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October 31, 2017

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Dominique Blom  
Acting General Deputy Assistant Secretary  
Office of Public and Indian Housing  
U.S. Department of Housing and Urban  
Development  
451 Seventh Street SW, Room 4100  
Washington D.C. 20410

RE: Challenges to the Civil Rights Certification of the City of Houston and the  
Houston Housing Authority

Dear Assistant Secretaries Rackleff and Farias and Acting General Deputy Assistant Secretary  
Blom:

I write on behalf of my client, Texas Low Income Housing Information Services (TxLIHS), to demand that you and your colleagues take immediate action to examine the validity of the current civil rights certifications of the City of Houston (City) and the Houston Housing Authority (HHA), and any forthcoming certifications related to applications for HUD funding, including entitlement funds, discretionary funds and funds available pursuant to appropriations under the Community Development Block Grant-Disaster Recovery (CDBG-DR) program.

HUD itself issued a determination on January 11, 2017, identifying multiple ways in which the City violated Title VI. That letter recites evidence of intentional racial discrimination and perpetuation of segregation. While this determination and the findings which it contains are more than enough to require HUD to challenge the validity of the City's and the HHA's current certifications and to consider forthcoming certifications warily, the balance of this letter articulates additional compelling evidence to support HUD's rejection of certifications that the City and HHA are complying with their obligations under a number of civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), Section 109 of the Housing and Community Development Act (Section 109), and the Fair Housing Act (FHA), as well as their

Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 2

---

separate obligation to affirmatively further fair housing. Given this evidence, HUD must act promptly to declare the certifications inaccurate and unsatisfactory to the Secretary. Civil Rights Requirements and Certifications Applicable to the City and HHA

As recipients of federal funds, the City and HHA must—as a precondition to their receipt of such funds—certify their compliance with Title VI, the FHA, and Section 109. Moreover, each must certify that it will affirmatively further fair housing. 24 C.F.R. §§ 91.225, 570.601, 903.7(o). *See also U.S. ex rel. Anti-Discrimination Ctr. of Metro New York, Inc. v. Westchester Cty.*, 668 F. Supp. 2d 548, 569 (S.D.N.Y. 2009)(holding that such grant funds are “expressly conditioned” on the civil rights certifications).

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. Specifically, Title VI provides that “...no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. HUD’s implementing regulations for Title VI provide specific prohibitions which include, but are not limited to, the prohibition of actions that directly or otherwise use methods of administration that discriminate and those that have the effect of defeating accomplishment of the objectives of a HUD program, as well as actions which perpetuate segregation through siting decisions or otherwise discriminate or exclude persons because of race. 24 C.F.R. §1.4(b)(1)(iii), (b)(2)(i), (b)(3).

Section 109 prohibits the City and HHA from discriminating against applicants or participants, denying them the benefits of their housing programs or otherwise excluding them, *inter alia*, on the basis of race, color or national origin. 24 C.F.R. § 570.602.

The FHA prohibits discrimination, *inter alia*, on the basis of race, color and national origin. 42 U.S.C. §§ 3601 *et seq.*, 24 C.F.R. Part 100. The separate obligation to affirmatively further fair housing raises the bar further, requiring the City and HHA to certify not only that they are not discriminating but that they will take—and then actually take—“meaningful actions” to further the goals they establish to affirmatively further fair housing. The City and HHA are required to take no action that is materially inconsistent with their obligation to affirmatively further fair housing. 24 C.F.R. §§ 91.225(a), 903.7(o). *See also Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33, 73, 75 (D.Mass. 2002)(holding that “[t]hese regulations unambiguously impose mandatory requirements on the [recipients] not only to certify their compliance with fair housing laws, but actually to comply.”)



Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 3

---

A public housing agency must comply with Title VI and the obligation to affirmatively further fair housing. See, e.g. 24 C.F.R. § 903.7(o)(1): “The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 ( 42 U.S.C. 2000d- 4), the Fair Housing Act (42 U.S.C. 3601-19) and that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs, in accordance with paragraph (o)(3) of this section.”

#### Civil Rights Certifications and Performance by the City of Houston

Since mid-January 2017, HUD has been on the record with an unchallenged determination that Title VI has been violated and findings that the City: (1) engaged in differential treatment on the basis of race in its denial of an affordable housing development proposed for a high opportunity community; and (2) maintained policies that “effectuate local opposition motivated by discriminatory intent and perpetuate segregation.” G. Sweeney letter of January 11, 2017, to Mayor Sylvester Turner (HUD Letter). While HUD analyzed these actions exclusively under Title VI, these findings clearly establish liability under Section 109 and the FHA as well, and constitute a violation of the City’s obligation to affirmatively further fair housing.

Among other things, HUD found that:

The City’s denial of a Resolution for Fountain View, as well as the City’s policies, practices and procedures for issuing LIHTC Resolutions, perpetuate segregation by blocking affordable housing proposals in integrated neighborhood....The City also made selections with respect to the ‘site or location of housing accommodations...with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination [on the basis of race]’ ... or “with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of [Title VI].”

...

Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 4

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[T]he City failed to “take affirmative action to overcome the effects of prior discrimination.”

...

City decision-makers effectuated the discriminatory motives of certain local residents in refusing to issue a Resolution of No Objection for the Fountain View project.

*Id.* at 10-11.

The HUD Letter concluded that “This system blocks or deters developers from proposing LIHTC projects in predominantly white neighborhoods where they are likely to encounter opposition, and as a result, perpetuates and reinforces patterns of residential segregation in the City.

*Id.* at 12.

HUD’s finding identifies systemic discrimination through decision making by the City of Houston and its mayor and, because the City has not sought review, pursuant to 24 C.F.R. Part 1, it represents the final determination of the Department.

An unresolved Title VI determination has important consequences which HUD may not ignore. One result of this Title VI determination is that the City is ineligible for discretionary funds from HUD.<sup>1</sup> Another is that unresolved civil rights violations must be remedied in order for HUD to accept a certification of compliance with civil rights laws and an assertion that a jurisdiction is affirmatively furthering fair housing.<sup>2</sup> Similarly, a State must assure that its sub-recipients comply with civil rights certifications.<sup>3</sup>

As you are aware, these outstanding issues have not yet been resolved and compliance has not yet been achieved through a voluntary compliance agreement. In such cases, HUD’s own Title VI regulations provide for the suspension or termination of funding to a refusal to grant or to continue Federal financial assistance, among other remedies. 24 C.F.R. § 1.8(a). Because the finding extends to the entire City of Houston and includes the actions of its mayor,

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<sup>1</sup> See, e.g., General Section to HUD’s Fiscal Year 2017 Notice[s] of Funding Availability for Discretionary Programs, (General Section), FR-6100-N-01, Section V. B.1.a.4 and 5 at p. 5-6.

<sup>2</sup> See, e.g. 24 C.F.R. § 91.225 (Entitlement Jurisdictions), 24 C.F.R. § 903.15(d) (PHAs).

<sup>3</sup> See, e.g. 24 C.F.R. § 570.487(b)(3).



Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 5

---

the entire City and its mayor must comply with any voluntary compliance agreement or be subject to the sanctions required by Title VI and HUD program regulations.

HUD is also obligated by its regulations either to secure voluntary cooperation from the City, or to consider other ways that “compliance ... may be affected, [including] by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law... [which] may include...[a] reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce [compliance].” 24 C.F.R. § 1.8.

But in the more than eight months that have transpired since the issuance of the HUD Letter, HUD has not even delivered a draft Voluntary Compliance Agreement to the City outlining a path to voluntary cooperation. HUD’s failure to act in this regard, or to take other steps to enforce Title VI, can already be considered an abuse of discretion. So long as HUD delivers a draft VCA to the City no later than November 15, 2017, TxLIHIS will refrain from litigation seeking a declaration that HUD has abused its discretion. So long as HUD and the City can demonstrate concrete progress toward consummation of a VCA, TxLIHIS will continue that forbearance until November 30, 2017.

Unless and until voluntary compliance has been reached, HUD must reject any submission or certification by the City regarding compliance with Title VI because, by HUD’s own determination, the City fails to comply with Title VI. HUD is therefore not authorized to continue funding or grant new funding to the City or Mayor until the existing findings are resolved and the City is able to make accurate certifications. *Cty. of Westchester v. U.S. Dep’t of Hous. & Urban Dev.*, 802 F.3d 413, 418 (2d Cir. 2015).

Any voluntary compliance agreement should address all issues identified in the HUD letter, and must include training of elected and appointed officials on addressing and resisting discriminatory community opposition. It must identify areas of segregation throughout Houston and outline remedial steps, including a robust mobility program that incentivizes owners to accept Housing Choice Vouchers in all parts of Houston. It must identify additional actions that will remediate its practices with respect to siting of Low Income Housing Tax Credit (LIHTC) housing and require and incentivize developers in a program to ensure that any newly constructed LIHTC housing be located in Census tracts with poverty rates of less than 20%.

The HUD letter contains evidence that the City has failed to affirmatively further fair housing. As noted in the determination, Houston’s 2015 Analysis of Impediments to Fair

Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 6

---

Housing Choice (AI) recognizes the historic patterns of actions in the City that have perpetuated segregation and commits the city to take specific actions:

- *The city is committed to promoting economically, racially, and ethnically integrated neighborhoods of opportunity and will take actions to encourage mixed income housing, preserve affordability in neighborhoods rapidly increasing in value, and create affordability and opportunities to find housing in areas of high opportunity. (2015 AI, 149) (emphasis supplied).*
- *The city will work to provide housing opportunity in areas with high performing public schools. (2015 AI, 156) (emphasis supplied)*

Evidence in the HUD Letter clearly demonstrates that the City has failed to promote economically, racially and ethnically integrated neighborhoods of opportunity by denying approval to the Fountain View site and by subsequently approving Independence Heights Apartments in the Crosstimbers neighborhood, an area that is impoverished and segregated by race and national origin, and that is served by failing schools.<sup>4</sup>

As a recipient of CDBG and HOME funds, the City is required to certify that it will take “meaningful actions” to further the goals it establishes to affirmatively further fair housing and it is required to take no action that is materially inconsistent with its obligation to affirmatively further fair housing. 24 C.F.R. § 91.225(a). The evidence shows that the City of Houston did not take meaningful actions to promote economically, racially and integrated neighborhoods or to provide housing opportunities in neighborhoods with high performing schools when it rejected the Fountainview application and approved the Independence Heights proposal. Thus, the City’s certification is inaccurate.

The resolution of this matter is made urgent by the impact of Hurricane Harvey on the city of Houston. Immediate action is essential because the law requires resolution of the outstanding noncompliance issues before HUD may accept any new certifications from the City about compliance with Title VI. A certification is required before HUD may approve any disaster recovery action plan from Houston (since certifications accompany those submissions) and before Houston may receive disaster recovery funds or any other funds from HUD, whether

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<sup>4</sup> The HUD Letter observes that, “[a]ccording to Children at Risk, a non-profit organization that ranks the quality of public education in Houston, TX, the three schools available to children who would live in the Independence Heights development all have an ‘F’ rating.” *Id.* at 5.



Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 7

---

directly or indirectly through a state grantee. It is therefore of the utmost importance that HUD work with the City to remedy the City's ongoing noncompliance now, in advance of HUD's anticipated approval of disaster recovery funds. The City's ongoing resistance to complying with civil rights laws must not be permitted to delay disaster survivors' access to disaster recovery funds.

There are additional facts that are known to the City of Houston regarding other critically important issues that require HUD's immediate attention. By separate letter, we ask that HUD open a new Title VI investigation involving the City's failure to provide neighborhoods comprised principally of people of color with equal access to adequate storm water infrastructure and flood protection. The City's denial of this essential infrastructure to these neighborhoods on the basis of race and national origin of the residents is a longstanding Title VI violation that has caused these neighborhoods and their residents to suffer repeatedly from catastrophic flooding.

Many of Houston's majority African-American and Latino neighborhoods suffer from substandard, poorly maintained, and sometimes altogether missing, City infrastructure of all types. These neighborhoods constitute both original, racially segregated neighborhoods of the city as well as areas annexed by the City over time. While majority white, non-Hispanic neighborhoods were generally provided internal storm water infrastructure providing adequate protection from street and structure flooding, most neighborhoods of people of color are still served today by informally developed, open ditch drainage infrastructure that was inadequately designed and that frequently results in inadequate storm water protection. Following widespread flooding of African-American and Hispanic neighborhoods in the wake of Hurricane Ike in 2008, the City Public Works Department, responding to demands from my clients, for the first time conducted an inventory and assessment of the City's open ditch drainage system through a Hurricane Ike CDBG-DR funded study but no action has been taken to address those identified infrastructure disparities.

The City's own report provides evidence about what was already common knowledge in Houston: that the neighborhoods served by open ditch drainage are overwhelmingly those occupied largely by African-American and Hispanic persons and that the open ditch system fails to provide the most basic levels of flood protection to these neighborhoods. However, the City has failed to act on this information to remedy the racial, ethnic and national origin inequalities in the provision of this critical infrastructure.

A specific example of the practices of discrimination in the provision of government subsidized housing City infrastructure can be found in the low-income, majority Hispanic and

Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 8

---

African-American Greenspoint area of Houston.<sup>5</sup> Three quarters of Greenspoint's 70 apartment complexes are in a floodplain and roughly one-third of were affected by flooding in April 2016. Damage estimates from Hurricane Harvey are not available but the impact is expected to be worse.

The City has failed to act to provide adequate flood protection to Greenspoint. The City has permitted thousands of Greenspoint apartments to be constructed, occupied and repeatedly reconstructed in the wake of catastrophic flooding. One HUD subsidized apartment development is actually built in a floodway, and HUD and the City have permitted it to be repeatedly rebuilt and reoccupied after it has flooded.

The City's false certifications include both the City's actions related to the location of government-subsidized housing as described in HUD's Title VI findings as well as the maintenance of a network of separate and unequal City infrastructure

The HUD Letter recites strong evidence that the City's actions were—and continue to be—materially inconsistent with its certification and that its actions were inconsistent with its own AI (upon which its current and prospective civil rights certifications are based). In light of this evidence, it is inexplicable (and an abuse of discretion) that HUD has failed to declare that the City has failed to affirmatively further fair housing. To provide HUD with sufficient time to take corrective action on this point, TxLIHIS will refrain from litigation asserting claims against HUD until November 30, 2017.

#### Civil Rights Certifications and Performance by the Houston Housing Authority

There is substantial evidence that the HHA is out of compliance with its civil rights certifications under Title VI, the Fair Housing Act and the obligation to affirmatively further fair housing. Unless and until the HHA comes into compliance, HUD must also challenge any HHA certifications. To begin with, evidence in the HUD Letter which represents findings by the Department indicates that the HHA has taken actions that are materially inconsistent with its obligation to affirmatively further fair housing, by repeatedly developing affordable housing in areas that are segregated and poor, and by failing to pursue such developments in high opportunity communities. Those findings make it evident that any recent or current HHA certification of compliance with Title VI and the obligation to affirmatively further fair housing is inaccurate.

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Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 9

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The evidence on which this assertion in the HUD Letter is based was provided by this firm or by TxLIHIS to Bryan Greene, HUD's Deputy Assistant Secretary for Fair Housing, in letters dated April 6, 2016 (CC: on letter to Mayor Turner); September 28, 2016; and December 5, 2016. In the first of these letters (a copy of which is attached), TxLIHIS informed HUD that, "[f]or its entire 78-year history, HHA has constructed and operated public housing almost exclusively in majority African-American neighborhoods with high concentrations of persons living below the poverty level." That letter alerted HUD to the City's impending refusal to support the Fountain View proposal, its effectuation of the discriminatory views of neighbors, and the necessity of HUD intervention to ensure that HHA had an opportunity to remedy its past practices by developing Fountain View in a high opportunity community.

The letter of September 28, 2016 (attached) includes detailed evidence that shows how siting of HHA properties over many years has perpetuated segregation based on race and national origin. The letter also identifies significant patterns of Housing Choice Voucher use across Houston that also perpetuate segregation based on race and national origin.

In its letter of December 5, 2016 (attached), TxLIHIS provided further information about HHA's continuing pattern of discrimination in site selection and perpetuation of segregation, highlighting the example of the Houston City Council's approval of a housing site at Independence Heights, which will increase segregation and poverty in the area and offer the poorest quality education to its children. TxLIHIS also invoked HUD's own regulations concerning site and neighborhood standards, urging HUD to take decisive action and determine that the Independence Heights site did not meet those standards.

HUD has additional evidence that five sites proposed by HHA since 2012 for affordable housing were rejected by HUD because the sites were located in areas of racial concentration and had little or no economic investment or planned reinvestment. Some (sites) had environmental concerns. Most had extremely poor quality schools. This evidence establishes a continuing pattern of intentional racial segregation in siting affordable housing in areas that have poor schools and little opportunity.

While HUD determined that the City violated Title VI, it has taken absolutely no action with respect to the HHA based on this evidence and its own findings. In other words, HUD has acquiesced—and become complicit in—HHA's discriminatory policies and actions. Doing so violates HUD's own obligation to administer its programs and activities in a manner to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). *See also NAACP v. Sec'y of Housing*

Neal Rackleff  
Anna Maria Farias  
Dominique Blom  
U.S. Dep't of Housing and Urban Development  
October 31, 2017  
Page 10

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*and Urban Development*, 817 F.2d 149, 154-55 (1st Cir. 1987)(holding that the affirmatively furthering obligation “imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)...This broader goal [of truly open housing] ... reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”)

There is still time for HUD to correct course with respect to HHA's noncompliance with its civil rights obligations, but doing so will require HUD to act expeditiously. Based on the evidence it has in front of it, HUD must reject any certifications by the HHA with respect to Title VI and its obligation to affirmatively further fair housing because they are inaccurate. And HUD must withhold any CDBG-DR or other funds from HHA until it has remedied its civil rights violations. Provided that HUD takes this corrective action, TxLIHIS will refrain from litigation to enforce HUD's own obligations until November 30, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "MA Allen", with a stylized, cursive script.

Michael Allen

Enclosures: as stated

CC: Bryan Greene  
Timothy Smyth  
John Henneberger  
Karen Paup



## ATTACHMENT A

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April 6, 2016

The Honorable Sylvester Turner  
Mayor of the City of Houston  
P.O. Box 1562  
Houston, TX 77251

RE: City Council resolution regarding Low Income Housing Tax Credits for the proposed Fountain View affordable housing development

Dear Mayor Turner:

I write on behalf of my clients, Texas Appleseed and Texas Low Income Housing Information Service, to request that the City Council adopt a resolution of support for the 4% Low Income Housing Tax Credit ("LIHTC" or "tax credit") application that the Houston Housing Authority ("HHA") has submitted to the Texas Department of Housing and Community Affairs to finance the mixed-income Fountain View development.

Under state law, HHA cannot secure the tax credits without the Council's resolution of support. HHA has said publicly that the tax credits are required for the financing of the development, to leverage funds required to replace other public housing units damaged or destroyed by Hurricane Ike, and to address the desperate need for more affordable housing in high opportunity areas in the City of Houston.

The Council's failure or refusal to adopt such a resolution would both block this development and put the City in violation of its certification that it will affirmatively further fair housing. That certification—and actual performance consistent with its civil rights obligations—is a precondition to the City's receipt of federal housing and community development funds, which amount to nearly \$41 million in FY 2016, and to the City's eligibility for more than \$150 million dollars of Round 2 Community Development Block Grant Disaster Recovery funds over five years. Moreover, a decision by City officials to block this development would also be a violation of the Fair Housing Act's prohibition on discrimination.

For its entire 78-year history, HHA has constructed and operated public housing almost exclusively in majority African-American and Hispanic segregated physically blighted neighborhoods with high concentrations of persons living below the poverty level.<sup>1</sup> The enclosed

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<sup>1</sup> See Robert B. Fairbanks, "The War on Slums in the Southwest: Public Housing and Slum Clearance in Texas, Arizona and New Mexico, 1935-1965." The City of Houston and the Houston Housing Authority notoriously engineered the destruction of the African-American Freedman's Town neighborhood in Houston's Fourth Ward, adjacent to the expanding downtown, by electing for slum clearance for the San Felipe Courts public housing development in that neighborhood, restricting occupancy in San Felipe Courts public housing units to whites and compelling African-Americans to move to the segregated Kelly Courts housing development in the African-American Fifth Ward. There are many other historical examples of collusion between the City of Houston and the



The Honorable Sylvester Turner  
Mayor of the City of Houston  
April 6, 2016  
Page 2

---

Map A shows the location of HHA apartment developments in relation to the residential patterns of white, non-Hispanic households. HHA's tenant population is overwhelmingly African-American (79%), with some Hispanic tenants (13%) and very few, non-elderly, white, non-Hispanic tenants. Map B shows how the location of HHA developments reinforces and perpetuates racial and ethnic segregation and isolates HHA residents.

The City created HHA and the mayor appoints its board of directors. Acting in consultation with mayors and Councils over several decades after its creation in 1938, HHA developed and operated housing that was explicitly and exclusively for "white", "Negro," and "Mexican" tenants. While curtailed by civil rights enforcement beginning in the 1960s, the legacy of those HHA policies persists to the present day, in the form of segregated racial and ethnic residency patterns.

HHA has stated clearly that construction of Fountain View is part of its plan to remedy the legacy of residential racial segregation. Its location, on land adjacent to HHA's headquarters in the middle-class predominantly white Briargrove neighborhood, is in an area with good public services, quality schools, and thriving businesses. The Census tract encompassing Fountain View has poverty at *just one-fifth* of the level of existing HHA developments. The U.S. Department of Housing and Urban Development ("HUD") has reviewed the Fountain View site and has concluded that the proposed location is consistent with the requirement that HHA develop and operate its housing in a manner that affirmatively furthers fair housing.

As the City recognized in the Analysis of Impediments to Fair Housing Choice ("AI") it submitted to HUD in August 2015, the right to fair housing choice and freedom from discrimination is limited by the extreme lack of affordable housing options in high opportunity neighborhoods in Houston, and by segregated housing patterns based on race and economic status. The AI identifies the following impediments:

*There is also a lack of affordable housing options located in certain areas of the city. Although 80% of those responding to the Community Needs Survey agreed that affordable housing should be available in all areas of the City, some housing affordable to low- and moderate-income families are in neighborhoods that are not located near public transportation or high quality schools, lack amenities, or have a high number of crime incidences. Many of the publicly funded affordable housing developments are located in mostly low-income neighborhoods. In addition, market rate housing available for low- and moderate-income households are often in older housing stock which may need a higher cost of repairs and may have additional health hazards, like lead-based paint or asbestos. (2015 AI, 147)(emphasis supplied).*

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Houston Housing Authority to increase racial and ethnic segregation. The effects of these actions are manifest in today's Houston residential racial housing patterns.

The Honorable Sylvester Turner  
Mayor of the City of Houston  
April 6, 2016  
Page 3

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*High opportunity areas with housing only available to wealthy households, limits housing and other opportunities for **not only low-income but also middle income families.** (2015 AI, 151)(emphasis supplied).*

*Residents often oppose the location of housing for protected classes in or near their **neighborhood**, including affordable housing, housing for persons with disabilities such as group homes, or even market rate housing that is more affordable than other kinds of housing such as multifamily housing or housing on smaller lot sizes. (2015 AI, 154) (emphasis supplied).*

The AI then commits the City to undertake the following actions to overcome these impediments:

*The City will work towards creating more housing and preserving housing options especially for persons in various protected classes **including in higher opportunity areas where housing is generally not available.** (2015 AI, 147)(emphasis supplied).*

*The city is committed to promoting economically, racially, and ethnically integrated neighborhoods of opportunity and will take actions to encourage mixed income housing, preserve affordability in neighborhoods rapidly increasing in value, and **create affordability and opportunities to find housing in areas of high opportunity.** (2015 AI, 149)(emphasis supplied).*

*The city will work to **provide housing opportunity in areas with high performing public schools.** (2015 AI, 156)(emphasis supplied).*

As you know, much of the community opposition to the Fountain View development is animated by bigotry, prejudice, and animus against classes of persons protected under the Fair Housing Act:

- At a March 9, 2016, HHA public hearing,<sup>2</sup> opponents of Fountain View made comments including the following: “It pays to be a loser!”; “What about citizenship? Will you check that?”; “This sounds like the same plan they had for bussing years ago!”; “They’re gonna bring our property value down!”; “How are the elderly supposed to stay safe?” Opponents also repeatedly expressed concern that families with children would live at Fountain View and asserted that these children would “overcrowd” Briargrove Elementary School, despite the fact that the school is already overcrowded and a second elementary school in the neighborhood is under construction. The hearing was overtly

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<sup>2</sup> An audio recording of this public hearing will be produced to you upon request.



The Honorable Sylvester Turner  
Mayor of the City of Houston  
April 6, 2016  
Page 4

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hostile; opponents yelled at HHA staff and board members during their presentation on the project, and my clients, who commented in support of the project, were repeatedly heckled and shouted down as they spoke. Elected public officials have made statements calling the proposed Fountain View development a “housing project” and alleging it would “damage[e] our schools, our traffic, [and] our quality of life.”

- Additional derisive comments demonstrating animus against persons in protected classes have been made about the potential tenants at Fountain View development in other venues as well. The following excerpts are taken from comments on a blog post about the controversy: “What’s next? Am I going to be forced to take these kids into my house having to raise, feed and educate them while their parents sit around in their rent-free luxury apartment on Fountain View Drive doing nothing????”; “I have seen what public housing can do to a neighborhood. You can’t say that property values will not decline due to public housing in the area and increase crime. If you say it won’t you are either a liar or just really stupid”; and “people living off a taxpayers dont deserve anything but the basics. fix the problems in their areas. dont bring their problems to other areas.” [sic]<sup>3</sup>
- Opponents have not objected similarly to recent market rate developments in the area, many of which have more total units and a greater number of large family-sized units than the Fountain View development. It is only the Fountain View development that has inspired the sentiment, as one blog commenter wrote, of “There goes the neighborhood!” (sic) In other words, concerns about school overcrowding, traffic, and other issues emerged only in response to a proposed affordable housing development whose residents would include families of color.

As your lawyers have undoubtedly made you aware, public officials who—in the exercise of their public responsibilities—adopt, endorse or acquiesce in opponents’ discriminatory views have been held liable for violating the Fair Housing Act. *See, e.g., United States v. Yonkers Bd. of Educ. (Yonkers I)*, 837 F.2d 1181, 1224 (2d Cir. 1987); *see also Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”) *MHANY Mgmt., Inc., v. Cnty. of Nassau, et al.*, 14-1634-cv (2d Cir., March 23, 2016)

In addition to its own affirmative obligation to overcome discriminatory impediments in Houston, the City has a separate obligation not to interfere with HHA’s efforts to comply with its civil rights obligations. The path to compliance with these obligations is clear: the Council must provide a resolution of support for Fountain View. As you know, my clients have been active in enforcing the civil rights obligations of the State of Texas and many of its municipalities.

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<sup>3</sup> The comments can be found as posted comments to the following article:  
<https://texashousers.net/2016/02/09/whats-behind-the-opposition-to-public-housing-in-a-high-opportunity-area-in-houston/>


RELMAN, DANE & COLFAX PLLC

The Honorable Sylvester Turner  
Mayor of the City of Houston  
April 6, 2016  
Page 5

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Should the Council withhold the resolution, my clients are prepared to exercise their rights under federal civil rights laws to seek an appropriate judicial or administrative remedy.

Please assure me that the City and the Council will act in accordance with their obligations.

Sincerely,  
  
Michael Allen

CC: Donna Edmundson, City Attorney, City of Houston

Tory Gunsolly, Executive Director, Houston Housing Authority

Lance Gilliam, Board Chair, Houston Housing Authority

Gustavo Velasquez, Assistant Secretary, Fair Housing and Equal Opportunity, US  
Department of Housing and Urban Development

Bryan Greene, Fair Housing and Equal Opportunity, US Department of Housing and  
Urban Development

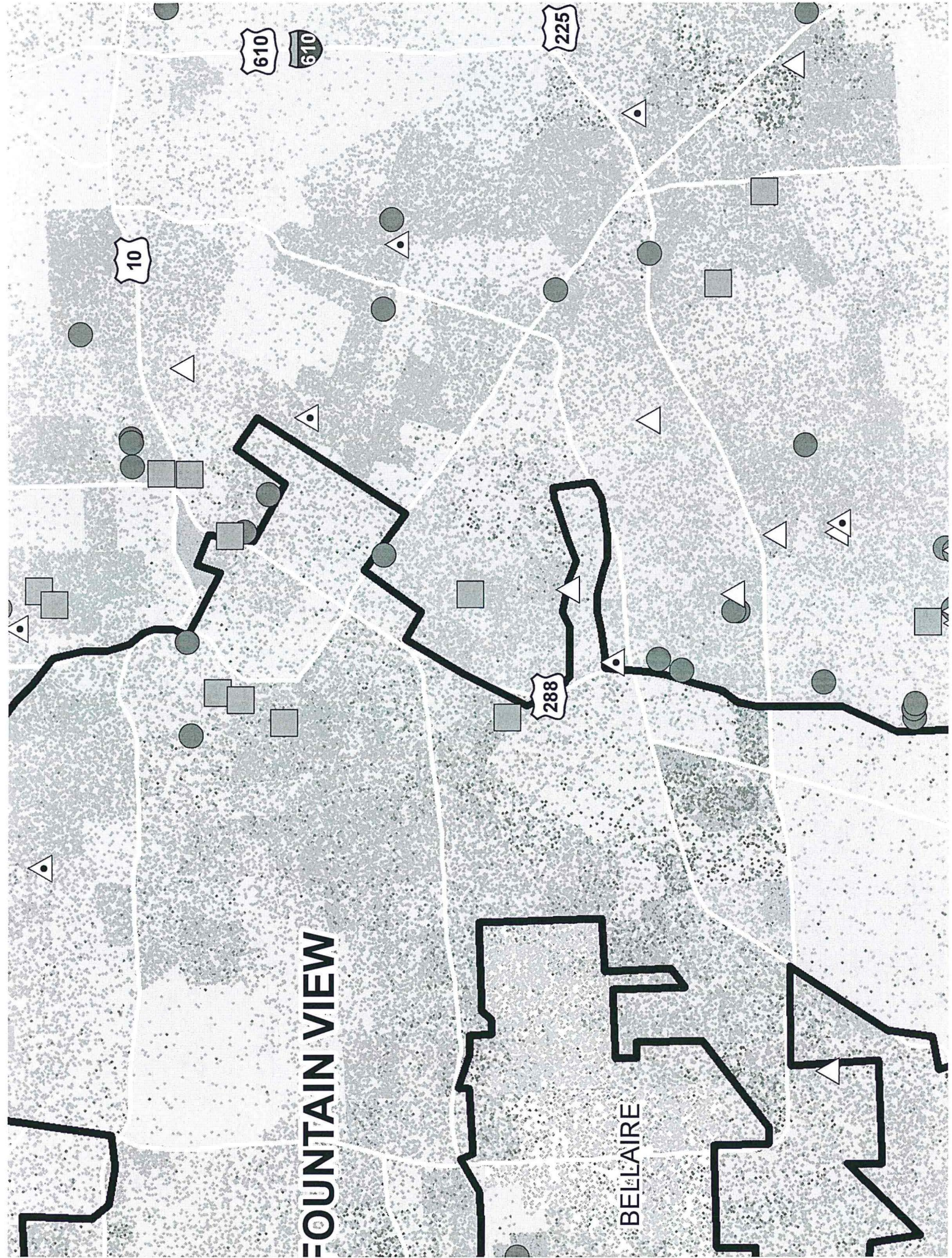
Lynn Grosso, Fair Housing and Equal Opportunity, US Department of Housing and Urban  
Development

Julian Castro, Secretary, US Department of Housing and Urban Development

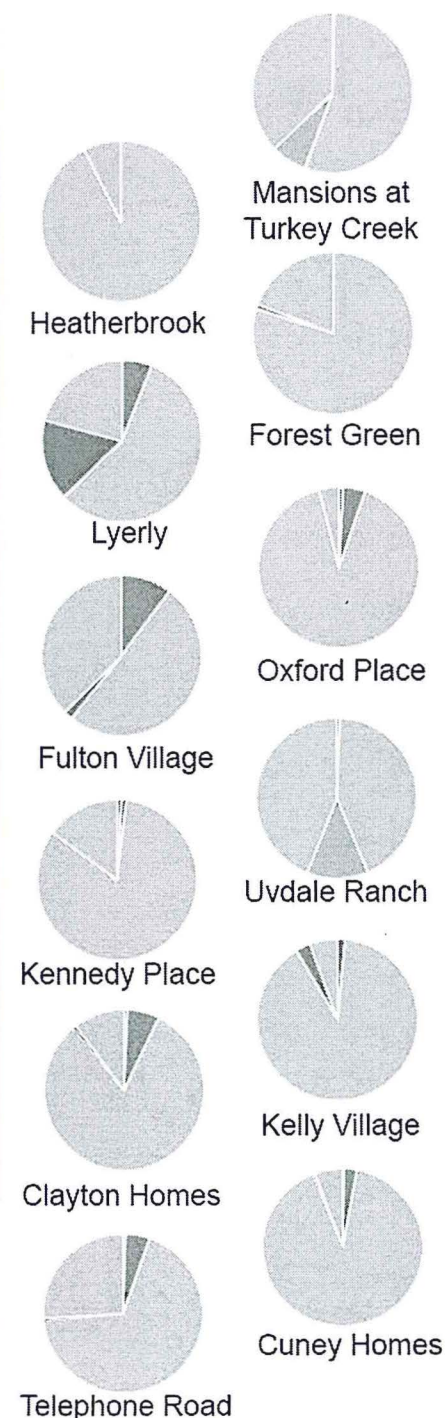
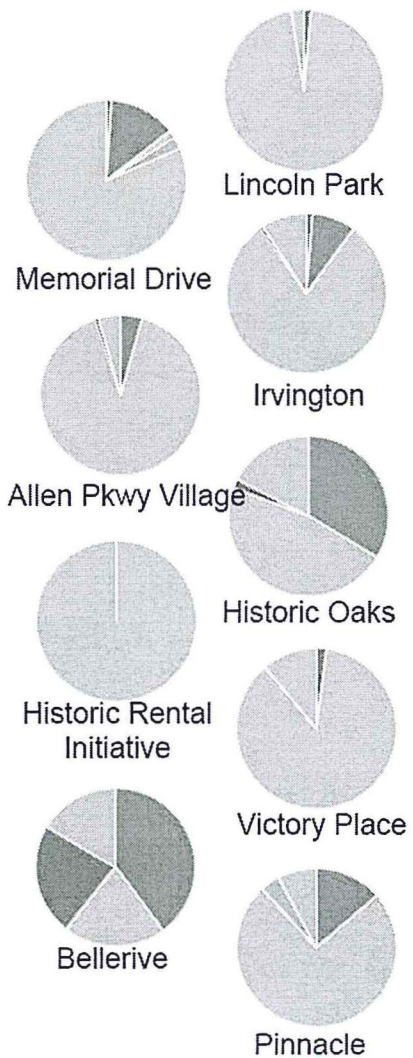
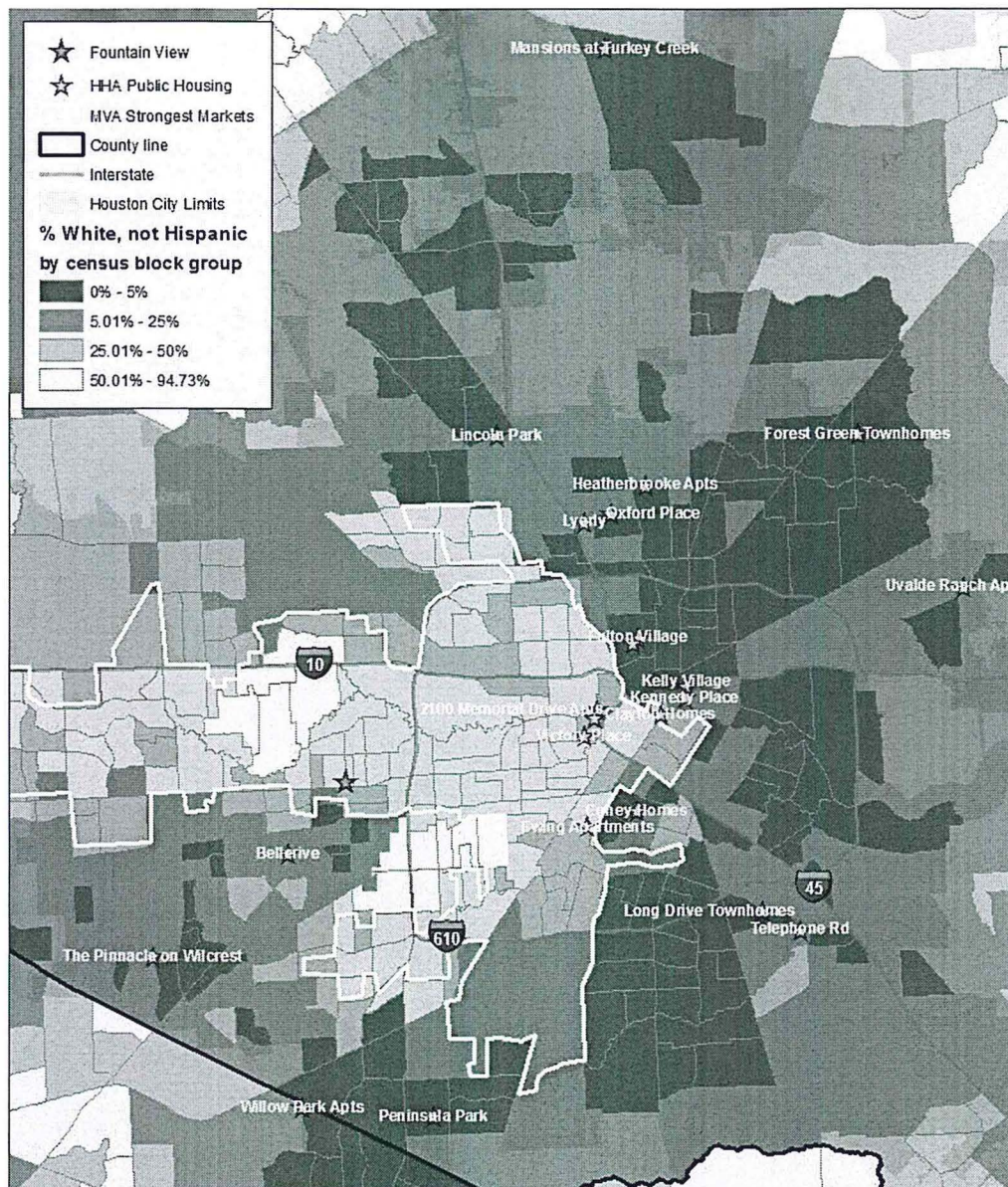
Tim Irvine, Executive Director, Texas Department of Housing and Community Affairs

Pete Phillips, Deputy Director of Community Development and Revitalization, Texas  
General Land Office











## ATTACHMENT B



Texas Low Income Housing  
Information Service

September 28, 2016

Bryan Greene  
General Deputy Assistant Secretary  
for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Garry L. Sweeney  
Regional Director, FHCO  
801 Cherry Street, Unit #45  
Suite 2500  
Fort Worth, TX 76102

SUBJECT: Civil Rights Investigation of the City of Houston, Case No. 06-15-R001-6 (Title VI)

Dear Mr. Greene and Mr. Sweeney:

Attached please find the following materials related to HUD's investigation of the City of Houston for possible Title VI and Fair Housing Act violations related to the siting of public and affordable housing in the City. Our organizations have long been concerned about the concentration of public and affordable housing in high poverty and minority concentrated areas of the City of Houston, and in the historical disinvestment of low-income communities of color. We have an additional interest in the City's siting of affordable housing developments because several of the developments at issue have or will be funded with Community Development Block Grant for Disaster Recovery (CDBG-DR) funds related to Hurricane Ike, which are the subject of a Conciliation Agreement between Texas Appleseed, Texas Low Income Housing Information Services, HUD and the State of Texas, and incorporated into all contracts signed by the State's subrecipients for these funds.

#### I. Houston Housing Authority Developments

For its entire 78-year history, HHA has constructed and operated public housing almost exclusively in majority African-American and Hispanic, racially segregated, physically blighted



neighborhoods with high concentrations of persons living below the poverty level.<sup>1</sup> Attached are maps showing the location of HHA apartment developments in relation to the residential patterns of white, non-Hispanic households. HHA's tenant population is overwhelmingly African-American (79%), with some Hispanic tenants (13%) and very few, non-elderly, white, non-Hispanic tenants. A second map shows how the location of HHA properties reinforces and perpetuates racial and ethnic segregation and isolates HHA residents. The legacy of these HHA policies persists to the present day, in the form of segregated racial and ethnic residency patterns. (Attached: Map of location of HHA developments and racial composition, Map of racial and ethnic composition of HHA's current developments)

HHA has stated clearly that construction of Fountain View is part of its plan to remedy the legacy of residential racial segregation. Its location, on HHA land adjacent to its headquarters in the middle-class, predominantly white Briargrove neighborhood, is in an area with good public services, quality schools and thriving businesses. The Census tract encompassing Fountain View has poverty *one-fifth* of the level of existing HHA developments. The U.S. Department of Housing and Urban Development ("HUD") has reviewed the Fountain View site and has concluded that the proposed location is consistent with the requirement that HHA develop and operate its housing in a manner that affirmatively furthers fair housing. ( Attached: District G Map, Demographics of Briargrove Elementary School, 2013 TxLIHIS Presentation on HHA's AFFHF obligations, including an analysis of the locations of proposed HHA developments, Map of the location of HHA properties on racial concentrations)

Research proves that growing up in the kind of high poverty neighborhoods where HHA residents have been isolated has serious consequences for children. More than half of the nearest elementary schools to HHA public housing receive a failing grade. Research also demonstrates that moving to higher opportunity areas has long-term positive effects on children's life outcomes.

## II. Housing Choice Vouchers

The Housing Choice Voucher (HCV) Program was created to give families choices about where to live, and to enable them to choose higher opportunity neighborhoods. HHA's voucher program, however, has also resulted in a concentration of HCV holders in high-poverty and minority-segregated neighborhoods. (Attached: Map of location of HCVs administered by

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<sup>1</sup> See Robert B. Fairbanks, "The War on Slums in the Southwest: Public Housing and Slum Clearance in Texas, Arizona and New Mexico, 1935-1965." The City of Houston and the Houston Housing Authority notoriously engineered the destruction of the African-American Freedman's Town neighborhood in Houston's Fourth Ward, adjacent to the expanding downtown, by electing for slum clearance for the San Felipe Courts public housing development in that neighborhood, restricting occupancy in San Felipe Courts public housing units to whites and compelling African-Americans to move to the segregated Kelly Courts housing development in the African-American Fifth Ward. There are many other historical examples of collusion between the City of Houston and the Houston Housing Authority to increase racial and ethnic segregation. The effects of these actions are manifest in today's Houston residential racial housing patterns.

HHA, Analysis of the location of HCV holders in Houston and Harris County, Map of HCV and median family income, Map of HCV holders and racial composition)

### III. Other Assisted and Affordable Housing in Houston

The pattern of concentrating affordable and assisted housing in minority segregated distressed neighborhoods is replicated in the siting of affordable housing in other programs, particularly the Low Income Housing Tax Credit (LIHTC) program. (Attached: Map of subsidized housing in Houston and race and ethnicity, Map of locations of 9% LIHTC developments, family and elderly, with racial concentrations)

The Texas Qualified Allocation Plan (QAP) and Multifamily Rules weights community and political support heavily. In the 4% program, a resolution of non-objection from the local governing jurisdiction is a condition of eligibility for tax credits. The City of Houston, therefore, has a great deal of control over which LIHTC developments are funded within its jurisdictional borders. (Attached: Map of the locations of approved family and elderly LIHTC developments in the City of Houston with racial concentrations, 4% Low-Income Housing Tax-Credit (LIHTC) applications that have received a Resolution of No Objection from the Houston City Council from 2014-2016 mapped by minority concentration, poverty level, and Area Median Family Income)

### IV Houston Analysis of Impediments to Fair Housing Choice

The City of Houston has documented, in the Analysis of Impediments to Fair Housing Choice ("AI") it submitted to HUD in August 2015, that the right to fair housing choice and freedom from discrimination is limited by the extreme lack of affordable housing options in high opportunity neighborhoods in Houston, and by segregated housing patterns based on race and economic status. The AI identifies the following impediments:

*There is also a lack of affordable housing options located in certain areas of the city. Although 80% of those responding to the Community Needs Survey agreed that affordable housing should be available in all areas of the City, some housing affordable to low- and moderate-income families are in neighborhoods that are not located near public transportation or high quality schools, lack amenities, or have a high number of crime incidences. Many of the publicly funded affordable housing developments are located in mostly low-income neighborhoods. In addition, market rate housing available for low- and moderate-income households are often in older housing stock which may need a higher cost of repairs and may have additional health hazards, like lead-based paint or asbestos. (2015 AI, 147)(Emphasis supplied).*

*High opportunity areas with housing only available to wealthy households, limits housing and other opportunities for not only low-income but also middle income families. (2015 AI, 151)(emphasis supplied).*



*Residents often oppose the location of housing for protected classes in or near their neighborhood, including affordable housing, housing for persons with disabilities such as group homes, or even market rate housing that is more affordable than other kinds of housing such as multifamily housing or housing on smaller lot sizes. (2015 AI, 154) (emphasis supplied).*

The AI then commits the City to undertake the following actions to overcome these impediments:

*The City will work towards creating more housing and preserving housing options especially for persons in various protected classes including in higher opportunity areas where housing is generally not available. (2015 AI, 147)(emphasis supplied).*

*The city is committed to promoting economically, racially, and ethnically integrated neighborhoods of opportunity and will take actions to encourage mixed income housing, preserve affordability in neighborhoods rapidly increasing in value, and create affordability and opportunities to find housing in areas of high opportunity. (2015 AI, 149)(emphasis supplied).*

*The city will work to provide housing opportunity in areas with high performing public schools. (2015 AI, 156)(emphasis supplied)*

The City's ongoing decisions about the siting of public and affordable housing are inconsistent with the actions it committed to in its Analysis of Impediments and fair housing and civil rights obligations.

We appreciate HUD's commitment to compliance with Title VI and the Fair Housing Act, and to ensuring that all Americans have equal access to opportunity. If there is any further information that would be helpful to the investigation, please let us know.

Sincerely,

John Henneberger, Co-Director  
Texas Low Income Housing Information Service

Madison Sloan  
Texas Appleseed

## ATTACHMENT C





Texas Low Income Housing  
Information Service

December 5, 2016

Bryan Greene  
General Deputy Assistant Secretary  
Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Garry L. Sweeney  
Regional Director, FHCO  
801 Cherry Street, Unit #45  
Suite 2500  
Fort Worth, TX 76102

SUBJECT: Civil Rights Investigation of the City of Houston, Case No. 06-15-R001-6 (Title VI)

Dear Mr. Greene and Mr. Sweeney:

We write regarding HUD's investigation of the City of Houston for possible Title VI and Fair Housing Act violations related to the siting of public and affordable housing in the City. In the face of that investigation, on November 30, 2016, the City of Houston made an additional housing siting decision that continues its pattern and practice of locating affordable housing exclusively in high poverty and racially concentrated areas occupied by people of color, passing a Resolution of No Objection for the Independence Heights Apartments (previously referred to by the Houston Housing Authority and in this letter as "Crosstimbers.") This action is in striking contrast to the City's refusal to bring a similar resolution to City Council for a vote, when the development at issue (Fountainview) was located in a low-poverty primarily White area with good schools.

In the 4% Low-Income Housing Tax Credit (LIHTC) program, under the Texas Qualified Allocation Plan (QAP) and Multifamily Rules, a resolution of non-objection from the local governing jurisdiction is a condition of eligibility for tax credits. We have reattached the map sent as an attachment to our September 28, 2016 letter showing that 4% LIHTC applications that have received a Resolution of No Objection from the Houston City Council from 2014-2016 are

located overwhelmingly in areas with minority concentration greater than 50% and poverty rates greater than 20%. (Attachment 1)

The Houston Housing Authority (HHA) initially proposed the Crosstimbers development in 2013 as a proposed use of Community Development Block Grant funds for Disaster Recovery (CDBG-DR). Not only do those funds carry the statutory obligation to comply with civil rights requirements and affirmatively further fair housing attached to all federal housing and community development funds, the City of Houston is specifically obligated under the May 25, 2010 Conciliation Agreement between Texas Appleseed and Texas Low-Income Housing Information Service, the State of Texas, and HUD to rebuild hurricane damaged or destroyed public housing in a manner that affirmatively furthers fair housing.<sup>1</sup>

As HUD's July 3, 2014 Site and Neighborhood review of the site points out, it is in an area of minority concentration, spanning two census tracts with minority populations of 95% and 84% respectively, as well as poverty rates of 40.3% and 37.4%. Census Tract 5304 qualifies as a Racially/Ethnically Concentrated Area of Poverty under HUD's Affirmatively Furthering Fair Housing regulation. (ACS 2007-2011) The current proposal involves only one of these census tracts, Census Tract 5304.

|               | Poverty | MFI       | White   | Black   | Hispanic |
|---------------|---------|-----------|---------|---------|----------|
| Crosstimbers  | 38.8%   | \$23,115  | 4.7%    | 46.6%   | 48.2%    |
| Fountainview  | 7.0%    | \$136,012 | 85.9%   | 4.2%    | 6.6%     |
| Houston, City | 22.9%   | \$66,600* | 25.6%** | 23.7%** | 43.8%**  |

Source: ACS 2010-2014 except: \*HUD, Houston Metro MFI 2016 \*\*Census 2010  
Fountainview (Census Tract 4313.02)

According to the 2015 Housing Sponsor Report, the average LIHTC development in Houston has a tenant population that is 37.2% Hispanic or Latino and 58.7% Black. Locating this development in a Census Tract that is already minority concentrated further perpetuates segregation in the City of Houston, as opposed to the Fountainview site, which would further integration and deconcentrate poverty.

The contrast between the Crosstimbers and Fountainview sites is also striking in terms of the quality of schools available to neighborhood children:

| <b>Crosstimbers</b> | Economically Disadvantaged | Rating |
|---------------------|----------------------------|--------|
| Kennedy Elementary  | 87%                        | F      |
| Williams Middle     | 79%                        | F      |
| Washington High     | 69%                        | F      |

<sup>1</sup> The City of Houston specifically agreed to the terms of the Conciliation Agreement in its subrecipient contracts with the State of Texas, and in the FFAST form it filled out and submitted as a condition of eligibility for Round 2.2 CDBG-DR funds.



Source: Children at Risk 2016 ([http://childrenatrisk.org/content/?page\\_id=8074](http://childrenatrisk.org/content/?page_id=8074))

| Fountainview          | Economically Disadvantaged | Rating |
|-----------------------|----------------------------|--------|
| Briargrove Elementary | 27%                        | A      |
| Grady Middle          | 49%                        | A-     |
| Lee High              | 61%                        | F      |

Source: Children at Risk 2016 ([http://childrenatrisk.org/content/?page\\_id=8074](http://childrenatrisk.org/content/?page_id=8074))

Overall, children who live in HHA housing have extraordinarily limited access to quality public schools. (Attachment 2) The average poverty rate of census tracts in which HHA public housing is located is 31.5% and these tracts are, on average, 32.4% Black and 45.8% Hispanic or Latino. (2010-2014 ACS) Lower income families in Houston do not have other housing choices.

HHA has repeatedly asserted that Independence Heights “was evaluated and recommended as a development site by the City of Houston’s CDBG-DR2 planning study”. HUD’s Site and Neighborhood review appears to rely on these assertions in determining that the Crosstimbers site met the “overriding need” standard of 24 CFR 909.602(d)(3)(ii). However, City’s May 2013 Market Analysis did **not** find that Independence Heights was in this position and did not recommend the area as a site of investment. (Attachment 3)

*The Independence Heights study area is an aging area of modest structures, many of which are in deteriorated condition, unimpressive commercial development or industrial uses, and vacant lots. Little or no market-rate investment appears to be occurring within the neighborhood itself. While major investment targeting affluent residents is occurring in adjacent areas to the south and west, the City will have to find ways to overcome freeway and land use barriers along with visual deterrents (dilapidated structures, poor visible public infrastructure) if this upward market activity is to leach into the Independence Heights neighborhood. Shepherd and 610 create physical boundaries that are difficult to jump and maintain appraisal value arguments. The reality of what truly is “in the Heights” or “in Garden Oaks” when said to a colleague or friend does matter to owners. Finally, there is a perceived lessening of safety when on the wrong side of these boundaries that will discourage single women or couples from taking a chance on housing in the core area in the foreseeable future.*

*There is very little new apartment construction in the vicinity of the core study area. The Reserve at Garden Oaks is a complete reconstruction of an older apartment property and is asking by far the highest rents in the area. It is still in the lease-up process. Other 1960s-1970s era properties renovated during the 2000’s but still offer rents well below \$1.00 per square foot. In general, occupancies are not as consistently strong as in other parts of Houston. (May 2013 Market Analysis at 154, emphasis added)*

The City failed to bring forward a Resolution of No Objection on the Fountainview

development, on the grounds that the costs were too high. The projected per unit cost of the Fountainview project was \$240,000 per unit, while the projected cost of the Crosstimbers project is \$226,000 per unit, in an area of the City where land is significantly less expensive. In addition, the City of Houston gave HHA \$750,000 of City funds in April 2015 to help acquire the Crosstimbers site; HHA did not request City funds for Fountainview. The assertion that the City of Houston could not support the Fountainview project because of its cost was clearly pretextual.

HUD's July 3, 2014 Site and Neighborhood review also concludes that HHA could not show "comparable [housing] opportunities exist outside areas of minority concentration." A conclusion affirmed not only by data but by the City's own 2015 Analysis of Impediments to Fair Housing Choice. Whether or not the Crosstimbers site, taken in isolation, meets federal civil rights and fair housing standards is at this point irrelevant. Two and a half years ago HUD explicitly warned the City that the development of Crosstimbers must be accompanied by a plan to deconcentrate poverty and "concerted efforts to develop housing in high opportunity neighborhoods that are not impacted" and that the agency must **"moderate their pursuit of housing in high poverty and high minority neighborhoods until the agency achieves a more balanced housing distribution that offers its clients greater choice."** (emphasis added) The City of Houston has blocked HHA's attempt to do so and frustrated HHA's efforts to comply with its own fair housing and civil rights obligations.

The City's ongoing decisions about the siting of public and affordable housing, as well as its continued investment in affordable housing projects in impacted neighborhoods, are inconsistent with the actions it committed to in its Analysis of Impediments and its ongoing fair housing and civil rights obligations. The City cannot simply continue to perpetuate segregation and deny its citizens housing choice with vague and unconvincing statement that it doesn't "rule out" building housing in non-impacted areas and that it "probably" will build housing in high opportunity areas at some point in the future while it explicitly commits to continue to build housing in high-poverty impacted neighborhoods. (See, "City OK's first new housing authority apartment project in a decade," *Houston Chronicle* November 20, 2016)

This historical discriminatory siting pattern of concentrating affordable housing in low-income neighborhoods occupied primarily by people of color - and how the City's decisions on the proposed Crosstimbers and Fountainview developments fit that pattern - can be clearly seen on the attached maps. These maps show the location of both public and LIHTC housing and Housing Choice Voucher holders by poverty level, race, and ethnicity. (Attachments 4, 5, and 6)

We would like to emphasize again that the fair housing issue we see is not the Crosstimbers decisions in a vacuum, but the City's failure to balance this investment and those like it with integrative developments in low-poverty areas. Because of its history and the resulting segregated pattern of affordable housing, "balance" means a balancing of the City's overall housing portfolio, not merely balancing one development in an impacted area with one in a low-poverty area.



We appreciate HUD's commitment to compliance with Title VI and the Fair Housing Act, and to ensuring that all Americans have equal access to opportunity. If there is any further information that would be helpful to the investigation, please let us know.

Sincerely,

John Henneberger, Co-Director  
Texas Low Income Housing Information Service

Madison Sloan  
Texas Appleseed

CC: Timothy Smyth  
Hugh McGlincy  
Avery Jackson