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RE: Complaint under Title VI of the Civil Rights Act of 1964

On behalf of Air Alliance Houston, Stop TxDOT I-45, LINK Houston, Texas Appleseed, and Texas Housers, we respectfully submit this complaint alleging violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. Department of Transportation's (USDOT) implementing regulations, 49 C.F.R. Part 21.

I. Introduction

Air Alliance Houston, Stop TxDOT I-45, LINK Houston, Texas Appleseed, and Texas Housers (Complainants) respectfully submit this complaint alleging violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. Department of Transportation's (USDOT) implementing regulations, 49 C.F.R. pt. 21. These civil rights violations stem from the Texas Department of Transportation's (TxDOT) adoption of a preferred alternative for the North Houston Highway Improvement Project (NHHIP) through its United Transportation Plan (UTP) that will result in disparate, severe, and unmitigated environmental and economic impacts on the predominantly Black and Hispanic/Latinx communities which lie in the path of the proposed expansion, including Second Ward, Third Ward, Fourth Ward, Fifth Ward, Independence Heights, Aldine, Acres Home, and Near Northside. TxDOT is a recipient of federal funds, and under Title VI, cannot lawfully take actions that have a discriminatory impact on the basis of race, color, and national origin.

The President of the United States has acknowledged the discriminatory history and ongoing discriminatory effects of the federal highway program:

[t]he creation of the Interstate Highway System, funded and constructed by the Federal Government and State governments in the 20th century, disproportionately burdened many historically Black and low-income neighborhoods in many American cities. Many urban interstate highways were

deliberately built to pass through Black neighborhoods, often requiring the destruction of housing and other local institutions. To this day, many Black neighborhoods are disconnected from access to high-quality housing, jobs, public transit, and other resources.¹

The use of highway construction and “Urban Renewal” programs to demolish and segregate Black and Hispanic/Latinx neighborhoods and communities is part of a longstanding pattern of federal, state, and local government use of policy and allocation of public resources to impose segregation and benefit white communities at the expense of Black, Hispanic/Latinx, and other communities of color.² As James Baldwin said in 1963, “Urban renewal is Negro removal.”

During the 20th century, Federal, State, and local governments systematically implemented racially discriminatory housing policies that contributed to segregated neighborhoods and inhibited equal opportunity and the chance to build wealth for Black, Latino, Asian American and Pacific Islander, and Native American families, and other underserved communities. Ongoing legacies of residential segregation and discrimination remain ever-present in our society. These include a racial gap in homeownership; a persistent undervaluation of properties owned by families of color; a disproportionate burden of pollution and exposure to the impacts of climate change in communities of color; and systemic barriers to safe, accessible, and affordable housing . . . ³

TxDOT’s current actions are openly discriminatory, but its actions are even more so in the context of historical and ongoing discrimination on the basis of race, color, and national origin. TxDOT may not, under federal law, further the wrongs of the initial highway siting decisions and the decades of significant adverse impacts in Black and Hispanic/Latinx neighborhoods adjacent to the NHHIP; it must, in fact, remedy them.⁴ The NHHIP,, however, not only perpetuates historical discrimination but intensifies

¹ President Joseph A. Biden, “*Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies*”, January 26, 2021. Available at: <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/>

² In addition to other forms, discrimination based on national origin includes discrimination against persons with limited English proficiency (LEP) under Title VI. *See*, Improving Access to Services for People with Limited English Proficiency, 65 Fed. Reg. 159 (Aug. 16, 2000); *see also* *Coldwell v. Dep’t of Health & Human Servs.*, 558 F.3d 1112 (9th Cir. 2009); *United States v. Maricopa Cnty.*, 915 F. Supp. 2d 1073 (D. Ariz. 2012); *Jones v. Gusman*, 296 F.R.D. 416 (E.D. La. June 6, 2013); and *Lau v. Nichols*, 414 U.S. 563 (1974). *See also*, DOT Guidance on LEP, 70 Fed. Reg. 7408, 74095 (Wednesday, December 14, 2005).

³ January 26, 2021 Memorandum.

⁴49 CFR S21.5(b)(7)

discriminatory impacts by widening and expanding I-45⁵ through neighborhoods occupied primarily by protected classes. In Segment 1, approximately 87% of residents are Black/Hispanic/Latinx; in Segment 2, 83.5% of residents are Black/Hispanic/Latinx; and in Segment 3, 76.3% of residents are Black/Hispanic/Latinx.⁶ The proposed expansion would displace 160 single-family residences, 433 multi-family residential units, 486 public and low-income housing multi-family units, 344 businesses, 5 places of worship, and 2 schools⁷; exacerbate already high levels of air pollution and other environmental hazards in already disproportionately burdened neighborhoods⁸; displace services and resources critical to low-income residents including a job training center, organizations that serve persons who are homeless, and a Texas Department of Health and Human Services office; place 26 schools and daycare centers within 500 feet of the highway; and destroy historically significant buildings and areas, among other disproportionate negative effects.

USDOT regulations require the Secretary of Transportation to “make a prompt investigation whenever a . . . complaint, or any other information indicates a possible” violation of Title VI. 49 C.F.R. § 21.11(c). If the Secretary determines that violations exist, he must inform the recipient of federal funds (here, TxDOT) and resolve the violations “by informal means whenever possible.” *Id.* § 21.11(d).⁹ If informal resolution is not possible, TxDOT’s continued violations may result in loss of federal financial assistance for the NHHIP project. *Id.* § 21.13(a) and render it ineligible for all federal transportation funds.

Because of the disproportionate and severe nature of the threats to the Complainants’ health, housing, community cohesion, and economic vitality presented by the NHHIP, Complainants request that the USDOT Departmental Office of Civil Rights accept this complaint and investigate whether TxDOT violated Title VI of the Civil Rights Act and its implementing regulations. Complainants request that USDOT continue to ensure that Black and Hispanic/Latinx persons and communities, and others similarly situated, are not irreparably harmed by TxDOT’s actions until this Complaint has been investigated and resolved.

⁵ While the NHHIP includes work on multiple highways and interchanges, many stakeholders and the general public used the phrase “I-45 expansion” or some variation thereof to refer to the entire project.

⁶ TxDOT, Final Environmental Impact Statement (FEIS), NHHIP, Houston District, August 2021, at 3-5 and 3-6.

⁷ FEIS, Table ES-2.

⁸ See, Air Alliance Houston, “Health Impact Assessment of the North Houston Highway Improvement Project”, May 2019. Available at: <https://airalliancehouston.org/wp-content/uploads/2019/09/HIA-Report-final-06-10-19.pdf>; Environmental Defense Fund, Available at: <https://www.edf.org/airqualitymaps/houston/findings>

⁹ Complainants request the opportunity to participate in any informal resolution, including negotiations and/or an opportunity to review and comment on any proposed resolution.

Finally, Complainants request that the Civil Rights Division of the U.S. Department of Justice (“DOJ”) play an active role in coordinating this federal investigation and any enforcement actions, consistent with the Federal Coordination and Compliance Section’s mission.¹⁰ On May 21, 2021, Complainants submitted a complaint to the Office of Civil Rights of the U.S. Environmental Protection Agency (EPA) alleging that TxDOT was in violation of Title VI because the NHHIP had significant and unaddressed environmental justice issues that also fell under the EPA’s authority. The complaint also informed EPA that the Federal Highway Administration (FHWA) was currently conducting a Title VI investigation and requested that EPA coordinate with FHWA to ensure that the environmental justice deficiencies and TxDOT’s non-compliance with Title VI are fully investigated and addressed.

On March 8, 2021, the Texas Division of the FHWA wrote to TxDOT requesting that TxDOT pause further contract solicitation efforts for the NHHIP to allow the federal agency “time to evaluate the serious Title VI concerns” raised by complaints it received from the public and an elected official.¹¹ On June 14, 2021, FHWA was forced to issue a second letter clarifying that the “pause” applied to right-of-way acquisitions, including solicitations, negotiations, eminent domain, and final design activities, because TxDOT had continued residential acquisition; including by threatening individual homeowners with the use of eminent domain if they refused to sell.¹² FHWA also informed TxDOT that it would be reviewing TxDOT’s compliance with the December 9, 2019, Memorandum of Understanding (MOU) that allowed TxDOT to issue the ROD.¹³

On June 30, 2021, the Texas Transportation Commission (TTC) announced that it was setting up a unique public comment process for TxDOT’s 10-year Unified Transportation Program (UTP) that was a significant departure from its regular UTP public comment process. The distributed public comment form began with questions specific to the NHHIP. TxDOT asked commenters to select one of two options: “Support maintaining project and funding as proposed,” or “Support removing project and

¹⁰ See Exec. Order No. 12250 § 1-201(a), *Leadership and Coordination of Federal Nondiscrimination Laws*, 45 Fed. Reg. 72,995 (Nov. 2, 1980) (“The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of . . . Title VI of the Civil Rights Act of 1964.”)

¹¹ June 14, 2021 letter from Achille Alonzi, District Administrator, FHWA, to Marc Williams, Executive Director, TxDOT.

¹² Paul Debendetto, “TxDOT Keeps Moving Forward On I-45 Project Despite Federal Warning, Feds Say”, *Houston Public Media*, June 24, 2021. Available at: <https://www.houstonpublicmedia.org/articles/news/transportation/2021/06/23/401359/txdot-kept-moving-forward-on-i-45-project-despite-federal-warning-documents-say/>.

¹³ June 14, 2021 letter from Achille Alonzi, District Administrator, FHWA, to Marc Williams, Executive Director, TxDOT.

funding.” No other option was presented. At its August 31, 2021 meeting, the TTC voted unanimously to approve the UTP, including the NHHIP project “as proposed.” Despite an ongoing Title VI investigation based on alleged discrimination in the NHHIP project “as proposed”, TxDOT decided, again, to move forward with a project it knew had a disproportionately high and adverse effect on environmental justice populations and persons protected under Title VI of the Civil Rights Act.

In addition to approving the UTP, the TTC announced that it would reconsider removing funding from the Houston-Harris County region again at its December 9, 2021 meeting, “ if no progress has been made and we’re still halted, and we have no viable path forward from FHWA . . . we’ll come back and we’ll revisit this after the 90 days have expired.”¹⁴ The TTC continued to hold the retaliatory threat of removing funding over the heads of persons and government officials who had filed civil rights complaints, and attempted to interfere with and curtail a federal Title VI investigation.

II. Parties

A. Complainants

Air Alliance Houston (AAH) is a Texas 501(c)(3) non-profit advocacy organization working to reduce the public health impacts from air pollution and advance environmental justice through applied research, education, and advocacy. AAH takes a strong stance against disproportionate exposure to air pollution by emphasizing an agenda centered on equity and environmental justice.

LINK Houston is a 501(c)(3) non-profit organization that advocates for a robust and equitable transportation network so that all people can reach opportunity. The organization envisions a world in which all people in Houston can easily access not only jobs but also educational experiences, medical appointments, grocery stores, greenspace, and other important destinations, regardless of their mode of transportation. To make that vision a reality, LINK Houston supports transformative and inclusive policies, systems, initiatives, and infrastructure development that advance equity and climate justice by connecting people to opportunity by transit, walking, rolling, and biking.

Stop TXDOT is a community based organization working to elevate walkability, challenge the status quo of transportation policy, build capacity within Houston neighborhoods to stop the I-45 expansion, and advocate for strategic, inclusive, and equitable transportation in Texas. Stop TXDOT represents community voices including those in the impacted areas.

¹⁴ TTC Chairman J. Bruce Bugg, August 31, 2021. Available: <http://txdot.swagit.com/play/08312021-654>

Texas Appleseed is a non-profit public interest justice center that promotes social, racial, and economic justice for all Texans. Our work includes a range of issues including criminal and juvenile justice reform, fair financial services, youth homelessness, education justice, and disaster recovery and fair housing, and is centered in supporting the most affected community members and community-based organizations. We work to ensure that communities of color and low-income communities are treated equitably, in areas including housing, disaster recovery, infrastructure investment, and environmental justice.

Texas Housers (incorporated as Texas Low Income Housing Information Service) is a Texas, IRS classified 501(c)(3) nonprofit organization incorporated in 1978. It operates from offices in Houston, Austin, and other Texas cities. The mission of Texas Housers is to support low-income Texans' efforts to achieve the American Dream of a decent, affordable home in a quality neighborhood.

B. Recipients

TxDOT (formerly known as the Texas Highway Department, was founded by the state legislature in 1917 and is an agency of the State of Texas. (Texas Transportation Code §201.001 et. seq.) TxDOT's key functions include, "plan[ning] and mak[ing] policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads,"¹⁵ in addition to planning, constructing, and maintaining other pieces of Texas' transportation system, including public transportation, railroads, airports, and the Gulf Intracoastal Waterway. TxDOT is governed by the Texas Transportation Commission (TTC), a five-member board appointed by the Governor. The TTC's responsibilities include selecting the agency's Executive Director, policymaking regarding the state's highway system, developing a statewide transportation plan, awarding contracts for the improvement of the state's highway system, and adopting rules for TxDOT's operation.¹⁶

III. Jurisdiction

Under Title VI of the Civil Rights Act of 1964, "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 subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. This prohibition on discrimination applies to all recipients of federal funds. Accepting federal funds from

¹⁵ Tex. Transp. Code §201.103(a); *see, also, generally*; Title 43, Tex. Admin. Code Ch. 2, subpt. A.

¹⁶ Title 43, Tex. Admin. Code, Ch. 1, Subchapter A, Rule §1.1.

USDOT obligates the recipient, in this case TxDOT, to comply with Title VI and USDOT's implementing regulations.¹⁷ Because TxDOT is a "program" receiving federal financial assistance from USDOT, this complaint meets the jurisdictional requirements established by Title VI and DOT's implementing regulations.

C. TxDOT is a "program" as defined by Title VI.

Title VI defines a program or activity as "all of the operations of . . . a department, agency . . . or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a state agency receives federal funds, the entire agency is covered by Title VI. TxDOT is a Texas State Agency created in 1991, by combining several previous state agencies, including the Texas State Department of Highways and Public Transportation.¹⁸ TxDOT uses and administers federal funds - more than \$1.45 billion in FHWA funds alone in FY 2020¹⁹ - activities which are listed in USDOT's Title VI implementing regulations as "activities to which this part applies." 49 C.F.R. pt. 21 App. A(1)–(2) Accordingly, TxDOT is a "program" under Title VI.

D. TxDOT receives federal financial assistance.

USDOT regulations define a "recipient" of federal funds as "any State . . . or any political subdivision thereof, or . . . any public or private agency . . . to whom Federal financial assistance is extended, directly or through another recipient." 49 C.F.R. § 21.23(f) USDOT regulations require applicants for agency funds to give "assurance" that they will comply with the agency's Title VI implementing regulations. 49 C.F.R. § 21.7a(1) TxDOT submitted assurances it would comply with Title VI most recently on September 30, 2020.²⁰

TxDOT, however, incorporates additional protected classes in its Nondiscrimination Statement:

The Texas Department of Transportation, as a recipient of Federal Financial assistance, and under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person on the grounds of **race, religion (where the primary**

¹⁷ 42 U.S.C. §§ 2000d to 2000d-7 and 49 C.F.R. pt. 21.

¹⁸ *Texas Transportation Code* §201.001 et. seq.

¹⁹ See, e.g. TxDOT, *Stewardship and Oversight Report FY 2020, Federal Highway Administration, Texas Division*, December 2020. Available at: <https://ftp.txdot.gov/pub/txdot-info/library/reports/gov/fhwa-stewardship/2020-report.pdf>

²⁰ See, TxDOT Civil Rights Division, *FY 2021 Title VI/Nondiscrimination Plan*, October 2020 at 45-47. Available at: <https://ftp.txdot.gov/pub/txdot-info/civ/title%20vi/title-vi-nondiscrimination-plan.pdf>

objective of the financial assistance is to provide employment per 42 U.S.C. §2003d-3), color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, excluded from, or otherwise be subjected to discrimination under any Department programs or activities.²¹ (Emphasis added).

TxDOT received \$4,346,816,446.00 in federal funds in Fiscal Year 2020 alone, and 32% of its 2022-2023 funding will come from federal funds.²² Because TxDOT receives financial assistance from U.S. DOT, it is subject to Title VI and US DOT's implementing regulations, as well as other civil rights laws and requirements.

E. This complaint is timely filed

USDOT's Title VI implementing regulations require that Title VI complaints be filed within 180 days of the alleged discriminatory act. 49 C.F.R. § 21.11(b).⁵ Complainants sent a letter to TxDOT alleging violations of Title VI and urging TxDOT not to issue a Record of Decision until these issues were resolved, on January 19, 2021. TxDOT published a notice of final action on the NHHIP environmental review in the Federal Register on February 8, 2021. 86 Fed. Reg. 8828 (Feb. 8, 2021). TxDOT then forwarded Complainant's January 19, 2021 letter to the Federal Highway Administration, which is treating it as a Title VI complaint. On August 31, 2021, the TTC voted to approve the state's Unified Transportation Program, specifically affirming that the NHHIP would go forward as proposed in the ROD, despite the fact that the U.S. Department of Transportation had directed TxDOT to halt contracting on the NHHIP until the FHWA's civil rights investigation was completed. The approval of the UTP is a discriminatory action. This complaint is filed on December 16, 2021 less than 180 days from August 31, 2021.

F. This Complaint is filed by Houston and Harris County residents and representatives of Houston and Harris County residents subject to discrimination on the basis of their race, color, or national origin.

²¹ TxDOT, FY 2021 *Title VI/Nondiscrimination Plan*, October 2020. Attachment 1. and pg. 4. "Title VI served as the model for subsequent nondiscrimination laws, including the Federal-Aid Highway Act of 1973 (gender), Section 504 of the Rehabilitation Act of 1973 (disability), and Age Discrimination Act of 1975 (age). TxDOT's nondiscrimination policy statement includes these protected classes to ensure that no person be subjected to any form of discrimination in our programs or activities."

Available at: <https://ftp.txdot.gov/pub/txdot-info/civ/title%20vi/title-vi-nondiscrimination-plan.pdf>

²² <https://www.usaspending.gov/search/?hash=c39e19e9bed005c45bfc59675cdc5729> and TxDOT, 2022 *Unified Transportation Plan*, Figure 8 at 24. Available at: <https://ftp.txdot.gov/pub/txdot/tpp/utp/utp-2022.pdf>

USDOT regulations provide that “[a]ny person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint.” 49 C.F.R. § 21.11(b). In compliance with the regulation, Complainants submit their complaint in writing, through their representatives Texas Appleseed and Dennis Grzezinski. Complainants are either Black and Hispanic/Latinx residents of neighborhoods that will be affected by the NHHIP, persons who believe a specific class of persons to be subjected to discrimination, and/or organizations who represent residents or have missions that include equitable and non-discriminatory use of public funds for transportation, environmental justice, housing, and racial justice.

Factual Background

A. The communities most impacted by I-45 are historically Black and Hispanic/Latinx neighborhoods already suffering because of past and ongoing discrimination and environmental racism.

The segment of I-45 that runs through Segment 3 of the NHHIP was one of the first freeways approved by the Texas Highway Commission in 1945. This segment of I-45 was constructed before the enactment of the Civil Rights Act in 1965, and before Congress enacted environmental laws that would have imposed on TxDOT the obligation to fully consider and mitigate the social, economic, and environmental impacts of the freeway, and give affected populations a voice in the process.²³

During the booming 1950s, parts of the Community RSA, particularly the Third, Fourth, and Fifth Wards, remained without adequate paving and drainage. These predominantly black communities received little public support, if any, for improvements to their parks, schools, or hospitals, and the construction of freeways threatened their already vulnerable communities. The construction of I-45 through downtown Houston started in the 1950s, with the Pierce Elevated opening in 1967. This section of I-45 displaced nearly 560 residences and businesses through Downtown and parts of the Third Ward, in addition to causing widespread turnover of neighborhood land uses. Most of the displaced residents in the Third Ward were renters with little legal power to contest the displacements. Overall, much of the right-of-way for Houston’s downtown freeways consisted of

²³ Notably, the National Environmental Policy Act (NEPA) 42 USC §4321 *et. seq.* signed January 1, 1970; its implementing regulations at 40 CFR §§ 1500-1508, issued in 1978; FHWA’s implementing regulations at 23 CFR §§771.101-771.139; and EO 12898, 59 FR 7629; February 16, 1994. I-45 replaced US-75, a two lane road.

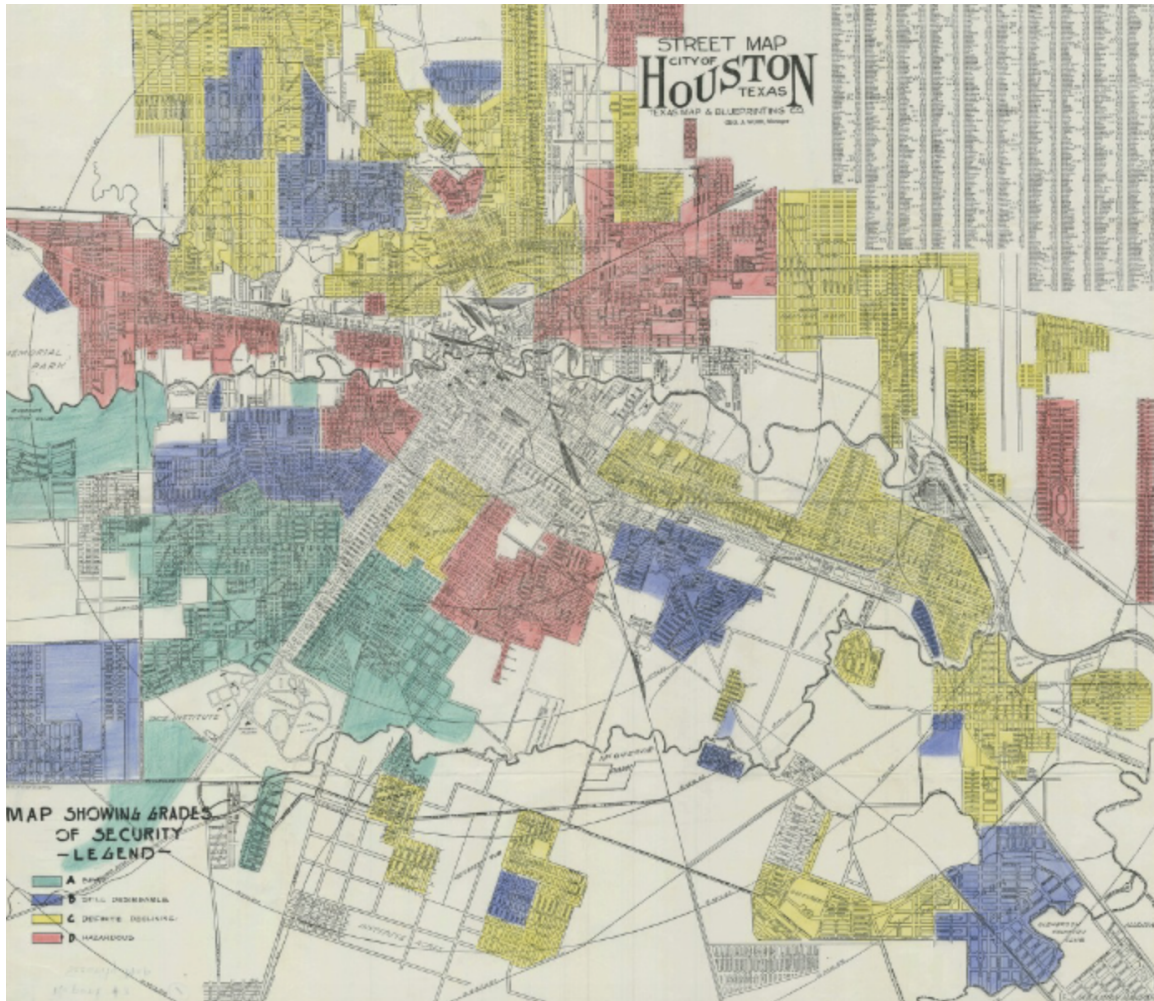
residential structures, with smaller impacts on commercial and industrial enterprises.²⁴

The original site selection, not only for I-45, but for many of the major highways in Houston, reflects the 1934 Home Owners' Loan Corporation (HOLC) Residential Security Map, which established the practice of “redlining” by designating Black and mixed-race areas as “high risk” and representing them in red on its Residential Security Maps. Redlining encouraged and enabled a wide range of discriminatory practices from lending discrimination to the location of industrial and environmentally hazardous uses – including highways – in these neighborhoods. On HOLC’s map of Houston,

[t]he tracts rated “hazardous,” without fail, reflected the concentration of black residents. For example, the majority (though not all) of the First Ward, Third Ward, Fourth Ward, Fifth Ward, and Sixth Ward were rated as “hazardous” or red. Other “hazardous” areas were Clinton Park and a neighborhood named “Brunsville” in the current Pleasantville area on the east side. This last neighborhood is for the most part gone, with Loop 610 and a number of railroads having diminished it to nearly nothing.²⁵

²⁴ Draft Final Cumulative Impacts Technical Report (CITR) at 30. (Internal quotations omitted.).

²⁵ Susan Rogers, “Hazardous: The Redlining of Houston’s Neighborhoods”, *OffCite*, October 4, 2016. Available at: <http://offcite.org/hazardous-the-redlining-of-houston-neighborhoods/>



Subsequent highways, including I-45, have taken a similar toll on many of these same neighborhoods, displacing entire neighborhoods, cutting Black and Hispanic/Latinx residents off from access to opportunities as diverse as grocery stores and healthcare, and reinforcing and exacerbating racial segregation

The construction of I-69, the I-10/I-69 interchange, and I-10 and U.S. 59 in the 1950s and 1960s displaced thousands of homes and businesses in the predominantly Black Fifth Ward and surrounding communities – by 1980, the population of Fifth Ward was half its pre-highway number – and created a physical barrier between Fifth Ward and the city, physically enforcing and perpetuating racial segregation.²⁶ The lack of pedestrian bridges and overpasses reinforced this segregation and is another example of TxDOT’s discriminatory actions. While the wealthier and whiter neighborhoods along I-59 had multiple overpasses, Fifth Ward “didn’t get any cute little bridges . . . we just got

²⁶ Bullard, Robert D., *Invisible Houston: The Black Experience in Boom and Bust* (College Station: Reville Books, Texas A&M University Press, 1987) at 27.

a complete wipeout.”²⁷ TxDOT’s failure to provide mitigating infrastructure also resulted in the deaths of children who had to cross the interstate to get to school.²⁸

The construction of the Eastex Freeway in the mid-1950s ran through the Second Ward - known as Segundo Barrio, because its population was predominantly Hispanic/Latinx - displacing residents and businesses.²⁹ At the same time, the Houston Housing Authority was constructing Clayton Homes, a public housing development that would serve a majority-Black population of tenants, within 100 feet of the freeway right of way that cut off residents’ access to businesses and public services and segregated them from the rest of Houston.³⁰

Third Ward, a historically Black community, also suffered displacement, losing over 2,000 homes to the construction of I-45 and State Highway 288 in the 1960s.³¹ The construction of the Pierce Elevated further divided Third Ward and destroyed its central business district.³²

Houston is frequently touted as “the most diverse city in America.”³³ Houston’s diversity and the fact that the City’s population is majority-minority are also frequently used to deny the impact of racism or the possibility of disproportionate impact on the basis of race, color, or national origin. However, like most large American cities, Houston is also extremely segregated. Harris County is also the 18th most segregated urban county in the country.³⁴ Highways in Houston have historically functioned to enforce and perpetuate segregation. The following map is a stark illustration of both racial and ethnic segregation in Houston, and of how highways delineate and enforce that segregation. I-45, SH 288, and US-59/69 - which will be expanded as part of the NHHIP preferred alternative - are particularly central to enforcing segregation and preventing or facilitating access to high resource areas and other neighborhoods.

²⁷ *Power Moves* at 84, quoting Beneva Williams, Fifth Ward resident.

²⁸ *Power Moves* at 85.

²⁹ *Power Moves* at 61

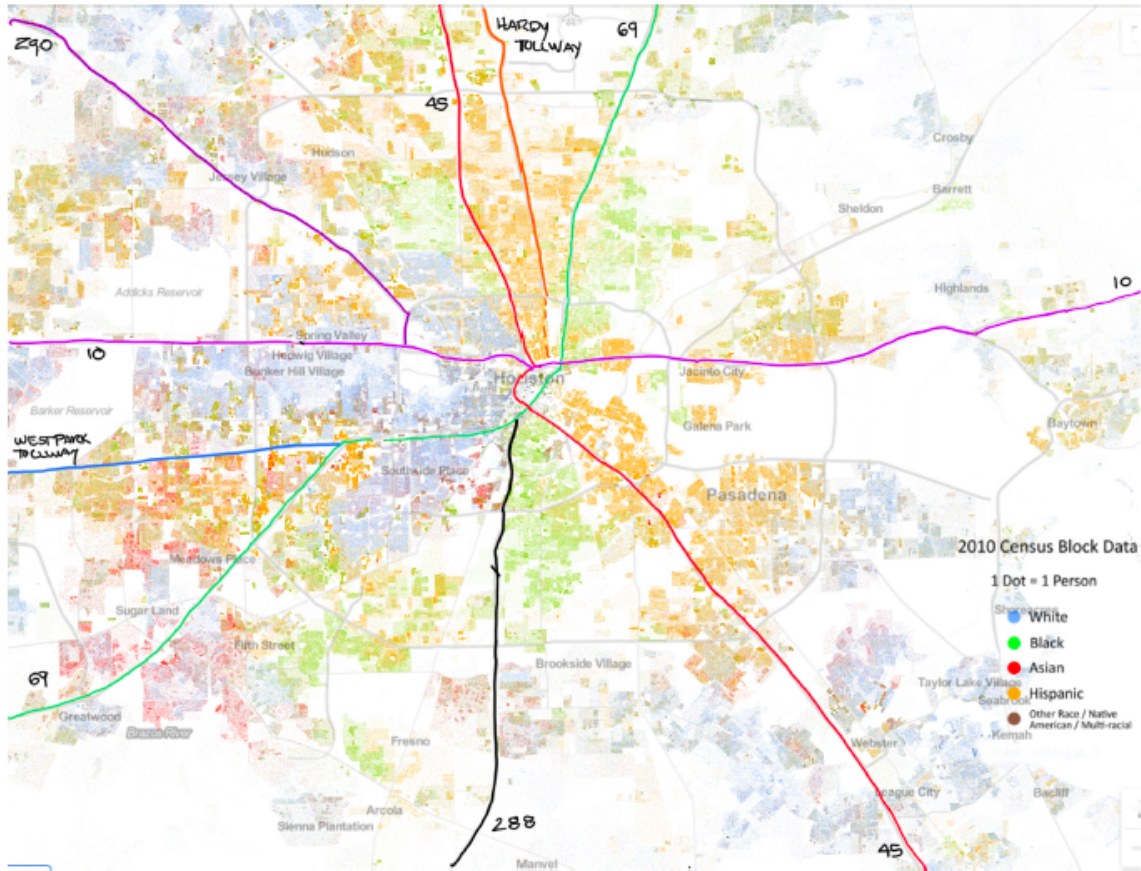
³⁰ See, <http://www.housingforhouston.com/publichousing/housingdevelopments/claytonhomes.aspx>

³¹ *Power Moves* at 76-77.

³² *Invisible Houston* at 76-77.

³³ Catherine Wendlant, “Houston is the Most Diverse City in America”, *HOUSTONIA*, April 21, 2021. Available at: <https://www.houstoniamag.com/news-and-city-life/2021/04/houston-is-the-most-diverse-city-in-america>

³⁴ Joe Cortright, “Where does Houston rank among America’s least (and most) segregated cities?”, *Urban Edge*, Kinder Institute for Urban Research at Rice University, September 4, 2020. Available at: <https://kinder.rice.edu/urbanedge/2020/09/04/houston-rank-america-least-and-most-segregated-cities>



Map: Texas Housers, Title VI Complaint to FHWA at 5.

The original siting of highways in Houston and Harris County was discriminatory; TxDOT's proposal to expand these highways in place without any attempt to redress the effects of those discriminatory decisions - or substantive attempt to mitigate ongoing adverse effects - perpetuates and exacerbates that discrimination.

B. History of the Proposed North Houston Highway Improvement Plan (NHHIP)

i. Planning and Scoping

TxDOT has been planning highway and transportation changes to the I-45 area for almost 20 years. In January 2002, TxDOT, the Metropolitan Transit Authority of Harris County (METRO), and the Houston-Galveston Council (H-GAC) began the North-Hardy Planning Study, a comprehensive transportation study of the area between I-45 and the Hardy Toll Road, starting from Downtown Houston and continuing approximately 30 miles northbound towards The Woodlands and SH 242 in Montgomery

County.³⁵ TxDOT considers the North-Hardy planning study part of the process of developing alternatives that culminated in the ROD.³⁶ TxDOT, METRO, and H-GAC published two Alternatives Analysis Reports; one in 2004 on the transit component, and one in 2005 on the highway component.³⁷ The Environmental Justice section of the Highway Alternative study states that “[b]ased on an assessment of a variety of factors that are considerations for environmental justice, there are no disproportionately high or adverse effects anticipated from any of the proposed Highway Build Alternatives on minority and low-income populations” and the recommended a build alternative.³⁸

Public comment on the build alternatives in the North-Hardy study was overwhelmingly negative, including a petition signed by 800 residents of Houston asking that the I-45 project remain in the existing Right of Way (ROW), include alternative modes of transportation, and not affect the quality of life for residents.³⁹ Commenters also objected to the lack of meetings or information in Spanish.⁴⁰ In October 2006, TxDOT sent a project initiation letter for the NHHIP to FHWA.⁴¹

FHWA and TxDOT published the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the NHHIP in the State and Federal Registers in October 2011.⁴² Between November 2011 and April 2015, TxDOT held four rounds of Cooperating and Participating Agency Scoping Meetings to define the need for and purpose of the proposed project, select the range of alternatives that TxDOT would

³⁵ *North-Hardy Planning: Alternatives Analysis Report (Highway Component)*, November 2005. Available: [https://www.h-gac.com/getmedia/9b424722-44a7-42fc-9da1-7ba9f30da07a/North%20Hardy%20Alternatives%20Analysis%20Report%20\(Highway\)%20Final%20November%202005.pdf](https://www.h-gac.com/getmedia/9b424722-44a7-42fc-9da1-7ba9f30da07a/North%20Hardy%20Alternatives%20Analysis%20Report%20(Highway)%20Final%20November%202005.pdf) The planning study clearly identified disparities between sections of potential affected areas. Sections north of Houston (Spring/The Woodlands) were disproportionately whiter and higher income than the sections of the proposed project area in the City of Houston. *See, North-Hardy Planning: Highway Component* at 54-59. This pattern remains. The Woodlands, for example, an exclusive suburb where the median income is \$122,634, is 4.5% Black and 17% Hispanic/Latinx, with a 4.3% poverty rate. Montgomery County, with a \$80,902 median income is 5.9% Black, 25.2% Hispanic/Latinx, with a poverty rate of 8.9%. In comparison, Harris County as a whole has a median income of \$61,705, and is 20% Black and 43.7% Hispanic/Latinx, with a poverty rate of 15%. U.S. *Census Bureau: Quick Facts*, Available at: <https://www.census.gov/quickfacts/fact/table/US/PST045219>

³⁶ FEIS at 2-1.

³⁷ While TxDOT frequently refers to the North-Hardy study as evidence of its long term planning and of the need for a build alternative, it generally ignores the transit component of that study and has refused to work with METRO to even mitigate the impact of construction on public transit.

³⁸ *North-Hardy Highway Component* at 60-62.

³⁹ *North-Hardy Highway Component*, Appendix I, at 45.

⁴⁰ *North-Hardy Highway Component*, Appendix I, October 26, 2004. Public Meeting Comments, at 26-37, comments 13,14,21,30, and 31.

⁴¹ At the time, FHWA was the lead agency for NEPA environmental review purposes, with TxDOT as the cooperating agency. On December 16, 2014, signed an MOU transferring primary responsibility for environmental reviews to TxDOT.

⁴² 36 Tex.Reg. §7043 (Oct. 14, 2011); and 76 FR. §65775 (Oct. 24, 2011)

consider for the proposed project in the DEIS, and collect public and stakeholder input on preliminary alternative design concepts, including environmental and other factors or issues. Presentations and exhibit boards for these scoping meetings were not translated into Spanish until the third meeting.

The first set of Public Scoping Meetings, held in 2011, included a survey asking attendees “Overall, do you support or oppose the idea to improve highway transportation in the North Houston Area.” Despite the question’s characterization of the project only as “improv[ing] highway transportation,” commenters clearly understood that TxDOT was proposing a freeway expansion. The majority of commenters specifically opposed expanding the I-45 ROW, and included comments on the loss of homes and businesses, the destruction of community cohesion, and increases in noise and air pollution - one commenter stated. “I currently cannot open the windows of my building because of the incredible level of noise produced by the adjacent pierce elevated. the pollution that enters the room is evident in the dark matter that is collected in our AC system vents and living area surfaces.” [sic]⁴³ Commenters also reminded TxDOT that building the original I-45 had destroyed homes and forced displacements in the same neighborhoods, and survey responses also included numerous comments on TxDOT’s lack of transparency, failure to provide information in Spanish, lack of alternative options, and general failure to listen to the affected communities.⁴⁴ TxDOT evaluated this universe of alternatives according to five initial screening criteria:

- “Meets the need for the project, purpose of the project, and specific project goals: Yes or No
- Meets current design criteria: Yes or No
- Requires new right-of-way between Cavalcade Street and Quitman Street (not including at intersections): Yes or No
- Provides traffic/mobility improvements: High/Medium/Low. Rating is based on travel demand modeling and considers how many drivers will use the highway if improved, how this compares among the alternatives, and how many hours drivers can expect to save traveling on the highway if improved. High is the best rating.
- Impacts community parks, cemeteries, historic properties currently listed on the National Register of Historic Places, or recorded archeological sites (due to right-of-way acquisition): Yes or No”⁴⁵

⁴³ Comment E6.

⁴⁴First Scoping Meeting Documents. Available:
http://www.ih45northandmore.com/scoping_documents.aspx

⁴⁵ DEIS at 2-7.

Despite the overwhelming negative feedback, the universe of alternatives TxDOT presented in subsequent Public Scoping Meetings included few potential options that did not include highway expansion and resulting displacements. The scoring and criteria were also frequently confusing and unclear. For example, in the second set of Public Scoping Meetings, held in 2012, the Alternatives Screening and Evaluation Matrix presented by TxDOT the Evaluation Criteria for “additional ROW” was marked N/A and not “yes”, even when the Alternative description stated that additional ROW would be acquired.⁴⁶ Public feedback was again critical of the preferred alternatives - almost exclusively so. Comments on the written survey included complaints about the lack of public information and outreach in affected communities, lack of Spanish translation, and expressed confusion about the information TxDOT was presenting.

Even commenters who generally supported improving highway infrastructure often qualified their support. Almost half of supportive comments conditioned their support on no increase in the ROW, or otherwise expressed concerns about the displacement of homes and businesses.⁴⁷ Commenters raised concerns about noise, air quality, and TxDOT’s reliance on traffic and other studies that were more than a decade old. There were a number of comments from business owners who would lose their business if I-45 was expanded, including the number of employees that would lose their jobs.⁴⁸

Nevertheless, TxDOT eliminated the alternatives with the most public support - adding managed lanes to the Hardy Toll Road, increasing public transit, and tunneling I-45 under the Segment 3 and Downtown portions of the project - between the 2nd and 3rd Public Scoping Meetings, but added options that increased the ROW and burdens on adjacent neighborhoods. Public comments pointed out, for example, that Alternative 7 for Segment 1 was presented at the 2nd Public Scoping Meeting as four elevated managed lanes requiring only 30 feet of additional ROW, but at the 3rd Scoping Meeting Alternative 7 required up to 81 feet of ROW. Alternatives 4 and 5 also required increased ROW, from 150 feet to 225 feet, without explanation. For Segment 3, TxDOT eliminated the bored tunnel alternatives that the public supported, and added two new alternatives (11 and 12).⁴⁹

⁴⁶ Second Scoping Meeting Documents Available:
http://www.ih45northandmore.com/scoping_documents2.aspx

⁴⁷ Second Scoping Meeting Documents, Vol. 2 Section 2: Email Comments Available:
<http://www.ih45northandmore.com/docs2/Vol.2%20Section%202%20Email%20Comments.pdf>

⁴⁸ Second Scoping Meeting Documents, Vol. 2 Section 2: Email Comments Available:
<http://www.ih45northandmore.com/docs2/Vol.2%20Section%202%20Email%20Comments.pdf>

⁴⁹ Citizens’ Transportation Coalition Comments on Meeting #3 - conducted November 14 & 19, 2013, submitted to TxDOT by email on January 31, 2014. (Alternatives 11 and 12 are not included in the “North Houston Highway Project - Universe of Alternatives Summary” presented by TxDOT at the 2nd Scoping Meetings.)

The public continued to both oppose increasing the I-45 ROW and point out the disproportionate adverse impacts of the alternatives selected by TxDOT on minority and low-income populations:

We employ over 200 employees at our store. These employees depend on their jobs to make a decent living. We also have 19 vendors [sic] that lease space from us with about 40 employees between them. There are 3 Housing complexes for the disabled and elderly within walking distance from the store totaling approximately 770 units. Most of these residents do not have vehicles, so they walk or ride their scooters to our store which is the closest supermarket to them. We also provide foods that these diversified individuals cannot get anywhere else. We are not just your usual grocery store. We serve a melting pot of customers from all over the world, and we carry foods from around the world that are not just found in any supermarket. There is also a bank inside our store which is important to our customers that do not have a vehicle.⁵⁰

Our home and business is located along the I45 service road. We have been working and living there for over 40 years. Most Project Alternatives would cause us to lose our homes and business and we'd be forced to relocate entirely. Our business is family owned and operated.⁵¹

I've been working at Dagos Tattoos for 20 years now and my father-in-law been in business for 40 years. This freeway is going to affect our home & business. We do not approve of this. We are going to lose employees and lose the place that changed our life and gave people a second chance. It's hurtful & sad that we work so hard so that someone can take from us.⁵² [sic]

This is a bad decision to expand the I-45 Freeway. With the economy being so bad and it being difficult to make a living the added stress from retail sales from the construction problems will probably cost me my job. I am barely making it now and being in sales, with the lack of business major road construction causes there is no way this will help. I lost my job when Katy Freeway was torn up

⁵⁰ Letter from Oscar Trujillo, Store Manager, Fiesta #11 to the Director of Project Development, TxDOT, December 2, 2013. 3rd Public Scoping Meeting, Vol. 2 Section 2: Email Comments Available: http://www.ih45northandmore.com/scoping_documents3.aspx

⁵¹ Public Comment from Celeste Coelho, NHHIP Third Public Meeting Comment Form, November 19 2013. Vol 2. Section 5. Available: http://www.ih45northandmore.com/scoping_documents3.aspx

⁵² Public Comments from Joel Ramirez, Jr., NHHIP Third Public Meeting Comment Form, November 19, Vol. 2. Section 5: 2013. Available: http://www.ih45northandmore.com/scoping_documents3.aspx

*because my employer had to reorganize. I am over 50 years old and cannot have this happen again and expect to recover from this.*⁵³

*There are so many areas of Houston that are being ruined by highway interchanges and construction. It is easy to see that most of the areas affected are less economically prosperous neighborhoods. These projects don't benefit the neighborhoods, only the people in cars passing through them.*⁵⁴

Between the 3rd and 4th Public Scoping Meetings, TxDOT evaluated the Alternatives presented in November 2013 “in consideration of; the Project Need and Purpose, the Project Goals, public and agency feedback from prior meetings, input from additional meetings with stakeholders, and engineering, traffic, and environmental studies” in order to identify and develop the Proposed Recommended Alternative presented at the 4th Public Scoping Meeting.⁵⁵

On December 16, 2014, FHWA and TxDOT signed a Memorandum of Understanding (MOU) which made TxDOT the lead agency for the NHHIP environmental review, including Section 4(f) compliance, allowing TxDOT to certify its own NEPA compliance without federal review. Under the MOU, TxDOT accepted responsibility for complying with the same federal environmental and administrative law standards that would otherwise apply to a federal agency; in this case, FHWA.⁵⁶ On December 9, 2019, FHWA and TxDOT renewed the MOU for another five-year period.⁵⁷ TxDOT has failed to carry out its responsibilities under the MOU and federal law, including Title VI compliance.

Beginning in the early 2000s, TxDOT had notice of numerous potential civil

⁵³ Comment from NHHIP Website by George Dorris, December 2, 2013. Vol. 2. Section 4. Available: <http://www.ih45northandmore.com/docs3/NHHIP%20PM3%20Summary%20Report%20Vol%202%20Section%204%20Website%20Comments.pdf>

⁵⁴ Comment from NHHIP Website by Laura Bodenheimer, January 28, 2014. Vol 2. Section 4. Available: <http://www.ih45northandmore.com/docs3/NHHIP%20PM3%20Summary%20Report%20Vol%202%20Section%204%20Website%20Comments.pdf>

⁵⁵ Fourth Public Meeting Documentation Report, Appendix F at 9. Available: <http://www.ih45northandmore.com/docs6/Appendix%20F.pdf>

⁵⁶ 23 U.S.C. § 327(a)(2)(C) (“A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.”)

⁵⁷ As detailed below, TxDOT has failed to fully comply with the procedural requirements of NEPA’s environmental review, § 4(f) review, the CEQ’s NEPA regulations, and FHWA’s environmental review regulations in ways that significantly impaired the ability of the public to participate and comment during the process. TxDOT has also failed to fully comply with the substantive requirements of NEPA’s environmental review, § 4(f) review, the CEQ’s NEPA regulations, and FHWA’s environmental review regulations in violation of the laws and regulations.

rights and NEPA violations related to the NHHIP. By the time TxDOT released the ROD, and approved the 2022 UTP, the agency had actual knowledge, gained through its own EIS process, that the NHHIP would have a disproportionately high and adverse effect on Black and Hispanic/Latinx neighborhoods and environmental justice populations in violation of the environmental justice provisions of NEPA, Title VI of the Civil Rights Act, and other civil rights protections..

ii. Draft Environmental Impact Statement (DEIS)

In April 2017, TxDOT made an incomplete DEIS available for public review and comment.⁵⁸ TxDOT held two open houses and public hearings, and a community meeting in May 2017. Public Comments were due on June 27, 2017.

The DEIS evaluated only the project alternatives identified during the planning and scoping process for each of the three segments, all of which included the “expansion of roadway capacity.” The preferred alternative TxDOT selected - without incorporating environmental justice and civil rights complaints into its process - for each segment involved adding lanes and increasing the ROW.⁵⁹ TxDOT claimed that “[t]he alternatives were modified, where possible, to avoid and/or minimize adverse impacts to existing development and community resources (e.g., parks and cemeteries), and to improve traffic flow or connectivity with other alternatives.”⁶⁰ In fact, however, the agency was utilizing criteria that eliminated multiple less discriminatory alternatives to the NHHIP before conducting a NEPA analysis, subjecting persons to discrimination because of their race, color, and national origin.

FHWA regulations require that a DEIS be signed by the lead agency and then released to the public **only when the DEIS complies with all NEPA requirements.**⁶¹ (Emphasis added). TxDOT signed the cover sheet affirming that the agency was “satisfied that the draft EIS complies with NEPA requirements” on April 19, 2017. The DEIS must be a single document, including appendices and technical reports.⁶²

Public comments on the DEIS objected to the fact that the DEIS was not complete and did not include critical information, including impacts on parks and historical resources, quantitative noise impacts, visual impacts, community and environmental justice issues, quantitative air quality analysis, and drainage and water resource impacts,

⁵⁸ 82 FR 19715 (April 28, 2017)

⁵⁹ TxDOT DEIS at 1-5.

⁶⁰ DEIS at 2-8

⁶¹ 23 C.F.R. § 771.123(g)

⁶² *See*; 40 C.F.R. §1502.9(a); 23 C.F.R. § 771.123(g)

required by NEPA and FHWA regulations.⁶³

TxDOT's DEIS was incomplete at the time of its release and during the public comment period because it did not contain all the information required by NEPA and FHWA regulations.⁶⁴ TxDOT's failure to include review or adequate discussion of numerous environmental, community, and other impacts that a DEIS is required to include, forced the public to comment on an incomplete DEIS that excluded critical information, particularly the Community Impact Assessment. Without this information, it was impossible for the public to understand the impacts of the NHHIP preferred alternative, and, therefore, impossible for the public to provide the meaningful public oversight and input that NEPA and FHWA demand. The information excluded was particularly important to the minority and environmental justice populations that would be most adversely affected by the NHHIP preferred alternative.

Agencies "shall prepare environmental impact statements in two stages and, where necessary, supplement them. "If an agency prepares an appendix, the agency shall publish it with the environmental impact statement."⁶⁵ A supplemental DEIS is mandatory; "[i]f a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion."⁶⁶

TxDOT tried to evade these legal requirements by releasing 12 individual technical reports and analyses on five separate dates between June 20, 2018, and December 19, 2019, and characterizing them as Draft Technical Reports for the FEIS instead of publishing a supplemental DEIS. TxDOT cannot cure its failure to comply with FHWA and NEPA regulations by releasing information that should have been included in the DEIS piecemeal over the next two years.. If TxDOT had not completed compliant technical reports for the NHHIP DEIS before December 2019, the agency should not have released the DEIS for public comment until December 2019, or should have issued a supplemental DEIS.

Because TxDOT failed to include the required review or discussion of numerous environmental, community, and other impacts in the document that it presented to the

⁶³ FEIS, Volume 3, Draft EIS Comments. Available: http://www.ih45northandmore.com/docs14/NHHIP_FEIS_Files/30_DEIS_Public_Hearing_Comments_Redacted.pdf

⁶⁴ 40 C.F.R. § 1502.9(a); 23 C.F.R. § 771.123(g) TxDOT has also failed to consider how the METRONext Moving Forward Plan ("METRONext") plan, which would have significant impacts on connectivity and traffic congestion, will affect and be incorporated into the NHHIP. (The METRONext plan was approved by Harris County voters on November 5, 2019.)

⁶⁵ 40 CFR §1502.19

⁶⁶ 40 CFR §1502.9(b)

public as a DEIS, the agency forced the public to comment on an incomplete DEIS that excluded critical information, particularly the Community Impact Assessment. Without this information, it was impossible for the public to understand the impacts of the NHHIP preferred alternative, and, therefore, impossible for the public to provide meaningful public input and oversight.. Effectively, the public was never provided with an opportunity to comment on a DEIS for the project.

Comments submitted on the DEIS and the subsequent 12 additional reports not only pointed out TxDOT's failure to comply with NEPA and other federal requirements, they also identified significant civil rights implications.

Complainant LINK Houston's February 7, 2020, comments on TxDOT's December 2019 Draft Community Impacts Assessment (CIA) and Draft Cumulative Impacts Technical Report (CITR), for example, specifically point out TxDOT's failure to address that the NHHIP would disproportionately displace minority populations, or that its proposed mitigation strategy - relocation - would also have a disproportionate adverse impact on the same populations.⁶⁷

Complainant Air Alliance Houston (AAH) also submitted comments on the December 2019 CIA and CITR.⁶⁸ These comments were submitted on behalf of AAH and 12 other organizations, largely located in the communities that would be most affected by the proposed NHHIP. AAH's comments also focused on TxDOT's failure to comply with NEPA and address the inherent racism in the history of the agency's infrastructure decisions. The comments pointed out TxDOT's failure to follow CEQ Guidance, failure to account for the air and water quality, displacement, environmental justice, and induced demands impacts of the NHHIP, as well as the use of outdated data and limited modeling in the Technical Reports that skewed the results of those reports. For example, TxDOT's CITR says that the region is classified as "moderate" for the eight hour ozone standard, but uses the 2008 standard when the region was re-classified as "serious" in September 2019 and when the CITR included air monitoring and reporting for only one segment of NHHIP construction.

TxDOT never released a single-document DEIS that complied with FHWA and NEPA regulations.⁶⁹ Instead, it released detailed technical reports over a multi-year

⁶⁷ February 7, 2020 Comment Letter from LINK Houston to Eliza Paul, P.E., TxDOT Available at: <http://linkhouston.org/wp-content/uploads/2020/02/LINK-Houston-Comments-on-TxDOT-NHHIP-Technical-Reports-from-December-2019.pdf>

⁶⁸ February 7, 2020 Comment Letter to TxDOT from AAH, Available at: <https://img1.wsimg.com/blobby/go/86a926a3-fdac-43e2-a0fb-1a8e433f3a8f/downloads/2020-02-07%20AAH%20Comments%20on%20NHHIP%20CIA.pdf?ver=1630544403683>

⁶⁹ See: 40 C.F.R. §1502.9(a); and, 23 C.F.R. § 771.123(g)

period after public comment had closed, and then treated public comment on the technical reports as part of public comment on the DEIS. Volume III of the FEIS includes both comments on responses on the Draft EIS and comments and responses on the subsequent draft technical reports.⁷⁰

iii. Final Environmental Impact Statement (FEIS)

On September 25, 2020, TxDOT published a notice that the FEIS had been completed and was available for public comment until November 9, 2020. The comment period was extended until December 9, 2020,

TxDOT's selected alternative for the NHHIP is divided into three different segments. Segment 1 is I-45 from Beltway 8 North to north of Interstate Highway 610 ("I-610") (North Loop). Segment 2 is I-45 from north of I-610 (North Loop) to Interstate Highway 10 ("I-10") [including the interchange with I-610]. Segment 3 is the Downtown Loop System [I-45, U.S. Highway 59/Interstate Highway 69 ("US 59/I-69"), and I-10]. TxDOT plans to build Segment 3 first, followed by Segment 2, and then Segment 1.⁷¹

⁷⁰ See, FEIS Volume III: Comments and Responses, August, 2020.. Available: http://www.ih45northandmore.com/final_eis.aspx

⁷¹ TxDOT has been engaged in the procurement process to select a design-build contractor for Segment 3 since at least 2018.

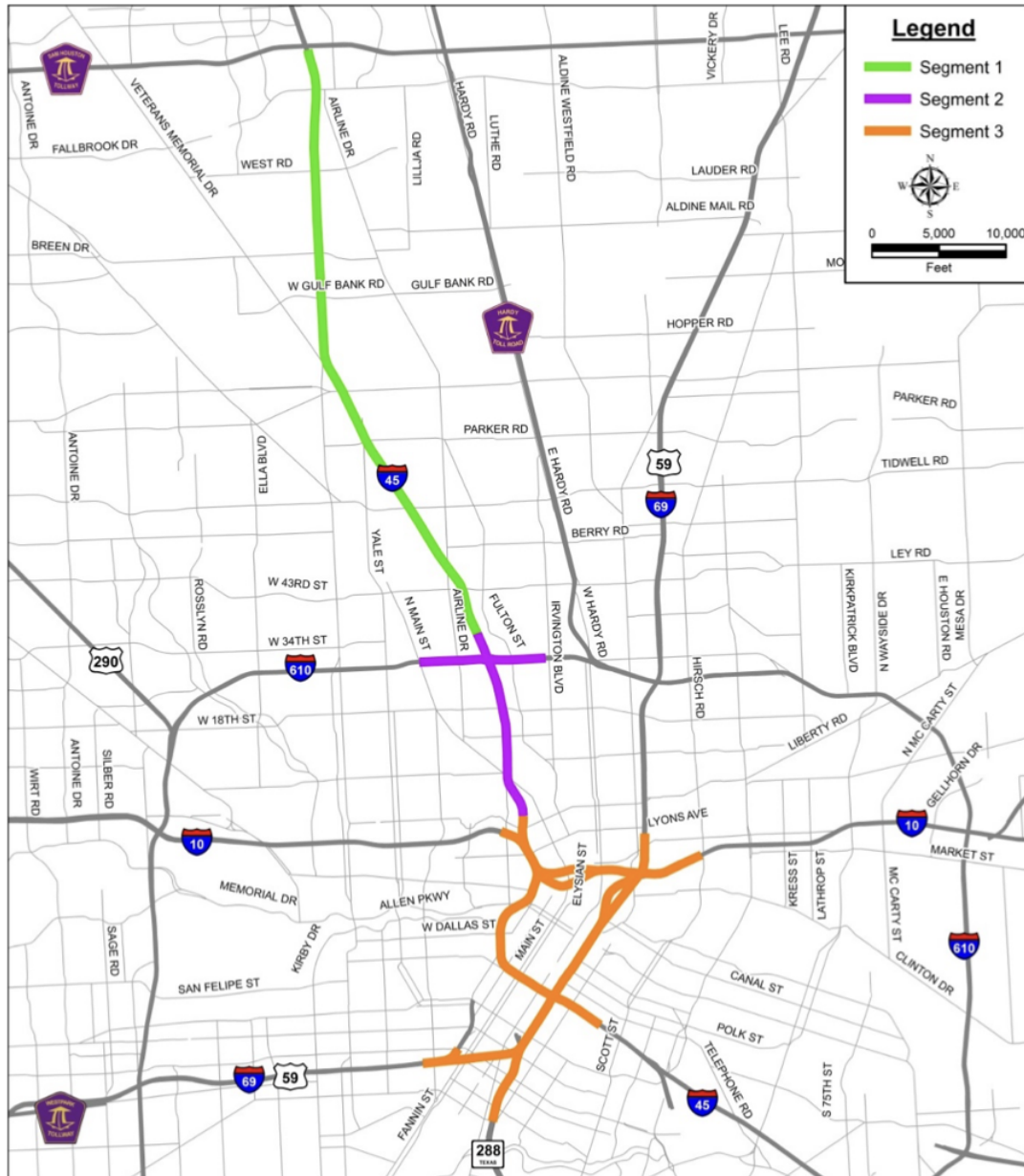


Figure 1-3 NHHIP Project Area Map, FEIS 1-17

The selected alternative expanded the required right of way (ROW) in all three segments, increasing displacement and other adverse effects in the adjacent communities of color.

All but one of TxDOT's design changes to Segments 1 and 2 required increasing the ROW to build detention ponds, add additional lanes (Change 2-4), or "increase the curve radius to provide a more desirable sight distance for drivers" (Change 2-1).

TxDOT's design changes to Segment 3 (based on "public and agency input")⁷² did modify the project design, for example, to avoid ROW acquisition at a historic property on Wrightwood Street, to avoid ROW acquisition at Freed Art and Nature Park, and to avoid ROW acquisition at Linear Park.⁷³ All of these changes, however, primarily benefited non-minority and higher-income populations and areas.

Public comments on the FEIS pointed out that TXDOT had failed to address deficiencies with the DEIS and draft Technical Reports and reiterated suggestions for less discriminatory alternatives and more substantive mitigation. Comments submitted by Harris County Judge Lina Hidalgo behalf of Harris County, for example, pointed out that "the FEIS for the NHHIP includes significant methodological flaws and omissions, including (i) inaccurate claims regarding the impacts of the alternatives identified in the FEIS, including as relates to congestion, safety, and evacuation routes; (ii) unsound project structure and methodology; and (iii) omissions of critical and/or required information", including the agency's failure to discuss climate change impacts.⁷⁴ In addition to detailing the deficiencies of the FEIS, the County's comments also included a less discriminatory alternative (Appendix D) and a report on the inequitable impacts of the preferred alternative (Appendix G).

Comments from the Harris County Engineer - which incorporated comments from three Harris County infrastructure departments - also concluded that "the FEIS does not contain sufficient detail and commitments to ensure that the project addresses the serious concerns raised by the residents and businesses in the surrounding neighborhoods" and that "there are gaps and missing pieces in the FEIS that must be addressed by TxDOT prior to the issuance of the Record of Decision."⁷⁵

Likewise, the City of Houston's comments on the FEIS pointed out that TxDOT's proposed mitigation was inadequate, particularly regarding the displacement of homes

⁷² FEIS at 1-19; *see, also*; FEIS ES-1 ("Since the release of the NHHIP Draft EIS in 2017, TxDOT has continued public engagement through community meetings and by posting updated technical reports for public comments. Feedback received during that robust public engagement period resulted in project design changes as well as new information on the project's environmental concerns, impacts, and mitigation. This input resulted in changes to the EIS."); FEIS 2-41 ("In response to comments received during the Draft EIS comment period and from continuing stakeholder input and coordination, the project design was revised between May 2017 and December 2019.")

⁷³FEIS at 2-52

⁷⁴ December 8, 2020 letter from County Judge Lina Hidalgo to Brian R. Barth, Director of Project Planning and Development, TxDOT.

⁷⁵ December 8, 2020 letter from John R. Blount, County Engineer, Russell Poppe, Executive Director, Harris County Flood Control District, and Peter W. Key, Interim Director, Harris County Toll Road Authority, to Brian R. Barth, Director of Project Planning and Development, TxDOT, Comments on the Final Environmental Impact Statement (FEIS) for the North Houston Highway Improvement Project (NHHIP)

and business. “TxDOT should increase its commitment to replacement of this housing stock at replacement value to capture the full need, . . . develop a similar plan for relocating businesses that will be displaced,” and plan to relocate public and affordable housing residents within their current neighborhoods.⁷⁶ The city also criticized TxDOT for failing to include specific criteria or sufficient detail about flood mitigation.

Congresswoman Sheila Jackson Lee also submitted comments on the FEIS, requesting additional time to submit public comments based on the high rate of COVID-19 deaths in the communities most affected by the NHHIP, and pointing out that the FEIS was 8,189 pages.⁷⁷ The Congresswoman’s letter also reiterated significant concerns of her constituents that remained unaddressed, particularly air quality in adjacent schools, insufficient flood protection because TxDOT was using the 100 year and not 500 year storm event standard, unsafe highway-urban interface design, and disproportionate impacts of displacement and degraded noise and air quality on communities of color. The letter specifically raised Title VI issues. TxDOT neither extended the public comment process nor addressed the issues raised in Congresswoman Jackson Lee’s letter.

Even after the FEIS public comment period closed, both advocates⁷⁸ and local government officials continued to urge TxDOT to comply with NEPA and Title VI requirements. TxDOT responded to local and regional government officials with threats to reallocate funding if they took any action to even suggest the FEIS was not compliant.⁷⁹

iv. Record of Decision (ROD)

TxDOT issued the ROD ending the NEPA process and adopting the preferred alternative identified in the FEIS on February 9, 2021. TxDOT issued the ROD despite significant public and governmental input pointing out the inadequacies of the agency’s EIS process; including a letter from Complainants pointing out that the selected alternative did not comply with Title VI and other civil rights requirements.

⁷⁶ Jeff Jeffery, “Turner pushes TxDOT for increased affordable housing funding, flooding mitigation in I-45 expansion plan”, bizjournals.com, December 8, 2020. Available: <https://www.bizjournals.com/houston/news/2020/12/08/houston-mayor-pushes-back-on-txdot-i-45-plans.html>

⁷⁷ Letter from Congresswoman Sheila Jackson Lee to J. Bruce Bugg and David R. Barth, TxDOT, December 7, 2020. (40 CFR §1502.2 “Environmental impact statements shall not be encyclopedic.”)

⁷⁸ On January 18, 2021, Complainants sent TxDOT a letter warning the agency that it should not issue a Record of Decision until the civil rights and environmental justice issues identified in the FEIS were properly analyzed, addressed, and resolved. TxDOT did not respond. FHWA accepted this letter as a Title VI complaint on February 22, 2021.

⁷⁹ See, August 25, 2021 letter from Harris County Precinct 2 Commissioner Adrian Garcia to TTC Commissioners Bugg, Ryan, New, and Vaughn.

TxDOT made the decision to issue the ROD, even though the preferred alternative identified in the FEIS perpetuates segregation and subjects Black and Hispanic/Latinx individuals and communities to discrimination. The NHHIP would displace 1,079 residential housing units (160 single-family homes, 433 multifamily residential units, and 486 public and low-income housing units), 344 businesses and consequently over 20,000 jobs, five places of worship, and two schools, and subject residents that remain to dangerous levels of air pollution and other environmental hazards - subjecting minority communities to disproportionately high and adverse, health, environmental, and economic effects. TxDOT had full knowledge of the discriminatory impact of the proposed alternative when the agency issued the ROD.

v. Title VI Investigation

During the FEIS public comment period, and before TxDOT issued the ROD, TxDOT received a significant number of comments and at least three post-FEIS letters pointing out the agency's failure to comply with Title VI and other civil rights requirements, including a letter from Complainants dated January 18, 2021. TxDOT forwarded these letters to FHWA, which accepted them as complaints in February 2021, and initiated a Title VI investigation.

On March 8, 2021, the Texas Division of the FHWA wrote to TxDOT requesting that the agency pause further contract solicitation efforts for the NHHIP to allow the federal agency "time to evaluate the serious Title VI concerns" raised by complaints it received from the public and an elected official.

TxDOT continued contract solicitation efforts - including a May 13, 2021, Pre-Request for Proposals (RFP) meeting for contractors interested in a design-build contract for Segment 3. When a contractor asked if the FHWA pause would affect the procurement dates TxDOT had put forward at the meeting, TxDOT responded that the agency was "planning to proceed using the dates discussed in the Pre-RFP meeting."⁸⁰ TxDOT also continued to pursue right of way acquisition; threatening homeowners who refused to sell with eminent domain proceedings.⁸¹

⁸⁰ TxDOT, Professional Engineering Procurement Services (PEPS) Division Solicitation No. 601CT0000004688 General Engineering Consultant- NHHIP Segment 3 Design-Build Questions & Answers (Q&A) Pre-PFP Meeting, May 13, 2021. Question 4. Available: <https://ftp.dot.state.tx.us/pub/txdot/ppd/meetings/05132021/questions-and-answers.pdf> TxDOT Presentation Available: <https://ftp.dot.state.tx.us/pub/txdot/ppd/meetings/05132021/presentation.pdf> (According to TxDOT's presentation, proposals would be due on June 16, 2021 and the agency expected to execute and finalize the contract in October 2021.)

⁸¹ Paul Debendetto, " TxDOT Keeps Moving Forward On I-45 Project Despite Federal Warning, Feds Say ", *Houston Public Media*, June 24, 2021. Available at:

On June 14, 2021, FHWA clarified that the “pause” applied to right-of-way acquisitions, including solicitations, negotiations, eminent domain, and final design activities. FHWA also informed TxDOT that it would be reviewing TxDOT’s compliance with the December 9, 2019, MOU that delegated environmental review authority to Texas.⁸²

vi. Texas Transportation Commission approval of the Texas Unified Transportation Program including the NHHIP.

On June 30, 2021, TxDOT’s governing body, the Texas Transportation Commission (TTC) held a regularly scheduled meeting during which the Commissioners discussed the required annual approval of TxDOT’s Unified Transportation Program (UTP). The UTP – TxDOT’s 10-year plan – is a list of projects TxDOT intends to develop or begin constructing over the next 10 years, as well as information on the available funding associated with those projects. The UTP is intended to guide and prioritize the development of transportation projects across the state.⁸³ Planning for the 2022 UTP began in September 2020. During the June 30, 2021 meeting, Commissioner Bruce Bugg announced that, in addition to regular public comment on the UTP as a whole, there would be a concurrent public comment process specific to the NHHIP, and that, depending on the results of the comment period, the commissioners would consider removing funding for the project from the Houston-Galveston Region and reallocate it to another region of the state.

The public comment period for the draft 2022 UTP, including the NHHIP specific question, began on July 9, 2021, and ended on August 9, 2021, with one additional public hearing on August 2, 2021. Residents and advocates called in to the August 2, 2021, meeting to raise concerns about the NHHIP, including the lack of notice and translation provided to LEP populations.

TxDOT asked the public to fill out a SurveyMonkey poll that offered only two options: “Support maintaining project and funding as proposed,” or “Support removing project and funding.” By framing the choice as binary - either support the project as proposed or lose allocated transportation funding for the Houston area entirely – TxDOT

<https://www.houstonpublicmedia.org/articles/news/transportation/2021/06/23/401359/txdot-kept-moving-forward-on-i-45-project-despite-federal-warning-documents-say/> .

⁸² Letter from Achille Alonzi, District Administrator, FHWA, to Marc Williams, Executive Director, TxDOT. (June 14, 2021).

⁸³ Ch. 43, Tex. Admin. Code §16.105; *see also*, TxDOT website, Inside TxDOT, Divisions, Unified Transportation Program (UTP). Available at: <https://www.txdot.gov/inside-txdot/division/transportation-planning/utp.html>

forced an impossible choice on the regions' residents. As Houston Mayor Sylvester Turner's response to the TTC decision to add an NHHIP Survey Monkey poll to the UTP points out, "[a] survey is not public engagement" and "this survey is framing a false choice . . . [w]e do not intend to play their game." Mayor Turner added that, "[t]here is a path forward for this project, . . . [i]t entails making commitments related to housing, connectivity, flooding, parks and green space, and multimodal forms of transportation . . . [b]ut it requires TxDOT to take a different approach. The take it or lose it position being offered by TxDOT is not helpful in getting this project done."⁸⁴

The TTC voted unanimously to approve the 2022 UTP, including the NHHIP project "as proposed" on August 31, 2021, but threatened again to remove funding from the Houston-Galveston region at its December 9, 2021 meeting "we're still halted and we have no viable path from the FHWA" within 90 days.⁸⁵

TxDOT has violated Title VI of the Civil Rights Act of 1964.

Title VI provides that "[n]o 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 subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.⁸⁶

TxDOT, as a state government entity that receives federal financial assistance, is prohibited by law from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin, from intentionally discriminating on the basis of race, color, or national origin, and from retaliating against persons who complain about civil rights violations.

⁸⁴ Mayor Sylvester Turner, Statement on TxDOT's I-45 NHHIP Survey, July 21, 2021. Available at: [https://mailchi.mp/houstontx/mayor-turners-statement-on-txdots-i-45-nhhip-survey?e=\[UNIQID\]](https://mailchi.mp/houstontx/mayor-turners-statement-on-txdots-i-45-nhhip-survey?e=[UNIQID])

⁸⁵ TTC Chairman J. Bruce Bugg, August 31, 2021. Available:

⁸⁶ DOJ Title VI Manual § II (quoting H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963))

DOT has promulgated regulations to effectuate provisions of Title VI.⁸⁷ The Title VI regulation prohibits discriminatory acts, including those that:

- Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program; Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; [and/or] Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; (49 CFR § 21.5(b)(1)(ii)(iii) and (iv)).
- [D]irectly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. (49 CFR § 21.5(b)(2)).
- In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part. (49 CFR § 21.5(b)(3)).
- A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part. (49 CFR § 21.5(d)).

Crucially, USDOT regulations provide that “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, **the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.**”⁸⁸ (Emphasis added.) Because of its prior

⁸⁷ 49 CFR §21.1 *et. seq.* (“No person in the United States shall, on the grounds 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 to which this part applies.” 49 CFR § 21.5(a).)

⁸⁸ 49 CFR § 21.5(b)(7)

discriminatory practices and usage – including the original decision to build I-45 through, divide, and displace, Black and Hispanic/Latinx communities –TxDOT has an affirmative responsibility to not only avoid discriminating against these communities today but to take affirmative action to overcome the legacy of its past discrimination.⁸⁹

USDOT requires entities that receive federal financial assistance to provide assurances that the recipient will comply with the funding agency’s implementing regulations under Title VI.⁹⁰ TxDOT submitted assurances it would comply with Title VI most recently on September 30, 2020.⁹¹

G. The NHHIP has a disparate adverse impact on Black and Hispanic/Latinx individuals on the basis of their race, color, and national origin.

A state agency’s discriminatory action does not have to be intentional to violate Title VI.⁹² For example, 49 CFR §21.5(b)(2) and (3) provide that, “[a] recipient . . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. . . .In determining the site or location of

⁸⁹ “This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. . . . Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.” (49 CFR §21.7(b)(7))

⁹⁰ See, 49 CFR § 42.21.7 (“Every application for Federal financial assistance to which this part applies . . . and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part.”)

⁹¹ See, TxDOT Civil Rights Division, *FY 2021 Title VI/Nondiscrimination Plan*, October 2020. Pp 45-47, Appendix Available at: <https://ftp.txdot.gov/pub/txdot-info/civ/title%20vi/title-vi-nondiscrimination-plan.pdf>

⁹² “The disparate impact regulations seek to ensure that programs accepting federal money are not administered in a way that perpetuates the repercussions of past discrimination. As the Supreme Court has explained, even benignly-motivated actions that appear neutral on their face may be traceable to the nation’s long history of invidious race discrimination in employment, education, housing, and many other areas.” (DOJ Title VI Manual §VIII(A) (citations omitted). “[A]ctions having an unjustifiable disparate impact on minorities [can] be redressed through agency regulations designed to implement the purposes of Title VI.” *Alexander v. Choate*, 469 U.S. 287, 293 (1985) (discussing *Guardians Ass’n v. Civil Serv. Comm’n of N.Y. City*, 463 U.S. 582 (1983); see also, DOJ Title VI Manual § VIII(B).

facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.”⁹³

To determine that a recipient’s actions have a disparate impact on a minority population, “the investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI.”⁹⁴ While the NEPA process and TxDOT’s UTP process may be facially neutral, the way in which TxDOT carried out both the EIS process and the process of approving the UTP disproportionately and adversely impacted the Black and Hispanic/Latinx residents of neighborhoods adjacent to the NHHIP and clearly subjected them to discrimination in violation of Title VI.

i. Disproportionality

FHWA’s Order 6602.23A defines disproportionately high and adverse impact on minority and low income populations “as an adverse effect that: (1) is **predominately borne by a minority population** and/or a low-income population; or (2) will be **suffered by the minority population and/or low-income population** and is **appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.**”⁹⁵ (Emphasis added.)

TxDOT’s DEIS and FEIS both document that the adverse effects of the preferred alternative will fall predominantly on minority populations.⁹⁶ In every Segment of the NHHIP the minority population is over 70%, and in two segments the minority population is more than 80% of the total population.

Race/Ethnicity	Segment 1	Segment 2	Segment 3
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⁹³ 49 CFR § 21.5(b)(3)

⁹⁴ DOJ Title VI Manual § VIII(B)

⁹⁵ FHWA Order 6604.23A, June 14, 2012. Available: <https://www.fhwa.dot.gov/legregs/directives/orders/664023a.cfm>

⁹⁶ Complainants rely on TxDOT’s data and analysis documenting high and disproportionate adverse impact on the basis of race, color, and national origin. *See, e.g.*: FHWA Letter of Finding (LOF), Corpus Christi Harbor Bridge Project, DOT# 2015-0124, January 18, 2019. (“FHWA’s Office of Civil Rights accepted the validity of the statistical and scientific measurements of the project on residents and neighboring communities from the FEIS, therefore, the information contained in the FEIS was primarily used, along with information obtained through the investigation, to assess impacts from the perspective of Title VI.”)

Black	17.6%	13.9%*	42.3%
Ethnicity: Hispanic	65.6%	69.5%	24.7%
<i>Total Minority:</i>	87%	83.5%	73.6%

Figures from TxDOT FEIS at 3-5 to 3-6. (Census 2010 Data) *Estimated. TxDOT did not include this figure in the FEIS.

TxDOT states in the FEIS Community Impact Assessment (CIA) that “[a]long the length of the Preferred Alternative, the majority of the adjacent residential areas include environmental justice populations (minority and/or low-income) as measured at both the census block level (for race) and census block group level (for income) as well as at the super neighborhood level.”⁹⁷ The effects of the NHHIP will be predominantly borne by and disproportionately suffered by minority and environmental justice populations

ii. Adverse Impact

The disproportionate adverse impact of the NHHIP on minority and environmental justice populations is, and will continue to be, significantly more severe and greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population. Significant adverse impacts include, but are not limited to, the following:

a. Health Impacts of Increased Air Pollution and Environmental Hazards

The majority of the NHHIP - particularly Segment 3 - is located within Harris County, which is part of the Houston-Galveston-Brazoria area that has been designated by the Environmental Protection Agency (EPA) as a serious and marginal nonattainment area for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS).⁹⁸ These areas are filled with cancer-causing pollutants as well as hazardous air pollutants which are known to cause a variety of illnesses including asthma and respiratory issues. TxDOT recognizes that there will be an increase in Mobile Source Air Toxics (MSATs). “The additional travel lanes contemplated as part of the Build Alternative would have the effect of moving some traffic closer to nearby homes and businesses; therefore, there may be localized areas where ambient concentrations of MSAT could be higher under the Build Alternative than the No Build Alternative.”⁹⁹ Specifically, sections closest to

⁹⁷ FEIS Community Impacts Assessment, August 2020 at 5-208.

⁹⁸ See, TxDOT, *Texas Air Quality Nonattainment or Attainment-Maintenance Areas and Counties* – December 30, 2021. Available: <https://www.epa.gov/naaqs>

⁹⁹ TxDOT FIES at 7.

Beltway 8, I-610, I-10 will be impacted with the heaviest concentrations of MSATs. TxDOT claims that there is incomplete or unavailable information about the full extent of the emissions or the health impacts of this project in these overburdened areas, yet they are choosing to push forward with the project without attempting to obtain this information, and ignoring research submitted by stakeholders, including AAH, that contains this information.¹⁰⁰

There is an extensive body of research documenting the negative effects of air pollution - particularly traffic-related air pollutants - and the disproportionate burden of air pollution on communities of color and low-income communities - including a higher COVID-19 mortality rate.¹⁰¹ Houston ranks 11th out of the 25 cities in the United States with the worst ozone - which is primarily produced by burning fossil fuels like gasoline-pollution.¹⁰² The effects of ozone pollution include premature death - even when other pollutants are present - immediate breathing problems like asthma attacks, worsening other respiratory and heart conditions, harm to the central nervous system, and reproductive and developmental harms, like low birth weights and decreased lung

¹⁰⁰ 40 CFR §1502.21; AHH, *Health Impact Assessment of the North Houston Highway Improvement Project*, May 2019. Available: <https://airalliancehouston.org/wp-content/uploads/2019/09/HIA-Report-final-06-10-19.pdf>

¹⁰¹ See, e.g. *Traffic Related Air Pollution and the Burden of Childhood Asthma in the Contiguous United States in 2000 and 2010*. <https://cartechnodata.org/library/webapp/trap-asthma-usa>; *Global, national, and urban burdens of pediatric asthma incidence attributable to ambient NO₂ pollution: estimates from global datasets*. <https://www.thelancet.com/action/showPdf?pii=S2542-5196%2819%2930046-4> ; Environmental Defense Fund. *Finding pollution- and who it impacts most- in Houston*. Available at <https://www.edf.org/airqualitymaps/houston/findings>; Bell ML, O'Neill MS, Cifuentes LA, et al. *Challenges and recommendations for the study of socioeconomic factors and air pollution health effects*. *Environ Sci Pol* 2005; 8:525–33; O'Neill MS, Jerrett M, Kawachi L, et al. *Health, wealth, and air pollution: advancing theory and methods*. *Environ Health Perspect* 2003;111:1861–70; Brender JD, Maantay JA, Chakraborty J. *Residential proximity to environmental hazards and adverse health outcomes*. *Am J Public Health* 2011;101:S37–52.; Chakraborty J. *Automobiles, air toxics, and adverse health risks: environmental inequities in Tampa Bay, Florida*. *Ann Assoc Am Geogr* 2009;99:674–97.; Gunier RB, Hertz A, Von Behren J, Reynolds P. *Traffic density in California: socioeconomic and ethnic differences among potentially exposed children*. *J Expo Anal Environ Epidemiol* 2003;13:240–46; Tegan K. Boehmer, Division of Environmental Hazards and Health Effects, CDC, *Residential Proximity to Major Highways – United States 2010*. Available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/su6203a8.htm>; Xiao Wu and Rachel C. Nethery, *Exposure to air pollution and COVID-19 mortality in the United States*, Department of Biostatistics, Harvard T.H. Chan School of Public Health, Boston, MA. Available at: https://projects.iq.harvard.edu/files/covid-pm/files/pm_and_covid_mortality.pdf; Joy Diaz, “When it Comes to COVID-19, the ‘I-35 Divide’ determines who’s most at risk”, *Texas Standard*, April 14, 2020:

¹⁰² American Lung Association, “State of the Air: 2021” Available at: <https://www.lung.org/research/sota/key-findings/ozone-pollution>

function in infants.¹⁰³ High ozone pollution also results in increased hospital admissions, particularly for children,¹⁰⁴ and people 65 and older face an increased risk of premature death; even when ozone levels are below the national standard.¹⁰⁵

Complainant Air Alliance Houston's comments on the FEIS clearly lay out the deficiencies and inconsistencies in TxDOT's DEIS and subsequent technical report, and the agency's failure to remedy these deficiencies in the FEIS, including:

Increase in Mobile Source Air Toxics (MSAT)

First, TxDOT claimed in the DEIS that there would not be no adverse effect from MSAT because;

. . . when a highway is widened, the localized level of MSAT emissions for the Build Alternative could be higher relative to the No Build Alternative, but this could be offset due to increases in speeds and reductions in congestion (which are associated with lower MSAT emissions). Also, MSAT will be lower in other locations when traffic shifts away from them. However, on a regional basis, EPA's vehicle and fuel regulations, coupled with fleet turnover, will over time cause substantial reductions that, in almost all cases, will cause region-wide MSAT levels to be significantly lower than today.¹⁰⁶

TxDOT admits that the NHHIP will increase Vehicle Miles Traveled (VMT) and that there will be a higher level of MSAT emissions as a localized level - in other words, on the communities of color directly adjacent to the project - but relies on anticipated regional reductions in MSAT emissions, and decreases in MSAT emissions "in other locations when traffic shifts away from them". A disproportionate and adverse impact on the basis of race, color, and national origin cannot be justified by regional benefits or

¹⁰³ U.S. Environmental Protection Agency. *Integrated Science Assessment of Ozone and Related Photochemical Oxidants (Final Report)*. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-10/076F, 2013.

¹⁰⁴ Mar TF, Koenig JQ. *Relationship between visits to emergency departments for asthma and ozone exposure in greater Seattle, Washington*. Ann Allergy Asthma Immunol. 2009; 103: 474-479 Strickland MJ, Darrow LA, et al. *Short-term associations between ambient air pollutants and pediatric asthma emergency department visits*. A J Respir Critical Care Med, 2010, 182:307-316; and, Lin S, Liu X, Le LH, Hwang SA. *Chronic exposure to ambient ozone and asthma hospital admissions among children*. Environ Health Perspect. 2008; 116: 1725-1730. Medina-Ramón, et al., 2006

¹⁰⁵ Di Q, Dai L, Wang Y, Zanobetti A, Choirat C, Schwartz JD, Dominici F. *Association of Short-Term Exposure to Air Pollution with Mortality in Older Adults*. JAMA. 2017; 318: 2446-2456.

¹⁰⁶ FEIS, Appendix C: MSAT at 5.

benefits in “other locations.” TxDOT continued to rely on these assumptions in the FEIS.¹⁰⁷

The 2019 Health Impact Assessment (HIA) of the NHHIP analyzed potential local air quality impacts, and found that the combination of the expanded right of way (ROW) footprint, rerouting highways around downtown, and increased VMT would have a substantial air quality impact on the adjacent neighborhoods, including several schools that would be brought dangerously close to the roadway. The removal of the Pierce Elevated would effectively reroute I-45 traffic to the north and east side of downtown, which would more than double VMT in the N/S section of the 59/69 corridor and the I-10 corridor north of Downtown. This would shift the traffic - and the significant adverse impacts associated with it - towards communities that are predominantly lower-income communities of color - for example, Near Northside, Fifth Ward, and Second Ward - and away from other communities - for example Washington Ave/Memorial Park, Fourth Ward, and Midtown - with disproportionately whiter and higher-income populations.¹⁰⁸

In other words, the NHHIP will increase MAST emissions in neighborhoods of color adjacent to the project, but will decrease MAST emissions in whiter, higher-income “locations” and regionally.¹⁰⁹

Super Neighborhood	Near Northside (#51)	Fifth Ward (#55)	Second Ward (#60)	Memorial Parkway/ Washington Avenue (#22)	Fourth Ward (#60)	Midtown (#62)
White	8%	4%	7%	59%	43%	62%
Hispanic/Latinx	82%	50%	78%	23%	21%	14%
Black	9%	45%	13%	6%	24%	13%

¹⁰⁷ Research has demonstrated that the effect of highway pollution is highly localized, and populations who live in close proximity to highways have significantly higher exposure to not only air toxics, but particulate matter, road dust, and other emissions and metals. *See, e.g.*: U.S. Environmental Protection Agency, *Near-Road Air Quality Monitoring Research* (Nov. 3, 2009); and, Irina N. Krivoshto et al., *The Toxicity of Diesel Exhaust: Implications for Primary Care*, J. AM. BOARD FAM.MED. 55, 58 (2008).

¹⁰⁸ AHH, *Health Impact Assessment of the North Houston Highway Improvement Project*, May 2019. Available: <https://airalliancehouston.org/wp-content/uploads/2019/09/HIA-Report-final-06-10-19.pdf>

¹⁰⁹ The Houston MSA is also disproportionately white when compared to the demographics of the most affected areas - 35% white non-Hispanic. U.S. Census Reporter, Houston-The Woodlands- Sugar Land, TX Metro Area. Available: <https://censusreporter.org/profiles/31000US26420-houston-the-woodlands-sugar-land-tx-metro-area/> (1-yr 2019 ACS data)

Median HH Income	\$34,495	\$25,489	\$45,054	\$120, 572	\$75,922	\$85,116
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https://www.houstontx.gov/planning/Demographics/super_neighborhoods_2.html (2017 ACS Data)

TxDOT cannot balance out disproportionate harm to a minority community by decreasing the adverse impact on a non-minority community, nor can it force minority communities to bear a highly disproportionate and damaging share of the harm for a project that benefits a larger overall population. There is no clearer case of subjecting someone to discrimination based on their race, color, and national origin.

Second, TxDOT also claims that increased MSAT emissions could be offset by “reduced congestion” and higher traffic speeds - despite increased VMT - because of future improvements in fuel efficiency. As described in this complaint, TxDOT’s assumption that congestion will be reduced by construction of the NHHIP is unsupported. TxDOT’s argument that MSAT emissions would be offset by ongoing improvements in fuel efficiency was entirely disingenuous; the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) had published a rule repealing both greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards - and preempting the ability of the states to set higher standards - on August 14, 2018, and finalized that rule on September 27, 2019.¹¹⁰ The EPA and NHTSA finalized new CAFE and GHG standards on April 30, 2020¹¹¹ that slashed year-over-year improvements in fuel efficiency and emission reductions from 5% to 1.5%. On January 10, 2019, Texas Congressman Roger Williams had introduced HR 431, which would have repealed CAFE standards entirely.

TxDOT based its analysis in the FEIS on the previous and more stringent GHG and CAFE standards, asserting that while the agency’s analysis “does not use the recently released CAFE standards (85 FR 24174), the new rule is **not expected to have any significant impact** on project-level analyses for the area.”¹¹² (Emphasis added.) TxDOT provides no evidence or analysis supporting this conclusion, relying entirely on EPA and NHTSA’s similarly unsupported assertion in the final rule that “it is expected that incremental impacts on criteria and air toxic pollutant emissions would be too small to observe under any of the regulatory alternatives under consideration.”¹¹³ Once again,

¹¹⁰ 84 FR 51310 (September 27, 2019), effective November 26, 2019. The final rule preempted states’ power to set stricter GHG and CAFE standards.

¹¹¹ 85 FR 24174 (April 30, 2020)

¹¹² FEIS at 3-22.

¹¹³ FEIS Appendix C: Mobile Source Air Toxics (MSAT) Quantitative Technical Report at 11. (August 2020)

TxDOT is using a geographic unit (project-level area) that elides localized impacts. Even if TxDOT's assumptions were true on a regional basis, the localized impact on adjacent minority and/or low-income populations would be significant and unacceptable.

Complainant Air Alliance Houston and other stakeholders also met multiple times with TxDOT staff to provide data on the disproportionate impact of localized air pollution from the NHHIP, and recommend potential mitigation strategies including installing high efficiency air filtration systems in schools, installing air monitors near sites with vulnerable populations, and funding sidewalks and tree lines. Despite verbal assurances from TxDOT staff that these issues would be addressed, none of these recommendations or mitigation measures were incorporated into the FEIS.

TxDOT recognized that there would be a highly disproportionate and adverse impact of increased MSAT emissions and other pollutants from the NHHIP on the basis of race, color, and national origin in its FEIS, but chose a methodology that partially masked these impacts by analyzing these impacts at a regional and not localized level. TxDOT also asserted that disproportionate adverse impacts on communities of color were balanced out by benefits to whiter and higher-income communities and improvements at a regional level, and offset by “significantly” better fuel efficiency standards. The agency did not consider the cumulative impact of increased MSAT and GHG emissions on communities with already high rates of asthma and other health conditions caused or worsened by air pollution. TxDOT had notice and actual knowledge that the criteria it chose to use resulted in a disparate and adverse impact on the basis of race, color, and national origin, but still chose to go forward with the preferred alternative.

Additional pollution and health impacts

Traffic-related air pollution is not the only environmental hazard that communities of color adjacent to the preferred alternative are forced to deal with because of historical discrimination. Other environmentally hazardous uses have been disproportionately sited in historically Black and Hispanic/Latinx neighborhoods.¹¹⁴

¹¹⁴Houston is notorious for having “no zoning”, particularly around land use. However, wealthier (and largely whiter) neighborhoods effectively have private zoning through deed restrictions that they can enforce through the city, and have the resources to fight “incompatible” land uses, including through litigation. These neighborhoods are increasingly using historic district designation as a substitute for use-based zoning. (e.g. Germantown) This is also a tool largely available to wealthier neighborhoods who have the resources both to apply for historic status, and to maintain historic homes and “neighborhood character” that lower-income communities of color often lack. See; William Fulton, *The 'Z' Word: Houston is famous for not having zoning. But that doesn't mean it doesn't have planning.*, Planning Magazine, The American Planning Association, January 2020. Available: <https://planning.org/planning/2020/jan/the-z-word/>

In 2020, the Environmental Defense Fund (EDF) drove 32,000 miles in Houston, measuring air pollution across neighborhoods.¹¹⁵ Unsurprisingly, EDF found disproportionate levels of air pollution in historically segregated Black and Hispanic/Latinx neighborhoods. EDF highlighted disparities between Fifth Ward - a historically disinvested neighborhood that will be severely impacted by the NHHIP - and River Oaks - a majority white and high-income neighborhood that is also within the I-610 loop. The population of Fifth Ward is largely made up of environmental justice populations - 90% of residents are non-white, and 40% live under the federal poverty line. River Oaks is more than 70% non-Hispanic white and one of the wealthiest neighborhoods in Houston.¹¹⁶

Rate:	Asthma	COPD	Heart Disease	Stroke	Life Expectancy
Region	9%	6%	5%	3%	78
Fifth Ward	11%	10%	9%	6%	69
River Oaks	7%	4%	2%		85

Data collected by EDF, 2020.

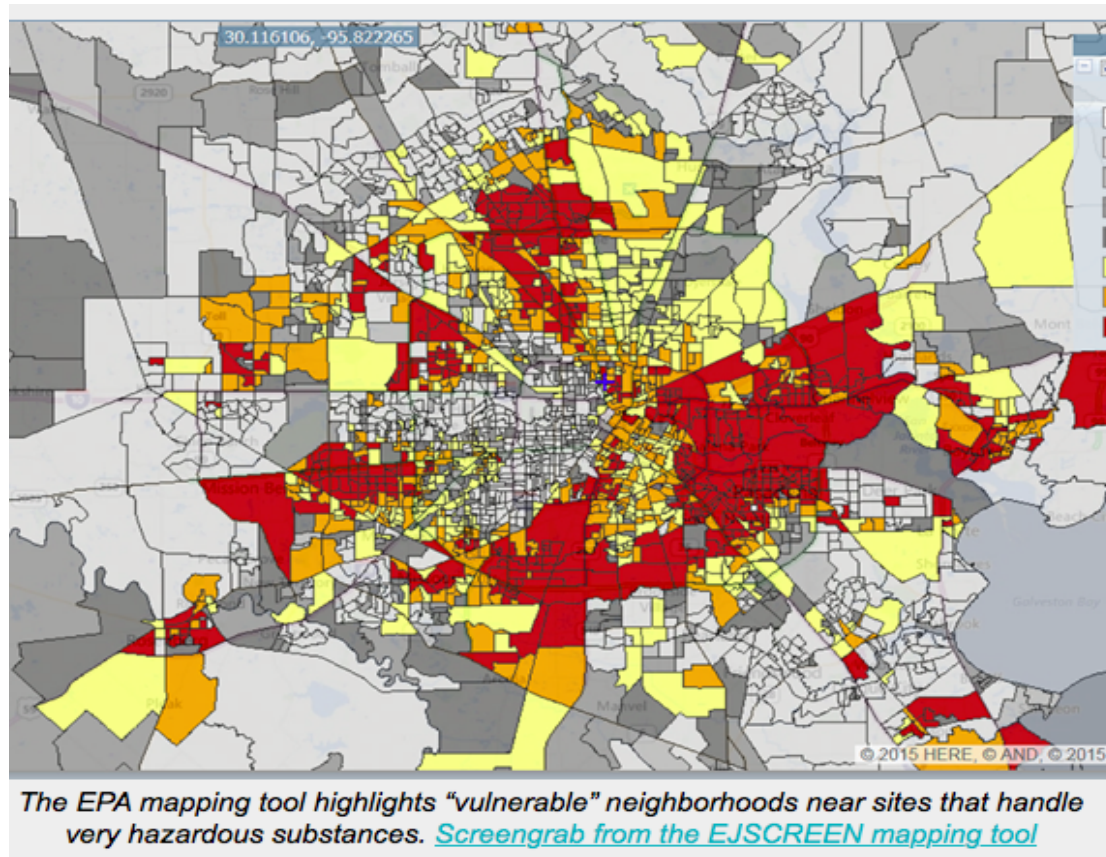
Fifth Ward is also home to numerous environmental hazards (which is not the case in River Oaks) reflecting a discriminatory pattern of locating environmental hazards in communities of color and not in white communities - despite Houston's lack of official zoning.¹¹⁷

Preexisting higher rates of asthma and other conditions caused and exacerbated by air pollution in freeway-adjacent communities increase the vulnerability of minority and low-income populations to the health and mortality risks of the additional air pollution produced by NHHIP and its construction. TxDOT failed to take this factor - which substantially increases the severity and magnitude of the NHHIP's impact on minority populations - into account, despite its obligation to do so under NEPA and Title VI.

¹¹⁵ Environmental Defense Fund, Available at: <https://www.edf.org/airqualitymaps/houston/findings>

¹¹⁶ <https://www.edf.org/airqualitymaps/houston/findings>

¹¹⁷ The lighter colored arrow shape visible in the map below is disproportionately white, and includes River Oaks.



The Texas Department of State Health Service (DSHS) has conducted multiple studies of cancer clusters in Fifth Ward and Kashmere Gardens connected to creosote contamination from a former industrial facility. DSHS has identified higher rates of acute myeloid leukemia, esophagus, larynx, liver, lung and bronchus cancers in adults, and lymphoblastic leukemia in children.¹¹⁸ In addition to the creosote facility, there are two Superfund sites in Fifth Ward and the community is an ongoing target for polluting facilities - including the I-45 expansion. Fifth Ward and other communities of color in Houston were included in a tour of historically marginalized and polluted communities in the South by Environmental Protection Agency administrator Michael Regan in November 2021.¹¹⁹

¹¹⁸ See, e.g.: TDSHS, Assessment of the Occurrence of Cancer Houston, Texas 2000-2016, March 20, 2020 Available: <https://www.dshs.texas.gov/epitox/CancerClusters/Assessment-of-Occurrence-of-Cancers,-Houston,-Texas---2000-2016.pdf>; Sara Willa Ernst, “‘We Know What We Want’: Fifth Ward Residents Demand Action After Another Confirmed Cancer Cluster”, Houston Public Media, February 3, 2021. Available: <https://www.houstonpublicmedia.org/articles/news/health-science/2021/02/03/390571/5th-ward-cancer-cluster-houston-confirmed/>

¹¹⁹ Erin Douglas, “People have already died”: In Houston, residents demand relief from chronic pollution during EPA chief’s visit, *The Texas Tribune*, November 19, 2021. Available: <https://www.texastribune.org/2021/11/19/texas-pollution-epa-regan-houston/>; Emily Foxhall, “They forgot about us”: Houston Residents Ask EPA Administrator Michael Regan to Fight for Them, *Houston*

The Code of Federal Regulations defines cumulative effects as effects “on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”¹²⁰ Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”¹²¹

The disproportionate impact of pollution on minority populations is a national issue: people of color are 61% more likely than white people to live in a county with unhealthy air.¹²² This is true not only in absolute terms but in disparities between pollution exposure and consumption that produces pollution. Overall, Black and Hispanic/Latinx Americans populations experience over 50% more pollution than they generate, while white populations experience 17% less pollution than they generate.¹²³ This pattern is mirrored in the NHHIP; communities of color will suffer the burden of pollution created by commuters from substantially whiter suburbs.

The increased air pollution caused by the NHHIP will have a cumulative health effect - including increased mortality - on the environmental justice populations adjacent to the project - who are already disproportionately adversely impacted by environmental hazards in their neighborhoods.

b. Noise Pollution

Exposure to noise pollution also has adverse health impacts, including higher blood pressure, heart rate, and stress, as well as sleep disturbances and increased symptoms of depression.¹²⁴ Constant exposure to traffic noise, in particular, is associated

Chronicle, November 19, 2021. Available: <https://www.houstonchronicle.com/news/houston-texas/houston/article/Systemic-racism-is-alive-and-well-EPA-16634551.php>

¹²⁰ Reductions in air emissions related to federal standards were not reasonably foreseeable at the time the EIS was prepared, as those regulations were being repealed at the time.

¹²¹ 40 CFR §1508.7. The FEIS was completed before this section was repealed in September 2020. TxDOT cites this definition on page one of FEIS Appendix Q; Cumulative Impacts Technical Report.

¹²² American Lung Association, *State of the Air 2021*. Available: <https://www.lung.org/research/sota>

¹²³ Christopher W. Tessum, Joshua S. Apte, Andrew L. Goodkind, Nicholas Z. Muller, Kimberley A. Mullins, David A. Paolella, Stephen Polasky, Nathaniel P. Springer, Sumil K. Thakrar, Julian D. Marshall, Jason D. Hill Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure

Proceedings of the National Academy of Sciences Mar 2019, 116 (13) 6001-6006;
DOI:10.1073/pnas.1818859116

¹²⁴ H. Ising, B. Kruppa, *Health Effects Caused by Noise: Evidence in the Literature From the Past 25 Years*, NOISE HEALTH 5, 5-13 (2004); and, H.M. Miedema, H. Vos, Associations Between Self-reported

with increased risk of stroke. Stroke risk increases by 14% for every 10 decibel increase in noise.¹²⁵

TxDOT found that there would be a noise impact on the vast majority of residential properties and schools affected by the NHHIP, the majority of which are in adjacent Black and Hispanic/Latinx neighborhoods.¹²⁶

c. Displacement and Economic Impact

The preferred alternative will displace 160 single-family homes, 433 multi-family residential units, 486 Public Housing¹²⁷ and low-income multi-family units, 344 businesses, five places of worship, two schools, five parking businesses, and 58 billboards.¹²⁸ The overwhelming majority of residents affected by this displacement are low-income people of color; TxDOT is fully aware of this disproportionate impact.

One major consequence of displacement is that communities of color are not able to retain property or the wealth associated with that property, further increasing economic disparities. Displaced families are likely to have increased housing and transportation costs, and businesses may also face increased rents. The NHHIP will demolish 486 housing units permanently affordable to the lowest-income Houstonians, and there is no proposal to replace these units on a one-for-one basis with the same affordability term and income limits, much less in the same community in time for tenants to avoid being displaced to other areas of the city or county.

Council on Environmental Quality (CEQ) guidance specifically states that, “analyzing cumulative effects on human communities requires specific economic impact analysis and social impact analysis methods.”¹²⁹ Neither the DEIS or FEIS provide any

Sleep Disturbance and Environmental Noise Based on Reanalyses of Pooled Data From 24 Studies, BEHAV. SLEEP MED. 1, 1-20 (2007). Ester Orban, et al, *Residential Traffic Noise and High Depressive Symptoms After Five Years of Followup*, (May 2016), available at <https://ehp.nies.nih.gov/doi/10.1289/ehp.1409400>

¹²⁵ Mette Sorensen et al., *Road Traffic Noise and Stroke: A Prospective Cohort Study*, EUROPEAN HEART JOURNAL 737, 740-41 (Jan. 2011).

¹²⁶ See, FEIS: Appendix I: Traffic Noise Technical Report, Table 3-2. June 2020.

¹²⁷ As of November 30, 2021, 80% of the Houston Housing Authority’s (HHA) tenants are Black. The average annual income of HHA tenants is \$12,186. HUD Resident Characteristics Report <https://pic.hud.gov/pic/RCRPublic/rcrha.asp>

¹²⁸ FEIS Appendix Q, Table 1

¹²⁹ www.ceq.doe.gov/docs/ceq_publications/ccnepa/sec5.pdf at p 53. See also 40 C.F.R. § 1502.25(a) (“To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16

specific methodology to analyze whether the displacement of over 1,000 individuals would negatively impact the communities, and further destroy community cohesion. This is particularly important when, as here, TxDOT alludes to the systematic racism and segregation policies of past infrastructure decisions but does not then utilize existing research to demonstrate the perpetuation and exacerbation of those negative consequences should this project go forward. Again, CEQ's guidance discusses the importance of utilizing models, and particularly econometric models that use time-series data to showcase the harm to communities.¹³⁰ TxDOT's failure to inform decision makers in this way is a fatal flaw to the Community Impacts Assessment technical report and any Environmental Impact Statement (EIS) that relies on it.

The effects of exposure to air and noise pollution and the impact of proximity to a highway go beyond health and mortality impacts on Black and Hispanic/Latinx populations. Both pollution and proximity to a highway lower property values and undermine the ability of minority households to build wealth.¹³¹ The impact of the NHHIP on property values and wealth is also cumulative, inflicting an adverse effect on minority populations that is significantly more severe and greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population. In communities like Fifth Ward and Third Ward that were devastated by highway construction in the 1950s and 1960s, this cumulative impact is generational.

The racial wealth gap in the United States is staggering. The median white family owns about \$184,000 in family wealth; that amount drops to \$38,000 for Hispanic/Latinx families, and \$23,000 for Black families.¹³² The typical white family has eight times the wealth of the typical Black family. This disparity is not accidental.

Residential segregation itself is not a result of individual choice, it is the product of deliberate government policy decisions at the federal, state, and local government level.¹³³ Included in these policies are racially explicit zoning; segregated public housing

U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

¹³⁰ See; CEQ Appendix A: Summaries of Cumulative Effects Analysis Method at A-44.

¹³¹ See, e.g.: Jason Carey, *Impact of Highways on Property Values: Case Study of the Superstition Freeway Corridor*, ARIZONA DEP'T OF TRANSPORTATION (2001) at 69.; Ian Bateman et al., *The Effect of Road Traffic on Residential Property Values: A Literature Review and Hedonic Pricing Study* (Jan. 2001) at 5-18.;

¹³² Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes, September 28, 2020. Available: <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finance-20200928.htm>

¹³³ See, e.g. Massey, Douglas and Denton, Nancy, *American Apartheid: Segregation and the Making of the Underclass*, Boston: Harvard University Press, 1998; Rothstein, Richard, *The Color of Law*. New York: Liveright Publishing Corporation, 2017; Katznelson, Ira, *When Affirmative Action Was White*. New York:

developments; housing subsidies under the GI Bill that went almost exclusively (99%) to whites,¹³⁴ guaranteeing bank loans to mass-production suburban builders conditioned on imposing racially restrictive covenants; “redlining” maps that categorized lending risk entirely based on the race of the neighborhood’s residents; discriminatory zoning that placed undesirable land uses into communities of color; denial of equal public services and infrastructure; urban renewal and highway programs that displaced and isolated minority communities; and lending and appraisal discrimination.¹³⁵ The continuing effect of these policies and the disproportionate investment of public resources in white homeownership and white communities can be seen clearly not only in continued residential segregation, but in the concentration of poverty and other kinds of disadvantage in historically segregated Black and Hispanic/Latinx neighborhoods.¹³⁶

TxDOT recognizes that the effects of the NHHIP are “cumulative with other activities that have affected, or are affecting, a community and thereby creating a cumulative effect that is more adverse than the individual effect associated with the project. Other associated effects occurring in these neighborhoods (to varying degrees) include impacts from flooding and floodplain buyout programs, previous transportation projects, as well as housing affordability associated with gentrification.”¹³⁷ Now the agency needs to recognize that its role in creating this damage imposes an affirmative obligation to “remove or overcome the effects of the prior discriminatory practice or usage”, as well as its negative obligation to refrain from subjecting minority populations to continued and ever more damaging discrimination.

d. Impact on Children and Education¹³⁸

TxDOT identifies 12 schools within 500 feet of the proposed NHHIP ROW across the three segments. Every single school is over 80% Black and Hispanic/Latinx, and the majority of its students are economically disadvantaged.

W.W. Norton & Company, 2005; Loewen, James, *Sundown Towns: A Hidden Dimension of American Racism*, New York: Simon & Schuster, 2005; Sharkey, Patrick, *Stuck in Place; Urban Neighborhoods and the End of Progress toward Racial Equality*, Chicago: University of Chicago Press, 2013.

¹³⁴ Michael Bennett, “The Law that Worked,” *Educational Record*, 75 (Fall 1994) pp 6.12.

¹³⁵ See, e.g. Rothstein, Richard, *The Color of Law*. New York: Liveright Publishing Corporation, 2017. Katznelson, Ira, *When Affirmative Action Was White*. New York: W.W. Norton & Company, 2005; and, Lauren Hepler, “A Black couple ‘whitewashed’ their home to see if the value would go up. It did — by nearly \$500,000” *San Francisco Chronicle*, December 8, 2021. Available:

<https://www.sfchronicle.com/bayarea/article/Black-Marin-City-couple-sues-appraiser-for-16672840.php>

¹³⁶ See, e.g. Sharkey, Patrick, *Stuck in Place*, Chicago: University of Chicago Press, 2013

¹³⁷ FEIS CIA, Section 5.9.1.3

¹³⁸ Please see, Air Alliance Houston, *Health Impact Assessment of the North Houston Highway Improvement Project*, May 2019 for a detailed analysis of the impact of the NHHIP on a number of school campuses, including a case study of Bruce Elementary. Available: <https://airalliancehouston.org/wp-content/uploads/2019/09/HIA-Report-final-06-10-19.pdf>

In Segment 1, Bussey Elementary School, Aldine Ninth Grade School, and Aldine High School Football Stadium are located within 500 feet of the proposed project right-of-way. The student populations for all three schools are 98% or greater minority students, and the schools are considered Economically Disadvantaged (TEA 2018).¹³⁹

In Segment 2, Roosevelt Elementary School and Jefferson Elementary School are located within 500 feet of the proposed project right-of-way. The student populations for both schools, have a minority population of at least 98% , and the schools are considered Economically Disadvantaged (TEA 2018) and are Title I schools¹⁴⁰.

There are seven schools, including a Head Start Program, located in Segment 3 within 500 feet of the proposed project right of way. All are between 80% and 99.3% minority, and a majority of students are economically disadvantaged. The affected schools in Segment 3 are: Houston Academy for International Studies; Young Women's College Preparatory School; Secondary Disciplinary Alternative Education Program (DEAP); Yes Prep Fifth Ward; Fifth Ward Head Start Center; Young Scholars Academy for Excellence; and Bruce Elementary.¹⁴¹

From 2004 to 2013, African-American children comprised the largest percentage of ambulance-treated asthma cases in Houston: 72% for elementary school students, 81% for middle school students, and 79% for high school students. Hispanic children comprised 23% (elementary), 15% (middle) and 15% (high school). In the highest case school zones - largely located on Houston's east side like Bruce Elementary - the number of cases was five times higher for elementary students, three times higher for middle school students and twice as for high school students as compared with all other school zones in the city.¹⁴² The health impact of air pollution and other environmental hazards on Black and Hispanic/Latinx children, the majority of whom are low-income, is already severe and disproportionate, the NHHIP will exacerbate that effect. Concentrations of benzene, a chemical compound known to cause cancer, for example, could rise up to

¹³⁹ FEIS Appendix F at 4-3.

¹⁴⁰ FEIS Appendix F at 4-4.

¹⁴¹ FEIS Appendix F at 4-8. Yes Prep Fifth Ward is 97% minority and 85% economically disadvantaged. (<https://fifthward.yesprep.org>) Young Scholars Academy for Excellence is 99.3% minority and 88% economically disadvantaged. (<https://www.usnews.com/education/k12/texas/young-scholars-academy-for-excellence-205026>) Secondary DAEP is over 80% minority and 67.3% economically disadvantaged. <https://schools.texastribune.org/districts/houston-isd/secondary-daep/> The Head Start program serves low-income children.

¹⁴² Loren H. Raun, Laura A. Campos, Elizabeth Stevenson, Katherine B. Ensor, Gwen Johnson, David Persse. Analyzing Who, When, and Where: Data for Better Targeting of Resources for School-Based Asthma Interventions. *Journal of School Health*, 2017; 87 (4): 253 DOI: [10.1111/josh.12494](https://doi.org/10.1111/josh.12494)

175% at some of the schools along the corridor.¹⁴³

In addition to the impact on their physical health, children with greater exposure to air toxins produced by traffic are more likely to need academic support services,¹⁴⁴ and when their level of exposure increases, they are more likely to experience decreases in test scores, more behavioral incidents, and miss more days of school.¹⁴⁵

The demolition of housing, including Clayton Homes and Kelly Village, and the displacement of the families who live there will also have a negative effect on children and schools. Low income children who are forced to switch schools frequently because of housing instability tend to perform less well in school, have learning disabilities and behavioral problems, and are less likely to graduate from high school.¹⁴⁶ Students who attend schools with large populations of hypermobile children also suffer academically since schools and teachers must spend more time on review and catching up on work.¹⁴⁷ Schools with declining enrollment lose desperately needed resources and risk being closed.

TxDOT failed to analyze future indirect impacts to schools in and around the Project Area, and has not considered any impact on schools or children beyond potentially ensuring construction isn't at its loudest during the STAAR test. This is not a harmless oversight. The impact of the NHHIP on children - particularly from families who live at Clayton Homes and Kelly village - will contribute to an already daunting set of barriers to school success for minority and low-income children and

¹⁴³ Air Alliance Houston, *Health Impact Assessment of the North Houston Highway Improvement Project*, May 2019. Available: <https://airalliancehouston.org/wp-content/uploads/2019/09/HIA-Report-final-06-10-19.pdf>

¹⁴⁴ Stingone, J.A., McVeigh, K.H. & Claudio, L. Early-life exposure to air pollution and greater use of academic support services in childhood: a population-based cohort study of urban children. *Environ Health* 16, 2 (2017). <https://doi.org/10.1186/s12940-017-0210-z>

¹⁴⁵ Jennifer Heissel, Claudia Persico, David Simon, "Does Pollution Drive Achievement? The Effect of Traffic Pollution on Academic Performance" NBER Working Paper No. 25489, Issued in January 2019.

¹⁴⁶ Voight, A., Shinn, M., & Nation, M. (2012). *The Longitudinal Effects of Residential Mobility on the Academic Achievement of Urban Elementary and Middle School Students*. Educational Researcher, 41(9), 385-392. Retrieved from <http://journals.sagepub.com/doi/pdf/10.3102/0013189X12442239>; Cunningham, M., & MacDonald, G. (2012). *Housing as a Platform for Improving Education Outcomes among Low-Income Children*. Washington, DC: Urban Institute. Retrieved from <http://www.urban.org/sites/default/files/publication/25331/412554-Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.PDF>; Fischer, W. (2015). *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*. Washington, DC: Center on Budget and Policy Priorities. Retrieved from <http://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf>.

¹⁴⁷ Cunningham, M., & MacDonald, G. (2012). *Housing as a Platform for Improving Education Outcomes among Low-Income Children*. Washington, DC: Urban Institute. Retrieved from <http://www.urban.org/sites/default/files/publication/25331/412554-Housing-as-a-Platform-for-Improving-Education-Outcomes-among-Low-Income-Children.PDF>.

further entrench racial and economic inequality.¹⁴⁸

e. Loss of Community Resources and Cohesion

As exemplified by the original construction of I-45 and other highways in Houston, “[t]ransportation and land use planning decisions can affect community cohesion by introducing barriers or limiting access to parts of a community . . . dividing the community or, conversely, by facilitating access to connect communities.”¹⁴⁹ The location of major transportation projects can also affect community cohesion by displacing residents, businesses, and community facilities, reducing the accessibility of resources and services, decreasing the safety of local streets, and reducing property values, public health, and access to employment.

TxDOT describes its methodology for evaluating community cohesion as “based on many factors, including but not limited to field observations of pedestrian activity, conditions of houses and buildings, number and type of community facilities, local businesses, accessibility to community facilities and services, and neighborhood studies and plans.”¹⁵⁰ This set of criteria, however, is biased against historically disinvested communities - using the conditions created by historical discrimination to devalue the current community and assert that it not cohesive in a way that requires TxDOT to even provide mitigation, much less consider changing the path of a highway for. Every criteria TxDOT lists - pedestrian activity, conditions of houses and buildings, number and type of community facilities, local businesses, accessibility to community facilities and services, and neighborhood studies and plans - is an indicator of resources, not community cohesion.

e. Transportation - METRO

The NHHIP will impact local connections for residents who use public transit during a decade or more of construction and the foreseeable future. Approximately 80% of all METRO riders will be impacted during construction, and more than a dozen bus routes will be permanently altered. The FEIS barely acknowledges and fails to adequately address and mitigate those and other related impacts to transit riders. The FEIS is unclear about commitments to maintain non-car access across the NHHIP during construction and the timing of any local connector improvements during the construction process.

¹⁴⁸The NHHIP will have additional impacts on access and safety for schoolchildren. The north street bridge that currently provides access across I-45 from Glen Park subdivision to Greater Heights would be removed; closing the bridge would eliminate the shortest passage across the freeway from Glen Park subdivision to Travis Elementary School FEIS at 3-12

¹⁴⁹ TxDOT, FEIS Appendix F at 3-4.

¹⁵⁰ TxDOT, FEIS Appendix F at 3-4

TxDOT often does not restore walk, roll, and bike access until the final stages of a project. For example, the expansion of US 290 mainlanes and frontage roads was completed in 2017, but sidewalk construction continued through 2019 into early 2020.¹⁵¹

f. Flooding

The City of Houston is not only extremely vulnerable to flooding historically - nearly one third of the 25 federally declared national disasters in Houston over the last 40 years have happened since 2015.¹⁵² Six out of seven of these disasters have involved flooding, including the 2015 Memorial Day floods, the 2016 Tax Day floods, Hurricane Harvey in 2017, and Tropical Storm Imelda in 2019. All of these events included record rainfall and severe flooding. Hurricane Harvey did not make landfall in Houston, but stalled over the Houston metroplex, dumping record rainfall of as much as 60 inches of rain in four days - 34 trillion gallons of water.¹⁵³ Harvey was also a demonstration of how inadequate FEMA floodplain maps were to identify high-risk areas - 75% of flooded homes were located outside of flood plains.¹⁵⁴

Low-income communities of color are particularly vulnerable to the impacts of disasters. Pre-existing disparities in infrastructure, storm protection, and geographic and social vulnerability are exacerbated by disasters, and response and recovery programs, policies, and activities that do not affirmatively address these disproportionate impacts perpetuate inequity and increase the vulnerability of underserved groups and communities.¹⁵⁵

¹⁵¹ LINK Houston, NHHIP FEIS Comments, December 3, 2020. Available: https://linkhouston.org/wp-content/uploads/2020/12/2020.12.03_LINKHouston_NHHIP_FEIS_Comments.pdf

¹⁵² 3 facts every Houstonian should know about natural disasters, Understanding Houston blog, January 26, 2021. Available: <https://www.understandinghouston.org/blog/must-know-facts-about-natural-disasters-in-houston> (Understanding Houston is a collaborative project between the Greater Houston Area Foundation and research partner Kinder Institute at Rice University.)

¹⁵³ Texas General Land Office, State of Texas Action Plan for Disaster Recovery: Hurricane Harvey, January 18, 2018 at 3. Available: <https://recovery.texas.gov/action-plans/2017-hurricane-harvey/index.html>

¹⁵⁴ 3 facts every Houstonian should know about natural disasters, Understanding Houston blog, January 26, 2021. Available: <https://www.understandinghouston.org/blog/must-know-facts-about-natural-disasters-in-houston> (Understanding Houston is a collaborative project between the Greater Houston Area Foundation and research partner Kinder Institute at Rice University.)

¹⁵⁵ See, e.g., Thomas Gabe, Gene Falk, Maggie McCarty, and Virginia Mason, Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas, Congressional Research Service Report to Congress (November 5, 2005); Alice Fothergill and Lori Peek, Poverty and Disasters in the United States: A Review of Recent Sociological Findings, *Natural Hazards* 32: 89–110, 2004; and, Shannon Van Zandt, Walter Gillis Peacock, Wesley E. Highland, and Samuel D. Brody, “Mapping social vulnerability to enhance housing and neighborhood resilience”, *Housing Policy Debate* 22(1):29-55 (January 2012); Junia Howell and James R. Elliott, “Damages Done: The Longitudinal Impact of Natural Hazards on Wealth Inequality in the United States”. *Social Problems*, Oxford University Press (August 14, 2018). Available: <https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spy016/5074453> and Rebecca

Disasters are often depicted as great levelers, victimizing rich and poor alike. The effects of disasters on populations are anything but random... The disaster vulnerability of individuals and groups is associated with a number of socioeconomic factors that include income, poverty, and social class; race, ethnicity, and culture; physical ability and disability; language competency; *social* networks and social capital; gender; household composition; homeownership; and age... The same factors that disadvantage members of society on a daily basis also play out during disasters.¹⁵⁶

Housing segregation and historical disinvestment have often forced communities of color into geographically vulnerable areas and then denied them protective infrastructure. A history of discriminatory zoning - even in places without formal zoning - has often placed heavy industrial and environmentally hazardous land uses in those communities, and governments have run highways and conducted “urban renewal” in the same neighborhoods. This has not only increased the vulnerability to natural and man-made disasters of these populations, but depressed their property values, making it difficult for these families to move to safer areas. Homes in formerly redlined neighborhoods are at higher risk of flooding than homes in historically greenlined neighborhoods seven decades after the HOLC redlining maps were created.¹⁵⁷ The impact of repeated disasters, for example, repetitive flooding, forces low and moderate income families into poverty, decreasing the resilience of these families and the communities they live in, and making it harder for them to recover from subsequent disasters.¹⁵⁸

The initial construction of Houston’s major highways, including I-45, US 59, I-610, and I-10 in the 1950s and 1960s was a major contributor to the increased flood vulnerability of the communities that will be most affected by the NHHIP. Initial

Hersher, “How Disaster Recovery Favors the Rich”, *All Things Considered*, *National Public Radio* (March 5, 2019). Available: <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>

¹⁵⁶ Kathleen J. Tierney, *The social roots of risk: Producing disasters, promoting resilience*, (Stanford, CA: Stanford Business Books, 2014), 141.

¹⁵⁷ Kriston Capps and Christopher Cannon, “Redlined, Now Flooding: Maps of historic housing discrimination show how neighborhoods who suffered redlining in the 1930s face a far higher risk of flooding today.” Bloomberg City Lab, March 15, 2021. Available at: <https://www.bloomberg.com/graphics/2021-flood-risk-redlining/> (“Put another way, 8.4% of homes in historically redlined neighborhoods face high flood risks nationwide, compared to 6.9% of homes in historically greenlined neighborhoods. These patterns represent disparities in development compounded by decades of disinvestment.”)

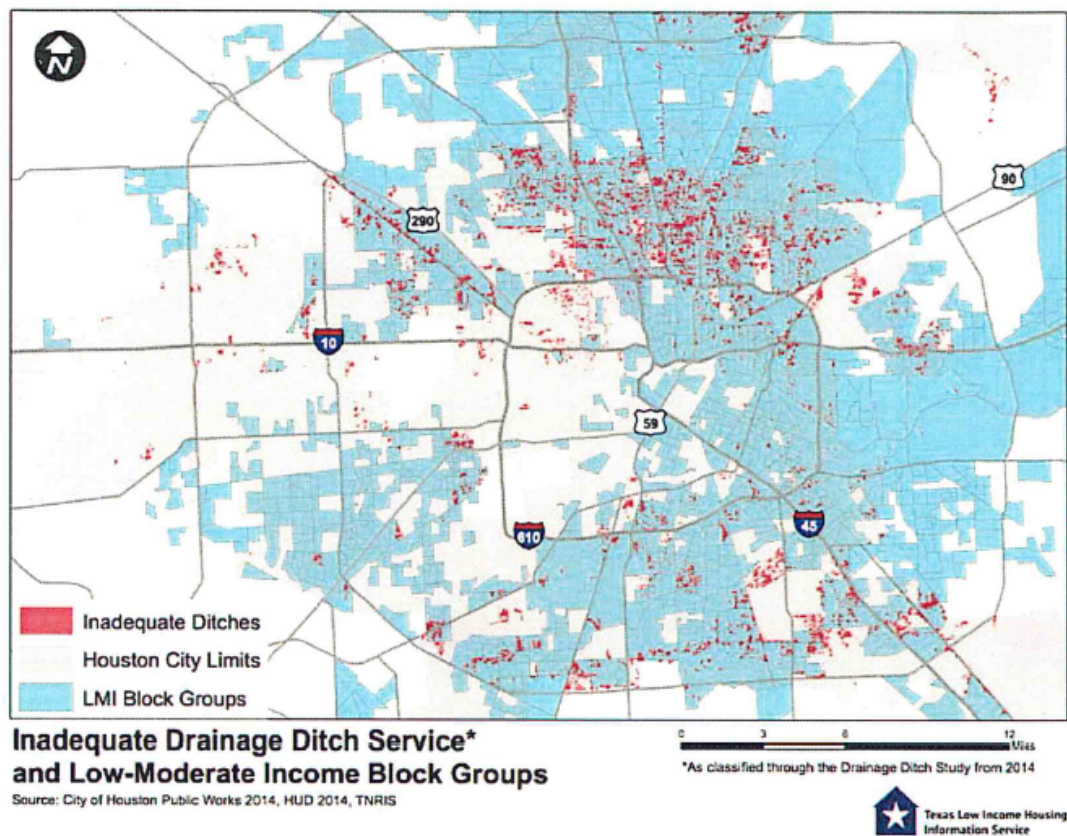
¹⁵⁸ The communities most affected by the NHHIP, including Third Ward, Fifth Ward, Second Ward, Acres Home, and Near Northside are historically redlined neighborhoods that continue to suffer these ongoing effects of segregation and historical discrimination. The proposed NHHIP will perpetuate and worsen these discriminatory effects by continuing to discriminate against environmental justice populations on the basis of race, color, and national origin.

highway construction did not take into account floodplains, watersheds, or the impact of increasing impervious cover on the amount of land available to absorb heavy rainfall and flooding, and was deliberately sited in and through communities of color. During this time period, as TxDOT acknowledges in the FEIS, “parts of the Community RSA, particularly the Third, Fourth, and Fifth Wards, remained without adequate paving and drainage”.¹⁵⁹ Some of these areas remain without adequate drainage today, and routinely flood whenever there is heavy rainfall, not only during disaster-level record rainfall.

An analysis of data from a 2014 Houston Public Works assessment of the city’s open ditch drainage system by Texas Housers found that 88% of open ditch drainage in Houston is located in Black and Hispanic/Latinx neighborhoods, and 43% of that drainage is inadequate to provide flood protection for even a two year flood event. Other parts of the open-ditch system could only handle floodwater for a five or 10-year storm event.¹⁶⁰

¹⁵⁹ FEIS, Appendix Q at 26-27 (Shelton, 2017)

¹⁶⁰ Texas Housers, Houston knew neighborhoods of color were inadequately protected from even modest storm events, August 31, 2017, Available: <https://texashousers.org/2017/08/31/houston-knew-neighborhoods-of-color-were-inadequately-protected-from-even-modest-storm-events/>; Texas Housers filed a Fair Housing Complaint against the City of Houston over its unequal provision of drainage infrastructure in November 2017. Available: <https://www.dropbox.com/s/m52f7ere3or32ye/2017.10.31%20.%20Allen%20ltr%20to%20A.%20Farias.pdf?dl=0>



Per the DEIS, “[a] current TxDOT drainage criterion requires storm sewers draining interstate highways to be designed for the 10-year design storm event.”¹⁶¹ Leaving aside the inadequacy of TxDOT’s standard (particularly in Houston), it appears that the NHHIP may be dumping water equivalent to a 10 year storm flow into low-income minority neighborhoods with drainage inadequate for 2 year storm flow. There is no evidence in the FEIS that TxDOT has accounted for differences in local drainage infrastructure in assessing the effects of discharging runoff into adjacent neighborhoods, or made efforts to address the damage caused by the agency’s original discriminatory siting of highways. TxDOT has not even done a drainage study Segment 1, but is placing the majority of its flood detention basins in that segment.

TxDOT has generally failed to assess the impact of its own discharge on water resources and flooding. The NHHIP impacts six (6) impaired waterways, but TxDOT declines to review the cumulative impact of its own discharge into those waters in

¹⁶¹ DEIS 1-14

violation of the Clean Water Act.¹⁶² The impact of this discharge is important to environmental justice communities not only because of increased flood risk, but because of the increased health risks of hazards related to chemicals, oils, sewage, waste or air pollution.

Nearly 500 acres of NHHIP ROW are in “currently” mapped floodplains but TxDOT does not include any adverse impacts to floodplains in the FEIS cumulative impacts analysis. According to the Memorandum of Understanding dated December 16, 2014 and executed by Federal Highway Administration (FHWA) and TxDOT, TxDOT is obligated to comply with the Flood Disaster Protection Act, 42 U.S.C. §§4001– 4130. Accordingly, TxDOT was required to review the impacts this project will have prior to the design phase, particularly when, as here, TxDOT recognizes that Hurricane Harvey greatly impacted this same area, and that the current proposed design is below grade—meaning it will become a collection point.

TxDOT’s failure to use hydrological modeling for the preferred alternative - even though a portion is below grade—puts lives at risk because the below grade sections will hold water and flood. By completely ignoring the safety hazard being created by the project design, TxDOT fails in its mandate to provide reasoned guidance to decision makers who may instead choose visual impairments over putting lives at risk.¹⁶³

TxDOT’s engineering standard for the NHHIP is insufficient; future floodplains impact analysis and the future detailed hydraulic study should analyze 500-year floodplain impacts using the recently released National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Rainfall Frequency data (fall of 2018), and design any proposed alternatives for these impacts accordingly. This data must also be used for environmental impact analyses and mitigation measure effectiveness analyses. It is widely accepted that areas currently mapped in the 500-year floodplain will be in the 100-year floodplain after remapping. TxDOT may have used Atlas 14 data for its drainage studies of Segments 2 and 3, but the analysis was only for the 100 year storm event, and the 500 year storm event impact was based on pre-Atlas 14 data,¹⁶⁴ Both Harris County and Houston have adopted design standards that mandate use of the 500

¹⁶² *U.S. v. Washington State Dept. of Transportation*, a District Court in Washington found Washington’s Department of Transportation liable for hazardous waste in waterways because the department had direct knowledge when designing its roadways—all of its roadways—that it sought to direct stormwater runoff to the first available ditch, tributary or stream. 716 F. Supp. 2d 1009 (W.D. Wash. 2010). Similarly, TxDOT excludes any analysis of floatables. In both cases, TxDOT seeks to externalize the impact of its project on adjacent communities.

¹⁶³ Please see also Attachment 5, FHWA’s Integrating Road Safety into NEPA.

¹⁶⁴ See, e.g.: TxDOT FEIS at 3-63. (“Based on the mitigation analysis presented in the Segment 3 drainage studies, the proposed roadway and storm drainage improvements for NHHIP Segment 3 would not adversely impact existing conditions for storm events up to and including the 100-year storm (Atlas 14) and the 500-year storm (pre-Atlas 14).”)

year storm event standard. Hurricane Harvey and Tropical Storm Imelda caused major flooding outside of identified floodplains. CEQ guidance specifically calls for TxDOT to consider *known* hazards such as this increased flooding potential. It is crucial that TxDOT state how it has accounted for this major expansion of 100-year floodplains in watersheds that will be affected by the project and what mitigation measures will be used to prevent flooding and flood waters due to this project. TxDOT must address how it will account for the fact that most local drainage infrastructure, specifically in low income Black and Hispanic/Latinx neighborhoods, is unable to handle even current stormwater, and how it will account for the fact that many of the adjacent environmental justice communities do not have engineered drainage at all, or even a functioning open-ditch drainage system.

The FEIS has very little detail on how the construction project will address flooding, outside of additional stormwater detention basins, which themselves are not described in detail. The location of stormwater detention basins in environmental justice communities may impose additional health and safety risks on Black and Hispanic-Latinx populations, including the risk of increased rates of diseases like West Nile and Zika because detention basins provide a breeding ground for mosquitoes.¹⁶⁵

The FEIS does not discuss the potential climate-change impact of the NHHIP, arguing instead that,

Unlike air pollutants evaluated in federal NEPA reviews, sources for [greenhouse gas] GHG emissions are typically evaluated globally or per broad-scale sector (e.g., transportation, industrial, etc.) and are not assessed at the local or project-specific level, since the impacts are global and not localized or regional. In addition, from a quantitative perspective and in terms of both absolute numbers and emission source types, global climate change is the cumulative result of numerous and varied natural and human emission sources. Each source makes a relatively small addition to global atmospheric GHG concentrations.¹⁶⁶

TxDOT then compares Texas on-road carbon dioxide emissions (CO₂) to CO₂ emissions worldwide.¹⁶⁷ TxDOT suggests, but does not commit to, potential mitigation strategies like a “cash for clunkers” program, but places the burden of mitigation on “federal engine and fuel controls.”¹⁶⁸ As designed, this project would increase vehicle miles traveled in the region and thus exacerbate carbon emissions, but the FEIS does not document these impacts.

¹⁶⁵TDSH, Mosquito-Borne Disease <https://www.dshs.texas.gov/texasmosquitoes/diseases/>

¹⁶⁶ TxDOT FEIS at 4-1.

¹⁶⁷ TxDOT FEIS, Figure 4-1 at 4-2

¹⁶⁸ TxDOT FEIS at 4-3.

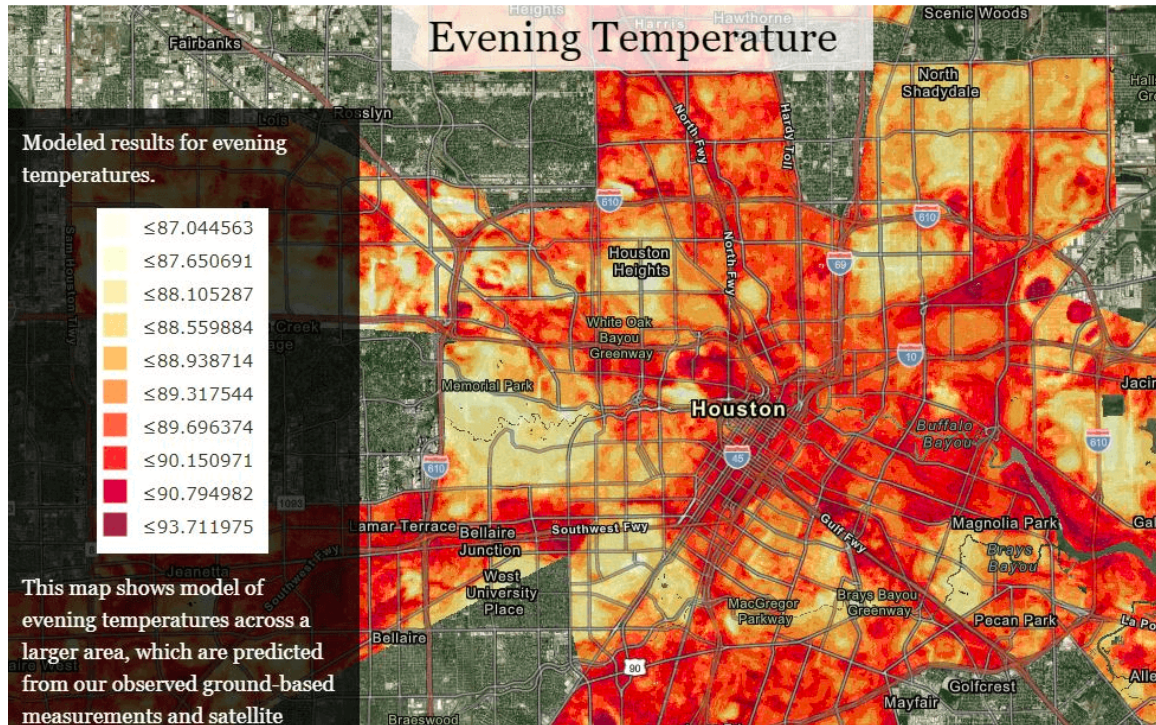
Climate change is a major contributor to the increasing frequency and severity of natural disasters, and sea-level rise will also increase the risk of flooding in coastal communities.¹⁶⁹ Like other disasters, climate change is already disproportionately impacting communities of color and low-income communities. Climate warming not only increases the risk of extreme weather, it increases the risk of heat-related illnesses and deaths. The NHHIP will increase built infrastructure through environmental justice communities and contribute to “heat islands” in those neighborhoods. Older adults, the very young, people with mental illness and chronic diseases, low-income populations, and outdoor workers have the highest risk levels.¹⁷⁰ Extreme heat kills more Americans than any other weather-related disaster, including floods and hurricanes.¹⁷¹ Low-income communities and communities of color in Houston are already disproportionately affected by extreme heat.¹⁷² The concentration of heat islands in the communities adjacent to I-45 and other highways can be seen in the following map:

¹⁶⁹ PCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [MassonDelmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J. B. R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press. In Press.

¹⁷⁰ Centers for Disease Control, Natural Disasters and Severe Weather, Available: https://www.cdc.gov/disasters/extremeheat/heat_guide.html

¹⁷¹ National Weather Service, Weather Related Fatality and Injury Statistics: 2020. Available: <https://www.weather.gov/hazstat/>

¹⁷² 2020 Houston Harris Heat Action Team mapping. Available: <https://www.h3at.org> ; https://www.understandinghouston.org/topic/environment/climate-change#extreme_weather



Map from: H3AT, 2020

As designed, the NHHIP would increase vehicle miles traveled in the region and exacerbate carbon emissions, but the FEIS does not document these impacts - particularly on the communities of color already disproportionately adversely impacted by the project. TxDOT has rejected community-requested mitigation in the form of tree planting and greenspace that would help reduce heat islands and air quality impacts.

In every segment of the NHHIP there is a disproportionate adverse impact on the basis of race, color, and national origin. Children, the elderly, individuals with disabilities, low-income people, and other protected populations are also disproportionately adversely affected in violation of other civil rights obligations like the ADA and NEPA's Environmental Justice requirements. The adverse effects of the NHHIP are predominantly borne by a minority population and/or a low-income population and these effects are appreciably more severe and greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population.

g. The NHHIP will disproportionately benefit non-minority and higher-income populations.

In addition to disproportionate and adverse impact on protected classes and environmental justice populations, the NHHIP would provide - as historical highway construction in Houston historically has - disproportionate benefits to a higher-income and whiter population. From the 1st Public Scoping Meeting through the UTP, public comments repeatedly raised the issue that the NHHIP is placing the interests of suburban commuters over the interests of city neighborhoods adjacent to the proposed freeway expansion - just as the agency did when it built these highways in the 1950s and 1960s.

Specific examples of the NHHIP's disproportionate beneficial impact on non-minority and higher income examples include, but are not limited to, the following:

The only section of highway that TxDOT is removing is the Pierce Elevated section of I-46 between I-69 and I-10, which will reconnect a majority white area with the central business district. In contrast, the highway barrier between majority Black and Hispanic/Latinx neighborhoods and the central business district is being expanded.

All but one of TxDOT's design changes to Sections 1 and 2 required increasing the ROW to build detention ponds, add additional lanes (Change 2-4), and "increase the curve radius to provide a more desirable sight distance for drivers" (Change 2-1).

The design changes TxDOT made to Segment 3 avoided ROW acquisition at a historic property on Wrightwood Street and at two parks.¹⁷³ Two of the specific changes to Segment 3 were Design Change 3-6, "[r]ealignment of Gray Street exit to avoid impacting a City of Houston Police Department building" (Figure 2-29) and Design Change 3-7, the relocation of managed lane access from Chenevert Street to Hamilton Street" which avoided impacting the property at 3501 Chenevert Street. (Figure 2-30)

The building at 3501 Chenevert is a luxury condominium development, where rents in 2019 and 2020 were between \$1,800 and \$2,500.¹⁷⁴ Proposed renters would find that "many of the Chenevert Condominiums homes for rent include heated swimming pools, floor-to-ceiling windows, breathtaking views, multiple-car garages, central air conditioning, and much more" in a "[w]alkable community offering dining, shopping,

¹⁷³ TxDOT FEIS at 2-52; TxDOT FEIS at 1-19; *see, also*; FEIS ES-1 ("Since the release of the NHHIP Draft EIS in 2017, TxDOT has continued public engagement through community meetings and by posting updated technical reports for public comments. Feedback received during that robust public engagement period resulted in project design changes as well as new information on the project's environmental concerns, impacts, and mitigation. This input resulted in changes to the EIS."); FEIS 2-41 ("In response to comments received during the Draft EIS comment period and from continuing stakeholder input and coordination, the project design was revised between May 2017 and December 2019.")

¹⁷⁴ Bex Realty, accessed 12/11/21. Available: <https://www.bexrealty.com/Texas/Houston/Midtown/Chenevert-Condominiums/Rentals.php#Chenevert%20Condominiums%20Homes%20For%20Rent>

arts, and entertainment. Great place to work, live, and play while in close proximity to downtown, the medical center, and the museum district.”¹⁷⁵

The historic building on Wrightwood Street is a single family home in the Germantown neighborhood, recognized as a City of Houston Historic District in December 2012 - which helped protect the neighborhood from the I-45 expansion.¹⁷⁶ At the time Germantown became a Historic District, however, Wrightwood Street was not included in the district in 2012; TxDOT and the Texas Historical Commission (THC) expanded the boundaries of the Germantown district in its FEIS Historical Resources Survey Report - Update, concluding that,

*[t]he proposed Germantown Historic District north of Woodland Park represents a mix of portions of several subdivisions that were platted separately during the early twentieth century. While the majority of the district is comprised of the Grota Homestead Addition west of IH 45, it also includes portions of several other plats and subdivisions, such as the Highland Addition and Woodland Heights. Germantown’s resources are unified by their age and architectural character as early-twentieth-century, middle- and working-class residences, and its cohesion as a district results from its identity by locals as the Germantown neighborhood.*¹⁷⁷

Houses in the Germantown neighborhood sold for between \$370,000 and \$1.2 million in 2021¹⁷⁸

In contrast, TxDOT and THC reduced the boundaries of the Historic District in Third Ward - identified by METRO in 2004 as “one of the city’s oldest areas.” METRO pointed out that “[t]he Third Ward was historically and is currently home to a large African-American community, and many of the city’s black leaders emerged from this neighborhood.”¹⁷⁹ Despite the area’s continued association with this history, TxDOT found in January 2019 that,

¹⁷⁵ <https://www.apartments.com/3501-chenevert-st-houston-tx/8gk0q40/>

¹⁷⁶ Whitney Radly, “Houston’s newest historic district: Germantown is recognized as an area worth preserving”, culturemap Houston, December 5, 2012. Available: <https://houston.culturemap.com/news/home-design/12-05-12-12-05-germantown-becomes-a-historic-district/#slide=0>

¹⁷⁷ FEIS, Appendix H at 95.

¹⁷⁸ https://www.har.com/germantown-historic-district/realestate_area/20

¹⁷⁹ Federal Transit Administration, U.S. Department of Transportation, and Metropolitan Transit Authority of Harris County (METRO), Southeast Corridor, Houston, Texas Final Environmental Impact Statement, January 2007, 3–89, <https://www.ridemetro.org/Pages/ProjectDocumentArchives.aspx>

the area from Holman Street north has been subject to considerable incompatible infill development, typically multi-story condominiums, since the late 2000s. Numerous vacant lots are also present from Holman Street north, perhaps due to clearing in preparation for land sale and redevelopment. While scattered historic-age resources remain extant, the substantial amount of infill development and the removal of historic-age buildings result in a loss of visual cohesion and an overall loss of integrity¹⁸⁰

This finding allowed the agency to carry out its proposed expansion of the ROW without complying with any requirements related to historic resources. Neither TxDOT nor THC considered TxDOT's role in perpetuating economic inequality and depressing property values in Third Ward, facilitating the exact land sale and redevelopment patterns that the agencies now contended removed parts of the Third Ward neighborhood from historic protections. TxDOT cannot use the consequences of the agency's own past discrimination to justify continuing to discriminate against minority and other environmental justice populations.

TxDOT's "facially neutral" criteria for community cohesion and historic status allowed a group of wealthy white homeowners to amalgamate pieces of three or more neighborhoods together into a historic district, while shrinking a historic Black community and stripping it of the protections it had to prevent further encroachment by developers - or the I-45 expansion.

The design changes TxDOT made in response to public comments on the DEIS generally increased the ROW requirements for the NHHIP. When TxDOT made design changes to reduce displacement and impacts on a neighborhood, those changes were for the benefit of either the Houston Police Department or higher-income homeowners and renters. Requests to reduce the impact on communities of color were ignored or rejected.

The FEIS and its alternatives favor white communities while disproportionately impacting communities of color. In its initial screening of alternatives, TxDOT was particularly mindful of limiting right-of-way impacts for Woodland Heights, between Cavalcade and Quitman, which is home to among the most affluent and whitest communities in the corridor.¹⁸¹ Additionally, in areas with more white

¹⁸⁰ FEIS Appendix H at 100

¹⁸¹ North Houston Highway Improvement Project: Final Environmental Impact Statement, August 2020. (FEIS Volume 1, Figure 2-2). Texas Department of Transportation. Available: http://www.ih45northandmore.com/final_eis.aspx ; FEIS Public Meeting Presentation, October 2020. (pp 41-42). Huitt-Zollars and University of Houston Community Design Resource Center . Available: <https://www.letstalkhouston.org/7872/widgets/24371/documents/15196> TxDOT agreed to stay within the exiting I-45 right-of-way between Quitman and Cavalcade as part of the approval process for the final

*residents, such as Downtown, Midtown, and Woodland Heights, the freeway is likely to be depressed, narrowed, or removed; parks are also more likely to be proposed. In areas with more Black and Hispanic residents, such as Third Ward, Northside, and Independence Heights, the freeway is likely to be widened and residential and commercial properties are more likely to be taken for the freeway project or otherwise negatively impacted.*¹⁸²

g. Perpetuation and Exacerbation of Segregation

USDOT regulations provide that “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.”¹⁸³ TxDOT not only failed to address or mitigate the current and future discriminatory impacts of the NHHIP on communities of color, it failed to take affirmative action to remove or overcome the effects of the agency’s prior discriminatory practices.

TxDOT acknowledges the agency’s role in demolishing and dividing Black communities through highway construction, and the construction and expansion of I-45 in particular.

The 1950s brought the construction of freeways and the corresponding right-of-way clearance through some of Houston’s downtown neighborhoods. It is important to note that the prosperity Houston experienced during the mid-to-late twentieth century did not extend to all Houstonians. During the booming 1950s, parts of the Community RSA, particularly the Third, Fourth, and Fifth Wards, remained without adequate paving and drainage (Shelton 2017b). These predominantly black communities received little public support, if any, for improvements to their parks, schools, or hospitals, and the construction of freeways threatened their already vulnerable communities. The construction of I-45 through downtown Houston started in the 1950s, with the Pierce Elevated opening in 1967. This section of I-45 displaced nearly 560 residences and businesses through Downtown and parts of the Third Ward, in addition to causing widespread turnover of neighborhood land uses (Shelton

North-Hardy Highway Component, and presented it as a project goal from the beginning of the scoping process.

¹⁸² Harris County FEIS Comments at 6

¹⁸³ 49 CFR § 21.5(b)(7)

2017b). Most of the displaced residents in the Third Ward were renters with little legal power to contest the displacements. Overall, much of the right-of-way for Houston's downtown freeways consisted of residential structures, with smaller impacts on commercial and industrial enterprises (Slotboom 2013).

TxDOT goes on to note that “[a]cross the county, large urban freeway projects requiring extensive displacements advanced without much opposition until the mid-1960s” and that “[o]pposition to Houston’s freeway construction did not arise until the 1970s.”¹⁸⁴ TxDOT is apparently oblivious to the fact that Black Americans were denied basic civil rights until the mid-1960s - when the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were passed - and that environmental justice obligations under NEPA were not passed until the early 1970s. Opposition to the expansion of I-45 through the Third Ward in 1972 was ignored by TxDOT.

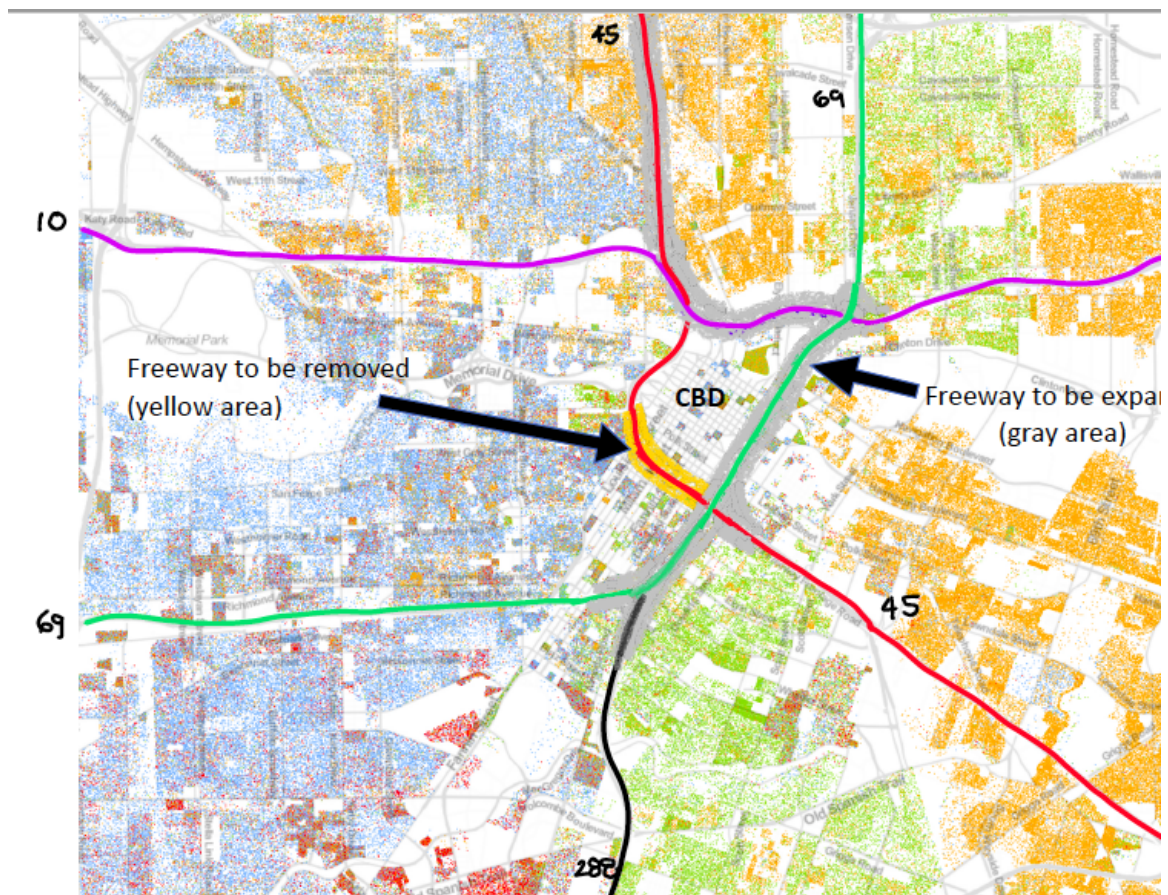
In 1972, the Texas Highway Department proposed the expansion of I-45 from six to eight lanes along a 4.8-mile stretch through the Third Ward. While projected to lead to a smaller number of displacements than the construction of the Pierce Elevated a decade earlier, residents of the Third Ward rejected the widening plans and accused officials of intentionally underfunding infrastructure in their community in order to justify the displacements (Shelton 2017a). Despite the opposition, the Texa Highway Department passed an order approving the widening in 1973 (though construction did not begin until 10 years later due to funding shortfalls).

TxDOT concludes that “[o]verall, the construction of I-45 through downtown Houston in the latter half of the twentieth century had a significant impact on surrounding neighborhoods”, but fails to recognize that the agency’s history of discrimination imposes a legal obligation to take affirmative steps to remedy that past discrimination, as well as to refrain from continuing to discriminate.¹⁸⁵

The expansion of I-45, along with US 59/I-69 and SH 288 in Segment 3, will perpetuate and worsen the racial and ethnic segregation created and enforced by the physical barriers that highways create between neighborhoods and resource-rich areas of Houston. TxDOT did not consider alternatives that would remove or mitigate highway barriers and reconnect neighborhoods to each other and downtown. The one section of highway that TxDOT is removing- the Pierce Elevated - will reconnect a majority white area with the central business district. The highway barrier between majority Black and Hispanic/Latinx neighborhoods and the central business district is being expanded.

¹⁸⁴ FEIS, Appendix Q at 26-27

¹⁸⁵FEIS, Appendix Q at 26-27



Map from Texas Housers. (Blue = white, Green = Black, Orange = Hispanic-Latnix, and Red = Asian.)

Segregation has effects beyond physical separation. As TxDOT noted in the CITA, minority-segregated neighborhoods were denied investment in basic infrastructure and public services. Redlining and ongoing housing and lending discrimination, combined with the discriminatory siting of environmental hazards and highways, depressed housing values and prevented families of color from building wealth. Urban renewal and highway programs targeted communities of color, destroying businesses and economic development as well as homes.

This racist history has now made historically disinvested communities - particularly those within the I-610 loop - vulnerable to gentrification, displacement, and cultural erasure.

iii. TxDOT did not seriously consider any alternatives without an adverse and disproportionate impact, and ignored stakeholder input about the adverse impact and discriminatory effects of the proposed NHHIP.

TxDOT's focus on car and highway-related goals was clear throughout the NHHIP process. From the 1st Public Scoping Meeting in 2011, the need and purpose TxDOT presented for public comment were focused on congestion, road safety, and eventually hurricane evacuation.¹⁸⁶ TxDOT states in its FEIS that it "is proposing improvements to **create additional roadway capacity** to manage congestion, enhance safety, and improve mobility and operational efficiency"¹⁸⁷ (Emphasis added.) This language is repeated in the ROD: "[t]he Selected Alternative for the NHHIP is designed to create additional roadway capacity to manage congestion, enhance safety, and improve mobility and operational efficiency on Interstate Highway 45(I-45) from U.S. Highway 59 (US 59)/I-69 to Beltway 8 North, including improvements along US 59/I-69 between I-45 and Spur 527 in Harris County, Texas."¹⁸⁸ Creating additional roadway capacity is always a condition precedent to managing congestion or improving safety.

Because of TxDOT's unwillingness to engage on changes to the NHHIP preferred alternative, Harris County and the City of Houston held their own joint public engagement process, which continued into 2020. Participants continued to oppose TxDOT's preferred alternative, but strongly supported elements of the project - such as converting existing general use lanes to transit only lanes - that the City of Houston incorporated into an additional preferred alternative. The City of Houston submitted the results of the workshop and survey, along with their own recommendations, to TxDOT on May 12, 2020. TxDOT declined to consider the community proposed alternative - known as Vision C - and Policy Committee on any suggested changes to the preferred alternative.

FHWA regulations mandate that the recipient "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment."¹⁸⁹ TxDOT never seriously considered meaningful alternatives to increasing the physical capacity of the roads included in the NHHIP - including any alternatives that might have reduced congestion and improved

¹⁸⁶ See, e.g., TxDOT Presentation, First Scoping Meetings, November 15 and November 17, 2011. Available at: <http://www.ih45northandmore.com/docs/Vol.1%20Section%205%20Presentation.pdf>

¹⁸⁷ FEIS at ES-1.

¹⁸⁸ ROD at 4. Available at:

http://www.ih45northandmore.com/docs14/NHHIP_RecordofDecision/NHHIP%20Record%20of%20Decision%20-%20Body.pdf

¹⁸⁹ 40 CFR §1502.1

safety without expanding I-45 and increasing the ROW. While TxDOT points out in its FEIS that it included an Alternative 2 for each segment that relied on Transportation Systems Management (TSM) that would not require “major capital expenditures to increase physical roadway traffic capacity”, these alternatives were never described beyond “TSM Projects”.¹⁹⁰

Between the 1st Public Scoping meeting and the 2nd, TxDOT had developed a universe of alternatives, done an initial screening process, and identified six preliminary alternatives for each project segment. By the time TxDOT’s “Universe of Alternatives” was presented to the public for comment, Alternative 2 (TSM projects) had already been eliminated. Any subsequent public input was on a decreasing set of alternatives selected by TxDOT until there was one “recommended alternative” - although commenters continued to criticize the alternatives presented throughout the EIS process.¹⁹¹ Alternative 1, the No Build alternative, was treated similarly to Alternative 2, and was only included in the universe of alternatives because NEPA regulations require the inclusion of a “no action” alternative in the EIS.¹⁹² No alternatives that might have made a major capital investment in improving the safety of I-45, reconstructing it without expanding the ROW, for example, were ever included in the universe of alternatives. TxDOT presented the “no action” alternative as the “no build” alternative, but did not seriously consider any alternatives that would not impose permanent “disproportionately high and adverse” effects on communities of color - most of which were tied to expanding the ROW.¹⁹³ The exclusion of any alternative that did not expand the freeway and increase the ROW continued through the DEIS and FEIS.

Finally, TxDOT’s failure to seriously consider less discriminatory alternatives is illustrated by the fact that it began a procurement process for Segment 3 in 2018 - two years before it published the FEIS for public comment. The NEPA process is intended to guide and inform the recipient’s decision-making process; TxDOT appears to have

¹⁹⁰ See, e.g.: FEIS at 403. (TxDOT refers to, “TSM which improves the operational characteristics of the transportation network (e.g., traffic light timing, pre-staged wrecker service to clear accidents faster, or traveler information systems.”)

¹⁹¹ See, FEIS, Figure 2-1 at 2-4

¹⁹² 40 CFR §1502.14(c)

¹⁹³ This is reflected in the binary choice TxDOT presented as part of the UTP public survey; the only alternatives were approving the preferred alternative or removing funding from the Houston-Galveston region.

approached the process as an opportunity to retroactively justify a decision it had already made.

TxDOT never evaluated a NHHIP alternative without a disproportionate and adverse impact on the basis of race, color, and national origin, or on environmental justice populations generally. The agency ultimately chose the alternative with the most disproportionate and adverse impact, with full knowledge it was doing so.

iv. TxDOT's selected alternative fails to achieve the agency's stated need and purpose.

TxDOT has consistently presented the purpose of the NHHIP as “to create additional roadway capacity to manage congestion, enhance safety, and to improve mobility and operational efficiency.”¹⁹⁴ However, TxDOT's preferred alternative will not meet the agency's stated need and purpose. The preferred alternative bears no relationship to the recipient's stated objective, much less does it present a substantial, legitimate justification for choosing the preferred alternative.

The extensive body of evidence that building more highway lanes results in the same or an increased level of congestion can be summarized as “if you build it, they will come.”¹⁹⁵ This “fundamental law of road congestion” was articulated in 1962 as “Down's Law of Peak-Hour Traffic Congestion . . . [o]n urban commuter expressways, peak-hour traffic congestion rises to meet maximum capacity.”¹⁹⁶ Economists Gilles Duranton and Matthew A. Turner provided definitive confirmation of this fundamental law in 2011, finding that for interstate highways in urban areas, there was a one-for-one increase in Vehicle Kilometers Traveled (VKT) for any increase in lane kilometers on roads, driven by increases in driving by current residents and commercial traffic, and by migration.¹⁹⁷

¹⁹⁴ See, e.g., TxDOT, presentation at 4th Public Scoping Meeting April 2015, Available: <http://www.ih45northandmore.com/docs6/Appendix%20F.pdf>; The agency added “expand capacity for emergency evacuation” to the need and purpose section in the FEIS at ES-3.

¹⁹⁵ *Field of Dreams*. This quote is perhaps more appropriate to highway expansion than baseball stadiums for ghosts.

¹⁹⁶ Anthony Downs, “The Law of Peak-Hour Expressway Congestion”, *Traffic Quarterly* Volume 16 at 393, (1962)

¹⁹⁷ Duranton, Gilles, and Matthew A. Turner. 2011. “The Fundamental Law of Road Congestion: Evidence from US Cities.” *American Economic Review*, 101 (6): 2616-52. Duranton and Turner's research also suggested that highway expansion did not divert traffic from other roads, so it is unlikely that expanding I-45 will relieve congestion on other roads in Houston.

TxDOT's expansion of the Katy Freeway (I-10) in 2008 is frequently invoked as the epitome of induced demand.¹⁹⁸ TxDOT spent almost \$3 billion to widen the freeway to 23 lanes, making it one of the widest highways in the United States. By 2014, congestion was worse than before the expansion - travel times were longer, and for a much higher number of cars.¹⁹⁹ TxDOT has simply ignored the real-time example of induced happening during the NHHIP planning process and concluded that doing the same thing all over again will somehow turn out differently.²⁰⁰ Expanding I-45 will not reduce, and will eventually worsen, congestion. Nor will a project that induces demand and increases VMT increase mobility or operational efficiency, or expand emergency evacuation capacity.²⁰¹

Despite TxDOT's commitment to highway expansion, policy around road-building is changing in Texas. The Governor of Texas has said clearly that **TxDOT needs to shift its transportation priorities away from road building**. "The bottom line is this: The way people get around, the way people live is going to change," Governor Abbott said in January 2020. "As a result, this generation of roads . . . is probably the last major buildout of roads we'll have in the state of Texas, even considering the fact that Texas is the fastest-growing state in America."²⁰²

No one disputes that I-45 needs safety improvements, but TxDOT has repeatedly refused to even consider an alternative that would not expand the highway as part of the EIS process.

¹⁹⁸ See, e.g.: Laura Bult, "How highways make traffic worse", VOX, February 12, 2021. Available: <https://www.vox.com/videos/22280067/highways-traffic-worse-congestion-expansion>; Patrick Sisson, Houston's \$7billion solution to gridlock is more highways", Curbed, August 5, 2019. Available: <https://archive.curbed.com/2019/8/5/20754435/houston-traffic-highway-i-45-north-txdot>;

¹⁹⁹ See, e.g.: Joe Cortright, "Reducing congestion: Katy didn't", City Commentary blog, December 16, 2015. Available: <https://cityobservatory.org/reducing-congestion-katy-didnt/>; David Zipper, "The Unstoppable Appeal of Highway Expansion", Bloomberg City Lab, September 28, 2021. Available: <https://www.bloomberg.com/news/features/2021-09-28/why-widening-highways-doesn-t-bring-traffic-relief>; Laura Bult, "How highways make traffic worse", VOX, February 12, 2021.

²⁰⁰ Like the NHHIP, the expansion of the Katy freeway was intended to improve the experience of commuters from the suburbs into downtown Houston. Katy is 58.6% white, 6.6% Black, and 29.4% Hispanic/Latino. Median household income is \$83,091, and the poverty rate is 3.7%. Census Quick Facts: <https://www.census.gov/quickfacts/katycitytexas>

²⁰¹ Even if the NHHIP did expand evacuation capacity, increasing evacuation capacity for private vehicles would also disproportionately benefit whiter and higher-income communities. Only 3% of white households in the Houston-Baytown-Sugarland region do not have a vehicle, but that number rises to 5% for Latino households and 10% for Black households. National Equity Atlas: Car Access 2019. Available: https://nationalequityatlas.org/indicators/Car_access#/?geo=03000000000026420

²⁰² Governor Greg Abbott quoted in Jackie Wang, "Gov Greg Abbott: Emphasis on Building Out Texas Roads Is Going to Change" *Rivard Report*, January 8, 2020. (emphasis added) Available at: <https://therivardreport.com/gov-greg-abbott-emphasis-on-building-out-texas-roads-is-going-to-change/>

H. TxDOT's proposed alternative does not adequately remedy NHHIP's discriminatory impact.

A recipient should take into account, when determining if a particular program has a disproportionately high and adverse effect on impacted persons, “mitigation and enhancement measures and potential offsetting benefits to the affected minority and/or low-income populations.” TxDOT concludes that “[t]he mitigation actions and improvements described in this assessment substantially offset the adverse effects on minority and low income populations that would result from the construction of the NHHIP.”²⁰³ TxDOT is incorrect.

1. The Proposed Mitigation is Inadequate

It is almost impossible to overstate the type and level of harm that the NHHIP will inflict on individuals, families, and communities directly adjacent to the NHHIP. These harms will fall disproportionately on minority communities, low-income communities, and persons protected by Title VI of the Civil Rights Act and other civil rights and requirements; including children, the elderly, and people with disabilities.²⁰⁴

TxDOT has made it very difficult to determine which mitigation measures, if any, it is committing to, and the actual content of those measures. For example, the ROD states that:

*[m]eans to avoid, minimize, and mitigate effects from the Preferred Alternative were presented in the Final EIS and have been updated in response to comments received on the Final EIS and progress made since the completion of the Final EIS, and are listed in Appendix A of this ROD. Appendix A is a summary of the means to avoid, minimize, and mitigate effects; additional information is included in the Final EIS.*²⁰⁵

There is no clear and substantive commitment to mitigation measures that is accessible to the public and allows the people most affected by the NHHIP to determine what their rights are and whether TxDOT is actually following through on its commitments.

²⁰³ FEIS at 3-14 and 3-15.

²⁰⁴ TxDOT, FY 2021 *Title VI/Nondiscrimination Plan*, October 2020. Attachment 1. pg. 4.

²⁰⁵ ROD, February 2021 at 15.

Regardless, it is abundantly clear that TxDOT has not taken nor will take any substantive measures to minimize or mitigate disproportionate adverse impacts on communities of color. .

a. Displacements-Relocation

TxDOT states clearly in the FEIS Community Impact Assessment (Appendix F) that both displacement and relocation have an adverse impact on individuals, families, and communities..

In general, displacement of residences can affect the cohesion of a community, especially if that community has a history and a culture that gives it a unique identity. From the information and analysis in Sections 5.1 and 5.2 it is apparent that most of the environmental justice communities indicated in Table 5-16 have a history and culture that is identifiable in the community today. For example, the Independence Heights community has a history that goes back over 100 years and has indicated through community planning studies the desire for historic and cultural preservation. As indicated in Table 5-16, the potential effects to community cohesion related to residential displacements could be expected to be felt more so in the neighborhoods of Northside/Northline, Independence Heights, Near Northside, Greater Fifth Ward, Downtown, Second Ward, and Greater Third Ward.

From a community-wide perspective, the loss of residents might be recurrent or cumulative with other activities that have affected, or are affecting, a community and thereby creating a cumulative effect that is more adverse than the individual effect associated with the project. Other associated effects occurring in these neighborhoods (to varying degrees) include impacts from flooding and floodplain buyout programs,²⁰⁶ previous transportation projects, as well as housing affordability associated with gentrification.

From the displacee's perspective, the disruption associated with moving can affect a resident's access to a social structure to which they have become familiar over time. This social structure can include community activities (church and

²⁰⁶ Federal Flood Buyout programs also have a disproportionately high and adverse impact on environmental justice populations for similar reasons - primarily, the impact of segregation and discrimination on housing values, and the racial inequity incorporated into the concept of "fair market value." To the extent that TxDOT relies on flood buyout programs to relocate individuals who would otherwise be relocated by TxDOT, this policy would also constitute discrimination on the basis of race, color, and national origin under Title VI because those programs provide lesser benefits to minority individuals than they may potentially qualify for under TxDOT's proposed relocation program.

school) and other regular routines such as grocery shopping, childcare and medical services. Individual circumstances will vary making it difficult to assess the extent of adverse effects related to residential displacements, however; low-income and limited English proficiency populations may be especially vulnerable to such effects. The proposed project would impact public housing communities and privately-owned housing projects for low-income families and individuals and persons with disabilities.²⁰⁷

TxDOT acknowledges the disproportionately high and adverse impact of the NHHIP on persons protected by Title VI, the ADA, NEPA, and other civil rights requirements, but also the disproportionately high and adverse effects of relocation on those populations. TxDOT cannot cure a civil rights violation by choosing a mitigation strategy that also violates civil rights requirements.

The disproportionate negative impact of relocation on both minority individuals and communities can be seen, for example, in federal flood buyout and relocation programs. Studies show that flood relocation programs are more disruptive for homeowners in minority communities than for homeowners in white or affluent neighborhoods. Homeowners from more privileged neighborhoods resettle closer to both their flood prone homes and to one another, thus helping to preserve the social as well as economic value of the home and community cohesion, while homeowners from less privileged areas end up farther away from both. Residents moving from a neighborhood where buyout prices average \$80,000 end up three times farther from their original home than those moving from a neighborhood where buyout prices averaged \$280,000, and they end up nearly twice as far from neighbors resettling through the same program.²⁰⁸ Relocation is more destructive to community cohesion in minority neighborhoods, and has a significantly more adverse impact on minority and low-income homeowners, who are forced to move further away from their original neighborhoods, and from the jobs, services, and other resources that were located in those neighborhoods.

In addition to the overall inability of relocation to mitigate displacement, TxDOT has made almost no mitigation commitments for residential displacement that were not already legally required by the Uniform Relocation Act and its implementing

²⁰⁷ FEIS CIA, Section 5.9.1.3, pp. 5-208-208.

²⁰⁸ James R. Elliott, James Loughran, and Phylcia Lee Brown, "Divergent Residential Pathways from Flood-Prone Areas: How Neighborhood Inequalities Are Shaping Urban Climate Adaptation", 2021, *Social Problems*, publication forthcoming. Available: <https://scholarship.rice.edu/bitstream/handle/1911/110847/Divergent-Residential-Pathways.pdf?sequence=1&isAllowed=y>

regulations.²⁰⁹ Compliance with federal law is not a means to avoid, minimize, and mitigate effects.

TxDOT is required to “provide language translation services” by Title VI. This translation service must include translation of all written documents into the LEP person’s primary language and simultaneous translation of all oral communications from TxDOT and its contractors. While basic compliance with Title VI and its own LEP requirements does not constitute mitigation, as detailed in this complaint TxDOT has also failed to comply with these requirements throughout the EIS, ROD and UTP processes. This appears to have continued in the property acquisition process.²¹⁰

TxDOT must provide relocation assistance counseling under the URA, and “shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962)”²¹¹

A relocation assistance program that complies with Title VI and the Fair Housing Act must not discriminate, and must constitute affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.”²¹²

- Any offer of compensation for property based on “fair market value” is inherently discriminatory if the property at issue has been devalued by TxDOT’s previous policies and/or other government policies that have depressed property values in historically disinvested communities. Displaced homeowners must be provided with sufficient resources to relocate, without financial penalty, to a comparable replacement dwelling, and may be entitled to additional compensation for being subjected to past discrimination. A civil rights remedy is not limited by, for example, assistance limits in the URA.

²⁰⁹ (URA) 42 U.S.C. §4601 *et. seq.*; 49 CFR §24.

²¹⁰ Juan Pablo Garnham, “Texas’ \$7 billion plan to remake Houston highways once again targets homes, businesses in communities of color”, *Houston Chronicle*, October 11, 2019. Available: <https://www.texastribune.org/2019/10/11/texas-plan-remake-houston-highways-targets-communities-color/> (“Olivares knows the expressway expansion will likely mean that he will have to sell. **He received some papers with information, but he doesn’t speak English**, so he just passed them along to a friend who is helping him make sense of his options. . . .Olivares also understands it could be difficult to get a good return on his investment. . . .**“It’s way too expensive for me to pay for a commercial appraisal, which would help,” he says. “But I can’t afford it.”**) (Emphasis added.)

²¹¹ 49 CFR §24.205(c)(1)

²¹² 49 CFR § 21.5(b)(7)

- TxDOT must ensure that relocation programs provide legal assistance to clear title to heirs property, which is more prevalent in African American families.²¹³
- TxDOT fails to provide any mitigation for loss of community cohesion, including community based planning, relocation within the same neighborhood,
- The role of relocation counselors, as described by TxDOT, is inadequate mitigation. TxDOT must provide meaningful relocation and mobility counseling including transportation to look at units, assistance with administrative paperwork, and real estate assistance.
- TxDOT has failed to identify measures to identify and mitigate direct and indirect effects of potential gentrification and displacement resulting from the NHHIP including affordable housing , economic development for long-term local businesses, preserving historic and culturally important sites, buildings, and art.
- TxDOT has not actually committed to giving homeowners and renters sufficient notice that they will be displaced. A “goal” of at least 180 days notice is not meaningful if residents can be given only 90 days notice, as happened to the tenants at Lofts at the Ballpark.
- TxDOT must actually provide tenants with “the opportunity to relocate to a comparable residence in the same neighborhood“ and sufficient rental assistance to find a safe and healthy replacement dwelling even above the amount provided in the URA.
- TxDOT’s actions must not perpetuate segregation either by expanding barriers around or between communities of color, or by facilitating the displacement of minority communities and the resegregation of those communities as majority white.

Houston has one of the most severe shortages of affordable housing in the United States. The Houston-The Woodlands-Sugarland MSA has a deficit of more than 203,000 units affordable to families making at or below 50% of Area Median Income (AMI), which is \$35,640 or less for a family of three. The Houston MSA’s affordable unit deficit makes up almost a third of the entire state’s unit deficit. There are 19 units available and affordable to every 100 families at 30% AMI or below, and 46 units for every 100 families at 50% AMI or below. There is no surplus of available and affordable units for any family making less than 100% of AMI, or \$79,200.²¹⁴ Fair market rent for a two-

²¹³ Heirs’ property is created when a landowner dies without a probated will, creating divided ownership of property between multiple heirs, creating a situation in which all the heirs must agree, for example, in order to sell the land, obtain a mortgage, or access programs like CDBG-DR home repair and rebuilding programs. Heir’s property ownership is particularly prevalent in African-American communities. *See, e.g.*: Kuris, Gabriel, ““A Huge Problem in Plain Sight”: Untangling Heirs’ Property Rights in the American South, 2000-2017,” 2018, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>

²¹⁴ NLIHC, The Gap Report: Texas. Available at: <https://reports.nlihc.org/gap/2019/tx>

bedroom unit in Harris County is \$1,176 per month, which would require an income of \$47,040, or the equivalent of 3.1 full time jobs as minimum wage. The rent affordable to someone at 30% of AMI is \$594 per month, approximately half of fair market rent.²¹⁵

The NHHIP will displace both subsidized and naturally occurring affordable housing. There is no proposal to mitigate the loss of public and other deeply affordable housing with one-for-one replacement or any replacement housing that would allow families to stay in the neighborhood. The only affordable housing mitigation measure proposed is the following:

TxDOT is committing \$27 million to support affordable housing initiatives in the neighborhoods most affected by the project in addition to the individual acquisition and relocation compensation provided to homeowners, renters and businesses that would be displaced. This commitment will provide financial assistance to support specific affordable housing initiatives. The eligible initiatives include construction of affordable single-family or multi-family housing, and support of programs that provide assistance and outreach related to affordable housing. This \$27 million affordable housing commitment is separate and apart from, and is above and beyond the funding for the acquisition, relocation and enhanced relocation services for the directly impacted residential properties. Please refer to section below labelled “Displacement and Relocations” for additional information about the enhanced relocation services.

This is not mitigation. TxDOT is not actually committing this funding to build affordable housing (as opposed to supporting programs that provide assistance and outreach), there is no timeline for when any housing might be built, and no restriction on the level of affordability or affordability term. Any new housing constructed with this funding would not be available until after residents had already been displaced.

b. Flooding

The only flooding-related mitigation measure proposed in the ROD (Appendix A) is “[c]onduct a hydraulic analysis to the more stringent of City of Houston, HCFCD, and

²¹⁵ https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf

Federal Emergency Management Agency (FEMA) floodplain standards, defined at the time of study and obtain a letter of no objection from the local authorities.”

Conducting a hydraulic analysis with the most up to date and appropriate data should have been part of the EIS process. Carrying out its obligations under NEPA is not mitigation

c. Health Impacts of Air and Noise Pollution

TxDOT does not commit to any measures to mitigate the impact of increased air pollution post-construction, and the majority of the agency’s mitigation commitments during the construction period are not substantive, or in some cases not even commitments.

“Encourag[ing] construction contractors” to use incentive programs to minimize diesel emissions is not an actual commitment to mitigate the impact of air pollution. Nor is “coordinat[ing] with schools to address construction phasing and effects during STARR testing and other sensitive times” a substantive commitment to actually stop or minimize construction at those times” much less to mitigate air pollution.²¹⁶

Evidence suggests that installing air filters in schools protects students’ health and increases academic performance - at minimal cost, particularly in terms of mitigation programs.²¹⁷ Advocates and community members have repeatedly asked TxDOT to fund the ongoing installation of HEPA (high efficiency) filters in buildings with sensitive occupants like children and the elderly, within 500 ft. of the highway in order to mitigate the adverse effects of air pollution, and to include other mitigation measures like building sidewalks and tree lines along the borders of the lots facing I-45 and along major streets within 500 ft of the highway/students’ main walking paths to and from school, locate construction staging areas at least 500 ft from sensitive uses like schools, senior living, residences, and health care facilities, and fund the installation of air monitors at sensitive receptors like schools, parks, and playgrounds during and after project completion.

TxDOT will install air monitors at one site in Segment 2 and one site in Segment 3 “for a minimum of five years during construction.” This is not adequate to even monitor construction emissions, and TxDot will remove these monitors at the end of construction, or even before, as construction could take up to 10 years.

²¹⁶ ROD AppendixA at 9.

²¹⁷ Gilraine, Michael. (2020). Air Filters, Pollution and Student Achievement. (EdWorkingPaper: 20-188). Retrieved from Annenberg Institute at Brown University: <http://www.edworkingpapers.com/ai20-188>; Matthew Yglesias, “Installing air filters in classrooms has surprisingly large educational benefits,” Vox, January 8, 2020. Available: <https://www.vox.com/2020/1/8/21051869/indoor-air-pollution-student-achievement>

TxDOT will not even commit to require its contractors to minimize diesel emissions during construction; its proposed air quality mitigation measures are completely inadequate.

TxDOT suggests only two mitigation measures that could be in place post construction; the use of longitudinal tining on main lanes and frontage roads, and the construction of noise barriers. However, TxDOT does not commit to either of these mitigation measures.

TxDOT admits that the final decision about whether to construct noise barriers will not actually be made until much later in the process. Even then, barriers would only be constructed “where feasible, reasonable, and approved by the landowners adjacent to the proposed noise barriers.” TxDOT also says that it “plans” to use longitudinal tining, but “potential noise reductions . . . have not been quantified for this project and are not accounted for in the Traffic Noise Technical Report.” TxDOT has not committed to either of these mitigation measures.²¹⁸

In the FEIS, TxDOT states that “[i]n addition to noise barriers, TxDOT is providing the opportunity for adjacent property owners in environmental justice (high minority and low-income) areas to receive noise mitigation that did not otherwise qualify under TxDOT’s noise guidelines or FHWA criteria.”²¹⁹ In Appendix A, the decision to construct noise barriers would not only be subject to a vote of the adjacent property owners, those barriers would have to meet noise reduction criteria.²²⁰

TxDOT’s proposed noise mitigation commitments in Appendix A during construction seem much less conditional than its post-construction commitments, however, in the body of the ROD, for example “[m]inimize construction noise through abatement measures” becomes “require the contractor to make every reasonable effort” to minimize construction noise. TxDOT will not require its contractors to use abatement measures, it will only ask them to make “reasonable” efforts.²²¹

TxDOT does commit to “develop a program to provide weatherization and energy efficiency measures for qualifying low-income single family homeowners” as mitigation for “temporary” noise and air quality issues during construction. This program is potentially mitigative, but there are no details about how the program will work, who

²¹⁸ ROD, Appendix A at 9.

²¹⁹ FEIS Appendix F, 5.9.3.5 (ultimately subject to a vote of the adjacent property owners) We respectfully request that FHWA review whether its cost-benefit formula for the construction of noise barriers has a disparate impact on environmental justice populations.

²²⁰ ROD Appendix A at 13.

²²¹ ROD at 22.

might qualify for assistance, or how many homes will be weatherized. Providing weatherization and energy efficiency measures for only a small percentage of homes affected will not mitigate the disproportionate and adverse impact of air pollution, or construction and traffic noise on environmental justice communities.

Under CEQ guidance, “[m]itigation measures identified in an EIS . . . should reflect the needs and preferences of affected low-income populations, minority populations, or Indian tribes to the extent practicable.”²²² TxDOT’s proposed mitigation measures completely fail to reflect the needs and preferences of minority and low-income populations in the most affected communities.

ii. Perpetuation Segregation and Discrimination

TxDOT’s selected alternative perpetuates and exacerbates segregation and discrimination in violation of Title VI and the U.S. DOT’s implementing regulations.

TxDOT is replicating and exacerbating the results of the agency’s prior discriminatory decisions to site highways through historically Black and Hispanic/Latinx neighborhoods and in locations which reinforced residential racial segregation by erecting physical barriers between segregated neighborhoods. TxDOT is not entitled to continue discriminating because it did so in the past. In fact, USDOT regulations mandate that “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, **the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.**”²²³ (Emphasis added.)

The selected alternative expands physical highway barriers between white-segregated and Black and Hispanic/Latinx segregated neighborhoods. The only highway segment being removed in the entire NHHIP - the Pierce Elevated - is where I-45 separates an overwhelmingly white neighborhood from the central business district of Houston. TxDOT is not only failing to redress past discrimination and imposing additional disproportionate and adverse effects on communities of color, the agency is affirmatively providing disproportionate benefits to whiter, higher-income communities.

²²² CEQ, Environmental Justice Guidance Under the National Environmental Policy Act (“CEQ NEPA Guidance”), at 16 (Dec. 10, 1997).

²²³ 49 CFR § 21.5(b)(7)

I. Less discriminatory alternatives exist

Projects that disparately impact protected populations will be carried out only if there is both a “substantial need” for the project and alternatives with less adverse effects either “would have other adverse social, economic, environmental or human health impacts that are severe; or [w]ould involve increased costs of extraordinary magnitude.” *Id.* § (8)(d)(2)(a)–(b). Showing that other alternatives are not “practicable” is a high standard and one that TxDOT has not met.

TxDOT has a variety of less discriminatory options for reducing congestion and increasing safety in the NHHIP area. Throughout the NHHIP planning process, which has gone on for almost 20 years, less-discriminatory alternatives have been raised by multiple stakeholders, but TxDOT has repeatedly rejected those alternatives and clung to an project that imposes highly disproportionate and adverse effects on Black and Hispanic/Latinx neighborhoods, compounding its previous discriminatory actions and the disproportionate effects of bulldozing highways through these neighborhoods originally.

Examples of less discriminatory alternatives include addressing safety issues by reconstructing I-45 to current design standards within the current ROW (as TxDOT agreed to do between Quitman and Cavalcade) and providing more robust and substantial mitigation measures.

In addition to community members and advocates, the City of Houston, Harris County, the H-GAC Transportation Policy Committee, and METRO, have tried repeatedly to engage with TxDOT about reducing the impact of the NHHIP. The City of Houston in fact held its own public engagement process over the Summer and Fall of 2019 and provided the resulting proposed alternatives and suggested mitigation to TxDOT on May 12, 2020.²²⁴ The goal of the City’s process was to develop an alternative that would meet the state’s purpose and need for improving the IH-45 corridor; while keeping the infrastructure generally within its current right-of-way.

The process involved a broad stakeholder facilitation group and iterative, deep engagement in and with directly adjacent community residents and business owners in each of the three segments of the NHHIP. The facilitation group included all relevant

²²⁴ May 12, 2020 letter from City of Houston Mayor Sylvester Turner to Laura Ryan, TTC Commissioner Laura Ryan.; Available: https://www.houstontx.gov/planning/nhhip/docs_pdfs/Commissioner%20Ryan%20-%20NHHIP%20-%20Letter%20&%20Technical%20Appendix.pdf
re.NNHIOPhttps://www.houstontx.gov/planning/nhhip/docs_pdfs/Commissioner%20Ryan%20-%20NHHIP%20-%20Letter%20&%20Technical%20Appendix.pdf

state, regional, county, city, and community entities. TxDOT was present and participated. Interactive community workshops afforded residents the opportunity to express their goals but also to remark on dozens of detailed project aspects.

The City's end vision included , for example, redesigning some lanes to reduce the required right of way, working with METRO to incorporate bus rapid transit, studying potential flood mitigation at in Halls and Little White Oak Bayou, surface connectivity, coordinating with the County and Flood Control District, and ensuring families who were displaced could stay in the same neighborhood..²²⁵ Harris County also supported this plan.²²⁶

Instead of using the EIS to identify and study a variety of alternatives, or engaging in good faith with local governments and communities, TxDOT used the process to give its preferred alternative the veneer of NEPA compliance and informed decision making. But the agency never seriously considered whether highway expansion was even the best way to meet its stated goals, let alone whether the NHHIP substantively complied with NEPA and Title VI.

J. TxDOT's failure to ensure that LEP populations could effectively participate in the NHHIP planning and approval process constitutes discrimination on the basis of national origin.

Under Title VI, discrimination based on national origin includes discrimination against LEP persons and populations.²²⁷ As part of their obligations under Title VI, federal agencies must make information regarding their programs and Title VI available to the public;

(d)(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

²²⁵ May 12, 2020 Letter from Houston Mayor Sylvester Turner to TTC Commissioner Laura Ryan,

²²⁶ May 19, 2020 letter from County Judge Lina Hidalgo to TTC Commissioner Ryan. Available: <https://img1.wsimg.com/blobby/go/86a926a3-fdac-43e2-a0fb-1a8e433f3a8f/downloads/2020-05-19%20Lina%20Hidalgo%20vision%20%26%20delay%20FEIS.pdf?ver=1639422329812>

²²⁷ *Lau v. Nichols*, 414 U.S. 563 (1974)

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to title VI (28 C.F.R. 42.405)

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency”, clarified the obligations of federal agencies to LEP persons and required agencies to develop guidance for their recipients on how to make their programs meaningfully accessible to LEP persons.²²⁸ DOT’s LEP guidance “clarifies existing legal requirements for LEP persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons. These are the same criteria DOT will use in evaluating whether recipients are complying with Title VI and Title VI regulations.”

“Persons living in areas affected or potentially affected by transportation projects” - as well as public transportation passengers - are “[e]xamples of populations likely to include LEP persons who are served or encountered by DOT recipients and should be considered when planning language services”, and specifically names “[s]tate departments of transportation” as DOT recipients to which the guidance applies.²²⁹

Recipients should examine four factors to assess language access needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons to a program or activity.

While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the recipient to people’s lives; and (4) the resources available to the recipient and costs.²³⁰

In this case, an assessment of all four factors required TxDOT to provide substantially greater language access to LEP populations in both the NHHIP planning and EIS processes, and in the adoption of the statewide UTP.

- a. Number or proportion of LEP persons eligible to be served or likely to be encountered by the NHHIP.

²²⁸ President William J. Clinton, “Improving Access to Services for People with Limited English Proficiency”, EO 13166, 65 Fed. Reg. 159 (August 16, 2000). 70 Fed. Reg. 74089

²²⁹ 70 Fed. Reg. 74091 (December 15, 2005)

²³⁰ 70 Fed. Reg. 74091

Every segment of the NHHIP included large populations of LEP individuals. In Segment 1, 51.7% of the population is LEP, and 12 Block Groups have LEP populations that are more than 50%.²³¹ In Segment 2, 21.5% of the population is LEP, but 47.4% in one Block Group.²³² In Segment 3, 10.9% of the population is LEP, but 46.1% and 49.2% in two Block Groups.²³³ From 83.2% to 98.9% of LEP individuals require Spanish translation “in order effectively to be informed of or to participate in the program”.²³⁴ The number and proportion of LEP persons affected by the NHHIP - as identified by TxDOT - clearly required the agency to provide significantly greater language access to LEP populations. For written translation, for example, U.S. DOT provides a “safe harbor”, which is considered strong evidence of compliance with the recipient’s LEP obligations. The “safe harbor” is that the recipient “provides written translations of vital documents for each eligible LEP group that constitutes 5% or 1,000, whichever is less, of the populations eligible to be served or likely to be affected or encountered.”²³⁵ There is no segment of the NHHIP with an LEP population less than 10%, and in an entire segment, more than half of the affected population is LEP. TxDOT failed to translate the DEIS, FEIS, or ROD into Spanish, or any other language used by an LEP population over 1000 or 5%.²³⁶

TxDOT notes in the FEIS that both Houston and Harris County have LEP populations of more than 20%.²³⁷ TxDOT should routinely translate documents regarding projects in Harris County and provide meeting translation without the need for a request.

b. Frequency with which LEP individuals come in contact with the NHHIP.

LEP populations will come into contact with the NHHIP daily, whether because they have been displaced, are affected by increased air pollution, or are using some portion of the transportation system.

c. Nature and importance of the NHHIP to people’s lives.

As Congressman Elijah Cummings pointed out, “[o]ur decisions about transportation determine much more than where roads or bridges or tunnels or rail lines will be built. They determine the connections and barriers that people will encounter in their daily lives - and thus how hard or easy it will be for people to get where they need

²³¹ FEIA CIA at 4-4.

²³² FEIS CIA at 4-5.

²³³ FEIS CIA at 4-8.

²³⁴ See: 28 C.F.R. 42.405

²³⁵ 70 Fed. Reg. 7408, 74095 (Wednesday, December 14, 2005)

²³⁶ TxDOT is also violating its own LEP requirements. See, TxDOT LEP Manual <https://ftp.txdot.gov/pub/txdot-info/ocr/language-assistance-plan.pdf>

²³⁷ FEIS, Appendix 4 at 4-10.

and want to go.”²³⁸ Transportation is directly connected to access to opportunity.

As documented in the DEIS and FEIS, the NHHIP will have a substantial impact on people’s lives. The nature of these impacts is critical, including health risks, access to services, and losing a home or business. Construction alone will substantially disrupt people’s lives for more than five years - including their access to transportation and, consequently, to jobs, school, and resources.

d. Resources available to TxDOT and costs.

The NHHIP is estimated to cost more than \$7 billion dollars, with additional funding for right of way acquisition.²³⁹ TxDOT is a state agency with a FY 2022-2023 budget of \$26.6 billion.²⁴⁰ TxDOT has substantial resources to make information available to LEP populations. As described above, TxDOT has violated its own LEP Plan, which anticipates that TxDOT will provide this access and specific services.²⁴¹

State and local governments with substantially fewer resources than TxDOT routinely translate critical documents and make information available in other languages, particularly Spanish, on their websites.²⁴²

TxDOT’s February 2021 announcement that it had issued the ROD includes notice that a translator is available in five languages, suggesting that TxDOT is aware of its LEP obligations. TxDOT states that it will provide a document translator upon request, however, only the specific notice that translation is available - not the information that the ROD is only in English or that a document translator is available - is

²³⁸ U.S. Rep. Elijah Cummings, “Missing links in BaltimoreLink bus plan”, op-ed *Baltimore Sun*, September 30, 2016. Available: <https://www.baltimoresun.com/opinion/op-ed/bs-ed-baltimorelink-cummings-20161002-story.html>

²³⁹ See, <https://recovery.texas.gov/action-plans/2017-hurricane-harvey/index.html>

²⁴⁰ Texas Comptroller of the Currency, Article VIII <https://comptroller.texas.gov/economy/fiscal-notes/2018/november/transportation.php>

²⁴¹ TxDOT LEP Manual <https://ftp.txdot.gov/pub/txdot-info/ocr/language-assistance-plan.pdf>;)

²⁴² The Texas General Land Office (GLO), for example, which administers federal Community Development Block Grants for Disaster Recovery (CDBG-DR) provides translation of critical documents into multiple languages. As part of the CDBG-DR process, the state must submit Action Plans detailing the proposed use of grant funds to the U.S. Department of Housing and Urban Development (HUD). Following Hurricane Harvey in 2017, GLO determined that in order to meet Title VI LEP requirements it needed to translate its Action Plans and all subsequent Amendments into five languages: Spanish, Vietnamese, Chinese, Arabic, and Urdu. It continues to do so. GLO’s FY 2022-2023 budget is \$3.3 billion. The Texas Department of Housing and Community Affairs (TDHCA) provides notice of language assistance in 25 languages, and has translated its entire program overview and public comment center pages into Spanish. TxDOT’s 2021 budget was less than \$29 million. .See: <https://www.tdhca.state.tx.us/lap.htm>; <https://www.tdhca.state.tx.us/overview-sp.htm>; <https://www.tdhca.state.tx.us/public-comment-es.htm>; and, <https://www.tdhca.state.tx.us/pdf/21-OperatingBudget.pdf>;

translated into other languages; the rest of the page is in English.

*The ROD is written in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to review the ROD, please contact the TxDOT Director of Advanced Project Development at (713) 802-5070 no later than 4 p.m. CT, at least three business days before the date on which you would like to review the ROD. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.*²⁴³

The availability of reasonable accommodations for persons with disabilities is not translated, nor is the three-day advance notice requirement.²⁴⁴

TxDOT failed to translate even basic information about the UTP on its website into other languages, did not translate any of the documents necessary for LEP people to meaningfully access the public participation process into other languages, failed to inform LEP persons with disabilities of their rights, and imposed a requirement that persons with disabilities and LEP persons request access to the ROD three business days in advance, a requirement that is not imposed on other persons.²⁴⁵ The draft UTP and slide presentations were also only provided in English.

The UTP Survey Monkey poll was provided online in English and Spanish, but the public had to navigate an English-only website in order to find the Spanish version.²⁴⁶ Even TxDOT staff expressed concerns about LEP access to the survey. In response to a June 29, 2021 email asking about translating the comment form into Spanish, a TxDOT employee responded that “[t]he UTP web page is only in English. So, I am uncertain how

²⁴³ <http://www.ih45northandmore.com>

²⁴⁴ See, eg. the Spanish translation: Si usted necesita un intérprete o traductor de documento porque inglés no es su idioma primario o usted tiene dificultad comunicando eficazmente en inglés, sírvase comunicarse con Sue Theiss Distrito de Houston, al número de teléfono (713) 802-5070.

²⁴⁵ <http://www.ih45northandmore.com>

²⁴⁶ TxDOT’s website has only one section available in Spanish, which includes information on TxDOT’s mission, hurricane evacuations, tourist information, a map of safety rest areas, and information on the border. No other part of the TxDOT website is available in translation, including information on projects and TxDOT’s public comment, meetings, and hearings calendar. See; <https://www.txdot.gov/inside-txdot/spanish.html>

we would guide folks needing Spanish language to the form.”²⁴⁷ These emails make it clear that TxDOT had not considered translating even the public comment form or the fact sheet explaining the purpose of the UTP and opportunities for public involvement until June 29, 2021:

*... based on our discussion on Tuesday, we are planning to add Spanish to the online public comment form and the UTP fact sheet. I opted to ask AECOM to help recreate and translate the fact sheet since I am not planning on translating the UTP document. Let me know if you have any feedback. I’ve told AECOM to translate and I’ll send it over to Francisco for review. We need his review fairly quickly in order to have this information online when public comment opens on Friday, July 9th.*²⁴⁸

The first public meeting about the UPT was held on July 7, 2021, two days before TxDOT planned to post even basic information about the UTP in Spanish. TxDOT’s public presentation was only in English at both the July 7, 2021 public meeting and the August 2, 2021 public meeting.²⁴⁹

TxDOT’s Unified Transportation Program - Public Involvement web page provides the following information about how the agency might assist with “special communication or accommodation needs”:

*The public meeting and public hearing are conducted in English. Persons who have special communication or accommodation needs are encouraged to contact the Transportation Planning and Programming Division at (800) 687-8108. Requests should be made at least three working days prior to a public meeting and/or public hearing. Every reasonable effort will be made to accommodate these needs. Please be aware that advance notice is requested as some accommodations may require time for TxDOT to arrange.*²⁵⁰

In addition to the fact that the information on how to request translation is only in English, the language itself is vague and confusing for both LEP persons and people with disabilities. “Special communication” needs might be Spanish-language translation, but

²⁴⁷ Email from Cameron Gaddy to Mildred Litchfield, June 29, 2021 at 2:58 pm. Obtained from TxDOT through a Texas Public Information Act request.

²⁴⁸ Email from Mildred Litchfield to Jessica Butler, Caroline Mays, and Roger Beall. July 1, 2021 at 5:02 pm. Obtained from TxDOT through a Texas Public Information Act request.

²⁴⁹ Both presentations are available on TxDOT’s UTP Public Involvement page at:

<https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>

²⁵⁰ <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>

they might also be American Sign Language translation, a TTD line, or TexasRELAY for people with hearing or speech impairments.

TxDOT knew that a high number and percentage of the population affected by the NHIHP was LEP, that the nature of the project was critical and LEP populations would have to deal with it frequently, and that the agency had access to translators and significant resources; the agency chose not to comply with LEP requirements. TxDOT engaged in discrimination on the basis of national origin in violation of Title VI.

e. TxDOT discriminated against persons with disabilities

In addition to its failure to provide language access for LEP populations for the August 31, 2021 UTP meeting, TxDOT also failed to provide reasonable accommodation for persons with disabilities, or any accommodation for a global pandemic that was having a disproportionate adverse impact on the exact environmental justice populations most adversely affected by the NHHIP.

TTC meetings are held monthly and made available to view virtually, but the only way to provide public comment to the TTC is to be present in Austin, Texas, in-person, on a weekday, in the middle of the morning - a particular burden on workers, low-income populations, and affected residents who do not live in Austin even absent a global pandemic.

In August 2021, the Delta variant of COVID-19 was sweeping through Texas,²⁵¹ and Austin's COVID-19 risk-based guidelines were raised to Stage 5, recommending that unvaccinated, partially vaccinated, and high-risk individuals should avoid all activities unless essential, particularly indoor and outdoor gatherings, even with precautions like masks. TTC, however, was not requiring masks or vaccination for those who attend Commission meetings, disregarding federal, state, and local risk-based guidance.²⁵² In order to offer testimony on a multi-billion dollar project that would displace thousands of people and have severe environmental and economic effects, individuals would have to travel and spend extensive periods of time indoors with numerous other people. The requirement that the public appear in person at TTC meetings not only places their health and even lives at risk, but effectively bars specific groups of Texans from participation in

²⁵¹ As of August 18, 2021, the 7-day average of new confirmed cases in the state of Texas was 13,457, the 7-day average of fatalities was 100, and 12,402 Texans were hospitalized with COVID-19. DSHS, COVID-19 Data Dashboard. Accessed August 18, 2021. Available: <https://txdshs.maps.arcgis.com/apps/dashboards/ed483ecd702b4298ab01e8b9cafc8b83>

²⁵² At the July 21, 2021, there were well over 100 attendees in one room, and many people were unmasked. People could not avoid being within a few feet of one another. No masks were offered, and no hand sanitizer was readily available.

the governmental decision-making process in violation of the Texas Open Meetings Act as well as the ADA and Rehabilitation Act.²⁵³

In an August 18, 2021 letter, complainants requested a reasonable accommodation and modification of TxDOT's policies to allow for remote public comment, including by phone and in writing.²⁵⁴ The Harris County Precinct 2 Commissioner submitted a second request for remote public comment as a reasonable accommodation on August 25, 2021.²⁵⁵ TxDOT responded on August 27, 2021, denying a reasonable modification of its policies, but providing an email address to which persons with disabilities could submit comments by 3:00 p.m. on August 30, 2021, in advance of the TTC meeting.²⁵⁶ However, TxDOT did not give the public notice that this reasonable accommodation was available; it is unclear how persons covered by the Americans with Disabilities Act are reasonably accommodated if they do not know that the reasonable accommodation exists. The same communities that would be disproportionately and adversely impacted by NHHIP were also being disproportionately adversely affected by COVID-19.²⁵⁷ In addition to violating the rights of persons protected under the Americans with Disabilities Act, TxDOT again demonstrated its unwillingness to engage with potentially critical feedback on the NHHIP.

²⁵³ TEXAS GOVERNMENT CODE, Chapter 551; People of color are also disproportionately exposed to air pollution that increases the prevalence of disabilities and increases the likelihood that COVID-19 will be fatal. Lisa Friedman, "New Research Links Air Pollution to Higher Coronavirus Death Rates", *New York Times*, April 7, 2020. Available: <https://nyti.ms/2UROU3Y>; Razzaghi H, Wang Y, Lu H, et al. Estimated County-Level Prevalence of Selected Underlying Medical Conditions Associated with Increased Risk for Severe COVID-19 Illness — United States, 2018. *MMWR MorbMortal Wkly Rep* 2020;69:945–950. DOI: <http://dx.doi.org/10.15585/mmwr.mm6929a1>.

²⁵⁴ August 18, 2021 letter from

²⁵⁵ August 25, 2021 letter from Harris County Precinct 2 Commissioner Adrian Garcia to TTC Commissioners Bugg, Ryan, New, and Vaughn.

²⁵⁶ August 27, 2021 letter from Mark D. Williams, Executive Director, TxDOT to Madison Sloan, Texas Appleseed. On file with the author.

²⁵⁷ See, e.g.: Jared Brey, "People Living in Formerly Redlined Neighborhoods at Higher Risk of COVID-19" *Next City*, September 11, 2020. Available at: <https://nextcity.org/daily/entry/housing-brief-people-in-formerly-redlined-neighborhoods-higher-risk-covid19>;

People of color are disproportionately exposed to air pollution that increases the prevalence of disabilities and

increases the likelihood that COVID-19 will be fatal. Lisa Friedman, "New Research Links Air Pollution to Higher Coronavirus Death Rates", *New York Times*, April 7, 2020. Available: <https://nyti.ms/2UROU3Y>; Razzaghi H, Wang Y, Lu H, et al. Estimated County-Level Prevalence of Selected Underlying Medical Conditions Associated with Increased Risk for Severe COVID-19 Illness — United States, 2018. *MMWR MorbMortal Wkly Rep* 2020;69:945–950. DOI:

<http://dx.doi.org/10.15585/mmwr.mm6929a1>; J. David Goodman, "The Virus Found a Crowded Houston Neighborhood, Sparing One Nearby", *New York Times*, July 21, 2020. Available at: <https://www.nytimes.com/2020/07/21/us/coronavirus-houston-gulfton-bellaire.html>;

K. TxDOT engaged in intentional discrimination on the basis of race, color, and national origin.

Title VI of the Civil Rights Act prohibits a recipient of federal funds from intentionally treating persons differently or intentionally causing them harm because of their race, color, or national origin. Recipients intentionally discriminate when they act, at least in part, because of the actual (or perceived) race, color, or national origin of the persons affected by the discriminatory treatment. However, no evidence of “bad faith, ill will, or any evil motive on the part of the [recipient]” is necessary. No evidence of “bad faith, ill will, or any evil motive on the part of the [recipient]” is necessary to show intentional discrimination.²⁵⁸

A recipient’s actions, however, that have a “foreseeable and anticipated disparate impact “ are relevant to the determination of intentional discrimination. “Adherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence ... is one factor . . . which may be considered by a court in determining whether an inference of segregative intent should be drawn.”²⁵⁹

While evaluation of intentional discrimination claims often looks to judicial precedents developed in private plaintiffs’ claims for damages, those standards do not necessarily apply to agency investigations. In agency investigations, unlike court cases, the agency itself collects evidence and determines whether that evidence supports a finding of discrimination; there is no “burden shifting” between complainants and recipients.²⁶⁰ Complainants will set out probative facts that, when analyzed cumulatively, demonstrate intentional discrimination, and request that FHWA carry out its own investigation.²⁶¹

²⁵⁸ *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir., 1984); *see, also*, DOJ Title VI Legal Manual, Section VI(A).

²⁵⁹ *See: Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464–65 (1979); *see United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009).

²⁶⁰ Department of Justice, Title VI Legal Manual, Section VI(A). Available at: <https://www.justice.gov/crt/fcs/T6Manual6#1> (“Investigating agencies can look to case law for guidance on proving intentional discrimination, but are not bound by case law concerning burden shifting between plaintiff and defendant (that is, as between a complainant and a recipient). . . . Rather, an agency has discretion to gather and evaluate all relevant evidence as part of its initial investigation, or may choose to make a preliminary prima facie finding then require recipients to articulate defenses.”)

²⁶¹ *Arlington Heights v. Metropolitan Housing Development Corporation*, 49 U.S. 255 (1977)

i. There is a clear pattern of discriminatory effect and severe and disproportionate harm.

As discussed in previous sections, the recipient itself documented and concluded that the NHHIP preferred alternative would have a disproportionately high and adverse effect on Black and Hispanic/Latinx persons and communities; a clear and foreseeable discriminatory effect. TxDOT can also look to the results of its prior actions - in the communities adjacent to the NHHP, in fact - to see both the discriminatory effect of its actions and the magnitude of that effect.

ii. TxDOT has a pattern and practice of discriminatory decisions about the location and expansion of highways.²⁶²

TxDOT's use of public funding - particularly federal highway funding - to perpetuate and increase racial and ethnic segregation has a long history in Houston and Texas.²⁶³ The original construction of I-45, US-59, I-10 and the other freeways and interchanges that are part of the NHHIP are part of that pattern, as is the NHHIP itself.

Houston: Harrisburg Freeway

In the mid-1960's TxDOT (the Texas Highway Department at the time) and the City of Houston proposed building the Harrisburg Freeway through the predominantly working-class Mexican-American neighborhoods of Harrisburg, Magnolia Park, and Second Ward to connect the southeastern suburbs and downtown Houston. TxDOT, city and county officials, and business interests, expressed the same goals for the Harrisburg Freeway as TxDOT and some officials have expressed for the NHHIP; increasing mobility between the suburbs and the city, and economic growth.²⁶⁴ Local business groups and white residents of East End neighborhoods who would not be displaced or otherwise affected by the highway largely supported the project.²⁶⁵

²⁶² Beyond the NHHIP, if TxDOT is using a process - including agency goals and project selection criteria - that routinely and predictably results in disproportionate and adverse impacts on environmental justice populations, communities of color, and other persons protected under federal civil rights laws and requirements, there is a larger pattern and practice of discrimination that needs to be addressed.

²⁶³ See, e.g.; Kyle Shelton, *Power Moves: Transportation, Politics, and Development in Houston*. (Austin: University of Texas Press, 2017).

²⁶⁴ *Power Moves*, pp. 91-93 and 100-101. Notably, the Harrisburg Freeway was the first Houston project that had to comply with NEPA requirements and rules requiring a more robust public engagement process.

²⁶⁵ *Power Moves* at 105.

Mexican-American residents of the East End, however, strongly opposed the project - particularly its route through their neighborhoods, which were already overburdened with industrial pollution and battling long-term discrimination in the provision of public services and adequate infrastructure.²⁶⁶ As journalist Maggie Landron articulated, these neighborhoods and their Mexican-American residents were “fed up choking on our own exhaust fumes; fed up looking at cement ribbons crisscrossing our cities; fed up with homes and people being destroyed to build more and more freeways; and fed up with others determining what is good for us.”²⁶⁷ TxDOT’s response to opposition also presages its response to I-45 opposition, dismissing community-suggested alternatives as “unworkable” and asserting that TxDOT must take into account “the desires and interests of the rest of the people of the sector and the entire community”, insinuating that opponents were somehow asking for special treatment instead of basic compliance with federal law and regulations on which the receipt of project funds was conditioned.²⁶⁸ The City’s Planning Department also pointed to the “considerable funds and public planning efforts” already invested in the project and asserted that the city’s needs as whole should be considered over the objections of directly affected residents and communities.²⁶⁹

The Harrisburg Freeway project was eventually abandoned in the late 1970s (although it remained in local, regional, and state highway plans until 1992) because of a combination of community opposition, the EPA’s rejection of the EIS, and an economic crisis that restricted available highway funding. The fact that TxDOT has not changed its policies, arguments, or discriminatory treatment of environmental justice and Title VI-protected individuals and communities in more than 50 years — despite the repeated assertion of civil rights and discrimination claims — suggests that the agency has deliberately chosen to continue policies and take actions it knows violate Title VI of the Civil Rights Act, NEPA, and other federal civil rights and regulatory requirements, as well as its own anti-discrimination policies.

Corpus Christi: Harbor Bridge Project

²⁶⁶ Opponents of the Harrisburg Freeway also made other arguments that opponents of I-45 would echo, including that “freeways are out of date before they are finished” and that more roads would serve suburban commuters but not the residents of the neighborhoods they bisected. *Power Moves* at 105-106.

²⁶⁷ Maggie Landron, “Freeway Kills - City Thinks”, *Papel Chicano*, April 11, 1970, quoted in Shelton at 107.

²⁶⁸ Shelton at 110, quoting a letter from Texas Department of Highways engineer A.C. Kyser to Richard Holgin, a resident of Magnolia Park, following a May 1970 community meeting organized by Holgin. Complainants note that the U.S. Constitutional system explicitly recognizes certain rights as protection against the discriminatory will of the majority.

²⁶⁹ Shelton at 117, quoting Roscoe Jones, director of the Houston Planning Department, in a memo to Houston City Council supporting building the Harrisburg Freeway as proposed.

In March 2015, residents of the Hillcrest and Washington Coles neighborhoods in Corpus Christi filed a Title VI complaint against TxDOT, alleging that the agency had discriminated against them on the basis of race, color, and national origin in the EIS process and selection of a preferred alternative for the Corpus Christi Harbor Bridge project that perpetuated segregation and disproportionately harmed their neighborhoods.²⁷⁰

Both Hillcrest and Washington Coles are historically minority-segregated neighborhoods on the north side of Corpus Christi. They continue to have higher minority populations than the City of Corpus Christi as a whole. In the late 1950s, despite objections from residents, TxDOT deliberately routed I-37 through the northside neighborhoods, not only dividing existing neighborhoods and demolishing hundreds of homes, but creating a physical barrier on the south side of the neighborhoods that isolated them from the rest of the city and trapped residents between the highway and the ever expanding Port of Corpus Christi and the refineries and petrochemical facilities surrounding it.²⁷¹ The Harbor Bridge Project would close off the one remaining connection between Hillcrest and other residential neighborhoods, completely segregating the neighborhood from the rest of the city. The City then intended to start rezoning the neighborhood as industrial.

Much like the NHHIP, TxDOT was clear from the beginning of the Harbor Bridge planning process that it had a preferred alternative and was prioritizing economic and other benefits for some parts of Corpus Christi at the expense of environmental justice communities. TxDOT's description of its preferred (red) alternative is abundantly clear that the agency was not considering the environmental justice implications as required by NEPA.

The red alternative corridor is recommended to replace the current Harbor Bridge. This corridor completely eliminates the offset in alignment between SH 286 and U.S. 181, providing the most flexibility for achieving the desirable design criteria. In addition, the red alternative is the most compatible with the City of Corpus Christi's future development plans.

²⁷⁰ March 5, 2015 Title VI: Complaint to the FHWA re.Harbor Bridge (On file with author.)

²⁷¹ Jessica Savage, *Corpus Christi library director hopes to rebuild trust in historic Northside neighborhoods*, May 6, 2012, Corpus Christi Caller Times, available at <http://www.caller.com/news/corpus-christi-library-director-hopes-to-rebuild> ("The neighborhood changed when the [I-37] highway construction began. . . . 'That changed the neighborhood really forever. It was almost destined to be industrial.' . . . Homes in the interstate's path were moved and demolished as the state highway department bought between 500 and 600 parcels of property.") Neighborhood residents have been exposed to excessive emissions and industrial accidents so extreme that two refineries adjacent to the Hillcrest neighborhood were indicted for criminally exceeding their benzene limits. One of the companies, Citgo, was convicted in 2007 for environmental crimes including uncontrolled benzene emissions from open tanks from 1994 through 2003 - almost a decade.

This alternative is located to the west of the proposed new stadium and cruise terminal allowing these two important facilities to become a part of the existing beachfront development, convention center area, and CBD. The alternative also would serve as a barrier between the newly developed Northside people-oriented area and the Port and industrial facilities located to the west of the red alternative. While the red alternative requires a longer bridge span resulting in a higher estimated construction cost than the green and orange alternatives, the benefits from better compatibility with future local development and elimination of the offset outweigh the added cost.²⁷² (Emphasis added)

TxDOT treated the residents of the Hillcrest neighborhood, who would be trapped on the “industry side” by the barrier of the new highway, with deliberate indifference, at best..

Like TxDOT’s EIS for the NHHIP, TxDOT’s EIS for the Harbor Bridge project also failed to include localized air pollution modeling (despite TxDOT’s admission that impact of air pollution “hot spots” created by the Harbor Bridge project would fall disproportionately on minority and low-income populations) and relied on regional modeling to mask disproportionate harmful impact, and failed to consider the cumulative effects of air pollution on already environmentally impacted neighborhoods. Nor did TxDOT provide meaningful public comment opportunities, include any meaningful mitigation measures in its EIS, or respond to extensive comment and opposition from residents of environmental justice communities. Again, demonstrating a pattern that the agency repeated during the NHHIP planning and EIS process.

FHWA opened a Title VI investigation, and reached a Voluntary Resolution Agreement (VRA) with TxDOT in December 2015. Under the VRA, TxDOT agreed to additional mitigation measures, including a voluntary acquisition and relocation process for neighborhood residents who wanted to relocate to safer areas. FHWA’s issuance of the ROD for the Harbor Bridge Project was conditioned on TxDOT’s implementation of the VRA. However, FHWA was forced to issue a Letter of Finding (LOF) in January 2017 because of TxDOT’s continued non-compliance with Title VI.²⁷³ TxDOT was not providing the additional mitigation assistance, including voluntary buyout and relocation programs, that it had committed to in the VRA.

Austin: Proposed I-35 Expansion

²⁷² US 181 Harbor Bridge Feasibility Study at 8-8, June 2003. Available at: <https://ccharborbridgeproject.files.wordpress.com/2012/03/harbor-bridge-feasibility-study.pdf>

²⁷³ FHWA Letter of Finding (LOF), DOT# 2015-0124, January 18, 2019.

In 1928 the City of Austin adopted a Master Plan for the city that recommended creating a “negro district” and segregating Black residents into a specific area on the east side of the city. In order to force Black families to relocate, the city shut down Black schools in other parts of the city and denied services like utilities and garbage collection to families who did not move. The construction of I-35 through Austin in the mid-1950’s constructed a physical barrier delineating the boundary between the predominantly Black and Hispanic/Latinx east side and predominately white downtown and west side.

TxDOT has proposed widening I-35 through Austin - to as many as 20 lanes in some areas - in order to deal with congestion. The three initial proposed alternatives all require the acquisition and demolition of homes and businesses and encroach into residential neighborhoods - expanding a barrier that was deliberately built to enforce racial segregation.. TxDOT has already dismissed a number of community alternatives as unfeasible because they did not increase roadway capacity or would involve mitigation that TxDOT would not pay for.²⁷⁴

El Paso: I-10 Expansion

During the 2022 UTP process, TxDOT threatened to remove funding from the Houston-Galveston region and reallocate it to expanding I-10 through El Paso. In the Survey Monkey poll²⁷⁵ TxDOT also asked commenters whether they support the I-10 project. Many commenters opposed the proposed expansion of I-10 for the same reasons communities in Houston opposed the NHHIP - disparate impact on low-income communities of color and increased environmental and health hazards.

El Paso doesn't need another project that will pollute our air quality. Please don't allow this project to initiate. (9478)

I am a local resident who opposes the proposed widening of I10. It will result in the seizure and destruction of homes and businesses, as well as increased pollution in a city that has already fallen below attainment requirements of the Clean Air Act. Many of us deal with asthma and upper respiratory issues as a result. Widening I10 will exacerbate these issues. (9487)

²⁷⁴ Nathan Bernier, “TxDOT’s Proposals for I-35 Would Raze Dozens of Properties in Central Austin”, KUT 90.5, August 19, 2021. Available: <https://www.kut.org/2021-08-19/txdots-proposals-for-i-35-would-raze-dozens-of-properties-in-central-austin>

²⁷⁵ The LEP population of El Paso County is 21.7%, <https://www.elpasompo.org/media/PublicParticipationPlan/LimitedEnglishProficiency.pdf>

This project will get rid of homes and businesses, and will cause pollution and more heat in neighborhoods historically neglected. (9498)²⁷⁶

Wider highways don't help bring people to our cities, they help them leave our city, making it so you don't even notice you're in El Paso. Wider highways will bring more pollutants to our historic downtown neighborhoods, destroying homes and low-income POC neighborhoods while mainly helping whiter wealthier parts of town. El Paso does not want this highway. (9771)

We cannot have this expansion done in the area central to El Paso, Tx. There is too many low income and disadvantaged people who live in this area and by doing this we make there lives that much harder and we close up businesses and throw families out that have been the Pilar of this community from the beginning. If we need to expand the funding should be used to fix up our parks and roads in the east side and lower valley. Maintain what we have and make it more safe and beautiful for others to enjoy. (9788)

As a resident of El Paso I am opposed to the expansion of I10 and the continued demolition of El Paso's oldest neighborhoods. Displacing minority residents for commercial gain is unethical. (9807)

We don't need wider highways. We need more public transportation in order to address the racial inequities inherent to the transportation system in El Paso. This project will disproportionately affect low-income people of color. If we want to invest in the economy of El Paso, we need better public transportation. (9837)

TxDOX's discriminatory behavior did not stop when it was required to comply with Title VI and NEPA, in part because the agency does not appear to recognize its affirmative obligation to address the effects of past discrimination. TxDOT, in fact appears to rely on the effects of its past discrimination to justify imposing further discriminatory burdens on communities of color. The agency's threats to reallocate funding in retaliation for one set of civil rights complaints to a project that potentially also violates Title VI illustrates how prevalent potential discrimination is in TxDOT's projects and project selection processes.

²⁷⁶ TxDOT UTP Comment Spreadsheet. Comments are identified by spreadsheet line. Available: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>

iii. **The specific sequences of events leading up to the adoption of the UTP contained significant departures from normal procedures and substantive criteria.**

In accordance with detailed facts set out in other sections of this Complaint, the specific sequence of events that led to the adoption of a discriminatory alternative in the UTP includes a number of significant departures from normal procedures and normal substantive criteria.

a. TxDOT did not publish a complete DEIS in violation of NEPA.

TxDOT's DEIS was incomplete at the time of its release and during the public comment period because it did not contain all the information required by NEPA and FHWA regulations.²⁷⁷

TxDOT's failure to publish a NEPA-compliant DEIS for public comment is a significant departure from normal procedural and substantive criteria. The "effective public participation" mandated by NEPA and EO 12898 requires meaningful access to information and a meaningful opportunity to provide input. TxDOT failed to give the public any opportunity to comment on a NEPA-compliant DEIS, and failed to "ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public."²⁷⁸

These procedural and substantive departures also had a disproportionate effect on the basis of race, color, national origin, and income because the excluded and inaccessible information was directly relevant to issues and concerns raised by these communities and because these communities were the most impacted by TxDOT's selected alternative. Critical information excluded from what TxDOT proffered as the "DEIS" included information on which specific properties would be affected, flooding, air pollution, and community impacts generally, including any proposed mitigation measures.

b. The addition of a public referendum on whether funding should be withdrawn from the region or the NHHIP should go forward "as proposed" in response to FHWA's initiation of a Title VI investigation was an unprecedented break with normal procedure and normal substantive criteria.

²⁷⁷ 40 C.F.R. §1502.9(a); 23 C.F.R. § 771.123(g) TxDOT has also failed to consider how the METRONext Moving Forward Plan ("METRONext") plan, which would have significant impacts on connectivity and traffic congestion, will be incorporated into the NHHIP. (The METRONext plan was approved by Harris County voters on November 5, 2019.)

²⁷⁸ Executive Order 12898, 59 FR at 7632.

TxDOT made a number of significant departures from normal procedures, including the failure to publish a NEPA-compliant DEIS for public comment and an unprecedented public referendum on the allocation of transportation funding. TxDOT never published a DEIS for public comment and effectively denied the public comment opportunities by failing to provide accessibility for LEP populations, or accommodations for people with disabilities or people at high risk of COVID-19.

v. TxDOT had actual notice and knowledge of the NHHIP's impact on protected classes under Title VI and environmental justice communities and affirmatively considered that impact in deciding to move forward with the preferred alternative

As set out in the preceding sections of this complaint, TxDOT itself found that the NHHIP would have a “disproportionate and adverse impact” on the basis of race, color, and national origin; it had clear notice and knowledge of disparate negative impact on protected persons and communities. From the planning process (which started in 2010), through the UTP vote in August 2021, TxDOT received continuous public feedback that the NHHIP would most affect communities of color and LEP populations, that its proposals failed to mitigate that impact, and that the failure to address these issues would be a civil rights violation under Title VI, NEPA, and other civil rights statutes and requirements. TxDOT published the FEIS and approved the ROD - after affirmatively considering the disproportionate and adverse impacts imposed on the basis of race, color, and national origin - and concluded that it had included sufficient mitigation to ensure that protected classes and environmental justice communities would not be disproportionately and adversely impacted. TxDOT decided to proceed with its preferred alternative after affirmatively considering the NHHIP's disproportionate and adverse impact on the basis of race, color and national origin.

When the FHWA initiated a Title VI investigation following the issuance of the ROD, and subsequently requested - twice - that TxDOT stop moving forward with the NHHIP until that investigation could be completed - TxDOT not reaffirmed discriminatory decision making by including a referendum on the NHHIP in the UTP comment process, voting to move forward with the project “as proposed”, and threatened, for the second time, to reallocate funding if the Title VI investigation was not “resolved” in 90 days .

vi. TxDOT engaged in retaliation for a protected activity which is intentional discrimination

TxDOT retaliated against complainants for protected activity by threatening to reallocate funding to another region of the state. Under Title VI, the evidence must show that; (1) an individual engaged in protected activity of which the recipient was aware; (2) the recipient took a significantly adverse action against the individual; and (3) a causal connection exists between the individual’s protected activity and the recipient’s adverse action.²⁷⁹

For there to be “protected activity,” there must be a showing that a person opposed a recipient’s actions that the person reasonably and in good faith believed violated Title VI or participated in a matter that reasonably or in good faith alleged a violation.²⁸⁰ Here, Complainants submitted a letter on January 19, 2021, to TxDOT urging the agency not to issue the NHHIP ROD because its actions would likely be illegal under Title VI. TxDOT was in fact the original recipient of the letter, and the party that forwarded it to FHWA as a possible complaint. FHWA accepted the January 18, 2021 letter as a complaint alleging that TxDOT’s actions were discriminatory. TxDOT, the recipient, was made aware of the letter and the fact that it was being treated as a formal complaint on March 11, 2021.

Second, an adverse action is an action that would deter a reasonable person from bringing or supporting a charge of discrimination.²⁸¹ Here, TxDOT essentially asked the region to either support a project that violates civil rights and environmental justice requirements, or lose out on funding for any improvements to the I-45 corridor. In the June 20, 2021 TTC meeting, the Director of TxDOT stated in response to overwhelming public concern “What I would recommend you put in the UTP is something very similar to what is on the screen here today which will identify all the funding categories and the funds associated with these categories so they understand what actions the commission may be taking in August as it relates to those categories,” and “This is an example of what we can put out for public comment – the potential removal of the category 12 funds – [indicating slideshow] so this summarizes Category 12 – but potentially other categories as well of removing those funds from the UTP. So we’ll be proposing that in the document that moves forward.”²⁸² Threatening to punish a broader population based

²⁷⁹ See *Peters*, 327 F.3d at 320; *Emeldi v. Univ. of Oregon*, 673 F.3d 1218, 1223 (9th Cir. 2012); *Palmer v. Penfield Cent. Sch. Dist.*, 918 F. Supp. 2d 192, 199 (W.D.N.Y. 2013); *Kimmel*, 639 F. Supp. 2d at 43; *Hickey v. Myers*, 852 F. Supp. 2d 257, 268 (N.D.N.Y. 2012); *Chandamuri*, 274 F. Supp. 2d at 84.

²⁸⁰ *Peters*, 327 F.3d at 320-21; *Bigge v. Albertsons, Inc.*, 894 F.2d 1497, 1503 (11th Cir. 1990); *Kimmel*, 639 F. Supp. 2d at 43

²⁸¹ See, e.g., *Jackson*, 544 U.S. at 179

²⁸² June 30, 2021 TTC Meeting. Available: <http://txdot.swagit.com/play/06302021-678>

on the complaints of individuals, for example, may subject the complainant to harassment and pressure to rescind the complaint.

Lastly, the evidence must show that the protected activity was the likely reason for the recipient's adverse action. In this case, the TTC explicitly linked the adverse action to civil rights complaints; the Chairman stated that he was proposing this new form of public comment because of the letters from the FHWA.²⁸³ Chairman Bugg stated:

*. . . given the letters from FHWA and given - oh, by the way, we received another letter actually dated the same day that my letter to Mayor Turner, June 14, was delivered, we received a second letter from FHWA further impeding our ability to move forward on this project. So I think it would be wise if we took this project and brought it back for public comment during our UTP public comment period and I would like to propose that to my fellow commissioners that we take that action today. To basically pull this project, put it up for public comment, see what the public comment is, and come back and revisit this probably in August.*²⁸⁴

On March 11, the FHWA communicated to TxDOT that it must pause its project as a result of Complainants Jan 19 letter and Harris County's NEPA suit. On June 30, 2021, TxDOT intended to gauge public input on the project (via the surveymonkey poll) and decide whether to pull funding or not.

At the July 29, 2021 TTC meeting, the Commissioners walked through the technical aspects of how they could actually reallocate the funds. At their August 31, 2021 meeting, the Commission announced their intention to keep the funds for the NHHIP in the Unified Transportation Plan for now, but would revisit the question at their December meeting "if no progress has been made and we're still halted, and we have no viable path forward from FHWA."²⁸⁵

The substance and timing of TxDOT's actions and decisions regarding the UTP indicate that these actions were taken in retaliation for civil rights complaints filed by multiple stakeholders. Disregarding all previous input from the public and government entities and officials, Chairman Bugg made clear that TxDOT would rely only on

²⁸³"But I think, at this point, we're taking the correct action of asking the public to weigh in on what their points of view are and we'll come back in August and we'll weigh the public comments that we receive." (Commissioner Bugg) "I respect the process that we're putting out because truly we look to the MPO to give us direction, and the MPO and TxDOT look to the citizens to give us direction." (Commissioner Ryan) Neither Commissioner appeared to find the last 15 years of public input relevant to the decision.

²⁸⁴ Commissioner Bruce Bugg, TTC Meeting, June 30, 2021. Available:

<http://txdot.swagit.com/play/06302021-678>

²⁸⁵ TTC Chairman J. Bruce Bugg, August 31, 2021. Available: <http://txdot.swagit.com/play/08312021-654>

responses to the Survey Monkey poll, stating that it would “basically pull this project, put it up for public comment, see what the public comment is, and . . . we’ll come back in August and we’ll weigh the public comments that we receive.”²⁸⁶ TxDOT essentially asked the region to either support a project that violates civil rights and environmental justice requirements, or lose out on funding for any improvements to the I-45 corridor.²⁸⁷

According to the commissioners, TxDOT has spent over two decades and at least \$503 million planning the project up to this point. TxDOT has continuously highlighted traffic safety concerns as a driving force behind their proposed improvements and its own documents claim that in 2019, I-45 was the “second most dangerous road in America.” Complainants believe that TxDOT’s threat to pull funding from the Houston area despite the vast amounts of time, energy, and funding spent on planning the NHHIP and the urgent need for safety improvements, is retaliation for the Title VI Civil Rights complaints filed against the agency based on the proposed project’s admittedly disproportionate and severe adverse impacts on populations protected by Title VI of the Civil Rights Act of 1964.

A review of UTP plans and related documents available on TxDOT’s website – covering the years 2015 to 2021 – shows that UTPs for six of the seven years were modified.²⁸⁸ However, these modifications took place after the UTP had been adopted by TTC, and had their own specific notice and comment periods.

TxDOT released the public comment form for the UTP on July 9, 2021. Concerning the NHHIP, TxDOT asked commenters to select one of two options: “Support maintaining project and funding as proposed,” or “Support removing project and funding.” No other option was presented. The NHHIP is a multi-billion dollar project subject to NEPA, which has substantive public comment requirements.²⁸⁹ The UTP vote was an attempt to bypass coordination with local officials and affected communities, and to invalidate the public participation of thousands of Texans over the past decade or more of planning.

²⁸⁶ TTC Chairman Bruce Bugg, June 30 2021 TTC Meeting. Available: <http://txdot.swagit.com/play/06302021-678>

²⁸⁷ The wording of the poll also contradicted staff recommendations: “What I would recommend you put in the UTP is something very similar to what is on the screen here today which will identify all the funding categories and the funds associated with these categories so they understand what actions the commission may be taking in August as it relates to those categories,” and “This is an example of what we can put out for public comment - the potential removal of the category 12 funds - [indicating slideshow] so this summarizes Category 12 - but potentially other categories as well of removing those funds from the UTP. So we’ll be proposing that in the document that moves forward.” Available: <http://txdot.swagit.com/play/06302021-678>

²⁸⁸ See, <https://www.txdot.gov/inside-txdot/division/transportation-planning/utp.html>

²⁸⁹ See; EO 12898

Furthermore, a question on the comment form asks commenters to "Please select your role as it relates to your comments on the UTP," with commenters able to select one of five options: Citizen; Elected Official; Representative of Metropolitan Planning Organization/Regional Mobility Authority; Representative or Member of a Community Organization; or Other. Houston and Harris County, and the State of Texas, are home to large immigrant communities, many of whom may be directly affected by any number of projects in the UTP. Language asking commenters to identify as "Citizens" or "Other" discourages broad participation from community members. Whether this exclusionary language choice was purposeful to deter participation or simply poor wording, TxDOT should have used the language "community member" or "resident" to ensure comprehensive public participation, particularly given the number of LEP persons directly affected by the NHHIP.

To poll was clearly an attempt to push the NHHIP project forward despite the FHWA's Title VI investigation, and without addressing serious allegations of discrimination and violations of NEPA environmental justice requirements. If TxDOT had, in fact, pushed forward with the project, those actions would have included right of way acquisition of homes and business, for example, which would have resulted in irreparable harm to persons in protected classes.

On August 31, 2021, the TTC voted unanimously to approve the UTP, including the NHHIP project "as proposed." TTC Chairman Bruce Bugg claimed the fact that "so many Texans have voiced their support for this project" as a reason to keep the NHHIP in the UTP.

We have listened to the community of Houston, we've listened to the MPO in Houston, I'm pleased to say that the mayor of Houston, recently as just yesterday, came out publicly in favor of this project, we have heard from the Greater Houston Partnership²⁹⁰ in favor of this project, we have heard from members of the Houston community, both here today, as well as numerous phone calls,

²⁹⁰ The Greater Houston Partnership's (GHP) membership is "comprised of 900 companies and organizations dedicated to the region's success." <https://www.houston.org> GHP has supported the preferred alternative, including spending \$10,000 on social media ads. The President and CEO of GHP sent an email to the membership asking them to comment on the UTP in favor of the NHHIP ("The Partnership requests your formal support of TxDOT's continued funding for the NHHIP, . . . Your voice as members of the business community will send a clear signal that this project is supported in our region.") and included a link to TxDOT's survey. Lucio Vasquez, "Business Groups Stand to Profit from Controversial I-45 Project, Critics Say", Houston Public Media, August 3, 2021. Available: <https://www.houstonpublicmedia.org/articles/news/transportation/2021/08/03/404144/the-greater-houston-partnership-pushes-for-controversial-i-45-expansion-project/> TxDOT received over 1000 survey responses supporting the NHHIP from members of the GHP.

*emails, text messages, et cetera. We know there is a lot of support in this area for this project.*²⁹¹

As the cell phone numbers of TTC Commissioners and TxDOT staff were not provided to the general public as a means of public comment, and no phone calls or texts were part of the public comment record, it is unclear which “members of the Houston community” the Chairman considered determinative in deciding whether there was public support for the project.

Contrary to Commissioner Bugg’s assertions, the Mayor of Houston had not publicly supported the NHHIP project. “Chairman Bugg misrepresented my position totally” the Mayor said.²⁹² Mayor Turner, in fact, had sent a proposed MOU to TxDOT, that would have: reduced the NHHIP’s footprint; incorporated portions of the METRONext Plan into the final design; compensate homeowners for gaps between “fair market value” and the actual cost of purchasing a comparable dwelling; provided displaced tenants the difference between their old and new rents for 42 months and paid moving costs; prioritized spending \$27 million for affordable housing in “the neighborhoods most impacted by the NHHIP: Independence Heights, Greater Northside, Greater Fifth Ward; and Greater Third Ward”; require TxDOT to use the 500-year flood plain standard; funded bypass canals recommended by FEMA; incorporate elements of the Emancipation Trail; and participate in an ongoing City-facilitated process with community and stakeholder groups, among others.²⁹³ TxDOT refused to sign the MOU.

It is also difficult to determine whether TxDOT was misrepresenting the MPO’s support for the project, given its history with that body. The H-GAC Transportation Policy Council (TPC), in response to public feedback, attempted to work with TxDOT to develop a multi-agency MOU intended to “articulate an understanding that multiple agencies, including H-GAC’s TPC, the Texas Department of Transportation (TXDOT), Harris County, Harris County Flood Control District, METRO, and the City of Houston would work collaboratively in the planning and implementation of the NHHIP.” For more than six months the MOU workgroup, which included a representative of TXDOT, gathered additional public input and drafted a consensus document. TxDOT refused to sign the draft. The members of the MOU Workgroup then voted to adopt the provisions

²⁹¹ TTC Commissioner Bruce Bugg, TTC Meeting, August 31, 2021. Video available: <http://txdot.swagit.com/play/08312021-654>

²⁹² Dug Begley, “Turner says TxDOT leader ‘misrepresented’ his position on the divisive I-45 project”, Houston Chronicle, September 16, 2021. Available: <https://www.houstonchronicle.com/news/houston-texas/transportation/article/Turner-says-TxDOT-leader-misrepresented-16462391.php>

²⁹³ MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF HOUSTON REGARDING THE NORTH HOUSTON HIGHWAY IMPROVEMENT PROCESS, Dated August 30, 2021.

of the MOU as “a non-binding resolution to be used as a frame of reference to monitor the NHHIP over the coming years.” However, TxDOT appeared at the TPC’s January 22, 2021 board meeting and threatened to pull funding from the project if the TPC passed even a non-binding resolution suggesting that it would respond to any criticism of the EIS process and/or the FEIS preferred alternative with intimidation and retaliation. “TXDOT is not going to let the \$8 billion sit around until we figure out what to do;” Eliza Paul, the Houston District Engineer for TxDOT said, “the money is going to be going to other regions. I don’t really want to bring that up, but that is very well the reality.”²⁹⁴

As Chairman Bugg proposed,

*So, I propose that we go ahead and we keep this project in the UTP today, we keep the funding in the project that it is currently proposed...and then, after 90 days, I’m gonna place on the December agenda, we’re gonna revisit this on our December 9th commission meeting, and if no progress has been made and we’re still halted, and we have no viable path forward from FHWA, . . . , we’ll come back and we’ll revisit this after the 90 days have expired, and we’ll discuss what to do with the project at our December 9th meeting.*²⁹⁵

TxDOT has not made further threats since FHWA initiated voluntary resolution discussions in November 2021.²⁹⁶

VI. Conclusion

For the reasons set forth above, the Texas Department of Transportation is not in compliance with Title VI of the Civil Rights Act of 1964, or DOT and FHWA implementing regulations.

TxDOT has only considered environmental justice and civil rights concerns about the NHHIP as if increasing highway capacity is the constraint on addressing discrimination, rather than understanding that civil rights requirements, in particular, are broadly applicable to all its activities and how it implements programs outside of specific projects. Project goals do not counterbalance civil rights issues; improving transportation must be pursued in a way that is non-discriminatory and does not result in disproportionate and adverse impacts on protected populations.

²⁹⁴ Letter from Adrian Garcia, Harris County Precinct 2 Commissioner to James Bass, Executive Director, TxDOT. January 29, 2021.

²⁹⁵ TTC Chairman J. Bruce Bugg, August 31, 2021. Available: <http://txdot.swagit.com/play/08312021-654>

²⁹⁶ November 29, 2021 letter from Andrew C. Rogers, Chief Counsel, U.S. Department of Transportation, to Jeff Graham, General Counsel, TxDOT.

VII. Relief Requested

Complainants respectfully request that FHWA accept this complaint and take all necessary steps to ensure that TxDOT comes into compliance with the requirements of Title VI and NEPA.

- A. Find that TxDOT has failed to comply with the provisions of NEPA, including 23 U.S.C. §327(a)(2)(c) and terminate the Memorandum of Understanding assigning environmental review responsibility to the state;
- B. Find that TxDOT has failed to comply with NEPA and Title VI of the Civil Rights, withdraw the the ROD for the NHHIP, and require TxDOT to engage in a new EIS process, reviewed by FHWA, that complies with NEPA and Title VI, including serious consideration of less discriminatory alternatives and civil rights remedies as mitigation;
- C. Find that TxDOT has discriminated based on national origin by failing to provide translated materials and oral translation, and require TxDOT to submit a new LEP plan that provides the required services, including an assessment of where LEP populations are located and which languages require translation;
- D. Find that TxDOT has discriminated based on the race, color, and national origin by taking actions that subjecting minority populations to discrimination;
- E. Find that TxDOT has intentionally discriminated on the basis of race, color, and national origin:
- F. Find that TxDOT has discriminated on the basis of race, color, and national origin by retaliating against persons who engaged in protected activity related to its violations of civil rights laws;
- G. Require TxDOT to directly engage, with the assistance of the FHWA and the U.S. Department of Transportation, with disproportionately and adversely affected communities on their preferred alternatives, including their preferences for actual and meaningful mitigation for both any transportation project and for past discrimination; and,

H. Any other relief that FHWA and the U.S. Department of Transportation deem appropriate.

Respectfully submitted,

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