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Sent via email

Christina Lewis
Regional Director, Fort Worth Regional Office
Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
307 W. 7th Street, Suite 1000
Fort Worth, Texas 76102
ComplaintsOffice06@hud.gov

Anhthu Hoang
Acting Director, External Civil Rights and Compliance Office
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Title_VI_Complaints@epa.gov

Daria Neal
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue
N.W. Washington D.C. 20530
Daria.Neal@usdoj.gov

**Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d,
Regarding Civil Rights Violations by the City of Corpus Christi for the Siting
of the Inner Harbor Desalination Plant in the Hillcrest Neighborhood**

Dear Regional Director Lewis, Acting Director Hoang, and Deputy Chief Neal,

On behalf of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy
[REDACTED] we file this complaint under Title VI of the Civil Rights Act of 1964 and its implementing regulations ("Title VI"). For the reasons stated below, we request that the United States Department of Housing and Urban Development ("HUD") and the United States Environmental Protection Agency ("EPA") investigate

whether the City of Corpus Christi (“the City”) is in compliance with Title VI based on the City’s decision to locate a new industrial facility – the Inner Harbor desalination plant – in the Hillcrest neighborhood. The City’s ongoing actions to site the Inner Harbor desalination plant in the historically African American Hillcrest neighborhood violate Title VI because they have the purpose and effect of subjecting the Hillcrest community to discrimination.

We further request that the Civil Rights Division of the United States Department of Justice (“DOJ”) play a coordinating and oversight role to ensure “the consistent and effective implementation of Title VI across the federal government.”¹

I. Introduction

The City of Corpus Christi is in violation of Title VI by choosing to site its planned Inner Harbor desalination plant in the historically African American Hillcrest neighborhood. Hillcrest is an environmental justice community in Corpus Christi, Texas, right across the fence line from an area known as “Refinery Row,” which houses a dense concentration of refineries. The construction and operational impacts of the City’s Inner Harbor desalination plant would exacerbate the existing disproportionate health and safety harms from decades of industrialization, isolation, and pollution in this predominately African American and Hispanic neighborhood.

The City’s desalination plant would pull in seawater from the Inner Harbor ship channel through an intake pipe to the plant, which would remove salts through a reverse osmosis process to make potable water.² The plant would discharge highly saline brine (concentrated salts) back into the ship channel and Corpus Christi Bay through a discharge pipe.³ The Inner Harbor desalination plant would be located in the Northwest corner of the Hillcrest neighborhood, within blocks of residents’ homes and neighborhood parks such as the historic Dr. H.J. Williams Park (see Figures 1 & 2, below).

¹ DOJ, Title VI Legal Manual, at Section III (Updated Feb. 3, 2021) (hereinafter “DOJ Title VI Legal Manual”), <https://www.justice.gov/crt/fcs/T6manual5#:~:text=Under%20Title%20VI%2C%20a%20private,to%20contract%20with%20a%20recipient>.

² See City of Corpus Christi, TCEQ Industrial Wastewater Permit Application (Jan. 17, 2020), <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>.

³ See *id.*; Section VI.B.1.i. *infra*.



Figure 1, Map showing satellite image of proposed desalination plant site⁴

⁴ City of Corpus Christi, file number 220920 (May 24, 2022) (follow "4. Inner Harbor Plant Site Map" link), <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=5653980&GUID=4D8E17BC-0EDE-4409-A5AA-ADC47CBD01F9>.

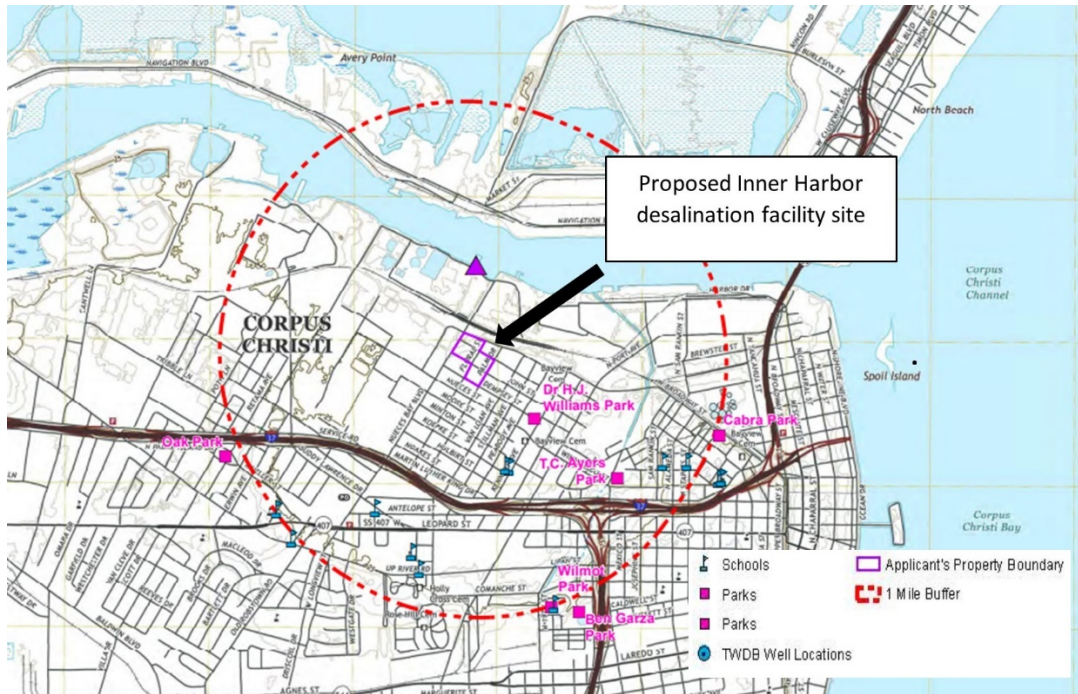


Figure 2, Map showing proposed Inner Harbor desalination facility site (purple outline) in the Hillcrest neighborhood along the Northside of Corpus Christi with the pipe discharge site (purple triangle), neighborhood parks, schools and a 1-mile buffer⁵

II. Complainants

(b)(6) Privacy, (b)(7)(C) Enf. Privacy is an advocacy group comprised of Hillcrest residents and their allies. **(b)(6) Privacy, (b)(7)(C) Enf. Privacy** membership mirrors the population it serves, which is predominantly African American and Hispanic. **(b)(6) Privacy, (b)(7)(C) Enf. Privacy** works to protect public health, safety, the environment, and the quality of life for all residents of the Hillcrest neighborhood and the immediately surrounding area, and to combat community deterioration. Additionally, **(b)(6) Privacy, (b)(7)(C) Enf. Privacy** aims to help Hillcrest residents expand economic and educational opportunities and to obtain safe and affordable housing.

(b)(6) Privacy, (b)(7)(C) Enf. Privacy is a community advocacy group of residents from the Hillcrest and Washington-Coles neighborhoods along Refinery Row in Corpus Christi, Texas. It was founded out of concern for the deteriorating conditions in the neighborhoods resulting from heavy industry.

⁵ City of Corpus Christi, TCEQ Industrial Wastewater Permit Application, Attachment C (Jan. 17, 2020), <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>.

Both (b)(6) Privacy, (b)(7)(C) Enf. Privacy have a long history of fighting for the rights of Hillcrest residents and against the encroachment of industrial development in their neighborhood, including filing two successful Title VI civil rights complaints.⁶ In 2007, (b)(6) Privacy, (b)(7)(C) Enf. Privacy filed a Title VI complaint against the City for discrimination in the siting of a new sewage treatment facility and in 2015, Hillcrest residents (b)(6) Privacy, (b)(7)(C) Enf. Privacy filed another Title VI complaint against the Texas Department of Transportation (“TxDOT”) for discrimination in siting the new Harbor Bridge. Now, (b)(6) Privacy, (b)(7)(C) Enf. Privacy are concerned about the City’s actions to site the new Inner Harbor desalination plant in Hillcrest because if built, it will exacerbate the harms created by the ongoing targeted industrialization of their neighborhood.

III. Jurisdiction

Federal civil rights laws apply to recipients of federal financial assistance like the City.⁷ Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁸ Once an entity receives federal financial assistance, jurisdiction under Title VI attaches.⁹ As discussed below, the City is a “program or activity” that receives federal funding from the HUD and EPA and is therefore required to abide by Title VI.

A. Program or Activity

A “program or activity” is defined as “all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance.”¹⁰ An entire local government is considered a “program or activity” that may be liable under Title VI

⁶ See Section IV.D. *infra*; Complaint under Title VI of the Civil Rights Act of 1964 by (b)(6) Privacy, (b)(7)(C) Enf. Privacy vs. City of Corpus Christi (April 5, 2007), available at https://www.epa.gov/sites/production/files/2015-02/documents/04r-07-r6_complaint_redacted.pdf, attached as **Exhibit 1**; Complaint Under Title VI of the Civil Rights Act of 1964 on behalf of residents of the Hillcrest neighborhood vs. Texas Dept. of Transp. (Mar. 15, 2015), attached as **Exhibit 2**.

⁷ EPA, U.S. EPA’s External Civil Rights Compliance Office Compliance Toolkit (Jan. 18, 2017), https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf.

⁸ 42 U.S.C. § 2000d.

⁹ DOJ Title VI Legal Manual, at Section V.

¹⁰ 42 U.S.C. § 2000d-4a.

“if it is partially responsible for the discriminatory conduct, is contractually obligated to comply with Title VI, or has a responsibility to monitor subrecipients.”¹¹

B. Federal Funding

Funding either directly or indirectly from a federal agency through federal grants, cooperative agreements and loans are clear examples of Title VI-covered federal financial assistance.¹² The City is subject to Title VI compliance because it receives direct and indirect federal grants and loans from HUD and EPA. The following examples of federal funding from HUD and EPA fall within the scope of Title VI:

HUD has awarded \$4.2 million in federal grants to the City for a home investment partnership program from September 20, 2021 to September 30, 2030.¹³

In January 2022, the Texas Water Development Board (“TWDB”) approved \$4.751 million in financial assistance from the Texas Clean Water Act State Revolving Fund to the City to address the flooding of Oso Creek through stormwater system improvements.¹⁴ The TWDB funds for these stormwater improvements came from EPA,¹⁵ making the City an indirect recipient of federal funding.

C. Timeliness

Title VI complaints are considered to be timely when the complaint has been filed within 180 calendar days of the date of the last alleged act of discrimination or if the complainant alleges a “continuing policy or practice” of discrimination.¹⁶ A complaint alleging a continuing discriminatory policy or practice must “allege facts that are sufficient to indicate either a series of related acts of which one occurred within the

¹¹ DOJ Title VI Legal Manual, at Section V.E.2.

¹² *Id.* at Section V.C.1.a. (“An entity may receive grant money directly from an agency or indirectly through another entity. In either case, the direct recipient as well as the secondary or subrecipient are considered to have received federal funds.”).

¹³ USA Spending, Grant Summary: Home Investment Partnership Program Grant from HUD to City of Corpus Christi, https://www.usaspending.gov/award/ASST_NON_M21-MP480502_8620 (last visited Oct. 13, 2022).

¹⁴ Hinojosa, *City of Corpus Christi to Receive \$4.751 Million from the Clean Water State Revolving Fund* (Jan. 6, 2022), <https://senate.texas.gov/press.php?id=20-20220106a>.

¹⁵ Personal communication with Mireya Loewe, South Region Manager, Texas Water Development Board (phone, July 2022) (confirming that City of Corpus Christi is a recipient of EPA funding from the TWDB for floodwater mitigation).

¹⁶ See 40 C.F.R. § 7.120(b)(2); see also EPA, *Case Resolution Manual*, at 8 (Jan. 2021), https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

180-day filing period or a systematic policy or practice that operated within the 180-day period.”¹⁷

The City’s discriminatory conduct consists of continuing policies and practices, including actions within the past 180 days. Since at least 2020, the City has enacted policies and taken actions to move forward with the Inner Harbor desalination plant, including applying for required permits and securing state loans to fund its construction.¹⁸ Examples of the City’s recent actions within the past 180 days include:

1. On May 10, 2022, the City authorized the City Manager, Peter Zanoni, to proceed with preparation of the purchase documents for the property for the Inner Harbor desalination plant in the Hillcrest neighborhood.¹⁹ The City will pay \$300,000 for 3 years in exchange for an option to purchase the property for over 5 million dollars.²⁰
2. On May 23, 2022, the City Manager met with officers of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy [REDACTED] at the Brooks AME Worship Center in Hillcrest to discuss the desalination plant. Mr. Zanoni confirmed that the City was proceeding with locating the desalination facility in Hillcrest instead of any alternative sites the City had considered. The City staff provided a detailed map of the site location, including the location of a new power substation, all to be located in the Hillcrest neighborhood.

¹⁷ *Id.*

¹⁸ See City of Corpus Christi, TCEQ Industrial Wastewater Permit Application (Jan. 17, 2020), <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>; City of Corpus Christi, TCEQ Water Rights Permit Application (Jan. 17, 2020), available at https://www.desal.cctexas.com/files/ugd/d9f0ec_ed0c427f1a514adf9ddcdc4dd459ff11.pdf; see generally City of Corpus Christi, *City Council Gives Final Approval on Loan Program for Seawater Desalination Project*, October 20, 2020, available at <https://news.cctexas.com/news/city-council-gives-final-approval-on-loan-program-for-seawater-desalination-project>.

¹⁹ City of Corpus Christi, Motion to authorize preparation of final contract documents for the purchase of approximately 12.5 acres of property and 11 acres of easements from Flint Hills Resources Corpus Christi, LLC and related entities in the vicinity of Nueces Bay Boulevard, Broadway Street, and the Inner Harbor for a seawater desalination plant in an amount of \$5,455,000, which will include an option period of 3 years and potential additional option time to allow for permitting and prerequisites related to a development agreement pursuant to Texas Local Government Code Chapter 212, a right to repurchase in the event of termination of the project, and requirements related to insurance, soil management, environmental sampling, and limits on use of the property, File number 22-0765, (May 10, 2022), <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=5561252&GUID=C28B3E7E-FA10-4D73-A7E2-3F16FEC2CE2B>.

²⁰ *Id.*

3. On May 24, 2022, the City Council passed a motion authorizing a professional services contract with American Electric Power, Texas, to provide preliminary engineering and regulatory work associated with interconnection of the City's Inner Harbor desalination plant to the Texas electric transmission grid.²¹
4. On July 19, 2022, the City Manager invited the Chief Operating Officer for Water Utilities, Michael Murphy, to discuss water supply project updates at a City Council meeting.²² Mr. Murphy gave an update on the desalination process and stated that the City's legal team is reviewing the Inner Harbor land purchase agreement.²³
5. On September 6, 2022, the City Council approved an ordinance adopting the Corpus Christi Fiscal Year 2022-2023 Capital Budget.²⁴ As proposed, the budget included a projected \$220,736,326 in funding for seawater desalination for fiscal years 2023 to 2025.²⁵ Notably, the only site location named in the proposed budget is the Inner Harbor seawater desalination plant.²⁶
6. On October 10, 2022, the City received a water rights permit from the Texas Commission on Environmental Quality ("TCEQ") for the Inner Harbor Desalination Plant.²⁷ [REDACTED] requested a contested case hearing on several

²¹ City of Corpus Christi, Motion authorizing a professional services contract with American Electric Power, Texas, to provide preliminary engineering and regulatory work associated with interconnection of the City's Inner Harbor Seawater desalination plant to the Electric Reliability Council of Texas electric transmission grid in an amount not to exceed \$100,000.00, located in Council District 1, with FY 2022 funding available from State Water Implementation Fund Texas Loan-2020, file number 220920(May 10, 2022) (follow "Action details" link),

https://corpuschristi.granicus.com/player/clip/1648?view_id=2&meta_id=331985&redirect=true.

²² City of Corpus Christi, Drought Response and Water Supply Project Updates, at 12:00 (July 19, 2022) (City Manager's Comments and Update on City Operations),

https://corpuschristi.granicus.com/player/clip/1665?view_id=2&redirect=true.

²³ *Id.*

²⁴ City of Corpus Christi, Ordinance adopting the Corpus Christi Fiscal Year 2022-2023 Capital Budget in the amount of \$628,234,271, file number 22-1472 (Sept. 6, 2022) ("passed on second reading as amended"), <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=5769320&GUID=389B46D3-2554-4042-8001-DEA8CC3B6898>.

²⁵ City of Corpus Christi, Proposed Capital Budget, at 318 (July 26, 2022),

<https://www.cctexas.com/sites/default/files/FY-2022-2023-Proposed-Capital-Budget.pdf>.

²⁶ *Id.* at 321.

²⁷ TCEQ Water Use Permit No. WRPERM 13676, issued to the City of Corpus Christi on October 10, 2022, available at

https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=984460112022285&doc_name=OrderPermit%202020%2D1559%2DWDR%2Epdf&requesttimeout=5000; see City of Corpus

deficiencies in the permit and raised civil rights and environmental concerns,²⁸ but the City argued that [REDACTED] members, including [REDACTED] who lives blocks from the proposed plant, did not have standing to challenge the permit because their interests “are common to members of the general public.”²⁹ TCEQ agreed with the City and issued the permit, despite [REDACTED] request for a hearing. The City also has a pending application for a wastewater discharge permit for the Inner Harbor location before TCEQ.³⁰

The City has chosen to take steps to move forward with the purchase of the property in the Hillcrest neighborhood for the proposed Inner Harbor desalination plant despite a clear history of discrimination by the City and other governmental entities in the Hillcrest neighborhood and vocal opposition to this proposed location from Hillcrest residents and faith leaders. These ongoing actions reveal the City’s prioritization of industrial development in the Hillcrest community that will exacerbate existing disparate harms based on race. The City’s decision to move forward with the Inner Harbor location threatens the health, safety and well-being of the Hillcrest community and its ongoing actions to site this facility constitute a continuing violation of Title VI.

D. Other Jurisdictional and Prudential Concerns

This complaint satisfies all other jurisdictional and prudential considerations laid out in Title VI and its implementing regulations. This complaint is in writing, describes

Christi, Press Release: *Project Milestone: City of Corpus Christi Awarded Water Rights Permit for Seawater Desalination* (October 5, 2022), <https://news.cctexas.com/news/releases-20221005>.

²⁸ [REDACTED] Comments and Hearing Request regarding Application of City of Corpus Christi for Water Rights Permit No. 13676 (March 18, 2021), available at https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=172689672021077&doc_name=2021%2E03%2E18%20HRA%20Public%20Comment%20and%20Hearing%20Request%2Epdf; see also [REDACTED] Reply to Responses to Hearing Requests (Sept. 26, 2022) (TCEQ Docket No. 2020-1559-WR, Water Use Permit No. WRPERM 13676), available at https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=964586062022269.

²⁹ City of Corpus Christi, Applicant’s Response to Hearing Requests, at 15-17 (Sept. 12, 2022) (TCEQ Docket No. 2020-1559-WR, Water Use Permit No. WRPERM 13676), available at https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=628477112022255.

³⁰ City of Corpus Christi, TCEQ Industrial Wastewater Permit Application (Jan. 17, 2020), <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>.

the alleged discriminatory acts and the entity that performed them, and is filed with the associated agencies by Earthjustice on behalf of (b)(6) Privacy, (b)(7)(C) Def. Privacy and (b)(6) Privacy, (b)(7)(C) Def. Privacy in response to the City's Title VI violations.³¹

IV. Factual Background

A. Segregation and Isolation of Hillcrest

The historically African American community of Hillcrest makes up one neighborhood in what is commonly known as the Northside neighborhoods of Corpus Christi (see Figure 3, below).

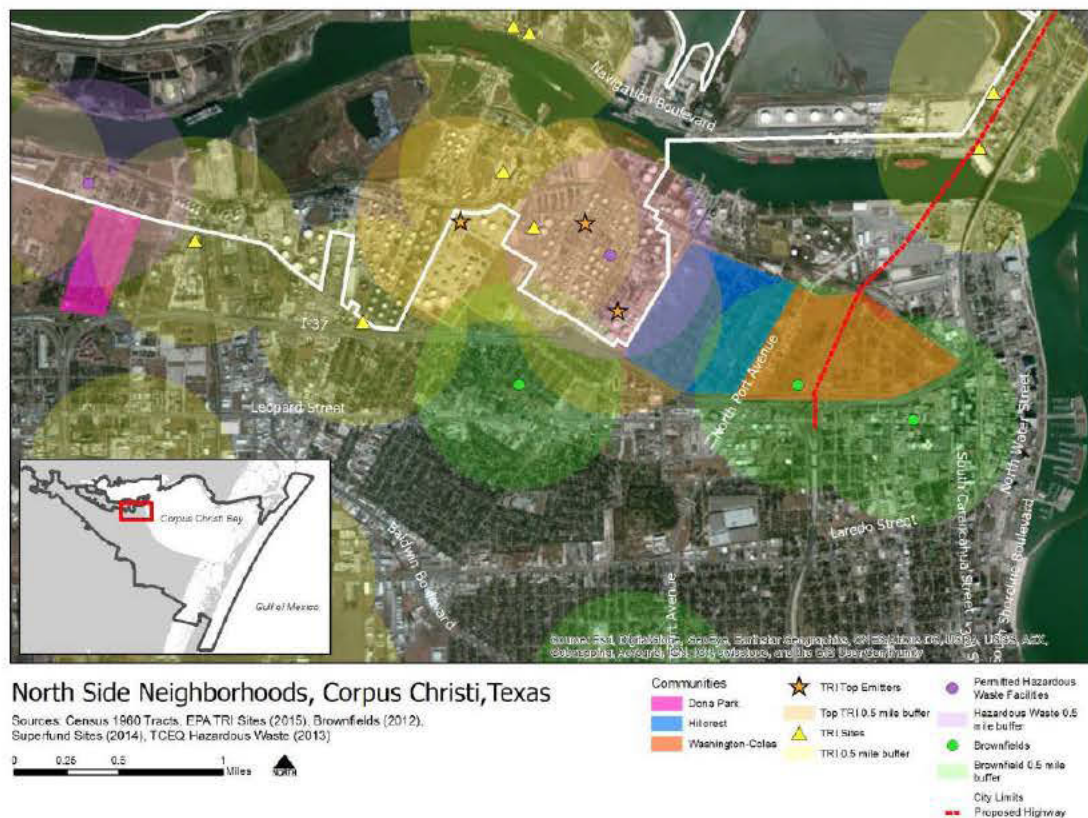


Figure 3, showing locations of Hillcrest (in blue), Washington Coles (in orange), and other Northside neighborhoods with surrounding industrial sources³²

Over two generations, the City enforced policies of racial segregation that required all African Americans who lived within Corpus Christi city limits to live in the Northside neighborhoods, while also targeting the area for industrial development.

³¹ 40 C.F.R. § 7.120(a), (b).

³² Melissa Morgan Beeler, *The Effect of Local Planning Actions on Environmental Injustice: Corpus Christi's Refinery Row Neighborhoods*, at 13 (2015), attached as **Exhibit 3**.

These policies have resulted in dire health outcomes for Hillcrest residents, who suffer from disproportionately high incidences of cancers, asthmas, and birth defects.³³ During the Jim Crow era, the City's Planning and Zoning Commission imposed zoning restrictions on African Americans. These racist zoning restrictions limited African Americans to the Northside after oil was discovered there and as oil refineries began to cluster in the area along the port, in what is now known as "Refinery Row." In the 1930s and 1940s, the Washington Coles neighborhood housed the majority of the City's African American population and until 1944, it was the only place where African Americans could legally reside within Corpus Christi.³⁴ Originally, the picturesque neighborhood of Hillcrest was for Whites only until about a decade after the first refineries arrived in the Port of Corpus Christi.³⁵ In 1944, once the refineries had established themselves in the area, the City began to allow African Americans to move to Hillcrest.³⁶ By 1948, African American residents were legally permitted to buy homes in Hillcrest.³⁷ White flight from the community accelerated in the 1950s, when Anglo residents of Hillcrest moved into newer neighborhoods like Oak Park.³⁸ The following decades saw that trend continue, with a marked shift from predominantly White to predominantly African American and Hispanic populations in the Hillcrest neighborhood.³⁹

Since desegregation and White flight changed the demographic landscape of the community, Hillcrest has been continually sequestered by a sea of pollution sources that now include refineries, the ship channel to its north, Highway I-37 to its south, and the lengthy ongoing construction of the new Harbor Bridge to its east. Interstate Highway I-37 was built during the 1960s, further entrenching the racial barrier that the City had cultivated between Hillcrest and the City's White population. In a contentious process that would unfortunately be familiar to Hillcrest residents today, City officials

³³ See ATSDR, Corpus Christi Refinery Row Brochure (Aug. 2016), https://www.atsdr.cdc.gov/HAC/pha/CorpusChristi/Brochure_Fact_Sheet_508.pdf.

³⁴ See **Exhibit 1**, (b)(6) Privacy, (b)(7)(C) Enf. Privacy v. City of Corpus Christi Title VI Complaint, at 6; TxDOT, Northside History Project Report, at 98, 102 (2017), https://texashistory.unt.edu/ark:/67531/metapht1310487/m2/1/high_res_d/Northside_History_Project_Report.pdf.

³⁵ FHWA, US 181 Harbor Bridge Project Final Environmental Impact Statement, at 3-64 (Nov. 2014) (hereinafter "Harbor Bridge FEIS"), <https://ccharborbridgeproject.files.wordpress.com/2012/02/eis-document-us-181-harbor-bridge-final-eis-section-3-0-affected-environment1.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

made statements showing that they viewed the Hillcrest community as little more than an opportunity for industrial growth. One City official stated that the “route would swing to the north adjacent to oil tank farms and would be a natural divider between industrial areas and Westside residences.”⁴⁰ While the City chose to avoid other residential areas, many homes in Hillcrest were demolished to make way for I-37, isolating the neighborhood from the commercial and residential corridor to its south.⁴¹ A report commissioned by TxDOT indicated that the construction of I-37 “in the early 1960s displaced some Northside residences as well as the businesses (many operated by African Americans)[.]”⁴² The encroachment from I-37 also divided parts of the existing community, creating a barrier between the south side of the neighborhood, cutting it off from the remainder of the community which was barricaded between the new interstate and the port/industrial corridor.⁴³

The African American population in Hillcrest increased from less than a quarter in 1960, to three quarters by 1970. From 1985 to 1998, nearby refineries focused buy-out efforts in the community, purchasing at least 500 homes.⁴⁴ In the 1980s, Hillcrest residents brought a lawsuit against nearby refineries, seeking to address ground water and air contamination, decreasing property values, and health concerns. The landowners and refineries eventually arrived at a settlement. As a result, about 100 homes were demolished in 1998, clearing the way to create an L-shaped buffer zone, adding a few blocks of separation between the neighborhood and the growing industrial corridor now known as Refinery Row.⁴⁵

⁴⁰ Cliff Hawthorne, *Year's Delay Seen if 37 is Rerouted*, Corpus Christi Caller Times, Nov. 18, 1958, at 1, 18, attached as **Exhibit 4**.

⁴¹ Harbor Bridge FEIS, at 3-64, 65.

⁴² TxDOT, Northside History Project Report, at 20 (2017), https://texashistory.unt.edu/ark:/67531/metapth1310487/m2/1/high_res_d/Northside_History_Project_Report.pdf.

⁴³ Jessica Savage, *Corpus Christi library director hopes to rebuild trust in historic Northside neighborhoods*, CORPUS CHRISTI CALLER TIMES, May 6, 2012 (“The neighborhood changed when the [I-37] highway construction began ‘That changed the neighborhood really forever. It was almost destined to be industrial.’ ... Homes in the interstate’s path were moved and demolished as the state highway department bought between 500 and 600 parcels of property.”), available at <http://www.caller.com/news/corpus-christi-library-director-hopes-to-rebuild>.

⁴⁴ Harbor Bridge FEIS, at 3-65.

⁴⁵ *Id.*

B. Increased Industrialization in Hillcrest

The City's land use decisions have resulted in the increased encroachment of industry into the Hillcrest community, as illustrated by examples like the City's siting of sewage facilities, including the Broadway wastewater plant in the adjacent Washington-Coles neighborhood. In the 1930s, with miles of vacant land surrounding Corpus Christi, the City chose to construct its sewage plant in Washington Coles.⁴⁶ As early as the 1950s, "a storage tank facility owned by General American Tank Transportation Corporation was sited between Hillcrest and Washington-Coles," further increasing the industrialization of the community.⁴⁷

In 1981, the City further cemented the industrialization of Hillcrest when it established the first industrial district agreement for the area.⁴⁸ By 1995, the Broadway Sewage Treatment Plant, was the source of virtually unmitigated foul odors and ongoing violations of environmental standards.⁴⁹ In response to complaints from residents, the City commissioned a study, which concluded that the City could save thousands of dollars and reduce the overall number of sewage treatment facilities by closing the Broadway plant and diverting that waste to another treatment facility.⁵⁰

In 1997, after the City Council voted to shut down the plant and to follow the diversion plan recommended by the study, the City promised Hillcrest residents it would close the aging treatment plant by 2001.⁵¹ The City later reversed course and decided, without any community involvement or notice, to maintain operation of the Broadway plant in Washington-Coles and to move ahead with plans for a new sewage plant located in the Hillcrest neighborhood.⁵² Before announcing its decisions to keep the old plant open in the adjacent neighborhood and to site a new plant in Hillcrest, the City demolished 200 units of housing that had been provided by the U.S. Department of Housing and Urban Development (HUD), and it also closed all schools in the area.⁵³ As a result, the Northside, which used to be the densest residential neighborhoods in Corpus Christi, suffered a 30 percent population decrease by 2007.⁵⁴

⁴⁶ Exhibit 1, (b)(6) Privacy, (b)(7)(C) Enf. Privacy City of Corpus Christi Title VI Complaint, at 6.

⁴⁷ Exhibit 3, Beeler, at 30.

⁴⁸ *Id.* at 33.

⁴⁹ Exhibit 1, (b)(6) Privacy, (b)(7)(C) Enf. Privacy City of Corpus Christi Title VI Complaint, at 7.

⁵⁰ *Id.*

⁵¹ *Id.* at 7-8.

⁵² *Id.* at 8-9.

⁵³ *Id.* at 2.

⁵⁴ *Id.*

The City's plan to site a new sewage treatment plant in the neighborhood was only thwarted by concerted community efforts, during which the [REDACTED] filed an administrative complaint under Title VI of the Civil Rights Act against the City for discrimination in the siting of the sewage treatment facility "in the context of a long history of racist land use decisions affecting African Americans and the Northside and Hillcrest neighborhoods."⁵⁵

In 2007, a federal judge found that the nearby Citgo refinery violated the Clean Air Act by illegally operating two uncovered tanks that contained oil and toxic chemicals including benzene. Benzene is a potent carcinogen, and one of the most dangerous pollutants released by refineries and petrochemical plants.⁵⁶ That same refinery was the subject of a then-recent study, which found that it was among 13 facilities that exceeded the EPA's "action level" in 2020 for average annual benzene emissions.⁵⁷

The continued encroachment of the industrial corridor into the community has meant that Hillcrest residents have endured a litany of environmental assaults over the years, including explosions, releases of toxic chemicals, fires, flaring, and violations of environmental law that were so flagrant they resulted in the criminal prosecution by the U.S. government of companies, such as the Citgo example cited above.⁵⁸ Over the years, these refinery accidents have become common occurrences that residents refuse to accept. Nor do residents acquiesce to the daily impacts of living near the industrial corridor. These impacts include loud noises and sirens, bright lights around the clock, including light from industrial flaring and vibrations that shake their homes.⁵⁹ In 2017, just blocks away from the Hillcrest community, a chemical leak resulted in potential contamination of the City's water supply, with residents unable to use water for days.⁶⁰

⁵⁵ **Exhibit 1**, [REDACTED] City of Corpus Christi Title VI Complaint, at 4.; see Section IV.D. *infra*.

⁵⁶ Environmental Integrity Project, *Environmental Justice and Refinery Pollution*, at 9 (Apr. 2021), <https://environmentalintegrity.org/wp-content/uploads/2021/04/Benzene-report-4.28.21.pdf>

⁵⁷ *Id.* at 5.

⁵⁸ **Exhibit 2**, Hillcrest Residents v. TxDOT Title VI Complaint, at 4-5.

⁵⁹ *Id.* at 5.

⁶⁰ David Switzer & Manuel Teodoro, The Color of Drinking Water: Class, Race, Ethnicity, and Safe Drinking Water Act Compliance, 109:9 Journal AWWA 40, 41 (2017), available at <https://mannyteodoro.com/wp-content/uploads/2014/03/SwitzerTeodoro-JAWWA-2017-Color-of-Drinking-Water.pdf>; Derek Hawkins, *Corpus Christi's tap water off limits after chemical leak. Schools, restaurants close.*, THE WASHINGTON POST, Dec. 16, 2016, available at <https://www.washingtonpost.com/news/morning-mix/wp/2016/12/16/corpus-christi-residents-told-to-avoid-tap-water-after-chemical-leak/>.

This was not an isolated incident, as the City has been responsible for several violations of the Safe Drinking Water Act.⁶¹

C. City Plans in Hillcrest: False Promises & Disinvestment

Concerted land use planning efforts and failures to follow through with promised reinvestments by the City have caused and contributed to the increased industrialization in Hillcrest. In 1999, as part of a planning effort, the City released policy statements focused on creating a buffer zone around the neighborhood where only light industrial activity would be allowed.⁶² The City later revised the plan, moving instead to rezone the area as commercial with a two-block strip to the north and west of the neighborhood, but this plan was not adopted either.⁶³ In 2003, another amendment to the plan for the area encouraged a transition from residential housing to a research and technology park.⁶⁴ That plan also called for the relocation of the Broadway wastewater treatment plant, which had caused violations of environmental standards and blanketed the community with foul odors.⁶⁵

In 2008, the City prepared the second phase of a redevelopment plan for the Northside, which included a series of improvements in Hillcrest.⁶⁶ Many residents of the community engaged with the process by attending a series of workshop sessions, where they shared their visions of redevelopment for Hillcrest.⁶⁷ This redevelopment plan first acknowledged that “[t]he area has been in a slow state of decline, cut off from the rest of the city by freeways, and encroachment of industrial uses from the north and west.”⁶⁸ The plan also acknowledged that “Hillcrest is an isolated neighborhood, and it has been easy for the rest of the city to ignore it.”⁶⁹ The plan went on to summarize input from the Hillcrest community, which expressed that “[r]evitalizing the Hillcrest neighborhood was an almost universal goal. This involved obvious tasks of improving the existing housing stock and infilling vacant lots with compatible new units, improving parks, and cemeteries, and re-occupying the school.”⁷⁰ Despite years of

⁶¹ Switzer & Teodoro, *supra* note 60, at 41.

⁶² Harbor Bridge FEIS, at 3-65.

⁶³ *Id.* at 3-65, 66.

⁶⁴ *Id.* at 3-66.

⁶⁵ *Id.*; see also **Exhibit 1**, (b)(6) Privacy, (b)(7)(C) Enf. Privacy City of Corpus Christi Title VI Complaint, at 8.

⁶⁶ City of Corpus Christi, Hillcrest and Washington Coles Areas Redevelopment Plan, at 1 (Nov. 15, 2008), attached as **Exhibit 5**.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 2.

consulting with the community on these much-needed improvements, the City abandoned the plans for redevelopment and revitalization, in a whiplash inducing change-of-course that has become familiar to Hillcrest residents. This familiar pattern reemerged when the City introduced its Central Business Development Plan in 2013, which proposed improvements for Hillcrest, only to abandon those improvements with the 2015 introduction of Plan CC, Comprehensive Plan 2035, as discussed in further detail below.

In May 2013, the City adopted its Central Business Development Plan, which if implemented, could have reinvigorated the Hillcrest neighborhood.⁷¹ Notably though, the City failed to include any representatives from Hillcrest in the list of individuals and organizations that it consulted with to develop the plan.⁷² The City's stated purpose in the Plan was to use measurable strategies "reasonable enough to be accomplished within a period of five years from the date of adoption."⁷³ The plan called for the addition of significant green spaces and parks, increased medium density housing, and commercial development in the area as an added buffer between residents and industrial facilities.⁷⁴ Furthermore, the plan called for significant investments in the Hillcrest community that could have changed course from the City's history of targeted industrialization and neglect. This plan included amenities such as "a neighborhood commercial and restaurant establishment corridor to provide more dining opportunities for the Washington-Coles and Hillcrest residential areas," and a community garden program with "[p]riority for establishment of community gardens [] given to the Hillcrest and Washington-Coles neighborhoods."⁷⁵ In addition, the plan called for the City to address the issue of blighted and vacant lots, mobilizing a special code enforcement team to actively seek out "developers and builders to develop these areas as affordable housing and senior-living developments."⁷⁶

Despite the bright outlook projected for Hillcrest by the City's Central Business Development Plan, the City again completely reversed course in 2015 when it introduced Plan CC Comprehensive Plan 2035, a guidance document for long-term

⁷¹ City of Corpus Christi, Central Business Development Plan at i (May 21, 2013), attached as **Exhibit 6**.

⁷² *Id.* at iii.

⁷³ *Id.* at 1.

⁷⁴ See *id.* at 4, 8 (analysis derived from comparison of Figure 2. Current Land uses, at 4, and Figure 3. Central Business Development Plant – Proposed Future Land Use Map at 8).

⁷⁵ *Id.* at 9.

⁷⁶ *Id.* at 15.

physical and economic development of the City.⁷⁷ The plan targeted Hillcrest as an “I-37 transition district,” recommending that residents move out of the area entirely and be replaced by industrial facilities.⁷⁸ As initially introduced, Plan CC called for the removal and relocation of Hillcrest residents to an undisclosed location over an undisclosed period of time.⁷⁹

Plan CC cited to the close proximity of “oil refineries and other industrial establishments,” before noting that residents “have long been concerned about environmental pollution and contamination and have been losing population.”⁸⁰ Plan CC used the results of the City’s own neglect and its increased industrialization of the Hillcrest community to justify the relocation of Hillcrest residents, stating that all “residential uses should leave this area and the designated land use should become light industrial or a buffer use (offices, supporting uses) within a heavy industrial district.”⁸¹ Despite calling for Hillcrest residents’ relocation, the City failed to consult with residents of the community before introducing this element of the plan. After intense pushback from residents who showed up at council meetings to voice their concern, the recommended relocation was removed from Plan CC before its final approval. Despite making this concession, the City’s actions have continued to create a de facto industrial transition district through ongoing neglect and land use decisions that continue to industrialize the community.

Indicators of the City’s disinvestment are impossible for to residents to ignore: vacant and blighted properties remain unkept, sewage is often backed up, abandoned buildings are occupied by the unhoused, historic cemeteries go uncared for, semis and construction trucks swarm through the residential streets, inadequate police patrols and street lighting compromise safety, and streets and storm water drains go unmaintained, leading to flooding problems.⁸² The City has acknowledged many of these issues over the years in its various planning documents, yet it has failed to redress the dire concerns

⁷⁷ City of Corpus Christi, Draft Ordinance 15-1111 - Plan CC (2015), attached as **Exhibit 7**, available at <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=2477736&GUID=8C2403EF-4C46-4AE4-A42A-9A3FFB9B19F5> (follow “2. Draft Ordinance - Plan CC” link).

⁷⁸ *Id.* at 37.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² (b)(6) Privacy, (b)(7)(C) Enf. Privacy Hillcrest PowerPoint Presentation (June 17, 2022) (hereinafter “Hillcrest PowerPoint Presentation”), attached as **Exhibit 8**.

from the Hillcrest community.⁸³ Some of these issues illustrate the inconsistent implementation of City's Code of Ordinances in Hillcrest. For example, residents of Hillcrest seeking to make improvements on their homes and land have had their applications consistently rejected, while the City continues to greenlight industrial development in their community.⁸⁴ Hillcrest residents have experienced the effects of decades of neglect and disinvestment from the City, while watching industry expand ever-closer to their homes.

D. History of Title VI Complaints and Violations in Hillcrest

1. The Broadway Sewage Treatment Plant Title VI Complaint

As described above, the City not only broke its promise to close down the existing sewage treatment plant on the Northside, but in 2006, it also planned to site a *new* Broadway sewage treatment plant in Hillcrest. In response, in 2007, (b)(6) Privacy, (b)(7)(C) Enf. Privacy filed an administrative complaint under Title VI of the Civil Rights Act against the City for discrimination in the siting of the sewage treatment facility.⁸⁵ The complaint detailed how the sewage treatment plans perpetuated a long history of the City's "discriminatory past land uses" and "broken promise[s] to the residents of Hillcrest and Northside."⁸⁶

Only after (b)(6) Privacy, (b)(7)(C) Enf. Privacy filed the Title VI complaint with HUD and EPA, and HUD accepted the complaint for investigation, did the City agree in a settlement with (b)(6) Privacy, (b)(7)(C) Enf. Privacy to withdraw its plans for this new Broadway sewage treatment facility.⁸⁷

This history is particularly notable here, as the proposed Inner Harbor desalination plant, like the previous Broadway sewage treatment facility, would also be located in the northern part of Hillcrest on land owned by Flint Hills Resources approximately 1,000 feet from (b)(6) Privacy, (b)(7)(C) Enf. Privacy' home.

⁸³ See **Exhibit 6**, Central Business Development Plan, at 14-15 (acknowledging the need to develop affordable housing in Hillcrest and Washington-Coles and to address blighted and deteriorating properties).

⁸⁴ Conversation with (b)(6) Privacy, (b)(7)(C) Enf. Privacy founding member, (b)(6) Privacy, (b)(7)(C) Enf. Privacy, (September 23, 2022).

⁸⁵ **Exhibit 1**, (b)(6) Privacy, (b)(7)(C) Enf. Privacy v. City of Corpus Christi Title VI Complaint, at 1-2.

⁸⁶ *Id.* at 2.

⁸⁷ Personal communication with (b)(6) Privacy Officers; Letter from Karen Higginbotham, Office of Civil Rights Director, EPA, to (b)(6) Privacy, (b)(7)(C) Enf. Privacy member, (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Jan. 15 2009), (acknowledging settlement between the City and (b)(6) Privacy, (b)(7)(C) Enf. Privacy and accepting the (b)(6) Privacy, (b)(7)(C) Enf. Privacy formal withdrawal of the Title VI complaint), https://www.epa.gov/sites/default/files/2015-02/documents/04r-07-r6_dismissal_redacted.pdf.

2. The Harbor Bridge Title VI Complaint

From 2013-2015, the Texas Department of Transportation (“TxDOT”) led the environmental impact analysis and planning process for a new Harbor Bridge in Corpus Christi, including analyzing various alternative routes for the new bridge. Despite repeated objections from Hillcrest residents and civil rights groups, TxDOT ignored residents’ input and chose the “Red Route” as its preferred alternative, which would completely isolate Hillcrest on the 4th side in an industrial area and bring additional pollution and noise to the already overburdened neighborhood. TxDOT omitted the entire existence of Hillcrest residents in its planning process for the new Harbor Bridge, making statements in its feasibility study that the Red Route would “serve as a barrier between the newly developed Northside people-oriented area and the Port and industrial facilities located to the west of the red alternative.”⁸⁸ This ignored the over 400 Hillcrest families who lived to the west of the proposed Red Route.

TxDOT was not alone in ignoring the objections of Hillcrest residents. As early as September 2013, the City passed its own resolution recommending the Red Route as its preferred route for the Harbor Bridge.⁸⁹ (b)(6) Privacy, (b)(7)(C) Enf. Privacy a retired legal aid attorney and member of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy working with Hillcrest residents against the Red Route, remembered a City Council presentation about the proposed route of the Harbor Bridge where “[t]he mayor didn’t ask a single question, no one in the council asked a single question about how the community residents in the area were going to be affected by it. All they said was build a pretty bridge.”⁹⁰ This sentiment was reiterated by City spokesperson Kim Womack in June 2015 in response to Hillcrest residents’ opposition to the chosen Red Route: “We challenge the [Hillcrest] neighborhood in the area to think about all the possibilities instead of the negatives,” Womack said, “because the bridge is going to be beautiful and it’s going to allow for so many more things.”⁹¹

⁸⁸ TxDOT, Corpus Christi District, *U.S. 181 (Harbor Bridge) Feasibility Study*, at 8-8 (June 2003), available at <https://ccharborbridgeproject.files.wordpress.com/2012/03/harbor-bridge-feasibility-study.pdf>.

⁸⁹ City of Corpus Christi, File Number 130000775, (Sept. 10, 2013) (follow “1. Agenda Memo - Harbor Bridge” link) (resolution to recommend “Red Route” passed unanimously), <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=1469878&GUID=54209AC1-BAAE-4EDC-8473-CC3C0AEE8920&Options=&Search=>.

⁹⁰ Aman Azhar, *In Corpus Christi’s Hillcrest Neighborhood, Black Residents Feel Like they Are Living in a ‘Sacrifice Zone,’* INSIDE CLIMATE NEWS, July 4, 2021, <https://insideclimatenews.org/news/04072021/corpus-christi-texas-highway-infrastructure-justice/>.

⁹¹ Priscila Mosqueda, *A Neighborhood Apart*, TEXAS OBSERVER, June 1, 2015, <https://www.texasobserver.org/txdot-threatens-to-sever-corpus-christi-neighborhood/>.

In March 2015, Hillcrest residents filed another administrative complaint under Title VI of the Civil Rights Act, this time against TxDOT for the disparate impacts the Red Route of the new Harbor Bridge would cause to the Hillcrest and Washington Coles communities.⁹² After the Federal Highway Administration's ("FHWA") Office of Civil Rights accepted the complaint and put the highway project on hold while it undertook a Title VI investigation, community members organized and advocated for their neighborhood, leading FHWA and TxDOT to enter into a Voluntary Resolution Agreement in December 2015, which allowed the Harbor Bridge project to move forward, but required tens of millions of dollars for community mitigation, including a voluntary relocation program for Hillcrest residents, a community advisory board, and park improvements and historical preservation in Hillcrest and Washington Coles, among other provisions.⁹³ At the same time, the City, the Port of Corpus Christi, the Corpus Christi Housing Authority, and TxDOT also entered into another agreement, called the "Four Party Agreement," to implement portions of the Voluntary Resolution Agreement.⁹⁴

In January 2017, due to a dispute over the implementation of the Voluntary Resolution Agreement that caused lengthy delays in the voluntary relocation program,⁹⁵ FHWA issued a letter of finding concluding that TxDOT's selection of the Red Route for the Harbor Bridge "violates Title VI, because its location has an adverse and disparate impact on the basis of race, ... [and] less discriminatory alternatives are available."⁹⁶ In February 2017, FHWA and TxDOT resolved this dispute by amending the Voluntary Resolution Agreement.⁹⁷

⁹² **Exhibit 2**, Hillcrest Residents v. TxDOT Title VI Complaint, at 8-11.

⁹³ Voluntary Resolution Agreement between FHWA and TxDOT (December 2015), available at https://www.fhwa.dot.gov/civilrights/programs/docs/title_vi_compl_dec/VoluntaryResolutionAgreement.pdf.

⁹⁴ Four Party Agreement (December 2015), available at <https://ccharborbridgerelocation.com/wp-content/uploads/2019/02/Four-Party-Agreement.pdf>.

⁹⁵ Alexa Ura, *Texas dispute with feds leaves Corpus Christi neighborhood in housing limbo*, TEXAS TRIBUNE, Jan 25, 2017, <https://www.texastribune.org/2017/01/25/dispute-over-texas-bridge-leaves-corpus-christi-re/>.

⁹⁶ Letter from Irene Rico, Associate Administrator for Civil Rights, FHWA, to James Bass, Executive Director, Texas Department of Transportation, *Subject: Letter of Finding (LOF), DOT #2015-0124*, at 36 (January 18, 2017), available at https://www.fhwa.dot.gov/civilrights/programs/docs/title_vi_compl_dec/2015-0124.pdf.

⁹⁷ Letter from James M. Bass, Executive Director, Texas Department of Transportation, to Walter Waidelich, Jr., Acting Deputy Administrator, Federal Highway Administration, *Subject: Voluntary Resolution Agreement (VRA) of December 17, 2015 – US 181 Harbor Bridge Replacement Project in Corpus Christi, Texas* (February 1, 2017), https://www.fhwa.dot.gov/civilrights/programs/docs/title_vi_compl_dec/harborbridgeagreement.pdf.

The construction of the new Harbor Bridge along the Red Route is ongoing, and while over 250 households moved out of Hillcrest as part of the relocation program, many people remain in the neighborhood, either by choice or due to legal or technical barriers to participating in the relocation program. Unfortunately, many challenges and unexpected issues have arisen in the implementation of the Harbor Bridge Title VI agreement.⁹⁸ In particular, none of the promised parks improvements on the Northside, which the City was supposed to partner with TxDOT to complete, have been completed to date.⁹⁹

While Hillcrest residents have been waiting to see the promised benefits of parks mitigation from the Harbor Bridge Agreement, they have suffered the burdens of increasing isolation from road closures, vacant lots and abandoned buildings, and additional daily health and safety hazards from dust, incessant noise, air pollution, and truck traffic in and around their neighborhood due to the construction of the new Harbor Bridge. The attached presentation by (b)(6) Privacy, (b)(7)(C) Enf. Privacy officers and members from a meeting with City officials in May 2022 includes descriptions and pictures of these daily hazards and burdens placed on the residents of Hillcrest.¹⁰⁰ As one long-time resident explained, “[t]he first strike against the neighborhood was the refineries moving in next to the residential area and the plan to construct a new harbor bridge drove the last nail in the coffin.”¹⁰¹

Additionally, the construction of the new Harbor Bridge has been delayed repeatedly, subjecting Hillcrest residents to many more years of construction impacts

⁹⁸ See (b)(6) Privacy, (b)(7)(C) Enf. Privacy *The Hillcrest Documentation Project: A Community perspective on the Hillcrest neighborhoods battle for environmental justice* (April 20, 2021), <https://storymaps.arcgis.com/stories/2e7558a7cb4c4e36ac5afdc48269eed9>; Harold D. Hunt and Clare Losey, *Crossing the Bridge: Lessons Learned from Hillcrest Relocation*, Texas A&M University Texas Real Estate Research Center (Mar. 6, 2020), <https://www.recenter.tamu.edu/articles/tierra-grande/Crossing-the-Bridge-2262>.

⁹⁹ Communications with (b)(6) Privacy, (b)(7)(C) Enf. Privacy leaders; see (b)(6) Privacy, (b)(7)(C) Enf. Privacy *Forum: Hillcrest neighborhood continues to fight against erasure*, Corpus Christi Caller Times, May 7, 2021, (b)(6) Privacy, (b)(7)(C) Enf. Privacy (“[T]hey promised to restore and enhance our parks, including a new park with a mural to preserve our heritage at the site of the now closed Washington Elementary School. But we are still waiting for these promises.”).

¹⁰⁰ **Exhibit 8**, Hillcrest PowerPoint Presentation, at slides 10-40.

¹⁰¹ Dan Gearino, *Some Black residents of Corpus Christi feel they’re living in a ‘sacrifice zone’*, THE DAILY NEWS, Jul. 11 2021, https://www.galvnews.com/article_e9715cf6-bc15-5c42-a803-934ab2743f99.html

and road closures than what was initially promised.¹⁰² Furthermore, TxDOT recently issued a Notice of Default to the Harbor Bridge contractor for failure to rectify major design flaws and safety deficiencies.¹⁰³ Completion of the project is now uncertain, as TxDOT has indicated that, “[d]ue to the complexity of the project and the seriousness of the issues, a timeline for resuming construction has not been determined.”¹⁰⁴ And, if the new bridge is ever completed, the old one will be torn down, subjecting the community to what will likely be a drawn-out demolition project.¹⁰⁵

E. Health Disparities and Environmental Justice Indicators in Hillcrest

EPA’s Office of Resource Conservation and Recovery has acknowledged that “[t]he Hillcrest community in Corpus Christi, Texas, is an environmental justice community that sits on the fence line of an area known as ‘Refinery Row,’ which has the densest concentration of refineries in the nation.”¹⁰⁶ The City’s actions have not only increased industrialization in Hillcrest but have led to dire outcomes for Hillcrest residents.

A 2016 study found that residents of Corpus Christi’s Refinery Row, which includes Hillcrest, suffer from disproportionately high incidences of cancers and birth defects.¹⁰⁷ The Study found exposure to maximum levels of benzene, hydrogen sulfide, particulate matter, and sulfur dioxide, detected in Refinery Row air “indicated levels that could potentially result in respiratory health effects in susceptible populations like people with asthma or other related respiratory illness.”¹⁰⁸ While elevated asthma in Refinery Row was not documented, the study noted that “[e]xposure to petroleum refinery emissions has been shown to increase adverse respiratory effects in

¹⁰² George Kevin Jordan, *Texas DOT halts \$803M Harbor Bridge project over safety issues*, CONSTRUCTION DIVE, Aug. 30, 2022, <https://www.constructiondive.com/news/texas-dot-halts-harbor-bridge-project-safety-issues/630824/#:~:text=The%20%24802.9%20million%20Harbor%20Bridge,31>.

¹⁰³ TxDOT, Press release: *Notice of default issued to Harbor Bridge developer* (Aug. 16, 2022), <https://www.txdot.gov/about/newsroom/local/corpus-christi/notice-of-default-issued-to-harbor-bridge-developer.html>.

¹⁰⁴ *Id.*

¹⁰⁵ Dan Gearino, *Some Black residents of Corpus Christi feel they’re living in a ‘sacrifice zone’*, THE DAILY NEWS, Jul. 11 2021, https://www.galvnews.com/article_e9715cf6-bc15-5c42-a803-934ab2743f99.html.

¹⁰⁶ EPA Office of Resource Conservation and Recovery, *Compendium of Key Community Engagement Practices at RCRA sites* (Jan. 4, 2013), available at <https://www.epa.gov/sites/default/files/2016-11/documents/cei-comp.pdf>.

¹⁰⁷ Agency for Toxic Substances and Disease Registry, *Public Health Assessment for Corpus Christi Refineries at 54-55* (Aug. 2016), available at https://www.atsdr.cdc.gov/HAC/pha/CorpusChristi/Corpus_Christi_Refinery_Row_PHA_508.pdf.

¹⁰⁸ *Id.* at 58.

children.”¹⁰⁹ It went on to state that Nueces county has higher rates of asthma hospitalizations among children than Texas as a whole.¹¹⁰ Finally, the study also noted that residents have expressed concerns over cancers, birth defects, respiratory illnesses, brain tumors, abdominal spasms, skin rashes, eye irritation, burning throat, miscarriages, and stress, among other health issues.¹¹¹

The mixture of chemicals detected in Refinery Row air, including benzene, hydrogen sulfide, particulate matter, and sulfur dioxide, can lead to “temporary respiratory effects such as nose and throat irritation and shortness of breath; and neurological effects such as headaches and other effects related to odors in the community”¹¹² Long term exposure to the mixture of chemicals in the outdoor air of Refinery Row “increases the risk of cancer.”¹¹³ Harmful air pollution impacts to Hillcrest residents from refineries and storage tanks are compounded by the impacts of noise pollution, sirens, dust and traffic, light from industrial flares, vibrations, and foul odors.¹¹⁴

Another study from 2021 found that residents in Hillcrest have a 15 year lower life expectancy than a high-income neighborhood in Corpus Christi just 10 miles away: “a resident in [Hillcrest,] a predominantly low-income community of color can expect to live to just 70 years, compared to a resident in a predominantly high-income neighborhood who can live to 85 years.”¹¹⁵ The same study found that a “disproportionate burden of COVID-19 disease, death and loss” were in most cases, found in the same communities facing existing “social, economic, environmental, and health-related challenges,” in particular in “low-income communities and communities of color in the Northside including Hillcrest and Washington-Coles[.]”¹¹⁶ Specifically, the study highlighted that “the ZIP codes with the highest prevalence of diabetes, high

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 54-55.

¹¹² *Id.* at 61; [see also](https://www.atsdr.cdc.gov/HAC/pha/CorpusChristi/Brochure_Fact_Sheet_508.pdf) Agency for Toxic Substances and Disease Registry, Corpus Christi Refinery Row Brochure (Aug. 2016), available at https://www.atsdr.cdc.gov/HAC/pha/CorpusChristi/Brochure_Fact_Sheet_508.pdf.

¹¹³ Agency for Toxic Substances and Disease Registry, Public Health Assessment for Corpus Christi Refineries, at 5 (Aug. 2016), https://www.atsdr.cdc.gov/HAC/pha/CorpusChristi/Corpus_Christi_Refinery_Row_PHA_508.pdf.

¹¹⁴ *See Exhibit 2*, Hillcrest Residents v. TxDOT Title VI Complaint, at 4-6, 10-11.

¹¹⁵ Texas Health Institute, Advancing Health Equity in Nueces Cty, Amid and Beyond the COVID-19 Pandemic, at 6 (April 2021), <https://www.nuecesco.com/home/showpublisheddocument/27938/637592887627930000>.

¹¹⁶ *Id.* at 37.

blood pressure, coronary heart disease and obesity are predominantly Hispanic and Black communities [], impacted by a legacy of discriminatory policies of the past, and at risk for continued disadvantage in the present.”¹¹⁷

EPA’s EJ Screen tool supports these findings of existing disproportionate health and safety burdens in Hillcrest. Hillcrest ranks very high on numerous EJ Indexes, which consider both demographic and environmental health data, including above the 90th percentile in Texas and nationally for Traffic Proximity and Volume, RMP Proximity, Hazardous Waste Proximity and Wastewater Discharge Indicator.¹¹⁸

F. Population and Demographics of the Hillcrest Neighborhood

About 75-100 households currently live in the Hillcrest neighborhood.¹¹⁹ As shown in Table 1, the Hillcrest neighborhood still has a much higher percentage African American population than the City as a whole and a higher percentage total population of people of color than the City as a whole.¹²⁰

Ethnicity and Race	Hillcrest (Census Tract 5)	City of Corpus Christi
Non-Hispanic White	3.6%	28.8%
Black or African American	35.1%	3.9%

Table 1, Comparison of 2020: ACS 5-year estimate data for Corpus Christi and Census Tract 5.¹²¹

¹¹⁷ *Id.* at 18.

¹¹⁸ See EJSCREEN Report for Hillcrest (Sep. 23, 2022), attached as **Exhibit 9**.

¹¹⁹ Communication with (b)(6) Privacy, (b)(7)(C) Enf. Privacy leaders.

¹²⁰ See U.S. Census, Corpus Christi Tract 5, DP05 2020: ACS 5-yr estimates data profiles, <https://data.census.gov/cedsci/table?q=1400000US48355000500&tid=ACSDP5Y2020.DP05> (last visited Oct. 14, 2022); U.S. Census, City of Corpus Christi, DP05 2020: ACS 5-yr estimates data profiles, <https://data.census.gov/cedsci/table?q=corpus%20christi%20&tid=ACSDP5Y2020.DP05> (last visited Oct. 14, 2022). These numbers include some residents in neighborhoods just outside of Hillcrest because of the location of the census block groups. Past numbers from ACS 2014-2018 data for Hillcrest are consistent with these numbers (31% African American, 3% non-Hispanic White, 66% Hispanic/Latino). See EJSCREEN ACS Summary Report for Hillcrest, attached as **Exhibit 10**.

¹²¹ *Id.*

Households in Hillcrest also have lower median incomes, higher levels of poverty, and a higher percentage of people living without healthcare coverage compared to the City as a whole.

	Hillcrest (Census Tract 5)	City of Corpus Christi
Health: Living without healthcare coverage	43.9%	18.6%
Income: Median household income	\$41,875	\$59,812
Poverty: poverty status in the past 12 months	24.3%	18.2%
Education: Bachelor's degree or higher	3.3%	24.6%

Table 2, Comparison of U.S. Census Profile for Corpus Christi and Census Tract 5.¹²²

G. The City's Inner Harbor Desalination Plant

The City has proposed two locations for building and operating desalination plants in the Corpus Christi region – the Inner Harbor and La Quinta Channel.¹²³ Other entities in the region, such as the Port of Corpus Christi, are also pursuing other locations for desalination plants to produce water for expanding industrial development in the region.¹²⁴

In public comments at a Port of Corpus Christi Commission meeting in May 2022 related to the Port's proposed Harbor Island desalination plant, Nueces County Judge

¹²² See U.S. Census, Corpus Christi Tract 5 U.S. Census profile, [https://data.census.gov/cedsci/profile/Census Tract 5, Nueces County, Texas?g=1400000US48355000500](https://data.census.gov/cedsci/profile/Census%20Tract%205,%20Nueces%20County,%20Texas?g=1400000US48355000500) (last visited Oct. 14, 2022); U.S. Census, City of Corpus Christi U.S. Census profile, [https://data.census.gov/cedsci/profile/Corpus Christi city, Texas?g=1600000US4817000](https://data.census.gov/cedsci/profile/Corpus%20Christi%20city,%20Texas?g=1600000US4817000) (last visited Oct. 14, 2022).

¹²³ See City of Corpus Christi, Applications and Permits, <https://www.desal.cctexas.com/applications-permits>.

¹²⁴ See Coastal Alliance to Protect our Environment, *Baywater Desalination* (last visited October 22, 2022), <https://capetx.com/desalination/>; see also Coastal Alliance to Protect our Environment, *It's a Fact, Jack –It Ain't For You and Me!* (last visited October 22, 2022), <https://capetx.com/its-a-fact-jack-it-aint-for-you-and-me/>.

and former Port of Corpus Christi Commissioner Barbara Canales provided this statement about the City's proposed Inner Harbor desalination plant:

[W]e have been working on water, here at the Port of Corpus Christi, for years. And we believe that science will drive the best decisions, and I can tell you, from my work with the breakwater, with the Harte Institute that *inside that Inner Harbor is the worst place for a second desal permit*. Because we already know that the science tells us that there is a lack of water exchange, that hypoxia and anoxia will occur, and how are we going to discuss oysters in the bay if we're going to drive salinity with no water exchange.¹²⁵

While the City initially proposed and applied for permits for two locations, its recent actions indicate that it is now prioritizing and moving forward with the Inner Harbor site ahead of any other site. For example, the City recently moved forward to purchase land in Hillcrest for the Inner Harbor site.¹²⁶ In addition, the City has asked TCEQ to prioritize its review of the City's permit application for the Inner Harbor location over the La Quinta application.¹²⁷ The City's capital budget for fiscal years 2022-23 also allocated \$220,736,326 in funding for seawater desalination for fiscal years 2023 to 2025, specifically for the Inner Harbor site, and only included an unnamed "second desalination facility" in its longer-term plans.¹²⁸

As discussed further in Section VI., below, City council members have stated that despite the two possible desalination locations and other available alternative water

¹²⁵ Judge Canales Comments at the Port of Corpus Christi Authority Meeting, at 15:29, May 24, 2022, https://portofcorpuschristi.granicus.com/player/clip/359?view_id=1&redirect=true&h=754251d9913095edc452804d6cb7c1a1.

¹²⁶ City of Corpus Christi, *Motion to authorize preparation of final contract documents for the purchase of approximately 12.5 acres of property and 11 acres of easements from Flint Hills Resources Corpus Christi, LLC and related entities in the vicinity of Nueces Bay Boulevard, Broadway Street, and the Inner Harbor for a seawater desalination plant in an amount of \$5,455,000, which will include an option period of 3 years and potential additional option time to allow for permitting and prerequisites related to a development agreement pursuant to Texas Local Government Code Chapter 212, a right to repurchase in the event of termination of the project, and requirements related to insurance, soil management, environmental sampling, and limits on use of the property*, File number 22-0765, Action Details (2022), <https://corpuschristi.legistar.com/LegislationDetail.aspx?ID=5561252&GUID=C28B3E7E-FA10-4D73-A7E2-3F16FEC2CE2B>.

¹²⁷ See Email from Brook McGregor, TCEQ, to Esteban Ramos, City of Corpus Christi (Feb. 15, 2022) ("The City would like to request that WRPERM 13676 "Inner Harbor" water rights application be expedited from our other water rights application WRPERM 13675 "La Quinta.") (obtained by public records request), attached as **Exhibit 11**.

¹²⁸ City of Corpus Christi, Proposed Capital Budget, at 318, 321, 369 (2022-2023), <https://www.cctexas.com/sites/default/files/FY-2022-2023-Proposed-Capital-Budget.pdf>.

sources, they really “only ha[d] one option” and that the City had “put all our apples in one basket” – the Inner Harbor desalination location. A City spokesperson also stated that the City chose the Inner Harbor location because it would be in “an industrial area” and thus would not be located in “a neighborhood,” completely erasing the existence of the Hillcrest neighborhood.

V. Legal Background

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

HUD and EPA’s implementing regulations state that this prohibition applies to any program or activity receiving HUD or EPA assistance, and then list more specific discriminatory acts that are prohibited.¹²⁹ For example, EPA’s regulations prohibit recipients from choosing “a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex.”¹³⁰ HUD’s regulations prohibit “subject[ing] a person to segregation or separate treatment in any manner related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity.”¹³¹

Both HUD and EPA’s implementing regulations prohibit recipients from making decisions which have the *purpose or effect* of subjecting individuals to discrimination because of their race, color, or national origin.¹³² This prohibits both intentional discrimination and disparate impacts.

A. Intentional Discrimination Claims

Intentional discrimination may be proven using direct or circumstantial evidence. Discriminatory intent may be established by direct evidence, where the evidence “if believed, proves the fact [of discriminatory intent] without inference or

¹²⁹ 24 C.F.R. § 1.4(a), (b)(i-v) (HUD); 40 C.F.R. § 7.30, 7.35(a)(1)-(7) (EPA).

¹³⁰ 40 C.F.R. § 7.35(c); *see also* 28 C.F.R. § 42.104(b)(3) (DOJ implementing regulations).

¹³¹ 24 C.F.R. § 1.4(b)(iii).

¹³² 24 C.F.R. § 1.4(b)(2)(i); 40 C.F.R. § 7.35(c).

presumption.”¹³³ In contrast, circumstantial evidence can include “suspicious timing, inappropriate remarks, and comparative evidence of systematically more favorable treatment toward similarly situated [individuals] not sharing the protected characteristic...”¹³⁴

Discriminatory purpose need not be the only motive; a violation occurs where the evidence shows that the entity adopted the challenged policy “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”¹³⁵ *Arlington Heights* and its progeny have set forth a non-exhaustive list of factors to apply when “[d]etermining whether invidious discriminatory purpose was a motivating factor” in the recipients challenged action, such as, statistics demonstrating “a clear pattern, unexplainable on grounds other than race;” “[t]he historical background of the decision;” “[t]he specific sequence of events leading up to the challenged decision;” the defendant’s departures from “normal procedural sequence” or substantive conclusions, and the “legislative or administrative history.”¹³⁶

To demonstrate discriminatory intent using the *Arlington Heights* factors, with either direct or circumstantial evidence, the plaintiff need provide “very little such evidence ... to raise a genuine issue of fact ...; any indication of discriminatory motive ... may suffice to raise a question that can only be resolved by a fact-finder.”¹³⁷ Finally, under *Arlington Heights*, the court or agency must conduct a cumulative assessment of the direct, circumstantial, and statistical evidence to determine whether the challenged action was motivated in part by invidious discriminatory purpose.¹³⁸

¹³³ *Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005) (citation omitted); see also DOJ Title VI Legal Manual, Section VI.B.1...

¹³⁴ *Loyd v. Phillips Bros., Inc.*, 25 F.3d 518, 522 (7th Cir. 1994); accord *Troupe v. May Dep’t Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994); see also DOJ Title VI Legal Manual at Section VI.B.2.

¹³⁵ *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

¹³⁶ *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977); *Pac. Shores Props.*, 730 F.3d at 1159 (stating that, “These factors are non-exhaustive.”); 429 U.S. at 266–68; *Faith Action for Cmty. Equity v. Hawai’i*, No. Civ. 13-00450 SOM, 2015 WL 751134, at *7 (D. Haw. Feb. 23, 2015) (Title VI case citing *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1158–59 (9th Cir. 2013)); see also *Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 819 (4th Cir. 1995) (adding to the *Arlington Heights* factors evidence of a “consistent pattern” of actions of decision-makers that have a much greater harm on minorities than on non- minorities).

¹³⁷ *Pac. Shores Props.*, 730 F.3d at 1159 (quoting *Schnidrig v. Columbia Mach., Inc.*, 80 F.3d 1406, 1409 (9th Cir.1996)

¹³⁸ See *Arlington Heights*, 429 U.S. at 266.

B. Disparate Impact Claims

Courts have developed analytical frameworks for assessing disparate impact claims in litigation that inform agencies Title VI investigative processes.¹³⁹ Some agencies have also established their own guidance documents to aid in the analysis for determining compliance in certain types of disparate impact cases. The three-part test established by courts and the DOJ Title VI Manual is as follows:

First, does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? Some courts refer to this first inquiry as the “**prima facie**” showing.

If so, can the recipient demonstrate the existence of a **substantial legitimate justification** for the policy or practice? A violation is still established if the record shows the justification offered by the recipient was **pretextual**.

Finally, is there an **alternative** that would achieve the same legitimate objective but **with less of a discriminatory effect**? If such an alternative is available to the recipient, even if the recipient establishes a justification, the policy or practice will still violate disparate impact regulations.¹⁴⁰

VI. Argument

A. The City’s Choice of the Inner Harbor Desalination Plant Site is Intentionally Discriminatory

The City is well aware of the history of segregation and discrimination and disparate health outcomes in the Hillcrest neighborhood, including the two successful Title VI complaints filed against the City and TxDOT in the last 15 years. Remarkably, the exact site where the City plans to locate the Inner Harbor plant was supposed to be a buffer zone to separate homes from refineries and is very close to where the City previously tried (but failed due to a Title VI complaint) to locate the City’s new Broadway sewage treatment plant.¹⁴¹

¹³⁹ DOJ Title VI Legal Manual, at Section VII.C..

¹⁴⁰ *Id.* (internal citations omitted).

¹⁴¹ See Section IV.D.1. *supra*; see also Brendan Gibbons, *On the Texas Gulf Coast, a race to build desalination plants to serve a thirsty oil & gas industry*, OIL AND GAS WATCH (Aug. 23, 2022), <https://news.oilandgaswatch.org/post/on-the-texas-coastal-bend-a-race-for-desalination-to-serve-a-thirsty-oil-gas-industry> (b)(6) Privacy, (b)(7)(C) Enf. Privacy of Brooks AME Worship Center in Hillcrest and co-

Now, the City has intentionally chosen to burden the Hillcrest community yet again by placing a new industrial plant and its associated harms in Hillcrest for the benefit of industry and the City. This historical background of siting industrial facilities in the Hillcrest neighborhood along with the undisputed racial disparities between Hillcrest and the City demonstrates “a clear pattern, unexplainable on grounds other than race.”¹⁴²

On March 18, 2021, at a public meeting for a draft water permit for the Inner Harbor facility, in response to a question about what the City considers when evaluating the proposed Inner Harbor facility, a City official explained, “the proposed location for this is an industrial area, and so it’s not going to be ... downtown or you know along ocean drive, *or in a neighborhood*, it’s in an industrial area so that was important in deciding [the Inner Harbor] just because having a plant over there is not going to interrupt people.”¹⁴³ The City official repeated this rationale later in the public meeting, stating, “Like I said earlier . . . since this an industrial area, that was part of the reason for the siting over here, to get [the desalination plant] ... a little more out of the way.”¹⁴⁴ These statements continues a long pattern of the complete erasure of the African American and Hispanic people living in the Hillcrest neighborhood by the City and other government entities during city planning, the siting of highways like the Harbor Bridge and I-37, the zoning of industrial facilities like the Broadway wastewater treatment plant, and provision of city services, as documented in Section IV, above.

Long-time Hillcrest resident and (b)(6) Privacy, (b)(7)(C) Enf. Privacy officer (b)(6) Privacy, (b)(7)(C) Enf. Privacy responded during his public comment on the water permit:

We still live here, there are residents here. Whether there's 1, or 500, whatever the count may be there are people who are living here, and *we resent that you call us an industrial area*. We were here long before the refineries started refining. The [industrial] area that you're speaking of is out of the City limits. The refineries ... are out of the city limits, that's why they're allowed to do what they do.

(b)(6) Privacy, (b)(7)(C) Enf. Privacy explained, this “was supposed to be buffer zone...Now they want to put desalination here.”)

¹⁴² *Arlington Heights*, 429 U.S. at 266.

¹⁴³ TCEQ, public meeting on the City of Corpus Christi’s water use permit application, at 49:30 (March 18, 2021) (emphasis added) (Statements made by Kevin Norton, Water Utilities Director), <https://archive.org/details/2021.03.18-pm-informal-13676>.

¹⁴⁴ *Id.* at 1:02:50 (March 18, 2021) (emphasis added) (Statements made by Kevin Norton, Water Utilities Director).

That doesn't give you the right to come into our neighborhood and do what you want ... that area is still residential.¹⁴⁵

During a later in-person meeting with the City manager and City representative for their district in June 2022, (b)(6) Privacy, (b)(7)(C) Enf. Privacy officers stated “[w]e now know that the City considers the neighborhood as ‘the inner harbor’, *as if we no longer exist.*”¹⁴⁶

The City official’s statement at the public meeting also provides comparative evidence that the City provides “systematically more favorable treatment toward similarly situated [individuals] not sharing the protected characteristic.”¹⁴⁷ That is, the statement makes it clear that the City would not “interrupt people” in a “neighborhood,” especially not a neighborhood along Ocean Drive, by choosing to site a desalination plant near them. According to EJ Screen, in contrast to the historic African American community of Hillcrest, the area surrounding Ocean Drive only 2% African American/Black, 48% Non-Hispanic White, and 87% White.¹⁴⁸

¹⁴⁵ TCEQ, public meeting on the City of Corpus Christi’s water use permit application, at 42:12 (March 18, 2021) (emphasis added) (Statements made by (b)(6) Privacy, (b)(7)(C) Enf. Privacy Officer) (follow “Listen to Public Meeting MP3” link),

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

¹⁴⁶ **Exhibit 8**, Hillcrest PowerPoint Presentation, at slide 49.

¹⁴⁷ *Loyd v. Phillips Bros., Inc.*, 25 F.3d 518, 522 (7th Cir. 1994); accord *Troupe v. May Dep’t Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994).

¹⁴⁸ See EJSCREEN ACS Summary Report for area along Ocean Drive, attached as **Exhibit 12**.

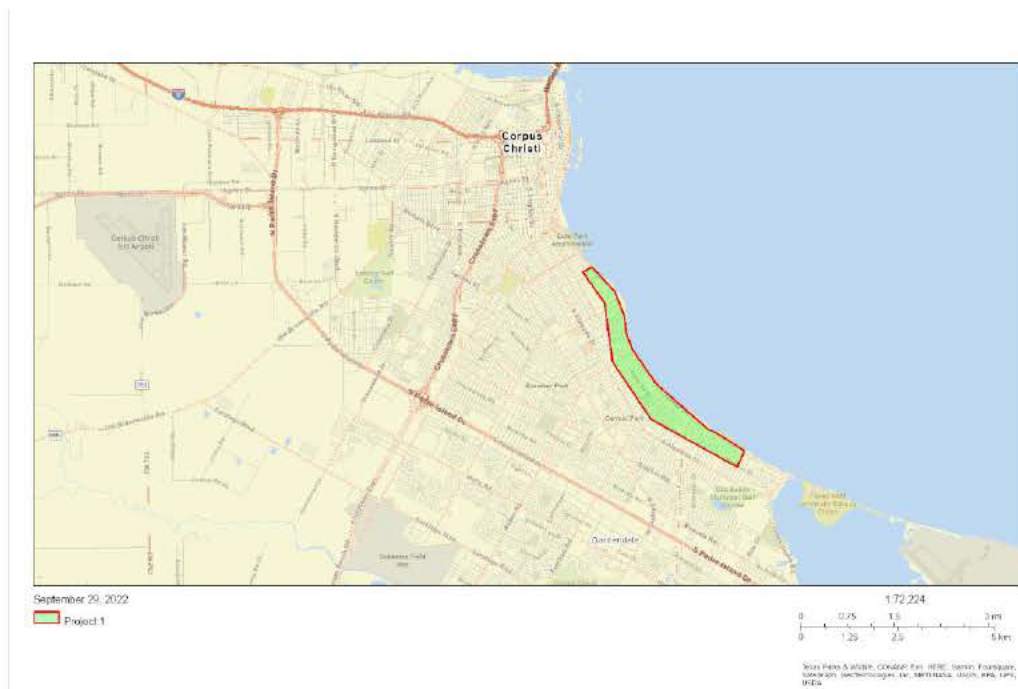


Figure 4, showing neighborhoods along Ocean Drive¹⁴⁹

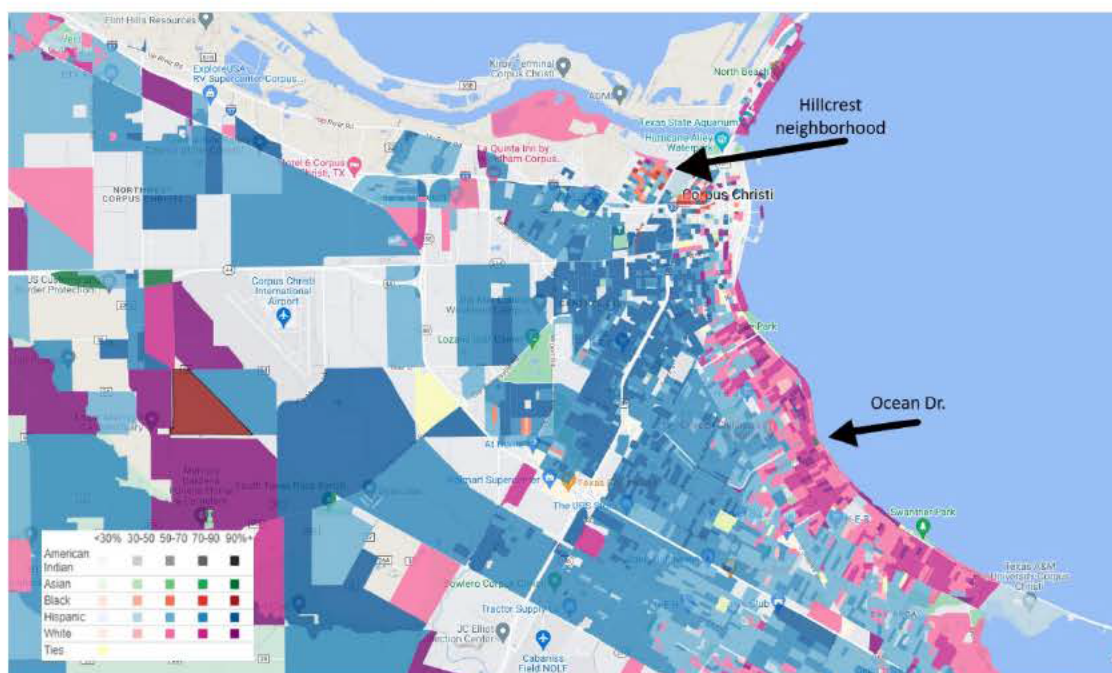


Figure 5, showing Corpus Christi demographic data¹⁵⁰

¹⁴⁹ See EJSscreen Report (Version 2.0) for specified area along Ocean Drive, attached as Exhibit 13.

¹⁵⁰ Corpus Christi Demographic Map, compiled by Justice Map using census data from the Census Bureau's 2010 Census and the 2020 American Community Survey (5-year summary), <http://www.justicemap.org/jtiny=22952>.

Not only is Ocean Drive whiter and more affluent than Hillcrest, but its residents do not face the same existing levels of pollution or health risks as Hillcrest residents.

Selected EJ Indexes for:	Hillcrest: percentile in state	Ocean Drive: percentile in state	Hillcrest: percentile in U.S.	Ocean Drive: percentile in U.S.
Particulate Matter 2.5	79	42	91	64
Ozone	68	40	83	61
2017 Diesel Particulate Matter	84	41	87	61
2017 Air Toxics Cancer Risk	68	41	83	61
2017 Air Toxics Respiratory HI	74	40	86	61
Traffic Proximity	92	54	94	70
Lead Paint	94	57	94	66
Superfund Proximity	85	47	90	65
RMP Facility Proximity	97	40	99	61
Hazardous Waste Proximity	98	50	95	65
Underground Storage Tanks	93	47	92	66

Table 3, EJScreen Report comparison between Hillcrest and Ocean Drive neighborhoods¹⁵¹

Many other Hillcrest residents and officers of (b)(6) Privacy, (b)(7)(C) Enf. Privacy spoke at the March 2021 public meeting in opposition to the Inner Harbor desalination plant and (b)(6) Privacy submitted written comments raising environmental justice and civil rights concerns.¹⁵² (b)(6) Privacy, (b)(7)(C) Enf. Privacy submitted supplemental comments after the public meeting stating that the City's comment:

¹⁵¹ See **Exhibit 13**, EJSCREEN Report for specified area along Ocean Drive; **Exhibit 9**, EJSCREEN Report for Hillcrest neighborhood.

¹⁵² See TCEQ Commissioners Integrated Database, All Comments on Water Rights Permit No. 13676, https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=267288782020058&detail=protestants&StartRow=1&EndRow=1&Step=5&requesttimeout=5000; Comments and Hearing

reflects the on-going and historical institutional discrimination exacted upon this neighborhood by the City of Corpus Christi, and their continuing failure to acknowledge the lives, or even the presence, of the residents. This neighborhood will be disparately impacted by the location of this massive facility and that impact must be assessed before any Permit is granted.¹⁵³

Despite these civil rights concerns and clear opposition from the Hillcrest community at the public meeting and numerous City Council meetings since, “the City made no effort to meet with the neighborhood to discuss the City’s plans” either while it was examining alternatives for meeting its water needs or for over a year after the public meeting on the Inner Harbor water permit.¹⁵⁴ In fact, the City did not meet directly with Hillcrest community leaders until it had already chosen to move forward with the Inner Harbor location over the other alternative location for desalination.¹⁵⁵

The City has demonstrated “a clear pattern, unexplainable on grounds other than race,” in its targeted industrialization of the historic African American community of Hillcrest.¹⁵⁶ Repeatedly, residents of Hillcrest have demanded improvements for their community. The City has promised investment in the neighborhood, only to encourage industrial expansion while starving the area of much needed resources, resources that the City’s own planning documents have identified would bring improvement to the area. As noted above in Section IV.C., the City’s 2013 business development plan called for the City to address the issue of blighted and vacant lots through a special

Request regarding Application of City of Corpus Christi for Water Rights Permit No. 13676, submitted by Perales, Allmon & Ice, P.C. and Earthjustice on behalf of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy (March 18, 2021), available at

https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=172689672021077&doc_name=2021%2E03%2E18%20HRA%20Public%20Comment%20and%20Hearing%20Request%2Epdf

¹⁵³ Supplemental Comments on Proposed Water Rights Permit No. 13676 by (b)(6) Privacy, (b)(7)(C) Enf. Privacy to TCEQ (April 1, 2021),

https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=903566792021091&doc_name=1%20%2D%20my%20written%20supplemental%20comments%20to%20TCEQ%2Epdf.

¹⁵⁴ **Exhibit 8**, Hillcrest PowerPoint Presentation, slide 48.

¹⁵⁵ See Section III.C. *supra* (noting that on May 10, 2022, the City Council authorized the City Manager to proceed with the purchase of the property for the Inner Harbor desalination plant, and almost two weeks later on May 23, 2022, the City Manager met with Hillcrest residents and community leaders and confirmed that the City was proceeding with locating the City’s desalination facility in Hillcrest instead of the other alternative sites the City had considered.)

¹⁵⁶ *Arlington Heights*, 429 U.S. at 266.

enforcement team and for the installation of streetlights for public safety.¹⁵⁷ Furthermore, that plan called for the City to “[i]nventory established residential neighborhoods (priority given to Hillcrest and Washington-Coles neighborhoods) with higher crime rates to determine whether adequate lighting and environmental design techniques are put into place to achieve a higher degree of safety, and establish a Neighborhood Watch program within the Hillcrest neighborhood.”¹⁵⁸ However, the City abandoned this plan, never implementing it. Hillcrest residents still have inadequate street lighting, and vacant and blighted properties still crowd the community.¹⁵⁹

The City also departed from “normal procedural sequence” in selecting the Inner Harbor site without serious consideration of alternative sites.¹⁶⁰ For example, council members made statements that indicate that while other sites were considered, the Inner Harbor site was the only serious contender. As one Council member stated/observed:

If we’re truly only looking at the Inner Harbor, and we really haven’t done that much work on La Quinta or any other site, you’re only boxing us in to one option . . . we got to have the other information about other true options, with detailed information about costs, viability . . . until we get that information, it’s hard to spend 200 million on a project *if we only have one option*.¹⁶¹

In June 2021, the same Council member asked for an analysis to “compare apples to apples on a per 1000 gallon basis over a long period of time, not just in the initial costs.”¹⁶² However, by December 2021, the information that would have allowed a meaningful side-by-comparison had seemingly never been provided, leading that Council member to abstain from voting to approve the option to purchase the site for the Inner Harbor desalination plant. He went on to state:

¹⁵⁷ See **Exhibit 6**, City of Corpus Christi, Central Business Development Plan.

¹⁵⁸ *Id.* at 21.

¹⁵⁹ **Exhibit 8**, Hillcrest PowerPoint Presentation.

¹⁶⁰ *Arlington Heights*, 429 U.S. at 266.

¹⁶¹ City Council Meeting, desal update at 1:44:00 by Gil Hernandez (Oct. 19, 2021) (emphasis added), https://corpuschristi.granicus.com/player/clip/1597?view_id=2&redirect=true&h=cca6ee30c92864d60c5f816242937305.

¹⁶² City Council Meeting, desal update at 1:21:06 by Gil Hernandez (June 29, 2021) https://corpuschristi.granicus.com/player/clip/1546?view_id=2&redirect=true&h=38ea2222cc68a3f6937263ec29eb8e26.

I have asked on numerous occasions about alternatives, in terms of how we go about [desalination] and I have yet to get any response from City staff, it feels like I'm talking to a wall. I don't get any information whatsoever from our water department, from our city manager, from any member of staff. I feel it's disrespectful, it's uncalled for, and it should be provided to me before making a decision of this kind of magnitude. Ultimately, this is going to be a 200 million dollar decision on that we're going to put on the rate payers of our community. Because of that, I will be voting no because I have yet to receive that information. Nothing. Absolutely nothing.¹⁶³

Instead of seeking more comparative information on the alternatives as the council member requested, the City continued solidifying its plans to site the desalination plant at the Inner Harbor location. Without this basic information about alternative options to guide its decision, the City went on to approve the option to purchase the Inner Harbor site. Another council member's statements support this conclusion:

Everyone knows, I've always made it clear that I'm not a big supporter of the Inner Harbor site. I have some concerns, as staff brought to council's attention that they've done more work on the inner harbor, I understand that, but staff has had plenty of time to be working on both sites, to give us proper information for both sites to be able to compare apples to apples, cost to cost, and yet we've only put all our apples in one basket, which is the Inner Harbor. I think that's inexcusable, staff should've been working on both sites from the beginning, not just one . . . This has been being talked about for years, they've had plenty of time to do the research on both areas. At this point, because the Inner Harbor is in the resolution, I will be voting no.¹⁶⁴

These statements lead to the inference that the Inner Harbor site was the only option given serious consideration by the City, constituting a serious departure from procedural sequence. The City's choice not to consider alternatives is more confounding

¹⁶³ City Council Meeting, desal update at 2:53:40 by Gil Hernandez (Dec. 14, 2021) https://corpuschristi.granicus.com/player/clip/1611?view_id=2&redirect=true&h=c13679ac03e3a2701280b5905f34fd02.

¹⁶⁴ City Council Meeting, desal update at 2:58:35 by Billy Lerma (Dec. 14, 2021) https://corpuschristi.granicus.com/player/clip/1611?view_id=2&redirect=true&h=c13679ac03e3a2701280b5905f34fd02.

in light of its 2008 settlement of a Title VI complaint brought by [REDACTED] for the discriminatory siting of a sewage treatment facility in what would be the footprint of the proposed desalination plant. The City's decision to move forward with siting the facility in this precise location demonstrates a clear pattern of discrimination, "unexplainable on grounds other than race."¹⁶⁵

B. The City's Inner Harbor Desalination Plant Will Cause Disparate Impacts Based on Race

The City of Corpus Christi has also violated Title VI and its implementing regulations because the siting of the Inner Harbor desalination plant would exacerbate existing disproportionate impacts to the health, safety, and well-being of the predominately African American and Hispanic residents of Hillcrest. In particular, this new plant would further the City's legacy of past policies, enforcement failures, and ongoing land use decisions that have allowed for the industrialization of this historically African American neighborhood.

1. Prima Facie Case

i. The Inner Harbor Desalination Plant Will Cause Adverse Impacts

The City's proposed Inner Harbor Desalination Plant would further industrialize a residential neighborhood, adding to the existing disproportionate health impacts and burdens Hillcrest residents face from decades of segregation, disinvestment, industrial expansion, and highway expansions in their neighborhood.¹⁶⁶ The construction impacts alone of a new major industrial plant in the neighborhood would bring even more truck traffic, noise, and dust in addition to the ongoing construction impacts from the new Harbor Bridge.

The operation of desalination plants also poses several potentially harmful impacts to the surrounding community and environment. Studies on the impacts of desalination on the local environment have found that the high-pressure pumps and turbines used in the reverse osmosis desalination process—the same process to be used in the planned Inner Harbor Desalination Plant—create a level of noise pollution such that desalination plants "should [] be located far away from populated areas or equipped with the appropriate technologies for lowering noise intensities."¹⁶⁷

¹⁶⁵ *Arlington Heights*, 429 U.S. at 266.

¹⁶⁶ See Section IV, *supra*.

¹⁶⁷ Einav et al., *The footprint of the desalination processes on the environment*, 152 *Desalination* 141, 145 (2003), attached as **Exhibit 15**; see also R. Venkatesan, *Comparison between LTTD and RO process of sea-water*

Furthermore, the City's application for its wastewater discharge permit indicates that the desalination plant will create up to 1.62 million gallons per day of "sludge," which the City intends to truck through Hillcrest to a local landfill.¹⁶⁸

The Hillcrest neighborhood has already borne substantial noise and truck traffic impacts from the continued industrialization of their community, notably, from ongoing construction of the Harbor Bridge. These noise impacts will continue once construction of the Harbor Bridge is completed and highway traffic begins. Noise can cause populations that live near the source to experience various adverse health effects. While exposure to normal urban levels of noise during the night has been associated with sleep disturbances, acute exposure to noise can increase blood pressure, heart rate, and the release of stress hormones.¹⁶⁹ The added noise and additional truck traffic from construction and operation of the planned desalination plant will increase the burden already experienced by the Hillcrest community.

Next, the proposed desalination plant poses potential harm to groundwater and aquifers in the Hillcrest community, which are already threatened by contamination from other industrial sources.¹⁷⁰ Site selection and method of discharge appear to be the most important factors for determining ecological impacts from desalination.¹⁷¹ Harmful impacts from desalination exist especially where the pipelines carrying brine are laid above an aquifer, creating potential for leaks and subsequent contamination.¹⁷² Given that the Inner Harbor Desalination Plant is currently proposed to be sited

desalination: an integrated economic, environmental and ecological framework, 106 *Current Science* 378, 380 (2014) (noting that desalination plants can cause noise pollution, gaseous emissions, and chemical spills) attached as **Exhibit 16**; Fahad Ameen et al., *The carbon footprint and environmental impact assessment of desalination*, 75 *Int'l J. of Env'tl. Stud.* 45, 50 (2018) (listing potential negative impacts of desalination, including noise pollution, impact to groundwater, land use, impact on marine environment, and energy use), attached as **Exhibit 17**.

¹⁶⁸ City of Corpus Christi, TCEQ Industrial Wastewater Permit Application, Attachment G, available at <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>, see also City of Corpus Christi, Desalination Town Hall, at 1:47:08 (Dec. 16, 2021) (statements by Chief Operating Officer for Water Utilities, Michael Murphy, responding to public comments), available at [youtube.com/watch?v=De8olbgjD8o](https://www.youtube.com/watch?v=De8olbgjD8o).

¹⁶⁹ H. Ising et. al, *Health Effects Caused by Noise: Evidence in the Literature from the Past 25 Years*, *NOISE HEALTH* 5, 5-13 (2004), attached as **Exhibit 18**.

¹⁷⁰ U.S. EPA, Summary of the Groundwater Flow Directions, Hillcrest Neighborhood, Corpus Christi, Texas, at 3, (Feb. 7, 2012), attached as **Exhibit 14**.

¹⁷¹ Southern California Coastal Water Research Project, Management of Brine Discharges to Coastal Waters, Recommendations of a Science Advisory Panel (2012), at 13, https://www.waterboards.ca.gov/water_issues/programs/ocean/desalination/docs/dpr051812.pdf.

¹⁷² **Exhibit 15**, Einav et al, *The footprint of the desalination processes on the environment*, at 152.

hundreds of meters away from the intake and discharge points, pipelines will likely be required to transfer seawater and wastewater to and from the plant.¹⁷³ These pipelines pose a further risk of contamination to the Hillcrest community's groundwater, which is already endangered by surrounding sources of industrial pollution. A 2012 study noted that groundwater contamination from neighboring industrial properties "ha[d] most likely moved into the Hillcrest neighborhood."¹⁷⁴

Further, the proposed desalination plant poses a risk to recreational activities that Hillcrest residents enjoy at the closest beaches and fishing areas where the ship channel connects to Corpus Christi Bay. This risk is created by disposal of a hypersaline concentrate, also known as "brine," which is a byproduct of the seawater desalination process.¹⁷⁵ In addition, brine discharge may also contain chemical contaminants from the desalination process.¹⁷⁶ Brine discharge from desalination plants can cause sea desertification and harm the surrounding marine eco-systems. For example, in one locality that was considering implementing desalination technologies, experts estimated that with the projected brine discharge, "the fish catch would decrease by about 30%."¹⁷⁷ Brine discharge has been well-documented as harmful to surrounding marine biotas. The increased salinity from brine discharges may also lead to hypoxia, or depleted levels of oxygen in water, further stressing the marine eco-systems and interrupting the recreational activities that rely on them.¹⁷⁸ In her public comment cited above, Judge Barbara Canales underscored the potential for hypoxia at the Inner Harbor location, stating that the "Inner Harbor is the worst place for a second desal permit.

¹⁷³ City of Corpus Christi, TCEQ Industrial Wastewater Permit Application, Attachment D (Map showing facility site in relation to proposed intake and discharge locations), available at <https://www.cctexas.com/sites/default/files/desal-discharge-inner-harbor.pdf>.

¹⁷⁴ **Exhibit 14**, EPA, Summary of the Groundwater Flow Directions in Hillcrest, at 3.

¹⁷⁵ NEHA, *The Permitting of Desalination Facilities: A Sustainability Perspective*, 79 J. of Env'tl. Health 28, 30 (2016), attached as **Exhibit 19**; **Exhibit 17**, Fahad Ameen et al., *The carbon footprint and environmental impact assessment of desalination*, at 46-7 (describing common desalination processes).

¹⁷⁶ *Id.* at 49-50; see also **Exhibit 16**, R. Venkatesan, *Comparison between LTTD and RO process of sea-water desalination: an integrated economic, environmental and ecological framework*, at 380.

¹⁷⁷ *Id.* at 384.

¹⁷⁸ **Exhibit 19**, Brett Koontz et al., *The Permitting of Desalination Facilities: A Sustainability Perspective*, 79 J. of Env'tl. Health 28, 30 (2016); see also Chrysi Lapidou et al., *Minimizing the Environmental Impact of Sea Brine Disposal by Coupling Desalination Plants with Solar Saltworks: A Case Study for Greece*, 2 Water 75, 83 (2010), attached as **Exhibit 20**.

Because we already know that the science tells us that there is a lack of water exchange, that hypoxia and anoxia will occur[.]”¹⁷⁹

ii. The Inner Harbor Plant’s Adverse Impacts are Disproportionate Based on Race

Census data shows that the Hillcrest neighborhood has a much higher percentage African American population than the City of Corpus Christi (35.1% compared to 3.9%) and a higher percentage total population of people of color than the City as a whole (96.4% compared to 71.3% non-White population).¹⁸⁰

The adverse impacts of the construction and operation of the Inner Harbor facility discussed above will fall on the Hillcrest community, whereas the purported benefits of increased water supply would extend to all residents and especially to commercial/industrial users of City water.

2. Burden Shifting

The City has no substantial legitimate justification for its decision to choose the Inner Harbor site for its desalination plant, and there are several less discriminatory alternatives available.¹⁸¹

i. No Substantial Legitimate Justification

The City has publicly claimed that it needs the water from desalination to meet municipal needs for water, however, statements made by members of City Council undermine these claims that the water is needed for residential uses. One City Council member stated, “we have commitments to industry... And I don’t mind saying that it is for industry.”¹⁸² He then went on to admit that after two new industrial facilities come online, 80 percent of all the City’s water supply will be dedicated to industry.¹⁸³ As one

¹⁷⁹ Judge Canales Comments at the Port of Corpus Christi Authority Meeting, at 15:29, May 24, 2022, https://portofcorpuschristi.granicus.com/player/clip/359?view_id=1&redirect=true&h=754251d9913095edc452804d6cb7c1a1.

¹⁸⁰ See Section IV.F. *supra* and notes 120-121.

¹⁸¹ (b)(6) Privacy, (b)(7)(C) Enf. Privacy provide this information for HUD and EPA’s benefit at this time and will add any additional responses to justifications or rationales the City provides in response to this Complaint.

¹⁸² City Council Meeting, desal update at 3:06:50 by Councilmen Roland Barrera (August 31, 2021), https://corpuschristi.granicus.com/player/clip/1583?view_id=2&redirect=true&h=c393de21d153430844b3fad6a20ab536.

¹⁸³ *Id.*; see also Brendan Gibbons, On the Texas Gulf Coast, a race to build desalination plants to serve a thirsty oil & gas industry, OIL AND GAS WATCH (Aug. 23 2022), <https://news.oilandgaswatch.org/post/on-the-texas-coastal-bend-a-race-for-desalination-to-serve-a-thirsty-oil-gas-industry>. The City has cited

City Council member succinctly put it, “I always thought the notion that this water is for everyone and not for industry was somewhat misleading.”¹⁸⁴

In March 2017, the City committed 20 million gallons per day (“MGD”) to Exxon-Sabir's new petrochemical facility, and in December of 2018, the City committed 6 MGD to Steel Dynamics.¹⁸⁵ Taken together, the City allotted to industry all of the new water that began flowing from the Mary Rhodes II pipeline in August 2016. As it appears poised to do here with the Inner Harbor desalination plant, the City had claimed that the Mary Rhodes II pipeline water was needed to safeguard against drought.¹⁸⁶

Even if the City did provide a substantial legitimate justification for the need for an additional water supply, any explanation the City may provide to claim that it carefully considered other desalination locations and had legitimate reasons for selecting the Inner Harbor location is merely pretextual. As detailed above in Section V.A., several statements made by City officials about the site selection process and its failure to meaningfully compare alternatives, support the conclusion that the Inner Harbor site was the only option given serious consideration by the City.

ii. Less Discriminatory Alternatives Are Available to Meet Corpus Christi's Water Needs

The City also failed to meaningfully consider cheaper and less discriminatory alternatives to baywater desalination to meet any additional needs for water, ignoring years of presentations that the City Council received on alternative options. One such option is groundwater from the Evangeline/Laguna segment of the Gulf Coast Aquifer, which could have provided about 25 MGD to the City within 18-24 months, far outstripping the timeline for implementing the City's desalination plans, and at a cheaper cost than desalination.¹⁸⁷ The City now appears to be evaluating the Evangeline Groundwater Project, but City Councilman Gil Hernandez stated in a July 2022 news

different and conflicting figures for the percentage of the City's water that goes to industry, but all of them are large. For instance, one City official expressed that 55 percent of the City's water goes to industry, while another claimed that the total was less than 50 percent. *Id.*

¹⁸⁴ City Council Meeting, desal update at 3:15:58 by Councilmen Gil Hernandez (August 31, 2021) https://corpuschristi.granicus.com/player/clip/1583?view_id=2&redirect=true&h=c393de21d153430844b3fad6a20ab536.

¹⁸⁵ (b)(6) Privacy, (b)(7)(C) Enf. Privacy *Fixated on desal in the bay to the detriment of the public*, THE NEWS OF SAN PATRICIO (Aug. 10, 2022), (b)(6) Privacy, (b)(7)(C) Enf. Privacy

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*; see also Coastal Alliance to Protect our Environment, *Costs of Baywater Desalination* (last visited October 22, 2022), <https://capetx.com/costs-of-seawater-desalination/>.

article that city staff should have engaged with this alternative water supply option more seriously years ago:

Evangeline had been providing the information and was asking for meetings to discuss it, but our city staff never called them back," Hernandez said. "They just ignored Evangeline with the ... myopic viewpoint of just desal and the desal in the Inner Harbor."¹⁸⁸

VII. Conclusion & Relief Requested

For the reasons set forth above, the City of Corpus Christi is violating its duty under Title VI of the Civil Rights Act of 1964. Accordingly, (b)(6) Privacy, (b)(7)(C) Enf. Privacy ask HUD and the EPA to thoroughly investigate the City's compliance with Title VI of the Civil Rights Act related to its actions to locate yet another industrial facility – the Inner Harbor Desalination Plant— in the Hillcrest neighborhood.

(b)(6) Privacy, (b)(7)(C) Enf. Privacy request that HUD and EPA take all necessary steps to ensure that the City comes into full compliance with Title VI, including putting all further permitting and siting actions by the City in furtherance of the Inner Harbor desalination plant on hold pending a resolution of this investigation and the City's full compliance with Title VI.

Moreover, given the City's long history of discrimination in the Hillcrest neighborhood, we request that HUD and EPA require the City to develop a detailed Title VI compliance and implementation plan with regards to land uses and the City's provision of services to the Hillcrest neighborhood.

We look forward to working with HUD and EPA to ensure that all Corpus Christi residents benefit from equal protection and to prevent further harm in the Hillcrest community.

[signatures on next page]

¹⁸⁸ Kathryn Cargo, *More than just desalination: City of Corpus Christi considering alternative water sources*, CORPUS CHRISTI CALLER TIMES (July 24, 2022), available at <https://www.caller.com/story/news/special-reports/building-our-future/2022/07/24/corpus-christi-considering-alternative-water-sources-as-well-as-desal/65379748007/>.

Sincerely,



Erin Gaines
Zora Djenohan
Earthjustice
845 Texas Avenue, Suite 200
Houston, Texas 77002
512-720-5354
egaines@earthjustice.org
zdjenohan@earthjustice.org

Attorneys for (b)(6) Privacy, (b)(7)(C) Enf. Privacy