U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

April 26, 2004

CERTIFIED, RETURN RECEIPT REQUESTED

Ms. Heather A. Mahood
Deputy City Attorney
City Hall
333 West Ocean Boulevard, Eleventh Floor
Long Beach, CA 90802-4664

Dear Ms. Mahood:

SUBJECT: Section 3 Complaint; Determination of Non-Compliance
Carmelitos Tenants Association, et al. v. City of Long Beach, et al.
Case #09-98-07-002-720

The U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (FHEO) has completed the review of the Carmelitos Tenant Association vs. City of Long Beach Section 3 complaint. The review of the complaint was conducted under the authority of Section 3 of the HUD Housing Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of the review was to determine whether the Section 3 program administered by the City of Long Beach was in compliance with the requirements of 24 CFR Part 135.

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

I. BACKGROUND:

On August 8, 1995, the City of Long Beach (hereinafter, the City and/or Recipient), California applied to HUD for a Section 108 loan guarantee in an amount of $40,000,000 dollars. The City requested said federal funding support in order to facilitate the development of the "Queensway Bay Project." It is described in the application as the "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."

The funds were specifically earmarked to construct the public infrastructure, including, but not limited to, the dredging of the downtown harbor, the construction of piers, docks, and landscaping, for the proposed "Rainbow Harbor." On August 14, 1995, HUD notified the City that

its request for $40,000,000 of assistance under Section 108 had been approved. On September 19, 1995, the City of Long Beach executed the "Funding Approval/Agreement," for the Section 108 Loan with HUD. In addition to Title 24 of the Code of Federal Regulations (CFR), Part 135.3 requiring compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended in the Housing and Community Development Act of 1992, the terms of the "Funding Approval Agreement" also required compliance with Section 3.

On July 10, 1998, HUD received several signed complaint forms and an 18-page narrative complaint letter from Dennis L. Rockway, Senior Counsel at the Legal Aid Foundation of Long Beach. The complaint forms and the complaint letter are signed and dated June 9, 1998. Mr. Rockway filed the Section 3 complaint against the City of Long Beach on behalf of Complainants, the Carmelitos Tenants Association, [redacted] who are Section 3 residents of the City of Long Beach that allegedly were deprived by Recipient and its Contractors of Section 3 jobs and business opportunities through the subject project. If proven, then the allegations would constitute non-compliance with Section 3 requirements of the Housing and Urban Development Act of 1968, as amended in the Housing and Community Development Act of 1992, and with Section 3's governing regulations at 24 CFR Part 135.

II. COMPLAINANTS' ALLEGATIONS:

The Complainants contend that they are qualified Section 3 residents of the City of Long Beach, who seek employment, training and other economic opportunities at the Queensway Bay Project ("Project") on behalf of themselves and as representatives of persons similarly situated. The Complainants further allege that the Recipient assured them that substantial economic benefits would flow to the low-income community surrounding the Project, if HUD financing for construction was made available. When the Project was close to completion and through June 9, 1998, they allege there had been virtually no participation by low-income Section 3 qualified residents from the City of Long Beach, nor by Section 3 qualified businesses.

The Complainants specifically allege that Recipient is in noncompliance with the requirements of Section 3, for the following reasons:

a) The City failed to undertake activities to facilitate the training and employment of Section 3 residents from the City of Long Beach and to award contracts to Section 3 business concerns in the City of Long Beach per 24 CFR 135.32(c);

b) The City's notification efforts regarding training, employment and contracting opportunities, for Section 3 residents was insufficient to meet the requirements of 24 CFR 135.32(a) and (c);

c) The City failed to assist and actively cooperate with HUD's FHEO Assistant Secretary to obtain the Section 3 compliance of its contractors and subcontractors as required by 24 CFR 135.32(d); and

d) The City failed to document any actions taken to comply with Section 3 requirements, the results of such actions taken, and impediments encountered, if any, as required by 24 CFR 135.32(e).

III. RECIPIENTS' DEFENSES:

The Recipient, City of Long Beach, contends that it is in compliance with the requirements of Section 3. The City listed numerous specific measures that it took from the start of the subject project to the date that the complaint was filed, as well as measures taken after the filing date to comply with Section 3. Recipient denies that it is in noncompliance with Section 3 requirements.

IV. SUMMARY OF FINDINGS:

The Queensway Bay Project initially consisted of three phases. Recipient, however, later combined Phase I and II to create a new "Phase I." The new Phase I consisted generally of the dredging and other activities associated with the creation of a circular harbor located adjacent to downtown Long Beach. Phase I commenced on November 25, 1996, which is in federal fiscal year 1997 (October 1, 1996 to September 30, 1997), and was completed in about 15 months on February 20, 1998, which was in federal fiscal year 1998. The new Phase II of the project consisted generally of the construction of piers, docks, an esplanade and other improvements associated with the harbor, including an anglers building, a fountain, a boardwalk and a lighthouse. Phase II commenced on September 8, 1997, which is about 3 weeks prior to the start of federal fiscal year 1998.

It was found that on October 29, 1996, the Recipient entered into a construction agreement with C.A. Rasmussen, Inc. ("Rasmussen") in order to construct Phase I of the Queensway Bay Project. Initially, the Phase I construction agreement lacked Section 3 requirements. The Recipient, however, amended this construction contract on November 8, 1996, to specifically include the Section 3 requirements per loan terms and 24 CFR 135.

On November 12 and 13, 1996, HUD, Fair Housing and Equal Opportunity conducted an on-site Section 3 monitoring review. It was found that the City had no mechanism in place to collect data pertinent to Section 3 compliance. The City "Compliance Strategy," described its community outreach strategy, as something City staff would develop at some future time.

It was found that the Recipient documented their actions with regard to their Section 3 compliance efforts and had documentation reflecting the problems they encountered in that

regard. At the first pre-construction agreement meeting of December 24, 1996, the City gave Valley Crest a form to be filled out by all new hires. This is a form which was created by the City and which contains the information necessary to determine whether a newly hired employee qualifies as a Section 3 resident. Copies of these completed forms were obtained. These forms, entitled "Employee Information," are signed and dated by new hires of Rasmussen, Valley Crest, and their jurisdictional subcontractors of $100,000 or more, who must also comply with Section 3.

On August 12, 1997, the Recipient entered into a second major project contract with Valley Crest (formerly named "Valley Crest Landscape, Inc.") for the construction of Phase II of the Queensway Bay Project. It was found that the Phase II construction Agreement contains specific Section 3 reporting requirements from its inception. According to a representative from Valley Crest, the company started charging employee time to the Phase II construction contract on or about August 11, 1997, and the last time they charged time to the subject Project was on May 30, 2000.

It was found that the City of Long Beach maintains a training and employment development program. The City chose to coordinate its outreach and training efforts through the existing local Private Industry Council and the City's own Training and Employment Development Division. Lynn Shaw, the City's Union/Contractor Liaison of the Training and Employment Development Division, notified the City's Jobs Training Partnership Act (JTPA) program[1] of employment opportunities within the Queensway Bay Project, with an emphasis on a JTPA program that trains women for non-traditional employment. There was evidence indicating that Ms. Shaw also notified an organization named "WINTER" ("Women in Non-Traditional Employment Roles") about employment opportunities with the Queensway Bay Project.

Verification forms signed by persons hired by the Recipient were obtained which show that the City itself hired 15 Section 3 residents[2] to work on the Queensway Bay Project. These individuals were members of the Conservation Corps of Long Beach[3], and they were hired to perform construction and landscape maintenance on the job site.

Signed "Memorandums of Understanding" were obtained which show that on October 10, 1997, the City obtained agreements with the Southern California Conference of Carpenters and Laborers Local 507, wherein these unions agreed to cooperate with the city's efforts to meet its

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[1] According to Deputy City Attorney, Heather A. Mahood, there are 4,000 to 5,000 participants in this program.

[2] These signed forms show that all 15 of these individuals lived in Long Beach and had a very low income.

[3] The City describes the Conversation Corps of Long Beach as a job training organization for Long Beach low-income youths at risk.

Section 3 requirements and to place its JTPA low income City residents in employment positions in the Queensway Bay Project.

Additionally, a flyer was obtained that is addressed to "Carmelitos Residents," which informs the residents that jobs are available at the Queensway Bay Project to "all tenants interested in signing up." A phone number and address was disclosed for persons seeking employment. Deputy City Attorney Heather A. Mahood states that this flyer was developed as a result of a meeting that Ms. Shaw had with Ray Fox and another official of the Carmelitos Tenants Association in April 1997. According to Ms. Mahood, the purpose of the meeting was to inform the Carmelitos public housing community of employment opportunities at the Queensway Bay Project. As such, the April 1997 subject flyer precedes the August 12, 1997 Phase II Agreement and its jobs.

From the spring of 1997 through August 1998, it was determined that Ms. Shaw spoke to eleven different organizations about job opportunities at the Queensway Bay Project, including the following: Long Beach Adult School, The United States Job Corps, Carpenters Educational Training Institute, Greater Avenues for Independence Now (GAIN), Long Beach City College, and Harbor Interface (a homeless services group). Ms. Shaw also participated in several radio interviews, discussing job opportunities at the Queensway Bay Project.

It was found that the City advertised contracting opportunities for Phase I and Phase II of the Queensway Bay Project in 18 different publications, including MBE/WBE Advisory Services, the National Center for American Indian Enterprise Development, the Long Beach Business Journal, the National Association of Women Business Owners, the Los Angeles Urban League, the Daily Construction Reporter, and the Alliance for Small, Minority and Women Business Owners.

A written agenda used by the City was obtained by HUD Investigators, which shows that on July 7, 1997, the City had a pre-bid meeting for all parties wishing to bid on the Queensway Bay Project. The agenda states that one of the construction conditions is "Federal funding, including HUD requirements for Section 3 compliance."

Deputy City Attorney Heather Mahood states that on September 3, 1997, the City conducted a pre-construction conference with Valley Crest, at which meeting Section 3 requirements were outlined. A copy of the agenda pertaining to this meeting shows that "HUD, Section 3 requirements" were listed therein. The agenda outline states ". . . a minimum of one of three [of] all new hires must qualify. . . ." Also, copies of Section-3 checklists that were distributed by Ms. Shaw at that meeting were obtained. The checklists relate to Section 3 recruitment requirements and information pertaining to new hires of the contractor and subcontractors.

A copy of the minutes of three different construction meetings, which included staff members from Rasmussen, Valley Crest and several subcontractors, were obtained. These meetings occurred on September 8, 15, 22, and 29, 1997. The minutes show that Ms. Shaw, in these instances, met with the contractors and subcontractors to discuss Section 3 requirements. A copy of a memo dated September 15, 1997, was obtained. The memo is from Ms. Shaw to J. Wickman Zimmerman, project manager for Valley Crest, and it is a follow up to a meeting that occurred earlier in the day between them wherein the Section 3 requirements were discussed. The memo refers to a chart containing income limits for Section 3 residents. Additionally, the minutes from the September 22 meeting states the following: ". . . Lynn Shaw's points of contact at Valley Crest will be Mike Hardin and Barbara Jimenez. Mike will provide Lynn with their resource allocation report by next week. Employment walk-ins shall be directed to Valley Crest who will take all applications . . . ."

On October 24, 1997, City Attorney John R. Calhoun and Deputy City Attorney Heather Mahood sent a letter to Mr. Zimmerman reminding him of the Section 3 requirements. In their letter, they inform Mr. Zimmerman that ". . . Valley Crest Landscape is required to comply with the regulations contained in Section 3 . . . ." The letter continues with the City asking Valley Crest to submit specific information pertaining to workforce projections for the Project, new hire projections for the Project, and employee information forms for each new hire. The City informs Valley Crest that "it is critical that this information be submitted to this office, as soon as possible. Failure to do so would constitute a default under our contract and could jeopardize the City's ability to continue to utilize your services . . . ." On November 14, 1997, Ms. Mahood met with Valley Crest officials at the job site and, again, outlined the Section 3 requirements.

During December 1997 and January 1998, Ms. Shaw went to the Project job site and interviewed workers who were present. On January 20, 1998, the City Attorney's Office conducted a meeting with the contractor and representatives from all of the subcontractors in which the Section 3 requirements were discussed. As a result of the City's efforts to obtain Section 3 compliance, on November 14, 1997 and January 8, 1998, Valley Crest also sent letters to its subcontractors informing them of the Section 3 requirements. Copies of these letters were obtained. The letter, dated January 8, 1998, states the following: ". . . at 10:30 am we will depart for a meeting with the City Attorney to discuss HUD 3 compliance. The City Attorney has called this meeting and she has required the attendance of one representative from each subcontractor. There are serious consequences for failure to comply with the HUD 3 (sic) requirements, so do not be late . . . ."

Documents corroborate that Recipient did not advise the Phase II principal contractor, Valley Crest, of the legal preference for Section 3 residents "from Long Beach," until February 5, 1998. It was found that until that date, all efforts at monitoring, recording, outreach, and communication with contractors and unions, including all work performed by Phase I prime

contractor Rasmussen, did not target the appropriate beneficiaries of Section 3 from the City of Long Beach. In fact, documentation indicates that Valley Crest felt a burden and hardship because the City kept "changing the rules" and if it had been told of the need to hire local Long Beach qualified Section 3 residents at the commencement of construction, instead of so "late in the game," then they would have done so.

Moreover, 24 CFR Part 135.30 provides that recipients and covered contractors may demonstrate compliance with the hiring and training requirements of Section 3 by hiring Section 3 residents at the rate of 30% of all new aggregate hires[4] for the one year period beginning in Federal fiscal year (FFY) 1997. Thus, HUD reviewed payroll records. An analysis of available documentation pertaining to all the project's new hires was done in order to determine the actual percentage of Section 3 new hires in relation to the "safe harbor" percentage.

Phase-I payroll "new hire" records indicate that a total of 443 employees worked, of which 23 were Long Beach Section 3 qualified employees, or 5.19% Section 3 new hires. Records for Phase-I also reveal that the all "new hires" worked a combined total of 65,797 hours, of which Long Beach "Section 3 new hires" worked 3,496 hours, or 5.31% of the total hours worked. Furthermore, "Valley Crest Landscape," who later became the principal contractor for Phase II, was listed as a subcontractor within the Phase I records. Phase-I records reflect that Valley Crest Landscape had 50 new hires as a subcontractor under Phase I, of which one was a Long Beach Section 3 employee, or 2% Section-3 new hires. In terms of hours worked by Valley Crest's 50 new hires in Phase I, they worked a combined total of 3,749 hours, of which the Long Beach Section 3 employee worked 20 hours, or 0.53% of the total hours worked by this subcontractor. Later, Valley Crest was selected by Recipient to become the principal contractor for Phase II.

The following Table shows the new hires from "project-start" to June 9, 1998:

Section 3 Long Beach (LB) New Hires /(over) **Total number of new hires = % of Sec. 3 Hires**
Contractor/Sub Project start thru 6/9/98, **Date Complaint Signed**.

Rasmussen	$\frac{1}{5} = 20\%$
Valley Crest	$\frac{3}{40} = 7.5\%$
Bayshore Dock	$\frac{3}{9} = 33\%$

[4] The regulations identify a ratio of 30% as a "safe harbor" of compliance.

Shaw & Sons	1/2 = 50%
Electro Construction	1/5 = 20%
Local Neon	1/6 = 17%
Construct One	0/0 = 0%
Systems Paving	4/21 = 19%
Total LB Section 3 Hires thru 6/9/98: (When the Complaint was signed)	14/88 = 16%

It was found that the payroll data corresponding to the period up to when the Section 3 Complaint was signed, on June 9, 1998, indicates that Section 3 Long Beach new hires from the start of the Project to said date equals 16 % overall, and 7.5% for the principal contractor of Phase II, Valley Crest. As result, Recipient did not reach the "safe harbor of 30%" as of June 9, 1998. After notice of the complaint, however, evidence shows that Valley Crest hired 18 Long Beach Section 3 new hires from June 10, 1998, to June 30, 1998. Also, from July 1, 1998 to the end of the Project, Valley Crest and its subcontractors hired most of their Long Beach Section 3 new hires.

Recipient advanced two novel Section 3 regulatory arguments during HUD's investigation, which HUD felt compelled to review more carefully because they might impact whether or not Recipient complied with Section 3 requirements. The first contention is that HUD's regulations do not preclude or prohibit any given recipient from doing all of its Section 3 resident hiring up to and including the last day of the project. Thus, a recipient, like the City of Long Beach, could technically reach a "safe harbor" percentage of 30% on the last day of the project with a rash of new hires that are Section 3 qualified residents. As a result of Recipient's argument, HUD's investigation was delayed and expanded in an effort to thoroughly review and address Recipient's contention.

Recipient's second argument is similar to the first, except the interpretation would limit HUD's evaluation of Section 3 compliance to only complete blocks of federal fiscal years, which end on September 30th of each calendar year. Consequently, it was also necessary to expand the

scope of HUD's investigation in order to also review the matter in federal fiscal year blocks.

HUD regulations disclose that the "greatest extent feasible" is the standard for determining Section 3 compliance. This flexible standard implies that data should be analyzed from many points of view and of time to determine meaningful compliance. While HUD may consider reviewing the City of Long Beach's compliance in federal fiscal year blocks, HUD must still determine in the process, whether opportunities were directed to "the greatest extent feasible" to Long Beach Section 3 beneficiaries during each federal fiscal year, as a whole.

A comparative table of new hires for federal FY 1997, 1998, and 1999 blocks follows:

Section 3 New Hires/(over) Total number of new hires = % of Section 3 Hires

Contractor/Sub	Federal Fiscal Year 1997	Federal Fiscal Year 1998	Federal Fiscal Year 1999
Rasmussen	1 5 = 20%	0 0	0 0
Valley Crest	0 0	21 60 = 35%	6 10 = 60%
Bayshore Dock	0 0	3 9 = 33%	0 0
Shaw & Son	0 1= 0%	1 1 = 100%	0 1 = 0%
Electro Construction	0 0	1 5 = 20%	0 0
Local Neon	0 0	1 6 = 17%	0 0
Construct One	0 0	1 4 = 25%	0 1= 0%
Systems Paving	0 0	4 21 = 19%	0 0

Total per FY:	1 6 = 17% Fed. FY '97 Ending 9-30-97	32 106 = 30% Fed. FY '98 Ending 9-30-98	6 12 = 50% Fed. FY '99 Ending 9-30-99

Total for the Three Federal Fiscal Years: $\frac{39}{124} = 31.4\%$

In order to truly determine, whether a recipient has met the "30 % safe harbor" within the meaning, intent, and spirit of Section 3 law, HUD also examined closely the percentages of the number of "full-time hours" worked by Section 3 employees as compared to the number of "full-time hours" worked by all new hires. This full-time hourly comparative assessment may be more meaningful than merely measuring the number of Section 3 new hire employees as compared to the total number of new hires. Otherwise, any given recipient could defy the intent of Section 3 by having a "hiring surge" on the last day(s) of a project to portray reaching and benefiting from the "safe harbor" percentage, rather than complying to the "greatest extent feasible" throughout the duration of any given Section-3 project.

There was payroll documentation for two Section-3 new hires, who were hourly workers hired from the start of construction of Queensway Bay to June 9, 1998. There was payroll documentation for five non-Section 3 hourly new hires, who were hired during the same time frame. The two Section 3 new hires worked a total of 437 hours from their date of hire to June 9, 1998. The five non-Section 3 hourly new-hires worked a total of 1,848 hours during the same time frame.

This translates into the following:

$\frac{\text{2 hourly Section 3 new hires}}{\text{7 new hires total (2 Sec 3 plus 5 non Sec 3)}} \approx 29\%$, the Sec 3 new hire hiring rate

$\frac{\text{437 hours worked by Section 3 new hires}}{\text{2,285 hours worked by all new hires}} = 19\%$, the rate of Sec 3 hours worked to all hours worked by all new hires

(437 hours by Sec 3 plus 1,848 hours by non Sec 3)

Although the rate of hours worked by the Section 3 new hires is less than their representation in the group of all new hires, this is a partial picture because all of the payroll documentation that applies to this time frame no longer exists since one of the two primary project contractors had disposed of such records. Thus, only the payroll records in existence were used to gain some insight into the total "hours worked" comparative rate.

There were eight Section 3 new hires, who were hourly workers hired from the start of construction of Queensway Bay to July 10, 1998, when the Complaint was stamped received by HUD in Washington, DC. There were 17 non-Section 3 hourly new hires, who were hired during the same time frame. The eight Section 3 new hires worked a total of 679 hours during the aforementioned timeframe, and non-Section 3 new hires worked a total of 2,888.5 hours during the same timeframe. This translates into the following[5]:

$$\frac{\text{8 hourly Section 3 new hires}}{\text{25 new hires total (8 Sec 3 plus 17 non Sec 3)}} = 32\%, \text{ the Sec 3 new hire "employee" comparative rate}$$

$$\frac{\text{679 hours worked by Section 3 new hires}}{\text{3567.5 hours worked by all new hires (679 hours by Sec 3 plus 2,888.5 hours by non Sec 3)}} = 19\%, \text{ the Sec 3 new hire "hours worked" comparative rate}$$

While Section 3 does not expressly address the length of employment of Section 3 new hires, it does express new hires in terms of "full time." As such, the full time equivalent comparative assessment was done above to determine the true percentage of full time Section 3 hours worked. The data indicates that Long Beach Section 3 Residents' opportunity to work equaled 19% of the total hours worked by all new hires on the subject project. Section 3 regulations provide that "the greatest extent feasible" is the standard by which a recipient's compliance with Section 3 is measured. As such, this standard enabled HUD to quantify the percentage of hours worked by Long Beach Section 3 new hires and compare it to the hours worked by all new hires on the project in order to evaluate if the hours worked reflect the "greatest extent feasible." It was found that Section 3 Long Beach resident hires in this case did not work 30% of total "new hire hours" at *any* time during the entire project, including at the end of each federal fiscal year.

V. ANALYSIS AND CONCLUSION:

1) HUD, FHEO in Washington, DC stamped the subject Section 3 Complaint received on July 10, 1998. When the complaint was signed and served by the Complainants on or about June 9, 1998, the percentage of new hires that were Section-3 qualified residents from the City of Long Beach in Phase I was 5.19% and in Phase II was 7.50%. At that point, therefore, Recipient was not within the minimum 30% "safe harbor," as provided in Section 3 regulations.

2) Recipient hired many more Section 3 Long Beach residents after the subject complaint was filed in an effort to meet the 30% safe harbor by the end of federal fiscal year 1998 (September 30, 1998), and by the end of the project. Recipient's new Section 3 employee hiring, however, resulted in them working 19% of the total "hours worked" by all new hires on the subject project. "Section

[5] This information is based on the existing payroll documentation.

3 *emphasizes results*—this is, the extent to which HUD-funded activities generate economic opportunity for low-income local residents and qualified businesses."

3) The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, "to the greatest extent feasible," be directed to low and very low-income individuals. 24 CFR §135.1. Section 135.30(a)(4) provides that the numerical goals set forth in the Section 3 regulations "represent minimum numerical targets" because "the greatest extent feasible" is the standard by which a recipient's compliance with Section 3 is measured. Although it may appear that Recipient may have come close to meeting the numerical percentage goals set forth in the Section 3 regulations by relying on the hiring of individuals for only a limited number of work hours/days after the complaint filing, the City failed to meet its "greatest extent feasible," standard when analyzing the payroll data in "full time" hours worked.

The United States Court of Appeals for the Ninth Circuit long ago recognized that the "greatest extent feasible" language of Section 3 is "strong language" in Ramirez, Leal & Co. v. City Demonstration Agency, 549 F.2d 97, 105 (9th Cir. 1976).

> We think that "greatest extent" means what it says, the maximum, and that the defendants were therefore obligated to take every affirmative action that they could properly take to make the award to Ramirez.

A recipient meeting the minimum numerical goals will be considered in compliance with Section 3 preference requirements *"[I]n the absence of evidence to the contrary..."* See "Safe harbor and compliance determination" at §135.30(d)(emphasis added). The evidence, here, indicates that Recipient did not reach the "safe harbor," and fell short of providing opportunities "to the greatest extent feasible." Furthermore, the ability to make significant Section-3 hiring progress, after the complaint was filed, tends to support that Recipient and/or its contractors may not have been making compliance efforts "to the greatest extent feasible" before hand.

Some examples of Recipient and its contractors not operating "to the greatest extent feasible," to comply with Section-3 requirements follows:

A. The City did not appear to follow-up "to the greatest extent feasible" with the Memoranda of Understanding that it executed with both the Carpenters and Laborers unions, obligating it to provide "names of persons qualified as Section 3 residents, which (sic) have received pre-employment training under the JTPA program." The City provided no such names to the Carpenters and only two such names to the Laborers.

B. HUD noted in its November 12 and 13, 1996 on-site Fair Housing and Equal Opportunity Monitoring review, that the City had no mechanism in place to collect data pertinent to Section 3 compliance. The City "Compliance Strategy," describes its community outreach strategy, as something City staff would develop at some future time.

C. The City failed to particularly direct Section 3 *opportunities* to residents of government assisted housing per § 135.1(a). After Recipient's single meeting with two representatives of Carmelitos public housing tenants, the City did not follow through "to the greatest extent feasible" on its commitment to provide information at a meeting in which tenants from each of the 565 Carmelitos family units could be invited. There was no evidence of City follow up to promote public housing tenant participation in the project, although Recipient operates a Housing Authority administering Section 8 certificates for approximately 5,500 low-income residents.

D. There was no evidence to support that Recipient implemented its responsibility under 24 C.F.R. §135.32(a) to notify Section 3 businesses about contracting opportunities generated by Section 3 preferences available at the project. There were no "extra or greater efforts" to notify potential Section 3 beneficiaries of opportunities, encourage them to apply, or facilitate awards to them as set forth at 59 Federal Register 33867. There was no evidence of compliance with §135.32(c) to facilitate the award of contracts to Section 3 beneficiaries by undertaking activities such as those described in the Appendix to §135. This may explain why no Section 3 businesses, in fact, benefited from the subject project.

For the above reasons, Recipient has been determined to be in non-compliance with Section 3 requirements at the time when the subject complaint was filed.

VI. IMPOSITION OF A RESOLUTION:

A. Recipient shall, within 90-days after receipt of this LOF, submit to Complainants a "restitution plan," which specifies in "clear and convincing" detail how it will restore all the Section 3 employment and business opportunities over the next three years that were actually lost in the subject project, and which Section 3 restoration quantity must exceed the minimum 30% "safe harbor," in terms of hours worked by all new hires, as well as include a meaningful number of new Section 3 business opportunities over the next three years. The above must *not* duplicate existing obligations or commitments in that regard, and all of which will be subject to HUD approval within 180 days;

B. Recipient will be required to report in writing on the specific progress of its Section 3 restitution implementation to HUD on a quarterly basis over the next three years, as well as required to retain all related records pertaining to this Section-3 matter for the next five years, and;

C. HUD may conduct any necessary on-site monitoring in order to review compliance with this resolution over the next five years. In the event, of HUD making a

subsequent finding of non-compliance with this resolution, the Recipient's eligibility for continued HUD federal funding will be evaluated in relation to the amount of Section 3 requirements remaining to be restored.

VII. EFFECTIVE DATE OF RESOLUTION:

The imposed resolutions will become effective and binding at the expiration of 15 days following notification to the recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Assistant Secretary and shall include the basis for the appeal.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon a third party's request. In the event that the Department's receives such a request, we will protect to the extent provided by the law, private information, which if release, would constitute an unwarranted invasion of privacy.

Additionally, 24 CFR Part 135.76 (3i) states that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business because the person or business has made a complaint, testified, assisted or participated in any manner in the investigation, proceeding, or hearing under this part.

In conclusion, the Department would like to thank you and your staff for the cooperation and assistance extended to the Department's staff throughout the review and we look forward to a prompt resolution to this matter.

Sincerely,

Carolyn Peoples
Assistant Secretary for Fair Housing
and Equal Opportunity

cc:
Chuck Hauptman
Steve Sachs
Dennis L. Rockway