use, permits, franchises, taxes and regulation of utility and communications companies. Additionally, the committee must suggest how the council might best coordinate with state and federal agencies in reconstruction efforts, financing,

bond issuance and the development of policies for rebuilding, repair and renovation.

When the Hurricane Recovery Advisory Committee met for the first time on January 26, 2006, the city council informed the members of the committee that they were chosen not to compete with the work being done by Mayor Nagin's Bring New Orleans Back Commission or Governor Blanco's Louisiana Recovery Authority but to enhance those efforts. The committee does not appear to have made any recommendations. (MK)

#### **HOW WOULD IT ENHANCE, INTERACT OF CONFLICT WITH THE EFFORTS TO REBUILD REAL ESTATE IN THE REGION?**

See above. In addition:

Hurricane Katrina alone destroyed more than 200,000 housing units alone in Louisiana. The current shortage of rental units and affordable housing has slowed construction efforts in New Orleans since workers have no place to live. Additionally, construction workers have generally focused their efforts on commercial reconstruction projects that pay more than residential housing reconstruction projects.

The city of New Orleans currently has an expedited permitting process in place. According to its web site, the city has streamlined the permitting requirements in order to expedite the recovery process. Most permits can be issued online or over the counter. However, Mayor Nagin's Bring New Orleans Back Commission recently proposed to impose a building moratorium on most of New Orleans.

According to the proposal, the city of New Orleans should not issue any permits to build or rebuild in heavily flooded and damaged areas until:

1. Advisory Base Flood Elevations have been issued by the Federal Emergency Management Agency;
2. Neighborhood planning teams have completed their plans and made recommendations to the city
3. Utilities and city services are adequate and efficiently delivered.

While it is unclear if Mayor Nagin will sign off on this proposal, it is widely believed that he will.

As mentioned above, the LRC would purchase the property of willing sellers. The acquisitions would relieve sellers of their mortgage obligations up to \$500,000 and transfer the title to the property to the LRC. Additionally, sellers would be given the right to repurchase the land when private developers redeveloped the area. Before selling the property to private developers, the LRC would need to make any necessary infrastructure changes. After making such changes, the LRC must dispose of the land by packaging the acquired real property in substantial tracts of land through a competitive bidding process.

From a public policy standpoint, the creation of the LRC would seem to support the rebuilding efforts of commercial and residential real property in Louisiana. Importantly, the LRC would be required to rely entirely on the private sector to rebuild the disaster area in accordance with local planning efforts. The LRC also would be required to make any necessary infrastructure changes before selling the land to private developers. Such a requirement would have the additional benefit of spurring economic activity, as construction jobs would be created.

Aspects of the LRC present major drawbacks. It will take some time for the bill to pass both houses of Congress especially given the opposition expressed by the Bush Administration, and for the LRC to offer the bonds to investors. Additionally, the continued stability of the LRC depends on its ability to sell the acquired land to private developers. Such developers will not buy the land from the LRC unless there is a supply of potential homeowners, and the number of homeowners is dependent on the economy in New Orleans. Many homeowners in the flooded areas of New Orleans have stated that they may not return to the city unless the levees will be rebuilt to protect the city against a Category 4 or Category 5 hurricane. It is unclear whether the levees will be rebuilt to withstand such a storm. (MK)

HR 4100 is specifically designed to interact with local efforts to rebuild real estate. First, the authors went to great pains to ensure that the bill does not override local governments or local property owners. Some examples include:

A. No authority for the LRC to exercise eminent domain. B. No coercion of local property owners in dealing with the LRC. C. Right of property owners to "opt-out" of any contract with the LRC. D. Requirement that the LRC be invited (via resolution) to work in any municipality or parish before it starts to take any actions. E. Right of first refusal of home owner who sells property to purchase property of comparable size and location in the same redeveloped area.

The legislation goes further to create a collaborative process of planning between the LRC and local governments and

citizens. For example, the legislation calls for a Local Advisory Council to be established in each parish in the state. The LRC would have to consult with each of these Councils on all actions by the corporation that affect the parish as well as other local community groups not part of the Council itself. Finally, the LRC must take into account any redevelopment plan that is enacted by the state or local government. In fact, any bids by the corporation must comply with these development plans. All of these protections and requirements helped to create broad, bipartisan support for the bill i, but they also create numerous hurdles for the corporation which could dramatically extend the time it takes to redevelop New Orleans. (Respondent X)

#### **HOW DO/SHOULD FEDERAL AND STATE/MUNICIPAL LEGISLATION DIFFER OR OVERLAP?**

As discussed above in response to the previous two questions, our review of the political climate in Louisiana suggests that federal, state and local legislation and initiatives currently exist. We have compared how state and local legislation and initiatives differ from and overlap with H.R. 4100, and now focus on how they should differ or overlap.

The answer to this question depends on your perspective on the role of the federal government. As noted above, the Administration and some members of Congress believe that the role for the federal government in this case is to provide funding support for recovery and redevelopment efforts but stay out of the way of state and local efforts. Proponents of HR 4100 are of the view that the scale of redevelopment on the gulf coast is so large that a federal coordinating role is critical to the process. No matter what your view, at some point the federal, state and local governments must soon come to some consensus so that each can execute their role in some coordinated fashion and get the process of redevelopment started. However, as is noted in several places in this paper, there is no agreement in the Congress, between the Administration and the Congress and even between the state and local governments in Louisiana as to what the appropriate roles are for each level of government. This continues to be one of the strongest criticisms of the overall recovery effort - a lack of clear authority in any one organization or individual to make decisions and get the process started. (Respondent X)

In order to bring back the confidence of homeowners, insurers and investors, the entity that is created must provide a mechanism for compensating homeowners and cleaning up and repackaging entire neighborhoods for private developers. This entity should probably not have any eminent domain powers since current homeowners have expressed concerns over such a power. Regardless of how this entity is created, the legislation must require it to work in conjunction with federal, state and local officials to coordinate the rebuilding efforts. In the short term, the entity should focus its rebuilding efforts on commercial property, rental property and affordable housing units. To achieve this objective, the best type of construction projects would appear to be mixed-use projects since they potentially provide workers with a reason to return to the area by giving them a place to work and live. (MK)

#### **HOW WOULD HR 4100 AFFECT THE CURRENT DYNAMICS OF THE REAL ESTATE INDUSTRY AND ECONOMY IN NEW ORLEANS?**

H.R. 4100 and the creation of the LRC would dramatically affect the real estate industry and the economy in New Orleans. In the aftermath of Hurricane Katrina, numerous speculators either attempted to buy or bought distressed properties in New Orleans. This frenzy was fueled by low mortgage interest rates and the desire of impacted homeowners to sell and let buyers deal with any reconstruction issues.

The redevelopment efforts proposed by the LRC would stabilize the real estate market in New Orleans. Homeowners in the flooded areas are generally waiting to see what will happen with the city and the levees before they invest the time and the money required to rebuild. Regardless of politics, most homeowners in the flooded areas must completely rebuild their homes. After all, most of the impacted homes were in neighborhoods that were at least partially flooded with water for weeks. The flooding led to mold and the corrosion of wires and plumbing. Because of these major structural issues, the LRC would provide the economic incentives to homeowners to either sell or repair the properties. In either case, local developers, contractors and subcontractors would be used. This would spur economic activity in New Orleans since the rebuilding the efforts would create new jobs in the construction industry.

The LRC should also focus its rebuilding efforts on creating affordable housing units and rental units. After all, the economy in New Orleans is heavily dependent upon the tourism and convention industries. Such industries will be very difficult to sustain without reasonably priced housing for workers. (MK)

In addition, there are three other issues that need to be discussed. They are:

1. Understanding the scope of problems left by hurricane damage (including: economic recovery, mortgage resolution), is H.R. 4100 a logical, feasible solution? Yes.

As you know, the federal government moved very slowly to aid the victims of Hurricanes Katrina and Rita. While the creation of another federal agency, the Louisiana Recovery Corporation ("LRC"), as proposed by H.R. 4100, would create another layer of federal bureaucracy, the LRC or a similar entity would stabilize the housing market in the Gulf Coast Region and improve the general economic conditions in the region.

Local and state leaders must provide insights in the rebuilding efforts in order to ensure that local needs are not overlooked. The LRC recognizes the importance local and state leaders have in the rebuilding efforts by requiring it to consult with such officials to locate and then acquire real property from the existing owners.

It is also worth noting that redevelopment efforts will be greatly enhanced if individual lots can be bundled and resold to developers in tracts of land. After the LRC purchases the real property, it must make improvements to the land including, but not limited to, road construction and repair or replacement of water and water infrastructure systems. Such efforts will also spur redevelopment in the region. It will be far more appealing for homebuilders and commercial developers to purchase tracts of such land and develop them than to develop individual lots of land. As developers purchase tracts of land and redevelop them, the economic recovery in the area will accelerate since bankers will be need to finance the projects and construction workers will be needed to rebuild the property.

Certainly the scale of the destruction from the hurricane calls for something on the scale of HR 4100 to respond, however, the value of something like the LRC is lost if the process gets so bogged down that paralysis results. The process established in HR 4100 is good because it draws input from multiple parties and does not roll over the needs and concerns of local governments and the property rights of individuals. Further, it served during debate over the bill in the House Financial Services Committee to broaden the support for the bill and draw all members of the Louisiana Congressional delegation - republicans and democrats - as cosponsors of the legislation. However, with all of the hurdles established by the bill (see above) it could take months or even years to for significant redevelopment to actually occur.

2. Can you provide a policy analysis of LRC, with perhaps a historical perspective of the similar real estate cataclysm addressed through the creation of the Resolution Trust Corporation?

This is outside my scope of knowledge; however, there is one distinction that I can make between the RTC and the proposed LRC. The primary mission of the RTC was to dispose of assets so insured depositors could get paid, not to engage in housing and economic redevelopment activities. (Respondent X)

Are there other recommended policy alternatives that can achieve the goals of the LRC without actually establishing the LRC? Yes.

Because the Bush Administration has publicly denounced the Baker bill, both Governor Blanco and Mayor Nagin have endorsed proposals that would establish an entity with powers similar to those of the LRC. However, these proposals appear to conflict with regard to whether the entity should be controlled by the state as Governor Blanco proposes or the city of New Orleans as Mayor Nagin proposes.

In a speech to the Louisiana Legislature, Governor Blanco outlined her plan for rebuilding housing efforts. Similar to the Baker bill, Louisiana Senate Bill 49 would create an entity that has as its primary mission and purpose the economic stabilization and redevelopment of areas in Louisiana that were devastated or significantly distressed by Hurricane Katrina or Hurricane Rita.

This entity would be called the Louisiana Housing and Land Trust ("Trust"), and it would negotiate to acquire the title to the real property and compensate any property owner, mortgagee or lien holder with an interest in the real property if the owner does not want to rehabilitate the property or a local jurisdiction determines that rehabilitation of the property is not feasible due to safety, flood control or environmental restoration concerns. While rebuilding, the Trust would need to adhere to the policy guidelines set forth by the Louisiana Recovery Authority and the local and regional planning authorities. Additionally, the Trust would have the authority to make loans to homeowners who cannot afford to pay their current mortgage by paying off part of or all of the mortgage payments in arrears.

Louisiana Senate Bill 49 is modeled after H.R. 4100. Governor Blanco and her staff have publicly issued statements in support of the creation of the LRC. Governor Blanco has stated, "that Louisiana's housing plan is not complete without Congressman Baker's housing legislation." Accordingly, it appears that Governor Blanco views

Louisiana Senate Bill 49 as a backup to H.R. 4100 that could channel federal money to the victims of Hurricanes Katrina and Rita.

The plan supported by Governor Blanco is making its way through the Louisiana Senate. This plan demonstrates her preference for the creation of an entity that permits the state to have authority to disburse the federal funds given to the state. Such a plan appears to conflict directly with the plan proposed by Mayor Nagin's Bring New Orleans Back Commission.

This commission proposed creating a city-controlled entity that would use the federal funds given to Louisiana to buy and sell houses and redevelop impacted areas. The entity would be called the Crescent City Recovery Corporation ("CCRC"), and it would also be responsible for expediting the reconstruction of both residential and commercial properties. Unlike the creation of the Trust out of a stand-alone piece of state legislation, the Bring New Orleans Back Commission proposed to modify the Baker bill in order to create the CCRC. However, the CCRC could just as easily be a stand-alone entity.

The CCRC would have the ability to:

- receive and expend redevelopment funds
- implement a redevelopment plan
- buy and sell property for redevelopment, including the use of eminent domain as a last resort
- issue bonds
- coordinate with and enhance City Planning Commission Capacity

However, unlike either of these entities, the CCRC would be permitted to use the power of eminent domain in limited circumstances, and would be able to buy out homeowners for 100 percent of their pre-Katrina market value.

3. Can the existing framework of laws and private sector participation initiate the recovery of south Louisiana without creating a new law? Maybe.

It is too early to tell if the existing framework of laws and private sector participation will initiate the recovery of south Louisiana. The activities of the federal government in the region must not compete with or hinder private involvement, but, rather, serve as a catalyst to encourage growth. At the end of 2005, President Bush signed into law the Gulf Opportunity Zones Act ("GO Zones Act"). The GO Zones Act provides tax relief for businesses affected by Hurricane Katrina. The GO Zones Act also provides tax credits to employers who hire people affected by Hurricane Katrina and relaxed the requirements for claiming the credit.

In addition to the GO Zones Act, the Small Business Administration ("SBA") has decreased the length of time required for businesses to obtain loans for their working capital needs as a result of Hurricane Katrina. Since the hurricanes, the SBA's Disaster Loan Program has approved over \$4.3 billion in disaster loans to over 60,000 homeowners, renters and small businesses in the Gulf Coast. Because the SBA is committed to assisting small businesses in this area and it is running out of money, Congress needs to approve additional funds for the SBA. (MK)

The GO Zones Act also provides for additional Low Income Housing Tax Credit (LIHTC) authority for the states impacted by Katrina. Louisiana, Mississippi and Alabama would receive additional LIHTC authority in the amount of \$18 per person in the Zones for 2006, 2007 and 2008 as measured by 2004 population data. The GO Zones will also be treated as Difficult to Develop Areas (DDAs) under the LIHTC program which means an additional 30 percent boost in credits for any given project. These additional resources will certainly be helpful in rehabilitating existing and constructing new affordable housing in the region. They do not address the same issues in the same way as HR 4100, but can be another tool to be used in the redevelopment process. (Respondent X)

One concern that has been expressed regarding HR 4100 is the amount that would be paid to banks that hold the mortgages in impacted areas of the state. The bill says that when the LRC buys mortgages from home owners not returning to the area, the bank that holds that mortgage will receive no more than 60 percent of its value. Critics of the legislation are specifically concerned with this section of the legislation as a disincentive and potential chilling factor for banks to invest in housing in the region. (Respondent X)

Perhaps even more important to the real estate industry in the region than HR 4100 is the need for environmental remediation and infrastructure rebuilding. Nothing contemplated in this legislation can be accomplished with first addressing these needs and they are massive. Without infrastructure rebuilding and environmental cleanup, significant redevelopment cannot occur. There are some existing laws and programs to help in this area, but none are funded at the level necessary to deal a problem of this size. (Respondent X)



## AREA OF EXAMINATION

- *Potential conflicts between HR 4100 with real estate laws as they are driven at the state and local levels*

### A. Summary

### B. Findings

In order to understand how H.R. 4100 comports with real estate law, two Members from our Law Council studied the issue. These lawyers lead the Real Estate practice at a well respected Louisiana firm.

- H.R. 4100 removes potential constitutional challenges under the Fifth Amendment takings clause by specifically excluding the power of eminent domain
- H.R. 4100 requires the Louisiana Recovery Corporation to comply with land use regulations established by local governments,
- **An important potential conflict of H.R. 4100 with Louisiana law** is the granting of a right of first refusal and option to maintain an interest in property to an owner or mortgagee.
  - Louisiana right of first refusal law allows parties to agree to not sell certain things before offering it to a certain person.
  - This requirement of certainty under Louisiana law usually requires that rights affecting real property contain a particular description of the property burdened with such rights
  - Ordinarily, this is satisfied by the inclusion of a legal description of the real property affected (i.e. lot, block, square, etc.) in the act creating the right.
  - **This requirement of certainty conflicts with the right of first refusal proposed by H.R. 4100.** H.R. 4100 proposes a right of first refusal granted over “real property of comparable size and location in redeveloped areas[.]”
- Research should be conducted at the legislative level to examine how H.R. 4100 may be amended to accord with Louisiana law regarding the requirement of certainty with rights of first refusal and options.
- The lack of certainty contained within H.R. 4100 could lead to potential title issues and invite litigation thereby removing the land from commerce.

**A.** Executive Summary**B.** Findings

H.R. 4100 proposes a right of first refusal granted over “real property of comparable size and location in redeveloped areas[.]” This lack of certainty could create title issues thereby resulting in the removal of property from commerce. A complete discussion of Louisiana law regarding rights of first refusal is detailed in section IX of the memorandum below. The option of an owner or mortgagee to maintain an interest in property of similar size and location presents similar issues and is discussed in section VII below.

**I. H.R. 4100 GENERALLY**

According to the American Red Cross, Hurricane Katrina destroyed an estimated 275,000 homes. More than 200,000 of those homes are estimated to be in Louisiana. H.R. 4100 (AKA the “Baker Bill”) would create the Louisiana Recovery Corporation (“Corporation”) whose primary mission is “the economic stabilization and redevelopment of areas within Louisiana that were devastated or significantly distressed by Hurricane Katrina or Hurricane Rita.” H.R. 4100, Sec. 105(a), 109th Cong. (2005). In order to accomplish this dual mission, the Corporation would consult with local governments to identify properties that are not likely to be redeveloped without Corporation assistance and acquire such for redevelopment. *Id.* at Sec. 105(b) & (c). Purchases would occur on a purely voluntary basis as the bill specifically excludes the right of eminent domain. *Id.* at Sec. 102(e)(1). Sellers will receive compensation based upon their equity in the property and, if they have one, their entire loan obligation will be satisfied.<sup>3</sup> Following such “buyouts”, the Corporation would pay for reconditioning of the land and provide the infrastructure improvements for it to be redeveloped through a competitive bidding process.

**II. REQUIREMENT OF INVITATION BY LOCAL GOVERNMENT**

The Corporation may not take any action in a parish or municipality before such parish or municipality has adopted a resolution of invitation for the Corporation’s assistance. *Id.* at Sec. 102(e)(4).

**III. HOW REDEVELOPMENT TAKES PLACE**

The Corporation must provide for a local advisory council in each parish in which it operates. *Id.* at Sec. 103(g)(1)(A). The local advisory councils shall consist of local elected officials, community groups, and other interested parties. *Id.* at Sec. 103(g)(1)(B). The Corporation must consult the local advisory council on all projects of the Corporation that affect any portion of the parish in which the advisory council is appointed. *Id.* at Sec. 103(g)(1)(C). During redevelopment, the Corporation must take into account and comply with any local plans for development adopted by local government officials. *Id.* at Sec. 103(g)(2). In executing redevelopment, the Corporation, after consulting with local and state agencies, will carry out the following: 1) package for sale acquired real property in substantial tracts of land, 2) make improvements on the land to make the land suitable for sale, 3) dispose of the land through a competitive bidding process, 4) provide for the protection of historical and culturally significant sites, 5) utilize the latest technology in urban planning, and 6) seek to ensure equitable treatment of all communities and areas. *Id.* at Sec. 105(c)(2).

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<sup>3</sup> Section 106(h)(1) provides in part that no payment to an individual property owner be less than 60 percent of the individual’s pre-storm equity. Further, H.R. 4100 caps payments to lien holders at 60 percent of the value of the lien. H.R. 4100 as written does not discuss whether lien holders must consent to such provisions. For further discussion of payment provisions, please see section VIII below.

#### IV. LAND USE

As section 103(g)(2) requires, the Corporation must take into account and comply with local plans for redevelopment; therefore, if local governments develop a master plan, including zoning restrictions, the Corporation must comply with such and redevelop acquired land accordingly.

#### V. PROPERTY ACQUISITION

The Corporation will negotiate with individual property owners through a voluntary process to acquire title to real property. *Id.* at Sec. 106(a). Should the property owner and the Corporation reach an agreement, the Corporation will compensate the property owner, mortgagee, or primary lien holder with an interest in the property. *Id.* at Sec. 106(b). While HR 4100 does require the Corporation to consider the remaining principal balance of any outstanding mortgage during the buyout process, HR 4100 does not address whether the lien holder must consent to such sales. *Id.* at Sec. 106(b)(3).

##### Purchase of Property Secured by a Lien

The Corporation must take the following into consideration in constructing offers of compensation for the acquisition of property secured by a lien: 1) the Corporation's expenses to improve the property for sale and development; 2) the Corporation's anticipated return upon sale of the property; 3) the remaining principal balance of any outstanding mortgage; 4) the equity position of the owner of the property immediately before the area was devastated by Katrina or Rita; 5) any potential net loss to the Corporation and indirectly to the taxpayers upon final sale of the property.

##### Purchase of Property Where no Lien Exists

The Corporation must take the following into account in constructing offers of compensation for the acquisition of property where no lien exists: 1) the Corporation's expenses to improve the property for sale and development; 2) the Corporation's anticipated return upon sale of the property; 3) the equity position of the owner of the property immediately before the area was devastated by Katrina or Rita; 4) any potential net loss to the Corporation and indirectly to the taxpayers upon final sale of the property.

#### VI. RIGHT OF FIRST REFUSAL/OPTION TO REPURCHASE

The Corporation would ensure that any developer or purchaser who acquires property for development via the competitive bidding process would grant the previous owner a right of first refusal and option to obtain an interest in property of comparable size and location in redeveloped areas. *Id.* at Sec. 106(d)(1). For a discussion on Louisiana law regarding rights of first refusal, see section IX below.

#### VII. RIGHT OF PROPERTY OWNER OR MORTGAGEE TO RETAIN INTEREST

If a property owner or mortgagee opts to forgo the buyout option, apparently,<sup>4</sup> the Corporation must offer any property owner or mortgagee an option to retain an interest in property of comparable size and location. *Id.* at Sec. 106(e)(1). If a property owner or mortgagee chooses such an option, the Corporation will pay no compensation to the property owner or mortgagee. *Id.* at Sec. 106(e)(1)(A). Under this option, the property owner or mortgagee would reimburse the Corporation for expenses to improve the property when the property owner or mortgagee obtained construction financing for development. *Id.* at Sec. 106(e)(1)(B). Any property owner or mortgagee exercising this right would be required to obtain construction financing within 90 days of notification by the Corporation that the area of the property is available for redevelopment and complete construction or a replacement commercial or residential structure within two years. *Id.* at Sec. 106(e)(2). Any agreements under this subsection

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<sup>4</sup> While H.R. 4100 provides for the option of a property or mortgagee to retain an interest in real property of comparable size and location, the bill lacks guidance as to exactly how and when this option is to be exercised by a property owner or mortgagee.

<sup>5</sup> H.R. 4100 does not provide direction on what would be considered a "windfall gain."

<sup>6</sup> H.R. 4100 does not provide a definition for "value." According to the Merriam-Webster Online Dictionary, one definition of "value" is "the monetary worth of something."

are required to be reduced to writing and must include: 1) a mechanism that allows the Corporation to take control of the property for a set price in case of a breach of the agreement by the land owner or mortgagee; 2) requirements that the land owner or mortgagee reimburse the Corporation for expenses associated with making the property suitable for development within 90 days of notice; and 3) a requirement that development of the property by the owner or mortgagee be completed within 2 years from the time the owner or mortgagee is notified that the property is available for redevelopment. *Id.* at Sec. 106(e)(3).

Similar to the issues raised in section IX below regarding rights of first refusal, H.R. 4100's option concerning real property could cause title issues and result in litigation. H.R. 4100 does not provide for terms and conditions to specifically identify real property this option will extend to. H.R. 4100 merely grants such an option over "real property of comparable size and location[.]"

#### VIII. LIMITATIONS OF PAYMENT; PROHIBITION AGAINST WINDFALL

During the buyout process, and when extending offers to purchase property or any mortgages on property, the Corporation must ensure the following:

- o In no case may the cumulative payment by the Corporation to any individual for purposes of acquiring real property exceed \$500,000;
- o In no case may any person be the beneficiary of a windfall gain as a result of any purchase offer extended by the Corporation;<sup>5</sup>
- o In no case may the cumulative payment by the Corporation to any individual be less than 60 percent of the individual's equity pre-storm;
- o In no case may the cumulative payment by the Corporation to any lien holder on any individual lien exceed 60 percent of the value<sup>6</sup> of that lien; and,
- o In no case may the Corporation make offers for the purchase of foreclosed property.

*Id.* at Sec. 106(h)(1). The Corporation will dispose of acquired property through a competitive bidding process in order to ensure maximum return on investment.

#### IX. LOUISIANA LAW ON RIGHTS OF FIRST REFUSAL

##### Source of the right

Louisiana Civil Code article 2625 establishes a Right of First Refusal under Louisiana law. Article 2625 provides for the option of a party to agree that he/she will not sell a ***certain*** thing without first offering it to a ***certain*** person. LA. CIV. CODE ANN. Art. 2625 (West 2005) (*emphasis added*). The right given under article 2625 may be enforced by the grantee via specific performance. *Id.* The requirement of certainty falls in line with other codal provisions affecting real property. As an example, for mortgages to be valid and enforceable under Louisiana law, they must identify the real property they burden with particularity. LA. CIV. CODE ANN. art. 3288 (West 2005). This can be satisfied by including the legal description (lot, block, square, and numerical of improvements, etc.) in the act creating the mortgage. Since a right of first refusal also affects real property, the same requirements would probably apply.

##### Obligation placed upon grantor of right, offer on same terms

Once given, the grantor of a right of first refusal may not sell the thing subject to the right to another person without first offering to sell the thing to the holder of the right on the same terms. LA. CIV. CODE ANN. art. 2626 (West 2005).

##### Timeline for acceptance of offer under right

Unless otherwise agreed to, an offer to sell real property to the holder of the right of first refusal must be accepted within thirty (30) days from the date of the offer. LA. CIV. CODE ANN. art. 2627 (West 2005). Unless the grantor concludes a final sale, or a contract to sell, with a third person within six months, the right of first refusal will remain with the grantee who failed to exercise such right when the offer was made to him. *Id.*

##### Time limitation for right

A right of first refusal concerning real property cannot be granted for a term longer than ten years, even if a longer term is stipulated by contract. LA. CIV. CODE ANN. art. 2628 (West 2005). However, if the right of first refusal is

granted in connection with a contract that gives rise to obligations of continuing or periodic performance, the right may be granted for as long as the period required for the performance of such obligations. *Id.* An example of such contract is a lease.

### Effect against third parties

A right of first refusal affecting real property is effective against third parties from the time the instrument that contains the right is filed for registry in the parish where the real property is located. LA. CIV. CODE ANN. art. 2629 (West 2005). The instrument granting a right of first refusal must identify the property burdened by the right with specificity in an effort to put third parties on notice as to which property is encumbered by such a right.

### Indivisibility of right

The right to exercise a right of first refusal is indivisible. LA. CIV. CODE ANN. art. 2630 (West 2005). When the right belongs to more than one person, it must be exercised by all. *Id.*

### Potential conflict with H.R. 4100

- The right of first refusal proposed by Sec. 106(d) of H.R. 4100 applies to an “interest in real property of comparable size and location in redeveloped areas to any party previously holding title.” Under Louisiana law, a right of first refusal can be granted over a *certain* thing to a *certain* person. This requirement of certainty seems to clash with the proposed right granted under H.R. 4100. Indeed, it would be difficult to grant a right of first refusal in accord with Louisiana law under H.R. 4100 as it calls for mass redevelopment of land through competitive bidding. As such, current lot, block, square descriptions would inevitably change and merge thereby negating the requirement of certainty under Louisiana law. This could cause potential title issues and invite litigation thereby removing the land from commerce. Likewise, the option of an owner or mortgagee to retain an interest in real property of comparable size and location could pose similar problems.
- The time limitations imposed by Louisiana law on rights of first refusal could pose an issue as well. Generally, rights of first refusal cannot be granted on real property for a term greater than ten (10) years. The intent of term limits is to keep land freely available in commerce; however, the ten year term limit can be extended if the right of first refusal is attached to a contract of continuing performance such as a lease. Given the uncertainty of redevelopment, the right of first refusal granted to an individual could expire before his/her section of the community was rebuilt.
- Another issue lies with the indivisibility of the right of first refusal. When property is owned jointly, the right of first refusal lies with all co-owners. Under Louisiana’s community property laws, property is presumed to be jointly owned by the spouses. LA. CIV. CODE ANN. art. 2340 (West 2005). As such, any rights attaching to the property would be born by both spouses. When a right of first refusal belongs to more than one person, all parties must exercise the right of first refusal; one cannot unilaterally exercise it to the exclusion of the other. LA. CIV. CODE ANN. art. 2630 (West 2005). Unfortunately, Katrina has strained already fragile marriages in New Orleans. According to local news reports, many divorces have resulted from the added stress of the storm. Since the right must be exercised by all parties vested with it, the uncertain domestic climate could prove to be a problem for the right of first refusal proposed by H.R. 4100.

## X. COMMUNITY PROPERTY

Under Louisiana law, a presumption of community exists as to the assets held by husband and wife. LA. CIV. CODE ANN. art. 2340 (West 2005). As a result of this presumption, both spouses must consent to any alienation of real property held during the existence of the marriage unless documentation exists to support such property is separately held. For the Corporation to purchase land, it must ascertain the marital status of the property owners during the course of title work. If property is subject to the community regime, both spouses must consent to the sale.

## XI. SUMMARY

The Louisiana Recovery Corporation seems to assume the position of any individual or developer who seeks to purchase property. H.R. 4100 specifically excludes the power of eminent domain thereby removing any constitutional concerns under the Fifth Amendment Takings Clause. The process is completely voluntary. There is no requirement for an individual homeowner to deal with the Corporation. The process seems to accord with the current practice of offer and acceptance presently used by individuals. An important potential conflict of H.R. 4100 with Louisiana law is



the granting of a right of first refusal and option to retain an interest in real property to property owners as outlined above. Research should be conducted at a legislative level for ways to amend H.R. 4100 so that it will comply with Louisiana law regarding rights of first refusal and options.

# In the Context of: Policy Alternatives



## AREA OF EXAMINATION

- *H.R. 4100 in the context of other legislative proposals*
- *The ability of proposals to rebuild real estate and the effect the economy*
- *The role of government and the Louisiana Recovery Corporation*

**A.** Summary

**B.** Findings

Gerson Lehrman Group employed the expertise of Council Members in various Practice Areas in order to obtain a multiplicity of perspectives on legislative and policy proposals and their potential economic, financial, and environmental impacts in Hurricanes Katrina and Rita recovery.

We used proprietary technology platforms to survey six economists, urban planners, financial experts, and policy experts on their views regarding how the provisions of the Baker Bill fit into the broader recovery efforts.



In order to obtain an array of perspectives that would result in a comprehensive broad assessment, we worked with the following respondents:

## William E. Finley, *Managing Partner, Finley & Partners*

Respondent 1

William Finley is a Managing Partner at Finley & Partners. After an initial career as a public city planner, Finley joined The Rouse Company to plan and develop a new city in MD. After a decade, he left to create his own company to develop public-private community projects. This included being appointed first President of MacArthur Foundation \$Billion real estate portfolio in Florida. Since then, Finley has served as Executive Dir of two Redevelopment agencies including rebuilding of Homestead FL after Hurricane Andrew. Projects included those in Russia and Bulgaria. Most recent experience has been to package \$46 mil apt community in West Palm Beach FL and to head new company to revive use of small cottages as affordable housing on infill sites in urban areas. Finley rec'd AB and MCP in City and Regional Planning at the University of California at Berkeley.

## Jeff Ward, *President, JSW & Associates, Inc.*

Respondent 2

Jeff Ward is a President at JSW & Associates, Inc.. Mr. Ward's areas of expertise include management of mitigation projects to include: acquisition and demolition, elevation, reconstruction, and flood control projects. Additional expertise includes benefit costs analysis of mitigation alternatives, develop of comprehensive hazard mitigation plans, and development of competitive applications. Over the past several years, he has been successful in implementing the acquisition and demolition of over 2,000 structures and assisting communities in obtaining funding for and executing over \$70 million in mitigation projects. In 2002, he received his Master of Business Administration C.F.M. from Georgetown University, and is Certified Floodplain Manager, #0408-02.

## Charles E. Feder, *Attorney*

Respondent 3

Charles Feder is an Attorney at a law firm in Atlanta, Georgia. Mr. Feder concentrates on real estate finance and development including multifamily tax credit projects, auto dealerships, restaurants, retail and office development, corporate reorganization, professional practices and acquisitions. He has experience with a wide variety of public and private financing vehicles, including conventional and conduit loans, taxable and tax-exempt bonds, tax-increment financing, SBA and HUD loan programs. Mr. Feder has served as general counsel for a developer, corporate secretary, development director, associate attorney and law firm principal and has been board member, advisor and consultant to economic development agencies, local governments, community and political organizations. Prior to becoming an attorney, he worked as an urban planner, college professor and director of college urban studies programs.





## Michael Bell, *President, The Bell Company*

Respondent 4

Michael Bell is President of The Bell Company, a full service PR, marketing communications, market research, environmental and real estate development consulting firm. With over 30 years experience in urban planning, design and construction in the housing industry, Mr. Bell brings a broad breadth of knowledge and experience in project management and outreach to the industry. Representative clients have include AT&T, the electric utility industry and major residential building firms.

## Loren C. Scott, *President, Loren C. Scott & Associates*

Respondent 5

Dr. Loren C. Scott is President and founder of Loren C. Scott & Associates in Baton Rouge, Louisiana, where he consults on impact studies, forecasting services, analysis of policy proposals, and general economic analyses. Previously, he was on the Economics Department faculty at Louisiana State University, where he rose through the ranks from Assistant Professor to the holder of the Freeport-McMoran endowed Chair of Economics. He is presently Professor Emeritus of Economics at LSU. Dr. Scott is co-developer of the Louisiana econometric model, a model used for providing annual forecasts of the Louisiana economy, which are released each fall. He was a co-investigator on over \$1 million in grant research at LSU and is the author of over 75 articles and technical reports in addition to reports written for consulting clients. Dr. Scott received his BS from Texas Tech University and his PhD from Oklahoma State University.

## Karl Evans, *Principal, IHS, Inc.*

Respondent 6

Karl Evans is a President at IHS, Inc.. IHS, Inc., is a non-profit entity dedicated to enhancing the economies of the lowest income rural counties in the U.S.A. Mr. Evans has 45 years experience living and working in low income rural counties. He has served as pastor in six states: Washington, Oregon, Idaho, Georgia, Arizona and Nevada. He has worked as a traveling national real estate financial consultant. He has developed and led workshops in church financial development, local church and community financial development, local church racism issues, sexuality issues, and in rural economic development. Dr. Evans developed and led a national study of the twenty-five lowest income rural counties of the U.S.A. He writes regularly for various internet and hard copy publications in the U.S.A and Canada. He has led recovery financing efforts in various areas rebounding from natural disasters. He has served on many local boards and service programs, including Corrections and Service.

A. Executive Summary

A. Findings

#### ASSESSMENT OF THE PROVISIONS OF H.R. 4100 AS A LOGICAL, FEASIBLE SOLUTION

- HR 4100 is the best of current policy options
- Control over the rebuilding efforts is a key issue and is not clearly assigned to the property owner or the LRC in HR 4100
- Potential conflict exists in HR 4100 between redevelopment of flood damaged property and mitigating future areas where flood damage is likely
- There is a suggestion of mixed income/Hope VI style redesign to be built into program

#### POTENTIAL SHORTFALLS

- In the case that the Corporation does not have Eminent Domain, holdouts could undermine the process.
- Risks of administrative and bureaucratic burdens and inefficiencies associated with similar types of institutions and agencies

#### POLICY ALTERNATIVES WITH SAME END GOALS AS THE LOUISIANA RECOVERY CORPORATION

- No comparable current alternative
- Potential advantages of non-profit and corporate leadership
- Key need for oversight to prevent waste (due to large amount of federal funds needed)

#### OTHER POLICY RECOMMENDATIONS

- There are lessons to be learned from the Hurricane Andrew Experience; the Resolution Trust Company, and the Home Owners Loan Corporation
- Any resulting plan needs to be precise and supplemented by an equally important public relations and education campaign on the variety of issues and areas to be addressed

**1. GIVEN THE SCOPE OF PROBLEMS LEFT BY HURRICANE DAMAGE (INCLUDING FOR EXAMPLE: ECONOMIC RECOVERY, ENVIRONMENTAL DAMAGE, MORTGAGE RESOLUTION), DO THE PROVISIONS OF H.R. 4100 OFFER A LOGICAL, FEASIBLE SOLUTION?**

Respondent #1: The listed functions do not seem to stress the actual rebuilding activities. While it is assumed that private contractors will do the actual building, they need to be controlled, inspected and verified by the funding entity. Those functions need to be connected directly to the property owner-homeowner and his legal and financial ties to the property. Maybe your listed functions do include this critical responsibility, but it is not initially clear.

Respondent #2: Yes - given the devastation caused by this event, this unique approach to redevelopment could be the only feasible solution - if implemented correctly. Classic Mitigation funds (such as HMGP) simply can not go far enough. Further, with the limited timeframe associated with using HMGP funds, there would be not way to mitigate the numbers of damaged/at-risk structures that could/should be mitigated. A coordinated approach to mitigation and redevelopment could be ultimately effective.

I have made some basic assumptions that are at the core of my assessment. The main assumption is in the intent of the bill. From reading the bill, it appears the intent is to identify areas heavily damages by Katrina (and/or Rita) that have little likelihood of being repaired. The LRC would go into these area with the intent of acquiring a large block of structures (on a voluntary basis), demolishing what is left of the structures. With raw land in hand, laying out a stronger, repaired or replaced infrastructure, and then selling this land to developers interested in redeveloping. To ensure equitable treatment of all prior owners and residents, some of this land would be made available to faith based organization and public housing agency(s) to ensure post-recovery homes were available for lower income ownership. My analysis focuses on whether there is anything in the bill that would prohibit this success.

One of the key factors to success, in my opinion is to get large enough parcels of land, where the area could be layout from scratch and infrastructure upgrades made so as to make the land attractive to developers. I do not believe getting every other parcel of land in a neighborhood will be what is needed to make redevelopment effective. There are items in the bill that I believe are restrictive to the point of making the implementation ineffective.

My experience with acquisitions focuses on the mitigation alternative of acquiring and demolishing flood-prone, at-risk structures. These acquisitions are always voluntary and carry with them deed restrictions on future use. Once acquired, the local government must demolish the structures, and turn the land into open space – nothing can be built on this land again – it can not be redeveloped. This mitigation alternative is well received by some local communities and completely avoided by others. Typically in more affluent counties or cities, taking out of the housing stock these flood prone, typically lower value/income homes is viewed as a positive solutions. However, when looking at the same alternative in less affluent areas or areas where there is a large portion of flood prone structures, taking homes out of the local housing stock, without being able to redevelop the land is seen as unacceptable. Communities often feel the loss of tax base would be ultimately more



detrimental than helpful. In these situations, elevations or demolition and rebuild were considered the best options. Homes were less at risk and were still there, and part of the tax base. It should be noted that FEMA just recently approved Demo Rebuild as an allowable mitigation alternative. Although the guidance for this mitigation alternative is not yet out, many Parishes are excited about the opportunity to have compliant homes rebuilt in the place of non-compliant/flood-prone homes. There are still many restrictions on the use of FEMA mitigation funds that hopefully would be overcome by reconstruction efforts under the Baker Bill.

In my opinion, it is extremely important that whatever is done under the LRC relative to reconstruction be closely coordinated with on-going FEMA mitigation programs to ensure the two programs are complementary. If this is not done, there is a strong chance the two programs will trip over one another, making both less than fully effective. Probably the best example of this is concerning the deed restrictions associated with FEMA mitigation funds. If a parish or city were to decide to acquire and demolish flood-prone structures, the deed on this land would have a restriction that nothing could be built on this site in the future. If this acquired/demolished structure(s) happened to be in the middle of an area deemed prime for reconstruction, these parcels may limit the effectiveness of this reconstruction – islands that would have to be worked around. Further, if FEMA funds were used to elevate homes in an area deemed prime for reconstruction, it would be very disruptive to the homeowner and significant waste of money to now go back and offer to buy this home, demolish, and then redevelop the land.

It is my thought that the LRC would need to work closely with the parish to lay in place a Parish-wide (or City-wide) assessment. The object would be an attack plan that would identify those areas best suited for the various types of available programs. Perhaps where damage to structures was not near total devastation, elevations, demo/rebuild, and acquisition with open space preservation would be best. In those areas closer to total devastation, perhaps LRC acquisition/reconstruction would be best, as well as some logical mix of the two in other areas. The benefit to this type of approach would be the leveraging of available funds (to stretch the money available). There would be over \$1.B of HMGP funds available in Louisiana. These funds would be most effective used in coordination with LRC efforts. In fact, one thought would be to have a portion of the LRC budget available as local match toward FEMA mitigation projects in those instances where the mitigation would be of benefit to the future redevelopment effort in an area. The problem is one of timing – as we debate and postulate over how, when, and where to establish the LRC, the mitigation train is moving – and it is not fair to the many flood victims to slow the mitigation train waiting for the LRC to catch up. If this is going to happen, it needs to happen immediately. In fact, in order to avoid the potential duplication and conflict between Redevelopment and Mitigation, it would be smart to set up the basic leadership of the Corporation before the staffing of the implementers so these issues can be identified and addressed as quickly as possible.

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Respondent #3: Recognizing that no proposed solution can possibly be complete or perfect, but that the need is enormous and urgent, the bill does offer a logical, feasible approach. Despite the shortcomings listed below, any approach is better than none.

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Respondent #4: It is probably necessary, considering the scope of the work to be done to set up this separate entity and get out of the hands of FEMA.

I think that the formation of the LRC is important that there needs to be an entity that is responsible only for this recovery. The group needs to have departments that specifically deal with each of the issues environmental economic planning and construction of the recovery. One of the most important aspects that need to be dealt with is the overall plan as to how to put the city back together. For example the city should be looked at as a clean slate and a comprehensive plan should be put together that uses new urbanism and planned unit



development practices to create mixed-use neighborhoods with retail, office and residential., both single family, multifamily and a mix of for sale and rental. This will create smaller scale neighborhoods and perhaps allow for people to live and work in close proximity.

It would also be important as they rebuild the infrastructure and utilities to look at alternative methods of energy creation. For example Geothermal heating and cooling is 35-70% more effective than regular electric generation and also cuts down on greenhouse gas emissions. Also Geo is in the ground and not expose as a chiller on the roof where it can be destroyed during a storm and thus cause utility black out. And of course this organization needs to make sure that there is a secure infrastructure that will protect the city and not allow the mass destruction of the city

Respondent #5 To appreciate the necessity of legislation like the Baker bill, one must understand the magnitude of the problem. Table 1 provides some idea of how serious the housing issue is in the New Orleans MSA.

Table 1 Impacts of Katrina and Rita on Housing in Louisiana

Impact Statewide New Orleans MSA

Destroyed 137,502 135,869

Major Damage 73,846 71,707

Minor Damage 70,689 65,934

Affected 188,656 155,679

Inaccessible 2,489 2,027

Total 473,182 434,216

Source: Red Cross

At least three points are notable in Table 1. First, there is the sheer number of homes impacted by these two storms---473,182 in Louisiana alone. A spokesman at the National Association of Home Builders reports this is seven times more homes impacted than any other natural disaster in U.S. history. Secondly, the vast majority of this harm ---over 92 percent--- was inflicted on homes in the New Orleans MSA.

Thirdly, the first two categories of impacts---destroyed or major damage---are homes that are uninhabitable. That would apply to 207,576 homes in this MSA. Pre-storm, there was an average of 2.42 persons living in each home. That means that 502,334 persons in the New Orleans MSA were rendered homeless by Katrina and Rita, a number that can only be fully appreciated when one drives through the devastation in this 7-parish area. Most of this devastation was concentrated in Orleans, St. Bernard, Plaquemines, Jefferson, and St. Tammany Parishes. St. Charles and St. John the Baptist Parishes were located far enough west to escape the worst effects of the storms.

The housing recovery further complicated by the fact that the damage was largely caused by standing flood waters created when the levee system failed. Once flood waters enter a dwelling, home owners insurance no longer applies. The homeowner must rely on flood insurance, and therein lays the rub. First of all, many homeowners in this region had no flood insurance. For example, latest estimates are that one-third of homeowners in Orleans and Plaquemines Parish had no flood insurance.

Secondly, even if one had flood insurance, that insurance only pays the lesser of 80 percent of the depreciated value of a home or \$250,000. Numerous homeowners with flood insurance are finding that the \$250,000 maximum does not provide enough cash to rebuild. This is especially a problem for those who owned very expensive house. For example if you owned a \$500,000 home, had \$50,000 in equity in it, and received the full \$250,000 from flood



insurance, you are still \$200,000 short of cash to rebuild your home. This is one place where the Baker bill is very important to owners of more expensive homes---such as those in the Lakeview area on New Orleans. The Baker bill has no limits on the absolute amount of money one might receive under the bill to rebuild. However, under the LRC proposed legislation, the maximum amount any homeowner could receive is \$150,000. For owners of expensive homes this is a very serious difference between the Baker bill and legislation proposed by the LRC.

There is another factor that is seriously limiting the home rebuilding effort in New Orleans. If it costs more than 50 percent of the pre-flood value of the home to rebuild or renovate, the home must be raised to a new base flood plain level. In some parishes it is not clear what that new base flood plain level is. New base flood plain levels have not yet been established for Orleans, Jefferson, St. Bernard, and Plaquemines Parishes. In some parishes---t. Bernard and Plaquemines, for example---these new base flood plain levels may be as high as 9 feet! That means the first floor can only be used as a garage, and if the owner is elderly, an elevator must be installed. This will obviously add significantly to the rebuild cost of the home.

All these factors contribute to the need for legislation like the Baker bill. The financial pressures on the residents of New Orleans who have destroyed homes or ones that are too damaged to inhabit are unusually severe.

These factors have combined to slow the home rebuilding process in New Orleans significantly. This, in turn, has significantly slowed the economic recovery effort in the New Orleans MSA. This is reflected in the slow progress of employment recovery in the MSA as shown in Table 2.

Table 2 New Orleans MSA Non-Farm Employment: 2005 (Thousands)

Jan	Feb	Mar	Apr	May	Jun
616.3	616.6	621.2	622	621.9	623
Jul	Aug	Sep	Oct	Nov	Dec
617.1	615.6	398.3	406.9	417.4	408.5

Source: Louisiana Department of Labor.

After dropping from a pre-Katrina level of 615,600 to 398,300, the area has only recovered about 10,200 of the lost jobs despite the fact that a large number of construction workers have entered the area to help with demolition. The problem with the employment recovery is that many firms would be willing to open but they cannot find workers because the workers have no place to live. The recovery in the area is being severely limited by the availability of housing.

One might argue this limited recovery is what one would expect in the face of a natural disaster. Actually, what normally happens is employment recovery occurs rather rapidly due to the huge infusion of insurance and rebuilds monies into an area along with a major influx of construction workers. Indeed, that is exactly what has happened in Lake Charles, an MSA hit badly by Hurricane Rita. December employment in that MSA was actually higher than December of 2004 due to a 48.9% increase in construction employment. That type of recovery is not happening in New Orleans due to the lack of housing for workers---another reason why legislation like the Baker bill is vital to the recovery of the New Orleans MSA.

Respondent #6: Each disaster that impacts either a large or small scope of humanity and resources leaves its own trail of issues. Yet every such event yields issues common to all, both in immediate impact and in human attempts to recover. The damage left by Katrina is quite similar, although on a smaller scale, to the damage left by the Civil War. On a larger scale, the redevelopment of Europe and Asia following WWII relied on similar recovery efforts, including



the Marshall Plan. H.R. 4100 is also similar to Reconstruction efforts following the Civil War and some pieces of the Marshall Plan. H.R. 4100 has both positive and extremely counter-effective elements. With the deletion of these few negative elements, H.R. 4100 can be an effective major tool for redevelopment.

## 2. WHAT ARE THE POTENTIAL SHORTFALLS?

Respondent #1: See above

Respondent #2: The success of redevelopment seems to hinge on getting substantial tracts of land that would be attractive on the open market for purchase for redevelopment. I see a couple of significant hurdles to this concept that could make this entire process ineffective.

1. Offers must be voluntary; the Corporation can not exercise eminent domain.
2. In no cases can the Corporation make offers for the purchase of foreclosed properties.

These two restraints are understandable but very likely to cause significant checker boarding. If an area that is considered prime for redevelopment has a large number of lower income areas, it is likely that some/many were foreclosed upon post-Katrina. Further, in lower income areas, there tend to be more title issues that often can only be resolved through condemnation. Last, if offers are voluntary than it may be impossible to get all properties in these areas. The result is there will likely be a mix of purchased houses and houses/lots that can not be acquired, thus eliminating the ability to get "substantial tracts of land".

One thing to understand is that to purchase a property in this type of situation, so as not be sued later by other owners that were not compensated, you would need to ensure you understood the ownership. In many lower income areas (some of which are likely to be the most prime for redevelopment, there is often not a clear chain of title – properties are handed down within a family with out proper recordation. When the current owner desires to sell, there is no way to verify ownership of to pass clear title to the corporation. The best resolution of this is through eminent domain. Title issues are resolved and the sale occurs. I am not suggesting the LRC has the right to use eminent domain when someone does not desire to sell, rather I am suggesting the LRC has the right to exercise eminent domain when this is the only way to obtain clear title. Additionally, I believe there are many owners of properties that have stopped paying their mortgages after these events. Unless there is some prohibition of executing foreclosures of Katrina damaged properties that will be a point were banks will have to foreclosure on properties. In these cases, in order to avoid not being able to get all the parcels necessary to make a given area attractive to developers, one of two things is recommended. 1. Either is able to buy foreclosed properties that would otherwise have been eligible for acquisition, or 2. Be able to work with banks to reverse the foreclosure, give the property back to the original owner, bring the bank current, and acquire the property. There is a lot more to this second option but it is possible.

There is an additional shortfall of not having a coordinated effort with on-going mitigation activities and use of HMGP funds. There may very well be structures that will be approved for use of mitigation funds for elevations, demo/rebuild (now called reconstruction), or acquisition in areas that would be prime candidates for Reconstruction as defined and intended by the Baker Bill. Once properties are mitigated using HMGP funds, the deed restrictions required by the Stafford Act may make reconstruction impossible. Further, if both mitigation and Baker Bill reconstruction are ongoing simultaneously there is likely to be



significant confusion to owners and Parishes on what program would/might work best in given areas. There is already a great deal of confusion about what the Baker Bill's implementation may do to HMGP funding and implementation that needs to be cleared up ASAP.

There is a section in the bill about right of first refusal. I understand why this is in there but I believe in looking at the return on a given investment. I believe that the administrative burden to the LRC to administer this far exceeds the benefits. If the seller of a damaged property is compensated, and can buy a replacement property, than they will end up whole, and they should be able to buy a redeveloped (or currently available) comparable replacement home. If any large numbers of people are interested in the right of first refusal option, the LRC will have to carry a very large staff to administer and oversee these cases – additional cost and burden I feel the LRC simply does not need.

One other major concern is of the available contractor base. Not only are we looking at acquiring close to 200,000 structures, they would need to be demolished and rebuilt. As everyone is award, there is an unprecedented amount of repair work on-going in Texas and LA from Katrina and Rita. Soon there will be construction work on top of this. The question is there enough contractors in the county to handle the volume of repair work and potential redevelopment. If this is to be effective, getting the nationwide contractor base up to speed on what might be coming would be critical. I am curious if anyone has done an analysis of how many homes can be build in a year (taking into account available materials and labor).

- Respondent #3:
- Absent the power of eminent domain, there appears to be no mechanism for dealing with recalcitrant property owners. Holdouts could undermine redevelopment efforts.
  - Financial assistance to local governments to fund condemnation for public health/safety reasons would be helpful.
  - If federal assistance is being used to purchase property (even if the sale is voluntary), is the Uniform Relocation Assistance and Real Property Acquisition Policies Act applicable? What about assistance to renters (as would be available under the Uniform Act)?
  - There is no clear indication of who would be entitled to insurance proceeds (seller or LRC?).
  - There should be some provision for assisting property owners with insurance claims.
  - There is a need to flesh out a mechanism for assisting displaced people in returning to their neighborhood/city after redevelopment.
  - The program does not appear to protect the interest of people wishing to return to their neighborhoods or even to their city. In order for a displaced person to obtain the Right of First Refusal/Option for comparable property, he must (1) give up any compensation for his relinquished property, (2) pay the Corporation its acquisition costs for the replacement property (3) obtain his own construction financing, and (4) complete reconstruction within 2 years.
  - There is a need to coordinate with whatever assistance is available for renters as well as owners.
  - The Office of Internal Audit does not appear to be sufficiently independent.
  - The Board of Directors appoints the members of the Office of Internal Audit, which sets its own salaries and reports to the Board of Directors. The Inspector General is subordinate to the Office of Internal Audit, whereas under the Inspector General Act, the IG is appointed by the President with the advice and consent of the Senate, and while the President may remove the IG, he must communicate the reasons to Congress. This affords some level of public accountability and scrutiny.





- The more the details are examined, the more this program looks like a land-grab for developers. Few developers will have the capacity to take on these projects. There is potential for enormous political fallout if the only perceived beneficiaries are companies such as Halliburton.
- The disposition of areas not suitable for rebuilding has not been addressed.
- The needs of people without flood insurance have not been addressed.
- The needs of renters are not addressed.

Respondent #4: Creating another bureaucracy that takes too long to accomplish their tasks. As in all governmental organizations there is always the fear of the bureaucracy taking over and the "hoops" that have to be jumped through large that the system fails to serve the purpose that it was created for. With proper management and specific duties and responsibilities this can be alleviated.

Respondent #5: No comment

Respondent #6: No comment

### 3. ARE YOU AWARE OF OTHER RECOMMENDED POLICY ALTERNATIVES THAT CAN ACHIEVE THE GOALS OF THE LRC WITHOUT ACTUALLY ESTABLISHING THE LRC?

Respondent #1: I think the LRC is essential, but there is a need to bring in non-profits with vast housing experience (Lisc, Enterprise, Ford, etc) to oversee the coordination of the rebuilding efforts. It will be essential to bring in people with non-profit motives to avoid hidden corruption when dealing with other peoples' money and contracting activities.

Respondent #2: I very much like the general concept of the LRC. I do not necessarily agree that it is the most effective way to establish this organization is as a Government Agency. I would prefer to see it be fully contracted out. Private industry bid on running this corporation. As for process implementation of the Baker Bill, I believe a coordinated approach to use of HMGP funds and reconstruction funds (with some flexibility on use of eminent domain - where required/needed to clear title issues) would make the organization more effective.

I believe the existing framework of laws and private sector participation initiate the recovery of south Louisiana without creating a new law. If anything needs to be changed, it would be some basic changes to the Baker Bill relative to condemnation and foreclosed property. As for the real estate side of the implementation, the appraisal, offer, settlement, and deed process could all follow current, standard industry practice. As for the redevelopment side of the implementation, current permitting and building code processes could be followed.

Respondent #3: Unfortunately not. The facts are that the need is overwhelming, the funding will involve billions of dollars but still be inadequate, and there will be great pressure to spend it quickly. This is a classic scenario for both waste and corruption. Emphasis must be placed on controls, auditing and bidding where possible.

Respondent #4: I am not aware of any other plan that to address this issue.

Respondent #5: No comment



Respondent #6 The primary issue involved in the development of the LRC is using financial muscle to free up sufficient resources for local communities to redevelop themselves. The most likely possibility of such a process, apart from outright development of the quasi-governmental entity by the federal government, is policy in support of private insurance entities to carry out the same process. The property could be purchased and resold, much as by the LRC.

Such a program would have several difficulties, of course. Chief among the difficulties would be the need to finance the process through land holder premiums. This might prove impossible. Many of the currently needy persons of Louisiana and the other affected areas have little or no insurance now. Additional premiums mean nothing to one paying no premiums already.

Additionally, such a future program would have no effect in the area now without extremely massive federal dollar input.

Another possibility would be the development of such a private program under federal auspices that would be funded through attaching portions of purchases prices. Later, the program would pay as other insurance for such devastation. Again, the weakness is in establishing the funding pattern.

The voluntary purchase and marketing of property apparently is very limited without this law. As noted below, one fundamental impact of an event such as a hurricane, a flood, or a volcanic eruption is the loss of economic power needed to re-establish life. The Baker bill is a significant step in this process.

However, forced redevelopment may be readily accomplished through other means once planning has been activated. One of the major issues of current legislative processes is the matter of eminent domain for limited commercial purposes.

The momentous importance of the Baker legislation is impossible to overestimate. Given the devastation spelled out below, this legislation provides a new path to recovery of a major section of the affected region. In addition, the impact of this legislation may be expected to continue in many other cataclysmic circumstances. Leaving behind, for the moment, the effects of the major hurricanes of 2005, consider the following circumstances.

About two per cent of the land area of Oklahoma has been burned by wildfire this fire season. Both urban and rural areas have been devastated. While this damage is not as concentrated as the Louisiana damage, still the vast need for recovery assistance is there. Residential and agricultural and service areas need an opportunity to re-shuffle the development of the area. This is uniquely possible when the land has been cleared by fire. Gone are houses, schools, service buildings and other pre-existing areas that ostensibly blocked redevelopment by the cost of replacing them without financial aid. The Baker bill would give these communities real openness to redevelop in a manner that would incorporate every known service need.

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**4. PLEASE ADD ADDITIONAL COMMENT ON THE ROLE OF AN LRC AND GENERAL PROVISIONS OF BILL IN ECONOMIC, FINANCIAL, ENVIRONMENTAL RECOVERY, NOT ADDRESSED BY QUESTIONS ABOVE?**

Respondent #1: The situation I am most familiar with is the impending epidemic of airborne toxins given off by MOLD cooking in the summer sun and no agency seeming to take the responsibility for remediation. I can imagine the issue of public relations is hanging in the air and no politician willing to accept any type of responsibility for it as an airborne disease. CDC and others have proclaimed its presence but stopped short of having any ideas as to how to eradicate

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the threat.

The Secretary of DEQ admitted its presence but indicated they did not know how to start. The Don Jones' offer to recruit an army of remediation experts has fallen on deaf ears due to many reasons I can guess. Once agencies think they have funds coming they are reluctant to share even if the problem is staring at their lungs.

The major difference between Homestead and NO is that in Florida we had a forceful governor, a terrific mayor, a brilliant, courageous city manager and community leaders willing to give authority to a non-profit bringing in expertise and ethical standards. We were given access to \$100 million, prepared a Plan in 60 days and started construction within 90 days on new housing, processed loans and grants 7 days/wk, etc. We rebuilt 90% of the community in 33 months. Of course, most homeowners had insurance and that rebuilding went on w/o public involvement.

I would feel better if I knew how your agency planned to effectuate the rebuilding process. It should be a seamless process, not a series of different required actions. Frankly it should be organized on a case system, not a construction system. How the organization is structured and manned is critical to how the process will work. I haven't read a word about the selected purchase system the Governor was promoting. Has it been approved?

Respondent #2: It is somewhat bothersome that a large, bureaucratic Government agency would be stood up to run this organization. The more functions that are handled internally, the less effective the implementation is likely to be. I would suggest the Corporation be as lean as possible responsible for the funding and oversight of the program and as much as possible be outsourced to industry. In fact, typically after a disaster there are many very knowledgeable professionals available with expertise in the functions the LRC will require. Real Estate agent, title/settlement company folks, appraisers, etc. could be hired by a commercial firm that would then be hired as an outsourced function.

Respondent #3: Nothing more

Respondent #4: The LRC will need to have a clear and precise plan and message and select the proper people with the ability to think of the economic environmental planning and construction other than business as usual. As stated alternative utility sources, proper Planned unit dev practices and innovative design and construction techniques need to be applied. This effort could be used as an example for how to properly put an area back together and provide for the needs of all the people of the region.

Respondent #5: Nothing more

Respondent#6: In many ways the Resolution Trust Corporation (RTC) and Home Owners Loan Corporation (HOLC) are very similar to the effort of the LRC. All target the fundamental financial inability of property owners to make appropriate use of the property due to events beyond their own control. All assume a possibility of appropriately responding to this real property cataclysm through federal action and local community initiative.

However, in other areas the RTC / HOLC and the LRC are quite different. The RTC, as a quasi-area of the federal government, is presumed to hold the balance of power and initiative as it attacked the Savings and Loan debacle of 1988-89. It is assumed that only the federal government could, by massive and forceful intervention, re-establish order to the chaotic development industry. That assumption has probably been correct.

The essence of the need for the RTC lay in two details. First, the massive numbers of



homes, businesses and services affected across the nation called for dollars that could not be replicated in any other scenario. No one had that much money or organization.

Second, the vast geographic area involved called for federal intervention in ways that local powers could not fathom. Only the federal government has a hand in community issues from Puerto Rico to Alaska and from Main to Guam. By involving both taxation and support issues, grants and various housing and development loan guarantees and other issues, the federal government becomes the core development mechanism for many billions of dollars across the nation.

After the hurricanes of Louisiana and other areas, it may be that local initiative holds the balance of power. There seems to be consensus that communities can and should be developed after new plans and models. The weakness is primarily that no entity apart from the federal government holds the massive ability to financially intervene in the rebuilding process. Forceful intervention is not a primary requisite, although it will be required in some instances. That makes the Baker legislation incredibly important.

With local initiative planning processes as the key thought processes, it can be reasonably expected that local bargaining and community rebuilding may negate more of the need for force. However, the might of the federal government to give stable funding to the planning and redevelopment processes through purchase and resale of the properties involved will be a powerful impetus toward bringing order to the chaotic situation in these concentrated communities.

The State of Florida also experienced devastating hurricanes through the previous decades. In many of these storms, the entire residential areas of the communities have been destroyed. When this land is cleared for rebuilding, it leaves a clean tablet for new development. By purchasing the land, re-planning and re-dividing and sub-dividing the area, a great new contribution is possible. Development can take place in orderly fashion as was originally impossible while the land was developed for first use. Utilities can be planned along with the residential and commercial structures, roads and other service requirements.

The Baker bill adds a valuable resource to communities looking to recovery. It allows these areas the opportunity to re-plan and re-develop major areas collectively. Major sections of land are repurchased and become available for block development. This allows the block development of infrastructure as well as residential and commercial activity after consistent planning.

This report was compiled from multiple sources for discussion and information purposes. Gerson Lehrman Group cannot guarantee the accuracy or completeness of this report nor of the inputs and content provided by GLG Council Members and other experts who contributed to this report.