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October 27, 2010

SENT VIA FEDERAL EXPRESS

The Hon. Joe Jaworski, Mayor

The Hon. Rusty Legg, District 1

The Hon. Linda Colbert, District 2

The Hon. Elizabeth Beeton, District 3

The Hon. Chris Gonzales, District 4

The Hon. Steve Greenberg, District 5

The Hon. Dianna Puccetti, District 6

Members of the City Council

P.O. Box 779

823 Rosenberg

Galveston, Texas 77553

RE: Civil Rights Obligations and the Rebuilding of Public Housing Units in Galveston

Dear Mayor Jaworski and Council Members:

I write on behalf of my clients, Texas Appleseed and Texas Low Income Housing Information Service, to address ongoing issues related to the rebuilding of public housing units on Galveston Island. Even after the City's October 13, 2010, Town Hall Meeting, a number of misleading assertions continue to circulate and require a response. In the interest of clearing up several misconceptions about federal law and regulations, we respectfully submit the following responses to four questions raised by citizens:

1. Does the rebuilding plan violate the HUD Site and Neighborhood standards set out in 24 CFR § 941.202?

No plan has been formally proposed to the City Council, so this question is premature. It is also our understanding that the Galveston Housing Authority and its Board intend to deconcentrate public housing sufficiently to address this concern. The City of Galveston must propose a plan to rebuild public housing that complies with applicable federal regulations and that affirmatively furthers fair housing.

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2. Does Executive Order 11988 (May 24, 1977) require the Galveston Housing Authority (GHA) to engage in a particular process related to floodplain development?

No. Executive Order 11988 imposes requirements only on federal agencies themselves, and not on mere recipients of federal funds. The term “agency” is defined by 5 U.S.C. § 105 as “an Executive department, a Government corporation, and an independent establishment.” Neither the Galveston Housing Authority nor the City of Galveston is a federal agency and neither is obligated to take specific actions under EO 11988. However, EO 11988 is part of a larger set of federal laws and regulations, including the National Flood Insurance Act of 1968, the Disaster Relief Act of 1974, the Coastal Zone Management Act, the National Environmental Policy Act, the Housing and Community Development Act of 1974, and implementing regulations that apply to **all** projects, programs, construction, and improvements that may impact the floodplain, not just rebuilding public housing. Galveston has already received more than \$150 million in FEMA Public Assistance funds, and more than \$267 million in CDBG-DR funds for projects that were evaluated under these standards, and have been found by the federal government to be consistent with those standards.

3. Does HUD Handbook 4010.1 (3-6) “direc[t] local housing authorities to use ‘every means at their disposal’ to avoid creating or adding to an oversupply or surplus of housing”?

No. This Handbook and Handbook 4425.1 (which contains the language cited) are handbooks related to mortgage credits and mortgage insurance. There is a separate HUD Handbook for public housing. The specific HUD Handbook quoted contains basic underwriting standards for HUD-FHA insured mortgages under Section 207 of the National Housing Act, a program that insures mortgage loans for multifamily rental housing targeted to families with incomes above the level of eligibility for subsidized housing, and has no applicability to the rebuilding of public housing units.

While the language of government regulations and policies can be difficult for individual citizens to interpret, Section 4425.1 (3-6) (A) clearly states HUD has an “obligation and responsibility to maintain a sound **mortgage insurance operation**. Foreclosures and acquisitions resulting from the overextension of building operations in a soft market are a negation of HUD responsibility.” Section 4425.1 (3-6) (B) states that “HUD should exercise **control of the mortgage insurance program** as to discourage housing oversupply.” Section 4435.1 (3-6) (C) states that it is the responsibility of the “**HUD F[ield] O[ffice] director**” to avoid creating an oversupply of housing. Again, the Galveston Housing Authority is neither a federal agency nor the Field Office of a federal agency. These handbooks do not apply to public housing, and to suggest that they do is both wrong and misleading.

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The cited Handbook provisions do, however, provide a useful reminder that there is not just one housing market. There may be an oversupply of single family homes for sale, but a shortage of affordable rental units. The City of Galveston's Consolidated Plan identified an urgent need for housing affordable to low-income renters even before public housing and other affordable rental units were destroyed by Hurricane Ike, finding that 46.3 percent of all City renters were very low- and low-income and qualify for housing subsidies. (Galveston Consolidated Plan at 5.) **The fact that there is a three-year waiting list for public housing and a five-year waiting list for Section 8 indicates that there is an undersupply of rental units affordable to low-income Texans in Galveston. Rebuilding 569 units of public housing will not address this shortage of units, it will simply bring the city back to its pre-storm level of need.**

4. Does the GHA have a waiver from HUD allowing it to use criteria other than Westchester to choose the locations for new public housing units?

The settlement order in *U.S. ex rel. Anti-Discrimination Center* (a case I litigated) applies only to Westchester County, and it had nothing to do with conventional public housing units. Rather, the decisions in that case interpret the obligations applicable to recipients of Community Development Block Grant (CDBG) funds. The settlement order outlines the terms Westchester accepted in order to avoid significant liability to the federal government. Although HUD has indicated that it will increase its efforts to enforce civil rights obligations on CDBG recipients around the country, it does not purport to apply the specific remedial provisions of the *Westchester* litigation on any particular recipient, and certainly not to the City of Galveston or the Galveston Housing Authority. Therefore, neither requires a "waiver" to rebuild 569 units of public housing in the City of Galveston in a manner that "affirmatively furthers fair housing," as required by the Conciliation Agreement. My clients support the rebuilding of these public housing units in a fashion that preserves the opportunity for pre-hurricane public housing residents to return to the Island with expanded fair housing opportunities.

More broadly, the central goal of the Fair Housing Act and the associated obligation to affirmatively further fair housing is to end discrimination and segregation, and to increase the supply of genuinely open housing for all Americans. An attempt to use fair housing law to discriminate against and deny housing opportunities on Galveston Island to individuals in protected classes directly contravenes not only the meaning of *Westchester*, but the meaning of the Fair Housing Act and the values it expresses.

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My clients and I appreciate your close attention to fair housing issues and the needs of all Galvestonians.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Allen", with a stylized flourish at the end.

Michael Allen