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Sent via email to: kevin.hamby@tdhca.state.tx.us

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Re: Comments on the Analysis of Impediments

Mr. Hamby:

Review:

We are participating in this exercise, today, for one reason; on 29 October 2009, Texas Appleseed (TA) and Texas Low-Income Housing Information Service (TXLIHIS) filed an [Administrative Complaint](#) with HUD stating that [the 2003 Analysis of Impediments \(AI\) conducted by the State of Texas was lacking in substance](#), and “... we ask you to *deem Texas’s Plan insufficient to support obligation of CDBG funds at this time, and require*

revision and resubmission of the Plan in accordance with applicable federal laws and regulations.” (Page 30)

*“Under federal regulations, this means that **the state must truthfully certify that it (a) has or will conduct an analysis to identify impediments to fair housing choice within the state, (b) take appropriate actions to overcome the effects of any impediments identified through that analysis,...**” (Page 21)*

*“The State in fact has a dual responsibility to affirmatively further fair housing. It must engage in its own activities that affirmatively further fair housing, and **must also ensure that any subrecipient jurisdictions to which it is providing funds comply with their individual certifications in order to affirmatively further fair housing.**” (Page 21)*

Shifting its focus from a statewide analysis, to the City of Galveston, the Complaint stated, **“Galveston’s Analysis of Impediments is stunningly inadequate.** It simply states that *“there were no policies that contributed to the concentration of racial/ethnic minorities and that city building codes or ordinances did not impede or limit the development or improvement of affordable housing in Galveston.”*

“...there are in fact impediments to fair housing choice, and that neither the City nor the State has taken actions to address these impediments.” (Page 27)

At the time, the Galveston Open Government Project, Inc. (GOGP) agreed with the conclusions reached by the Complainants, but noted that they conveniently failed to mention the remedies to the State’s and the City’s inadequate analyses and actions to Affirmatively Further Fair Housing (AFFH) offered by [Thompson v. HUD](#).

On 10 November 2010, [HUD Assistant Secretary Mercedes Marquez wrote to Governor Perry](#) informing him that the State’s proposed action plan for \$1.7 Billion in CDBG Disaster Recovery Funding was *“substantially incomplete”*. (Page 1)

*“The first concern is on the State’s Analysis of Impediments to fair housing choice. A recipient of CDBG funding is **required to certify that it will Affirmatively Further Fair Housing**, which means that the recipient: 1) has or will conduct an AI within the state; 2) take appropriate actions to overcome the effects of any identified impediments, and 3) maintain records reflecting the analysis and actions taken in this regard.” (Page 2)*

*“Recent events demonstrate that it is in the State’s best interest to update the existing AI. The Department notes **a recent District Court settlement in which a deficient AI was the basis for an action under the Federal False Claims Act. As a result of the deficient AI, the court found that Westchester County, New York, violated its certification that it would Affirmatively Further Fair Housing.**” (Page 2)*

The Department reminds the State of its certification to conduct and administer its CDBG Disaster Recovery Program in conformity with the Civil Rights Act of 1964 and the Fair Housing Act. (Page 2)

Conciliation Agreement:

*“HUD informed the state that absent reaching a conciliation agreement with the housing advocates, **HUD would immediately launch an investigation in Texas, much as it did with Westchester County, N.Y., and halt all CDBG funding in the state, including disaster recovery funding.** Rather than delay the funds for the length of a pending investigation, the State moved toward a Conciliation Agreement with the Complainants to ensure Texas had access to more than \$3.1 billion in disaster recovery funds.” (Page 11-12)*

The preceding paragraph from the AI clearly admits that when the State was faced with a halt in funding and an investigation, that may have revealed that it had committed infractions similar to those committed by Westchester County; it decided to sign a [Conciliation Agreement](#). For the sake of political expediency, it

sacrificed the rights and well being of the City of Galveston by agreeing to segregate all of the Public Housing serving Galveston County, in the City of Galveston.

This action was first and foremost a betrayal of the good people of the City of Galveston, but in their haste to make a deal, the State failed to realize that the requirement to rebuild 569 Public Housing units, in the City of Galveston, forces HGAC, Galveston County, and the City to violate the Fair Housing Act; since the requirement cannot be met and still Affirmatively Further Fair Housing!

Often mischaracterized as a State or federal law, this Agreement is a contract between four parties which requires certain specific performance by the City of Galveston, and no other city or county in the State. Since the City of Galveston was not a party to this Agreement, the requirement to rebuild 569 Public Housing units, in the City of Galveston, should be severed and considered null and void!

Analysis of Impediments:

After weeks of delays, the first draft of the new [Analysis of Impediments](#), commissioned by the State, for Southeast Texas, is finally available for review and comment. It is meant to address and resolve the issues and problems outlined above.

Unfortunately, this document does an embarrassingly poor job of addressing the deficiencies in the prior AI. Describing it as "inadequate" would fail to capture the full breadth of how truly bad it really is!

It would be easy to say that the taxpayers should hope that the State hasn't actually paid the consultants who wrote this, so that new consultants could be hired to redo it properly, but after more than two years of experience with this issue, the more likely conclusion is that it is not the consultants who failed; they were probably directed to draft it in this way by their client.

To be blunt; when analyzing the HGAC region, how could any qualified consultant list several general impediments, but **fail to recognize and include the Primary Impediment to Affirmatively Further Fair Housing**; the one that has caused most of the controversy in this area, and the one that has generated the most debate?

Is it possible that they just missed it, or forgot to include it; or is it more likely that they were directed to ignore it?

Primary Impediment:

Due to the coordinated actions, and/or inactions, of local government officials, in Galveston County, the vast majority of the County's Public Housing units have historically been located in the City of Galveston. In fact, since the demolition of the Public Housing units, in Texas City, all of the Public Housing units, in the County, are either already located in, or are slated to be located in the City of Galveston. **This traps Public Housing residents in the one city in Galveston County that offers them the lowest chance of achieving self-sufficiency, and places an unfair burden on the City of Galveston.**

This disturbing arrangement was further entrenched into the County's political "understandings" when it was enshrined in the infamous Conciliation Agreement, rather than being listed and noted as the major Impediment to Fair Housing in Galveston County, and required actions outlined to overcome it; as it should have been.

The Mayor of the City of Galveston likes this arrangement, because it brings federal funds into the City. The mayors of the other cities like this arrangement, because it keeps Public Housing out of their cities; and the County Commissioners like this arrangement, because they don't have to deal with the controversy that would arise if Public Housing had to be fairly distributed throughout the County.

Unfortunately, **this arrangement, and these actions and/or inactions, clearly fail to Affirmatively Further Fair Housing, and also clearly violate the Fair Housing Act** as interpreted by court rulings such as Thompson v. HUD.

Therefore, any government official who signs off on this AI, or any AI addressing Galveston County, and/or the City of Galveston, more specifically, before this Impediment is added, and addressed with an adequate remedy, is **leaving their government body open to a False Claims Act lawsuit** for the reasons outlined in the 10 November letter from Secretary Marquez.

Since the Primary Impediment involves the cooperation in and acquiescence to this arrangement by the Mayor of the City of Galveston, it is extremely disturbing that the author of this AI stated, *“Thanks to strong leadership from the Galveston Mayor locally and the State requiring the units to be built as part of the Conciliation Agreement, this effort to stop public housing does not look like it will be successful.”* (Page 64)

There is no doubt that the Mayor has been the leader in the effort to maintain the system that places all Public Housing in the City of Galveston, but it is an effort designed to produce the political outcome desired by the Mayor; specifically to increase the flow of federal funds into the City; NOT to Affirmatively Further Fair Housing. In fact, the actions of the Mayor can easily be demonstrated to violate the Fair Housing Act, as interpreted by recent court rulings like [Thompson v. HUD](#); hardly actions that should be praised by the author of this AI, and sanctioned by the State of Texas.

Recommended Action - Primary Impediment:

Professor John A. Powell is widely recognized as a premier expert on issues relating to race, ethnicity, poverty, and the law, and currently serves as the executive director of the Kirwan Institute. He was one of the primary expert witnesses in the

Thompson v HUD case, in Baltimore, and proposed a "Communities of Opportunity" approach to guide the remedy.

As Professor Powell ranked each census tract in the Baltimore metropolitan area, it became obvious that there were not enough "high-opportunity" neighborhoods in the City itself that could serve as acceptable locations for Public Housing. For this reason, his analysis convinced the court that the remedy must look to and include the surrounding area in a regional approach. Exactly what HUD says should be done in its ["Fair Housing Planning Guide"](#), dated March 1996.

On page 29, it states "An affirmative, metrowide/regional approach to the HUD-assisted family housing programs is encouraged for States and a consortia of local governments (to include State-funded and Entitlement jurisdictions) in metropolitan areas."

[There is no doubt that the Communities of Opportunity approach is what should be used to guide the proper selection of Public Housing locations in Galveston County.](#)

*Professor Powell has stated that, "the remedy must require HUD to utilize the wide variety of tools available, including vouchers and new housing production, **to ensure housing opportunities in high opportunity communities.**"*

*"The remedy must be sensitive to opportunity and to the **importance of location** in determining access to opportunity. **Where we live and where we have the opportunity to live determine not only our ability to live in an integrated environment, but also determine our ability to access those opportunities and resources that are critical to life outcomes and health.**"*

[Measuring Opportunity:](#)

Professor Powell has developed a **14-point method** to quantify, compare, and rank areas according to their relative opportunity as measured in three primary categories:

Economic Opportunity and Mobility,
Neighborhood Health, and
Educational Opportunity.

Indicators of Economic Opportunity and Mobility:

- 1.) Job growth over the most recent 4-year period.
- 2.) The number of entry-level and low-skill jobs.
- 3.) The number of entry-level and low-skill jobs per capita.
- 4.) The percentage of the area within one-half mile of a public transit line.
- 5.) The median commute time.

Indicators of Neighborhood Health:

- 6.) Population change over the last 10 years.
- 7.) Crime rate.
- 8.) Poverty rate.
- 9.) Vacant property rates.
- 10.) Median value of owner-occupied homes.

Indicators of Educational Opportunity:

11.) The percentage of elementary and middle school students qualifying for free and reduced lunch.

12.) The percentage of classes taught by highly qualified teachers.

13.) The percentage of elementary school students proficient in reading.

14.) The percentage of elementary school students proficient in math.

Done properly, Professor Powell's system would **analyze all 61 census tracts in Galveston County**, that define neighborhoods, and then rank them into five groups (very-low, low, moderate, high, and very-high opportunity) based on the quintile in which their opportunity index scores fall.

However, due to the lack of complete data on the census tract level, for the purposes of this commentary on the proposed Analysis of Impediments; available data for each city in Galveston County will be used to look at opportunity on a citywide basis.

Does the placement of Public Housing in the City of Galveston Affirmatively Further Fair Housing, or does it violate the Fair Housing Act?

City	1990-2000 Population Growth (1990 & 2000 Census) see TSL
La Marque	-3.10%
Galveston	-3.09%
Texas City	+1.71%
Santa Fe	+13.28%
Friendswood	+27.28%
League City	+50.68%
Dickinson	+79.98%

City	Crime Rate National Average = 320 (2007 FBI UCR) see City Data
Galveston	650
La Marque	568
Texas City	453
Santa Fe	275
Dickinson	266
League City	175
Friendswood	99

City	% of Individuals Below Poverty Level (2000 Census) see QT-P34
Galveston	22.3%
La Marque	17.5%
Texas City	14.9%
Dickinson	13.1%
Santa Fe	6.5%
League City	4.8%
Friendswood	3.3%

City	Median Household Income (2000 Census) see DP-3
Galveston	\$28,895
La Marque	\$34,841
Texas City	\$35,963
Dickinson	\$41,984
Santa Fe	\$47,550
League City	\$67,838
Friendswood	\$69,384

City	% Other Vacant Housing (2000 Census) see QT-H1
La Marque	2.74%
Galveston	2.55%
Santa Fe	1.93%
Texas City	1.74%
Dickinson	1.59%
League City	0.76%
Friendswood	0.34%

Note: The City of Galveston currently has about **20% Vacant Housing!**

City	Median Value of Owner-Occupied Homes (2000 Census) see DP-4
La Marque	\$59,500
Texas City	\$63,800
Galveston	\$73,800
Dickinson	\$83,400
Santa Fe	\$86,800
League City	\$112,000
Friendswood	\$124,500

City	% Economically Disadvantaged Students (2010 TEA) see GS	Great Schools District Ranking (2010 GS) see GS
Galveston	66%	4
La Marque	64%	3
Texas City	58%	5
Dickinson	57%	6
Santa Fe	27%	6
League City	18%	9
Friendswood	4%	10

The percentage of elementary school students proficient in reading; as measured by the 3rd and 5th grade school assessment tests.

2010 TAKS reading test results Grade 3:
GISD 85% - State average 92%

2010 TAKS reading test results Grade 5:
GISD 82% - State average 85%

The percentage of elementary school students proficient in math; as measured by the 3rd and 5th grade school assessment tests.

2010 TAKS math test results Grade 3:
GISD 76% - State average 86%

2010 TAKS math test results Grade 5:
GISD 83% - State average 86%

Summary:

The author of the Analysis of Impediments is certainly aware of at least the basic concept of the Communities of Opportunity, because the AI includes several general statements like:

“high opportunity areas, as defined by future rules.” Page 15

Why are the rules not defined in the AI?

“TDHCA will include in its regional allocation formula, factors regarding the presence within jurisdictions of members of protected classes, families of extremely low income, and opportunity indicators including access to high-quality public education, concentration of poverty, racial segregation, environmental quality, access to health care, access to sustainable jobs, and crime rates as defined in rules to be issued.” P175

Again, we do not have the rules to examine as part of the AI.

“Jurisdictions should ensure that their practices do not promote concentrations of protected classes...” P175

“...should review them to determine if the plan promotes racial concentrations...” P176

Building Public Housing in the City of Galveston will concentrate members of protected classes.

The lack of specific definitions and rules with regards to the opportunity indicators referred to in the AI is most disappointing, because this concept is meaningless without them. Our commentary on the AI provides much more specific information on this topic than the AI commissioned by the State!

Based solely on the available data, in this commentary, shown above, if the locations for Public Housing were selected by city;

it appears as though Friendswood, League City, and Santa Fe would be the high-opportunity cities, and Galveston, La Marque, and Texas City the low-opportunity cities; with Dickinson offering moderate opportunity.

It would be easy to make the case that the **City of Galveston is the worst location for Public Housing in the County**, and that no Public Housing should be built in Galveston, La Marque, or Texas City. It could also be argued that most, if not all, Public Housing should be located in Friendswood, League City, and Santa Fe.

When the Communities of Opportunity analysis is completed for each census tract in the County, it is possible that a few census tracts in the City of Galveston may qualify as high-opportunity neighborhoods, but **it is nearly impossible to imagine a scenario in which all, or even most, of the Public Housing in Galveston County could be placed in the City of Galveston, and still Affirmatively Further Fair Housing!**

The current draft of the Analysis of Impediments is highly deficient on two counts: First, although it mentions the basic concept of the need to place Public Housing in Opportunity Areas, **it does not require any measurement of opportunity, nor does it define what level of opportunity is acceptable.** Second, **the AI does not include any meaningful demographic data in the appendixes that could be used to measure opportunity using Powell's methods, or a similar alternative.**

Conclusion:

Since the time of our meeting with you, some things have changed, but many have not. **The Mayor continues to lead the City on a path that will result in further decline by willingly obligating it to host and pay for Public Housing for decades to come in exchange for "free federal money" today, while ignoring the impossibility of Affirmatively Furthering Fair Housing, if all of these units are built in this city! The tremendous burden that Public Housing places on City services such as schools, fire,**

police, EMS, and social services is of little or no concern. Finally, the so-called fair-housing groups, that initiated this process, have decided **to punish the City of Galveston for the perceived crime of be unwilling to host all of the Public Housing for the entire County, and in doing so, they have joined with the State to trap the most vulnerable and helpless members of our society in the City that offers them the least opportunity to gain any sort of self-sufficiency! Congratulations for your fine work!**

A lawyer has been located who is willing to represent the interests of the people of the City as opposed to the local Poverty Industry, or those whose only concern is obtaining federal funding; no matter what the cost. He is in early stages of **outlining the legal options** available to those who are trying to **extricate the City from the unholy political arrangement** that has forced the City of Galveston to shoulder most of the burden of Public Housing for the entire County, and which violates the Fair Housing Act.

If the Mayor persists in “leading” the City down this path, the only alternative available to the people will be to challenge him in court.

A new fair-housing group is being formed that will be composed of a large cross section of the local citizenry. We are told that their preferred cause of action is to file a **Thompson v. HUD type of lawsuit** alleging that HUD, the State of Texas, HGAC, Galveston County, the City of Galveston, and the Galveston Housing Authority **will violate the Fair Housing Act**, if they proceed with their current plans to build any and all additional Public Housing units serving Galveston County, in the City of Galveston.

However, after reading the current version of the State’s AI, there may be renewed interest in **filing a Westchester type lawsuit** alleging that the above-named parties **violated the False Claims Act**, if they sign off on an AI that knowingly fails to identify the Primary Impediment to AFFH in Galveston County.

The most equitable resolution to this issue would be for the State to modify the current AI to include the Primary Impediment described above, and to order the suggested remedy, which **would satisfy all of the parties involved, except those who hope to profit** from the current plans to concentrate all of the low-income racial and ethnic minorities, in need of Public Housing, in the City of Galveston.

It is our hope that you can help to orchestrate these changes to the AI which would make any legal actions unnecessary.

Best regards,

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