

# FIGHT FOR NYCHA

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### FIGHT FOR NYCHA

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22 April 2021

**Via E-Mail : [NY\\_PH\\_Director@hud.gov](mailto:NY_PH_Director@hud.gov)**

Mr. Luigi D'Ancona  
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U.S. Dept. of Housing and Urban Development  
New York Regional Office  
Jacob K. Javits Federal Building  
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New York, NY 10278-0068

**Re : NOI/RROF : Williamsburg Houses**  
**Objection under 24 CFR § 58.75 and ULURP Process**

Ladies and Gentlemen :

I submit the following objection to the Notice of Intent to Request the Release of Funds, as published by the New York City Housing Authority ("NYCHA") in the newspaper, *amNew York*. The New York City Department of Housing Preservation and Development ("HPD") is the responsible entity ("RE") and is the applicant ("Applicant") coming before the U.S. Dept. of Housing and Urban Development ("HUD").

This objection ("**Objection**") is filed pursuant to 24 CFR §§ 58.75 (b)-(d), (f) and the ULURP Process, the latter, which is applicable to the RE as Applicant for NYCHA. The five (5) parts to this Objection are made individually and alternatively and not collectively, meaning if HUD determines that one part of the Objection was made

successfully, then the Release of Funds must be rejected. The ULURP Process also has application on the requirement to hold public hearings or meetings. Since the RE is acting as Applicant for NYCHA, there may be times when we interchangeably refer to RE or NYCHA in this Objection.

**Part I : 24 CFR § 58.75(b)**

HUD will consider objections claiming a RE's noncompliance with § 58 if the RE failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47, or 58.53 for the project, as applicable.

The National Environmental Policy Act ("**NEPA**") Categorical Exclusion documents were signed on 25 Feb 2021 by **Matthew Charney**, Vice President of Design and Construction at NYCHA Real Estate Development, constituted a written determination wherein NYCHA claimed several categories of activities for which no environmental impact statement ("**EIS**") or environmental assessment ("**EA**") and finding of no significant impact under NEPA was required. *See* §58.35.

The only exception that would require an EIS or EA and finding of no significant impact would be extraordinary circumstances in which a normally excluded activity may have a significant impact. *See* § 58.2(a)(3). The NEPA Categorical Exclusion documents revealed several conditions that exist that will have a significant impact on Williamsburg Houses residents. Yet, NYCHA maintained that no extraordinary circumstances existed by claiming several Categorical Exemptions. Based on NYCHA's written determination, NYCHA prepared and submitted the NEPA Categorical Exclusion documents by certifying its compliance with the requirements that would apply to HUD under certain laws and authorities, noting that it had considered the criteria, standards, policies and regulations of such certain laws and authorities. *See* § 58.5.

- (i). NYCHA was wrong to claim that no extraordinary circumstances existed.
- (ii). Furthermore, during the time leading up to the preparation of the NEPA Categorical Exclusion documents, NYCHA admitted that it suspended inspections of public housing apartments.<sup>1/</sup> That suspension interfered with

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<sup>1/</sup> *See* Joe Anuta, *Coronavirus wreaks havoc on New York City's public housing*, Politico (10 Apr. 2020), <https://www.politico.com/states/new-york/albany/story/2020/04/10/coronavirus-wreaks-havoc-on-new-york-citys-public-housing-1274821>.

NYCHA's ability to prepare the NEPA Categorical Exclusion documents in a state of completeness for the Williamsburg Houses.

**Extraordinary circumstances exist.** NYCHA faces actions that are unique or without precedent. *See* § 58.2(a)(3)(i). NYCHA is at a turning point, and it cannot be overstated that NYCHA faces extraordinary circumstances since as it confronts a crisis in physical condition standards following decades of racist divestment. At the same time, NYCHA has never been forthcoming about the severely compromised nature of the physical condition of its assets. Likewise, NYCHA's residents have been demanding an open and transparent audit of its financial condition, which has been denied, leaving public housing residents in the dark about NYCHA's finances.

The Government Executive in charge of NYCHA, Mayor **Bill de Blasio**, has embraced RAD/PACT privatisation, because our Federal Government has betrayed the New Deal promise of public housing made during the Great Depression. This mayor also so proceeded to settle the Government's physical condition standards investigation into NYCHA. Mayor de Blasio agreed to a flawed Settlement Agreement ("**Settlement Agreement**") to avoid the Trump administration's threat to put NYCHA under a form of receivership.<sup>2/</sup> The Federal investigation into NYCHA revealed that NYCHA engaged in fraud and deception, and these acts were documented by the U.S. Attorney's Office in a Complaint filed in U.S. District Court for the Southern District of New York. "The Complaint alleges that NYCHA for years has violated and continues to violate basic federal health and safety regulations, including regulations requiring NYCHA to protect children from lead paint and otherwise to provide decent, safe, and sanitary housing. The Complaint further alleges that NYCHA has repeatedly made false statements to HUD and the public regarding its lead paint compliance, and has intentionally deceived HUD inspectors." *See Manhattan U.S. Attorney Announces Settlement With NYCHA ...*, U.S. Dep't of Justice (11 June 2018), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-settlement-nycha-and-nyc-fundamentally-reform-nycha>.

**The activities contemplated for Williamsburg Houses are designed to end public housing as we know it, and this also constitutes extraordinary circumstances.** The actions contemplated for Williamsburg Houses are also likely to alter existing HUD policy or HUD mandates. *See* § 58.2(a)(3)(iii). HUD must reject

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<sup>2/</sup> *See* Benjamin Weiser, et al., *De Blasio Cedes Further Control of Nycha but Avoids Federal Takeover*, The New York Times (31 Jan 2019), <https://www.nytimes.com/2019/01/31/nyregion/hud-nycha-deal.html>.

the NEPA Categorical Exclusion documents, because NYCHA is not disclosing its intent to rapidly and swiftly abandon its statutory obligations to tenants, who are transferred from Section 9 public housing in New York City to Section 8 rental assistance. U.S. District Court Judge **William Pauley III**, who administers the *Baez* class action mold abatement case, has ruled that NYCHA can weaken tenants' rights to public housing residents, who have undergone RAD/PACT conversion. The *Baez* case provides a Revised Consent Decree, which allows the certified class of Plaintiffs to access environmental protections related to the removal of toxic mold and the sources of excess moisture. NYCHA has argued that only Section 9 public housing residents can access those protections, not holders of Section 8 rental assistance vouchers, and the Hon. Judge Pauley has agreed. "[T]his Court finds that the Revised Consent Decree unambiguously excludes PACT tenants. ..." *See Baez, et al v. NYCHA*, No. 13-CV-8916 WHP, Dkt. No. 331 at 20 (S.D.N.Y. 17 Dec 2013). The Court ruling has decimated the certified class of Plaintiffs, and it has resulted in the different treatment of public housing residents under the law, which is tantamount to discrimination, which is unlawful. As a result, the NEPA Categorical Exclusion documents must be rejected until NYCHA discloses and addresses the extraordinary circumstances created by NYCHA's denial of access to RAD/PACT tenants of environmental protections, including tenants' access to the Revised Consent Decree in the *Baez* case.

**The activities contemplated for Williamsburg Houses include demolition, which would set a dangerous precedent in New York City.** When the de Blasio administration announced the selection of the RAD/PACT Landlord for Williamsburg Houses, the press release issued by NYCHA promoted the "preservation" of public housing apartments. *See NYCHA Designates Development Partners ...*, NYCHA (13 Feb 2020), <https://www1.nyc.gov/site/nycha/about/press/pr-2020/pr-20200213-1.page> (noting that the designated developers shall "preserve 5,908 units in Manhattan and Brooklyn with critical infrastructure and capital repair needs.") (emphasis added). Yet, the NEPA Categorical Exclusion documents revealed that NYCHA will be permitted to engage in demolition. *See the HPD-NYCHA-NY SHPO Section 106 Programmatic Agreement* at 8. Neither Mayor de Blasio, NYCHA, nor the RE have ever publicly informed residents of Williamsburg Houses that the activities planned included demolition. Mayor de Blasio has admitted to knowing about the false lead paint certifications that NYCHA was submitting to HUD without making that knowledge public. *See Grace Rauh, De Blasio admits he knew NYCHA falsified lead paint reports*, NY1 (21 Nov 2017), <https://www.ny1.com/nyc/all-boroughs/politics/2017/11/21/bill-de-blasio-says-regrets-how-he-handled-nycha->

falsified-lead-paint-reports-issue-nyc. If Mayor de Blasio knew about the planned demolition at Williamsburg Houses, then he must be similarly engaged in deceiving the public, in particular public housing residents, about dangerous conditions that are in store for residents of Williamsburg Houses. HUD must not accept more deception on the part of the de Blasio administration. What NYCHA is doing here is not routine. This would be the first time when NYCHA would demolish public housing apartment buildings. Such extraordinary circumstances cannot be brought into existence without a robust public debate. The plans for demolition must be publicly announced by Mayor de Blasio and NYCHA and approved by the public before HUD can approve the Release of Funds.

**Williamsburg Houses is described as being the site of Native American burial grounds, and this also constitutes extraordinary circumstances.** The activities contemplated for Williamsburg Houses violate Federal law regarding the protection of Native American burial grounds. The Programmatic Agreement included with the NEPA Categorical Exclusion documents reveals provisions governing the treatment of archaeological resources, cultural artifacts, and human remains discovered under the grounds of Williamsburg Houses. NYCHA has suspected that archaeological resources, cultural artifacts, and human remains definitely originate from Native American tribes. This was indicated when NYCHA invited the Stockbridge-Munsee Mohican Tribal Historic Preservation New York Office, the Shinnecock Indian Nation Tribal Office, Delaware Tribe Historic Preservation Representative, and the Delaware Nation to provide feedback to NYCHA's plans for real estate development on what may turn out to be Native American burial grounds. Rather than conduct a full EA or EIS, as applicable, and acknowledge whether or not Native American burial grounds exist on the grounds of Williamsburg Houses, NYCHA has instead circumvented the law by planning for expedited reviews, emergency undertakings, monitoring, reporting, and dispute resolution. This indicates that NYCHA is intent on desecrating the tribal heritage of Native Americans, in violation of the law, because NYCHA is treating the preservation and treatment of Native American cultural artifacts as *possible* exigencies instead of an obligation to comply with the law before any of the environmentally-disruptive activities contemplated for Williamsburg Houses even begin. Before HUD can approve the Release of Funds, HUD must demand that NYCHA conduct a full EA or EIS to determine definitively or not whether Native American human remains and cultural resources exist on the grounds, which would need to be preserved in compliance with the Native American Graves Protection and Repatriation Act of 1990 ("**NAGPRA**"). *See* 25 U.S.C. 3001 *et seq.* Under NAGPRA, Government Agencies receiving Federal funding, such as

NYCHA, must return to descendants or Native American tribes items discovered of their cultural heritage, and that includes human remains. A separate and related complaint will be being filed with the U.S. Dept. of the Interior over the de Blasio administration's failure to comply with NAGPRA.<sup>3/</sup>

**Because NYCHA suspended inspections, HUD can't accept a flawed or incomplete environmental analysis of the properties, particularly given the presence of very high quantities of toxic or poisonous substances, which should have required the preparation of an EIS or EA.** In 2019, Mayor de Blasio promised the public, in particular residents of Williamsburg Houses, that their apartments would be subject to x-rays to detect lead paint.<sup>4/</sup> Yet, the NEPA Categorical Exclusion documents don't disclose the results of those x-ray tests. We don't know how much lead paint exists in common areas or in apartment interiors. The lack of information is troubling. Of particular concern is that NYCHA fails to comply with environmental laws. "For years, NYCHA has failed to comply with key HUD and EPA lead paint safety regulations, including by failing to inspect apartments for lead paint hazards and failing to remediate peeling lead paint. NYCHA also fails to ensure that its workers use lead-safe work practices. ... Mold grows unchecked at many NYCHA developments, often on a very large scale, threatening the health of residents with asthma." U.S. Dep't of Justice, *supra*. NYCHA has admitted it has suspended inspections. In light of NYCHA's track record, HUD cannot accept the NEPA Categorical Exclusion documents that omit disclosures of lead paint and toxic mold at Williamsburg Houses.

**If NYCHA had appropriately considered HUD environmental standards, it would have prepared an EIS or EA.** Only certain minor actions are exempt from environmental review. In a flawed attempt to fabricate the appearance of a thorough environmental review, NYCHA concerned itself, and filled a large part of the NEPA

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<sup>3/</sup> We know Mayor de Blasio does not care whether the impact of his policies are described as racist or racially-insensitive. After all, he has countenanced racial segregation of students in public schools. He has defended race-based policing policies. His land use and affordable housing policies have resulted in displacement of people of colour. Now, he is implementing changes to public housing that will result in a disparate impact on people of colour. Fight For NYCHA respectfully ask HUD not to approve of Mayor de Blasio's changes to NYCHA, because those changes, if approved, will reflect on the HUD Secretary and the Biden administration. Please don't go along with this.

<sup>4/</sup> See Nolan Hicks, *NYCHA will X-ray apartments to check for lead paint contamination*, The New York Post (15 Apr 2019), <https://nypost.com/2019/04/15/nycha-will-x-ray-apartments-to-check-for-lead-paint-contamination/>.

Categorical Exclusion documents, with issues related to noise abatement and control. *See* Statutory Worksheet at 9-10. The activities contemplated for Williamsburg Houses are reasonably expected to require substantial removal of toxic mold, lead paint, possibly lead plumbing or lead fixtures in plumbing (not disclosed), lead water service lines (not disclosed), asbestos, toxic soil, and other hazards, on real property affecting approx. 1,630 public housing apartment units and thousands more residents. This scale of work is substantially similar to that normally require an EIS to properly analyse potential environmental impacts. *See* § 58.2(a)(3)(ii).

There are no lawful grounds for HUD to accept the NEPA Categorical Exclusion documents in place of an EA or EIS. However, were HUD to violate the law and accept the NEPA Categorical Exclusion documents in place of an EA or an EIS, then the least HUD could do is find the NEPA Categorical Exclusion documents defective, insufficient, or incomplete.

The NEPA Categorical Exclusion documents were required to address air quality. *See* § 58.5(g). In furtherance of NYCHA's claim of a Categorical Exemption, it noted, in relevant part, that, "[N]o significant impacts on air quality would occur as a result of the Proposed Project." *See* Statutory Worksheet at 9. However, NYCHA admits that "mitigation of indoor vapors, lead based paint, asbestos and mold" must take place. *Supra*. But NYCHA makes no disclosure of methods or environmental standards for the removal of poisonous lead paint and asbestos or toxic mold that would leave air quality unaffected. The absence of described procedures means that NYCHA is making no written assurances or guarantees to public housing residents that indoor air quality will be safe during the activities contemplated for Williamsburg Houses. Moreover, the Government had previously found, in relevant part, that NYCHA has failed "to ensure that its workers use lead-safe work practices." U.S Dep't of Justice, *supra*. Consequently, HUD cannot accept NYCHA's self-made statements about indoor air quality safety in the face of environmental poisons and toxins. As a result, the NEPA Categorical Exclusion documents must be found to be defective, insufficient, or incomplete and must therefore be rejected.

**We can make a showing for HUD that NYCHA has made false or misleading statements, particularly as to whether environmental protections apply to public housing residents undergoing RAD/PACT conversion.** NYCHA has admitted in proceedings before the Hon. Judge Pauley that the Revised Consent Decree that governs the removal of mold and sources of excess moisture from

NYCHA public housing developments does not apply to RAD/"PACT Section 8 developments." *See Baez*, Dkt. No. 304 at 19. This recent statement is contrary to the representations, warranties, and guarantees made in writing to public housing residents. *See, e.g., Permanent Affordability Commitment Together (PACT) Frequently Asked Questions (FAQs)*, NYCHA (2020), <https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT-RAD-FAQs-2020.pdf> at 2 (where public housing residents undergoing RAD/PACT conversion were advised : "*Your rights will not change. PACT residents have the same strong rights as residents in traditional public housing, including the right to a hearing to resolve any grievances, along with succession rights.*") (emphasis added). Despite making false or misleading promises to induce public housing resident into accepting RAD/PACT conversion, the de Blasio administration successfully won the right in the *Baez* case to deny environmental protections to RAD/PACT residents. The representations made by the RE and NYCHA in the NEPA Categorical Exclusion documents must be treated by HUD with scepticism, particularly since NYCHA has argued in U.S. District Court that NYCHA can abandon its obligations to public housing residents following RAD/PACT and Blueprint conversions.

Since NYCHA has engaged in fraud and deception, HUD should award NYCHA's "no significant adverse impacts" claim no credibility and reject its conclusion, for example, that air quality will not be impacted. This is particularly true, since NYCHA has implemented no oversight framework to compel RAD/PACT developers to comply with the Revised Consent Decree in the *Baez* case. The lack of oversight available to public housing residents following RAD/PACT conversion is made worse by the fact that RAD/PACT tenants do not benefit from the Federal Monitor appointed to oversee NYCHA under the Settlement Agreement.<sup>5/</sup> Consequently, since those activities involve the removal or remediation of a wide range of extremely poisonous or toxic environmental conditions, which combined, are substantially similar to those that normally require an EIS, for the activities contemplated for Williamsburg Houses, HUD should require NYCHA to prepare an EIS. *See* § 58.2(a)(3)(ii).

**In the face of suspended inspections, a normally excluded activity will certainly have a significant impact on residents, thus nullifying the exception**

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<sup>5/</sup> *See* Greg Smith, *NYCHA Monitor, Mold Protections Vanish for Tenants Under Private Management*, The City (7 Feb 2020), <https://www.thecity.nyc/housing/2020/2/7/21210561/nycha-monitor-mold-protections-vanish-for-tenants-under-private-management>.



**from preparing an EIS or EA.** Finally, due to unusual physical conditions on the site or in the vicinity, the proposed activities have the potential to significantly impact the environment or in which the environment could have a significant impact on users of the facility. *See* § 58.2(a)(3)(iv). NYCHA has not disclosed the outcome of the x-ray tests for lead paint that were scheduled to begin in 2019. NYCHA has sought to unlawfully minimize or downplay the potential for the discovery of human remains on the site of Williamsburg Houses. Furthermore, NYCHA has completely ignored revelations that "29 spills and 8 historical cleaners within 1/8 mile ; 45 underground storage tank sites, 8 dry cleaners and 36 aboveground storage tank sites within 1/4 mile ; 44 leaking storage tank sites within 1/2 mile ; and 3 manufactured gas plant sites within 1 mile of the subject property" may have affected the site.<sup>6/</sup> Because NYCHA has a long history of violating its own promises of, much less laws regulating, environmental protections, it should come to no surprise that NYCHA engaged in obfuscation in the NEPA Categorical Exclusion documents by limiting the depth of groundwater soil borings to 45 feet bgs.<sup>7/</sup> NYCHA acted disingenuously and, therefore, unlawfully, when it failed to conduct adequate environmental studies of groundwater under Williamsburg Houses. A random check of the elevation of Williamsburg Houses using a Web application, it was revealed that the elevation of the grounds of Williamsburg Houses ranges from 43 feet to 52 feet.<sup>8/</sup> When NYCHA conducted inadequate environmental studies of the groundwater specifically designed to fail to encounter groundwater, it was as if NYCHA conducted no groundwater studies at all. HUD has a duty to object.

NYCHA must not be allowed to ignore the possibility of disturbing hazardous waste, chemicals, poisons, or toxins in the soils, including three pesticides (4,4'-DDD, 4,4'-DDE, and 4,4'-DDT) and several metals (arsenic, copper, lead, mercury, and zinc), which were detected at levels above their respective NYSDEC Unrestricted and/or Restricted Resident Use Soil Cleanup Objectives.<sup>9/</sup> Despite NYCHA's representation that air quality will improve as a result of the activities contemplated for Williamsburg Houses, NYCHA makes no disclosure about how the activities to mitigate or remove poisons or toxins from indoor air, soil vapour, or soil will be carried out to ensure safe indoor air free of contamination. Volatile organic compounds ("**VOC's**"), such as acetone, benzene, carbon tetrachloride, chlorobenzene, chloroform, chloromethane, isopropanol, and toluene were detected

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<sup>6/</sup> See Letter from Wei Yu to Digser Abreu (20 Oct 2020) at 1-2, in the NEPA Categorical Exclusion documents.

<sup>7/</sup> See Letter from Wei Yu to Digser Abreu (08 Jan 2021) at 1, in the NEPA Categorical Exclusion documents.

<sup>8/</sup> See, e.g., Worldwide Elevation Map Finder, <https://elevation.maplogs.com/>.

<sup>9/</sup> See Letter from Yu to Abreu (08 Jan 2021) at 2.

in soil vapour.<sup>10/</sup> Furthermore, VOC's, such as acetone, benzene, carbon tetrachloride, chloroform, ethyl acetate, ethyl benzene, methylene chloride, and toluene, were detected in indoor air.<sup>11/</sup> VOC's were also detected in ambient air, such as acetone, benzene, carbon tetrachloride, chloromethane, ethyl acetate, ethyl benzene, isopropanol, and toluene.<sup>12/</sup> Because the NEPA Categorical Exclusion documents ignored or downplayed the possibility of exposing residents to VOC's, HUD must reject the NEPA Categorical Exclusion documents. These conditions plainly show that Williamsburg Houses residents will feel a significant impact from the activities contemplated by the RAD/PACT conversion. In the place of the NEPA Categorical Exclusion documents, HUD must request a comprehensive reevaluation of the environmental assessments and other environmental findings. *See* § 58.47.

## **Part II : 24 CFR § 58.75(c)**

**Omissions were made that invalidate the NEPA Categorical Exclusion documents.** If HUD determines that NYCHA was required to prepare an EA, then NYCHA must be found to have engaged in fraud and deception, leaving it with no credibility on environmental issues. As a result, HUD should reject NYCHA's entitlement to a categorical exclusion that waives the preparation of an EIS. NYCHA's suspension of inspections means it has breached its Settlement Agreement with HUD. This means NYCHA is out of compliance with HUD. There is no objective way that HUD can accord a defaulting party full credibility on environmental matters when the default involves compliance with environmental regulations. In the event that HUD rules that an EA was more appropriate than an EIS, then HUD must still reject the NEPA Categorical Exclusion documents.

We have established that NYCHA made omissions in the NEPA Categorical Exclusion documents of important disclosures, such as : (i). the extraordinary circumstances faced by NYCHA, as were revealed at the conclusion of the Federal investigation into NYCHA's physical condition standards ; (ii). NYCHA's suspension of inspections during the Coronavirus pandemic, which might explain why no x-ray test results for lead paint were referenced in the NEPA Categorical Exclusion documents ; (iii). NYCHA's failure to fully consider HUD environmental standards, because the sole environmental consideration in the NEPA Categorical Exclusion documents was noise abatement ; and (iv). the effect of NYCHA's suspension of in-person meetings and the discriminatory and undemocratic use of virtual meetings (as further explained below) that without a doubt has infringed on residents' rights to robust

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<sup>10/</sup> *Supra.*

<sup>11/</sup> *Supra.*

<sup>12/</sup> *Supra* at 3.

public discussions and debate about the changes contemplated at Williamsburg Houses.

Against this backdrop, the NEPA Categorical Exclusion documents ignored or downplayed the potential for impact on residents stemming from the presence of significant amounts of poisons, toxins, and other environmental conditions at Williamsburg Houses, as noted above. The potential to disturb or remove the hazards, poisons, or toxins, including the VOC's, would certainly affect the project or have a bearing on its impact on residents. It also appears that NYCHA purposely chose to conduct groundwater soil borings that NYCHA's environmental engineers knew or should have known were too shallow for the elevation of Williamsburg Houses. These omissions, for which NYCHA failed to conduct appropriate studies, satisfy a requirement that NYCHA must engage in a reevaluation of environmental assessments and other environmental findings. *See* § 58.47(a)(2).

This also raises an additional, permissible objection. HUD will consider objections when a RE has omitted one or more steps set forth in subpart E of § 58, such as the preparation of an EA, if HUD determines that preparation of an EA was required. *See* § 58.75(c). As a result, HUD must deny the Release of Funds.

### **Part III : 24 CFR § 58.75(d)**

**NYCHA held no public hearings or meetings.** Because NYCHA should have prepared an EIS, the RE omitted one or more of the steps set forth at subparts F and G of § 58 for the conduct, preparation, publication and completion of an EIS. As a result, HUD will consider objections claiming a RE's noncompliance on the ground that the RE or NYCHA omitted one or more of the steps set forth at subparts F and G of § 58. *See* § 58.75(d).

**If NYCHA held any meetings, then those meetings didn't cover the true environmental assessment of Williamsburg Houses.** One of the requirements of subparts F and G of § 58 is the holding of public hearings or meetings. Because NYCHA failed to prepare an EIS (and, instead, prepared and submitted the fatally defective NEPA Categorical Exclusion documents), NYCHA never held public hearings or meetings that would have led to a robust public discussion of the actual environmental threats or risks to public housing residents. Because NYCHA never fully conducted a thorough environmental analysis of Williamsburg Houses, public housing residents were denied opportunities to review and discuss, for example, the real possibility that the de Blasio administration plans to desecrate the burial

grounds or human remains of Native American tribes that may rest under their public housing development. These lost opportunities have denied public housing residents information about the social, cultural, and economic costs of the activities contemplated for Williamsburg Houses. There were no discussions about the groundwater soil borings being deliberately designed to fail to reach groundwater, for example. Because NYCHA failed to consider these factors or make these disclosures, HUD must reject the NEPA Categorical Exclusion documents. *See* § 58.59(a)(1).

**NYCHA has not been transparent about its intention to abandon its obligations to public housing residents.** NYCHA has not held public hearings or meetings to facilitate or permit public housing residents to receive information, comment on, or engage NYCHA with aspects of its plans to abandon all of its obligations to public housing residents following RAD/PACT or Blueprint conversions. Very limited information about the abandonment by NYCHA of its obligations has entered the record in the U.S. District Court proceedings in the *Baez* case. The refusal to facilitate or permit public housing residents to participate in public hearings and meetings about NYCHA's plans to use RAD/PACT or Blueprint conversions to abandon NYCHA's obligations to public housing residents violates NYCHA's requirement to consider factors, such as the degree of interest in or controversy concerning projects, such as the activities planned for Williamsburg Houses. Because NYCHA has denied residents any engagement with the controversy of projects, this violates HUD policy. There is a substantial public interest in the survival, success, and expansion of public housing, and that substantial public interest requires resident engagement. NYCHA's actions represent an omission of requirements of subparts F and G of § 58 due to the lack of public hearings or meetings. Consequently, HUD must block the Release of Funds. *See* § 58.59(a)(2).

The activities contemplated at Williamsburg Houses require robust public input and resident engagement, and NYCHA is denying the public and public housing residents opportunities to propose ideas that would benefit or be of assistance to NYCHA. At Fulton Houses, for example, Mayor de Blasio convened a Mayor's Working Group of lower-ranking Government officials, officials from non-profit groups, and a few NYCHA residents. Those few residents were supposed to formulate a vision for the future of public housing in the Manhattan neighbourhood of Chelsea. *See* Michael Gartland, *Mayor de Blasio launches 'working group' to hash out NYCHA plans in Chelsea*, Daily News (10 Oct 2019), <https://www.nydailynews.com/new-york/ny-de-blasio-nycha-fulton-chelsea-elliott->

private-developer-20191010-aajo3uv5hvc7hdaxiv2zznip3q-story.html. "This working group will ensure that the plan to improve these developments meets all of the residents' needs," Mayor de Blasio was quoted as saying. Gartland, *supra*. Whilst we disagree that the Mayor's NYCHA Working Group was completely transparent or democratic, the fact is that Mayor de Blasio denied an equivalent working group to residents of Williamsburg Houses. Consequently, Mayor de Blasio, and, by extension, NYCHA, failed to consider holding public hearings and meetings that would have been an assistance to NYCHA, leading to the unequal treatment of public housing residents under the law and a violation of HUD requirements. As a result, HUD must reject the NEPA Categorical Exclusion documents, because Williamsburg Houses residents didn't receive equal treatment shown to Fulton Houses residents. *See* § 58.59(a)(3).

**HUD must delay all RAD/PACT conversions until the pandemic comes to a complete end, because the kinds of meetings or hearings held by NYCHA, if any, have been inferior and had no basis in law.** NYCHA failed to convene adequate and lawful public hearings and meetings as a result of the Coronavirus pandemic. NYCHA also suspended inspection of apartments. If meetings were held at all, NYCHA has conducted virtual meetings. Only public housing residents or members of the public with access to, and experience with, technology have been able to participate in such limited, virtual meetings. Subpart G of § 58 does not authorize virtual meetings. While HUD waived the requirement for the holding of public meetings for the 5-Year and Annual Plan submissions, it has not done this for environmental reviews. NYCHA's implementation of virtual meetings was also problematic, because it did not provide many residents with physical copies of documents, including translations. Furthermore, many NYCHA residents have lacked printers to produce hardcopy documents from digital copies of presentation materials, limiting the review of information. Additional challenges, such as technological difficulties, connectivity issues, low or limited bandwidth, and lack of translators, prevented public housing residents from hearing presentations or others' testimony or providing their own testimony in a clear manner without interruption, and from knowing, seeing, or identifying all other participants, including NYCHA officials. The sum total of this experience led to inferior experiences. Thus, virtual meetings constituted defective meetings.

What is more, NYCHA never considered alternatives, like holding socially-distanced meetings outdoors. Notwithstanding these problems, HUD's waiver of the holding of some public meetings were not achieved through legislation, making them unlawful,

since no changes were made to the requirements of § 58. *There has been no basis in law for the waiver.* Nevertheless, the waiving of some public meetings by HUD should have placed responsibilities on NYCHA to achieve public involvement by other means. Unfortunately, the NEPA Categorical Exclusion documents do not provide any explanation to HUD about how meetings took place or what those other means that were used to obtain resident engagement. As a result, the NEPA Categorical Exclusion documents must be rejected by HUD due to NYCHA's failure to consider other means by which the RE achieved public involvement. Since HUD's waivers were not achieved through legislation, any waivers were unlawful, and the NEPA Categorical Exclusion documents must be rejected. *See* § 58.59(a)(4).

#### **Part IV : 24 CFR § 58.75(f)**

HUD shall consider objections based on the failure of a RE to obtain a satisfactory written finding from the standpoint of environmental quality from another Federal agency acting pursuant to 40 CFR § 1504. *See* § 58.75(f).

NYCHA has an obligation to protect the burial grounds of Native American tribes. Congressional testimony reflects this sensibility. "Tribal witnesses also testified that in the case of unidentifiable Native American human remains, the human remains should still be given proper burial." *See* Senate Report 101-473, at 3 (1990). The NEPA Categorical Exclusion documents are not clear that NYCHA or the RE have provided *any* protections to Native American burial sites.

We do not know why NYCHA has decided to keep, without a clear purpose, possible human remains that are identifiable and affiliated with specific Native American tribes. All we know is that the RE invited Tribal Historic Preservation Officers from Stockbridge-Munsee Mohican Tribal Historic Preservation New York Office, the Shinnecock Indian Nation Tribal Office, Delaware Tribe Historic Preservation Representative, and the Delaware Nation to consult on the HPD-NYCHA-NY SHPO Section 106 Programmatic Agreement submitted with the NEPA Categorical Exclusion documents. But merely making an invitation to consult an agreement does not satisfy the Government's obligations to Native American tribes. The U.S. owes Native American tribes self-determination and tribal sovereignty. That obligation is not met by NYCHA keeping possible possession of tribal burial grounds for the purposes of the activities for which the RE claim categorical exclusion under § 58.35. Furthermore, the RE, on behalf of the Government, owes a particular obligation to deliver environmental justice to minority and low-income populations. *See* § 58.5(j). Because of the expense involved in conducting environmental studies ;

reclaiming human remains, if any, buried underneath Williamsburg Houses ; and providing those human remains a proper burial, the RE is exploiting limitations on tribal sovereignty, particularly tribes' lack of economic resources. This exploitation means that Native American tribes are unable to oppose harmful activities planned for Williamsburg Houses. An aspect of tribal sovereignty is "the responsibility of the U.S. to protect tribal resources."<sup>13/</sup> The Government is obviously not protecting tribal resources by ignoring the environmental impact of the activities for which the RE claimed categorical exclusion at Williamsburg Houses.

Congress enacted the NAGPRA in 1990 to preserve Native American human remains and cultural resources. The U.S. Dept. of the Interior is tasked with implementing many of the provisions in the NAGPRA. The Secretary of the Interior must provide guidance to Government Agencies receiving Federal funding to assist them with their compliance requirements. The HPD-NYCHA-NY SHPO Section 106 Programmatic Agreement submitted by the RE with the NEPA Categorical Exclusion documents failed to consult with the Secretary of the Interior.

The Code of Federal Regulation provides the basis of an objection when another Federal agency acting pursuant to 40 CFR § 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. In respect of Williamsburg Houses, the RE obtained *no written finding at all*. Since the RE failed to obtain a written finding from the Dept. of the Interior that the project was satisfactory from the standpoint of environmental quality, the RE has violated a permissible basis for objection. *See* § 58.75(f). As a result, HUD must reject the Release of Funds.

## **Part V : The ULURP Process**

The local Planning Commission notes that other New York City agencies, such as the RE, take the lead on land reviews, such as for housing projects and urban renewal plans, when they are the applicants. In such cases, those actions are still reviewed through the Uniform Land Review Procedure ("**ULURP Process**").<sup>14/</sup> That did not happen here. As a result, HUD must reject the NEPA Categorical Exclusion documents, because they were prepared in a manner that was unlawful for the RE.

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<sup>13/</sup> See Ranco DJ, *The Trust Responsibility and Limited Sovereignty : What can Environmental Justice Groups Learn from Indian Nations?* Society & Natural Resources : An International Journal. 2008;21(4):354–362, 356 .

<sup>14/</sup> See Environmental Review Process, New York City Planning Commission, <https://www1.nyc.gov/site/planning/applicants/environmental-review-process.page>.

Finally, the RE is an Agency of the Government of the City of New York. Besides being governed by § 58 for this instant process, the RE is also subject to the New York City Charter. In addition to HUD regulations, NYCHA is regulated by the laws of New York State. Real estate development plans for public housing must be approved by the local Legislative body and by the local Planning Commission, if any. *See* N.Y. Pub. Housing Law § 150. The disposition of public housing assets is subject to the ULURP Process. Under the Charter of the City of New York, the disposition of public housing assets must be done following the consultation and advice of the community, including the City Planning Commission, the New York City Council, the Borough President, and the local Community Board. *See* N.Y.C. Charter § 197-C. Alternatively, RAD/PACT conversions represent an urban renewal plan that is subject to the ULURP Process. *See* N.Y.C. Charter § 197-C(8). And, the ULURP Process requires public meetings. In the event that HUD makes a determination that the RE, as applicant for NYCHA, should have managed the activities planned for Williamsburg Houses through the ULURP Process, then HUD must conclude that the RE failed to follow the public meetings schedule required by the ULURP Process ; as a result, the RE failed to follow a lawful review process. Consequently, the NEPA Categorical Exclusion documents must be rejected.

For foregoing reasons, NYCHA never complied with the procedure for holding public hearings or meetings. *See* § 58.59(b).

Overall, NYCHA wrongly omitted the holding of public hearings and meetings. This omission denied public housing residents a *robust* public discussion of the above environmental issues. Therefore, NYCHA never considered the factors listed in § 58.59(a). As a result, HUD must find that NYCHA has not complied with §58.75(d) and must, in turn, reject the NEPA Categorical Exclusion documents.

### **Conclusion**

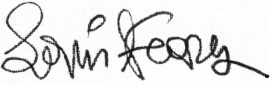
If the RE or HUD find that NYCHA or the Applicant failed to comply with either 24 CFR §§ 58.75 (b)-(d), (f) or the ULURP Process, individually and alternatively and not collectively, then HUD must reject the NEPA Categorical Exclusion documents. Once the NEPA Categorical Exclusion documents is rejected based on any of the grounds listed in the above five (5) parts, HUD must reject the Release of Funds until HUD requests either a reevaluation of the NEPA Categorical Exclusion documents, an EIS, or an EA, as appropriate, from either NYCHA or the RE.



Mr. Luigi D'Ancona  
HUD  
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Respectfully submitted,

**Fight For NYCHA**



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