



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Ave., SE
Washington, D.C. 20590

JAN 18 2017

In Reply Refer To: HCR-20
DOT# 2015-0124

James Bass
Executive Director
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701

Subject: Letter of Finding (LOF), DOT# 2015-0124

Dear Mr. Bass:

In March and April 2015, the Federal Highway Administration (FHWA) received two complaints alleging that the Texas Department of Transportation (TxDOT or Respondent) violated Title VI of the Civil Rights Act of 1964 when it selected the preferred alignment for the Corpus Christi Harbor Bridge Project (Project). As you are aware, FHWA's Office of Civil Rights undertook an investigation regarding these complaints.

To resolve the issues identified in FHWA's investigation and in lieu of issuing a LOF, FHWA and TxDOT entered into a Voluntary Resolution Agreement (VRA) on December 17, 2015, in which TxDOT agreed to provide additional mitigation, including a voluntary acquisition and relocation program for owners, landlords and tenants in the affected neighborhood. On January 8, 2016, FHWA issued a Record of Decision for the Project, which referenced and incorporated the VRA, thus conditioning approval for the Project on TxDOT's commitment to implement the VRA and its voluntary acquisition and relocation program.

FHWA has previously informed TxDOT of its concerns with TxDOT's interpretation of its obligations under and implementation of the VRA. Specifically, FHWA has explained that TxDOT is mistaken in asserting that the VRA's terms are governed by the Uniform Relocation Act and not Title VI. As an agreement entered into to mitigate and address Title VI issues, the VRA's requirements must be interpreted in a manner consistent with Title VI. A critical aspect of the VRA is to provide a strong incentive to landlords to sell their properties so that their tenants are offered relocation assistance and benefits. Thus, the VRA calls for landlords to receive the same relocation benefits as owner occupants, more than what landlords would be provided under the Uniform Relocation Act. As required by the VRA, FHWA has previously informed TxDOT of its failure to comply with the agreement's requirements in this regard.

As a result and consistent with the terms of the VRA, FHWA is issuing this LOF, which will summarize the results of its investigation, identify how the Project does not comply with Title VI, and the steps TxDOT must take to address these issues.

I. Procedural History

On March 5, 2015, [REDACTED], two African-American residents of the Hillcrest neighborhood in Corpus Christi, TX, filed a complaint alleging discrimination on the basis of race, color, and ethnicity against TxDOT in violation of Title VI of the Civil Rights Act of 1964. The complaint was then joined by letter to FHWA, by the Citizens Alliance for Fairness and Progress, comprised of residents of both the Hillcrest and Washington-Coles neighborhoods and has also been supported independently by 22 resident co-signers from the Hillcrest and Washington-Coles neighborhood (Complainants).

Complainants alleged that the Respondents violated Title VI when they selected the recommended alternative for the Project, violated public participation procedures during the environmental impact analysis of the Project, and violated competitive bidding processes for construction of the recommended alternative causing an adverse, disparate impact against African-American and Latino residents in the Hillcrest and Washington-Coles neighborhoods of Corpus Christi, TX. Additionally, the Complainants alleged acts that constituted intentional discrimination on the same prohibited classes.

On April 9, 2015, FHWA accepted the Title VI portion of the complaint for investigation on behalf of the USDOT.¹ FHWA HCR reviewed multiple documents, solicited community members' statements, conducted site visits, reviewed publicly available documents as well as documents provided by TxDOT, the City of Corpus Christi, Census Bureau data, American Community Survey information, the Respondent's statement, and the Final Environmental Impact Statement (FEIS), prepared and adopted by TxDOT in November 2014. In the FEIS, TxDOT identified the "Red Alternative" as its Recommended Alternative for the new Harbor Bridge, and it is this decision and the process leading up to the making of this decision that complainants have alleged was discriminatory under Title VI. 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.

II. Factual Background

a. Project History

Corpus Christi's Harbor Bridge, originally completed in 1959, crosses the Industrial Canal as part of US181 from the city's Central Business District (CBD) and coming down again into the North Beach neighborhood.² The current Harbor Bridge has a height of 243 feet, with 138 feet of clearance below for passing ships. A Feasibility Study completed by TxDOT in 2003 concluded that US181 and the Harbor Bridge must be improved to maintain a safe and efficient

¹ FHWA did not accept for investigation the allegation regarding the violation of competitive bidding processes as no further facts were provided by the complainants as to this claim and nothing in the preliminary phase of the investigation indicated Title VI implications or contracting issues.

² TxDOT Final Environmental Impact Statement (FEIS) 1-1

transportation corridor.³ TxDOT published a Notice of Intent (NOI) to develop an Environmental Impact Statement (EIS) in the Federal Register in 2005, but in November of 2007, this NOI was rescinded. The current NOI was published in the summer of 2011, under which the Draft EIS (DEIS) and Final EIS (FEIS) proceeded.⁴ The final Record of Decision was signed by FHWA on January 8, 2016.

The new Harbor Bridge is to be 538 feet tall, with between 206 and 216 feet of clearance below for passing ships. The significant increase in clearance (138 feet for the current bridge, as much as 216 feet for the new bridge) is designed to accommodate larger vessels from the Panama Canal and elsewhere into the Port.⁵

The environmental impact process evaluated six alternatives for the location of the newly aligned Harbor Bridge and US181, plus a no-build alternative as required by the National Environmental Policy Act (NEPA). These six alternatives were: Blue, Green, Orange, Red, West, and Tunnel. During the DEIS stage, both the Blue and the Tunnel alternatives were removed from consideration, as they were deemed to not fit the Purpose and Need of the project under NEPA. The no-build alternative was also determined to not meet the Purpose and Need for the project.⁶ The four remaining alternatives were thus evaluated for the FEIS. These alternatives were: Green, Orange, Red, and West.⁷

³ 2003 Feasibility Study <https://ccharborbridgeproject.com/map-and-pictures/>

⁴ *Id.*

⁵ FEIS 2-15

⁶ FEIS 2-9

⁷ FEIS 2-10

Exhibit A



The Green Alternative would follow the existing US181 alignment to Burleson Street with the location of the new bridge slightly offset to the west of the existing bridge to allow US181 to remain open for traffic during construction. It would be constructed with three 12-foot main lanes in each direction with a median barrier and 12-foot inside and 10-foot outside shoulders. It would also include a 10-foot bicycle and pedestrian shared use path separated from the main lanes by a two-foot concrete barrier.⁸ The Green Alternative would also correct the “horizontal curvature” creating safety problems on the current alignment.⁹ Because it traces the current

⁸ *Id.*

⁹ FEIS 2-7

alignment before diverging slightly over the water, the Green Alternative would be located largely in the current footprint of US181, in downtown Corpus Christi, adjacent to the Central Business District (CBD), the Sea, Arts, and Entertainment (SEA) District, and downtown Corpus Christi to the east, with the neighborhoods of the Northside to the west. The Green Alternative would be approximately 5.06 miles long, with right-of-way (ROW) 228-459 feet wide, narrowest at the bridge, costing an estimated \$558 million, not including ROW, utility relocation, and any necessary mitigation.¹⁰

The Orange Alternative would be on a new location alignment west of the existing US181 and Harbor Bridge alignment. The new Harbor Bridge itself would be offset approximately 100 feet to the west of the existing bridge, to allow for the existing bridge to remain open to traffic while construction proceeded. The Orange Alternative would include a reconstructed interchange at I-37 and the Crosstown Expressway, with the realigned US181 located between the neighborhoods of Hillcrest and Washington-Coles before traveling north and traversing the Washington-Coles neighborhood to cross the Industrial Canal. It would be constructed with three 12-foot main lanes in each direction with a median barrier and 12-foot inside and 10-foot outside shoulders. It would also include a 10-foot bicycle and pedestrian shared use path separated from the main lanes by a two-foot concrete barrier. The Orange Alternative would also correct the “horizontal curvature” creating safety problems on the current alignment.¹¹ The Orange Alternative would be approximately 6.0 miles long, with ROW 200-430 feet wide, narrowest at the bridge, costing an estimated \$630 million, not including ROW, utility relocation, and any necessary mitigation.¹²

The Red Alternative would be on a new location alignment approximately 1,000 feet west of the existing US181 and Harbor Bridge alignment. The Red Alternative would include a reconstructed interchange at I-37 and the Crosstown Expressway, with the realigned US181 located between the neighborhoods of Hillcrest and Washington-Coles, adjacent to both. It would be constructed with three 12-foot main lanes in each direction with a median barrier and 12-foot inside and 10-foot outside shoulders. It would also include a 10-foot bicycle and pedestrian shared use path separated from the main lanes by a two-foot concrete barrier. The Red Alternative would also correct the “horizontal curvature” creating safety problems on the current alignment, creating a straighter corridor from the reconstructed interchange at I-37 north over the Industrial Canal and into North Beach. The Red Alternative would be approximately 5.98 miles long, with ROW 200-430 feet wide, narrowest at the bridge, costing an estimated \$637 million, not including ROW, utility relocation, and any necessary mitigation.¹³ The Red Alternative was formally endorsed by the City of Corpus Christi, the Port of Corpus Christi, and the Corpus Christi MPO.¹⁴

The West Alternative would be on a new location alignment approximately 6,700 feet west of the existing US181 and Harbor Bridge alignment. This alternative would include a new interchange at I-37 near Nueces Bay Boulevard and a reconstructed interchange at I-37 and the

¹⁰ FEIS 2-10

¹¹ FEIS 2-7

¹² FEIS 2-12

¹³ FEIS 2-11 to 2-12

¹⁴ FEIS 2-21

Crosstown Expressway. The realigned US181 would run parallel to and east of Nueces Bay Boulevard, through the buffer zone established between the industrial refineries located adjacent to the west and the Hillcrest neighborhood located adjacent to the east. North of the Industrial Canal, US181 would run northeast across a dredged spoils placement area before realigning with the existing alignment at the same location in North Beach as the other alternatives. The West Alternative would be constructed with three 12-foot main lanes in each direction with a median barrier and 12-foot inside and 10-foot outside shoulders. It would also include a 10-foot bicycle and pedestrian shared use path separated from the main lanes by a two-foot concrete barrier, correcting the “horizontal curvature” creating safety problems on the current alignment. The West Alternative would be approximately 7.59 miles long, with ROW 320-570 feet wide, narrowest at the bridge, costing an estimated \$679 million, not including ROW, utility relocation, and any necessary mitigation.¹⁵

The FEIS was finalized in November of 2014, with TxDOT selecting the Red Alternative as the Recommended Alternative.

b. History of the Northside Community

The Northside community is comprised of two neighborhoods, with Hillcrest to the west and Washington-Coles to the east. Historically, the neighborhoods of Hillcrest and Washington-Coles were two distinct and racially separate neighborhoods, with African-Americans permitted by law to live only on the east side in what is now the Washington-Coles Neighborhood. In 1944, the Corpus Christi Planning Commission recommended opening the Hillcrest subdivision to African-American residents due to overcrowding, and beginning in 1948, African-Americans were legally permitted to purchase homes in Hillcrest.

¹⁵ FEIS 2-13 to 2-14



Over the next two decades, Hillcrest transitioned from predominantly White to predominantly African-American and Hispanic or Latino.¹⁶ According to the 2010 Census, the Northside today remains predominantly African-American and Hispanic or Latino, with populations identifying as 36% and 57.7%, respectively.¹⁷ This makes the Northside community unique within the City of Corpus Christi and the project area. Only 4.3% of City residents identify as African-American, and the other neighborhoods potentially affected by the realignment of US181 contain African-American populations no higher than 5.1%.¹⁸

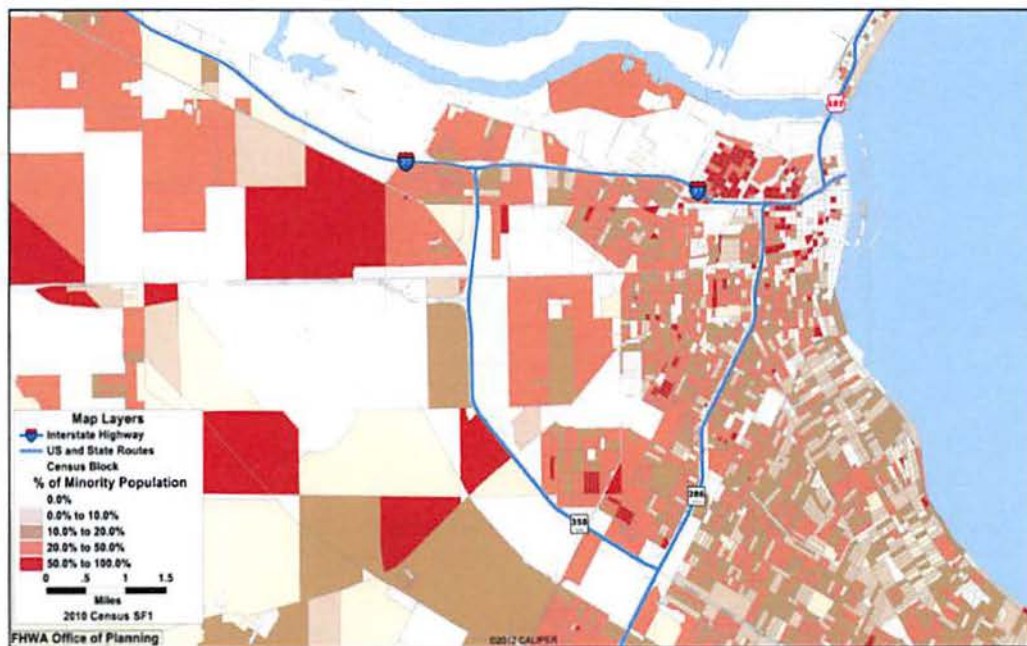
¹⁶ FEIS 3-64

¹⁷ FEIS 3-67

¹⁸ FEIS 3-60

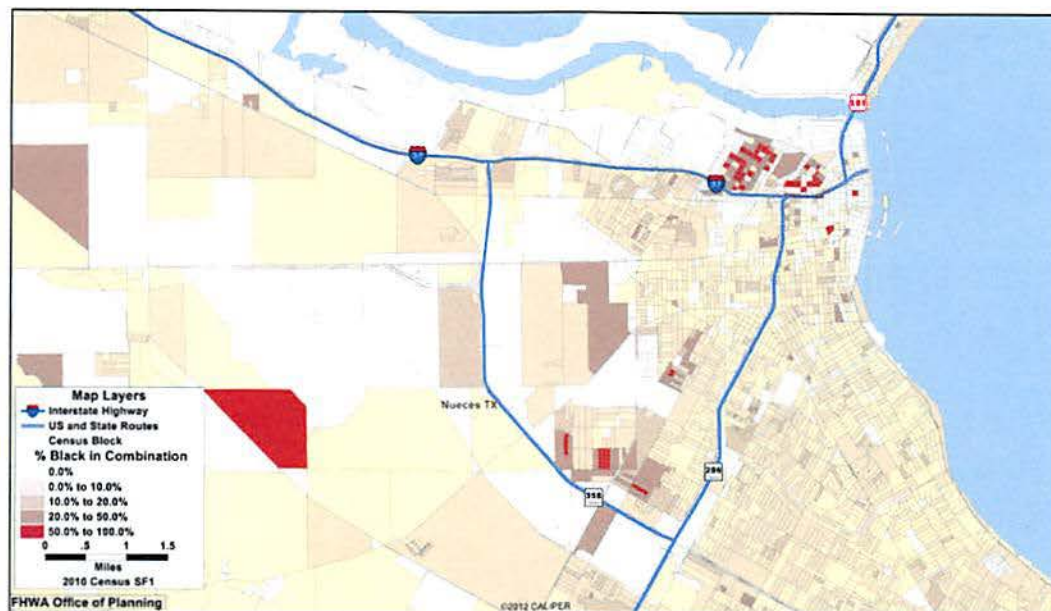
% of Minority Population

Harbor Bridge Project Title VI Analysis



% of Black Population

Harbor Bridge Project Title VI Analysis



In the 1940s and 1950s, large public housing units were developed in the Northside for African-American residents.¹⁹ In 1961, construction of I-37 began, and “many homes in both the Hillcrest and Washington-Coles neighborhoods were moved and demolished.”²⁰ I-37 removed the “neighborhood’s connection to the commercial corridor to the south.”²¹ In recent years, the Northside has been “the focal point of buy-outs by the nearby refineries, which purchased 500 or more homes in the area between 1985 and 1998.”²² Numerous large refineries operate directly west and north of the Hillcrest neighborhood, with the Port of Corpus Christi directly north against the Industrial Canal. In 1998, approximately 100 houses were cleared along Nueces Bay Boulevard and West Broadway in the Hillcrest area as the result of a lawsuit filed by Hillcrest residents against the refineries, costing \$3.1 million, creating an L-shaped buffer zone between the industrial refineries and residential Hillcrest. At the center of the lawsuit were claims of groundwater and air contamination, and the effect that they were having on human health and property values.²³ In 1995, an industrial tank farm between Hillcrest and Washington-Coles was

¹⁹ FEIS 3-64

²⁰ *Id.*

²¹ FEIS 3-64 to 3-65.

²² FEIS 3-65

²³ *Id.*

removed, leaving a large swath of vacant land between the northern part of the two communities.²⁴

Since 1992, the Northside community has been the subject of several planning efforts in 1999, 2003, and 2009 aimed at the rezoning of the Hillcrest Neighborhood as either light industrial or as a research and technology park.²⁵ The planning efforts were opposed by the Northside communities and the rezoning was never officially adopted by the City Council. Today, the neighborhoods still feature a high degree of community cohesion, with the more residential Hillcrest utilizing the more lightly populated Washington-Coles for social services, including Solomon Coles High School and the Oveal Williams Senior Center.²⁶

III. Issues

Complainants allege that the selection of the Red Alternative will continue to have significant negative impacts on the Northside Neighborhoods and that those impacts are predominantly borne by African-American residents. The issues are:

1. Whether Respondents violated Title VI and DOT's Title VI implementing regulations when they selected the Red Alternative as the recommended alternative for the Corpus Christi Harbor Bridge Project;
2. Whether Respondents violated Title VI by not following public participation procedures during the environmental impact analysis of the project;

IV. Legal Background

a. Title VI

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides:

[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.²⁷

The U.S. Department of Justice (DOJ), as the Federal government's coordinating agency for Title VI, implemented its Title VI program in 28 C.F.R. Part 42, which provides that the responsibility for enforcing Title VI rests with the federal agencies which extend financial assistance, such as the FHWA.²⁸ The USDOT issued common Title VI regulations for all

²⁴ FEIS 3-64

²⁵ FEIS 3-65 to 3-66

²⁶ FEIS 3-68 to 3-69

²⁷ 42 U.S.C. § 2000d.

²⁸ 28 C.F.R. § 42.401.

USDOT modes at 49 C.F.R. Part 21. When individuals file discrimination complaints under Title VI, the FHWA Headquarters Office of Civil Rights (HCR) will process the complaints. If HCR accepts the complaint, it will investigate and issue a LOF with potential findings and recommendations. Specific provisions regarding the investigation of Title VI complaints are found at 49 C.F.R. § 21.11. The FHWA's complaint investigation procedures are contained in its Procedures Manual for Processing External Complaints of Discrimination.²⁹

b. Discrimination Prohibited

Title VI prohibits discrimination under two separate legal theories: disparate treatment and disparate impact. Regarding disparate impact, the USDOT's Title VI implementing regulations state that a recipient "may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin,"³⁰ Recipients also must take "affirmative action to remove or overcome the effects" of discrimination where prior discriminatory practice or usage exists.³¹ FHWA's Title VI regulations similarly require Title VI compliance by recipients receiving Federal financial assistance from FHWA.³²

The Supreme Court has held that such regulations may validly prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory.³³ The USDOT adopted regulations that prohibit recipients of Federal funds from using criteria or methods of administering their programs that have the effect of subjecting individuals to discrimination based on race, color, or national origin.

Disparate impact involves an allegation that a specific policy or practice, that is neutral on its face, nevertheless has a discriminatory effect on the basis of race, color, or national origin. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.³⁴ To establish a prima facie case³⁵ of discrimination, the investigating agency must ascertain whether the recipient utilized:

1. A specific, facially neutral policy or practice;
2. That had a disproportionate impact on protected group; and
3. Whether the policy or practice likely caused the disproportionate impact.

After a prima facie showing is made, the burden shifts to the respondent to demonstrate the existence of a "substantial legitimate justification" for the allegedly discriminatory practice. To

²⁹ <https://www.fhwa.dot.gov/civilrights/programs/finalcomplaintmanual110410.cfm>.

³⁰ 49 C.F.R. § 21.5(b)(2).

³¹ 49 C.F.R. § 21.5(b)(7).

³² 23 C.F.R. Part 200.

³³ *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 582 (1983); *Alexander v. Choate*, 469 U.S. 287, 292-94 (1985); see *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir.), reh'g denied, 7 F.3d 242 (11th Cir. 1993).

³⁴ *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d. Cir. 1995).

³⁵ *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984); *Elston*, 997 F.2d at 1407).

prove a "substantial legitimate justification," the recipient must be able to show that the challenged policy was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."³⁶ The justification must bear a "manifest demonstrable relationship" to the challenged policy.³⁷

If the recipient can make a showing of "substantial legitimate justification," the investigating agency must then focus on whether there are "less discriminatory alternatives" that meet the recipient's legitimate needs, but that will do so without the same level of disparate effect on a class protected by Title VI.³⁸

For allegations involving disparate treatment there must be proof that "a challenged action was motivated by an intent to discriminate."³⁹ However, the record does not need to contain evidence of "bad faith, ill will or any evil motive on the part of the [recipient]."⁴⁰ Evidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by decision makers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure, legislative or administrative history, a past history of discriminatory or segregated conduct, and evidence of a substantial disparate impact on a protected group.⁴¹

If the case file contains sufficient evidence to establish a *prima facie* case of discrimination, the investigating agency must then determine if the recipient can articulate a legitimate, nondiscriminatory reason for the challenged action.⁴² If the recipient can articulate a nondiscriminatory explanation for the alleged discriminatory action, a determination must be made whether the case file contains sufficient evidence to establish that the recipient's stated reason was a pretext for discrimination.⁴³

c. Jurisdiction

Sec. 602 of Title VI directs each Federal agency that extends Federal financial assistance to any program or activity to issue rules, regulations, or orders of general applicability. The USDOT and the FHWA have issued regulations at 49 CFR Part 21 and 23 CFR Part 200. These regulations apply to any recipient of Federal financial assistance from USDOT and/or FHWA. A recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession,

³⁶ *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), *aff'd*, 197 F.3d 484 (11th Cir. 1999), *rev'd* on other grounds, *Alexander v. Sandoval*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413).

³⁷ *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1418 (11th Cir. 1985); See, e.g., *Elston*, 997 F. 2d at 1413 (In an education context, the practice must be demonstrably necessary to meeting an important educational goal, i.e. there must be an "educational necessity" for the practice).

³⁸ *Elston*, 997 F.2d at 1407.

³⁹ *Elston*, 997 F.2d at 1406.

⁴⁰ *Elston*, 997 F.2d at 1406 (quoting *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984)).

⁴¹ See *Arlington Heights v. Metropolitan House. Redevelopment Corp.*, 429 U.S. 252, 266-68 (1977) (evaluation of intentional discrimination claim under the Fourteenth Amendment); *Elston*, 997 F.2d at 1406.

⁴² See *McDonnell Douglas*, 411 U.S. at 802.

⁴³ *Id.*

the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient.⁴⁴

Any person who believes they, or any specific class of persons, have been subjected to discrimination prohibited by Title VI may by themselves or by a representative file with a written complaint with the FHWA.⁴⁵ A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by FHWA. Once a complaint is accepted, FHWA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with Title VI. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with Title VI.⁴⁶

d. Texas Department of Transportation

Every fiscal year, TxDOT receives its allotted apportionment of funds from FHWA. In FY2015, for instance, TxDOT received more than \$2.2 billion in total apportionment funding from FHWA.⁴⁷ According to TxDOT, \$291 million in federal funding has thus far been earmarked for the project.⁴⁸ TxDOT does not deny FHWA's jurisdiction.

V. **Analysis**

A. **Did Respondents violate Title VI when they selected the Red Alternative as the recommended alternative for the Corpus Christi Harbor Bridge Project?**

1) **Respondents engaged in facially-neutral policies and practices.**

The specific policy or practice identified from the FEIS was the selection of the Red Alternative as TxDOT's Recommended Alternative for the new Harbor Bridge project, realigning US181 and the new Harbor Bridge from its current location adjacent to the Central Business District to a location in the Northside community, between the neighborhoods of Hillcrest and Washington-Coles.⁴⁹ The process that was used to make the determination that the Red Alternative was the Preferred Alternative followed the standard NEPA process and TxDOT project selection requirements.

2) **The selection of the Red Alternative as the recommended alternative for the Project caused a disparate impact to the Hillcrest neighborhood.**

⁴⁴ 49 C.F.R. § 21.23(f).

⁴⁵ *Id.* § 21.11(b).

⁴⁶ *Id.* § 21.11(c).

⁴⁷ https://www.fhwa.dot.gov/map21/docs/fy_2015_computational_tables.pdf

⁴⁸ <http://www.chron.com/communityblogs/atmosphere/article/Corpus-Bridge-4514972.php>

⁴⁹ FEIS 2-30 to 2-32

Under Title VI, the Red Alternative is analyzed to determine effects on the impacted community. Impacts should be determined by considering the benefits of the project, the burdens imposed by the project, as well as any mitigation measures proposed for the impacted community. The possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system are fully considered in the development of such project.⁵⁰ Impacts to be considered include factors such as (1) air, noise, and water pollution (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion, and the availability of public facilities and services (3) adverse employment effects, and tax and property value losses; injurious displacement of people, businesses and farms; and (5) disruption of desirable community and regional growth. *Id.*

a. Noise

The FEIS contains a summary of future (2035) traffic noise impacts for each of the four alternatives identified in the environmental impact process. The chart contains three numbers for each alternative: Number of sensitive receivers impacted, equal to or above the level set by the Noise Abatement Criteria (NAC); the number of sensitive receivers impacted greater than 10 decibels over existing noise levels; and the total number of impacted receivers.

The noise requirements of the Federal Aid Highway Act of 1970 are mandated in 23 USC 109(h)-(i), and the steps that follow these measures are codified at 23 CFR Part 772. TxDOT's Environmental Handbook on Traffic Noise adheres to these authorities.

The NAC established in 23 CFR Part 772, Table 1, identify the decibel level for determining the threshold for comfortable noise levels for a particular receptor, and identify, based on usage, where the decibel levels should be measured.

Alternative	Sensitive Receivers Impacted \geq NAC	Sensitive Receivers > 10 dBA Over Existing Noise Levels	Total Number of Impacted Receivers*
Green Alternative	520	11	522
Red Alternative	533	33	538
Orange Alternative	480	34	480
West Alternative	424	6	424

⁵⁰ See NAACP v. Med. Ctr. Inc., 657 F.2d 1322, 1331-2, 1340 (3d Cir. 1981); United States v. Bexar County, 484 F. Supp. 855, 859-60 (W.D. Tex. 1980); see also 23 U.S.C. § 109(h).

Residential receivers are identified as Activity Category B receptors, with a NAC decibel level at 67 dBA, measured on the exterior of the residence. When it is determined that projected noise impacts approach or exceed this level, noise abatement is to be considered and adopted if “feasible” and “reasonable.” Highway agencies must establish an approach level when determining a traffic noise impact, which must be at least 1 dBA less than the NAC-level for that Activity Category. 23 CFR Part 772.11(e). TxDOT has identified 1 dBA as its approach level in its Environmental Handbook on Traffic Noise.

Highway agencies are also required to define “substantial noise increase” between 5 dBA and 15 dBA over existing noise levels. 23 CFR Part 772.11(f). Along with noise levels that approach or exceed the NAC listed in Table 1, a substantial noise increase is the other type of impact defined as a “traffic noise impact” in 23 CFR Part 772.5. TxDOT, in its Environmental Handbook on Traffic Noise, has defined a “substantial noise increase” as occurring when the predicted noise level exceeds the existing level by more than 10 dBA. Every 10 dBA increase doubles the perceived “loudness” of an activity.

According to the FEIS, the Red Alternative would impact 533 receivers at or above the NAC established for that type of usage in 23 CFR Part 772, Table 1, representing an adverse impact. The Red Alternative would impact 33 receivers by increasing their by more than 10 dBA their existing noise levels, identified as a “substantial noise increase” by TxDOT, creating an adverse impact on these receivers. The total number of impacted receivers by the adoption of the Red Alternative is 538. Many of these impacted receivers are only impacted by the new Harbor Bridge project under the Red Alternative, because they are located near the re-aligned segment of US181 and the new interchange to be built with existing I-37, and are not as close to I-37 as it currently exists or its reconstruction as part of the new Harbor Bridge project. In total, 204 residential receivers in the Northside community would experience traffic noise impacts under the Red Alternative.

For the Northside community, noise abatement measures were considered using 23 CFR Part 772.13, but none were determined to be reasonable and feasible. Therefore, should the Red Alternative be constructed, “traffic noise impacts” as defined by 23 CFR Part 772.5 will be experienced by the affected residents close to the realigned US181 and Harbor Bridge.

b. Isolation and Economic Impacts

The construction of transportation facilities in Corpus Christi has historically had significant impacts on the Northside communities. Chapter 3 of the FEIS, discussing the Affected Environment, discusses the 1961 construction of I-37 and the 1963 construction of the State Highway 286, known as the Crosstown Expressway. I-37 is the primary hurricane evacuation Alternative for the City, beginning in Corpus Christi and ending in San Antonio. The FEIS acknowledges that they did not adhere to existing transportation corridors and “were constructed through established residential neighborhoods,” leaving “isolated pockets of neighborhood areas to the north of the interstate, bounded by oil refineries and the Port on the north and west and the highway itself on the south.” The alignment of I-37 forced formerly major roads, such as North Staples, Winnebago, and

North Broadway, to end at the new highway, which “altered the traffic patterns through the area.” The FEIS states that “many homes in both the Hillcrest and Washington-Coles neighborhoods were moved and demolished.”

The Red Alternative would require the closure of Winnebago Street, identified as “the principal connecting roadway between the Washington-Coles and Hillcrest neighborhoods and would introduce a physical barrier between the new neighborhoods.” TxDOT acknowledges in its FEIS that “the degree of separation of the Hillcrest neighborhood would be magnified by the implementation of the [Red Alternative].” In order to mitigate the severance of Winnebago Street, TxDOT will redevelop Lake Street, located to the north, in order to establish it as the new principal thoroughfare between the two communities, passing east-west under the realignment of US181. The realignment of US181 would remove the existing highway barrier between Washington-Coles and downtown, but TxDOT acknowledges that “Hillcrest is a more cohesive neighborhood than Washington-Coles,” though Washington-Coles contains many of the public amenities utilized by Hillcrest residents, including the St. Paul United Methodist Church, the Oveal Williams Senior Center and the Solomon Coles High School and Education Center, the only school still remaining in the Northside community. TxDOT stipulates in its FEIS that the Red Alternative’s realignment of US181 will isolate the Hillcrest neighborhood and “contribute to the further urbanization of the community and separation between the two neighborhoods, affecting cohesion in the Northside community as a whole.”

Chapter 6 of the FEIS examines the indirect effects to community cohesion that can be anticipated from the selection of any of the four build alternatives, including the Red Alternative. The Green Alternative would only re-align the US181 slightly to the west, “maintaining the existing barrier created by US181 between the Northside neighborhoods and downtown,” but mitigating this barrier beyond the current alignment by constructing four additional underpasses to improve connectivity to and from the downtown. The Red and Orange Alternatives “would contribute to separation of these neighborhoods already challenged to maintain community cohesion and interconnectivity with the rest of the city, stemming primarily from the barrier presented by I-37,” the existing highway forming the southern boundary of the Northside community. TxDOT expects the Red Alternative to “adversely effect the cohesion of the Northside community.” The West Alternative was projected by TxDOT to “remove the existing barrier between the Northside neighborhoods and downtown and create a new barrier between the Hillcrest neighborhood and nearby refineries.” Such a barrier can be perceived as beneficial, as it maintains the connectivity between the traditionally African-American Northside communities while also removing one of the Northside’s existing barriers to downtown access.

On December 16, 2014, HUD’s Office of Community Planning and Development sent a letter to TxDOT with concerns about the project. Amongst other concerns, HUD was concerned with the impact to property owners beyond the purchase of land for rights-of-way, particularly with regards to reduction in property values. TxDOT responded that possible reductions in property values were too speculative for consideration as an adverse effect under NEPA, and thus would not be considered.

City of Corpus Christi additionally drafted the Corpus Christi Comprehensive Plan 2035, last updated in July 2015, that has seen a number of drafts published online and that “includes a vision for the future and goals and policies [to] provide direction for the city as a whole.” In it, the City expresses its plan to establish “the Special I-37 Transition District,” which covers residential uses west of the alignment of the Red Alternative and north of I-37. This includes the Hillcrest neighborhood. The City acknowledges that the Hillcrest neighborhood has been losing population for decades, citing environmental pollution and contamination, along with the barrier represented by the construction of I-37 to the south, which “cut them off from the south.” By labeling Hillcrest a Transition District, the City plans that, over time, “residential uses should leave this area and the designated land use should become light industrial or a buffer use . . . within a heavy industrial district.”

The City’s future plan for the Hillcrest Neighborhood to become a Transition District and then a light industrial center was further observed during HCR on-site reviews of the Hillcrest and Washington-Coles neighborhoods during the investigation of the claim. It was observed on these site visits to the neighborhood that many parks and vacant lots were neglected, with the grass growing nearly waist-high in many places. Former public buildings and school properties were closed or showed signs of fire damage. Many buildings which contained community services, such as a day-care center and police station were boarded up and the properties were in disrepair.

Impacts to neighborhood businesses in Hillcrest from the new Harbor Bridge project are likely to affect community cohesion. Many small businesses that were observed in the neighborhood including rental properties, houses of worship, a small convenience store, an auto dealership, and others rely on the accessibility in the Hillcrest neighborhood that would be affected by the Harbor Bridge project. However, the Red Alternative is predicted by TxDOT in its FEIS to displace only three businesses (through right-of-way acquisition), employing seven to fifteen employees. It is estimated that these businesses would be able to reestablish nearby, and that any effects on unemployment would be temporary. While all businesses and employees affected by potential alternatives in the FEIS are estimated to be capable of reestablishing nearby, TxDOT estimates the Red Alternative will affect the least number of employees of the four alternatives.

The effects of removing the community cohesion would have a uniquely adverse impact on the African-Americans in the neighborhood due to the historic segregation of the African-American community in Corpus Christi. Based on interviews and historical data reviewed during the investigation, Corpus Christi historically limited African-American residence to the neighborhood of Washington-Coles and then opened up the Hillcrest neighborhood to African-Americans when Washington-Coles became too small to hold the population. This, in effect, created a uniquely cohesive community of African-Americans within the Washington-Coles and Hillcrest Neighborhoods to the point that they are often referred to as one community of Northside.

Relocation of residents in the Hillcrest neighborhood, whether through a mitigation strategy designed to limit the impacts of the Red Alternative or through the gradual

industrialization described by Plan CC 2035, will likely result in a significant loss of business for the 187 rental properties located in the community. The relocation of residents will also likely have significant impacts on the ability of small businesses to operate in the area, particularly those heavily dependent on local traffic and community cohesion.

c. Proposed Mitigation

When determining adversity, the countervailing benefits accruing to impacted communities from a proposed project or policy are to be weighed against the harms.⁵¹ When recipients take actions to mitigate impacts, they must be balanced against the adversity of the impacts to determine if the project as a whole is truly adverse.

The Red Alternative contains a variety of different methods for attempting to mitigate the adversity of the project on residents of Hillcrest and Washington-Coles. The FEIS contains various proposals by TxDOT to mitigate impacts to community cohesion in the Northside under the Red Alternative. While no mitigation is proposed for residents in Hillcrest and Washington-Coles affected by the realignment of US181 with regards to traffic noise, there will be construction of a hike and bike trail from Hillcrest to Washington-Coles that traverses under the realigned US181, street lights, the creation of a new park to replace the current T.C. Ayers Park in Hillcrest, the neighborhood pool and basketball courts will be resurfaced, workforce support for affected businesses, incorporating neighborhood input into the aesthetics of the new Harbor Bridge and US181, and the incorporation of neighborhood history into the trail and redesigned parks. The Red Alternative will also fund a small museum on neighborhood history, to be located within Solomon Coles High School.

A Community Sustainability Plan is to be developed within a year of the beginning of construction, designed to showcase opportunities for the community to apply to federal agencies for sustainability grants, if the residents themselves choose to apply for them.⁵² On October 15, 2014, TxDOT hosted a Livability Summit at the Solomon Ortiz Center in Washington-Coles, intended to provide additional mitigation for impacts to community cohesion in the Northside.⁵³ The Livability Summit was organized by FHWA, and sponsored by the Partnership for Sustainable Communities. Input from the Livability Summit “will contribute to a Community Sustainability Plan to be developed by TxDOT for the Northside neighborhood” by showcasing opportunities for the residents themselves to apply for HUD, EPA, and DOT sustainability grants in the future. The meeting consisted of predominately government officials and few Northside residents. The Community Sustainability Plan has not been published as of this date, with TxDOT promising in its Position Statement that it will be “drafted and finalized within one year of the start of construction,” and will not contain any commitments from TxDOT or any

⁵¹ See, e.g., *NAACP v. Med. Ctr., Inc.*, 657 F.2d at 1340; see also *United States v. Bexar County*, 484 F. Supp. at 859.

⁵² FEIS 9-2 to 9-6. See also TxDOT Position Statement pgs. 14-18.

⁵³ TxDOT Position Statement

other public or private entity for funding. It will largely serve as an educational tool for residents interested in opportunities for applying for federal sustainability grants. It contains no dedicated funding.

Mitigation is projected to cost \$20.8 million under the Red Alternative, or approximately 3.2% of the overall project costs, minus costs for ROW and utility relocation.⁵⁴

Proposed mitigation such as the hike-and-bike trails, contribute in a small way to lessening severe impacts to community cohesion caused the realignment of US181, and the inclusion of neighborhood history also promotes community cohesion. The creation of a new park to replace T.C. Ayers Park is also useful; however, HCR on-site visits to the neighborhood revealed parks in the neighborhood to be in severely dilapidated conditions, unmaintained and practically not functional.

The realignment of US181 between Hillcrest and Washington-Coles will serve the City's plan to transition Hillcrest into an industrial zone, isolating the residential community and serving as a barrier between the future expanded industrial zone and the residential communities to the south and east. The proposed mitigation involving hike and bike trails, parks, and community history projects would do little to reconnect Hillcrest to the rest of the community and would not be useful to residents that will be rezoned into an industrial area within the next 15 years. While the rezoning of Hillcrest has not happened yet and is not within the purview of TxDOT, the Red Alternative would add to the transition of Hillcrest from a neighborhood community to an industrial area.

d. Impact Analysis

In a Title VI disparate impact analysis, a causal connection must be shown between the facially neutral policy or practice and the disproportionate and adverse impact on the protected group.⁵⁵ To demonstrate causation, evidence that "adequately captures" the impact of TxDOT's project on similarly situated members of protected and non-protected groups must be shown, using an "appropriate measure."⁵⁶ The phrase "similarly situated" requires the analysis to focus on persons potentially directly affected by the location of any of the four alternatives considered for the project. Residents living in other locations, while they may use the facility once it is completed, would not be affected in the same way when it comes to the consideration of its location. Impacts on the CBD, Northside, and North Beach were compared since these communities would be the most impacted both by the benefits and burdens based on the selection of one of the proposed alternatives. It is possible, under the four location alternatives, for residents of North Beach, Northside, and the CBD to see the realignment of US181 and the new Harbor Bridge constructed within the boundaries of their neighborhoods; it is not possible for residents of other communities in Corpus Christi to be affected in this way.⁵⁷

⁵⁴ TxDOT Position Statement Exhibit F

⁵⁵ New York City Envtl. Justice Alliance v. Giuliani, 214 F.3d 65, 69 (2d Cir. 2000).

⁵⁶ New York Urban League v. New York, 71 F.3d 1031, 1037-38 (2d Cir. 1995).

⁵⁷ See, e.g., Chapter 2 of the FEIS for the build alternatives and their effects on each neighborhood. For the purposes of this complaint, only the communities potentially impacted by the site-selection and by the realignment of US181 are "similarly situated."

The impact of noise on the protected group, the unique and historically African-American neighborhoods of the Northside, was directly measured by TxDOT in their FEIS. While Northside residents currently experience external noise impacts from other sources, such as I-37, the Port, and industrial refineries, TxDOT measured the projected impact of noise directly caused by the realignment of US181 and the new Harbor Bridge under the Red Alternative. The Red Alternative is projected to impact 204 residential receivers in the Northside, some by doubling the decibel-level of external noise to be experienced (10dBA), and others by raising the decibel level to within 1 dBA of the Noise Abatement Criteria set for that type of property usage by 23 CFR Part 772. TxDOT concedes the impact of noise from the project in Chapters 4 and 6 of the FEIS, and therefore, the project has a causal connection to increases in noise in the Northside communities.

The isolation, community cohesion, and economic impacts of the Red Alternative on the protected group are also causally related to the project. TxDOT acknowledges in Chapter 6 of its FEIS that “the degree of separation of the Hillcrest neighborhood would be magnified by the implementation of the [Red Alternative],” a result that the FEIS plans to mitigate by replacing the severed Winnebago Street with the redevelopment of Lake Street as a cross-neighborhood Alternative to the north, where the realignment of US181 will rise high enough to permit traffic to pass underneath.⁵⁸ Chapter 6 further stipulates that the Red Alternative “would contribute to separation of these neighborhoods already challenged to maintain community cohesion and interconnectivity with the rest of the city, stemming primarily from the barrier presented by I-37,” adversely effecting “the cohesion of the Northside community” and contributing “to the further urbanization of the community and separation between the two neighborhoods, affecting cohesion in the Northside community as a whole.”⁵⁹ The Red Alternative is not alone in isolating the Northside communities from the rest of the city, as the industrial facilities to the north and west, the Port to the north, and I-37 to the south are major contributors. But TxDOT acknowledges in its FEIS the causal effect of the Red Alternative on further isolating Hillcrest from the other historically African-American neighborhood in Washington-Coles, as well as from the rest of the city, and the impacts that this isolation will have on community cohesion between the Hillcrest and Washington-Coles neighborhood. These impacts are not limited to those immediately adjacent to the intended facility, but all of those within the affected Northside communities, particularly residents and businesses of Hillcrest.

3) Respondents articulated a substantial legitimate justification for the replacement of the bridge.

Under a Title VI analysis, after a disproportionate impact on the affected community is shown, the burden shifts to the respondent to demonstrate the existence of a “substantial legitimate justification” for the allegedly discriminatory practice. To prove a “substantial legitimate justification,” the recipient must show that the challenged policy was “necessary to meeting a goal that was legitimate, important, and integral to the [recipient’s] institutional mission.”⁶⁰The

⁵⁸ FEIS 4-84

⁵⁹ FEIS 6-40

⁶⁰ *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), *aff’d*, 197 F.3d 484 (11th Cir. 1999), *rev’d* n other grounds *Alexander v. Sandoval*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413).

justification must bear a "manifest demonstrable relationship" to the challenged policy.⁶¹ In a transportation context, the practice must be demonstrably necessary to meeting an important transportation goal, such that there must be a transportation "necessity" for the practice or project. The justification must bear a demonstrable relationship to the challenged project, and the justification must be sufficiently critical to the institutional mission of the recipient to allow implementation of the project despite its discriminatory effects.

a. Structural and Design Deficiencies

In its Position Statement, TxDOT asserts that replacing the current Harbor Bridge and US181 is necessary because the current bridge and highway have critical structural and transportation deficiencies.⁶² Inspections in 2007 and 2008 revealed seven types of structural concerns, including missing or broken rivets and bolts, corrosion, sagging bracing, and widespread rusting. The current Harbor Bridge carries higher loads than the loads for which it was designed, as traffic volumes and vehicle weight have increased since 1959. According to Chapter 1 of the FEIS, the Harbor Bridge is a fracture-critical structure; if key supports fail, the bridge itself would be in danger of collapse.⁶³ Inspections in 2012 echoed the structural concerns voiced by TxDOT, and the design deficiencies are in conflict with current TxDOT and federal standards.⁶⁴ Additionally, maintenance costs since 1980 have exceeded \$70 million, and extending the service life of the current bridge would cost an estimated \$279,471,206 in 2012 dollars.⁶⁵

Furthermore, according to TxDOT's Position Statement, US181 as it is currently aligned, including the Harbor Bridge, does not meet current FHWA and TxDOT roadway and bridge design standards, posing a safety risk to the travelling public.⁶⁶ There is a lack of roadway shoulders, increasing the potential for and severity of congestion of when traffic accidents and breakdowns occur, and ensuring that the clearance between the travel lanes and the railing on the Harbor Bridge do not meet current standards. Some of the ramp lengths to gain access to the facility within the project limits are also deficient, as they do not provide sufficient acceleration or deceleration distances.⁶⁷ On-site interviews with residents of Hillcrest, Washington-Coles, and members of other communities who participated in the public outreach process, as well as interviews with TxDOT staff, revealed that the current alignment creates dangerous sharp "S" curves at high speeds, due in part to a steep vertical grade, which all parties consider dangerous. Chapter 1 of the FEIS cites these curves as one of the "needs" for the new project.⁶⁸

In both its Position Statement and its FEIS, TxDOT has repeatedly stated that the current bridge, and US181, must be replaced due to structural and design deficiencies.⁶⁹ The Red Alternative,

⁶¹ Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d. 1403, 1418; Elston, 997 F. 2d at 1413.

⁶² TxDOT Position Statement pgs. 20-21

⁶³ Chapter 1 of the FEIS discusses the health of the current Harbor Bridge in detail. While the bridge itself is not currently considered unsafe, inspections have noted middling condition ratings and noted evidence of deterioration, erosion, and cracking.

⁶⁴ FEIS 1-5

⁶⁵ FEIS 1-5

⁶⁶ TxDOT Position Statement pg. 20

⁶⁷ Chapter 1 of the FEIS details the appropriate ramp lengths by TxDOT design standards.

⁶⁸ FEIS 1-6

⁶⁹ TxDOT Position Statement pgs. 20-21, FEIS Chapter 1

realigning US181 and constructing a new Harbor Bridge, would correct these structural and design deficiencies.⁷⁰ The new Harbor Bridge project is designed to address both safety and structural concerns with the current facility. It is also designed to decrease the potential for congestion on US181 by adding shoulders, for the purposes of day-to-day travel and for use as a hurricane evacuation route. In the Chapter 2 discussion of the four reasonable alternatives, all four of the alternatives, including the Green Alternative which would realign US181 directly adjacent to the current facility, correct the dangerous conditions caused by the “horizontal curvature” of the current facility.⁷¹

b. Major Hurricane Route

Within the project area, both US181 and I-37 are designated by TxDOT to be major hurricane evacuation routes. US181 and the Harbor Bridge are the primary evacuation routes for San Patricio County, the county north and west of Nueces Bay. In Corpus Christi, US181 is the alternate route for hurricane evacuation; I-37 is the primary route.⁷² According to Chapter 1 of the FEIS, discussing the need for the project from a NEPA perspective, given the design deficiencies in the current Harbor Bridge, there would be a heightened risk of congestion on US181 during an emergency hurricane evacuation. The purpose of the project, according to TxDOT’s FEIS, is therefore “to maximize the long-term highway operability of the US181 crossing of the Corpus Christi Ship Channel; and [to] improve safety for the traveling public, including during hurricane evacuations.”⁷³

Chapter 2 of the FEIS states that the Green, Red (Preferred), Orange, and West alternatives would each meet TxDOT’s standards for a hurricane evacuation route, providing “adequate capacity to facilitate evacuation and, with improved geometry and a non-fracture-critical design, would also provide the reliable, long-term solution needed to serve this purpose of the proposed project.”⁷⁴

c. Economic Development

TxDOT also highlights a number of objectives for the project, “in addition to the primary purpose,” in Chapter 1 of the FEIS.⁷⁵ These are to “provide the transportation infrastructure to support the economic opportunities in the area” and to “consider the connectivity of US 181 to the local roadway system and address its effect on adjacent neighborhoods.”⁷⁶ According to TxDOT’s Position Statement, the selection of the Red Alternative best meets these objectives.⁷⁷ Chapter 1 of the FEIS describes the current location of US181 as “creating a barrier” between residential neighborhoods and downtown Corpus Christi, particularly the developing Sports, Entertainment, and Arts (SEA) district.⁷⁸ The selection of the Red Alternative will allow Corpus

⁷⁰ FEIS Chapter 1

⁷¹ FEIS 2-3

⁷² FEIS 1-7

⁷³ *Id.*

⁷⁴ FEIS 2-8

⁷⁵ FEIS 1-7

⁷⁶ *Id.*

⁷⁷ TxDOT Position Statement pg. 20

⁷⁸ FEIS 1-8

Christi, according to Chapter 2 of the FEIS, to redevelop the current span of US181 into an at-grade boulevard, with the City planning to develop around the new boulevard mixed-use commercial and residential properties.⁷⁹ This is consistent with the City of Corpus Christi's desire to redevelop the Central Business District, as portrayed in Plan CC 2035. Chapters 4 and 7 of the FEIS also discuss the potential for economic development in the downtown area and SEA district.

4) Reasonable alternatives to the Red Alternative that would have a less discriminatory impact

Recipients are required under Title VI to implement the "least discriminatory alternative" that is feasible and meets its legitimate objectives and eliminates or reduces an unnecessary and harmful effect on protected populations. Courts have defined "less discriminatory alternatives" to be those that meet the recipient's legitimate needs, but that will do so without the same level of disparate effect on a class protected by Title VI.⁸⁰ In a transportation context, courts have analyzed site selection alternatives, particularly where the recipient had already considered and rejected them, establishing a record.⁸¹ In cases involving site selection, courts have considered not only whether the construction was necessary to begin with, but also whether the recipient can justify selection of the particular site over alternatives.⁸²

In Chapter 2 of its FEIS, TxDOT asserts that each of the four build alternatives (Green, Orange, Red, and West) will have disproportionately high and adverse effects on minority and low-income populations.⁸³ However, each of the four build alternatives considered by TxDOT in the FEIS meet the purpose and need for the project, as required by NEPA.⁸⁴ Therefore, severity of impacts, specific demographics, historical impacts, cumulative impacts, Section 4(f), connectivity, cohesion, business impact, psychological and physical barriers, access, public services, among other factors, must be assessed between the different build alternatives.

In a document entitled "Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process," the Council on Environmental Quality (CEQ) discussed what constitutes a "reasonable alternative" for the purposes of an EIS.⁸⁵ The Memorandum describes "reasonable alternatives" as "those that are practical or feasible

⁷⁹ FEIS 6-28; Plan CC Comprehensive Plan 2035 describes the City's future land use goals in detail, and includes the realignment of US181 and the Harbor Bridge onto the Red Alternative through the Northside. Maps for the future development of each neighborhood are contained towards the end, with the downtown area maps being presented on pg. 40. For more information on Plan CC 2035, the most recent drafts are all available at <http://www.plancc2035.com/>.

⁸⁰ Elston, 997 F.2d at 1407.

⁸¹ See, e.g., *Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 119-20 (S.D. Ohio 1984), (conducting a thorough review of alternatives sites for highway or other methods, such as light rail or public transportation).

⁸² See, e.g., *Damian*, 608 F. Supp. at 127; see also *Bryan, Jr., et al., v. Edward I. Koch et al., and District Council 37, American Federation of State, County and Municipal Employees Union, AFL-CIO, et al.*, 627 F.2d 612 (1985) at 617-18.

⁸³ FEIS 2-20

⁸⁴ FEIS 2-9

⁸⁵ General Counsel, Council on Environmental Equality, "Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process" 46 Fed. Reg. 18026 (March 23, 1981).

from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”⁸⁶ In Chapter 2 of the FEIS, TxDOT rated all six of the original preliminary project alternatives (Blue, Green, Red, Orange, Tunnel, West), along with the no-build alternative, to determine whether the alternative was reasonable with regards to the purpose of the project. TxDOT “eliminated from detailed consideration in the Draft EIS” all “alternatives that did not meet the need and purpose for the project, or were not feasible and prudent Section 4(f) avoidance alternatives.”⁸⁷ The project purposes, as identified, were to maximize the long-term highway operability of the US181 crossing of the Corpus Christi Ship Channel, and to improve safety for the traveling public, including during hurricane evacuations.⁸⁸ Both the Blue and Tunnel alternatives were eliminated under this process, as they did not meet the need and purpose for the project. The no-build alternative also did not meet the need and purpose for the project.⁸⁹

The four alternatives remaining for consideration in the FEIS all met TxDOT’s stated need and purpose for the project, and are by definition “practical or feasible from the technical and economic standpoint and using common sense,” qualifying them as “reasonable alternatives.”⁹⁰ They are therefore “comparably effective.”⁹¹ These alternatives are: Green, Orange, Red, and West.

TxDOT cites in its Position Statement the Section 4(f) analysis performed as part of the FEIS as a substantial legitimate justification for the selection of the Red Alternative over the Green, Orange, and West Alternatives.⁹² A Section 4(f) analysis, performed pursuant to NEPA and 23 CFR Part 774.3, is required whenever multiple build alternatives would all require the use of Section 4(f) properties. An agency must then evaluate all “feasible and prudent” alternatives under this analysis, and determine which causes the “least overall harm.” An alternative is not considered “prudent” for consideration under a Section 4(f) if, among other reasons, it causes severe social, economic, or environmental impacts; severe disruption to established communities; or severe disproportionate impacts to minority or low income neighborhoods.⁹³ According to Chapter 5 of the FEIS and FHWA’s Record of Decision (ROD), when it comes to impacts to Section 4(f) properties, the Green, Red, and Orange Alternatives all scored a “medium” in the analysis, with the West Alternative scoring “high” on both “ability to mitigate adverse impacts to 4(f) properties” and “relative significance of 4(f) properties.”⁹⁴ The Red Alternative differs in this analysis from the other alternatives only in the category entitled “degree to which the Alternative meets the purpose and need and objectives,” under which the Red Alternative is scored “high,” Green and Orange are scored “medium,” and West is scored

⁸⁶ *Id.* Question 2a

⁸⁷ FEIS 2-2

⁸⁸ FEIS 2-3

⁸⁹ *See* Chapter 2 of the FEIS

⁹⁰ General Counsel, Council on Environmental Equality, “Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process” 46 Fed. Reg. 18026 (March 23, 1981).
Question 2a.

⁹¹ *See* Georgia State Conf., 775 F.2d at 1417; Elston, 997 F.3d at 1413.

⁹² TxDOT Position Statement pg. 23

⁹³ 23 CFR Part 774.17

⁹⁴ FEIS 5-57 to 5-58

“low.” Under these criteria, the Red Alternative was considered by TxDOT to be the alternative that causes the “least overall harm” under a Section 4(f) analysis.⁹⁵

This scoring is assuming only the 4(f) analysis to be the controlling factor when deciding on the preferred alternative. When taking Title VI factors of historical discriminatory impacts, community cohesion, the specific demographics of the historically African-American community members, connectivity and community cohesion, psychological and physical barriers, as well as access to public services, into consideration it would appear that these Title VI considerations were not factors were weighed as heavily in the selection process since the FEIS does not talk about these as in depth as other factors. The FEIS does acknowledge that the selection of the Red Alternative would contribute to separation of these neighborhoods and would adversely affect the cohesion of the Northside community.⁹⁶ However, 4(f) and future planned land use and development seemed to take priority over Title VI considerations.⁹⁷

The Harbor Bridge Collaborative Judgment Land Use Panel (Land Use Panel), a group of local experts compiled by TxDOT with “intimate knowledge of the proposed project and study area,”⁹⁸ provided land use and economic development forecasting based upon the proposed alternatives for site selection for the purposes of the project.⁹⁹ The Land Use Panel identified the Port of Corpus Christi and the Port Industries as the most common catalysts for development within the project area. The Land Use Panel was asked to consider, among other forecasts, “reasonably foreseeable future development within the area and if they considered that development to be dependent on the proposed project.”¹⁰⁰ Future development identified by the Land Use Panel included plans for the revitalization of downtown Corpus Christi, redevelopment of existing land uses to mixed-use community centers, increased pedestrian access throughout the area, and repurposing of city parks, along with further development in the industrial sector.¹⁰¹ The Land Use Panel indicated that while the new Harbor Bridge project “may play a part in the future development of the area,” the “current and future actions identified would not be dependent on the implementation of the proposed project and either are or would be taking place independently.” The Land Use Panel identified Port-related industrial development, the SEA District, and the downtown area in general (higher-density infill development) as “areas likely to be developed independently of the proposed project.”¹⁰² The panel did recognize, however, that “increased accessibility and an improved view of the downtown area and the SEA District” resulting from the Red Alternative could enhance opportunities for development in these locations.¹⁰³

⁹⁵ *Id.*

⁹⁶ FEIS Chapter 6

⁹⁷ FEIS Chapter 6

⁹⁸ FEIS 6-43

⁹⁹ The Land Use Panel was represented by: the City of Corpus Christi, the Corpus Christi Regional Transportation Authority, Nueces County, the Port of Corpus Christi Authority, the Coastal Bend Bays Foundation, Texas A&M University-Corpus Christi, the Coastal Ben Bays and Estuaries Program, the Hispanic Chamber of Commerce, the Corpus Christi MPO, local real estate developers, and city planners and engineers. Their role is described in detail in Chapter 6.1.4 of the FEIS.

¹⁰⁰ FEIS 6-6

¹⁰¹ *Id.*

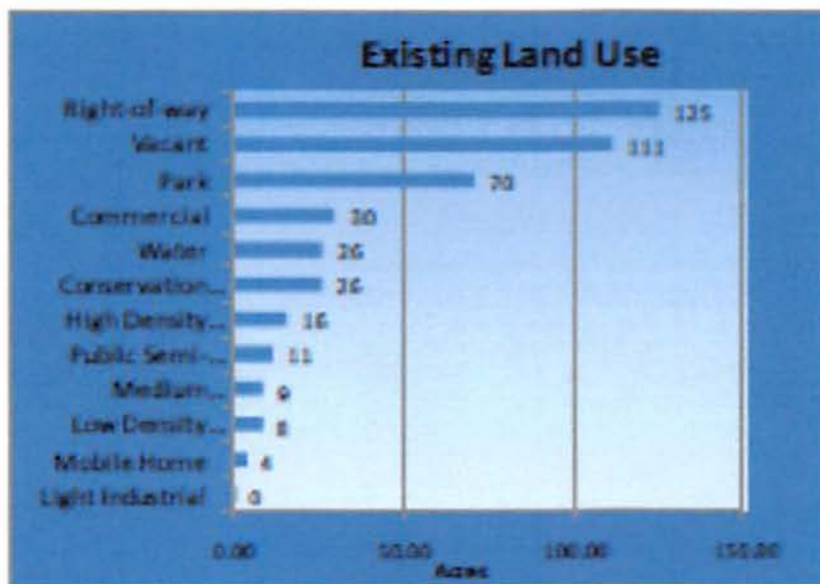
¹⁰² *Id.*

¹⁰³ *Id.*

a. Communities Impacted by the Red, Orange, Green and West Alternatives

The project area communities who would assume the majority of the benefit or burden depending on which alternative was selected are the North Beach area, the South Central community, and the Northside community. Other communities discussed in the FEIS are burdened or benefitted by the project in similar ways, regardless of the chosen alternative. For example, the communities of Refinery Row, considered in the FEIS, are impacted by the expansion of I-37 as part of the project; however, the expansion of I-37 will occur regardless of which of the four alternatives were selected.¹⁰⁴

In the North Beach area, according to the 2010 Census, 59.6% of residents identify themselves as White, with 34% of persons describing themselves as Hispanic or Latino, 3.5% identifying themselves as Asian, and 1.9% describing themselves as African-American. With a total area of 436 acres, the North Beach area is primarily intended to promote tourist oriented development with some permanent residential uses.¹⁰⁵ The vast majority of property on North Beach is zoned as Resort Commercial District or Resort Multifamily-Apartment Tourist District.



The South Central area is comprised of the Central Business District, the Evans Elementary neighborhood, and the Crosstown East neighborhood.¹⁰⁶ The Evans Elementary neighborhood is situated southeast of the intersection of the Crosstown Expressway and I-37, South of each of the four alternatives. The Crosstown East neighborhood, further South, is separated from I-37 by the Evans Elementary neighborhood. The Evans Elementary neighborhood and Crosstown East neighborhood would be affected similarly regardless of the alternative chosen due to their location south of the project area.

¹⁰⁴ See, e.g., FEIS Appendix E on Land Use Plates.

¹⁰⁵ <http://www.cctexas.com/Assets/Departments/PlanningEnvironmentalServices/Files/81712AdoptedNBPlanText.pdf>

¹⁰⁶ FEIS Appendix A, Figure 3-5.4

The Central Business District (CBD), which contains the Sports, Entertainment, and Arts (SEA) District, is directly affected by the choice of alternative. The current alignment of US181 forms the SEA District's western boundary. The CBD area is largely commercial, with only 37 of its 180 Census blocks populated, comprising a total population of 1,030 people. Approximately 66.1% of residents of the CBD area identify themselves as White, with 27.2% identifying themselves as Hispanic or Latino. African-Americans make up 5.1% of the CBD population, and all other ethnic groups comprise less than 1%.¹⁰⁷

The Northside community is comprised of the Hillcrest and Washington-Coles neighborhoods. Until 1944, Washington-Coles was the only neighborhood in Corpus Christi where African-Americans were permitted to live. In 1948, the Hillcrest neighborhood was opened to African-Americans, and over the next two decades the racial makeup of Hillcrest transitioned from predominantly White to predominantly African-American and Hispanic or Latino. The Hillcrest neighborhood now features the largest concentration of African-Americans in the City of Corpus Christi.¹⁰⁸ According to the 2010 Census, there are 2,473 residents in the Northside community, of which the vast majority live in Hillcrest. In Hillcrest, 55% of persons identify as Hispanic or Latino, 38% identify as African-American, and 7% identify as White. In Washington-Coles, 63% of persons identify as Hispanic or Latino, 31% as African-American, and 5.7% identify as White.¹⁰⁹

b. Green Alternative

In Chapter 2 of the FEIS, TxDOT "eliminated from detailed consideration in the Draft EIS" all "alternatives that did not meet the need and purpose for the project, or were not feasible and prudent Section 4(f) avoidance alternatives."¹¹⁰ The Green Alternative, as one of the remaining four alternatives, is therefore practicable and comparably effective in meeting the legitimate and substantial needs addressed by the recipient's challenged practice.¹¹¹

The Green Alternative was the alternative most frequently cited by the Complainants and members of the Citizens Alliance for Fairness and Progress, comprised of residents and homeowners in Hillcrest and Washington-Coles, as the most desirable of the four alternatives, as the site selection and mitigation packages accompanying them currently stood.¹¹² The Green Alternative would realign US181 and the Harbor Bridge directly to the west and adjacent to the current facility, maintaining its current location inside the Central Business District (CBD) to the south and North Beach to the north.¹¹³ The Central Business District is mostly commercial, with

¹⁰⁷ FEIS 3-60

¹⁰⁸ FES 3-64

¹⁰⁹ FEIS 3-67

¹¹⁰ FEIS 2-2

¹¹¹ See Georgia State Conf., 775 F.2d at 1417; Elston, 997 F.3d at 1413.

¹¹² The on-site interviews were conducted by FHWA on May 27, 2015, and July 8-9, 2015, with the members of the Alliance, the individual complainants, and their attorneys at Texas RioGrande Legal Aid, Inc.. Interviews were also conducted with members of the Citizens Advisory Committee from other potentially impacted neighborhoods on July 8-9, 2015.

¹¹³ FEIS 2-17; FEIS Appendix A

a total population of 1,030, according to the 2010 U.S. Census. The North Beach neighborhood is smaller, with a total population 536 people.¹¹⁴

According to Chapters 2 and 6 of the FEIS, the Green Alternative would reconstruct US181 at a higher elevation in order to allow for local street connectivity, with four additional underpasses constructed underneath to allow for access to the CBD, though it would, according to TxDOT, “maintain the barrier” to the CBD, allowing for only minimal improvements in connectivity relative to the current facility.¹¹⁵ The Green Alternative would improve connectivity between the Northside community and the CBD, relative to the current facility, by constructing four additional underpasses between the community and the CBD, though it would not improve connectivity for Washington-Coles to the CBD relative to the Red Alternative. These four additional underpasses would “allow for perpendicular streets that currently end at the embankment on the east side of US181 to carry under US 181 to connect to Tancahua Street on the west side of US 181.”¹¹⁶

Under the Green Alternative, the number of sensitive receivers impacted based on noise from the project would be similar to the Red Alternative (522 to 538); however, the number of receivers being impacted by increases in decibels of 10 or more (a doubling of the perceived volume) is 11 to 33, respectively.¹¹⁷ Both the Green Alternative and the Red Alternative increase the capacity of I-37; the receivers impacted by noise from that portion of the project are largely the same.¹¹⁸ Furthermore, the type of receiver impacted by the two alternatives differs substantially. The Green Alternative would, in addition to the receivers impacted by the I-37 portion of the project, impact a number of receivers in the east side of Washington-Coles, but these are a park, a medical facility, and a cemetery.

According to the FEIS the Green alternative would be one of the environmentally preferable alternatives since it follows the existing alignment of US 181 resulting in fewer adverse impacts in minority and low-income areas, and as explained in section 2.0 of the FEIS, the Green alternative would have less environmental impacts to wetlands, marsh habitat, and fish habitat and would be the least visually intrusive.

The Green Alternative is projected to cost \$558 million, not including right-of-way, utility relocation, and any mitigation provided.¹¹⁹ For the Green Alternative, 75-year maintenance costs are estimated at \$19.2 million.¹²⁰

c. West Alternative

In Chapter 2 of the FEIS, TxDOT “eliminated from detailed consideration in the Draft EIS” all “alternatives that did not meet the need and purpose for the project, or were not feasible and

¹¹⁴ FEIS 3-67

¹¹⁵ FEIS 2-17

¹¹⁶ FEIS 2-17

¹¹⁷ FEIS 4-139; FEIS Appendix I: Traffic Noise Plates

¹¹⁸ FEIS Appendix I: Traffic Noise Plates

¹¹⁹ TxDOT Position Statement pg. 9, Exhibit F (for mitigation costs of Red Alternative)

¹²⁰ FEIS 2-18

prudent Section 4(f) avoidance alternatives.”¹²¹ The West Alternative, as one of the remaining four alternatives, is therefore practicable and comparably effective in meeting the legitimate and substantial needs addressed by the recipient’s challenged practice.¹²²

The West Alternative was the alternative most frequently cited by the Complainants and members of the Citizens Alliance for Fairness and Progress, comprised of residents and homeowners in Hillcrest and Washington-Coles, as the second most desirable of the four alternatives, as the site selection and mitigation packages accompanying them currently stood.¹²³ It is projected to cost \$679 million, not including right-of-way, utility relocation, and any mitigation provided.¹²⁴ The West Alternative’s 75-year maintenance costs are estimated at \$27.6 million.¹²⁵ The West Alternative would result in the fewest residential and business displacements of the four alternatives, though all of the displacements would affect minorities.¹²⁶ This is because the West Alternative would be built through the buffer zone established in 1998 along Nueces Bay Boulevard.¹²⁷ A site visit on May 27, 2015 revealed a stretch of several formerly residential blocks, now mostly open fields, occupied only by the occasional refinery office. The West Alternative is located approximately 1.25 miles to the west of the existing facility, and would cross the Industrial Canal and come down across a dredge spoils field before reconnecting with Alternative 35 north of the North Beach neighborhood.¹²⁸

The West Alternative would remove the existing barrier created by the current facility between Washington-Coles and the CBD, whereas the Green Alternative would only increase access over the existing facility by installing four additional underpasses to promote neighborhood connectivity. Unlike the Red Alternative, removing this barrier between Washington-Coles and the CBD would not create a new one between Washington-Coles and Hillcrest. A new barrier would be created in the Hillcrest buffer zone, between the residential community of Hillcrest and the refineries located across Nueces Bay Boulevard. On-site interviews with North Beach residents expressed concern about the West Alternative because they believed that the relocation of the highway that far to the west would discourage travelers accessing the North Beach’s attractions, which are adjacent to the current facility. Like the other three alternatives, the West Alternative would reconnect with the existing alignment with a northbound exit to be provided at Beach Avenue.¹²⁹

Unlike the Red Alternative, the West Alternative would, according to Chapter 2 of the FEIS, “substantially reduce accessibility to US 181 and I-37 for the Hillcrest neighborhood, affecting hurricane evacuation and routine use,”¹³⁰ although all four of the alternatives “meet TxDOT’s

¹²¹ FEIS 2-2

¹²² See *Georgia State Conf.*, 775 F.2d at 1417; *Elston*, 997 F.3d at 1413.

¹²³ The on-site interviews were conducted by FHWA on May 27, 2015, and July 8-9, 2015, with the members of the Alliance, the individual complainants, and their attorneys at Texas RioGrande Legal Aid, Inc.. Interviews were also conducted with members of the Citizens Advisory Committee from other potentially impacted neighborhoods on July 8-9, 2015.

¹²⁴ FEIS 2-18

¹²⁵ *Id.*

¹²⁶ FEIS 4-48 to 4-49

¹²⁷ FEIS 2-5

¹²⁸ FEIS 2-13

¹²⁹ *Id.*

¹³⁰ FEIS 2-22

standards for an appropriate hurricane evacuation Alternative for the Corpus Christi area.”¹³¹ According to Chapter 2 of the FEIS, due to geometric design constraints, the West Alternative would necessitate the removal of the three existing entrances to I-37 from the Northside community (Padre Street, Brownlee Boulevard, and North Port Avenue), requiring Hillcrest residents to travel to downtown Corpus Christi to access I-37, the primary hurricane evacuation Alternative for the area.¹³² The next available entrance would be located a mile to the west of North Port Avenue, past Buddy Lawrence Drive. While the West Alternative still meets TxDOT standards for a hurricane evacuation Alternative, it does not meet this need “as well as the other build alternatives.”¹³³ The Green, Preferred, and Orange would all remove the Brownlee Boulevard entrance to I-37, but would maintain the entrance at North Port Avenue and another entrance at North Staples Street.¹³⁴

The West Alternative would also be “aligned in such a way that traffic (and potential business patrons) would be diverted away from the downtown area and the SEA District, potentially offsetting the opportunities” for optimal economic redevelopment of the CBD.¹³⁵ As discussed in the prior section on Substantial Legitimate Justification, the Land Use Panel indicated that while the new Harbor Bridge project “may play a part in the future development of the area,” the “current and future actions identified would not be dependent on the implementation of the proposed project and either are or would be taking place independently.”¹³⁶ The Land Use Panel specifically identified that the downtown area, including the SEA District, as “areas likely to be developed independently of the proposed project.”¹³⁷ The findings of the Land Use Panel can be read in greater detail in Chapter 6.1.4 of the FEIS.

Because of its location further away from the residences in Hillcrest, it would have a lesser impact on traffic noise levels when compared to the Red Alternative.¹³⁸ The entire west side of the realigned US181 would be lined with industrial refineries, and the bridge itself would rise above the Port of Corpus Christi before crossing the Industrial Canal. The east side of the realigned US181 would impact nearly all residential properties on the western border of Hillcrest, with the overall project impacting 471 sensitive receivers, compared to 522 for the Green Alternative and 538 for the Red Alternative.¹³⁹ Like the Red Alternative, the realignment of US181 would largely impact residential receivers with traffic noise exposure, though unlike the location immediately surrounding the Red Alternative, the West Alternative is less densely populated, owing to the buffer zone built in 1998.

d. Orange Alternative

In Chapter 2 of the FEIS, TxDOT “eliminated from detailed consideration in the Draft EIS” all “alternatives that did not meet the need and purpose for the project, or were not feasible and

¹³¹ FEIS 2-8

¹³² FEIS 2-18

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ FEIS 2-19

¹³⁶ FEIS 6-6

¹³⁷ *Id.*

¹³⁸ See FEIS Chapter 4 noise impact comparisons

¹³⁹ FEIS 4-139

prudent Section 4(f) avoidance alternatives.”¹⁴⁰ The Orange Alternative, as one of the remaining four alternatives, is therefore practicable and comparably effective in meeting the legitimate and substantial needs addressed by the recipient’s challenged practice.¹⁴¹

The Orange Alternative was not cited by any party, or by anyone interviewed, as the most preferable alternative. It is projected to cost \$630 million, not including right-of-way, utility relocation, and any mitigation provided. The Orange Alternative’s 75-year maintenance costs are estimated at \$22.2 million.¹⁴² To the south, the Orange Alternative would realign US181 roughly in the same position as the Red Alternative, between Hillcrest and Washington-Coles, but would veer east across the Washington-Coles neighborhood, cutting Washington-Coles itself into two parts and creating a new barrier between the eastern portion of Washington-Coles and Hillcrest. The Orange Alternative would cross the Industrial Canal at the same location as the Green Alternative, a quarter-mile east of the Red Alternative and adjacent to the current facility.¹⁴³

As TxDOT’s Position Statement indicates, the Orange Alternative would turn a large portion of residential section of Washington-Coles into a major highway corridor, and would potentially have a greater disparate impact upon the Northside than the Red Alternative.¹⁴⁴ Washington-Coles is a historically and disproportionately African-American community, and the Orange Alternative would center traffic noise and community cohesion impacts from the project in that community.

e. Red Alternative

The Red Alternative casts the heaviest burden on the Northside neighborhoods of Hillcrest and Washington-Coles, with the realignment of US181 running between them through T.C. Ayers Park as it continues to rise through the neighborhood and over the Port to the north, crossing the Industrial Canal and coming down again in the North Beach neighborhood, approximately 1,000 feet west of the current alignment.¹⁴⁵ These impacts that will adversely affect the neighborhood will be disproportionately borne by the African-American population in the communities due to the unique historical segregation of African-Americans and the current distribution of the population of African-Americans in the Corpus Christi area.

The Northside neighborhood, comprised of the Hillcrest and Washington-Coles communities, is unique in the project area and in the City of Corpus Christi as a whole, being heavily populated by historic African-American populations. The Northside has a total population of 2,473, making it more residential than both the CBD and North Beach, with the vast majority of residents residing in Hillcrest rather than Washington-Coles (1,564 to 909). TxDOT stipulates in its FEIS that the Red Alternative’s realignment of US181 will isolate the Hillcrest neighborhood

¹⁴⁰ FEIS 2-2

¹⁴¹ See Georgia State Conf., 775 F.2d at 1417; Elston, 997 F.3d at 1413.

¹⁴² FEIS 2-18

¹⁴³ FEIS 2-12

¹⁴⁴ TxDOT Position Statement pg. 24

¹⁴⁵ FEIS 2-11

and “contribute to the further urbanization of the community and separation between the two neighborhoods, affecting cohesion in the Northside community as a whole.”¹⁴⁶

By realigning US181 between Washington-Coles and Hillcrest, a new “barrier” would be created between the two neighborhoods. The Red Alternative would require the closure of Winnebago Street, identified as “the principal connecting roadway between the Washington-Coles and Hillcrest neighborhoods and would introduce a physical barrier between the new neighborhoods.”¹⁴⁷ TxDOT acknowledges in its FEIS that “the degree of separation of the Hillcrest neighborhood would be magnified by the implementation of the [Red Alternative].”¹⁴⁸ In order to mitigate the severance of Winnebago Street, TxDOT will redevelop Lake Street, located to the north, in order to establish it as the new principal thoroughfare between the two communities, passing east-west under the realignment of US181.¹⁴⁹ The realignment of US181 would remove the existing highway barrier between Washington-Coles and the CBD, but TxDOT acknowledges that “Hillcrest is a more cohesive neighborhood than Washington-Coles,” and is more heavily populated, though Washington-Coles contains many of the public amenities utilized by Hillcrest residents, including the Oveal Williams Senior Center and the Solomon Coles High School and Education Center, the only school still remaining in the Northside community.¹⁵⁰

The Red Alternative would serve as a new barrier between Washington-Coles and Hillcrest. Hillcrest would be further isolated from both the rest of the Northside community and the rest of Corpus Christi by the Red Alternative.

The Red Alternative would, in addition to the receivers impacted by the I-37 portion of the project, impact the D.N. Leathers public housing complex in Hillcrest, along with additional residences and a church located on the west side of Washington-Coles. A map showcasing the impacted receivers under each alternative can be found in Appendix I of TxDOT’s FEIS.

USDOT’s Title VI regulations state that, “where prior discriminatory practice or usage tends” to discriminate against populations protected under Title VI, “the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.”¹⁵¹ In Chapter 6 of the FEIS, TxDOT’s FEIS stipulates the impact of past siting decisions on the Northside communities. TxDOT acknowledges that both the Red and Orange Alternatives “would contribute to separation of these neighborhoods already challenged to maintain community cohesion and interconnectivity with the rest of the city, stemming primarily from the barrier presented by I-37,” the existing highway forming the southern boundary of the Northside community.¹⁵² Chapter 3, discussing the Affected Environment, discusses the 1961 construction of I-37 and the 1963 construction of the Crosstown Expressway, stating that they did not adhere to existing transportation corridors and “were constructed through established residential neighborhoods,” leaving “isolated pockets of neighborhood areas to the north of the

¹⁴⁶ *Id.*

¹⁴⁷ FEIS 4-81

¹⁴⁸ FEIS 4-84

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ 49 CFR part 21.5(b)(7).

¹⁵² FEIS 6-40

interstate, bounded by oil refineries and the Port on the north and west and the highway itself on the south.”¹⁵³ The alignment of I-37 forced formerly major roads, such as North Staples, Winnebago, and North Broadway, to end at the new highway, which “altered the traffic patterns through the area.”¹⁵⁴ The FEIS states that “many homes in both the Hillcrest and Washington-Coles neighborhoods were moved and demolished.”¹⁵⁵ Washington-Coles and Hillcrest were racially segregated by law until 1944, when overcrowding in Washington-Coles forced the City of Corpus Christi to allow African-Americans to move into Hillcrest. In 1948, African-Americans were permitted to buy homes in Hillcrest, and over the next two decades, Hillcrest transitioned from predominantly White to predominantly Black and Latino, like Washington-Coles.¹⁵⁶ Chapter 3 of the FEIS relays this history in detail.

The Northside community has also been the site of numerous environmental disasters, stemming from the industrial refineries located largely to the immediate north and west, and the Port of Corpus Christi to the immediate north. Since the 1950s, there have been a series of explosions emanating from tank farms located within Hillcrest and the refineries, along with releases of toxic chemicals like hydrogen sulfide, hydrogen fluoride, and benzene.¹⁵⁷ In 2007, CITGO was found guilty of two felony criminal violations of the Clean Air Act for operating two large open top tanks without installing proper emissions controls required by federal law at its Corpus Christi East Plant Refinery.¹⁵⁸ According to the EPA, CITGO’s failure to follow proper emissions control resulted in the emission of benzene into the air, which is recognized as a known carcinogen and is also emitted by motor vehicles as an MSAT. This facility is located on the western edge of the Hillcrest neighborhood. Between 1985 and 1998, the adjacent refineries purchased more than 500 homes in the Northside communities. In 1998, approximately 100 homes in Hillcrest were purchased and cleared for approximately \$3.1 million along Nueces Bay Boulevard and West Broadway. This buffer zone was shaped as a result of a lawsuit filed in the early 1980s by Hillcrest residents alleging that ground water and air contamination had decreased property values and impacted public health.¹⁵⁹ More information on industry buy-outs and the buffer zone can be found in Chapter 3.5 of TxDOT’s FEIS.

Like in Plan CC 2035, the FEIS discusses the City of Corpus Christi’s plans to redevelop the old alignment of US181 into an at-grade boulevard with mixed-use commercial and residential properties.¹⁶⁰ The Red Alternative would remove the highway “barrier” to the SEA District, allowing for greater mobility downtown and promoting community and economic growth in the CBD.¹⁶¹

¹⁵³ FEIS 3-2

¹⁵⁴ FEIS 3-65

¹⁵⁵ FES 3-64

¹⁵⁶ *Id.*

¹⁵⁷ A list of environmental accidents in the neighborhood can be found in the original complaint, located at Attachment A.

¹⁵⁸ http://www.justice.gov/archive/opa/pr/2007/June/07_enrd_463.html

¹⁵⁹ FEIS 3-65

¹⁶⁰ FEIS 6-28

¹⁶¹ *See, for e.g.*, Chapter 6 of the FEIS, discussing indirect effects to each community from each alignment. Pages 6-36 and 6-37 specifically address these benefits.

The Red Alternative is projected to cost \$637 million, not including right-of-way or utility relocation, along with an estimated \$20.8 million in mitigation costs, according to TxDOT's Position Statement.¹⁶² The Red Alternative's 75-year maintenance costs are estimated at \$27.9 million.¹⁶³

Based on the FEIS and the Title VI investigation, there were less discriminatory alternatives than the Red Alternative that were available and met both the purpose and need of the project from a Title VI perspective.

B. Did Respondents violate Title VI by not following public participation procedures during the environmental impact analysis of the project?

In assessing allegations involving a disparate impact on persons under Title VI, an initial determination of whether or not a prima facie case of discrimination has been alleged must be made. A prima facie allegation of discrimination must identify: specific policy or practice (facially neutral), adverse impacts, disparity in those impacts, and causation by the specific policy or practice. If a prima facie case of discrimination has not been alleged, then the specific policy or practice does not violate Title VI and no further inquiry is required.

The specific policy or practice is the public involvement process conducted as part of the environmental impact assessment by TxDOT, which began with public scoping meetings on August 9, 2011.¹⁶⁴ There was no evidence obtained that demonstrated a policy that was adverse to persons on the basis of race, color, or national origin. While there were isolated events that could potentially have had an impact on persons on the basis of race, these were outliers in a much larger and more inclusive process.

Specifically, the January 29, 2015 Northside Workshop hosted by TxDOT was designed to allow Northside residents to discuss and comment on ideas for the Community Sustainability Plan, a key aspect of the mitigation offered by TxDOT for the adverse impacts associated with the selection of the Red Alternative.¹⁶⁵ While the Northside Workshop was held after the issuance of the FEIS, it was not unrelated to the project or the public involvement process surrounding the project for the purposes of Title VI, because it was designed to further the development of the Community Sustainability Plan that was a part of the FEIS and the package accompanying the Red Alternative, according to TxDOT's Position Statement. According to on-site interviews conducted with TxDOT and Northside residents involved in the public involvement process for the project, while TxDOT did post notice for the Workshop on its website and mailed notice to other key stakeholders, including residents of Washington-Coles, it failed to mail notice to Hillcrest residents.¹⁶⁶ TxDOT's Position Statement acknowledges the error.¹⁶⁷ The day before the Workshop, TxDOT hand-delivered notice door-to-door throughout Hillcrest, and placed a

¹⁶² FEIS 2-18

¹⁶³ *Id.*

¹⁶⁴ FEIS 8-2 to 8-3

¹⁶⁵ TxDOT Position Statement pgs. 8-9

¹⁶⁶ On-site interviews with the members of the Alliance, the individual complainants, and their attorneys at Texas Riogrande Legal Aid, Inc, TxDOT's local engineers in charge of the project, and representatives from TxDOT's Office of General Counsel. The on-site interviews were conducted on May 27, 2015, and July 8-9, 2015.

¹⁶⁷ TxDOT Position Statement pg. 8

flashing roadway sign in a neighborhood park to alert residents. In response to the late notice, TxDOT hosted a second Northside Workshop on February 21, 2015, with appropriate notice.¹⁶⁸

According to Chapter 8 of the FEIS, TxDOT formed the Harbor Bridge Citizens Advisory Committee (CAC) in 2011, with members recruited from neighborhoods adjacent to the proposed project and including residents, business owners, service providers, and advocacy groups.¹⁶⁹ CAC members met regularly from 2012-2014 to, among other goals, “promote public awareness and understanding of the project” and to advise TxDOT “on the community’s preferences regarding the project as well as the best approach for communicating with the public.”¹⁷⁰ Membership in the 29-member CAC included six Hillcrest residents and three from Washington-Coles. Membership included environmental justice activists, representatives from Northside churches, and residents and businesses from downtown Corpus Christi, North Beach, Portland, and other neighborhoods.¹⁷¹ Meetings were held in the evening at the Oveal Williams Senior Center in Washington-Coles to facilitate access for Northside residents. These meetings included presentations by TxDOT, round-table discussions, and comments from the round-tables following discussions of the presentations. Public comments were also permitted and recorded towards the end of the meetings.¹⁷²

TxDOT also hosted dozens of non-CAC public involvement meetings as well, including neighborhood meetings and open houses, formal public meetings and public hearings, and stakeholder meetings.¹⁷³ TxDOT hosted numerous “storefront meetings” at the Oveal Williams Senior Center every Tuesday and Thursday during the public comment period, hosting them in the evenings. The original “storefront meeting” was held on a Wednesday, but when informed that this was a day when many Northside residents attended church, they changed the day of the week to accommodate more participation.¹⁷⁴ Meetings were advertised in English and Spanish, and Spanish interpreters were available and present.¹⁷⁵ Based on input from the public, the Tunnel and West Alternatives were added to the Draft EIS, the West Alternative was considered as a reasonable build alternative under the FEIS,¹⁷⁶ a shuttle service will be provided between Hillcrest and the Oveal Williams Senior Center during the construction of the Red Alternative in order to facilitate continued access,¹⁷⁷ and neighborhood history will become a part of the proposed hike and bike pedestrian trail in the Northside, as well as represented in a small museum in Solomon Coles High School.¹⁷⁸

According to on-site interviews with TxDOT’s Corpus Christi engineers and project staff, while the Red Alternative was known to be the likely choice as the Recommended Alternative since a

¹⁶⁸ *Id.*

¹⁶⁹ FEIS 8-10

¹⁷⁰ *Id.*

¹⁷¹ TxDOT Document Request Exhibit B

¹⁷² *Id.*

¹⁷³ FEIS 8-17 to 8-19

¹⁷⁴ On-site interviews May 27, 2015 and July 8-9, 2015. Northside residents and TxDOT spoke of “storefront

¹⁷⁵ See Chapter 8 of FEIS. See also Exhibit F of TxDOT Document Request, which contains samples of meeting announcements and newspaper advertisements.

¹⁷⁶ FEIS 2-1 and 2-2

¹⁷⁷ TxDOT Position Statement pg. 15

¹⁷⁸ TxDOT Position Statement pg. 17

2003 Feasibility Study was conducted on the project, there was no clear choice, and the public involvement process was utilized to help determine the best alternative.¹⁷⁹

Because there is no evidence of adversity created by the facially neutral specific policy or practice in question, a prima facie case of discrimination has not been alleged.

a. Intentional Discrimination in the Public Involvement Process

Both TxDOT's FEIS and Position Statement discuss the demographic breakdown of each potentially impacted community, using statistics from the 2010 Census to determine the racial makeup of each community and describing them in Chapter 3.5.3 of the FEIS.¹⁸⁰ TxDOT states that the Red Alternative benefits minorities because "not only are the areas immediately surrounding the Project site comprised mostly of minority populations, but the overall population of Corpus Christi is also mostly minority."¹⁸¹

There is no direct evidence that TxDOT operated its public involvement process in the way that it did *because of race*, and there is little circumstantial evidence. TxDOT's Northside Workshop in January of 2015 was a departure from their standard procedures, with Hillcrest residents alone failing to receive notice by mail until the day before the meeting.¹⁸² On-site interviews with the TxDOT staff responsible for the Workshop on July 8, 2015, indicated that this was a mistake that was corrected as well as it could have been at the time, with TxDOT staff going door-to-door and employing a flashing traffic sign in a prominent Northside park in order to alert residents about the meeting. An additional Workshop was then put together and held in February of 2015 in order to facilitate greater access for Hillcrest residents. Within the context of the rest of the public involvement process for the project, there is no evidence of discrimination necessary to prove that TxDOT acted *because of race*.

VI. CONCLUSION

TxDOT's selection of the Red Alternative in its FEIS of November of 2014 violates Title VI, because its location has an adverse and disparate impact on the basis of race, and while a substantial legitimate justification exists for the replacement of the existing Harbor Bridge and US181, less discriminatory alternatives are available. Additionally, the mitigation included as part of the Red Alternative does not sufficiently balance the significant adverse impacts caused by the project's location.

TxDOT's public involvement process, conducted as part of the environmental impact analysis for the project, did not have a disparate impact on the basis of race, color, or national origin.

TxDOT's public involvement process, conducted as part of the environmental impact analysis for the project, did not intentionally discriminate on the basis of race, color, or national origin.

¹⁷⁹ On-site interviews with TxDOT's Rich O'Connell, Chris Amy, and Victor Vourcos were conducted on July 8, 2015, at TxDOT Corpus Christi District headquarters.

¹⁸⁰ FEIS Chapter 3.5.3

¹⁸¹ TxDOT Position Statement pg. 2

¹⁸² TxDOT Position Statement pgs. 8-9

VII. VOLUNTARY RESOLUTION AGREEMENT

In an effort to resolve the issues identified through the investigation of the instant Complaint, FHWA and TxDOT entered into the VRA on December 17, 2015, in which TxDOT agreed to provide additional mitigation to ensure that the affected minority persons in the affected neighborhood do not bear disparate impacts from the project. On January 8, 2016, FHWA issued a Record of Decision for the project, which referenced the VRA and required TxDOT to undertake the obligations set forth in the VRA. The VRA, among other things, called for TxDOT to carry out a Voluntary Acquisition Program for Owners and Businesses in the affected neighborhood, as defined in the VRA, as well as a Relocation Benefits Program for the following persons: (1) Owners (including owner-occupants and landlords) who participate in the Acquisition Program (except for homeowners who elect to retain a life estate and thereby waive their rights to relocation benefits); (2) Tenants of an Owner-Occupied Property or Residential Rental Property in which the Owners participate in the Acquisition Program; and (3) Businesses who participate in the Acquisition Program.

To implement these Title VI mitigation programs (the Acquisition and Relocation Programs), the VRA borrows certain provisions from the Uniform Relocation Assistance and Real Property Acquisition Property Acquisition Policies Act of 1970 (URA). As FHWA has explained many times to TxDOT, the VRA uses the URA to serve as a tool to guide the *manner* in which TxDOT should provide the required Title VI mitigation benefits, but not as the instrument for determining *eligibility* of persons to participate in the programs, which is otherwise set forth in the VRA. In a Title VI matter like this one, Title VI, and not the URA controls the eligibility for relief.

VIII. REMEDIAL ACTIONS

Based upon the facts and conclusions above, TxDOT must take the following action, or another equivalent action approved by FHWA, to address the Title VI disparate impacts on the Hillcrest neighborhood. TxDOT must comply with the provisions of and obligations in the VRA in accordance with the FHWA's explanation of those requirements its October 13, 2016 and December 19, 2016 letters to TxDOT. Specifically, TxDOT must abide by the VRA and establish a Relocation Benefits Program for landlords which provide landlords the same relocation benefits as owner-occupants. As intended by the VRA, this program will incentivize landlords to participate in the voluntary program to maximize relocation benefits available to tenants. Compliance with the VRA's mitigation requirements is required to render the current Red Alternative alignment the least discriminatory of the four alternatives evaluated in the FEIS.

TxDOT shall take appropriate action to address the disproportionate impact, as described above, within 30 days of receipt of this LOF. If TxDOT fails to take appropriate action, FHWA may pursue its available legal remedies to address the disproportionate impact, including actions to withhold funding for the Project.

If you have any questions about this LOF, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,



Irene Rico,
Associate Administrator for Civil Rights

cc: Erin Gaines, Attorney at Law, Texas RioGrande Legal Aid, Inc.
Al Alonzi, Division Administrator, FHWA's Texas Division Office
Nicolle Fleury, Deputy Chief Counsel, FHWA's Office of Chief Counsel
Leslie Proll, Director, Departmental Office of Civil Rights
Yvette Rivera, Associate Director, Equal Employment Opportunity Program Division