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FIGHT FOR NYCHA
7522 37th Ave., #420
Jackson Heights, NY 11372

central.planning@mg.fightfornycha.org

29 March 2021

Via E-Mail : *NY_PH_Director@hud.gov* ***and UPS Ground***

Mr. Luigi D'Ancona
Director, Office of Public Housing
U.S. Dept. of Housing and Urban Development
New York Regional Office
Jacob K. Javits Federal Building
26 Federal Plaza, Suite 3541
New York, NY 10278-0068

Re : NOI/RROF : NYCHA Harlem River I and Harlem River II Amended and Restated Objection under 24 CFR § 58.75 and ULURP Process

Ladies and Gentlemen :

I submit the following amended and restated 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*, on 1 March 2021. ***This amendment and restatement corrects the addresses, as requested.*** 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) and the ULURP Process, the latter, which is applicable to the RE as Applicant for NYCHA. The

four 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 ERR 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 Environmental Review Record ("**ERR**"), signed on 28 Jan 2021 by **Matthew Charney**, Vice President of Design and Construction at NYCHA Real Estate Development, constituted a written determination wherein NYCHA claimed a category of activities for which no environmental impact statement ("**EIS**") or environmental assessment ("**EA**") and finding of no significant impact under the National Environmental Policy Act ("**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). NYCHA claimed that no extraordinary circumstances existed by claiming a Categorical Exemption. Based on NYCHA's written determination, NYCHA prepared and submitted the ERR 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 ERR, NYCHA admitted that it suspended inspections of public housing apartments.[1/] That suspension interfered with NYCHA's ability to prepare a complete ERR of Harlem River I ("**HRI**") and Harlem River II ("**HRII**").

1/ *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.

(iii). Even if the ERR was the correct choice, NYCHA failed to consider HUD environmental standards when the sole environmental consideration in the ERR was noise abatement. *See* § 58.5(i)(2)(i).

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 it deals with a crisis in physical condition standards as a result of 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.[2/] 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 Harlem River I and Harlem River I are designed to end public housing as we know it, and this also constitutes

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2/ *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.

extraordinary circumstances. The actions contemplated for Harlem River I and Harlem River II are also likely to alter existing HUD policy or HUD mandates. *See* § 58.2(a)(3)(iii). HUD must reject the ERR, because NYCHA is not fully disclosing its intent to rapidly and swiftly abandon its statutory obligations to tenants, who reside in Section 9 public housing in New York City. In proceedings before U.S. District Court Judge William Pauley III, NYCHA has argued that it has no obligations to tenants in buildings subject to RAD/PACT conversions. "When NYCHA-operated developments are converted to PACT, a small team of staff at NYCHA administratively closes all open mold and excessive moisture work orders on those buildings...." *See Baez,* Dkt. No. 304 at 22. NYCHA has admitted that in respect of overall maintenance requests made by NYCHA residents, "PACT property managers are better able to address the work orders than NYCHA." *See Id.* at 23. Plaintiffs' counsel in *Baez* described the net effect of NYCHA's actions as a run-around to supervision meant to make NYCHA comply with environmental protections, such as the Revised Consent Decree in *Baez*. Once it became clear what NYCHA was attempting, Plaintiffs' counsel communicated their concerns to the Court. "NYCHA cannot circumvent its obligations under the Decree by changing the structure by which NYCHA-owned buildings are managed." *See Baez*, Dkt. No. 284 at 3. Likewise with the Court, HUD cannot ignore NYCHA's attempts at undermining environmental protections afforded its residents. As a result, the ERR must be rejected until NYCHA addresses the extraordinary circumstances of RAD/PACT conversions on tenants' access to environmental protections.

If as a matter of routine, HUD accepts the ERR, then it will permit NYCHA to disingenuously abandon all of its obligations to public housing residents. These actions are likely to alter HUD policy, because RAD/PACT residents would be forced to sign resident leases against their best interests, would not be able to excercise the same civil rights as before, and would be denied the same access to justice in the forms of both the Revised Consent Decree in the *Baez* case that regulates the remediation of toxic mold and the supervision by the Federal Monitor, as shown below. Permitting the largest public housing authority in the nation, one with a horrifying record on environmental violations, the ability to use RAD/PACT to abandon their obligations was not contemplated by HUD when it authorised the use of RAD/PACT conversions. As a result, HUD must reject the ERR until such time as NYCHA fully communicates to HUD, and, equally important, to public housing residents, the full legal and financial consequences of RAD/PACT conversions. What NYCHA is doing here is not routine.

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. 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 automatically accept an ERR from NYCHA. Instead, HUD must conduct its own inspection of Harlem River I and Harlem River II.

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 claimed in the ERR that the sole environmental standard that was considered was noise abatement and control. *See* Statutory Worksheet at 8-10. The activities contemplated for Harlem River I and Harlem River II require substantial removal of toxic mold, lead paint, possibly lead plumbing or lead fixtures in plumbing (not disclosed), lead water service lines (not disclosed), toxic soil, and other hazards, such as buried gasoline and petroleum storage tanks, on real property affecting almost 700 public housing apartments and thousands of residents. This scale of work is substantially similar to that normally require an EIS to analyse potential environmental impacts. *See* § 58.2(a)(3)(ii).

There has been media attention focused on the presence of lead in apartments at Harlem River I and Harlem River II.[3]/ NYCHA has disclosed that the common areas of public housing apartment buildings contain lead paint. An example is 344 East 28th Street, which has already been converted under RAD/PACT. The ERR for Harlem River I and Harlem River II does not explain why the precense of lead, mold, and/or asbestos is limited to apartment interiors but not in any of the common areas. *See* ERR at 3. The ERR made no mention of how or when lead, mold, and/or asbestos were remediated or abated from the common areas prior to the selection

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3/ *See, e.g., Lisa Evers*, Twitter (16 April 2019 5:31 PM EST), https://twitter.com/LisaEvers/status/1118265603360530432.

of Harlem River I and Harlem River II for RAD/PACT conversion. Given that NYCHA has admitted that it suspended HUD inspections of apartments as a result of the Coronavirus pandemic, a reasonable conclusion can be drawn that NYCHA did not complete a full inspection of Harlem River I and Harlem River II prior to the preparation of the ERR. As a result, HUD must reject the ERR. *See* § 58.47.

If HUD accepts the ERR, then it must find the ERR defective, insufficient, or incomplete. The ERR is 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, "The Proposed Actions would result in better building quality for residents as a result of improvements to building systems as well as the mitigation of indoor vapors, lead based paint, asbestos and mold. No impacts on air quality would result from the Proposed Action and further assessment is not required." *See* ERR at 8. However, the ERR fails to describe methods or environmental standards for the removal of lead paint, toxic mold, or asbestos that would leave air quality unaffected. Moreover, the Government has 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 own characterisation that, "No impacts on air quality would result from the Proposed Action and further assessment is not required." *See* ERR at 8. As a result, the ERR must be found to be defective, insufficient, or incomplete and must therefore be rejected.

We can demonstrate for HUD that NYCHA has submitted a false or misleading statement in the ERR when NYCHA claimed, "No impacts on air quality would result from the Proposed Action and further assessment is not required." NYCHA has admitted in proceedings before U.S. District Court Judge William Pauley III 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, et al v. NYCHA*, No. 13-CV-8916 WHP, Dkt. No. 304 at 19 (S.D.N.Y. 17 Dec 2013). Since NYCHA is arguing in U.S. District Court that it can abandon its obligations to public housing residents following RAD/PACT and Blueprint conversions, NYCHA has a conflicted interest in claiming that no impacts of air quality will result from RAD/PACT conversion. NYCHA's conflicted interest in making sure that it can abandon its obligations to public housing residents includes fighting to specifically ensure that repair of roof fans is *excluded* from RAD/"PACT Section 8 developments." *Id.* This discriminatory exclusion can only be sustained if NYCHA succeeds in falsely asserting that, "No impacts on air quality would result from the Proposed Action and further assessment is not required." The

representations made by NYCHA and the RE in the ERR must be accepted by HUD with scepticism. Since NYCHA has engaged in fraud and deception, HUD should award NYCHA's "no adverse impact" claims no credibility and reject its conclusion 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.[4/] 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 Harlem River I and Harlem River II, 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 from preparing an EIS or EA. Finally, due to unusual physical conditions on the site or in the vicinity, the proposed action 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 sought to minimize or downplay the discovery of hazardous materials on the site of Harlem River I and Harlem River II. "The Phase I ESA identified several Recognized Environmental Conditions (RECs) associated with stone crushing works, laundromats and dry cleaners, and lead waste at the site, and gasoline tanks and coal waste adjacent to the site. " *See* Appendix A to the ERR at 4. NYCHA has wrongly asserted that, "disturbance from the Proposed Action would be limited." *Supra.* NYCHA has disclosed that the lead waste is estimated to be 5,100 pounds at just one location and an unspecified amount of lead waste at another. *See* Statutory Worksheet in the ERR at 10. Like most large public housing developments owned and operated by NYCHA, Harlem River I and Harlem River II receive heat and hot water from boiler systems that require the transport of water or steam through underground mains.[5/] NYCHA has admitted that it must

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4/ *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.

5/ Indeed, NYCHA has admitted these conditions exist. "According to Tamar Kisilevitz (the project architect), boilers located in the adjacent NYCHA Harlem River II public housing complex provided steam to heat the Harlem River Houses complex." *See* HRI Ph. I Env't Site Assess't at 5.

"repair/replace steam boilers." *See* Appendix A to the ERR at 4. It also admits needing to remove and replace the "Steam Boiler Plant for Harlem River II." *See* Scope Matrix Harlem River I and II to the ERR. Any repair or replacement of steam boilers will involve the completion of studies that may recommend and/or require the replacement of water or steam mains. Those studies were not described in the ERR. The omission is all the more glaring, since NYCHA has admitted, in relevant part, that the cause of at least one spill on the premises took place as a result of, "MATERIAL IS ENTERING BASEMENT aREA [sic]POSSIBLY DUE TO BROKEN PIPE IN BOILER OF ADJOINING PROPERTY." *See* Map Findings Summary to HRI Ph. I Env't Site Assess't at 761-2. What is more, an underground storage tank in HRII was disclosed to have an expiration date of April 5, 2020. *See* HRII Ph. I Env't Site Assess't at 4. But NYCHA has not rightly acknowledged the possibility of digging up expired underground storage tanks in the ERR. This is an important omission with grave implications for human safety. The disturbance of toxic or poisonous soil would be detrimental to the health and safety of HRI and HRII residents.

NYCHA must not be allowed to ignore the possibility of disturbing hazardous waste or flammable or combustible tanks buried under ground should it be required to replace water or steam mains or underground storage tanks in connection with repairs to the boilers. Because the ERR ignored or downplayed the possibility of having to disturb the hazardous waste and the flammable or combustible tanks, HUD must reject the ERR. Certainly, disturbances of the hazardous waste will have a significant impact on public housing residents, who *have already been exposed* to at least lead paint and toxic mold. HUD should order NYCHA to conduct complete studies to determine whether disturbances to the soil to remove and replace the boiler systems will disrupt the hazardous waste and or require the removal of the flammable or combustible tanks. As a result of NYCHA's failings, HUD must reject the ERR and, instead, request a reëvaluation of the environmental assessments and other environmental findings. *See* § 58.47. A reëvaluation of the ERR is warranted by the RE, since there are new circumstances (the possibility of lead paint existing in common areas, increasing the likelihood of exposure to residents -- in addition to any risk of exposure from the removal of lead paint from apartment interiors) and environmental conditions (the presence of thousands of pounds of lead waste in the soil and the likelihood of having to replace water or steam mains and expired underground storage tanks) which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued. *See* § 58.47(a)(2). These conditions plainly show that the activities contemplated for HRI and HRII will have a significant impact on residents, and that impact has not been studied in the ERR. Consequently, NYCHA should not be allowed to claim an excluded activity exception as a pretexte to avoid preparing an EIS or EA.

Part II : 24 CFR § 58.75(c)

Omissions were made that invalidate the ERR. NYCHA has engaged in fraud and deception and has 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. HUD must reject the ERR and require a full 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 ERR. If, however, HUD accepts that an ERR was the correct choice of format of submission, then HUD must review the ERR for all of the aforementioned omissions.

We have established that NYCHA made omissions in the ERR 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 no disclosure of lead or mold in the common areas of Harlem River I and Harlem River II ; (iii). NYCHA's failure to fully consider HUD environmental standards, because the sole environmental consideration in the ERR 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 public discussions and debate about the changes contemplated at Harlem River I and Harlem River II.

Against this backdrop, the ERR ignored or downplayed the circumstances and environmental conditions of the presence of significant amounts of hazardous waste and conditions at Harlem River I and Harlem River II, as noted above. The potential to disturb or remove the hazardous waste, water and steam mains, and flammable or combustible tanks would certainly affect the project or have a bearing on its impact. The omissions of these dangerous conditions, for which NYCHA failed to conduct appropriate studies, satisfy a requirement that NYCHA must engage in a reëvaluation 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).

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, those meetings didn't cover the true environmental assessment of Harlem River I and Harlem River II. 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 a fatally defective ERR), 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 Harlem River I and Harlem River II, public housing residents were denied opportunities to review and discuss the true magnitude of the project. These lost opportunities denied public housing residents information about the economic costs of dealing with hazardous waste, the likelihood of replacing water or steam mains connected to the boiler systems, the dangers or risks from flammable or combustible tanks located on the premises, and the history of hazardous waste in the geographic area involved. Because NYCHA failed to consider these factors or make these disclosures, HUD must reject the ERR. *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 proceedings before U.S. District Court Judge William Pauley III. Those

proceedings lacked the information that could have been provided, as well as participation, by tenants, who have experienced RAD/PACT conversion. 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 violates NYCHA's requirement to consider factors, such as the degree of interest in or controversy concerning projects, such as the activities planned for Harlem River I and Harlem River II. Because NYCHA has denied residents any engagement with the controversy of projects, this violates HUD policy. There is a substantial public interest in seeing the survival and success 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 reject the ERR. *See* § 58.59(a)(2).

During recent oral arguments in the *Baez* class action mold abatement case, U.S. District Court Judge William Pauley III described the issues facing NYCHA as complex. The issues facing NYCHA have come to the fore in the form of NYCHA's increased disposition of strategic public housing assets using RAD/PACT conversions and, if NYCHA had its way, through its recently-proposed Blueprint disposition. The activities contemplated at Harlem River I and Harlem River II 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 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-elliot-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 Harlem River I and Harlem River II. 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 ERR, because HRI and HRII 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 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 authorise 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 lack printers to produce hardcopy documents from digital copies of presentation materials. Additional challenges, such as technological difficulties, connectivity issues, and low or limited bandwidth, 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. But the ERR does not provide any explanation to HUD about how meetings took place or what those other means were. As a result, the ERR must be rejected by HUD for 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 ERR must be rejected.
See § 58.59(a)(4).

Part IV : The ULURP Process

It must be noted that 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**").[6/] That did not happen here. As a result, HUD must reject the ERR, because it was prepared in a manner that was unlawful for the RE.

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 Harlem River I and Harlem River II 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 ERR 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, as a result, reject the ERR.

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

Conclusion

If the RE or HUD find that NYCHA or the Applicant failed to comply with either 24 CFR §§ 58.75 (b) - (d) or the ULURP Process, individually and alternatively and not collectively, then HUD must reject the ERR. Once the ERR is rejected based on any of the grounds listed in the above four parts, HUD must reject the Request the Release of Funds ("**RROF**") until HUD requests either a reëvaluation of the ERR, an EIS, or an EA, as appropriate, from either NYCHA or the RE.

Respectfully submitted,

Fight For NYCHA

By : _____

Name : Louis Flores
Title : Member

cc : Louise Carroll, Commissioner *(via UPS Ground)*
c/o Matthew Juliana, Director, Environmental Planning
NYC Department of Housing Preservation & Development
100 Gold Street, Room 7-A3c
New York, NY 10038

Jacob Thomas Lillywhite *(via email : jacob.lillywhite@usdoj.gov)*
Jeffrey Stuart Oestericher *(via email : Jeffrey.Oestericher@usdoj.gov)*
Monica Pilar Folch *(via email : monica.folch@usdoj.gov)*
Sharanya Mohan *(via email : sharanya.mohan@usdoj.gov)*
Talia Kraemer *(via email : talia.kraemer@usdoj.gov)*
Robert William Yalen *(via email : robert.yalen@usdoj.gov)*
86 Chambers Street
New York, NY 10007

Michael Sussman, Esq. *(via email : info_sussman1@frontier.com)*
Melanie Aucello *(via email : maucello43@gmail.com)*
Diane DeJesus *(via email : dejesusd67@gmail.com)*