

**LEGAL • AID
FOUNDATION**
OF • LONG • BEACH

110 Pine Avenue, Suite 420 • Long Beach, CA 90802-4421 • Tel: (562) 435-3501, Ext 211 • Fax: (562) 435-7118

Dennis L. Rockway
Senior Counsel

June 9, 1998

Ms. Eva Plaza
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Washington, DC 20410

RE: Queensway Bay Project
Project/Grant Number #B-95-MC-06-0522
Long Beach, California

Dear Assistant Secretary Plaza:

Please accept the enclosed Complaints regarding the Queensway Bay Project in Long Beach, California, filed by the Legal Aid Foundation of Long Beach on behalf of the Carmelitos Tenants Association, Joyce Blake, Michelle Davis, Patricia Estrella, Emmett Reed, Ray Fox, Brenda Sanders, Curtis Speck and Patricia Wandick.

Complainants contend that the City of Long Beach and its contractors have failed to comply with Section 3 of the Housing and Urban Development Act of 1968. Complainants base their contentions on the enclosed nine individual Complaint Register forms (HUD-958) and common Attachment.

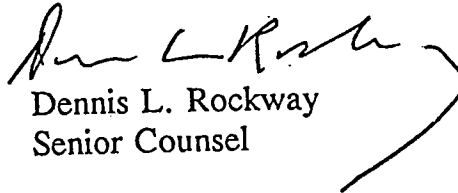
Complainants ask that HUD suspend financial support for commercial development in Long Beach, including the Queensway Bay Project and Orchard's Supply Hardware, both of which are backed by Section 108 loans, pending a showing of genuine compliance with Section 3. Complainants further ask that HUD impose special monitoring and reporting conditions on the City of Long Beach's participation in all other HUD programs.

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Ms. Eva Plaza
Assistant Secretary for Fair Housing and Equal Opportunity
June 9, 1998
Page Two

Please acknowledge and mark receipt of the extra copy of this cover letter enclosed herewith, and return it to our office in the envelope provided. We would be happy to supply any additional information per your request.

Sincerely,


Dennis L. Rockway
Senior Counsel

DLR/bb

enclosures

cc: Tom Honoré, Director, Civil Rights Division, HUD Los Angeles Area Office
Art Agnos, Secretary Representative, HUD
George Williams, Director, Fair Housing HUB Office, HUD
James C. Hankla, City Manager, City of Long Beach
Robert Paternoster, Director, Queensway Bay Project, City of Long Beach
Heather Mahood, Esq., Principal Deputy City Attorney, City of Long Beach

Complaint Register
Under Section 3 of the Housing
and Urban Development Act of 1968

U.S. Department of Housing
 and Urban Development
 Office of Fair Housing
 and Equal Opportunity

OMB Approval No. 2529-0043 (Exp. 04/30/97)

Case type or print.

Public Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies, Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0043), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Instructions: Read this form and the instructions on reverse. Try to answer all questions, but if you don't know the answer or if a question isn't applicable, leave it blank. Fill out as much of the form as you can. Sign and date your complaint. If more than one person or organization is filing the same complaint, and all information is the same, each party must complete a separate form and attach it to the original. Mail the complaint to the address (listed on the reverse) for the state in which the complaint arose, to a HUD Field Office, or to the Office of Fair Housing and Equal Opportunity, HUD, Washington, D.C. 20410. Or present the written complaint in person at any HUD office. Note: HUD furnishes a copy of the complaint to the person or organization named in the complaint.

Name of Complainant (person or organization) Home Phone: () Business Phone: C/O Legal Aid (562) 435-3501 x21

Carmelitos Tenants Association
 Street Address (city, county, State and zip code)
 851 Via Carmelitos, Long Beach CA 90805

Against whom (person or company) is this complaint being filed? (name of person or organization) Phone Number: (562) 570-6711

City of Long Beach
 Street Address (city, county, State and zip code) Also, if you named an individual above who appeared to be acting for a company, write the address here:
 33 West Ocean Boulevard
 Long Beach CA 90802-4664

- | | |
|---|---|
| <p>1. Describe the status of the aggrieved (check one or more boxes)</p> <p><input type="checkbox"/> Low/very low income</p> <p><input type="checkbox"/> Public Housing resident(s)</p> <p><input checked="" type="checkbox"/> Representative of a or b</p> <p><input type="checkbox"/> Section 3 business concern(s)</p> <p><input type="checkbox"/> Representative of d</p> | <p>4. Describe the status of the party about which the complaint is being filed (check one or more boxes)</p> <p>a. <input type="checkbox"/> Applicant</p> <p>b. <input checked="" type="checkbox"/> Recipient</p> <p>c. <input type="checkbox"/> Sub-recipient</p> <p>d. <input type="checkbox"/> Contractor</p> <p>e. <input type="checkbox"/> Subcontractor</p> <p>f. <input type="checkbox"/> Other</p> |
|---|---|

Name and identify others (if any) you believe violated the law in this case

3. Basis for noncompliance under Section 3
- a. Training Opportunities Denied b. Employment Opportunities Denied c. Contracting Opportunities Denied

5. What did the person you are complaining against do? Check all that apply and give the most recent date these act(s) occurred below.
- a. Failed to recruit Section 3 area residents as trainees (continuing) e. Failed to utilize Section 3 area residents as trainees (continuing)
- b. Failed to recruit Section 3 area residents as employees (continuing) f. Failed to utilize Section 3 area residents as employees (continuing)
- c. Failed to solicit bids or proposals from Section 3 business concerns (continuing) g. Failed to incorporate Section 3 contract clause in procurement documents
- d. Failed to award contracts to Section 3 business concerns

7. When did the act(s) checked above occur? (include the most recent date if several dates are involved)
- The above acts continue through the present time.
- | | | |
|---|---|--|
| 8. Identify HUD assistance program(s). (Check all that apply) | | |
| a. <input type="checkbox"/> PIH/DEV | e. <input type="checkbox"/> 202/811 | i. <input type="checkbox"/> Homeless |
| b. <input type="checkbox"/> PIH/MOD | f. <input type="checkbox"/> Other/Housing | j. <input type="checkbox"/> Other/CPD |
| c. <input type="checkbox"/> PIH/OPER | g. <input checked="" type="checkbox"/> CDBG | k. <input type="checkbox"/> Lead-Based Paint |
| d. <input type="checkbox"/> Other/PIH | h. <input type="checkbox"/> HOME | l. <input type="checkbox"/> Other |

9. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Attach additional information if necessary.

The City of Long Beach has obtained financing through the Section 108 Loan Guarantee Program for construction of the Queensway Bay Project. The City and its Contractors have failed to provide notification to and opportunities for Section 3 beneficiaries, have failed to monitor the workforce and have failed to comply with reporting obligations.

See Attachment to form HUD-958, submitted by Legal Aid Foundation of Long Beach on behalf of Carmelitos Tenants Association, Joyce Blake, Michelle Davis, Patricia Estrella, Ray Fox, Emmett R. Brenda Sanders, Curtis Speck, and Patricia Wandick.

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LEGAL AID FOUNDATION OF LONG BEACH
 ATTORNEY FOR COMPLAINANT

10. I declare under penalty of perjury that I have read this complaint (including Signature and Date: *Ann C. R...*)

Complaint Register
Under Section 3 of the Housing
and Urban Development Act of 1968

U.S. Department of Housing
 and Urban Development
 Office of Fair Housing
 and Equal Opportunity

OMB Approval No. 2529-0043 (Exp. 04/30/97)

Print name or print.

Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies, Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0043), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Instructions: Read this form and the instructions on reverse. Try to answer all questions, but if you don't know the answer or if a question isn't applicable, leave it blank, fill out as much of the form as you can. Sign and date your complaint. If more than one person or organization is filing the same complaint, and all information is the same, each party must complete a separate form and attach it to the original. Mail the complaint to the address (listed on the reverse) for the state in which the complaint is filed, to a HUD Field Office, or to the Office of Fair Housing and Equal Opportunity, HUD, Washington, D.C. 20410. Or present the written complaint in person at any HUD office. Note: HUD furnishes a copy of the complaint to the person or organization named in the complaint.

Name of Complainant (person or organization) **Joyce Blake** Home Phone: () Business Phone: C/O Legal Aid (562) 435-3501 x21

Street Address (city, county, State and zip code) **859 Via Wanda #15, Long Beach CA 90805**

Person or company against whom (person or company) is this complaint being filed? (name of person or organization) **City of Long Beach** Phone Number: (562) 570-6711

Street Address (city, county, State and zip code) Also, if you named an individual above who appeared to be acting for a company, write the address here: **3 West Ocean Boulevard Long Beach CA 90802-4664**

- | | |
|---|---|
| <p>Describe the status of the aggrieved (check one or more boxes)</p> <p><input checked="" type="checkbox"/> Low/Very low Income</p> <p><input checked="" type="checkbox"/> Public Housing resident(s)</p> <p><input type="checkbox"/> Representative of a or b</p> <p><input type="checkbox"/> Section 3 business concern(s)</p> <p><input type="checkbox"/> Representative of d</p> | <p>4. Describe the status of the party about which the complaint is being filed (check one or more boxes)</p> <p>a. <input type="checkbox"/> Applicant</p> <p>b. <input checked="" type="checkbox"/> Recipient</p> <p>c. <input type="checkbox"/> Sub-recipient</p> <p>d. <input type="checkbox"/> Contractor</p> <p>e. <input type="checkbox"/> Subcontractor</p> <p>f. <input type="checkbox"/> Other</p> |
|---|---|

Name and identify others (if any) you believe violated the law in this case

- Basis for noncompliance under Section 3
- Training Opportunities Denied b. Employment Opportunities Denied c. Contracting Opportunities Denied

- What did the person you are complaining against do? Check all that apply and give the most recent date these act(s) occurred below.
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- Failed to recruit Section 3 area residents as employees (continuing) f. Failed to utilize Section 3 area residents as employees (continuing)
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- Do any of the above acts continue through the present time.
- | | |
|---|--|
| 8. Identify HUD assistance program(s). (Check all that apply) | |
| a. <input type="checkbox"/> PIH/DEV | e. <input type="checkbox"/> 202/811 |
| b. <input type="checkbox"/> PIH/MOD | f. <input type="checkbox"/> Other/Housing |
| c. <input type="checkbox"/> PIH/OPER | g. <input checked="" type="checkbox"/> CDBG |
| d. <input type="checkbox"/> Other/PIH | h. <input type="checkbox"/> HOME |
| | i. <input type="checkbox"/> Homeless |
| | j. <input type="checkbox"/> Other/CPD |
| | k. <input type="checkbox"/> Lead-Based Paint |
| | l. <input type="checkbox"/> Other |

9. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Attach additional information if necessary.

The City of Long Beach has obtained financing through the Section 108 Loan Guarantee Program for construction of the Queensway Bay Project. The City and its Contractors have failed to provide notification to and opportunities for Section 3 beneficiaries, have failed to monitor the workforce and have failed to comply with reporting obligations.

See Attachment to form HUD-958, submitted by Legal Aid Foundation of Long Beach on behalf of Armelitos Tenants Association, Joyce Blake, Michelle Davis, Patricia Estrella, Ray Fox, Emmett Rendena Sanders, Curtis Speck, and Patricia Wandick.

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LEGAL AID FOUNDATION OF LONG BEACH
 ATTORNEY FOR COMPLAINANT

10. I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct. Signature and Date: *Ann L. Rubin* DATE: 9/9/98

Attachment to form HUD-958, submitted by Legal Aid Foundation of Long Beach on behalf of Carmelitos Tenants Association, Joyce Blake, Michelle Davis, Patricia Estrella, Ray Fox, Emmett Reed, Brenda Sanders, Curtis Speck and Patricia Wandick.

I

Introduction

This is a complaint brought pursuant to 24 C.F.R. §135.76 and Section 3 of the Housing and Urban Development Act of 1968. Complainants are Section 3 residents seeking employment, training and other economic opportunities at the Queensway Bay Project ("Project") and other HUD assisted projects on behalf of themselves and as representatives of persons similarly situated. The complaint addresses acts and omissions of a continuing nature by the City of Long Beach ("City") and C.A. Rasmussen and Valley Crest ("Contractor"(s)). This complaint is an attachment to form HUD-958 filed herewith.

Despite the City's assurance that substantial economic benefits would flow to the low-income community surrounding the Project if financing for construction were made available by the U.S. Department of Housing and Urban Development ("HUD"), the Project nears completion with virtually no participation from low-income residents of Long Beach. Therefore, Complainants ask that HUD suspend financial support for all HUD assisted commercial development in Long Beach pending the City's showing of genuine compliance with the Section 3 program. Complainants further ask that HUD impose special monitoring and reporting conditions on the City's participation in all HUD programs.

II

The City Promised Compliance With Section 3
Objectives In Its Application For Federal Assistance.

On or about August 8, 1995, the City filed an Application for Federal Assistance ("Application") with HUD in connection with the Queensway Bay Project. (See Exhibit A). The Application sought \$40 million under the Section 108 Loan Guarantee Program for "construction of a commercial harbor and public esplanades in support of a high-quality downtown waterfront project involving retail and restaurant development, entertainment facilities, commercial boat tours and charters, and a 150,000 square foot aquarium." (See Exhibit A).

In support of its Application, the City indicated that the activities to be funded by the Section 108 loan would "comply with national objectives as specified in §570.208 (a)(4), job creation and retention activities directly benefiting low-income and moderate income persons." (See Exhibit A).

The Application also indicated that the City would use resources provided under the Jobs Training Partnerships Act (JTPA) "to train unemployed and underemployed Long Beach residents to fill the jobs created by the Queensway Bay Project." (See Exhibit A). In addition, the Application assured that the City would utilize certain state programs "to insure that the City's low-income residents and small entrepreneurs have maximum opportunity to benefit from Queensway Bay development." (See Exhibit A).

Finally, the Application described the extreme poverty surrounding the Project site and how low-income residents in the immediate vicinity of the Queensway Bay Project would

directly benefit from construction jobs created by the Section 108 loan:

The 17 census tracts contiguous to the Queensway Bay Project have poverty rates over 21% and represent the highest concentration of high poverty census tracts with (sic) the South Bay portion of Los Angeles County. (See Attachment C, Specified Low-Income Census Tracts). Fifteen of these tracts have poverty rates over 25%. Nearly 85% of the renter households and 53% of the owner households are paying in excess of 50% of their income for housing. These are the census tracts which would benefit most directly from the service and construction jobs created by the Queensway Bay Project initiated by the Section 108 Loan. (emphasis added) (See Exhibit A).

Based upon the representations made by the City in its Application, HUD approved the City's request for a \$40 million Section 108 loan on August 14, 1995.¹

On July 30, 1996, Complainants contacted Mr. Robert Paternoster, Director of the Queensway Bay Project, to encourage compliance with Section 3 and requested to meet with him regarding Section 3 employment opportunities during the construction phase of the Project. (See Exhibit B). On August 5, 1996, Mr. Paternoster declined the opportunity to conduct such a timely meeting. (See Exhibit C). On October 17, 1996, Complainants sought intervention by HUD to assure the City's participation in the Section 3 Program. (See Exhibit D). On October 31, 1996, Thomas F. Honoré, Director of the Civil Rights Division of the Los Angeles HUD office, advised the City of an urgent need to "begin to understand and implement Section 3 as required." (See Exhibit E). Despite such admonition, the City's understanding and implementation of Section 3 has been less than adequate. Frustrated in their desire to obtain economic opportunities to the greatest extent feasible for their community under the Section 3

¹HUD no doubt also considered the City's Program Year Action Plans, which were submitted to HUD annually in support of its 1995-2000 Consolidated Plan. The Action Plans included Certifications indicating the City's intention to comply with Section 3. (See Exhibit G).

Program, Complainants again seek HUD's assistance with this administrative complaint.

III

The City Has Failed To Implement Procedures To Notify Section 3 Residents about Training and Employment Opportunities On The Project And Has Also Failed To Notify Section 3 Businesses About Contracting Opportunities.

A. Notification Regarding Training And Employment Opportunities Has Been Insufficient:

Title 24 CFR §135.32(a) assigns the City the responsibility of implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance. The City, however, has failed to implement meaningful notification procedures regarding Section 3 opportunities at the Project. Complainants requested information regarding the City's procedures on January 16, 1997. (See Exhibit F). In response, over two months later on March 20, 1997, the City provided Complainants with the "City of Long Beach Section 3 Compliance Strategy" (hereinafter "Compliance Strategy"). (See Exhibit G). Complainants suspect that the Compliance Strategy was not formulated prior to the time of their request, despite the fact that construction on the Project had already begun.

The Compliance Strategy notification procedure was set out as follows:

Based on the labor force needs and apprenticeship opportunities, City staff will development (sic) a community outreach strategy to recruit low-income residents for employment/apprenticeship opportunities.

Outreach will include:

- Federally designated low-income and moderate-income neighborhoods
- Tenant organizations in the two HUD support (sic) housing projects: The Carmelitos Tenants Association and the Southern California Resident and Management Initiative Corporation.

The City has failed entirely to develop and implement an effective Compliance Strategy.

The City has failed even to implement the Compliance Strategy's targeted outreach through the Carmelitos Tenants Association and the Southern California Resident and Management Initiative Corporation. A sincere effort to work with those tenant groups would have been consistent with one of the purposes of Section 3, as it would have ensured that opportunities were particularly directed to recipients of government assistance for housing. See §135.1(a). Despite the City's promise to utilize the Private Industry Council (PIC) to notify Section 3 residents about "opportunities generated by the Queensway Bay Project," the City has taken no such steps to notify Section 3 residents via the PIC. (See Exhibit H). Such omissions have continued through the present time.

B. Notification Regarding Contracting Opportunities Has Been Insufficient.

Title 24 C.F.R. §135.32(a) assigns the City the responsibility of implementing procedures designed to notify Section 3 businesses about contracting opportunities generated by Section 3 covered assistance. The City, however, has failed to provide any notification to Section 3 business concerns about contracting opportunities generated by the Project. The Compliance Strategy contains no provision for such responsibility. (See Exhibit G). Instead, the City limited "potential Queensway Bay Contractors" to those attending pre-bid and pre-construction conferences and, apparently, abdicated all responsibility to notify Section 3 business concerns pursuant to 24 C.F.R. §135.32(a) & (c) and §135.36. (See Exhibit H). Such omissions have continued through the present time.

IV

The City Has Failed To Assist And Actively Cooperate
With The Assistant Secretary To Obtain Compliance
Of Contractors And Subcontractors.

Although §135.32(d) requires the City to assist and actively cooperate with the Assistant Secretary to obtain the compliance of contractors and subcontractors with Section 3 regulations, the City has failed to do so. Indeed, when questioned as to the Compliance Strategy's lack of procedures to "assist and actively cooperate" with the Assistant Secretary, the City responded that its procedure was limited to declining to make awards to contractors debarred or suspended by HUD. (See Exhibits H and I).

The City is in a position to enforce Section 3 compliance by its Contractors by exercising its prerogative to withhold progress payments. The Compliance Strategy, however, includes no such provision. (See Exhibit G). The City declined to respond to Complainants' inquiry as to whether the Contractors' compliance with Section 3 would be a condition of progress payments for work performed. (See Exhibits R, S and U). By continuing to fund construction despite the Contractors' failure to honor their Section 3 contract commitments, the City has frustrated HUD's efforts to obtain compliance.

In a letter dated November 21, 1996, to Thomas Honoré, Director of the Civil Rights Division of the Los Angeles Area office of HUD, City Manager James Hankla advised HUD that the City intended to "assist the contractor in outreach to our unemployed, low-income residents and to offer customized construction training services funded by the Job Training Partnership Act (JTPA)." (See Exhibit J). In fact, the City provided no such assistance to any Queensway Bay Project Contractor, nor did it offer customized construction training services

to Section 3 residents for employment opportunities on the Project. Such a failure by the City to comply with its representations to HUD is indicative of a failure to assist and actively cooperate with HUD.

On November 12 and 13, 1996, HUD conducted an on-site Fair Housing and Equal Opportunity monitoring review in Long Beach in which it assessed implementation of the Section 3 Program. The HUD review indicated that the City had no mechanism in place to collect data pertinent to Section 3 compliance. (See Exhibit K). At a meeting with Complainants' counsel on January 10, 1997, Long Beach Neighborhood Services Bureau Manager Dennis Thys acknowledged that the City still had no data on the Queensway Bay Project workforce. The Compliance Strategy indicated the City's commitment at some unspecified future time to "[d]evelop a system to monitor labor force information and jobs created." (See Exhibit G). Apparently, the City has yet to develop such a system. In sum, the City does not collect sufficient and timely data to provide for any meaningful monitoring of Section 3 compliance.

The HUD review further indicated that the City had not submitted a Section 3 Report for fiscal year 1995-1996 and recommended that the report be sent as soon as possible. (See Exhibit K). To this date, the City has failed to submit such a report. Indeed, the City has acknowledged that the only report it ever filed with HUD regarding the Queensway Bay Project was submitted on February 18, 1998. (See Exhibit L). This submission, however, covered the period from July 1, 1996 to January 31, 1998 and was not filed until some four weeks after complainants' counsel requested copies of all relevant annual reports and the dates of their filings. (See Exhibits V and M). Title 24 C.F.R. §135.90 requires submission of an annual report. The City's submission was clearly not timely. Its aggregate figures spread over three

calendar years, thus precluding any assessment of annual performance. By failing to comply with mandatory reporting procedures, the City violated 24 C.F.R. §135.90 and, therefore, failed to assist and actively cooperate with the Assistant Secretary as required by §135.32(d).

The City in its Compliance Strategy, moreover, indicated its commitment to "[c]ollect Section 3 data, as required by HUD, and prepare and submit quarterly reports to HUD." (See Exhibit G). The City has neither prepared nor submitted such quarterly reports. Its failure to comply with its own Compliance Strategy for providing information to HUD further establishes the City's failure to assist and actively cooperate with the Assistant Secretary per §135.32(d). Such omissions have continued through the present time.

V

The City Has Failed To Undertake Activities To Facilitate The Training And Employment Of Section 3 Residents And The Award Of Contracts To Section 3 Business Concerns.

Title 24 C.F.R. §135.32(c) obligates the City to undertake activities to facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as those set forth in the Appendix to 24 C.F.R. §135. The City, however, has failed to seriously engage in any activities to promote the achievement of Section 3 goals. For example, the City has failed to undertake virtually all of the 20 strategies set forth in the Appendix as "Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents," nor has the City undertaken any other similar activities.

Complainants have tried to assist the City by making recommendations regarding activities that would facilitate training and employment. Complainants suggested, for example, that the

City utilize those strategies enumerated in the Appendix, distribute them to contractors and unions and incorporate them into its Compliance Strategy. (See Exhibit I). In addition, Complainants provided materials to the City regarding efforts made in other jurisdictions. Complainants suggested that meetings be conducted with contractors and union representatives to address enforcement mechanisms for Section 3 compliance, including monitoring procedures, preferences on future bids per §135.9(c) and penalties on future bids per §135.72(b). (See Exhibit I). Complainants suggested that monitoring be undertaken regarding such factors as how long Section 3 beneficiaries remain on jobs and the reasons cited for any terminations (See Exhibit I). Complainants' suggestions have been in vain.

The City could have promoted participation of Section 3 residents by facilitating outreach and referrals through appropriate community organizations. Unfortunately, however, resources such as Women In Non-Traditional Employment Roles ("WINTER"), which is based in Long Beach, were not offered opportunities to assist in recruiting Section 3 beneficiaries for the Project. (See Exhibit N). Indeed, such failure to work with community based organizations to encourage participation by Section 3 residents indicates efforts substantially less than the greatest extent feasible, even if the 30% goal per §135.30(b)(3) had been achieved.

The City has declined to implement any of the above strategies. It has declined to conduct meaningful community outreach. Such omissions have continued through the present time.

The City Has Failed To Document Any Actions Taken To Comply With Section 3 Requirements, The Results Of Such Actions Taken And Impediments Encountered, If Any.

Title 24 C.F.R. §135.32(e) requires the City to document actions taken to comply with Section 3 requirements, the results of such actions taken and impediments encountered, if any. The City, however, has apparently either declined to monitor workforce data pertinent to Section 3 compliance, or has inexplicably refused to release such data. Meanwhile, the number of construction jobs on the site has remained a mystery. The City's Application for Federal Assistance projected 2,291 construction jobs for an unspecified "fully developed project". (See Exhibit A).

In a letter dated March 20, 1997, addressed to counsel for Complainants, the City indicated a total Queensway Bay Project workforce of 109 for the second phase, with a 20% increase in the third phase. (See Exhibit G). On May 16, 1997, in a subsequent letter to counsel for Complainants, the City adjusted its numbers to indicate a total Queensway Bay workforce of 31 for the first phase, with an estimated 58 for the second phase.² (See Exhibit H). The number of new hires for Phase 1 was presented as 6, with the estimated number of new hires for Phase 2 of 14. (See Exhibit H). The combined 30% Section 3 goal for the Project was presented as 6.2 new hires. (See Exhibit H). This figure suggests an urgent need for

²In the midst of the Project, the City renumbered the Project's phases. The Project was reduced from 3 phases to 2 phases. Exhibit H references this reduction in the number of Project phases. Accordingly, the workforce for the initial phase was reduced from 109 to 31. The renumbering of the Project's phases has rendered monitoring the City's compliance with Section 3 very difficult.

monitoring. The number of Section 3 workers benefitted appears to be much too low for a Project funded by a \$40 million federal loan.³

On May 30, 1997, in an effort to determine Section 3 compliance on the Project, Complainants requested information as to the residence and income of each individual employed on the Project. Complainants additionally requested that the City designate those employees considered new hires and those considered Section 3 beneficiaries. (See Exhibit O). The City provided certain information purporting to be based on on-site interviews conducted on April 28, 1997. (See Exhibit P). Such information indicated a total on-site workforce of 20, including nine new hires, with only one new hire residing in Long Beach. That Long Beach resident, however, was not a low or very low-income individual. (Exhibit R).

On June 6, 1997, Complainants asked the City to indicate those employees it considered Section 3 beneficiaries. (See Exhibit Q). The City declined to respond. Complainants have also made a continuing request for subsequent monitoring reports addressing Section 3 compliance on the Project site. (See Exhibit Q). The City has either failed to prepare such reports, or has declined to release them to Complainants.

On October 31, 1997, in yet another effort to monitor the City's compliance with Section 3 on the subject Project, Complainants submitted a number of informational requests to the City.

³Lessons From the Field on the Implementation of Section 3, prepared November 1996 for the U.S. Department of Housing and Urban Development Office of Policy Development and Research by Manpower Demonstration Research Corporation, concluded that vigorous enforcement of Section 3 would yield a range between 1.9 and 3.1 Section 3 jobs per \$1 million spent on construction and rehabilitation projects. The conclusion was based upon experiences of seven Public Housing Authorities, including Los Angeles. As applied to the Queensway Bay Project, it would be expected that the \$40 million spent in federal funds would have yielded between 76 and 124 Section 3 jobs.

Complainants requested information regarding the following: 1) workforce data; 2) whether Section 3 compliance was a precondition of progress payments to the Contractors; 3) the frequency with which work force evaluations were conducted; 4) the extent of the City's correspondence with Contractors regarding Section 3 compliance; and 5) the existence of the City's "community outreach strategy" that was described in its Compliance Strategy. (See Exhibit R). Unfortunately, the City failed to provide Complainants with information regarding any of the above topics. Complainants made further requests for such information on December 19, 1997, and again on January 23, 1998. (See Exhibits S & M). The City has refused to provide Complainants with the information requested.

On January 12, 1998, the City indicated to Complainants that it would verify an assertion by the Contractor that it had only one new hire on site who was a Section 3 beneficiary. (See Exhibit T). The City has failed to verify such information.

As of January 12, 1998, the City was improperly identifying eligible Section 3 beneficiaries as low-income residents residing anywhere in Los Angeles or Orange Counties. (See Exhibit T). Complainants, citing §135.34(2)(i), advised the City on January 23, 1998, of the Section 3 mandatory training and employment preference for service area or neighborhood residents. (See Exhibit U). It is unclear whether the City has adopted the appropriate definition to date. Any assessment of Section 3 compliance must rest upon a valid definition of legally designated beneficiaries.

The only report filed by the City with HUD indicates a total of eleven Section 3 employees and trainees during the period of July 1, 1996 through January 31, 1998. (See Exhibit V). This information, however, is not helpful in assessing the City's compliance with

Section 3 for a number of reasons. First, the numerical goals set forth in §135.30(b)(3) are based upon a "one year period." The City's sole report, unfortunately, is based upon a 3 year period of time. Second, as of at least January 12, 1998, the City was improperly counting residents from the entirety of Los Angeles and Orange Counties as Section 3 beneficiaries, without regards to the preferences set out in §135.34(a)(2)(i). (See Exhibit T). Thus, it remains unclear whether eligibility standards were properly applied, who the alleged Section 3 beneficiaries were, whether they were hired over those with legitimate preferences based on residency and for what period of time they actually worked.

Title 24 C.F.R. §135.32(e) requires the City to document actions taken to comply with Section 3 requirements, the results of such actions taken and impediments encountered, if any. The City's Compliance Strategy sets forth no such responsibilities. (See Exhibit G). The City's commitment to documentation has been limited to noting the placement of a contractor on the HUD debarred/suspended list. (See Exhibits I and H). The City's failure to produce basic workforce information after several written requests from Complainants has made meaningful monitoring and enforcement of the applicable Section 3 regulations impossible and indicates the City's failure to comply with §135.32(e). Such omissions have continued through the present time.

VII

Conclusion

The HUD regulations issued to effectuate the Section 3 program explicitly enumerate the responsibilities of any entity receiving Section 3 covered assistance. The City of Long Beach has not complied with such responsibilities on the Queensway Bay Project. The City has fallen

far short of directing economic opportunities to the greatest extent feasible to low-income and very low-income people in the service area and neighborhood in which the Project is located. Indeed, it is not apparent how the applicability of Section 3 to the Queensway Bay Project has provided any particular benefit to the surrounding low-income community.

In summary, the City failed to notify the low-income community of economic opportunities on the Project and failed to provide basic information to the community regarding who was working on the Project and what was being done to promote Section 3 compliance. In addition, the City failed to comply with its legal obligation to provide HUD with annual reports and its own explicit written commitment to supply HUD with quarterly reports. The only report provided by the City of Long Beach to HUD is highly suspect in that it appears to disregard legally defined geographic preferences for hiring Section 3 beneficiaries and, further, it does not indicate compliance with goals on an annual basis as provided by law. The City has been unable to show that even a single low-income Long Beach resident was employed at the construction site. Finally, even if the City's very limited hiring of Section 3 beneficiaries had satisfied the required percentage goal for each fiscal year, the City's failure to conduct adequate outreach, communication with community groups and notification to Section 3 businesses indicates efforts far less than the greatest extent feasible.

In inducing HUD to provide \$40 million to finance the Queensway Bay Project, the City promised to provide construction jobs to residents of the surrounding poverty-stricken neighborhoods. The City failed to keep that promise.

VIII

Relief Requested

HUD should suspend financial support for the Queensway Bay Project, Orchard's Supply Hardware and any and all other HUD assisted commercial development in Long Beach pending the City's sufficient submission to Complainants and HUD of the following:

1. A comprehensive analysis of the Project workforce to date, including all information previously requested by Complainants in Exhibit R attached hereto;
2. The addresses and incomes of all individuals claimed by the City to be Section 3 beneficiaries who have worked on the Project to date;
3. Documentation of total Project workforce data on an annual basis beginning in Fiscal Year 1996 and addressing factors such as Section 3 eligibility and preferences, with such data presented quarterly for the current fiscal year;
4. Annual reports pursuant to 24 C.F.R. §135.90, commencing in 1996 (i.e. form HUD-60002, "Economic Opportunities for Low-income and Very Low-Income Persons in Connection with Assisted Projects");
5. Documentation of adequate notice procedures, if any, to potential Section 3 residents and businesses regarding employment opportunities at the Project;
6. Documentation of actual assistance and active cooperation, if any, by the City with the Assistant Secretary with regards to Section 3 implementation at the Project;
7. Documentation of the undertaking of appropriate activities, if any, to facilitate economic opportunities for Section 3 residents and businesses at the Project;
8. Documentation indicating the hiring of Section 3 beneficiaries at the Project

to the greatest extent feasible, on an annual basis beginning Fiscal Year 1996 and continuing thereafter, with such data presented quarterly for the current fiscal year;

9. Any other documentation or information HUD deems appropriate.

Complainants additionally request that HUD enforce the following prospective, preventative measures upon the City as a precondition to the City's receipt of future HUD grants or assistance, including, but not limited to, future projects funded by Section 108 Loans and the City's potential designation as an Empowerment Zone:

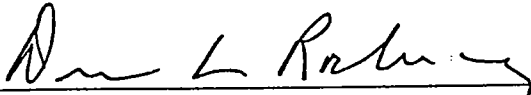
1. The City must agree to stringent monitoring and reporting requirements to ensure its compliance with Section 3 and all other HUD mandates. Failure to comply with Section 3 and all other HUD mandates should result in immediate and severe sanctions against the City. This requirement should apply to all current and future HUD assisted projects.
2. The City must immediately draft an Amended Section 3 Compliance Strategy that sets forth an effective plan to promote economic benefits to Section 3 residents and businesses to the greatest extent feasible. The Amended Section 3 Compliance Strategy must address issues such as: (a) effective notification procedures for training, employment and contracting opportunities created by the project; (b) effective measures to ensure compliance by contractors and subcontractors with Section 3 (e.g., suspension of progress payments for failure to comply); (c) effective measures to facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 businesses; (d) effective means of documenting all actions taken to comply with Section 3, the results of such actions

and impediments encountered, if any; (e) a commitment by the City to cooperate with individuals or groups who would like to monitor the City's compliance with Section 3 and/or who would like to work with the City to assure creation of the maximum number of Section 3 opportunities.

3. The City must produce regular and periodic documents illustrating its compliance with the Amended Section 3 Compliance Strategy. These documents must provide detailed workforce data regarding factors such as Section 3 eligibility criteria, Section 3 preferences and the identities of Section 3 individuals employed by the project. Such documents must be readily available to the public upon request.
4. The City must set-aside funds for the training and employment of low-income individuals residing in the impacted neighborhoods that should have benefitted from the Queensway Bay Project over the last three years.
5. The City must commit to a minimum annual employment goal of 30% for each Section 3 covered occupational classification, with exemptions for management positions.
6. The City must set-aside funds for an independent monitoring and compliance entity to provide local monitoring and enforcement for future HUD assisted or funded projects.
7. The City must establish a local oversight committee to review the documentation requested herein. The oversight committee should be comprised of representatives from: the City, the community, Legal Aid Foundation of Long Beach, HUD, congressional and/or state representatives and labor.

8. The City must set-aside funds for technical assistance to assure opportunities are created for local Section 3 businesses on future HUD assisted projects.
9. Future City projects receiving HUD assistance should be divided into smaller projects where feasible, to provide maximum participation by small local businesses.
10. The City must set-aside bonding and loan guarantee funds to assist small local business participation.
11. Future project construction contracts must include language providing for penalties against contractors for failing to fulfill their employment obligations, including reporting responsibilities.
12. Any other remedy HUD deems appropriate.

DATED: JUNE 9, 1998



Dennis L. Rockway, Senior Counsel
Susanne Browne, Staff Attorney
LEGAL AID FOUNDATION OF LONG BEACH

DLR/bb

attachment(s)

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