

## **TWO YEARS AFTER THE STORM: THE STATE OF KATRINA HOUSING RECOVERY ON THE MISSISSIPPI GULF COAST**

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### I. INTRODUCTION

In the early morning of August 29, 2005, one of the largest hurricanes in recorded history struck the United States. The eye of the storm was forty miles wide, extending from Waveland, Mississippi, to Slidell, Louisiana. Severe winds of up to 140 miles per hour and tidal surges of up to twenty-six feet hammered the shoreline seventy miles in either direction from the eye of the storm. The assault lasted ten hours; by the time it

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finally subsided, 231 Mississippians had lost their lives, and the Mississippi Gulf Coast was unrecognizable.<sup>1</sup>

The damage from Hurricane Katrina to Mississippi's housing supply was of such magnitude as to create an immediate state of emergency: 70,000 homes were destroyed, and 160,000 were damaged.<sup>2</sup> In the early aftermath, those who had stayed and survived took refuge in public shelters. Those who evacuated only to return and find their homes or apartments destroyed or uninhabitable took shelter wherever they could: in damaged but unoccupied structures, automobiles, churches, tents provided by early relief workers, or even blankets outside under trees. Later, as FEMA trailers finally began to arrive, these temporary structures averaging 240 square-feet in size served as housing for many residents of South Mississippi: by the spring of 2006, 100,000 Mississippians were living in 37,000 FEMA trailers.<sup>3</sup>

Given these harsh realities, it was not surprising that Governor Haley Barbour's Commission on Recovery, Rebuilding and Renewal identified the development of affordable housing as the "cornerstone" of Mississippi's Katrina recovery in December of 2005.<sup>4</sup>

This article addresses the State of Mississippi's response to the affordable housing crisis on the Coast. Part I describes the damage to existing housing stock and the heightened impact of the storm on low-income and minority communities. Part II describes and discusses the key recovery programs created by the Office of the Governor and approved by HUD. Part III offers a critique of these programs as neglectful of the needs of low-

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<sup>1</sup> Joshua Norman, *Death Toll Anything but Certain: Professor Leads Quest for Most Accurate List of Katrina Victims*, SUN HERALD, Sept. 30, 2007, at A1 (citing Miss. Dep't of Pub. Safety, Office of Crime Laboratories).

<sup>2</sup> OFFICE OF GOVERNOR HALEY BARBOUR, ONE YEAR AFTER KATRINA: PROGRESS REPORT ON RECOVERY, REBUILDING AND RENEWAL 15 (2006).

<sup>3</sup> *Barbour: Preparation Vital During Quiet Part of Hurricane Season* (WLOX television broadcast Aug. 4, 2006).

<sup>4</sup> GOVERNOR'S COMM'N ON RECOVERY, REBUILDING AND RENEWAL, AFTER KATRINA: BUILDING BACK BETTER THAN EVER 51 (2005), available at [http://www.mississippi-renewal.com/documents/Governors\\_Commission\\_Report.pdf](http://www.mississippi-renewal.com/documents/Governors_Commission_Report.pdf) [hereinafter GOVERNOR'S COMM'N REPORT].

income individuals and others who rely on rental property for shelter. Part IV describes additional tools for promoting affordable housing. Part V suggests several early lessons to be learned from the state's experience in confronting the affordable housing problem on the Gulf Coast.

## II. IMPACT OF KATRINA ON AFFORDABLE HOUSING STOCK AND LOW-INCOME COMMUNITIES

Hurricane Katrina destroyed or damaged so severely as to render uninhabitable over sixty percent of the single family dwellings in southern Mississippi.<sup>5</sup> The impact of the storm upon multi-family rental units was even greater: seventy percent of such units in Hancock County were rendered uninhabitable, forty-six percent of such units in Harrison County were rendered uninhabitable, and thirty percent of such units in Jackson County were rendered uninhabitable.<sup>6</sup>

As staggering as these numbers appear, they must be considered in context. First, an affordable housing crisis already existed in Mississippi before Katrina. Mississippi, the poorest state in America, has historically suffered from a shortage of decent and affordable housing.<sup>7</sup> Secondly, the impact to housing from Katrina was not equally distributed across all communities.

Though it is popular to say, as President Bush did, that “[t]he storm didn’t discriminate,”<sup>8</sup> every study conducted in the aftermath of Katrina reveals a disproportionate impact upon low-income and minority communities. For example, “house-

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<sup>5</sup> See Mississippi Beyond Katrina, <http://www.mississippibeyondkatrina.com/help> (last visited Mar. 18, 2008).

<sup>6</sup> See summary of MISS. CTR. FOR JUSTICE RENTAL UNIT SURVEY, HURRICANE KATRINA DAMAGE TO MULTI-FAMILY APARTMENT COMPLEXES IN JACKSON, HARRISON AND HANCOCK COUNTIES (2006), available at <http://mscenterforjustice.org/about%20us/survey.html>. See also Priscilla Frulla, *Apartment Losses Near 50%, 10,000 Units Fell Victim to Katrina*, SUN HERALD, Oct. 31, 2006, at B8 (citing Mississippi Center for Justice Rental Unit Survey).

<sup>7</sup> See Deborah H. Bell, *The University of Mississippi Housing Law Clinic: A Local Law Office and Regional Law Center*, 61 MISS. L.J. 501 (1991).

<sup>8</sup> CNN, *Bush Gets Ground Tour of Katrina Damage*, Sept. 12, 2005, <http://www.cnn.com/2005/US/09/12/katrina.impact/index.html>.

holds at or below 150% of the Federal Poverty Line” comprised ten percent of pre-Katrina households, “yet such households represented 13.5% of those within Katrina’s Surge Inundation Limit.”<sup>9</sup>

As the Governor’s Commission notes, there were much larger numbers of lower-income households in the Katrina-devastated areas: “about 65 percent of the housing units exposed to the surge and over 57 percent of the units exposed to flooding were occupied by households with incomes below the U.S. median household income level.”<sup>10</sup> In Hancock and Harrison Counties, almost seventy-five percent of the housing units were occupied by households living below the median income level for the nation.<sup>11</sup>

Low-income renters face a particular and acute crisis. The loss of rental housing stock precipitated an overall average increase in rental rates of thirty to fifty percent.<sup>12</sup> Extremely low-income households, those living at thirty percent or less of the area median income, have been served historically by public housing. Hurricane Katrina damaged or destroyed more than ninety percent of the 2,700 public housing units on the Coast.<sup>13</sup>

### III. PROGRAMS CREATED TO ADDRESS IMPACT

In February of 2006, Congress awarded \$5.05 billion in a special Katrina Community Development Block Grant allocation to Mississippi for the rebuilding effort.<sup>14</sup> This appropriation

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<sup>9</sup> Jonathan P. Hooks & Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 CAL. W. L. REV. 21, 27 (2006) (citing GOVERNOR’S COMMISSION REPORT ON RECOVERY, REBUILDING AND RENEWAL 53 tbl.2 (2005)) (calculating percentage based on 10,228 low-income households out of 75,733 housing units exposed to surge).

<sup>10</sup> GOVERNOR’S COMM’N REPORT, *supra* note 4, at 54.

<sup>11</sup> *Id.* at 53.

<sup>12</sup> Tony Pipa & Steve Greene, *Forgotten Communities, Unmet Promises: An unfolding tragedy on the Gulf Coast*, OXFAM AMERICA, Aug. 21, 2006, [http://www.oxfamamerica.org/newsandpublications/publications/briefing\\_papers/briefing\\_paper.2006-08-21.1978258942/Oxfam\\_GulfReport.pdf?searchterm=forgottencommunities](http://www.oxfamamerica.org/newsandpublications/publications/briefing_papers/briefing_paper.2006-08-21.1978258942/Oxfam_GulfReport.pdf?searchterm=forgottencommunities).

<sup>13</sup> OFFICE OF GOVERNOR HALEY BARBOUR, ONE YEAR AFTER KATRINA: PROGRESS REPORT ON RECOVERY, REBUILDING AND RENEWAL 20 (2006).

<sup>14</sup> Pub. L. No. 109-148, 119 Stat. 2680 (2005).

supports a number of programs created by the Governor's office and approved by HUD.

#### A. MDA-CDBG

The Mississippi Development Authority's Homeowner Assistance Program (HAP) is a two-phase program designed to help homeowners whose residences were damaged by Hurricane Katrina. "In short, one can characterize the Mississippi plan as a grand compensation and covenant purchase plan."<sup>15</sup>

The HAP was authorized by the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act of 2006.<sup>16</sup> The Emergency Appropriations Act appropriated \$11.5 billion in Community Development Block Grant (CDBG) funds for states affected by Katrina and Rita.<sup>17</sup> Mississippi received \$5.058 billion of the initial CDBG disbursement.<sup>18</sup> The Act authorized Mississippi to spend the CDBG funds for activities authorized under Title I of the Housing and Community Development Act of 1974,<sup>19</sup> which includes the Disaster Recovery Assistance program within the larger CDBG program structure.<sup>20</sup> The "Disaster Recovery Assistance [program] provides grants to help areas recover from Presidentially-declared disasters."<sup>21</sup>

The HAP consists of two phases. Phase I was designed to

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<sup>15</sup> John A. Lovett, *Rebuilding a Region: Housing Recovery Efforts in the Wake of Katrina and Rita*, 20 PROB. & PROP. 49, 51 (2006).

<sup>16</sup> Department of Defense Appropriations Act of 2006, Pub. L. No. 109-148, 119 Stat. 2680, 2779-80 (2005) (describing the Community Development Fund).

<sup>17</sup> Pub. L. No. 109-148, 119 Stat. 2680, 2779-81 (2005).

<sup>18</sup> Allocations and Common Applications and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Guarantees, 71 Fed. Reg. 7666 (Feb. 13, 2006) (Dep't of Housing and Urban Dev.).

<sup>19</sup> Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301 (1974)); *see also supra* note 16.

<sup>20</sup> NIXON PEABODY LLP & THE MISS. CTR. FOR JUSTICE, GUIDE TO APPEALS UNDER THE HURRICANE KATRINA HOMEOWNER'S GRANT PROGRAM OF THE MISSISSIPPI DEVELOPMENT AUTHORITY 4 (2006), *available at* <http://micdbgappeals.nixonpeabody.com/Nixon%20Peabody%20Manual%20Peabody%20Guidebook%20to%20Mississippi's%20Homeowner%20Assistance%20Program%20UPDATED%20201-17-97.pdf> (updated Nov. 17, 2007).

<sup>21</sup> *Id.* at 4.

help homeowners outside the federally-designated flood plain who suffered storm surge damage. Phase II, which is still emerging, is aimed at lower-income residents who suffered storm surge damage, whether inside or outside the flood plain. Neither phase assists residents who suffered only wind damage.

i. Phase I

In March 2006, the Mississippi Development Authority (MDA) released its first plan, subject to Department of Housing and Urban Development (HUD) approval, in July 2006.

HUD released \$3.4 billion of the \$5 billion allocation.<sup>22</sup> The purpose of Phase I of the HAP is to:

provide a one-time grant payment, up to a maximum of \$150,000, to eligible homeowners who suffered flood damage to their primary residence as of August 29, 2005, from Hurricane Katrina. In exchange for the grant payment, a qualifying homeowner must agree to a covenant on their property that establishes building code, flood insurance and elevation requirements for them or any future owner of the land.<sup>23</sup>

This program is directed at those who relied to their detriment on governmental flood plain designations. Approximately 31,000 homeowners who suffered storm surge and had homes outside the flood plain have registered with FEMA.<sup>24</sup> “Approximately 19,000 of these homeowners, having relied on the NFIP with regard to the need to carry flood insurance, did not have flood insurance” to cover Katrina damage.<sup>25</sup> Seven thousand eight hundred homeowners did carry some flood insurance, but in many instances the amount of flood insurance was very insufficient to cover the loss.<sup>26</sup> “Grant payments under this program will act, in effect, as insurance

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<sup>22</sup> Lovett, *supra* note 15, at 51.

<sup>23</sup> MISS. DEV. AUTH., PARTIAL ACTION PLAN FOR KATRINA RECOVERY HOMEOWNER GRANT PROGRAM: PHASE I at 2 (2006), *available at* [http://www.mississippi.org/userfiles/file/home\\_owners\\_assistance\\_program/hap3606%20final.pdf](http://www.mississippi.org/userfiles/file/home_owners_assistance_program/hap3606%20final.pdf).

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

proceeds” for homeowners without flood insurance or with minimal flood coverage.<sup>27</sup>

To qualify for assistance, homeowners must be outside the flood plain and not have had insurance to cover structural flood damage:

Single-family homes, owner-occupied duplexes and manufactured housing including mobile homes are eligible for grants under this program. Under Hurricane Katrina Homeowner’s Grant Program, homeowners may receive up to \$150,000 or the insured value of their home times the percentage of damage the home received (whichever is less), less any insurance or FEMA payments for structural damage. If homeowners have an SBA disaster loan, SBA will perform a duplication of benefit analysis to determine if the grant proceeds would be used to repay the loan. In addition, if homeowners must elevate their houses when rebuilding to reduce the risk of damage from future storms, they may be eligible for up to \$30,000 to cover the higher cost of construction.<sup>28</sup>

Only one application per household is allowed, and the grant does not apply to any contents of the home—only to structural damage.<sup>29</sup> After receiving a grant, homeowners have sole discretion over the use of the funds. However, the funds will be handled for the homeowner by the mortgage company, and the proceeds will go first to any “past due installments owed on the Homeowner’s mortgage loan with the Lender and any ad valorem taxes due and owed on the damaged property.”<sup>30</sup> Also, “if funds are used for something other than repairing or rebuilding the home, the Homeowner should consult its tax advisor regarding the taxability” of the grant.<sup>31</sup>

The requirements for a Phase I grant are:

- (1) You owned and occupied your home as of August

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

<sup>28</sup> Mississippi Home Help, Katrina Homeowner Grants, Phase I General Program Information, [http://www.mshomehelp.gov/p1\\_default.htm](http://www.mshomehelp.gov/p1_default.htm) (last visited July 27, 2007).

<sup>29</sup> Mississippi Home Help, Katrina Homeowner Grants, Phase I Grant Program Guidelines, <http://www.mshomehelp.gov/guidelines.htm> (last visited Aug. 6, 2007).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

29, 2005.

(2) Your home was located in the Mississippi Counties of Harrison, Hancock, Jackson, or Pearl River.

(3) Your home was your primary residence on August 29, 2005.

(4) You maintained homeowner's insurance on the property.

(5) Your home was outside the pre-Katrina designated flood zone (FEMA-designated one-hundred-year flood zone) on August 29, 2005, yet suffered flood damage as a result of Hurricane Katrina.<sup>32</sup>

The following are covenants that grant recipients must agree to in order to receive a Phase I grant:

(1) Maintain flood insurance on damaged residence in perpetuity.

(2) Rebuild or repair to applicable codes and local ordinances.

(3) Rebuild to newly recommended FEMA flood elevations.

(4) Manufactured housing (mobile homes) must comply with the Federal Manufactured Housing Code.<sup>33</sup>

## ii. Phase II

Phase II differs from Phase I in that homeowners who live outside the flood plain are eligible, but an income requirement of 120% of Area Median Income (AMI) has been added. The maximum compensation level is \$100,000. "MDA is redirecting \$700 million of the \$3 billion initially allocated for Homeowner Assistance Grants to the Phase II Homeowner Grant Assistance Program."<sup>34</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> MISSISSIPPI DEV. AUTH., HOMEOWNER ASSISTANCE PROGRAM MODIFICATION NUMBER 4: PHASE II at 2 (2006), available at [http://www.mshomehelp.gov/p2\\_action\\_plan.pdf](http://www.mshomehelp.gov/p2_action_plan.pdf) [hereinafter MODIFICATION NUMBER 4].

Homeowners who fit the following guidelines are asked to register for Phase II:

- (1) You owned and occupied your home as your primary residence on August 29, 2005.
- (2) Your home was located in Harrison, Hancock, Jackson, or Pearl River Counties.
- (3) Your home received flood surge damage as a result of Hurricane Katrina.
- (4) Your household income is at or below 120% of the AMI.<sup>35</sup>

Homeowners receiving Phase II assistance will be required to demonstrate the commitment to follow through on certain actions in exchange for compensation. They must sign a legally binding document, which provides for the following:

- (1) Homeowner will maintain recommended structure and flood insurance.
- (2) The home they own and occupy meets the applicable building codes and local ordinances.
- (3) When rebuilding, the home they own and occupy complies with FEMA guidance for base flood elevations.
- (4) If the home is manufactured housing, it will comply with HUD's manufactured housing code and be elevated in accordance with FEMA advisory flood levels.

Any homeowner that fails to meet all of these terms and conditions may be required to repay all or a prorated portion of the financial assistance provided through this program.<sup>36</sup>

### iii. Special needs

Grant awards for homeowners who meet the criteria for special needs will be calculated at one hundred percent of the uncompensated damage. Those who meet the following criteria

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<sup>35</sup> Mississippi Home Help, Katrina Homeowner Grants, Phase II, Housing Needs Assistance Program Guidelines, [http://www.mshomehelp.gov/p2\\_guidelines.htm](http://www.mshomehelp.gov/p2_guidelines.htm) (last visited Aug. 13, 2007).

<sup>36</sup> *Id.*

may be eligible for special needs assistance:

(1) Elderly: age sixty-five or over as of grant closing date; or

(2) Disabled: any person who has a physical or mental impairment that substantially limits one of [sic] more major life activities; has a record of such impairment; or is regarded as having such an impairment as defined by the Social Security Administration; or

(3) Household income at or below sixty percent of the AMI.<sup>37</sup>

#### iv. Elevation grants

Eligible homeowners may also receive a separate grant of up to \$30,000 to defray the costs of elevating their homes. This grant would be made available to homeowners who meet the eligibility and program requirements.<sup>38</sup> Homeowners who had flood insurance at the time of the flood and are eligible for assistance from the National Flood Insurance Program (NFIP) are not eligible to receive the \$30,000, as they should receive a like amount directly from NFIP. “The grant is for the increased costs of building to the new height regulations. Each property may be subject to an environmental review.”<sup>39</sup>

Comments submitted during the public comment period suggesting the expansion of Phase II to renters, owners of rental property, and homeowners whose homes suffered damage from any source, among others, were rejected.<sup>40</sup>

#### B. Katrina Cottages

The Mississippi Alternative Housing Program is a pilot program funded by FEMA that is an attempt to implement an alternative form of disaster housing that is safer and more

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<sup>37</sup> MODIFICATION NUMBER 4, *supra* note 34, at 4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 6.

comfortable than traditional FEMA trailers.<sup>41</sup> Applicants are selected from an eligible pool of Katrina survivors through a random proportional selection mechanism. Those who are eligible to participate in the program must:

(1) Have been a permanent resident in one of Mississippi's three coastal counties (Hancock, Harrison and Jackson) on August 29, 2005.

(2) Be a resident of the State of Mississippi living in a FEMA-provided travel trailer or mobile home in one of the three coastal counties as of April 1, 2007.

(3) Be listed with FEMA as the applicant or co-applicant.

(4) Live in the alternative housing unit for at least six months beyond September 1, 2007.<sup>42</sup>

"Anyone who is not currently living in FEMA-provided disaster housing is not eligible for the program . . . [a] random, proportional selection will be used to determine who will participate in the program."<sup>43</sup>

The Alternative Housing program is authorized by § 2403 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006,<sup>44</sup> and administered by the Mississippi Emergency Management Agency. In addition to creating new types of units, the program is aimed at creating new strategies for disaster unit management and creating the opportunity for disaster victims to permanently reside in the alternative housing.<sup>45</sup>

The Mississippi program consists of two projects—the

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<sup>41</sup> DEPT OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, EVALUATION OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S ALTERNATIVE HOUSING PILOT PROGRAM (2007), available at [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_07-39\\_Apr07.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-39_Apr07.pdf) [hereinafter FEMA EVALUATION].

<sup>42</sup> Miss. Emergency Mgmt. Agency, Mississippi Alternative Housing Program, <http://mscottage.org/eligibility/> (last visited Aug. 13, 2007).

<sup>43</sup> *Id.*

<sup>44</sup> Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Pub. L. No. 109-234, 120 Stat. 418 (2006).

<sup>45</sup> Miss. Emergency Mgmt. Agency, Mississippi Alternative Housing Program, <http://mscottage.org/reservist/> (last visited Aug. 13, 2007).

“Green Mobile” project and the “Park Model and Mississippi Cottage” project.<sup>46</sup> The Green Mobile project proposed to build one hundred energy efficient one- or two-bedroom units from structural insulated panels. FEMA provided \$5,890,882 for the project.<sup>47</sup> Original plans called for a larger Park Model and Mississippi Cottage project, funded up to \$275,427,730, to build 7,261 one-bedroom Park Model units to replace FEMA travel trailers and 1,933 two- or three-bedroom Mississippi Cottages to replace FEMA mobile homes.<sup>48</sup> However, expectations are now set at between 4,000 to 6,000 units.<sup>49</sup> “All of the units are modular, stick-built homes that can be converted into permanent homes.”<sup>50</sup>

In June 2007, the first Park Model unit went to Biloxi resident Katherine St. Amant, whose home was destroyed by Katrina.<sup>51</sup> As of June 2007, 247 individuals or families were approved for the Park Model unit; forty-seven have been approved for the two-bedroom Mississippi Cottage unit; and twenty-seven have been approved for the three-bedroom Mississippi Cottage unit.<sup>52</sup> As of November 2007, 655 units have been constructed, with 500 occupied.<sup>53</sup>

### *C. Rental Housing Development Programs*

As described above, the central component of Mississippi’s Katrina recovery plan consists of a two-tiered program of homeowner restitution. As originally designed by the state, no

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<sup>46</sup> See FEMA EVALUATION, *supra* note 41, at 3-4.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.* at 4; see also Miss. Emergency Mgmt. Agency, Mississippi Alternative Housing Program, <http://mscottage.org/reservist/> (last visited Aug. 13, 2007).

<sup>49</sup> Miss. Emergency Mgmt. Agency, Mississippi Alternative Housing Program, <http://mscottage.org/reservist/> (last visited Aug. 13, 2007).

<sup>50</sup> *Id.*

<sup>51</sup> Press Release, Governor Haley Barbour’s Office, Governor Barbour Gives First Cottage Keys to Biloxi Resident (June 21, 2007), available at [www.governorbarbour.com/recovery/news/2007/jun/pr.FirstCottage.htm](http://www.governorbarbour.com/recovery/news/2007/jun/pr.FirstCottage.htm).

<sup>52</sup> *Id.*

<sup>53</sup> Keith Burton, *Placement of Mississippi Cottages to Replace FEMA Trailers Moving Slow*, GULFCOASTNEWS.COM, Nov. 8, 2007, <http://www.gulfcoastnews.com/GCNews/KatrinaMississippiCottages110807.htm>.

recovery funds were devoted to addressing the loss of rental property. However, following aggressive advocacy, MDA created a small-scale rental assistance program.

i. Small rental assistance program

In 2006, the Mississippi Development Authority unveiled a new program designed to “provide affordable rental housing by offering incentives for small-scale rental property owners—owners of properties containing between one and four rental units.”<sup>54</sup> The program is budgeted at \$262.5 million dollars, funded from the original congressional appropriation of CDBG Katrina rebuilding money.<sup>55</sup>

The program is structured to provide four types of assistance to landlords in Hancock, Harrison, Jackson, and Pearl River Counties: (1) rental income subsidy assistance; (2) repair or reconstruction reimbursement for Katrina-damaged property; (3) reconstruction or conversion reimbursement for non-Katrina damaged property; and (4) new construction reimbursement.<sup>56</sup>

The initial phase of this program (Round I) is open to all ownership entities, whether individuals, corporations, LLCs or partnerships. Non-profit organizations are encouraged to apply, and twenty million dollars is reserved for non-profits as a set-aside.<sup>57</sup>

Qualifying owners must agree to abide by MDA and HUD’s standards of affordability, i.e., rents set at thirty percent of a tenant’s gross annual income.<sup>58</sup> The owner must agree that *all* rental units covered by the program will be rented to tenants

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<sup>54</sup> MISS. DEV. AUTH., SMALL RENTAL ASSISTANCE PROGRAM APPLICATION GUIDEBOOK I (2007), *available at* [http://www.mississippi.org/UserFiles/File/Home\\_Owners\\_Assistance\\_Program/Sample%20Rental%20Assist%20Documents/SRAP%20Book%201.4%2010012007.pdf](http://www.mississippi.org/UserFiles/File/Home_Owners_Assistance_Program/Sample%20Rental%20Assist%20Documents/SRAP%20Book%201.4%2010012007.pdf).

<sup>55</sup> MISS. DEV. AUTH., SMALL RENTAL ASSISTANCE PROGRAM CDBG DISASTER RECOVERY ACTION PLAN AMENDMENT 1, 2 (2007), *available at* [http://www.mississippi.org/UserFiles/File/Home\\_Owners\\_Assistance\\_Program/SmallRentalFinal%2006\\_12.pdf](http://www.mississippi.org/UserFiles/File/Home_Owners_Assistance_Program/SmallRentalFinal%2006_12.pdf).

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.* at 1.

<sup>58</sup> *Id.* at 11.

with incomes at or below 120% of the AMI. Additionally, the owner must agree to rent *a majority* of the rental units to tenants at or below eighty percent of the AMI.<sup>59</sup>

MDA began accepting applications for Round I of the small rental assistance program on September 10, 2007, with a deadline for applicants of October 26, 2007.<sup>60</sup> According to sources within the Governor's office, approximately eight-hundred applications were received. Assuming each application embraced the maximum of four units and was otherwise a qualified application, the program would result in the rehabilitation, reconstruction, or construction of 3,200 units of rental housing.

ii. Low income tax credits

The chief program upon which the state is relying to promote the replacement of affordable rental housing is the Low Income Housing Tax Credit program (LIHTC). The LIHTC, created by Congress as part of the 1986 Tax Reform Act, subsidizes developers of low-income rental housing by providing a complex system of tax credits, which in turn can be sold to others.<sup>61</sup> In exchange for these credits, developers agree to restrict the rents on a percentage of their units for a specified period of years and to dedicate those units only to tenants who meet income limits.<sup>62</sup> Specifically, the developer of a LIHTC property must opt to have either twenty percent or more of the building's residential units rent-restricted and occupied by renters whose income is fifty percent or less of the AMI, or have at least forty percent or more of its residential units rent-restricted and occupied by tenants whose income is no greater than sixty percent of the AMI.<sup>63</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 1.

<sup>61</sup> Megan J. Ballard, *Profiting from Poverty: The Competition Between For-Profit and Nonprofit Developers for Low-Income Housing Tax Credits*, 55 HASTINGS L.J. 211, 212 (2003).

<sup>62</sup> *Id.* at 215.

<sup>63</sup> Daniel P. Cohen, *Improving the Supply of Affordable Housing: The Role of the Low-Income Housing Tax Credit*, 6 J. L. & POL'Y 537, 542 (1998).

## III. CRITIQUE

The most frequent criticism of the Mississippi recovery plan is that, from its inception, it focused exclusively on the needs of homeowners and failed to take into account the needs of renters, and low-income renters particularly. At the local and statewide levels, this criticism has been advanced continuously by many, if not all, of the grassroots and faith-based organizations participating in recovery work on the Coast. Legal commentators have also noted the discrepancy, with some going as far as to say that “[n]eglect and exclusion of low-income renters has characterized Mississippi’s plans for its special allocation of federal recovery and rebuilding funds.”<sup>64</sup> Considering the fact that only five percent of the recovery funds are proposed to be used for rental property development, this criticism has considerable force.<sup>65</sup> This criticism is not simply an academic or theoretical one: twenty-eight percent of Coast residents were renters at the time of Katrina, and the post-Katrina rise in real estate costs does not suggest that the number of renters will decline in the near future.<sup>66</sup>

The failure of the state to devote any significant amount of the CDBG recovery money for the development of affordable rental housing on the Coast is not offset by the foreseeable rental development that will be stimulated by the LIHTC. LIHTC developments, which have a reduced rent obligation of fifteen years, do not promote long-term affordability. Moreover, while the program provides strong incentives to develop rental property for those earning sixty percent or less of the AMI and somewhat lesser incentives to develop rental units for those earning forty percent or less of the AMI, the program offers no incentives to develop rental units that are affordable to people earning less than forty percent of the AMI.<sup>67</sup>

Moreover, since the GO Zone encompasses forty-nine counties in the state, and most of the non-coastal counties enjoy

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<sup>64</sup> Hooks & Miller, *supra* note 9, at 25 n.13.

<sup>65</sup> *Id.*

<sup>66</sup> UNITED STATES CENSUS (2005).

<sup>67</sup> Ballard, *supra* note 61, at 235.

much lower land prices than the Coast, there is no guarantee that affordable developments will be placed where they are most needed. Mississippi Home Corporation data regarding those projects approved for LIHTC development provide cause for concern. Specifically, of the eight LIHTC developments placed in service since Katrina, only one is located in a coastal county. Four of the developments are located in Hinds County, and three of the developments are located in Madison, Lauderdale, and Attala Counties. Stated in terms of the number of units created, 553 units have been placed in service since Katrina, but only ninety-six of these units are located on the Coast.<sup>68</sup>

#### IV. POTENTIAL EMERGING AFFORDABLE HOUSING TOOLS

In an effort to address the shortcomings and oversights of the state's Katrina-recovery plan, housing and social justice advocates are working in partnership with local non-profit groups to promote the use of additional nongovernmental and quasi-governmental tools which have a demonstrated ability to promote affordable housing.

##### *A. Statewide Affordable Housing Trust Fund*

An affordable housing trust fund is another proven mechanism for promoting affordable housing, though one which requires a dedicated source of revenue. There are currently almost six hundred affordable housing trust funds in thirty-nine states, with annual revenues of \$1.6 billion.<sup>69</sup> The affordable housing trust fund promotes affordability by providing incentives beyond those offered by the LIHTC.<sup>70</sup> For example, the housing trust fund may cover land costs and other predevelopment fees.

In the aftermath of Hurricane Katrina, a broad-based

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<sup>68</sup> Miss. Home Corp., Table, GO Zone Credit Authority Low-Income Housing Tax Credit Direct 6 Counties [George, Hancock, Harrison, Jackson, Pearl River, and Stone] (Sept. 11, 2007) (on file with author) (compiled at the request of the Gulf Coast Renaissance Corporation).

<sup>69</sup> CTR. FOR CMTY. CHANGE, HOUSING TRUST FUND PROGRESS REPORT 2 (2007), available at <http://cccfiles.org/shared/publications/downloads/HTF%2007%20final.pdf>.

<sup>70</sup> *Id.*

coalition of community groups, concerned about the obvious housing problem on the Coast, created Housing Mississippi. Members of this coalition include AARP Mississippi, Back Bay Mission, Coalition for Citizens with Disabilities, Deep South Delta Consortium, Enterprise Corporation of the Delta/Hope Community Credit Union, First Delta Federal Credit Union, Habitat for Humanity of the Mississippi Gulf Coast, Lawyers' Committee for Civil Rights Under Law, Local Initiatives Support Corporation, Lutheran Episcopal Services in Mississippi, Mississippi Action for Community Education, Mississippi Center for Justice, NAACP Mississippi State Conference, NeighborWorks America, Oxfam America, and Quitman County Development Organization. Housing Mississippi is in the second year of a campaign for the adoption of a statewide housing trust fund in Mississippi.

The Housing Trust Fund proposal developed by Housing Mississippi would include twenty million dollars per year in dedicated revenues to support the fund.<sup>71</sup> The Housing Trust Fund would be administered by the Mississippi Development Authority and managed by an eleven-member oversight board.<sup>72</sup> Housing Trust Fund money would be used to provide grants, loans, loan guarantees, and/or loan subsidies to eligible grantees to fund residential housing and/or related services to households with incomes at or below eighty percent of the MFI.<sup>73</sup> The Trust Fund provides for income targeting: one hundred percent of Trust Fund dollars must be used to serve households with incomes at or below eighty percent of MFI.<sup>74</sup> At least sixty percent of the Trust Fund dollars must be used to serve households with income at or below fifty percent of the MFI.<sup>75</sup> At least fifty-five percent of that sixty percent must be used to serve households with income at or below thirty percent of the MFI.<sup>76</sup> The Trust Fund also provides for geographic equity: at

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<sup>71</sup> H.B. 896, Reg. Sess. (Miss. 2008).

<sup>72</sup> *Id.* §§ 3-4.

<sup>73</sup> *Id.* § 5.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* § 5(2)(a).

<sup>76</sup> The thresholds for income targeting are based on income data for Mississippi's

least fifty-five percent of the Trust Fund dollars must be used to serve households living in rural areas of Mississippi Community Land Trusts.<sup>77</sup>

### *B. Community Land Trusts*

A community land trust is a mechanism that provides long-term affordability of owner-occupied homes by separating the ownership of the land from the ownership of the house built upon it. The land trust retains ownership of the land and leases it to the owner of the house. Since only the house itself must be purchased, the price of home ownership can become affordable. The amount of equity an owner is allowed to claim upon sale of the house is usually limited to less than market value to ensure long-term affordability. Although not market rate, the owner nonetheless builds greater wealth than by renting.

The North Gulfport Community Land Trust (NGCLT) is a 501(c)(3) non-profit organization founded in 2004 to “address the environmental degradation, wetlands filling, land speculation, and potential gentrification of the North Gulfport community.”<sup>78</sup> This once-vibrant African-American neighborhood had fallen into disrepair and was affected by serious flooding due to the filling of nearby wetlands. This flooding was exacerbated by Hurricane Katrina.<sup>79</sup>

The vision of the NGCLT is to rebuild a community by building new homes and refurbishing the housing stock, but also by restoring Martin Luther King Jr. Boulevard, bringing economic development incentives to the neighborhood, developing community playgrounds and gardens, and initiating a strong community arts campaign.<sup>80</sup>

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households. According to the U.S. Census, 61.5% of Mississippi's households with incomes below eighty percent of the MFI have incomes below fifty percent of the MFI. UNITED STATES CENSUS (2005). Of the households with incomes below fifty percent of the MFI, 55.6% have incomes below thirty percent of the MFI. *Id.*

<sup>77</sup> H.B. 896, Reg. Sess. (Miss. 2008).

<sup>78</sup> N. Gulfport Cmty. Trust, About, <http://www.ngclt.org/> (last visited Feb. 19, 2008).

<sup>79</sup> E-mail from Jason Mackenzie, Executive Director, N. Gulfport Cmty. Land Trust, to John Jopling, Co-Director, Affordable Housing Initiative, Miss. Ctr. for Justice (Aug. 14, 2007, 20:51:20 CST) (on file with author) [hereinafter E-mail].

<sup>80</sup> N. Gulfport Cmty. Trust, Current Projects, <http://www.ngclt.org/projects.htm> (last

The NGCLT provides permanently affordable housing through the Community Land Trust model.<sup>81</sup> This model, common among the nearly two hundred Community Land Trusts throughout the nation, provides permanent affordable housing to low- and moderate-income individuals and families through the ground lease and resale restrictions. The ground lease allows the NGCLT to remove the value of the land from the sales price, as well as ensure that the land is never lost to speculation. The resale restriction ensures that any grants applied to the purchase price remain with the home and not with the homebuyer. This model is common among the nearly two hundred Community Land Trusts around the nation, some of which are almost forty years old.<sup>82</sup>

The NGCLT utilizes a number of tools to provide permanently affordable housing through partner organizations and supporters. The organization is run by members who are invited to become the Board of Directors. Legal partners assist in locating pro-bono advice for land closings and other legal matters. Volunteer partners, like Hands On and Youthbuild, provide much of the construction labor, and the organization also seeks alternative homebuyer grants.<sup>83</sup>

NGCLT's construction projects rely heavily on partnerships. For example, two historic homes, one built in 1917 and one in 1925, were donated to the NGCLT to be restored and sold to low-income clients at affordable prices. These two homes were moved from their previous locations, approximately six miles away, to their new sites in North Gulfport. Grants to restore the homes were sought and received from the Mississippi Department of Archives and History, among other groups, and volunteer labor was used to carry out the restoration efforts. When all is complete, NGCLT expects to sell these homes at affordable prices to low-income families in 2007 and 2008.<sup>84</sup>

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visited Feb. 20, 2008).

<sup>81</sup> N. Gulfport Cmty. Trust, Vision and Needs, <http://www.ngclt.org/vision.htm> (last visited Feb. 20, 2008).

<sup>82</sup> See E-mail, *supra* note 79.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

Since the storm, the Land Trust has acquired two homes that are being remodeled and will be for sale to low-income clients. One modular home was donated by Unity Homes and is serving as the Land Trust office. NGCLT serves only those persons below eighty percent of the AMI.<sup>85</sup>

### C. ECD–Hope

Home Again, Inc., is a project of ECD–Hope, a non-profit 501(c)(3) corporation originally founded in 1994.<sup>86</sup> Home Again, Inc., was initially funded in February 2006 by Mississippi author John Grisham, Home Depot, and an anonymous donor.<sup>87</sup> The project produces affordable modular housing units in Hancock County, the county hit hardest by Hurricane Katrina.

Home Again, Inc., began by providing up to \$80,000 in forgivable loans to fifteen homeowners who met the following requirements: (1) they lost their home because of damage from Katrina; (2) they are low- to median- income as defined by HUD; and (3) they live in a designated area of Pass Christian.<sup>88</sup>

Home Again, Inc., works in partnership with private modular housing developers. The average cost of an unelevated home is approximately \$88,000.<sup>89</sup> If elevation is necessary, the average cost per home is approximately \$119,000.<sup>90</sup>

A subsequent gift from Mississippi entrepreneur Jim Barksdale has allowed Home Again, Inc., to offer up to \$50,000 in a forgivable loan to up to twenty additional families. To date, Home Again, Inc., has placed sixty-four houses on sites, of which sixty-one are already occupied.<sup>91</sup>

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<sup>85</sup> See E-mail, *supra* note 79.

<sup>86</sup> Telephone Interview with Jessie Lawson, Senior Program Officer, ECD-Hope (Aug. 10, 2007).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Telephone Interview with Phil Eide, Vice President of Housing, ECD-Hope (Mar. 18, 2008).

*D. Realtors Relief Fund*

An important effort to address the absence of programs directed at renewing the stock of affordable rental housing is the Realtors Relief Fund, which is a project of Lutheran Episcopal Services of Mississippi. Initially funded with a \$250,000 grant from the Mississippi Association of Realtors, the project was designed specifically to create affordable rental units.<sup>92</sup> As Bob Lowery, the project's director, states, "this project was necessary because renters—an entire socio-economic class—had been left out of the recovery."<sup>93</sup>

The Realtors Relief Fund takes applications directly from owners of small rental properties. The fund will go in fifty-fifty with qualifying landlords, up to \$10,000 per unit, in order to rehabilitate each unit.<sup>94</sup> Lutheran Episcopal Services, a 501(c)(3) non-profit corporation, obtains materials at discount and much of the labor is provided by volunteers.<sup>95</sup>

In return for the rehab assistance, owners execute a memorandum of understanding. The owners agree to rent to median income tenants for one year at the pre-Katrina monthly rental rate.<sup>96</sup> For months thirteen through twenty-four, the owner agrees to increase rent by no more than the federally established cost-of-living increase.<sup>97</sup>

Since its inception in June of 2006, the relief fund has rehabilitated twelve units, all of which are currently occupied by renters.<sup>98</sup> The National Association of Realtors recently donated \$500,000 to the fund.<sup>99</sup>

## V. CONCLUSION

Hurricane Katrina's devastating effects fell dispro-

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<sup>92</sup> Telephone Interview with Bob Lowery, Director, Realtor Relief Fund, Lutheran-Episcopal Services in Mississippi (Aug. 13, 2007).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

portionately upon low-income and moderate-income residents of Mississippi. The recovery programs implemented thus far fail to take this significant fact into account. The state has repeatedly sought and obtained waivers from HUD of the congressionally-mandated requirement that fifty percent of the CDBG funds appropriated for Katrina housing recovery be targeted towards the needs of low- or moderate-income residents. As a result, the state's housing recovery has failed to address the needs of a substantial segment of South Mississippi's population, the very segment that was underserved before Katrina.

Grassroots organizations on the Gulf Coast have aggressively advocated for more attention to the needs of low- and moderate-income Mississippians. Over fifty organizations have banded together in the Steps Coalition to promote a more just and equitable recovery. These organizations include many mainstream social service agencies, as well as progressive and reform-minded groups, faith-based and otherwise.

The efforts of non-profit and grassroots organizations have also resulted in small-scale projects designed to replace housing stock with both ownership and rental units. These projects serve as affordable housing laboratories from which successful models could be replicated on a larger scale. The state's policy and decision makers would be well-advised to invite the participation of others, including members of the faith-based and social justice communities, into the process of formulating programs to meet the remaining post-Katrina housing needs of the Mississippi Gulf Coast.