



Municipalities and the Fair Housing Act

**The Role of Municipalities in the fight for
Fair Housing**

Presenters

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Central Alabama Fair Housing Center

- ▶ The Central Alabama Fair Housing Center (CAFHC) is a non-profit civil rights agency created in 1995 to ensure equal housing opportunity for all people living in central Alabama
- ▶ We are dedicated to eliminating housing discrimination, enforcing fair housing laws and educating individuals regarding fair housing laws.



Agenda

- ▶ History of the Fair Housing Act
- ▶ Overview of the Fair Housing Act
- ▶ Zoning and Fair Housing Considerations
- ▶ Segregation
- ▶ Affirmatively Furthering Fair Housing
- ▶ Key Concepts & Take Aways



Fair Housing is Access to Opportunity

Access to Opportunity means...

- **Community Investment**
- **Access to Credit**
- **Income and Wealth**
- **Affordable Housing**
- **Education**
- **Transportation**
- **Access to Justice**
- **Health Care, Environment**
- **Fresh Food, Clean Water**
- **Child Care**



History of the Fair Housing Act

Watch: “Seven Days” Video Produced by NFHA
(Approx. 9 minute Video)

<https://www.youtube.com/watch?v=0EKo5rBBzpl>

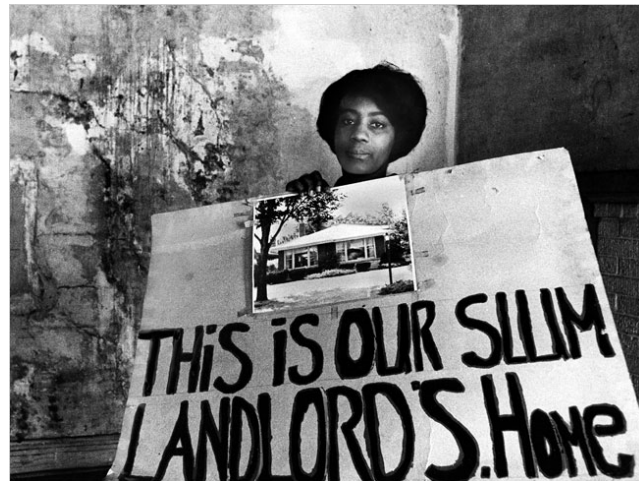


April 4th 1968,
Martin Luther King, Jr. is assassinated.

Riots break-out across the country in response to his death and widespread discrimination.



Against the odds...



...Fair Housing becomes a Civil Right.



- ▶ Only after the assassination of MLK, national riots, and a Congressional soul searching did housing rights get included in the Civil Rights Act.



Fair Housing Act

The Fair Housing Act

- Prohibits discrimination in the sale, rental, or financing of a home or dwelling based on 7 protected classes.
- Title VIII of the Civil Rights Act of 1968 as amended; 42 U.S.C. 3601 et seq.; Amended in 1974, 1988

The Fair Housing Act

Prohibits Housing Discrimination against these 7 Protected Classes:

- Race
- Color
- Religion
- National Origin
- Sex *
- Handicap (disability)
- Familial Status (children or pregnancy)



Expanded Protections on the basis of Sex

- ▶ Executive Order 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (January 20,2021)
 - ▶ Executive Order addresses the Supreme Court's recent decision in *Bostock v Clayton County*, which held that the prohibitions against sex discrimination in the workplace contained in Title VII of the Civil Rights Act of 1964 extend to and include discrimination on the basis of sexual orientation and gender identity.
 - ▶ Directed every federal agency to access all agency actions taken under federal statute that prohibits sex discrimination and to fully enforce those statutes to combat discrimination based on sexual orientation and gender identity.
- ▶ Worden HUD Memorandum February 11,2021
 - ▶ Expanded protections on the basis of sex to prohibits discrimination on the basis of sexual orientation and gender identity
 - ▶ Effective immediately

Fair Housing Protections are Broad in Scope:

- ▶ The Fair Housing Act is broad in terms of the people protected, the activity prohibited, the property covered and the extent of liability. Liability is non-delegable.
- ▶ Disability is broadly defined
- ▶ Disparate impact counts: *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*
 - The law protects not only against intentional acts of discrimination, but acts that have the *effect* of discriminating.

Who is Protected By the Fair Housing Act?

Any “**aggrieved person**” who is harmed by housing discrimination may sue under the Fair Housing Act, including:

- ▶ Anyone denied housing or housing-related services
- ▶ Family members of anyone denied housing or housing-related services
- ▶ People associated with members of protected classes, i.e., guests, family members, friends.
- ▶ Fair Housing Organizations and testers
- ▶ Housing Providers affected by discriminatory acts.

Who Must Comply with The Fair Housing Act?

Anyone providing housing or housing-related services must comply with the Fair Housing Act, including:

- ▶ Rental agents and other employees (including maintenance workers)
- ▶ Contractors
- ▶ Owners of rental property;
- ▶ Real estate agents, companies and brokers
- ▶ Insurance providers
- ▶ Mortgage and home improvement loan providers
- ▶ **Municipalities**
- ▶ Real estate developers and builders;
- ▶ Condominium and homeowners associations
- ▶ Neighbors (harassing behavior)
- ▶ Nursing homes
- ▶ Newspapers and other advertisers
- ▶ Emergency shelter providers
- ▶ Providers of college or university housing

Prohibited Behavior under the Fair Housing Act

- ▶ Differential Treatment
 - ▶ Refusing to rent or sell because someone is a member of a protected class
 - ▶ Different terms and conditions for members of protected classes
 - ▶ Refusal to grant Reasonable Accommodations and/or Modifications
 - ▶ Steering
 - ▶ Discriminatory statements
 - ▶ Discriminatory advertising
- ▶ Disparate Impact
 - ▶ Neutral rule that has a disparate impact (greater effect) on members of a protected class

The Fair Housing Act

- **The Fair Housing Act Requires:**
HUD to administer its housing and urban development policy in a way that **affirmatively affirms**, or promotes, fair housing- and combats segregation.
- **HUD is the Agency in charge of administration and enforcement-** along with the federal courts.

Source: Sec 808 [42 USC 3608]

Fair Housing Enforcement Options

- ▶ **Federal Courts:** Damages to include punitive, and actual or compensatory, and attorney's fees
- ▶ **Make Complaints:** To HUD or local jurisdiction
- ▶ **Community Organization:** To exercise and enforce rights under the Assessment of Fair Housing process.

Source: Sec. 813 [42 U.S.C. 3613]

The Fair Housing Act and Zoning and Land Use Laws

- ▶ The FHA prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a protected characteristic
- ▶ Housing includes not only building intended for occupancy for residence, but also vacant land that may be developed into residences.

Effect not Intent

- ▶ Important to remember that the discrimination does not have to be *intentional*
 - ▶ Discrimination may be through differential treatment or through discriminatory effect (*Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507(2015))
- ▶ Therefore when planning or enacting new laws/ regulations it is crucial not only to think about the intended consequences but also about the logical unintended consequences of the action
- ▶ Examples of land use practices that may violate the FHA discriminatory effect standard include:
 - ▶ Minimum floor space or lot size requirements (Without legally sufficient justification)
 - ▶ Excluding low-income or multifamily housing may have discriminatory effect

Examples of Zoning Laws that may violate the FHA

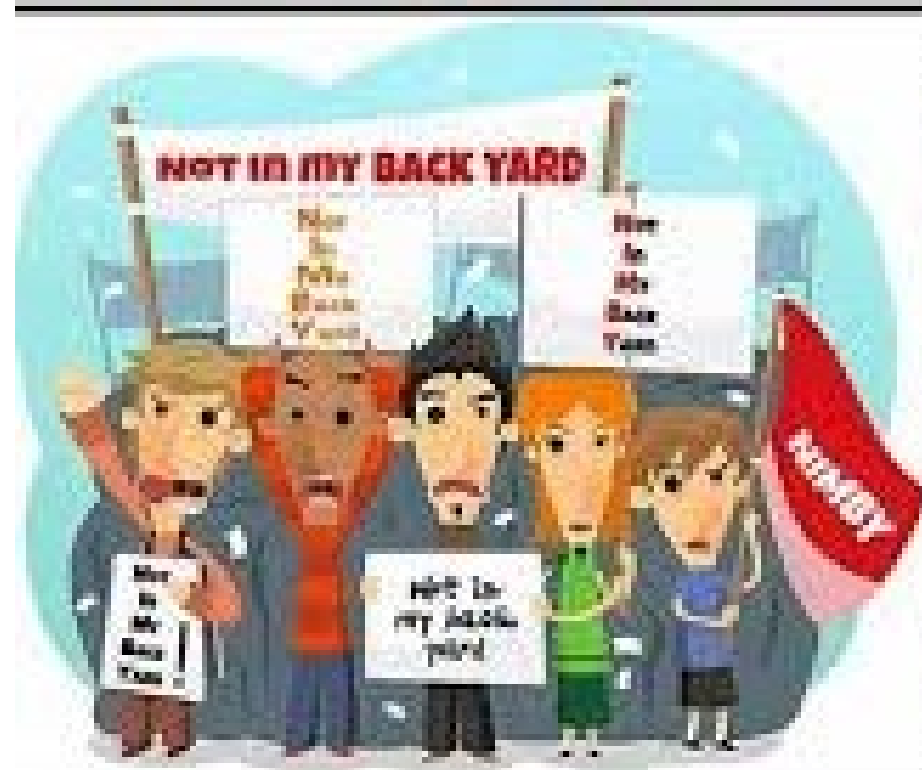
- ▶ Prohibiting or restricting the development of housing based on the belief that the residents will be members of a protected class
 - ▶ Ex. Blocking the construction of multifamily housing because of concerns that residents will include members of a protected class
- ▶ Imposing restriction or additional conditions on group housing for people with disabilities that are not imposed on families or other groups of unrelated individuals
 - ▶ Ex. Requiring occupancy permits for PWD to live in a single-family home while not requiring permits for other residents

Examples of Zoning Laws that may violate the FHA

- ▶ Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes
 - ▶ Ex. Requiring extra security measures on proposed development based on belief that a persons of a particular protected class are more likely to engage in criminal behavior
- ▶ Enforcing a neutral laws/ policy differently because of residents' protected characteristics
 - ▶ Ex. Citing protected class members for violating code requirements for property upkeep but not citing others for similar violations.
- ▶ Refusing to grant RA to land use or zoning policies when such accommodation may be necessary to allow PWD to have an equal opportunity to use and enjoy the housing
 - ▶ Ex. Denying request to modify setback requirement to an accessible sidewalk

NIMBY ISSUES

- ▶ NIMBY- Not In My Back Yard
 - ▶ NIMBY issues arise when residents oppose the development of something that they deem “undesirable” in their neighborhood
 - ▶ NIMBY generally becomes a Fair Housing issue when stereotypes are used to block housing development



NIMBY ISSUES

- ▶ When enacting or applying zoning or land use laws, state and local governments **may not** act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics.
- ▶ Examples:
 - ▶ City cannot deny zoning approval for low-income housing development that meets all zoning and land-use requirements because the development may house residents of a particular protected class who the community fears will increase crime OR lower property values
 - ▶ Cannot block a group home or deny a requested RA in response to neighbors' stereotypical fears or prejudices about people with disabilities

Inclusionary Zoning

- ▶ Inclusionary Zoning policies require and/or encourage developers to set aside a certain percentage of housing units in new or rehabilitated developments for low- and moderate- income residents.
- ▶ Creates opportunities with diverse socioeconomic backgrounds to live in the same developments and have access to same types of community services and amenities.
- ▶ Inclusionary Zoning leverages private-sector development so it requires fewer direct public subsidies than many state and federal programs that promote mixed-income communities.
- ▶ Inclusionary zoning has emerged as a proven strategy to address the shortage of affordable housing with the potential for creating socially and economically integrated communities.

Examples of Inclusionary Zoning

- ▶ New York– voluntary program that began in 1987.
 - ▶ offers floor area increases of up to 20 percent to developers in exchange for providing permanently affordable housing for families earning no more than 80 percent of the area median income (AMI) in high-density areas zoned R10 and commercial zones with equivalent densities.
- ▶ Chicago – mandatory citywide program for all developers adopted in 2003
 - ▶ applies to all rental and for-sale projects with at least 10 residential units that require certain zoning changes, include land purchased from the city, receive financial assistance from the city, or are within a planned development in a downtown zoning district. At least 10 percent of units in these developments must be set aside for lower-income households; the requirement jumps to 20 percent if a development receives financial assistance from the city.
- ▶ Minneapolis – Eliminates Single-family Zoning adopted in 2018
 - ▶ Proponents of eliminating single-family zoning in Minneapolis advanced three major arguments: reform would make the city more affordable, by expanding the supply of housing; it would make the city fairer, by reducing racial and economic segregation; and it would combat climate change, by reducing commutes and making housing more environmentally friendly

Segregation & the Creation of Suburbs in the United States.

Segregation breeds inequality...



How was Segregation created?



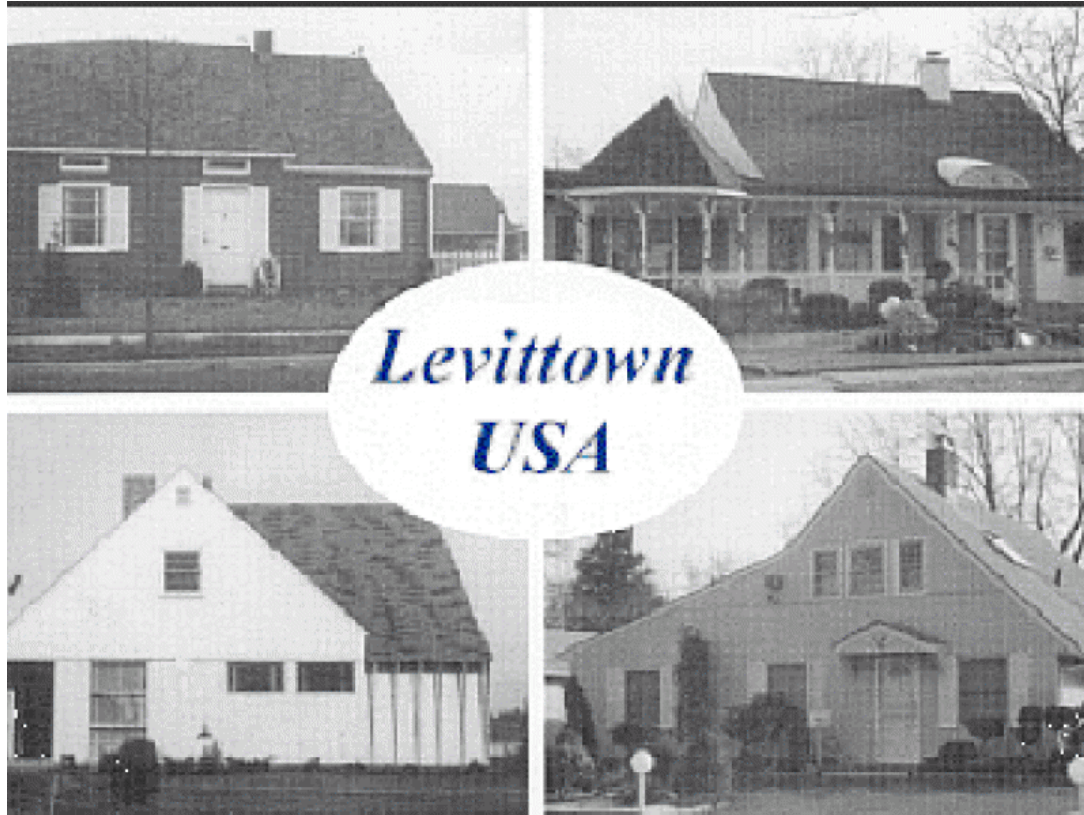
Segregative Housing Policies

- ▶ Government Subsidized White Suburbs
 - 1944: GI Bill, FHA and VA subsidized mortgages and guaranteed mortgage insurance to vets
 - Black veterans denied supports
 - “White Flight” → blacks isolated in city centers

<https://vimeo.com/328684375>

Video: Segregated By Design
(Approximately 17 minutes)

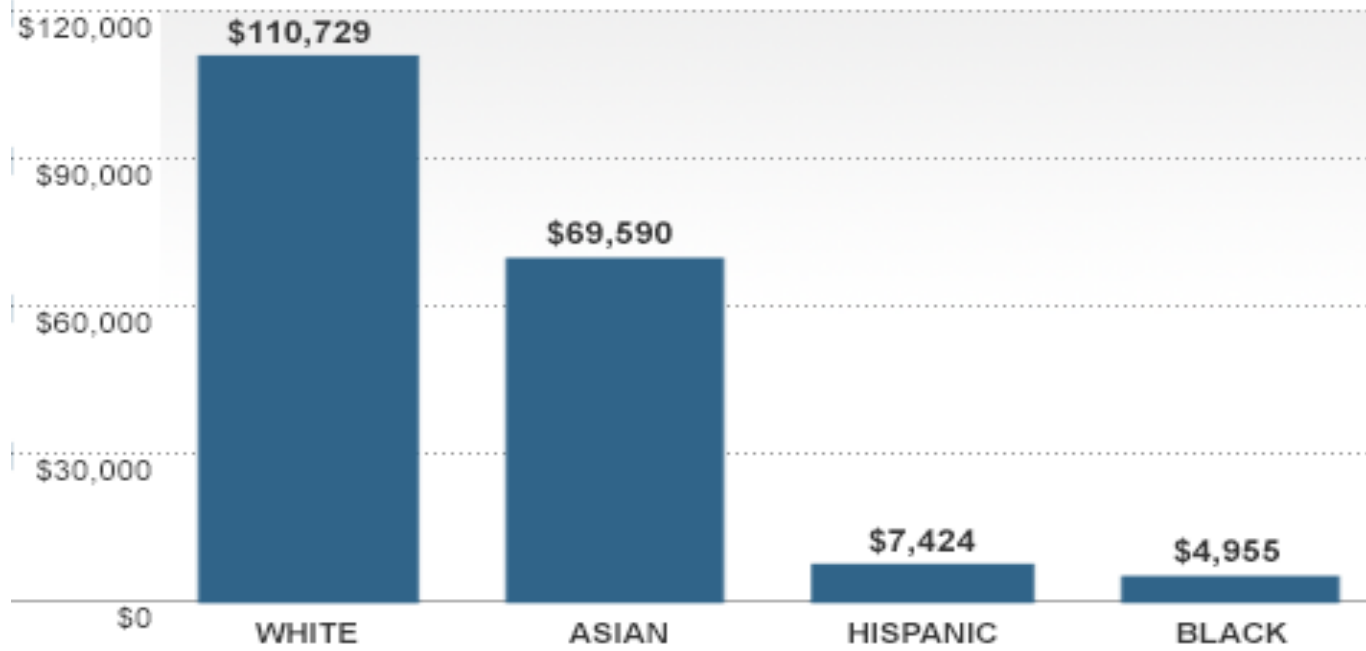
Levittown Pennsylvania



\$125,000

\$500,000

RACIAL WEALTH GAP

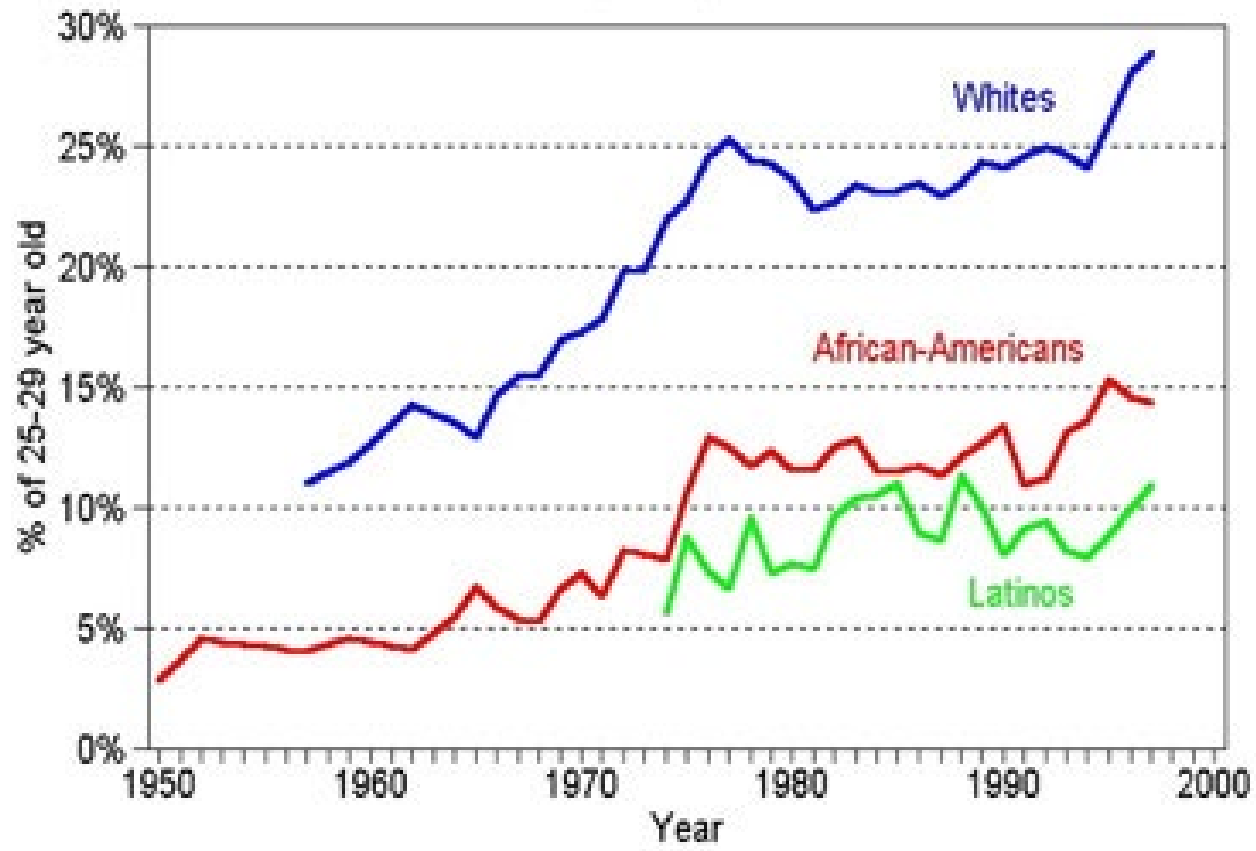


SOURCE: CENSUS BUREAU

Race & the Wealth Gap...

<https://www.aclu.org/issues/racial-justice/race-and-economic-justice>

College graduates by race/ethnicity (25-29)

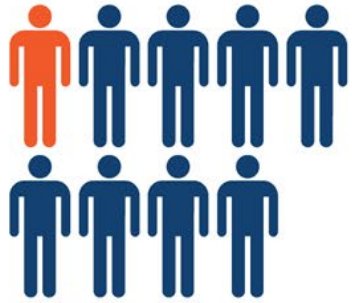


Source: <http://www.census.gov/population/www/socdemo/educ-attn.html>

Note: From 1950 to 1962 data for African-Americans include all nonwhites; Latinos may be of any race.

Lifetime Likelihood of Imprisonment

All Men



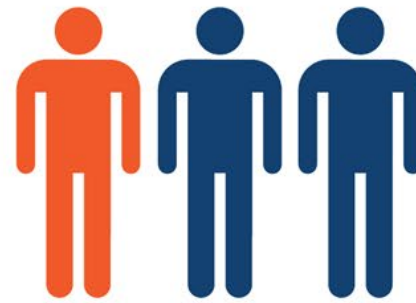
1 in 9

White Men



1 in 17

Black Men



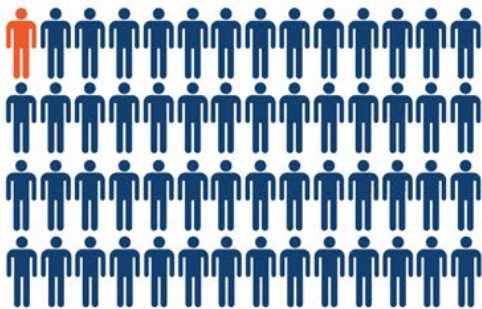
1 in 3

Latino Men



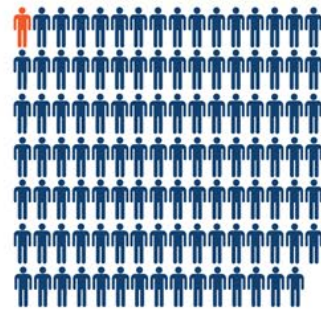
1 in 6

All Women



1 in 56

White Women



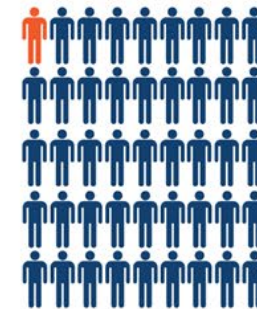
1 in 111

Black Women



1 in 18

Latina Women

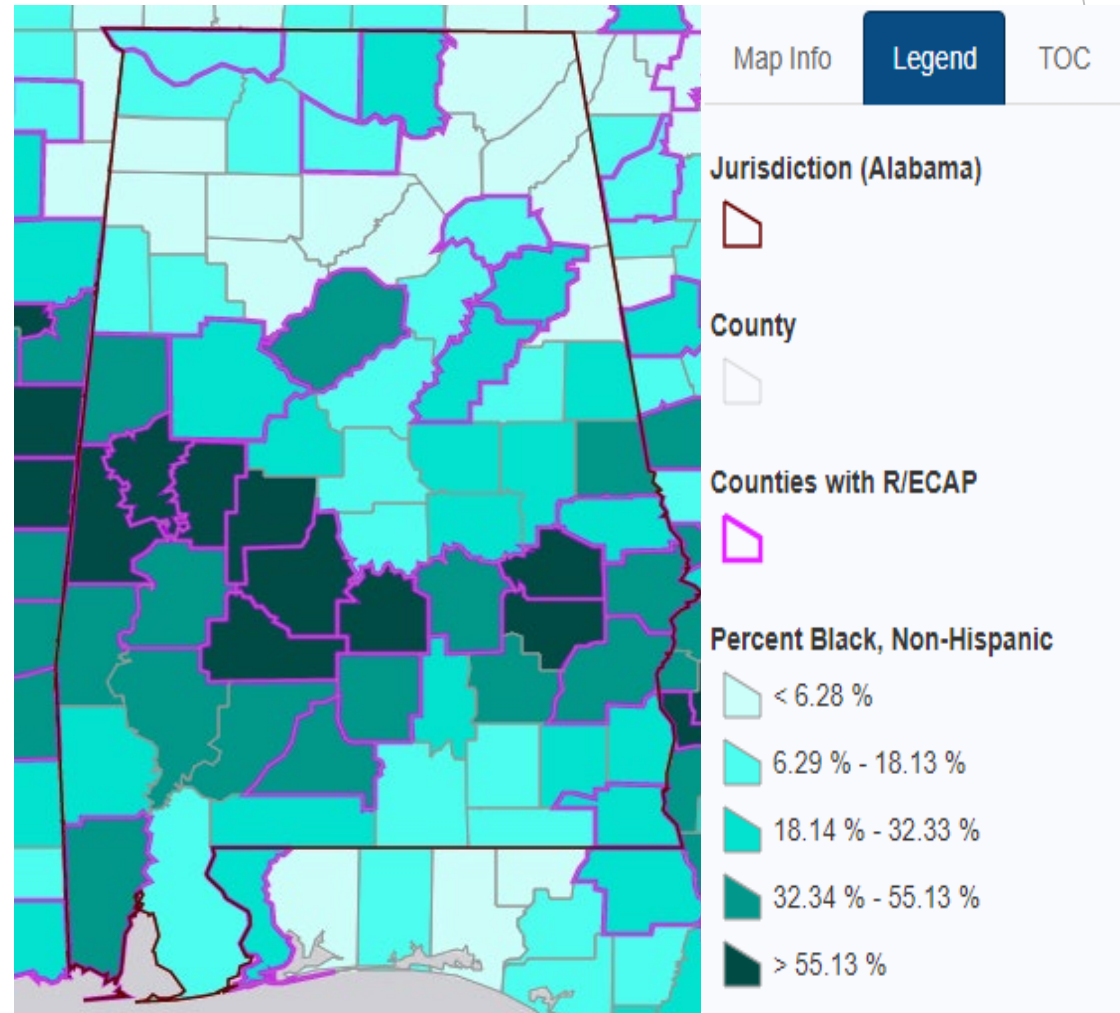


1 in 45

Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974–2001*. Washington, D.C.: Bureau of Justice Statistics

Segregation in Alabama

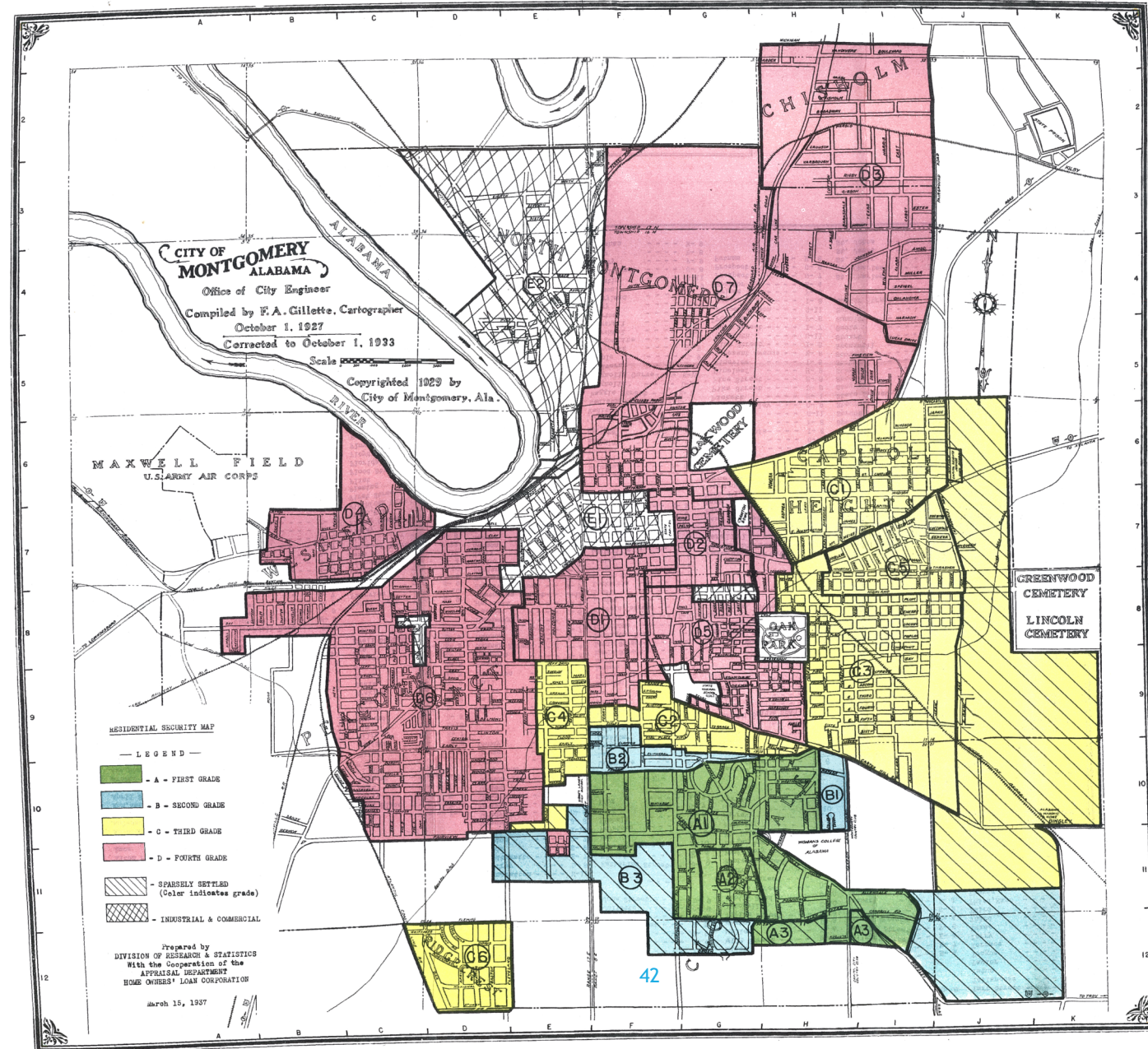
- ▶ Residential segregation in Alabama cities, as throughout the country, did not occur in a vacuum. It is the direct result of federal, state, and local governmental policies and practices in place for decades.





Lines were drawn...

- ▶ From the mid-1930s through the early 1940s, the Home Owners' Loan Corporation (HOLC), created "residential Security: maps of major American cities.
- ▶ These maps color-coded our cities based on a Hazardous -- Desirable ranking system
- ▶ This system codified and expanded the practices of racial and class segregation



AREA DESCRIPTION

1. NAME OF CITY Montgomery, Ala. SECURITY GRADE Hazardous AREA NO. D-6

2. DESCRIPTION OF TERRAIN.

Mostly level; not wooded. Principal subdivisions known as Sayre-Holcombe, Tharp, Peacock, Homeview, Irmadale. Some low land along Genetta Ditch.

3. FAVORABLE INFLUENCES.

All utilities except gas, which is available in certain sections of the area, and city water, which, although available, is not installed in small portions of the area. Two parks, churches, schools.

4. DETRIMENTAL INFLUENCES.

Majority of streets not paved; fair transportation facilities; no residential restrictions, certain sections zoned for business. In certain portions of area surface toilets necessitate use of scavenger service. Small amount of business encroachment. Genetta Ditch traverses small portion of area and is subject to overflow. Houses of advanced age show dilapidation. Portions subject to vandalism.

5. INHABITANTS.

a. Type Skilled mechanics, domestics, clerical workers, and laborers b. Estimated annual family income \$ 300 - 2,000

c. Foreign born None; % d. Negro Many; 75 % of area

e. Infiltration None f. % of area %

g. Population is increasing slowly

6. BUILDINGS. (Predominant or Typical)

a. Type or types 1-story, 4-rm single b. Type of construction Frame

c. Average age 10 - 50 years d. Repair condition Poor to fair

7. HISTORY OF ~~DEVELOPMENT OF THE AREA~~ ~~OR~~ ~~DEVELOPMENT OF THE AREA~~

Sales Values				Rental Values			
	Year	Range	Average %	Year	Range	Average %	
High	1928	700-4,000	\$1,500 100	1928	8-30	\$12.50 100	
Low	1933	300-2,000	650 44	1933	5-20	7.50 60	
Current	1937	500-3,000	1,000 67	1937	5-25	10. 80	

8. OCCUPANCY: a. Land 70 %; b. Dwelling units 100 %; c. Home owners 20 %

9. SALES DEMAND: a. Fair b. 1-story, 4-rm singles c. Activity is poor

10. RENTAL DEMAND: a. Good b. \$10 singles c. Activity is good

11. NEW CONSTRUCTION: a. Types No residential b. Amt. last yr. 10 houses (Cost

Home Home about \$5M)

12. AVAILABILITY MORTGAGE FUNDS: a. Purchase Very limited b. Building Very limited

13. TREND OF DESIRABILITY NEXT 10-15 YEARS Stable for negro desirability. Declining

14. CLARIFYING REMARKS:

This is the largest negro area in the City; wage-earners work in homes, fertilizer factories, railroad shops. Houses in western and northern portion of this area are in much poorer repair than remainder of area.

15. INFORMATION FOR THIS FORM WAS OBTAINED FROM B. Frank Noble, Montgomery

District Appraiser, James M. Holt, Montgomery Property Management Contract Broker, and Theo D. Copeland, Montgomery Property Management Field Inspector.

AREA DESCRIPTION

1. NAME OF CITY Montgomery, Ala. SECURITY GRADE Definitely Declining GRA NO. C-6

2. DESCRIPTION OF TERRAIN.

Slightly rolling; not wooded; known as Ridgecrest. Land is prairie soil.

3. FAVORABLE INFLUENCES.

Water, lights, telephone, septic tanks.

4. DETRIMENTAL INFLUENCES.

About 3 miles from City, with no bus facilities (taxies make special rate). Unpaved streets; no sidewalks; long distance to schools and business center, necessitating ownership of automobiles.

5. INHABITANTS.

a. Type Mixed, including clerical workers and small business proprietors. b. Estimated annual family income \$ 1,250-2,000

c. Foreign born None; 0 % d. Negro None; 0 %

e. Infiltration None f. Other families None - static

g. Population is ~~increasing~~ static

6. BUILDINGS. (Predominant or Typical)

a. Type or types 1-sty, 6-rm singles b. Type of construction Brick veneer and frame

c. Average age 7-10 years d. Repair condition good

7. HISTORY OF PREDOMINATING OR TYPICAL PROPERTY

Sales Values				Rental Values			
Year	Range	Average	%	Year	Range	Average	%
High 1928	3,500-5 $\frac{1}{2}$ M	\$5 M	100	1928	30-50	\$40	100
Low 1933	3 M-4 M	3 $\frac{1}{2}$ M	70	1933	20-35	27	69
Current 1937	3,200-4 $\frac{1}{2}$ M	3 $\frac{1}{2}$ M	75	1937	25-37.50	32.50	81

8. OCCUPANCY: a. Land 20 %; b. Dwelling units 100 %; c. Home owners 70 %

9. SALES DEMAND: a. Poor b. 1-sty \$3,500 singles c. Activity is Poor

10. RENTAL DEMAND: a. Fair b. \$30 singles c. Activity is Good

11. NEW CONSTRUCTION: a. Types None b. Amt. last yr. None

12. AVAILABILITY MORTGAGE FUNDS: a. Purchase Limited b. Building Limited

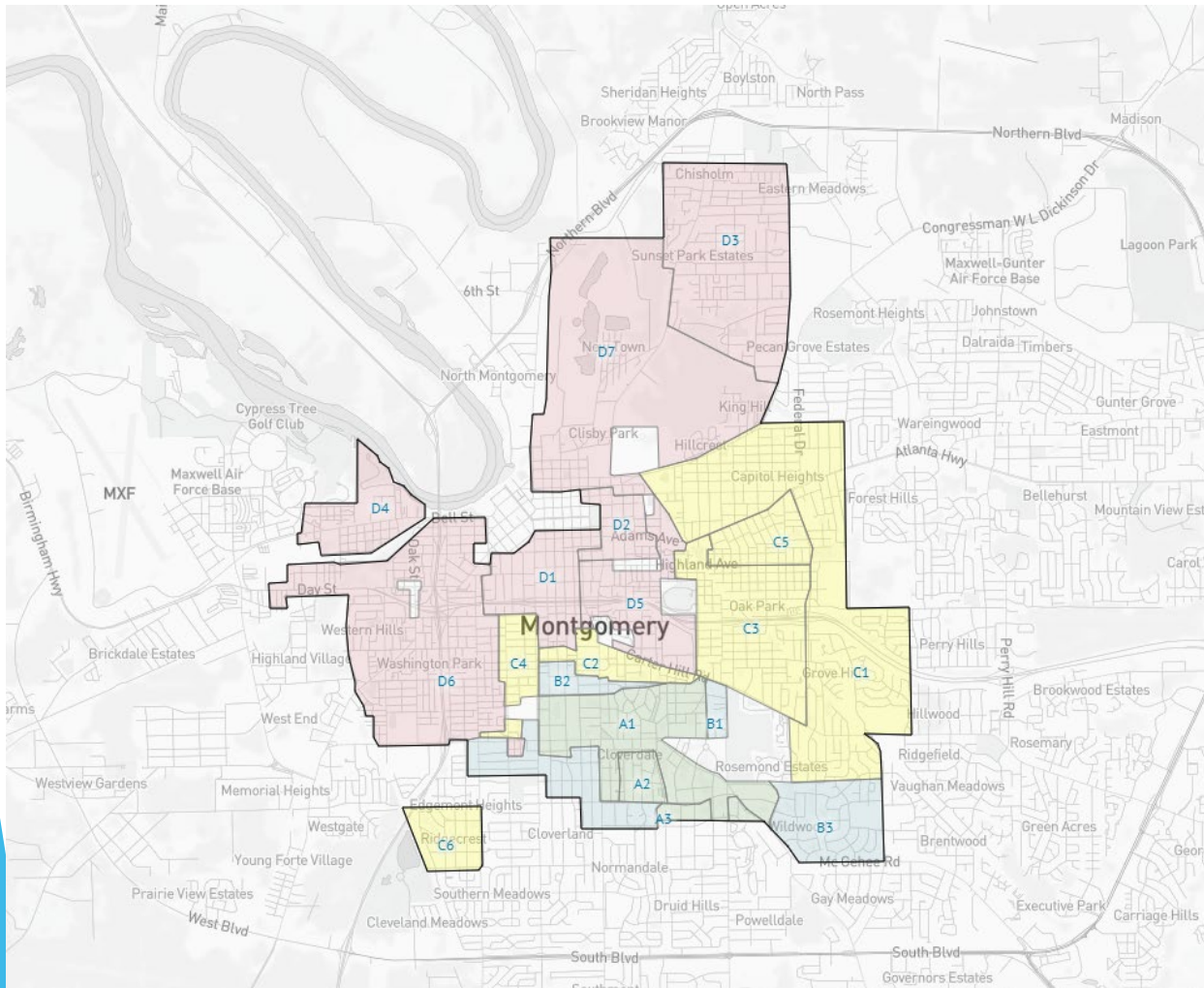
13. TREND OF DESIRABILITY NEXT 10-15 YEARS Static

14. CLARIFYING REMARKS: If proposed negro development fostered by Catholic Church materializes, future trend of residential desirability will be downward. Development of this section began in 1925 by auction sale of lots, consequently many of the purchasers were speculators with the result that many of the lots eventually were returned to the developers. Present owners of subdivision now own at least 50% of the unimproved property.

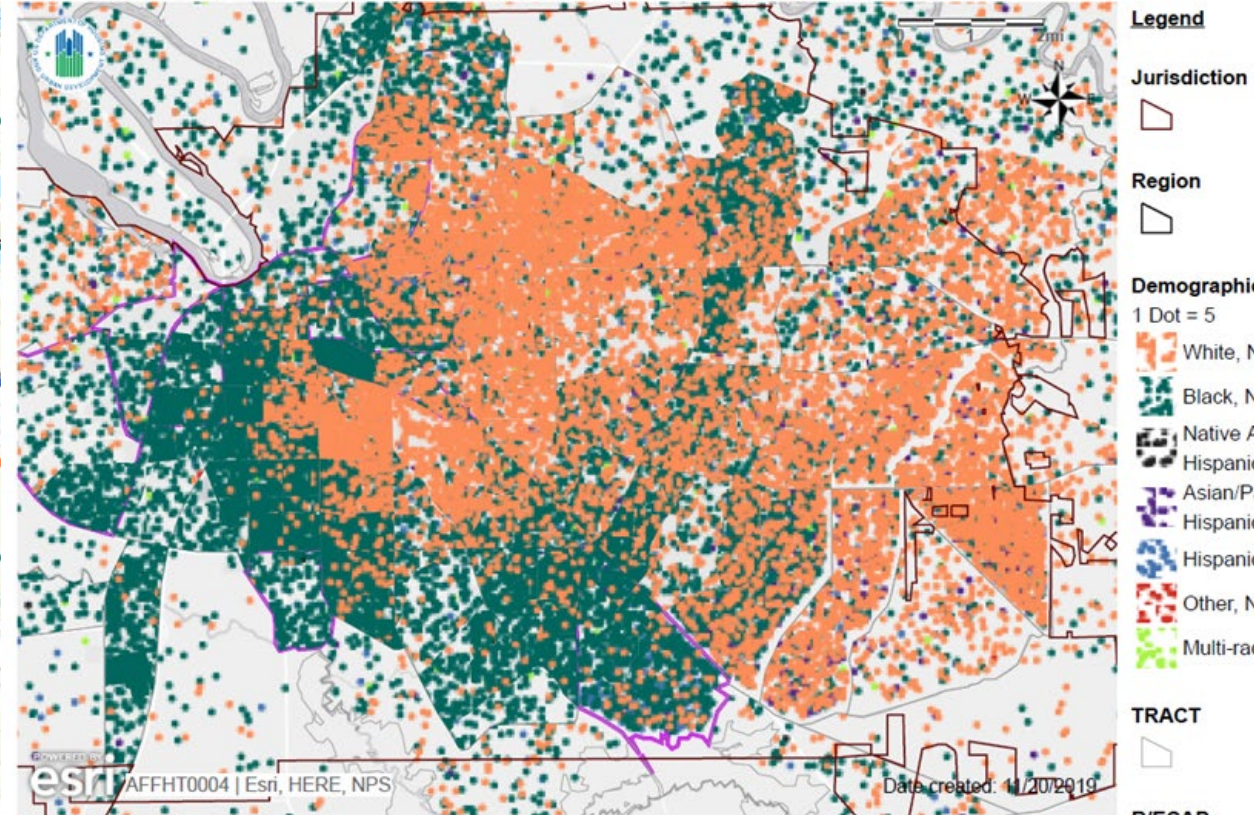
15. INFORMATION FOR THIS FORM WAS OBTAINED FROM B. Frank Noble, District

Appraiser, and checked by Norman W. Gayle, State Appraiser, Alabama H. O. L. C.

The Redlines have yet to blur...



HUD Affirmatively Furthering Fair Housing Data and Mapping Tool



Name: Map 1 - Race/Ethnicity

Description: Current race/ethnicity dot density map for Jurisdiction and Region with R/ECAPs

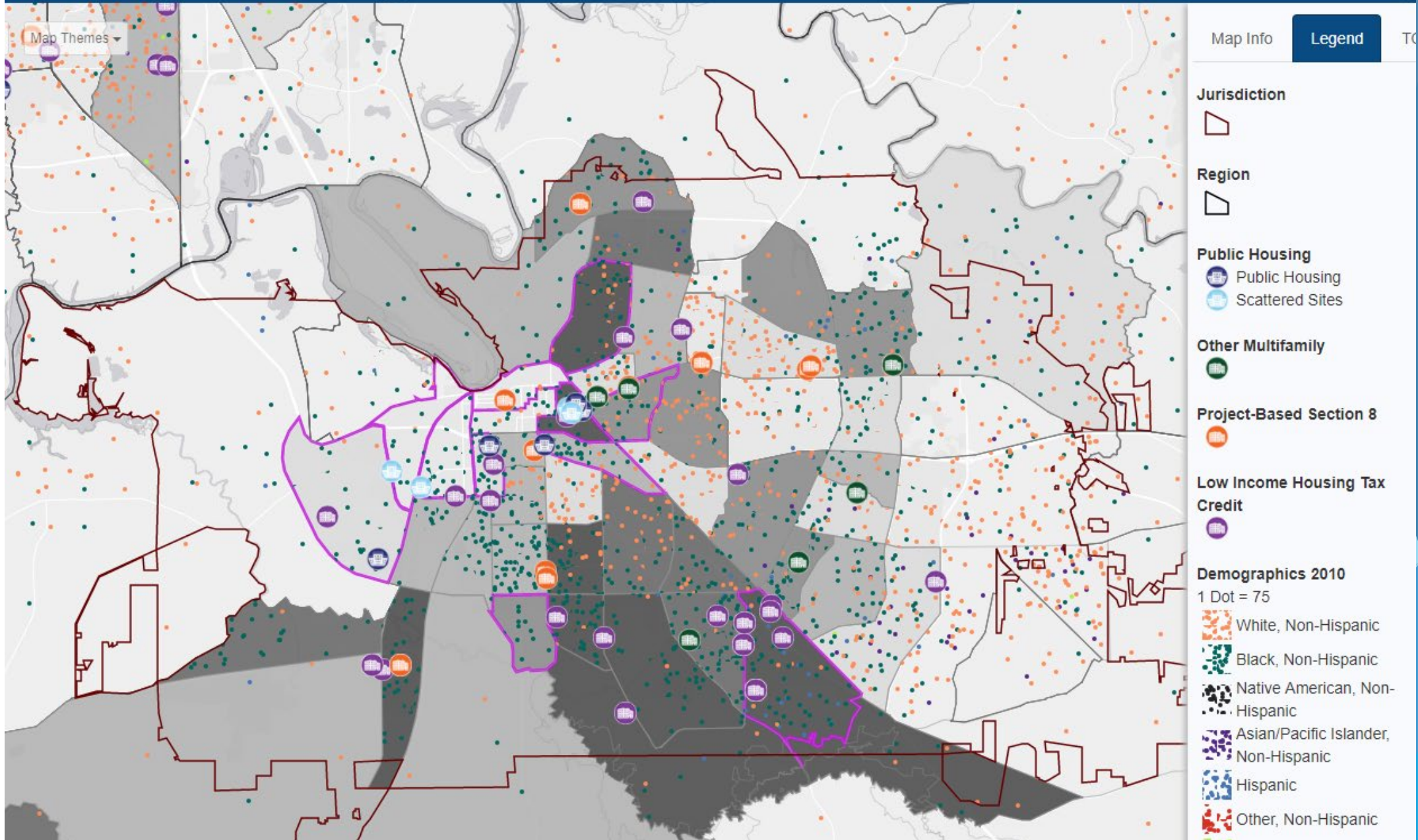
Jurisdiction: Montgomery (CDBG, HOME, ESG)

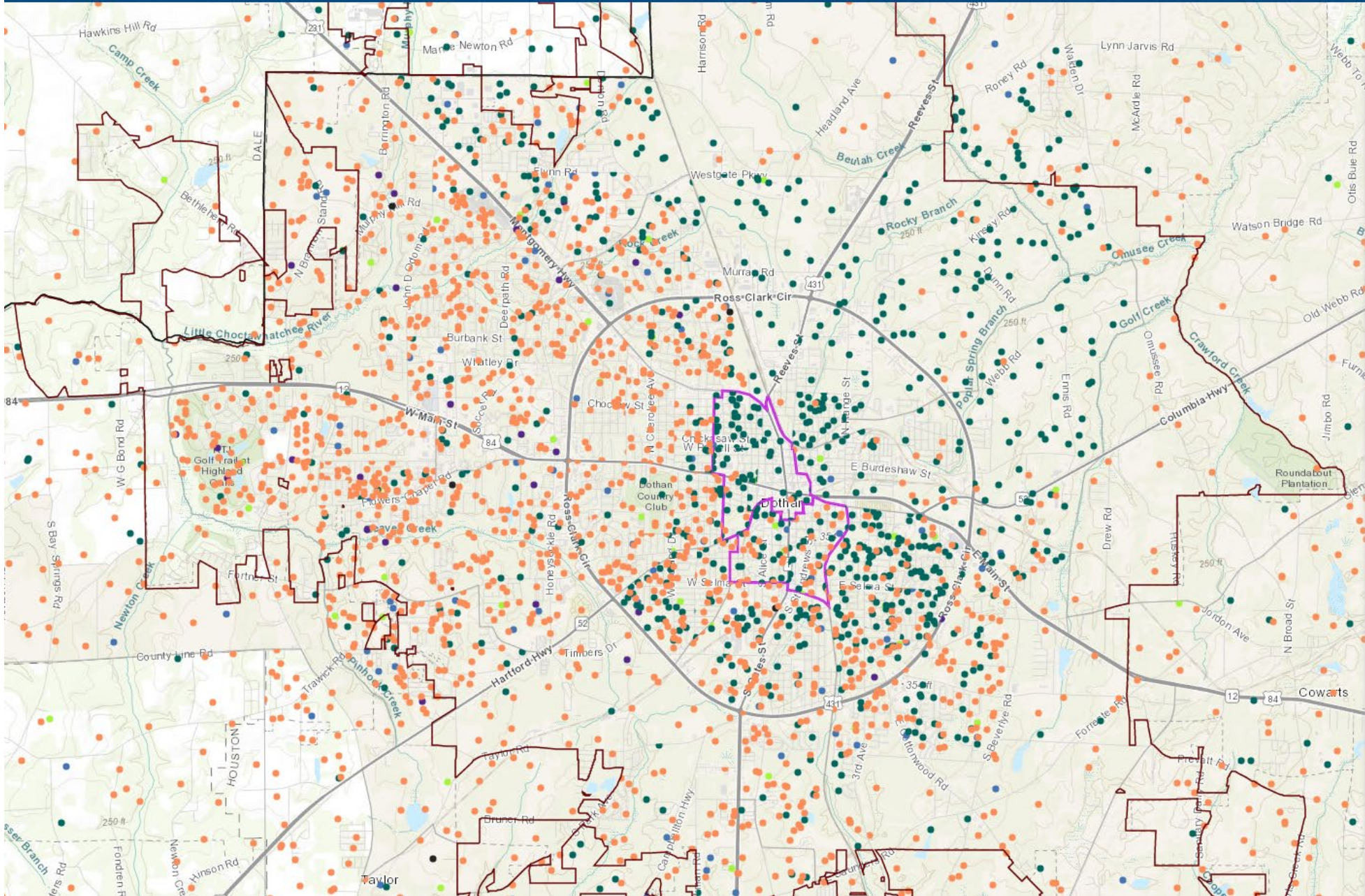
Region: Montgomery, AL

HUD-Provided Data Version: AFFHT0004



AFFIRMATIVELY FURTHERING FAIR HOUSING

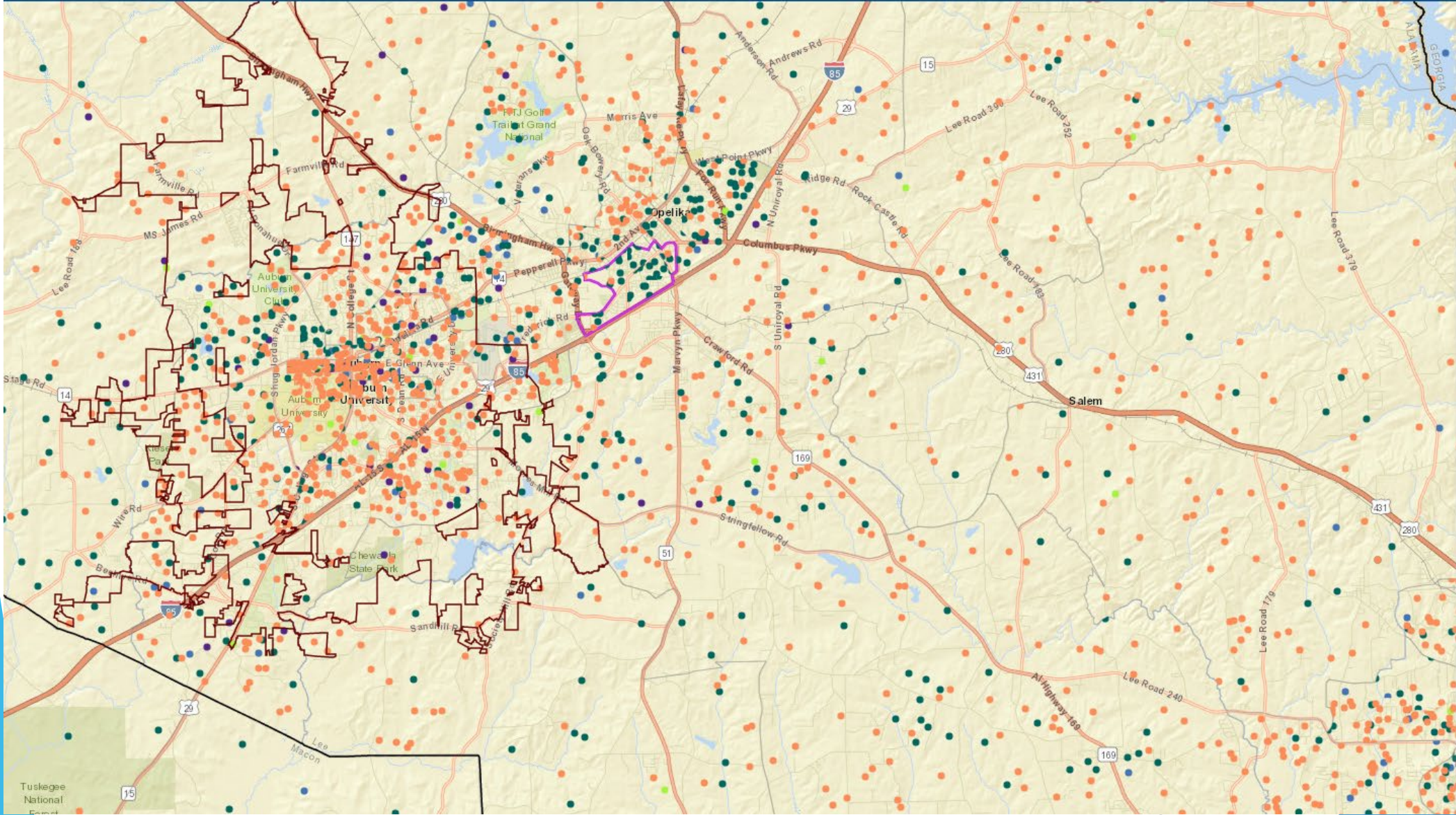




Map Info Legend TOC

- Jurisdiction**
 Jurisdiction boundary
- Region**
 Region boundary
- Demographics 2010**
 1 Dot = 25 People
- White, Non-Hispanic
 - Black, Non-Hispanic
 - Native American, Non-Hispanic
 - Hispanic
 - Asian/Pacific Islander, Non-Hispanic
 - Hispanic
 - Other, Non-Hispanic
 - Multi-racial, Non-Hispanic
- TRACT**
 Tract boundary
- R/ECAP**
 R/ECAP boundary

AFFIRMATIVELY FURTHERING FAIR HOUSING



Map Info Legend TOC

Jurisdiction
[Red outline symbol]

Region
[Purple outline symbol]

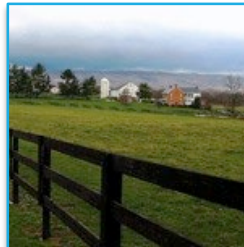
Demographics 2010
1 Dot = 50 People

- [Orange dot] White, Non-Hispanic
- [Green dot] Black, Non-Hispanic
- [Black dot] Native American, Non-Hispanic
- [Purple dot] Asian/Pacific Islander, Non-Hispanic
- [Blue dot] Hispanic
- [Red dot] Other, Non-Hispanic
- [Light green dot] Multi-racial, Non-Hispanic

TRACT
[White outline symbol]

R/ECAP
[Purple outline symbol]

“For as long as there is residential segregation, there will be de facto segregation in every area of life.



. . . So the challenge is here to develop an action program. “

-Dr. Martin Luther King Jr.

Affirmatively Furthering Fair Housing Overview

Affirmatively Furthering Fair Housing

- ▶ From its inception, The Fair Housing Act mandated that it be administered “in a manner affirmatively to further the purposes” and the policies of the Act.
 - ▶ Fair Housing Act, 42 USCA § 3608(d) and 42 USCA § 3608(e)(5)

Purpose of the Fair Housing Act

- ▶ The Fair Housing Act was intended not only to prevent discrimination but also to reverse segregation.
- ▶ The ultimate goal of the FHA was to create integrated communities.

*** Walter F. Mondale, Walter Mondale: The Civil Rights Law We Ignored, N.Y. Times, April 11, 2018.

Affirmatively Further Fair Housing

- ▶ Every community receiving federal money is required to affirmatively further fair housing even if the grant is for non-housing related activities.
- ▶ Fair housing poster contests and other equally benign activities are not evidence of a community's efforts to affirmatively further fair housing.¹
- ▶ Communities are encouraged and supported to include real, effective, fair housing strategies in their overall planning and development process.

¹HUD, "Fair Housing Planning Guide" [Fair Housing Planning Guide_508.pdf \(hud.gov\)](#)

Principals of Affirmative Furthering Fair Housing

- ▶ Design project activities that:
 - ▶ Overcome the effects or conditions that have kept your community segregated
 - ▶ Redress past discrimination
 - ▶ Encourage future inclusion

Who is Obligated to Affirmatively Further Fair Housing

- ▶ The Affirmatively Furthering Fair Housing mandate requires all federal agencies and **federal grantees** to actively address and work to eliminate housing discrimination and segregation.
- ▶ As a recipient of CDBG, ESG, and HOME funds, **Montgomery** has the duty to affirmatively further fair housing

How to Affirmatively Further Fair Housing

- ▶ Perform an analysis of impediments to fair housing or identify an analysis of impediments to use in choosing fair housing action steps
- ▶ Identify fair housing action steps to overcome the impediments to fair housing
- ▶ Complete the fair housing action steps chosen

What does it mean to Affirmatively Further Fair Housing

**Affirmatively Furthering Fair Housing
means creating access to opportunity
which is about so much more
than a home...**

Keep your eyes on the prize and the goal of connecting neglected people and places to:

- **Community Investment**
- **Access to Credit**
- **Income and Wealth**
- **Affordable Housing**
- **Education**
- **Transportation**
- **Access to Justice**
- **Health**
- **Child Care**



UPDATE: AFFH Under the New Administration

- ▶ Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies (Jan. 26,2021)
 - ▶ Acknowledges that our government systemically implemented racially discriminatory housing policies that contributed to segregations and inequality
 - ▶ “The Federal Government has a critical role to play in overcoming and redressing this history of discrimination and in protecting against other forms of discrimination by applying and enforcing Federal civil rights and fair housing laws. It can help ensure that fair and equal access to housing opportunity exists for all throughout the United States.”
 - ▶ Orders the HUD Secretary to “examine the effects” of the Preserving Community and Neighborhood Choice rule and the Sept. 24, 2020 Disparate Impact rule
 - ▶ Orders the HUD Secretary to take any steps necessary to implement the FHA’s requirement that HUD administer its program in a manner to AFFH and HUD’s overall duty to administer the FHA

Key Concepts & Take Aways

- ▶ The Fair Housing Act is a broad and powerful civil rights law that is applicable to nearly everyone.
- ▶ The purpose of the FHA is two-fold:
 - ▶ Prevent Discrimination and
 - ▶ Encourage Integration
- ▶ Segregation is the result of government actions and policies. Government action is required to dismantle it.
- ▶ Make sure to look past your intent and think through the likely consequences of your actions
- ▶ The 2020 HUD “Preserving Community” rule, it did **NOTHING** to the requirement of all recipients of federal funds to affirmatively further fair housing.
 - ▶ **THE RULE IS CURRENTLY UNDER REVIEW BY THE NEW SECRETARY OF HUD*****
- ▶ Be creative when brainstorming solutions to the barriers to Fair Housing in your community (go beyond housing)

RESOURCES

- ▶ The Color of Law: A forgotten History of how our government segregated America by Richard Rothstein
- ▶ The Warmth of Other Suns by Isabel Wilkerson
- ▶ President Biden's January 26,2021 Memo to Secretary of HUD: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>
- ▶ HUD Affirmatively Furthering Tools: <https://egis.hud.gov/affht/>

Questions?

Thank you!

