

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL TRUST FOR HISTORIC
PRESERVATION IN THE UNITED
STATES,

1785 Massachusetts Avenue N.W.
Washington, D.C. 20036

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,

810 Vermont Avenue N.W.
Washington, D.C. 20420

GENERAL ERIC SHINSEKI,
*In His Official Capacity as
Secretary of Veterans Affairs,*
810 Vermont Avenue N.W.
Washington, D.C. 20420

FEDERAL EMERGENCY
MANAGEMENT AGENCY,
500 C Street S.W.
Washington, D.C. 20472

NANCY WARD,
*In Her Official Capacity as Acting
Administrator of FEMA,*
500 C Street S.W.
Washington, D.C. 20472

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action by Plaintiff National Trust for Historic Preservation in the United States (“NTHP”) against federal Defendants the United States Department of Veterans Affairs (“VA”); General Eric Shinseki, in his official capacity as Secretary of Veterans Affairs; the Federal Emergency Management Agency (“FEMA”); and Nancy Ward, in her official capacity as Acting Administrator of FEMA. Plaintiff brings this action to challenge the VA’s and FEMA’s failure to consider the adverse effects of the proposed construction of two new medical centers in a New Orleans, Louisiana, historic district.

2. Plaintiff seeks a declaratory judgment that the VA and FEMA violated the National Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”) in their preparation of a Programmatic Environmental Assessment (“PEA”) and each agency’s Finding of No Significant Impact (“FONSI”). Plaintiff seeks injunctive relief to enjoin all construction-related activities on the proposed adjacent sites, including site selection, property acquisition, site preparation, demolition, and construction, until the VA and FEMA have fully complied with their legal duties to consider the effects that the projects will have on historic properties and the local community.

JURISDICTION, VENUE, AND RIPENESS

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-02 (declaratory relief), and 5 U.S.C. § 702 (right of review under the APA).

4. For purposes of the declaratory relief sought in this Complaint, an actual case or controversy within the meaning of 28 U.S.C. § 2201 exists between the parties as to whether the Defendants complied with the requirements of NEPA and the APA prior to issuing their findings

of no significant impact for the Veterans Affairs Medical Center (“VAMC”) and Louisiana State University Academic Medical Center (“LSU-AMC”).

5. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because Defendants reside in Washington, D.C., where the U.S. Department of Veterans Affairs and Federal Emergency Management Agency are headquartered, and both FONSIIs were signed by agency officials in Washington, DC. The National Trust has its headquarters in Washington, D.C.

6. The present action is ripe for judicial review because all Defendants have issued FONSIIs.

PLAINTIFF

7. Plaintiff NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES (“National Trust”) is a private charitable, educational, non-profit corporation chartered by Congress in 1949 to protect and defend America’s historic resources, to further the historic preservation policy of the United States, and to facilitate public participation in the preservation of our nation’s heritage. *See* 16 U.S.C. § 468. The National Trust is headquartered in Washington, D.C., and has nine regional and field offices around the country, including a field office in New Orleans, as well as 29 historic sites open to the public. The National Trust has more than 235,000 individual members across the country, including nearly 2,500 members in Louisiana. By statute, the Chairman of the National Trust is a member of the Advisory Council on Historic Preservation, an independent federal agency whose duties include implementation and enforcement of the National Historic Preservation Act. *See* 16 U.S.C. §§ 470i(a)(8), 470j, 470s. The statutory powers of the National Trust include the power to bring suit in its corporate name. *Id.* § 468c(b).

8. In 2008, the National Trust listed the historic Charity Hospital abandoned by LSU and the historic lower Mid-City neighborhood that the new VAMC and LSU-AMC would destroy, as one of America's 11 Most Endangered Historic Places.

9. The National Trust participated actively in the review processes for the proposed project under NEPA and the National Historic Preservation Act ("NHPA"), including testifying at public hearings, commenting on NEPA documents, and participating as a consulting party under Section 106 of the NHPA, 16 U.S.C. 470f, 36 C.F.R. §§ 800.2(c)(5) and 800.3(f)(3).

10. The National Trust's members use, enjoy, and appreciate the historic properties threatened by Defendants' actions, including Charity Hospital and the affected areas of the Mid-City Historic District. They are concerned that development of the new medical centers in the historic district will destroy important and irreplaceable historic resources. The interests of the National Trust and its members in using, enjoying, protecting, and appreciating those historic resources are threatened and adversely affected by the Defendants' actions and omissions complained of herein. The National Trust and its members are and will continue to be aggrieved and adversely affected by the actions of the Defendants, and they have suffered and will continue to suffer injury-in-fact due to the Defendants' past, current, ongoing, and prospective failure to comply with the law.

DEFENDANTS

11. Defendant U.S. DEPARTMENT OF VETERANS AFFAIRS ("VA"), headquartered in Washington, D.C., is a federal agency responsible for the provision of medical care for veterans.

12. Defendant General Eric Shinseki is sued in his official capacity as Secretary of the Department of Veterans Affairs. Secretary Shinseki is responsible for ensuring that the VA's actions comply with NEPA and other federal laws.

13. Defendant FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA"), headquartered in Washington, D.C., is a federal agency with responsibility for administering the Public Assistance Grant Program, 44 C.F.R. § 206. The Louisiana Division of Administration, Office of Facility Planning and Control, has applied to FEMA for funding from the Public Assistance Grant Program, based on claims of damage to Charity Hospital from Hurricane Katrina, with the intention of using that funding to construct the new LSU-AMC. FEMA is responsible for complying with NEPA and other federal laws prior to making a final decision on individual grant awards.

14. Defendant Nancy Ward is sued in her official capacity as Acting Administrator of the FEMA. Acting Administrator Ward is responsible for ensuring that FEMA's actions comply with NEPA and other federal laws.

15. Defendants the VA and FEMA are co-lead federal agencies for the proposed VAMC and LSU-AMC, for purposes of complying with NEPA.

NATIONAL ENVIRONMENTAL POLICY ACT

16. The National Environmental Policy Act of 1969, as amended, establishes that "it is the continuing responsibility of the federal government to use all practicable means . . . [to] preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice." 42 U.S.C. § 4331(b)(4).

17. To achieve this goal, Congress directed federal agencies in Section 102(2)(C) of NEPA to produce a “detailed statement” disclosing the environmental impact of “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

18. Regulations promulgated by the Council for Environmental Quality (“CEQ”) “tell federal agencies what they must do to comply with the procedures and achieve the goals of [NEPA].” 40 C.F.R. § 1500.1(c). CEQ’s regulations are “binding on all federal agencies.” 40 C.F.R. § 1500.3.

19. The VA has also published regulations establishing procedures to guide the VA’s compliance with NEPA and CEQ regulations. 38 C.F.R. § 26.1 *et seq.*

20. If a federal agency action will “significantly affect[] the quality of the human environment,” the agency must prepare an environmental impact statement (“EIS”). 42 U.S.C. § 4332(2)(C). When deciding whether or not to prepare an EIS, a federal agency must analyze “whether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). “Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). Under the VA’s NEPA regulations, the VA must normally prepare an EIS for the “[a]cquisition of land in excess of 10 acres for development of a VA medical center facility,” or for actions that result in “[p]robable significant degradation of historic or cultural resources.” 38 C.F.R. §§ 26.6(a)(1)(ii), (a)(2)(i).

21. If the proposed action is not one that normally requires an EIS, then the federal agency may prepare an Environmental Assessment (“EA”) to determine whether or not the proposed action is significant and requires an EIS. 40 C.F.R. § 1501.4(a), (b). An EA is a

“concise public document” that provides “sufficient evidence and analysis for determining” the significance of the impacts of the proposed action. 40 C.F.R. § 1508.9(a).

22. If an EA concludes that a proposed project will not have a significant impact on the environment, the federal agency must issue a FONSI. 40 C.F.R. §§ 1501.4(e), 1508.13. A FONSI must present “the reasons why an action . . . will not have a significant effect on the human environment.” 40 C.F.R. § 1508.13.

23. Proposed actions “which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a)(1).

24. Federal agencies must also analyze the impacts of “connected” actions in a single EA or EIS. 40 C.F.R. § 1508.25(a). Actions are connected if they “[a]utomatically trigger other actions which may require [EISs],” “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1).

25. CEQ regulations allow a federal agency to “tier” its environmental impact analysis when a broad EIS covers general matters, “with subsequent narrower statements or environmental analyses . . . incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared,” or when an EIS “focus[es] on the issues which are ripe for decision and exclude[s] from consideration issues already decided or not yet ripe.” 40 C.F.R. § 1508.28.

26. An agency must examine direct, indirect, and cumulative impacts. 40 C.F.R. § 1508.25(c). Effects include “ecological . . . , aesthetic, historic, cultural, economic, social, or health” effects. 40 C.F.R. § 1508.8.

27. Direct impacts are those “caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a).

28. Indirect impacts are those “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b).

29. Cumulative impacts are the impacts on the environment resulting from “incremental impact[s] of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person under such other actions.” 40 C.F.R. § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

30. When weighing the significance of an action, agencies must consider the action’s “context and intensity.” 40 C.F.R. § 1508.27.

31. Agencies must consider the action in “several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.” 40 C.F.R. § 1508.27(a).

32. Intensity is defined by referring to the severity of the impact and includes factors that “should be considered in evaluating intensity,” including the “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources.” 40 C.F.R. § 1508.27(b).

33. A federal agency can mitigate environmental impacts by “[a]voiding the impact altogether,” “[m]inimizing impacts,” “[r]ectifying the impact by repairing, rehabilitating, or restoring the affected environment,” using “preservation and maintenance” to reduce or eliminate impacts over time, or “[c]ompensating for the impact by replacing or providing substitute resources or environments.” 40 C.F.R. § 1508.20(a)–(e).

ADMINISTRATIVE PROCEDURE ACT

34. The APA provides for judicial review of federal agency actions. 5 U.S.C. § 701(a).

35. The APA authorizes courts to review agency actions and “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “without observance of procedure required by law.” 5 U.S.C. §§ 706(2)(A), 706(2)(D).

MID-CITY HISTORIC DISTRICT

36. The Mid-City Historic District (“historic district”) in New Orleans was listed on the National Register of Historic Places in 1993.

37. The historic district contains residential and commercial buildings that represent a broad range of building types and styles from 1860 to 1943.

38. At the time of its listing, 85 percent of the buildings in the historic district contributed to its historic character, and 83 percent displayed a form of architectural style, including at least five distinct types.

39. Nearly half of the buildings in the historic district are a form of the “shotgun” house, a unique architectural style in the Southern tradition that was individually styled in New Orleans.

40. The commercial buildings in the historic district are “highly stylized” and represent 12 percent of the total building stock.

41. Fifteen square blocks within the Mid-City Historic District are included in the proposed sites for the VAMC and LSU-AMC.

42. The contributing properties that would be demolished for the proposed medical centers include a mixture of architectural styles such as shotguns, creole cottages, sidehalls, raised basements, and commercial structures.

43. Some properties that would be demolished are among the oldest in the historic district.

44. The VA's proposed site for constructing its new medical center consists of nine city blocks in the historic district and contains the Dixie Brewery, which is a building individually eligible to be included in the National Register of Historic Places ("National Register").

45. The VA's proposed site also contains the Pan American Life Insurance Building, which is listed in the National Register.

46. The VA's proposed site would require the demolition of 123 properties that contribute to the Mid-City Historic District.

47. FEMA's proposed site is immediately adjacent to the VA's proposed site and consists of ten blocks, six of which are in the Mid-City Historic District. The site contains three buildings individually eligible for listing on the National Register—the Deutsches Haus, the McDonogh No. 11 School, and the Orleans House.

48. FEMA's proposed site would require the demolition of 42 properties that contribute to the Mid-City Historic District.

49. The VAMC and LSU-AMC together will require the acquisition and demolition of at least 25 square blocks within the City of New Orleans.

50. New Orleans has a unique culture with a deep sense of community and place. Many families remain in the city for generations, and family members frequently live within

blocks of one another with the neighborhoods and homes forming part of the residents' personal identity.

51. The neighborhood within the footprint of the proposed sites has seen a number of residents return since Hurricane Katrina, and some efforts to revitalize the area of the proposed sites have been successful.

52. Construction of the VAMC and LSU-AMC will require the demolition of approximately 265 residential housing units.

53. More than 600 people, over 85 percent of them identified as belonging to minority groups and over 40% of them identified as living below the poverty line, would be displaced by demolition at the proposed sites.

54. A significant shortage of affordable housing exists in New Orleans.

NEW ORLEANS HEALTHCARE SYSTEM

55. The Medical Center of Louisiana in New Orleans ("MCLNO") consists of 23 buildings, nine of which are historically significant, including Charity Hospital.

56. LSU's previous medical facility, Charity Hospital, was constructed in 1939, is identified as "one of the premier examples of Art Deco style in [Louisiana]," and is an individually-eligible National Register property within the MCLNO.

57. The existing VA medical center was constructed in 1952.

58. The existing VA medical center facilities are contributing elements of the New Orleans Medical Historic District, which is eligible for listing on the National Register.

59. Charity Hospital and the existing VA medical center sustained damage during Hurricane Katrina in August 2005.

60. Charity Hospital and portions of the existing VA medical center have remained closed since Hurricane Katrina.

61. In response to a directive from the Louisiana state legislature, on August 20, 2008, the Foundation for Historical Louisiana released a detailed study by RMJM Hillier assessing the structural condition of Charity Hospital and the feasibility of renovating the building for future hospital use.

62. The RMJM Hillier study concluded that renovating Charity Hospital would cost 22 percent less and require two years less time than the alternative of constructing a new medical center at the proposed site in Mid-City.

PROPOSED NEW ORLEANS BIOSCIENCES DISTRICT

63. The proposed Greater New Orleans Biosciences Economic Development District (“Biosciences District”) encompasses the area surrounding the existing VA medical center, Charity Hospital, the proposed LSU-AMC and VAMC sites, and a portion of the Mid-City Historic District.

64. The proposed Biosciences District is an area of significant growth potential intended to serve as the core of regionally and nationally competitive health care and research facilities.

65. The Biosciences District is intended to accommodate an expanding array of future health service and research facilities.

VAMC SITE SELECTION

66. On April 1–8, 2007, the VA issued a solicitation for the acquisition of land for the construction of a new medical center in New Orleans.

67. On November 19, 2007, the VA entered into a Memorandum of Understanding (“MOU”) with the City of New Orleans (“City”) that states the VA is “seeking to obtain a new land site in the City on which to build and then operate a new, world-class VA hospital.”

68. The MOU states that the City agrees to demolish and prepare the VA’s proposed site in the Mid-City Historic District and transfer the site to the VA, for purposes of constructing a new VAMC.

69. The VA intends to “construct a tertiary medical care complex” with “200 inpatient beds, an outpatient center including primary, mental health, and specialty care, surgical capabilities, diagnostics, treatment, and ancillary services, research facilities and parking.”

70. The new VAMC will cost an estimated \$675 million.

71. As of June 2008, Congress had appropriated \$625 million for the new VAMC.

72. On August 1, 2008, the State of Louisiana and the City entered into a Cooperative Endeavor Agreement that states the City will acquire the proposed site for the VA “for the purpose of constructing a hospital by the [VA].”

LSU-AMC SITE SELECTION

73. The purpose of selecting a site for the LSU-AMC is to “repair or replace healthcare services and medical training” in New Orleans.

74. The LSU-AMC project is a proposal to “construct a modern, academic healthcare training center.”

75. The LSU-AMC proposed project includes a 424-bed hospital.

76. The LSU-AMC proposed project will cost an estimated \$1.2 billion.

77. New Orleans Municipal Code § 84-77(4) Demolition, requires the City to consider the future utilization of a site prior to issuing any permit for demolition within a historic district.

VA AND FEMA'S PROGRAMMATIC ENVIRONMENTAL ASSESSMENT AND FONSI

78. The VA and FEMA began a NEPA scoping process in mid-2008 for preparation of a PEA.

79. On July 31, 2008, the National Trust submitted scoping comments urging the VA and FEMA to consider the significant historic and cultural impacts of building the medical centers at the proposed sites, the indirect and cumulative adverse impacts resulting from the proposed Biosciences District, and the adverse impacts on the historic Charity Hospital and existing VAMC if the facilities are not rehabilitated.

80. The National Trust also expressed concern that the VA and FEMA did not intend to analyze the indirect and cumulative impacts to the historic district from economic development triggered by the new medical facilities.

81. On August 22, 2008, the VA and FEMA released an Alternatives Analysis eliminating a number of alternatives from detailed analysis in the PEA, including repairing the existing VA facilities at the current location, constructing replacement VA facilities at their current location, and constructing replacement LSU facilities at the existing site of Charity Hospital.

82. On October 16, 2008, the VA and FEMA released a Draft PEA for a 30-day public comment period.

83. On October 28, 2008, the VA and FEMA held a public meeting to accept comments on the Draft PEA.

84. Public testimony at the October 28, 2008 meeting was overwhelmingly opposed to the proposed sites in the Mid-City Historic District for the medical centers.

85. On November 15, 2008, the National Trust submitted comments on the Draft PEA raising concerns about, among other things, the need for an EIS to analyze significant environmental impacts from the proposed medical centers, how demolition would foreclose consideration of alternative building designs in the future, the apparent pre-determined outcome of the site selection process, and the inadequate information about the future disposition of MCLNO including Charity Hospital and the existing VA medical center.

86. General public comments on the Draft PEA also raised concerns about the adequacy of VA and FEMA's consideration of cumulative and indirect impacts, use of a tiered or programmatic review document rather than a comprehensive document, and the significant historic, cultural, and socioeconomic impacts resulting from the proposed locations for the medical centers.

87. The VA and FEMA issued the Final PEA, dated November 2008, ten days after the close of the public comment period.

88. The VA and FEMA considered and analyzed their site selection and demolition for the new VAMC and LSU-AMC as a programmatic decision, announcing that “[a] site-specific environmental analysis will be tiered from [the PEA], and will focus on the environmental and interrelated socioeconomic impacts of project design, construction, and operation of the facilities.”

89. The PEA covers only site selection and site demolition for the new proposed VAMC and LSU-AMC facilities.

90. The PEA does not consider the impacts of design, construction, and operation of the proposed medical facilities.

91. The PEA states that the VA and FEMA intend to address the additional environmental impacts from design, construction, and facility operations separately in future NEPA documents.

92. The PEA does not consider alternative hospital designs on the proposed sites that could avoid demolishing some or all of the historic structures.

93. The PEA concludes that selecting and demolishing the properties on the proposed sites may have significant adverse historic and socioeconomic impacts, including adversely affecting the integrity of the Mid-City Historic District, physically dividing the historic district, destroying 165 contributing historic properties, displacing minority and low-income residents, reducing community cohesion, disrupting community networks, and changing the character of Charity Hospital such that its National Register eligibility may be affected.

94. According to the PEA, the VA and FEMA will develop mitigation plans that include “reasonable measures” to prevent vandalism at the sites during construction, possible integration of peripheral historic structures and Dixie Brewery into the proposed facilities, a fund to promote the preservation of historic properties outside of the affected area, helping the State Historic Preservation Office develop plans to record and salvage destroyed properties, “reasonable measures” to ensure historic buildings are secure and ventilated, and “to the extent practicable,” phase demolition and construction activities to reduce vibration effects on the surrounding neighborhoods. The PEA does not set a deadline for developing these mitigation plans.

95. The PEA requires the VA to document the historic structures that are destroyed and provide information on the project website.

96. The PEA states that the VA and the City have established a fund up to \$800,000 for moving residences “of exceptional architectural importance” out of the footprint of the proposed sites, with a maximum of \$40,000 for each eligible property.

97. Other than the Pan-American Life Building, the PEA does not commit to preserving any specific historic buildings on the proposed sites.

98. To mitigate socioeconomic impacts, the PEA states the agencies will comply with the Uniform Relocation Act and the Louisiana Expropriate Provisions.

99. The PEA concludes that mitigation measures would reduce the significant historic and socioeconomic impacts to a level less than significant.

100. The PEA states that the proposed VAMC and LSU-AMC facilities could also catalyze adjacent and nearby development of medical support services and facilities that would result in adverse cumulative historic and socioeconomic impacts.

101. The PEA does not evaluate the nature and extent of such cumulative historic and socioeconomic impacts, but concludes without explanation that the impacts would be mitigated to a level of insignificance.

102. The PEA fails to identify what actions would mitigate the cumulative adverse historic and socioeconomic impacts that would result from the proposed federal action.

103. The PEA acknowledges that any of the alternative sites would result in no direct adverse impacts on historic properties and would have only beneficial socioeconomic impacts.

104. The PEA discusses only the requirements of the Uniform Relocation Act and the Louisiana Expropriation Provisions to mitigate socioeconomic impacts from selection and demolition of the proposed sites.

105. The PEA anticipates the need for “housing of last resort” for displaced residents to mitigate socioeconomic impacts to a level below “significant” if the proposed sites are selected and demolished.

106. The proposed mitigation measures in the PEA do not address the impacts on community cohesion, disruption of community networks, or the physical division of the neighborhood into a northeast and southwest portion that would result from site demolition or construction of the two medical centers.

107. The PEA acknowledges that any alternative that does not use Charity Hospital and the existing VA medical center will result in their continued neglect, state of disrepair, and shift from historic operations, which would threaten their historical integrity and National Register eligibility.

108. The PEA does not consider the impacts of a final disposition of the existing VA medical center and MCLNO facilities, leaving that analysis for a future NEPA document.

109. The PEA does not consider indirect and cumulative cultural impacts on the New Orleans Medical Historic District from abandoning the existing VA medical center.

110. The PEA does not consider indirect and cumulative socioeconomic impacts on the surrounding communities from abandoning the MCLNO facilities and existing VA medical center campus.

111. The PEA states that selecting and demolishing the proposed sites will have the immediate consequence of irretrievably committing 25 city blocks, including 15 square blocks

and 165 historic buildings within the Mid-City Historic District, to the development of medical facilities.

112. The PEA does not consider the environmental impacts of re-grading and filling in the proposed sites to elevate the ground, constructing extensive utility infrastructure, expanding and altering transportation systems, staging construction equipment, landscaping, and operating the facilities.

113. The VA's proposed site calls for the acquisition of 30 acres of land for the new VAMC.

114. Section 26.6(a) of the VA's regulations normally require the preparation of an EIS when the VA acquires more than 10 acres of land for a medical center facility. 38 C.F.R. § 26.6(a).

115. The VA and FEMA signed independent FONSI's on November 24, 2008, just nine days after the close of the comment period on the PEA.

116. The VA's FONSI states that the PEA considers environmental impacts from "site selection and construction" at the proposed site.

117. FEMA's FONSI states that the proposed use of the funds being granted to the City from FEMA are for "the construction of the new [medical] facility."

118. On April 16, 2009, the VA held a public meeting to discuss the design alternatives for the new VAMC on its proposed site.

119. On April 29, 2009, FEMA held a public meeting to discuss the design alternatives for the new LSU-AMC on FEMA's proposed site.

CLAIMS FOR RELIEF

COUNT I

(violation of NEPA, failure to prepare EIS despite significant impacts on the human environment)

120. Plaintiff repeats and incorporates by reference all preceding paragraphs.

121. The VA and FEMA violated NEPA and its implementing regulations by failing to prepare an EIS to analyze the significant historic, cultural, and socioeconomic impacts on the Mid-City Historic District and surrounding neighborhood that will result from the proposed siting of the VAMC and LSU-AMC medical facilities. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.3, 1508.27.

122. The VA and FEMA violated NEPA and its implementing regulations by failing to prepare an EIS despite the lack of evidence supporting the agencies' conclusions that mitigation measures would successfully reduce the historic, cultural, and socioeconomic impacts of the proposed siting of the medical facilities below the level of "significant." 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.3, 1508.9.

123. The VA and FEMA's failure to prepare an EIS in light of the significant impacts from the proposed federal actions was "arbitrary and capricious," an "abuse of discretion," and "not in accordance with law." 5 U.S.C. § 706(2)(A).

COUNT II

(violation of NEPA, failure to consider indirect and cumulative impacts in the PEA)

124. Plaintiff repeats and incorporates by reference all preceding paragraphs.

125. The VA and FEMA violated NEPA and its implementing regulations by failing to consider in the PEA the indirect and reasonably foreseeable impacts on the surrounding

community and historic properties from designing, constructing and operating the LSU-AMC and the VAMC facilities. 40 C.F.R. § 1501.4.

126. The VA and FEMA violated NEPA and its implementing regulations by failing to consider in the PEA the indirect and reasonably foreseeable impacts of abandoning Charity Hospital, a property individually-eligible for the National Register, its supporting facilities, and the existing New Orleans Veterans Affairs Medical Center. 40 C.F.R. § 1501.4.

127. The VA and FEMA violated NEPA and its implementing regulations by failing to consider in the PEA the indirect and reasonably foreseeable cultural and socioeconomic impacts from the influx of new medical services and further development of the Medical District on the remaining residents, businesses, historic properties, and environment. 40 C.F.R. § 1501.4.

128. The VA and FEMA's failure to consider the indirect and cumulative impacts of their site selection and demolition decisions before issuing FONSI was "arbitrary and capricious," an "abuse of discretion," and "not in accordance with law." 5 U.S.C. § 706(2)(A).

COUNT III

(violation of NEPA, unlawful exclusion of connected actions)

129. Plaintiff repeats and incorporates by reference all preceding paragraphs.

130. The VA and FEMA violated NEPA and its implementing regulations by improperly limiting the scope of the proposed federal action in the PEA to only site selection and demolition, and excluding from the PEA the connected actions of designing, constructing, and operating the proposed medical facilities, and disposing of the MCLNO facilities, including Charity Hospital and the existing VA medical center. 40 C.F.R. §§ 1502.4(a), 1508.9(b), 1508.25(a)(1).

131. The VA and FEMA’s improperly defined scope of the proposed federal action and failure to consider the connected actions of designing, constructing, and operating the proposed medical facilities was “arbitrary and capricious,” an “abuse of discretion,” and “not in accordance with law.” 5 U.S.C. § 706(2)(A).

COUNT IV

(violation of APA and NEPA, inappropriate “tiering”)

132. Plaintiff repeats and incorporates by reference all preceding paragraphs.

133. The VA and FEMA acted arbitrarily and capriciously, in violation of 5 U.S.C. § 706(2)(A), and in violation of NEPA and its implementing regulations by failing to consider the proposed federal actions in a single NEPA document and instead improperly “tiering” when all the issues of the proposed actions—site selection, demolition, design, construction, and operation of the medical facilities—are ripe, and the issues analyzed in the PEA do not comprise a broad program, plan, or policy from which smaller or more specific actions would follow. 40 C.F.R. §§ 1502.4(a), 1502.20, 1502.28.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants violated the National Environmental Policy Act by failing to prepare an Environmental Impact Statement;
2. Declare that Defendants violated the National Environmental Policy Act by failing to adequately address in a single NEPA document the direct, indirect, and cumulative impacts of the projects in conjunction with other planned, related, and/or connected actions or phases of the projects;

3. Declare that the actions and decisions of Defendants were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

4. Vacate Defendants' Findings of No Significant Impact and enjoin any property acquisition, demolition, site clearance, and construction related to the proposed medical centers until Defendants comply with the National Environmental Policy Act and the Administrative Procedure Act;

5. Enjoin Defendants from providing any funds or taking any other action toward property acquisition, demolition, site clearance, and construction of the medical facilities until Defendants comply with the National Environmental Policy Act and the Administrative Procedure Act;

6. Award Plaintiff all costs and expenses related to this action, including reasonable attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and

7. Any additional relief as the Court deems just and proper.

DATED this 1st day of May, 2009.

Respectfully submitted,



Melanie Kleiss Boerger, Staff Attorney
(D.C. Bar No. 978672)
Hope M. Babcock, Director
(Fed/D.C. Bar No. 14639)

Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W., Suite 312
Washington, D.C. 20001
Phone: 202-662-9535
Fax: 202-662-9634