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Michael M. Daniel

July 17, 2008

Kim Kendrick  
Assistant Secretary  
Fair Housing and Equal Opportunity  
Room 5100  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

Re: The City of Allen, Texas' refusal to affirmatively further fair housing

Dear Secretary Kendrick:

The Inclusive Communities Project, Inc. ("ICP") is a Dallas, Texas fair housing/civil rights organization that helps Black Dallas Housing Authority ("DHA") Section 8 families move into the suburbs using DHA's Settlement Voucher program. We represent ICP and are filing this complaint on behalf of ICP and its clients against the City of Allen, Texas for The City's refusal to affirmatively further fair housing.

### **The injury**

The City of Allen's refusal to affirmatively further fair housing by addressing the lack of affordable housing in The City and the other related impediments to fair housing choice that The City has itself identified directly injures ICP and ICP's clients. The City of Allen has no public housing units and no Section 8 Voucher program. There is only one Low Income Housing Tax Credit project in this City of 69,441 persons. The lack of affordable housing in Allen makes it more difficult and more expensive for ICP to find housing in Allen for its clients.

### **The violation**

The City of Allen, Texas ("The City") is a recipient of federal Community Development Block Grant ("CDBG") funds. The City is an entitlement grantee since it receives the funds as a result of meeting the minimum population requirement for receiving the funds on an annual basis.

As an entitlement CDBG grantee, The City is required to ". . . submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome

the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.” 24 C.F.R. § 91.225(a)(1).

The City has conducted an analysis to identify impediments to fair housing choice in the City of Allen. Allen has identified the general lack of affordable housing as an impediment to fair housing that prevents the City from becoming more diversified.

Affordable housing is one of the major barriers to fair housing. By maintaining and increasing the supply of affordable housing, there should be a greater opportunity for the community to become more diversified. Other impediments to fair housing include limited choices and community support. The City of Allen seeks support from the community to ensure that all housing is safe, decent, and available to all people. City of Allen 2006 - 2007 CAPER Comprehensive Annual Performance Evaluation Report, page 3.

The City has also identified a combination of factors that are impediments to fair housing because they discourage the provision of affordable housing.

The current housing market, combined with City land use regulations and impact fees for residential development, make new affordable housing difficult. This contributes to a lack of interest by most developers and builders to construct lower priced housing. Additionally, limited multifamily dwellings are being developed that would be considered affordable housing. 2006-2007 CAPER, pages 3-4.

The City of Allen’s CDBG documents do not identify a single change that the City has made to reduce the admitted effect of City land use regulations and impact fees on making “new affordable housing difficult.” The City of Allen’s CDBG documents do not identify a single action taken by the City to overcome the effects of the City’s land use regulations and impact fees contributing to the lack of interest by developers and builders to construct lower priced housing. The City of Allen’s CDBG documents do not identify a single action taken by the City to overcome the limited development of multifamily housing that would be considered affordable housing.

The only action taken by The City to overcome the impediment of the lack of affordable housing is to use CDBG funds for a small number of annual home repair grants and home purchase assistance grants. The City has assisted 10 home purchases and 21 home rehabilitations during the period from October 1, 2004 through September 30, 2007. City of Allen Accomplishment Reports for 2004, 2005, 2006.

ICP offered to provide funding to The City for an action that would have directly addressed the identified impediments. The offer was first made by letter dated January 31, 2008.<sup>1</sup> The offer was again presented to The City by letter dated March 20, 2008.<sup>2</sup>

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<sup>1</sup> Copy enclosed.

<sup>2</sup> Copy enclosed.

To briefly summarize the proposal's essential elements: ICP offered to enter into an agreement with The City to provide a grant to The City which would be used to make funds available to one or more applicants for low income housing tax credits to be used in the City. A participating developer would have to apply for tax credits to develop housing for families with children in Allen, and would have to agree to accept Section 8 vouchers from Dallas Housing Authority Section 8 Housing Choice Voucher families. The provision of funds would be conditioned upon award of the tax credits by the State. The financial assistance provided by the City pursuant to this grant would reflect support for the tax credit application, and would enable the developer to claim up to 18 points in the Texas Department of Housing and Community Affairs application scoring process pursuant to the provisions of the State's Qualified Allocation Plan.<sup>3</sup> The money for the grant would have come the Housing Fund established as part of the remedy in the *Walker v. HUD*, CA3-85-1210 (N.D. Tx.) litigation.

An example of a similar program is the one operated by the Southeast Texas Housing Finance Corporation. The regulations for the SETH program are available at <http://www.sethfc.com/pdf/2008/LoansForTaxCreditApplicaion.pdf>. The local political subdivision contribution programs have been very successful at attracting developers of tax credit housing. For example, in the 2006 tax credit award cycle, four of the nine applications in the Dallas area region receiving tax credits had also received TDHCA selection criteria points for the local political subdivision contribution.<sup>4</sup> Although none of these grants were from ICP's program, that program is designed to work in much the same way by providing the local government with the funds for the contribution.

The City rejected the offer by letter dated June 10, 2008.<sup>5</sup>

HUD's regulations require that The City take appropriate actions to overcome the effects of the impediments identified through its analysis of impediments. 24 C.F.R. § 91.225(a)(1). The actions taken by the City do not address various impediments identified in its analysis. The City land use regulations and impact fee provisions have not changed. No action has been taken to overcome the lack of developer interest in providing affordable housing. The City deliberately and knowingly refused funding to participate in ICP's program that would have directly

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<sup>3</sup>The authority for the local political subdivision grant for housing tax credit projects is Tex. Gov't Code 2306.6710(b)(1)(E). The local political subdivision grant program is at Section 49.9(i)(5) of the FY 2007 Qualified Allocation Plan and at Section 50.9(i)(5) of the TDHCA 2008 Qualified Allocation Plan.

<sup>4</sup> The authority for the local political subdivision grant or loan for housing tax credit projects is Tex. Gov't Code 2306.6710(b)(1)(E). The local political subdivision grant or loan program is at Section 49.9(i)(5) of the FY 2007 Qualified Allocation Plan and at Section 50.9(i)(5) of the TDHCA 2008 Qualified Allocation Plan.

<sup>5</sup> Copy enclosed.

addressed the impediments to fair housing choice identified in The City's analysis. The City of Allen is in violation of its obligation to affirmatively further fair housing in its housing and community development activities.

**The remedy**

HUD has wide discretion in its enforcement of the affirmatively further fair housing obligation. ICP requests that HUD condition The City's CDBG funds on an explicit requirement that The City engage in specific actions including reform of its land use regulations, reform of its impact fees, and participation in programs such as that proposed by ICP or offered by the Southeast Texas Housing Finance Corporation to appropriately address the impediments to fair housing choice identified by The City.

Sincerely,



Michael M. Daniel

Enclosures

cc: w/ enc.: Elizabeth K. Julian, President ICP  
Peter G. Smith, attorney for The City of Allen