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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 20 Ordinance/Resolution# 11-242

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of June 6, 2011
 (Adoption Date)

TITLE: A RESOLUTION ADOPTING THE 2011-2015 ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR THE CITY OF LAS CRUCES, AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD).

PURPOSE(S) OF ACTION:

Adopt the HUD-required plan to reduce fair housing discrimination and other impediments to create affordable housing within the city limits.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> David Dollahon	<u>Department/Section:</u> Community Development / Neighborhood Services	<u>Phone:</u> 528-3060
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces, as both an entitlement community for the Community Development Block Grant (CDBG) and as a participating jurisdiction for the Home Investment Partnership (HOME) programs from HUD, must develop and adopt an Analysis of Impediments to Fair Housing Choice (or AI) every five years. The AI is intended to identify those issues that the City can address that helps to reduce housing discrimination and other barriers to affordable housing development.

Generally, this AI is adopted with the HUD-required 5-year Consolidated Plan that identifies the community development and affordable housing needs that the City will attempt to address during the plan period. However, this year when the 2011 – 2015 Consolidated Plan was presented to the City Council under Resolution 11-217 on May 2, 2011, differences arose between the City staff and the Housing Authority related to their occupancy standards. As a result, the AI was removed from the overall Consolidated Plan. The specifics of the issue related to concerns with single-parent, single-child households being only provided a one-bedroom unit from all Housing Authority Programs, which could be perceived by some, as discriminatory, especially when compared to larger families or families with no children. The differences between the two organizations have been resolved and the staff asks for the Council to adopt the Resolution as presented.

Generally, the previous language was changed at the request of the Housing Authority, as they intend to change their occupancy standards so that single-parent, single-child households will have access to a two-bedroom unit. This will help them increase their Section 8 utilization rates.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A," proposed 2011-2015 Analysis of Impediments to Fair Housing Choice.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will adopt the HUD-required 2011-2015 Analysis of Impediments to Fair Housing Choice for the City of Las Cruces, allowing it to be incorporated into the City's Consolidated Plan for the same period and authorize transmittal to HUD.
2. Vote "No"; this will not adopt the HUD-required 2011-2015 Analysis of Impediments to Fair Housing Choice for the City of Las Cruces. This action would make the City out of compliance with HUD regulations and would prevent the continued usage of any CDBG or HOME funds.

3. Vote to "Amend" and vote "Yes"; this may allow Council to modify the Resolution by adding conditions as they deem appropriate.
4. Vote to "Table"; Council may table/postpone the Resolution and direct staff accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. 11-217

RESOLUTION NO. 11-242**A RESOLUTION ADOPTING THE 2011-2015 ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR THE CITY OF LAS CRUCES, AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD).**

The City Council is informed that:

WHEREAS, the City of Las Cruces is an entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and as a participating jurisdiction for the HOME Investment Partnership (HOME) Programs; and

WHEREAS, entitlement communities are required to develop, adopt, and implement an Analysis of Impediments to Fair Housing Choice (or AI) every three to five years to identify and to begin to address issues related to fair housing discrimination within the City along with impediments to the creation of affordable housing in order to continue to receive the CDBG and HOME funding; and

WHEREAS, the City's current AI is part of the current 2006 – 2010 Consolidated Plan that expires at the end of the current City fiscal year (June 30, 2011); and

WHEREAS, a new AI for the HUD Program Years 2011 through 2015 has been developed by both City staff and the City-hired consultant, BBC Research and Consulting of Denver, CO; and

WHEREAS, a public comment period was held from April 1 to May 1, 2011 and the City staff and the staff from the Housing Authority of the City of Las Cruces have resolved the outstanding issues between the two entities.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces 2011-2015 Analysis of Impediments to Fair Housing Choice, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved and adopted.

(II)

THAT the Assistant City Manager is hereby authorized to execute the necessary submittal documents and staff is hereby authorized to transmit the 2011 – 2015 Analysis of Impediments to Fair Housing Choice to the U.S. Department of Housing and Urban Development on the City's behalf.

(III)

THAT the 2011 – 2015 Analysis of Impediments to Fair Housing Choice is hereby authorized to be incorporated into the City's 2011 – 2015 Consolidated Plan.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPENDIX F.

Analysis of Impediments to Fair Housing Choice

This appendix contains the City's updated Analysis of Impediments to Fair Housing Choice. This update was completed as part of the City's 2011-2015 Consolidated Plan.

This section contains:

- Maps examining racial, ethnic and income concentrations in Las Cruces;
- The findings from a fair housing survey that was conducted for this analysis;
- A review of the City's land use policies and zoning codes for barriers to fair housing choice;
- An analysis of home mortgage lending data;
- An analysis of fair housing complaints; and
- An identification of fair housing barriers and recommended fair housing action plan.

Analysis of Impediments to Fair Housing Choice (AI). The AI is a U.S. Department of Housing and Urban Development (HUD) mandated review of impediments to fair housing choice in the public and private sector. The AI is required for the City of Las Cruces to receive federal housing and community development block grant funding.¹

The AI involves:

- A review of a City's laws, regulations and administrative policies, procedures and practices;
- An assessment of how those laws, policies and practices affect the location, availability and accessibility of housing; and
- An assessment of public and private sector conditions affecting fair housing choice.

According to HUD, impediments to fair housing choice are:

- Any actions, omissions, or decisions *taken because of* race, color, religion, sex, disability, familial status or national origin that restrict housing choices or the availability of housing choices.
- Any actions, omissions or decisions that have the effect of restricting housing choices or the availability of housing choices *on the basis of* race, color, religion, sex, disability, familial status or national origin.

¹ The City is also required to submit a Consolidated Plan for Housing and Community Development and an annual performance report to receive funding each year.

Although the AI itself is not directly approved or denied by HUD, its submission is a required component of a City's or state's Consolidated Plan for Housing and Community Development (Consolidated Plan) performance reporting. HUD desires that AI's:

- Serve as the substantive, logical basis for fair housing planning;
- Provide essential and detailed information to policy makers, administrative staff, housing providers, lenders and fair housing advocates; and
- Assist in building public support for fair housing efforts both within a City's boundaries and beyond.

Federal Fair Housing Act. The Federal Fair Housing Act, passed in 1968 and amended in 1988, prohibits discrimination in housing on the basis of race, color, national origin, religion, gender/sex, familial status and disability. The Fair Housing Act covers most types of housing including rental housing, home sales, mortgage and home improvement lending and land use and zoning. Excluded from the Act are owner-occupied buildings with no more than four units, single family housing units sold or rented without the use of a real estate agent or broker, housing operated by organizations and private clubs that limit occupancy to members and housing for older persons.²

HUD has the primary authority for enforcing the Federal Fair Housing Act. HUD investigates the complaints it receives and determines if there is a "reasonable cause" to believe that discrimination occurred. If reasonable cause is established, HUD brings the complaint before an Administrative Law Judge. Parties to the action can also elect to have the trial held in a federal court (in which case the Department of Justice brings the claim on behalf of the plaintiff)³.

Local ordinance. The City of Las Cruces has adopted a local fair housing ordinance with protections that are similar to the Federal Fair Housing Act, in addition to prohibiting discrimination on the basis of ancestry, ethnicity, gender identity and sexual orientation. The director of the City of Las Cruces Community Development Department has authority and responsibility for administering the ordinance. The director and/or staff of the Department are required by the ordinance to assist aggrieved persons with filing complaints of housing discrimination with HUD.⁴ However, according to HUD, City staff cannot file a complaint on their behalf.

If the Director of Community Development has reason to believe that violation has occurred the Director shall refer such information regarding the violation to HUD or the State Human Rights Commission for violations of the State's Fair Housing Statute for investigation and prosecution according to the Fair Housing Act of 1988.

² "How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws", The U.S. Department of Housing and Urban Development, Office of Policy and Research, April 2002.

³ Ibid.

⁴ <http://library.municode.com/index.aspx?clientId=11136&stateId=31&stateName=New%20Mexico>. See Chapter 13 Housing, Article III Fair Housing.

Protected Class Concentrations

Racial concentrations. In both Doña Ana County and the City of Las Cruces, Hispanics comprised the majority of residents at 66 percent and 57 percent, respectively. These proportions are the same as in the middle part of the last decade.

Figure F-1 shows the racial distribution of Las Cruces residents as of 2010, along with the proportion of residents in each racial category who consider themselves of Hispanic descent.⁵

**Figure F-1.
Population
by Race and
Ethnicity, 2010**

Source:
2010 Census.

	2010 Population	Percent of Population by Racial/Ethnic Category	Percent Hispanic Ethnicity by Racial Category (2009 estimates)
American Indian and Alaska Native	1,706	1.7%	5.0%
Asian	1,541	1.6%	0.0%
Black or African American	2,385	2.4%	8.7%
Some other race	14,913	15.3%	97.9%
Two or more races	3,454	3.5%	71.0%
White	73,513	75.4%	57.2%
Total population	97,512	100.0%	
Hispanic or Latino ethnicity	55,443	56.9%	

Definition of racial and ethnic concentrations. According to HUD, a disproportionate need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points higher than the percentage of persons in the category as a whole. Using this definition, an area of racial and ethnic concentration is defined as where the percentage of persons in a particular race or ethnicity is at least 10 percentage points higher than the percentage of persons in the category for the City as a whole.

Figures F-2 through F-4 show the distribution of City residents by the following racial and ethnic categories, which have the largest proportions of residents by race/ethnicity:

- Residents who report their race as White,
- Residents who report their race as Black or African American, and
- Residents who report their ethnicity as Hispanic/Non-White.

Using the above definition of concentration, block groups in Las Cruces have a concentration if the following exists:

- A White population proportion of 85 percent,
- A Black or African American population proportion of 12 percent or more, and
- A Hispanic population proportion of 67 percent or more.

⁵ The 2010 Census reports a much higher White population and, conversely, a much lower Some Other Race population than the 2000 Census. As such, it is not possible to compare growth rates among racial categories due to this reclassification.

Figure F-2 shows the percentage of White residents within each block group in the City. Based on the above definition of White concentration, there are only a few block groups in the City where more than 85 percent of residents are White.

**Figure F-2.
Percent of Population
that is White, 2010**

Source:
2010 Census and BBC Research &
Consulting.

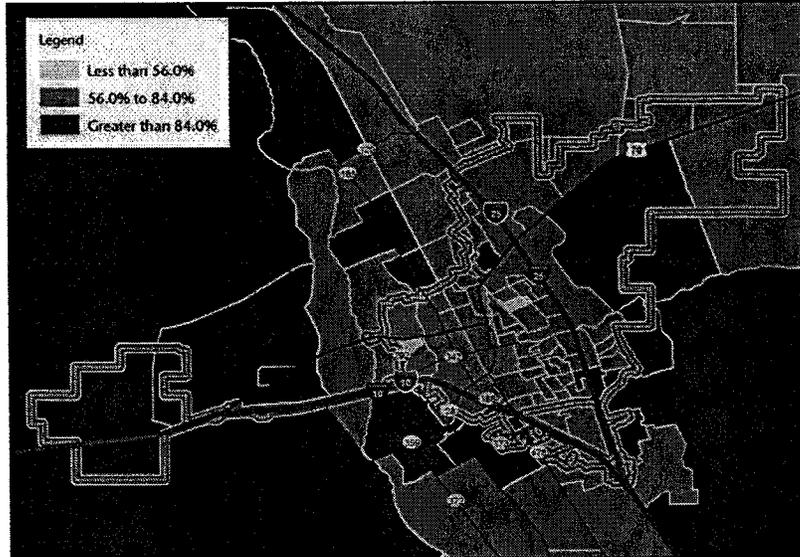


Figure F-3 shows the ratio of Hispanics to total population by block group in the City. As the map demonstrates, there are many block groups in the City, largely west of I-25, with Hispanic concentrations.

**Figure F-3.
Percent of
Population of
Hispanic/Latino
Ethnicity, 2010**

Source:
2010 Census and BBC Research
& Consulting.

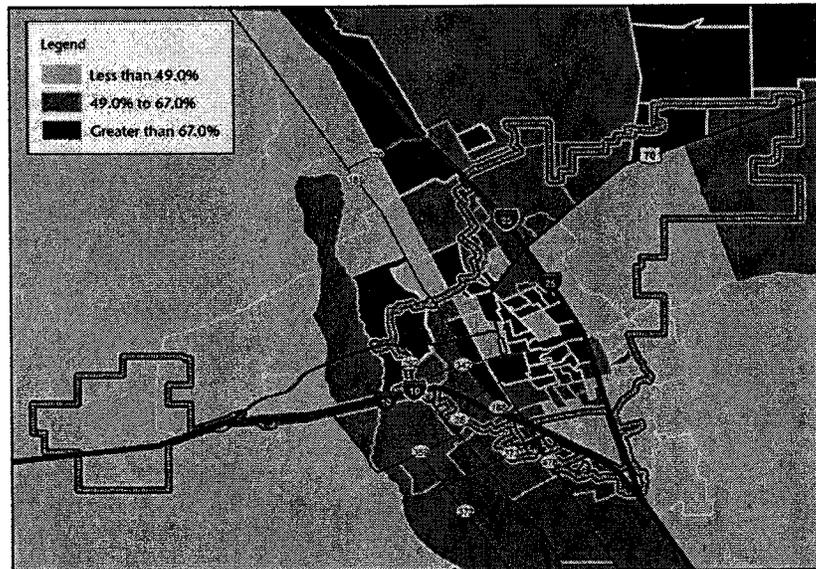
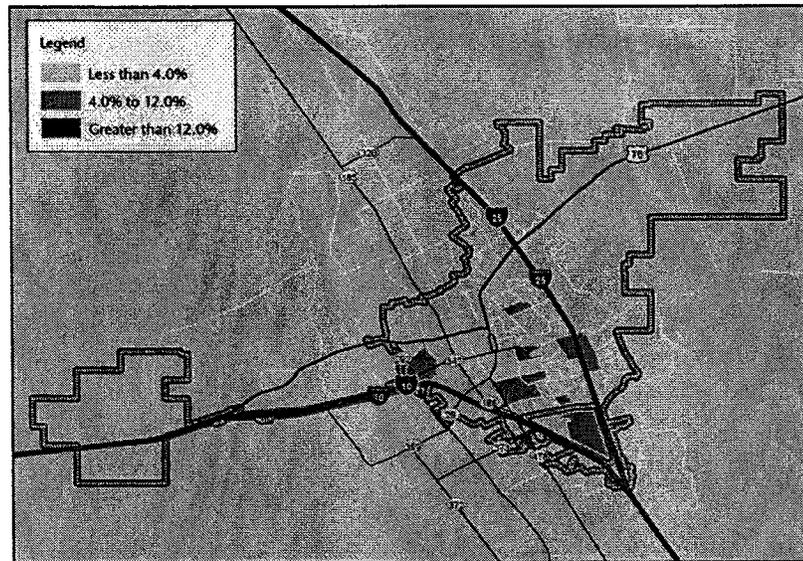


Figure F-4 shows the proportion of African Americans by block group in the City. There are no block groups with concentrations of African Americans.

Figure F-4.
Percent of Population
that is African
American, 2010

Source:
2010 Census and BBC Research &
Consulting.



Distribution among block groups. Another way to examine concentration is to examine how the White, Hispanic and African American populations are distributed among the block group (as opposed to looking at what proportions comprise an individual block group). This exercise revealed no evidence of concentration of any of the three categories. Indeed, the percentages of each racial/ethnic group by block group ranged between 1 and 2 percent (with a high of 6 percent for one block group).

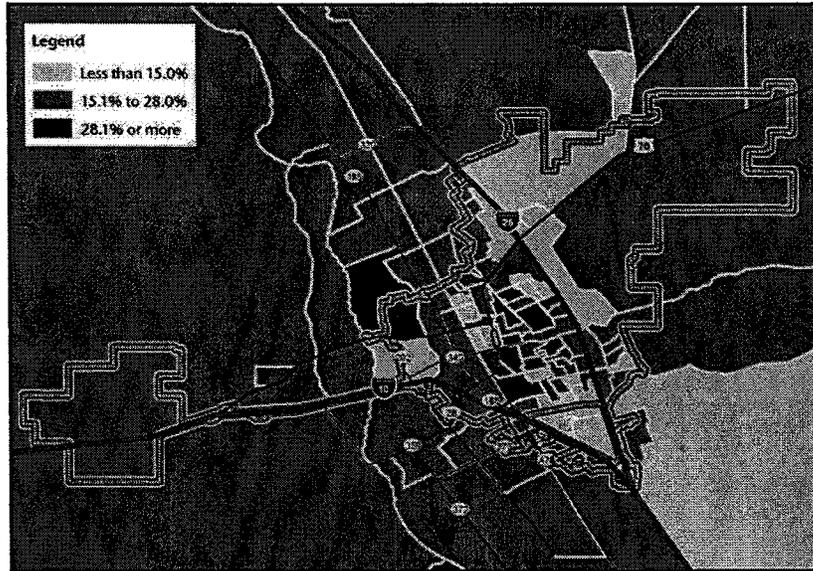
Due largely to the almost equal balance of Non-Hispanic and Hispanic or Latino residents, the City is relatively ethnically and racially dispersed. Dispersion appears to have changed slightly since 2005, when there was one block group with 8 percent of the White population and one with 6 percent of the Hispanic population (still very small).

Persons with disabilities. The 2009 ACS reports that 11 percent of Las Cruces residents have a disability. The Census' definition of disability status is based on individual answers to several Census survey questions. According to the Census, individuals have a disability if any of the following three conditions are true: (1) they were 5 years old and over and had a response of "yes" to a sensory, physical, mental or self-care disability; (2) they were 16 years old and over and had a response of "yes" to going outside the home disability; or (3) they were 16 to 64 years old and had a response of "yes" to employment disability.

Figure F-5 shows the concentration of persons with disabilities in Las Cruces by block group as of 2000, the latest date of availability. A block group is concentrated when 29 percent of residents in a block group have a disability (based on the 2000 Census disability proportion for the City). There are several block groups with concentrations of persons with disabilities, largely located in the central part of the City.

**Figure F-5.
Concentrations
of Persons with
Disabilities, 2000**

Source:
U.S. Census 2000 and BBC
Research & Consulting.



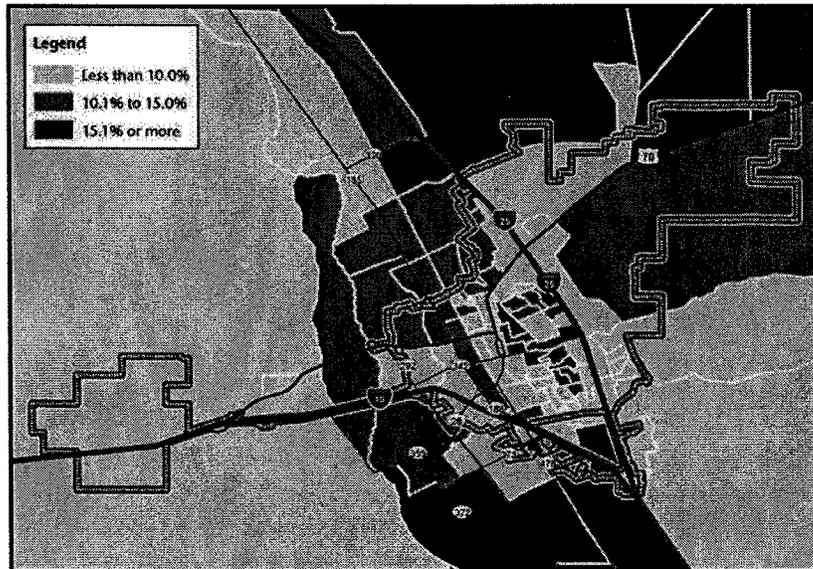
Familial status. Concentrations of persons based on familial status were examined for large families and single-female heads of household, both of which reportedly are more likely to face discrimination in housing.

Large households, defined by the Census as having five or more persons in a household, made up 5.8 percent of the total households in 2009. All of these were family (related party) households.

The map in Figure F-6 examines the location of large households within the City. Concentrated block groups are those in which large households make up more than 16 percent of households; there are very few concentrated block groups.

**Figure F-6.
Percentage of Large
Households by Block
Group, 2009**

Source:
2009 Claritas and BBC Research
& Consulting.



In 2009, the majority of Las Cruces households were households without children (71.4 percent). This was much higher than 1990 proportion (64.5 percent). Of households with children, the majority (58 percent) were married couple families.

Figure F-7 shows the distribution of Las Cruces households with and without children for 1990, 2000 and 2009. As the table demonstrates, the City has seen steady growth in female-headed households with children and married couple households *without* children; growth and then decline in male-headed households; and decline and then growth in married couple households *with* children.

Figure F-7.
Household Characteristics, 1990, 2000 and 2009

	Number and Percent of Households						Change in Households			
	1990		2000		2009		1990-2000		2000-2009	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Households with children										
Married couples	5,773	24.3%	5,241	18.0%	5,934	16.7%	-532	-9.2%	693	13.2%
Single female-headed	2,140	9.0%	2,890	9.9%	3,799	10.7%	750	35.0%	909	31.5%
Single male-headed	530	2.2%	750	2.6%	438	1.2%	220	41.5%	-312	-41.6%
Households without children	15,354	64.5%	20,303	69.6%	25,393	71.4%	4,949	32.2%	5,090	25.1%
Total households	23,797	100.0%	29,184	100.0%	35,564	100.0%	5,387	22.6%	6,380	21.9%

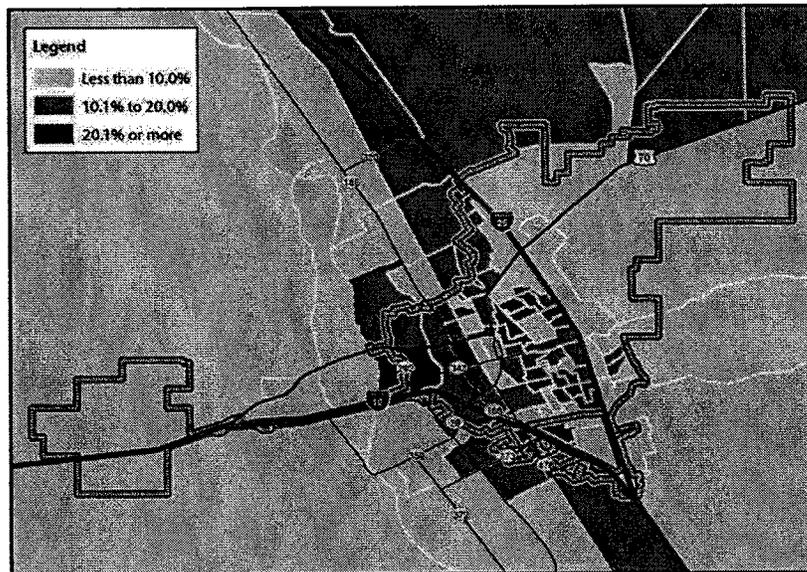
Source: U.S. Census Bureau's 1990 Census and 2000 Censuses and 2009 American Community Survey.

Single parent households—especially those with single mothers—have some of the highest rates of poverty in most communities. As such, they have needs for social services (child care, transportation) and affordable housing. Female-headed households with children also face fair housing barriers because of lack of support and knowledge of their rights under the Federal Fair Housing Act.⁶

The map in Figure F-8 shows the percentage of female-headed households with children by block group. Concentrated block groups are those in which female-headed households with children make up more than 21 percent and are mostly located in the central City.

⁶ Surveys of residents conducted by BBC show that in almost every community, support and knowledge of fair housing protections on the basis of familial status is very low.

Figure F-8.
Percentage of
Female-Headed
Households with
Children by Block
Group, 2009



Source:
 2009 Claritas and BBC Research
 & Consulting.

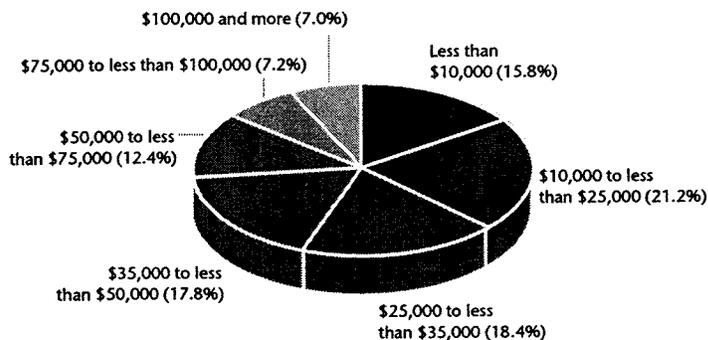
Resident Survey

In January and February 2011, 5,600 paper surveys were sent to Las Cruces addresses within the City’s low and moderate income neighborhoods. By March 2011, 527 residents had responded and 500 had been returned due to bad addresses, for a response rate of 10 percent. The survey was offered in Spanish and English. The survey focused on issues related to housing discrimination.

Respondent characteristics. Survey respondents were asked to indicate the ethnic or cultural group they consider themselves to be a member of and their total household income.

Race/ethnicity. Nearly half of the respondents (49 percent) consider themselves to be “Hispanic/Chicano/Latino,” 38 percent “White/Anglo,” and 5 percent “Multi-Racial”—the next most common ethnic or cultural group selected. Data from the Census are not directly comparable with the survey data since the Census considers race and ethnicity separately (and the survey did not).

Figure F-9.
Total Household Income, Las Cruces, 2011



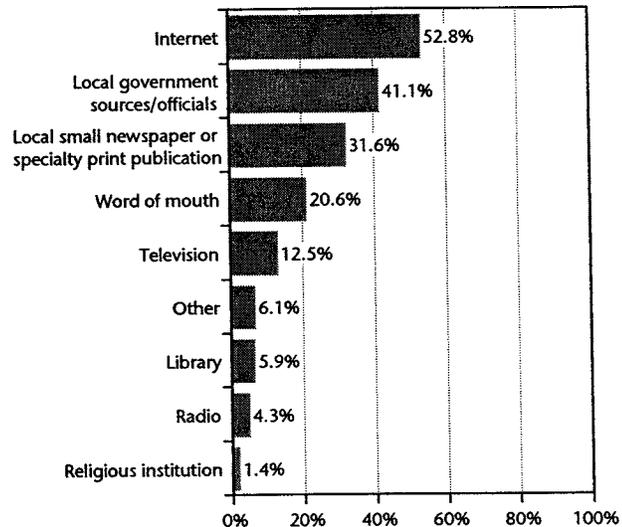
Note: n=499.
 Source: BBC Research & Consulting from 2011 City of Las Cruces Resident Housing Survey.

Household income. As shown in Figure F-9, about 16 percent of respondents reported total household incomes of less than \$10,000. Because the surveys were sent only to the City’s low to moderate income neighborhoods, the income data reported in Figure F-9 should not be compared to the city at large, but rather to the neighborhoods surveyed.

Information sources. Survey respondents noted the types of information sources they rely upon when they want to learn about housing or government issues in Las Cruces. As shown in Figure F-10, about half of respondents would rely on the Internet, and 41 percent would turn to local government information sources, including government officials.

Housing discrimination. Survey respondents were asked about their personal experience with housing discrimination, their recommendation for how they would respond to housing discrimination and who to contact to file a complaint.

Figure F-10.
Sources for Information about Housing or Government Issues in Las Cruces, 2011



Note: n=506.

Source: BBC Research & Consulting from 2011 City of Las Cruces Resident Housing Survey.

Prevalence of housing discrimination.

About 9 percent of respondents believe that they have experienced housing discrimination, similar to the finding in the 2006 city-wide telephone survey (8 percent of respondents). This indicates that approximately 742 residents living in the City's low to moderate income neighborhoods have experienced housing discrimination. If this finding applies citywide, it suggests that about 5,727 adult residents of Las Cruces have experienced discrimination at some point.

Reason for discrimination. When asked why they thought they had been discriminated against, familial status and race/ethnicity were the most common responses. The following quotations provide more specific examples of residents' perception of their housing discrimination experiences:

- "Racial slur made regarding Hispanics being able to legally have the money to buy a house. 'Only drug dealers that are Mexican can have money.' Can you believe in this day and age someone actually believes or says something like this?"
- "Our age, he wouldn't even show us the inside of the apartment even though we set up an appointment. We arrived and he said he couldn't help us."
- "I have six children. The place that I was trying to rent only allowed two kids and no pets."
- "My wife and step daughter were from Mexico."
- "Disabled daughter was told she did not qualify for a two bedroom apartment for her, her husband and baby; they could have slept in one bedroom, the baby in the other."
- "Single parent with two kids and Hispanic."
- "Being black."

Response to housing discrimination. When asked what they would do or recommend if they or someone they know experienced housing discrimination, 70 percent reported that they would file a complaint; 9 percent would move and 2 percent would do nothing. Among the 7 percent who suggested “other” responses to housing discrimination, their comments included:

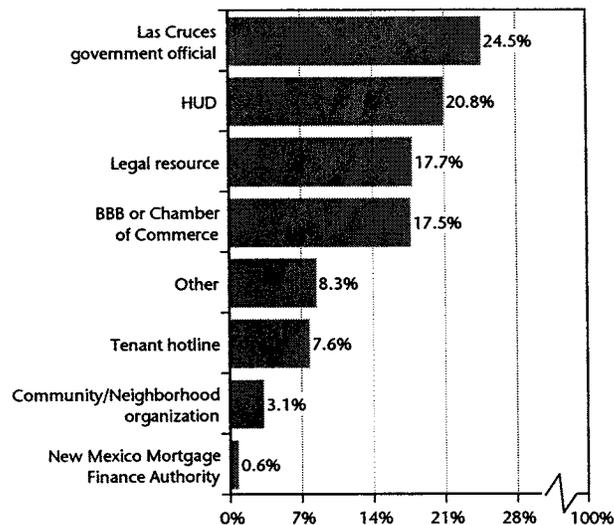
- “Move on, keep trying.”
- “Probably would not feel comfortable there anyways.”
- “Research the situation and contact the appropriate people.”
- “Seek advice, many people think there is a problem but in actuality they were not subject to discrimination.”
- “I believe the owner has a right to choose the renter for whatever reason, to protect it in every way from condition to value, from keeping property clean and kept up to making payments on time.”
- “Move to another state, Las Cruces discriminates.”
- “Get a lawyer.”

Reporting housing discrimination. Overall, 31 percent of respondents stated that they knew who to contact to report housing discrimination. As shown in Figure F-11, 25 percent would contact a Las Cruces government official first, if they wanted to report housing discrimination.

Figure F-11.
Survey question: “Who would you call first for information about reporting housing discrimination?”

Note:
 n=515.

Source:
 BBC Research & Consulting from 2011 City of Las Cruces Resident Housing Survey.



Stakeholder Input

During the development of the Consolidated Plan and AI, stakeholders were consulted about fair housing barriers and housing and community development needs. The top fair housing barriers that were identified included:

Barriers for persons with disabilities.

- Accessible housing is very much lacking in Las Cruces. People with disabilities, especially veterans, have the hardest time finding housing they can afford.

- Landlords who have accessible units are not required to rent them to tenants with disabilities; therefore, able-bodied renters are living in the City's very limited accessible housing stock.
- Landlords do not allow service animals, even when they are required to. They do not understand that service animals also serve the needs of people with emotional needs.
- Landlords do not understand their requirements under the Fair Housing Act — for example, are landlords required to provide flashing lights (alarms) for persons who are deaf/hard of hearing?
- The new Department of Vocational Rehabilitation is not on a bus route and there are not sidewalks along the streets.
- There are 60 to 70 people with developmental disabilities in Las Cruces who are employed at White Sands. The City's bus does not extend to White Sands. Extending the transportation system to White Sands would benefit those who work there and cannot drive; it is acknowledged, however, that this would be costly to the City.
- The Section 8 program's limit on the number of unrelated persons living together creates an obstacle for persons with developmental disabilities, who do best living together with 3 roommates and one caregiver. This is also the most cost effective living arrangement.

General fair housing barriers.

- People are afraid to complain about their housing situation because they think they may lose their housing subsidy.
- Many landlords and tenants operate on verbal agreements, which give the tenants few rights. Many agree to rent-to-own situations without written contracts. In the county, in particular, sellers use "contracts of sale" or "real estate contracts" that establish an arrangement that is more like a landlord/tenant arrangement. If the "buyer" misses a payment they lose their house.
- Some trailer park owners charge fees for people if they are outside past 8 p.m. Other landlords charge rental applicants a \$35 background check/application fee that is not returned if they are selected for the unit.
- Tenants allege that there are cases where landlords walk in unannounced; where they enter apartments when tenants are not there and rummage through people's belongings.
- Affordable housing providers commend the City on the fee waivers it currently grants, but would like to see waivers for other development fees too. Some feel that waiving parking requirements is tricky because low income residents need cars to access job opportunities. They also like having cars and need a place to park them.
- The process for sewer and water lines seems to involve a lot of change orders, which costs time and money. Can this be avoided through better communication? Could the required environmental and archeological reviews for home lots be done at the same time?

Housing and Land Use Policy Review

This section discusses the housing and land use policies that may affect fair housing in the City of Las Cruces.

Housing profile. A detailed profile of the City's housing market is provided in the Housing Market Analysis section of the Consolidated Plan (Section II). In sum, the analysis found:

- Except for certain block groups in the central part of the City and some mobile home parks, the City's housing stock is new and in good condition. Few residents live in substandard units and few reported living in overcrowded units.
- The median value of owner occupied homes in Las Cruces was \$155,000 in 2009. This is up from the median value of \$91,200 in 2000—or an increase of \$63,800. The City has experienced some softening in the for sale market, but nothing as dramatic as in many U.S. cities. Indeed, homeowners would need to earn approximately \$19,000 more per year in 2009 than in 2000 to afford the median-valued home in Las Cruces.
- The 2009 median rent in Las Cruces, including utilities, was \$629. This is much higher than in 2000 (\$470). Even as recently as 2005 the median was much lower than in 2010 (\$475).
- Renter purchasing power has decreased over the decade as rents have risen, especially very recently. Fewer than half—44 percent—of renters can afford to pay the median rent and utilities. There is a shortage of approximately 4,700 affordable rental units for renters earning less than \$20,000 per year.

Development regulations review. As part of the City's recent Affordable Housing Strategy study in 2008, Clarion Associates, a planning and land use consulting firm, conducted a detailed review of the City's land use policies and zoning code. The analysis considered barriers to affordable housing development and recommended changes to facilitate affordable housing development.

Although the study did not find an egregious barriers to affordable housing creation in Las Cruces, the regulatory review resulted in several recommendations:

- **Proactively rezone land into the R-4 zone.** Proactively rezone lands along bus routes and major one-way street pairs into the R-4 zone to encourage construction of multifamily housing.
- **Adjust the R-4/C-3 Zone height and density.** Raise the height limit in the C-3 and R-4 zones from 60 feet to 75 feet and revise minimum density requirement.
- **Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones.** Adopt minimum density regulations for key zone districts.
- **Refine R-1-b Zone and provide templates.** Revise the dimensional standards for the R-1-b district and prepare template examples of smaller single family housing on 3,500 square foot lots in order to encourage wider use of this existing zoning tool.
- **Reduce residential parking requirements.** Reduce the minimum off-street parking requirement for accessory dwelling units (ADUs) and multifamily dwelling units to 1 space per unit.

- **Refine Accessory Dwelling Unit regulations.** Remove the requirement that ADUs be occupied by a member of the same family that occupies the primary housing unit, and that the ADU be contained within a primary structure.
- **Expand impact fee exemption.** While the existing exemption from park, water, and sewer fees is good, it covers too few units to make a significant difference in affordable housing supply.

Proactively rezone land into the R-4 Zone. While Las Cruces has significant unmet demands in both single family and multifamily affordable housing, the city has focused largely on site-specific single family housing supply. Over time, a rising share of unmet demand for affordable housing may need to be met through multifamily rental and ownership units, simply because the per unit land and construction costs are lower, and an increasing share of families in need of affordable housing may only be able to afford purchases or rentals of attached and multifamily units. Las Cruces’ zoning ordinance includes the R-2, R-3, and R-4 multifamily districts, which are fairly well designed to permit potentially affordable development. The R-4 district regulations—which include a minimum density high enough to help support bus/transit service and no maximum density—is particularly well suited for use in constructing affordable multifamily units. Unfortunately, only 7.1 percent of the developed land in the city is zoned into multifamily districts, and only 1.3 percent of the developed land is zoned in the R-4 category—which is the only one that requires (rather than allows) multifamily construction.

Figure F-12.
Percent of
Developed Land
by Zone District

Source:
 Clarion Associates.

District	Min. Lot Size (sq. ft.)	Density Limits	Acres	Percent of Developed Land
R-1-c	10,000	4/acre	52	0.1%
R-1-a	5,000	8/acre	8,733	19.6%
R-1-b	3,500	12/acre	4,087	9.4%
R-2	5,000	15/acre	978	2.2%
R-3	5,000	20/acre	1,580	3.6%
R-4	8,500	<ul style="list-style-type: none"> • 10/acre min. • 40/acre max for pre-2001 • No max for newer rezones 	545	1.3%
C-1	5,000	N/A	438	1.0%
C-2	10,000	N/A	1,214	2.8%
C-3	21,780	N/A	2,374	5.4%

We recommend that Las Cruces proactively rezone more lands into the R-4 zone district in order to encourage production of multifamily rental and ownership units. The rezoned lands should be located along key one-way pairs of streets or other major arterials that serve as major transportation corridors connecting downtown and the university area with other major activity centers in the city. Although the city’s current looped bus routes are not focused on those corridors, experience shows that as bus systems mature and expand those are logical routes for expanded service because (a) they

can help relieve traffic congestion and (b) there is less community opposition to bus routes in those locations. Adding housing density along those corridors can also help support future bus system expansions and contribute to housing affordability, since the combined costs of housing and transportation can be reduced when bus service is available. In addition, Las Cruces should consider pro-actively rezoning land into the R-4 category in other activity centers or near major arterial-arterial and collector-arterial intersections currently served by the looped bus routes. Several other western city plans—including Albuquerque’s Centers and Corridors plan – have recognized this symbiotic relationship between public transit and affordable housing.

Adjust the R-4/C-3 Zone height and density. In general, the dimensional standards in the Las Cruces zoning ordinance are reasonable for their intended purposes. The few exceptions include the 60 foot height limits on development in the R-4 and C-3 districts which limits the achievable density of multifamily rental and ownership units. In both of these districts, the 2001 zoning ordinance limits density to 40 dwelling units per acre for land previously zoned in these districts, but offers unlimited density for those who rezone into these districts and become subject to other 2001 development standards. However, in both of these cases the 60 foot height limit serves as an effective cap on density. Because of the high cost of constructing underground parking, many affordable housing projects accommodate parking in surface or above-ground structures (i.e., by stacking dwelling units over a parking deck or “podium”). Either way, the 60 foot height limit is a barrier to development. If surface parking is chosen then the builder needs to accommodate housing units on less site area (avoiding the parking lot), which tends to require taller buildings. If a structured parking podium is used, then the housing can cover more of the site but needs to be accommodated in the remaining available height above the parking structure. In general, a 60 foot limit restricts structures to no more than six floors (including parking) and perhaps less.

In order to allow for the construction of more affordable units, we recommend that the city raise the height limit in the R-4 and C-3 districts to 75 feet (roughly the height at which fires can be fought without the use of high-rise firefighting equipment). In addition, we recommend that the city consider lifting the 40 unit/acre maximum density for lands zoned R-4 or C-3 before 2001 if the resulting dwelling units are affordable housing units with occupancy subject to income limits.

Finally, we recommend that the minimum density calculation in the C-3 be revised to require that the combined residential and non-residential density be equivalent to at least 10 dwelling units per acre. The C-3 zone is already a mixed use district (i.e., both residential and non-residential uses are allowed), but as a practical matter it is sometimes difficult to construct ground floor commercial or office uses (and their required parking) plus an additional 10 dwelling units per acre. By providing a conversion factor—for example, by giving the builder “credit” against the 10 unit/acre minimum for the non-residential floor area constructed—the city could encourage the type of mixed use development that C-3 zoning anticipates. For example, if the residential portions of a mixed use building have an average gross floor area (including hallways, elevators, and fire stairs) of 2,500 square feet per unit, then the builder would be “credited” with the equivalent of one dwelling unit per 2,500 square feet of commercial and office development constructed. This is important because many modern affordable housing developments use the income from ground floor commercial and office uses to indirectly subsidize the construction costs of the upper floor housing.

Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones. Like many cities, Las Cruces requires that new annexations and development proposals be consistent with the city's adopted master plans for the area, which means that the proposed development must meet minimum as well as maximum development densities. Unfortunately, over the last decade the city has faced numerous requests to amend the master plan simply to accommodate individual projects (or to amend previously approved development plans for the site) in order to allow for development at lower densities. While these requests have apparently been market driven—i.e., the builder believes that fewer homes at lower densities will sell faster and for higher prices than those called for by the plan—they have the effect of driving up housing prices and reducing the potential supply of affordable housing. This impact is compounded by the fact that once lower-density housing is constructed residents of the area often resist efforts to construct higher density housing nearby; so one plan amendment may lead to requests for similar plan amendments on nearby properties in the future.

We recommend that Las Cruces amend its residential zone districts to establish minimum densities for the R-1-b, R-2, and R-3 districts, and that those minimum densities correspond to those shown in the applicable plans for each area. This could increase the supply of both affordable ownership units (at the lower end of the density range) and rental units (at the upper end of the range). This would affect approximately 15.2 percent of the developed land in the city but would not affect the 19.7 percent of developed land in the R-1-a and R-1-c districts. In addition, we recommend that the authority of the Planning and Zoning Commission be revised to prohibit variances to the minimum zoning requirements. If the city wants to provide some avenue for relief from the minimum densities we suggest that a super-majority vote of city council (i.e., a 2/3 or 3/4 majority) should be required.

Refine R-1-b Zone and provide templates. In addition to establishing a minimum density, the effectiveness of Las Cruces' current R-1-b district as an affordable housing tool could be improved by revising some of the other dimensional standards applicable to that district. The R-1-b district currently allows the platting and development of lots with a minimum size of 3,500 square feet and a maximum density of 12 units per acre (which is probably high enough to help support future bus/transit service). As a point of reference, minimum lot sizes actually platted and developed in Las Cruces and other western cities often run between 5,000 and 10,000 square feet (which are not high enough to build support for bus/transit service). Several studies have shown that large minimum residential lot sizes are the single form of regulation most responsible for increasing housing prices. Zone districts with single family lot sizes smaller than 5,000 square feet have proven useful tools in helping reduce the cost of housing in many cities, and the housing industry has developed several innovative housing products that work well on these smaller lots. The R-1-b district avoids that problem by making smaller lots available.

Figure F-13.
Las Cruces Requirements v. Other Cities

City	Zone	Min. Lot Size (sq.ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Max. Height (ft.)	Lot Width (ft.)	Lot Depth (ft.)
Las Cruces	R-1-a	5,000	15	0-5	20	35	50	70
Comparison Cities	Similar Zones	2,000 – 7,000	15-25	5-20	10-25	16-35	50	N/A
Las Cruces	R-1-b	3,500	15	0-5	15	35	40	70
Comparison Cities	Similar Zones	3,000 – 4,000	7-15	0-10	15	24-26	40	N/A

Note: Comparison cities include Santa Fe, NM; Albuquerque, NM; Silver City, NM; Tucson, AZ; and Boulder, CO. Since dimensions vary from city to city, ranges were used for comparison.

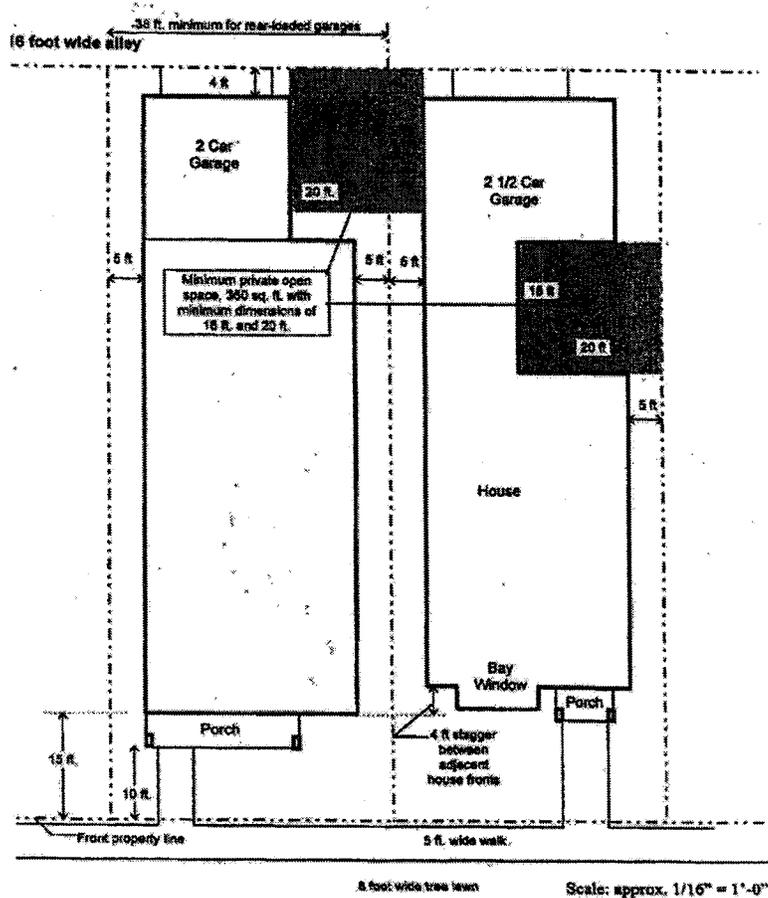
Source: Clarion Associates.

Unfortunately, the R-1-b district dimensional standards now work against its small minimum lot size to discourage affordable housing. As the table above shows, the district currently requires a minimum lot width of 40 feet and a minimum lot depth of 70 feet. Experience shows that efficient, livable housing products can be developed on 37.5 foot wide lots, and some larger and older cities are developing templates to allow housing development on 25 foot wide lots. Because narrower lots allow the builder to spread infrastructure costs (particularly roads and the water, sewer, and drainage pipes located in the streets) over more property owners, the per unit infrastructure cost can be lower, which promotes affordability. In addition, many cities do not regulate minimum lot depths. We recommend that Las Cruces reduce the minimum lot widths in the R-1-b district to 37.5 feet (but also limit front driveways on those lots to a maximum of 12 feet wide) and remove the minimum lot depth requirement. We also recommend that the city allow 25 foot wide lots with reduced front setbacks of 10 feet if alley access to parking is provided (i.e., if the lots will not have front driveways). Often wider lots and deeper front setbacks have been required to accommodate the dimensions of a car (or two cars) parked in a front driveway, but if rear access is provided in lieu of front driveways those larger dimensions should be reduced accordingly.

Unfortunately, even though 9.4 percent of the developed land in Las Cruces is zoned R-1-b, lots in the 3,500 square foot range are not often platted or developed. Instead, owners of R-1-b land tend to plat lots in the standard 5,000 square foot range, apparently to meet perceived market demand. In order to help meet demands for more affordable single family housing it is important that smaller lot products actually be platted and constructed. In order to encourage this, we recommend that the city collect or develop “templates” showing efficient and financially successful housing products on 3,500 square foot lots and work with builders to encourage their use. Some cities have even “pre-approved” template developments for small lots, meaning that applicants who submit housing products designed to meet the templates get minimal review or can proceed directly to obtain a building permit. An example of a simple template from Aurora, Colorado, is shown in the following figure.

**Figure F-14.
Reduce
Residential
Parking
Requirements**

Source:
Clarion Associates.



In addition to minimum lot sizes and maximum development densities, minimum on-site parking requirements are often a significant barrier to affordable housing development. That is because minimum parking requirements are actually indirect limits on development density—every square foot of lot area devoted to parking is a square foot that cannot be used to provide housing, landscaping, walkways, or recreation areas. Las Cruces' zoning ordinance follows the standard past U.S. practice of requiring 2 off-street spaces for each single family unit and townhouse, regardless of size or affordability restrictions. In addition, the code requires between 1.5 and 2 spaces per apartment unit and between 1 and 2 spaces per unit for accessory dwelling units (so-called "granny flats").

Increasingly, U.S. cities are reviewing their minimum parking standards to require only 1.5 parking spaces per unit for smaller housing units, attached units, or apartment units (or providing a sliding scale based on number of bedrooms). While some of the occupants of these units will no doubt have more than one car, some will not, and some of the "extra" cars can be accommodated through on-street parking or public parking areas. More importantly, experience suggests that lenders and developers will provide additional parking over the city-established minimums if those spaces are needed to rent or sell the units being constructed. For medium and higher priced housing, additional units are often provided, but for smaller and more affordable housing, 1 or 1.5 parking spaces per unit is often adequate. Similarly, for accessory dwelling units, 1 parking space per unit is generally adequate.

We recommend that Las Cruces reduce the minimum off-street parking requirements for multifamily housing to 1.5 spaces per unit, and the minimum for accessory dwelling units to 1 space per unit. Further, we recommend that when dwelling units are part of the city's managed affordable housing pool (i.e., that occupancy is subject to income limits) the minimum be reduced to 1 space per apartment or townhouse unit. This change could encourage additional supply of affordable rental units.

Refine Accessory Dwelling Unit regulations. Las Cruces permits accessory dwelling units in all single family zoning districts, which is admirable. However, it then requires that ADUs meet a number of conditions and restrictions that limit their potential for both general housing and affordable housing. In particular, Section 38-53 of the zoning code defines ADUs as “a self-contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling” and requires that “accessory dwelling units shall be created solely to accommodate those related to the family.” Several cities permit accessory dwelling units to be located not only within the main dwelling structure but in permitted accessory buildings — such as a second story or attic space over an existing garage or barn. In addition, most cities do not limit occupancy of an ADU to family members, which significantly limits their usefulness as a source of low cost housing units. In reality, the impacts of an accessory dwelling unit on the neighborhood do not depend on whether a family member is occupying the unit. Administratively, it is also difficult to enforce “family-only” restrictions, since that requires regular record-keeping on ADU occupants and (potentially) inspections to confirm who is living in the unit. Most local governments do not want to engage in that type of enforcement, and most property owners would prefer not to have to report to the city government about who is occupying the unit.

For all of the above reasons we recommend that Las Cruces remove the requirements that ADUs be located in the primary dwelling structure and that occupancy be limited to family members.

Expand impact fee exemption. Las Cruces currently imposes development impact fees of \$800/unit for parks, \$1,855/unit for water infrastructure, and \$1,165/unit for wastewater infrastructure. When compared to municipal fee structures, these are fairly low fees, and they may not cover the city's actual costs of expanding park, water, and wastewater services to new development. Chapter 13 of the Las Cruces Municipal Code provides a process whereby affordable housing builders can apply for and receive exemptions to each of these fees, which removes approximately \$3,820 from the builder's cost per unit. As part of Las Cruces' budget process, the city adopted a resolution that currently limits the exemption to \$20,000 in park fees and \$75,000 in water and sewer fees annually. As a practical matter, this means that no more than 25 affordable dwelling units can take advantage of the exemption each year. This is a very small number when compared to the estimated unmet affordable housing demand of 3,600 low income rental units and 1,800 low- and moderate income ownership units.

It would help facilitate affordable housing development if the City could expand the development impact fee exemption so that it covers at least the average number of affordable housing units produced in these categories each year—or 105 units annually. However, it is acknowledged that the state law that governs that development impact fee statute (Land Development Fees and Rights, Chapter 5 Article 8 NMSA 1978) can serve as a disincentive to impact fee waivers. This is because the state law requires that fee waivers must benefit households who pay no more than 30 percent of their monthly household income in housing costs. This standard, although a goal for affordability, is not always attainable (i.e., sometimes households may need to pay slightly more than 30 percent).

Other topics considered. In the process of developing the recommendations above, Clarion Associates also reviewed several other aspects of the Las Cruces zoning ordinance. More specifically, we reviewed the menu of available zoning districts and overlay districts; the uses available by right, with conditions, and by special permit in each district; landscaping standards; and other development standards applicable to new development and redevelopment in the City. While there are many improvements that could be made to the ordinance, we do not believe that those shortcomings constitute significant barriers to the construction of affordable housing (except as noted above).

For example, although the City does not have any “mixed use” districts listed in the ordinance, many of the existing districts in fact allow mixed uses. In addition, the City’s practice of allowing “pancake” zoning—i.e., the application of more than one base zone district to a property—provides another way to allow mixed use development. If the zoning ordinance is revised in the future, we would probably recommend that these approaches to mixed use be revisited and that new mixed use districts be developed—but it does not appear that the absence of those types of zones is in fact discouraging affordable housing at this time.

Similarly, we received suggestions that perhaps the Las Cruces zoning ordinance would benefit from one or more new zone districts designed only for affordable housing—i.e., zones in which the only permitted development would be affordable housing. Most cities do not adopt single-purpose affordable housing districts (with the exception of some very high cost resort communities), because the creation of special purpose districts tends to concentrate rather than disperse affordable housing and tends to take focus away from integrating affordable housing tools throughout the zoning ordinance. For those reasons, we do not recommend the creation of new special purpose affordable housing districts at this time.

Another possible way to promote affordable housing is by “streamlining” the development review and approval process. Almost all zoning ordinances can be improved in this area—through better internal staff coordination, clearer approval criteria, and delegation of decision-making authority to reduce the number of steps in the process. Some cities have begun to use “ombudsmen” to speed up processing and resolve issues that arise in affordable housing proposals. Although we heard criticism of Las Cruces’ review procedures from housing builders, it appears that the City’s timeframes for development review and approval are no longer than many comparable cities (and shorter than many). In light of those preliminary findings, we did not pursue a detailed evaluation of the review process. If the zoning ordinance is significantly revised in the future, however, we recommend that this issue be reviewed to identify ways to improve both the efficiency and predictability of the development review process.

Finally, the current zoning ordinance does not incorporate several recent trends in zoning practice, including sustainable development, Smart Growth, transit-oriented development, New Urbanism, some of the form-based principles articulated in the Smart Code, or incentives in the proposed LEED-ND rating system (such as incentives for ADUs and smaller primary housing units). Each of those trends is worthy of careful consideration as implementation tools after Las Cruces updates its comprehensive plan. We have not focused on those broader zoning reforms in this review simply because they address planning issues much broader than affordable housing and because the changes recommended above will target specific barriers to affordable housing more directly.

Public Housing Authority policies. The policies and procedures of the Housing Authority of the City of Las Cruces (HACLCL) were reviewed as part of the FY2011-2015 AI. This discussion of the HACLCL is based on interviews with management.

Section 8 voucher program. As of March 2011, the HACLCL was serving 693 tenants through its allocation of funds from the federal Section 8 voucher program. The housing authority is authorized by HUD to issue as many as 917 vouchers. Doña Ana County also receives Section 8 voucher program allocation; 459 households had vouchers through the county in March 2011, but 605 are authorized by HUD.

The housing authority reports that it has as many as 1,200 households on its voucher wait list at any one time. However, many request to be dropped off the list before they reach the top or are unable to be reached (an estimated 25 percent of the wait list). The housing authority reports that voucher holders have difficulty finding affordable units for a number of reasons: landlords prefer to rent to the student market; voucher holders cannot find units they prefer, etc.

Affordable units. The HACLCL also owns and manages 724 affordable rental units. Because of the difficulties voucher holders have had in finding landlords who will rent to them, the housing authority has recently purchased rental complexes on the private market to increase the supply of units that will accept vouchers.

Client demographics. The HACLCL serves clients who would have a very difficult time renting on the private market. As of March, 2011, the housing authority's clients had very limited incomes, with most (29 percent) receiving General Assistance from the government, averaging \$2,200 per year. Another 19 percent earned Social Security Income (SSI), averaging \$5,500 per year; 15 percent worked and earned an average of \$8,300 per year. Almost 50 percent of the housing authority's residents are children and 7 percent have some type of disability.

Figure F-15 presents the developments and numbers of units or vouchers operated and/or administered by the HACLCL.

**Figure F-15.
HACLCL-Provided
Housing, Las Cruces,
March 2011**

Source:
Housing Authority of Las Cruces.

Property Name	Number of Units
Stone Mountain Place	84
Montana Senior Villages (Elderly, LIHTC)	132
Walnut Grove (Multifamily, Conventional housing)	100
Desert Palms	100
Tres Arboles (Multifamily, Conventional housing)	64
Valley Vista (Multifamily, Section 8 new construction)	61
Jardines Alegres and Jardines Verdes (Elderly/Disabled, Section 8 new construction)	87
San Pedro Place (Conventional housing, Elderly/Disabled)	38
Oak Street Apartments (Multifamily)	20
Pecos Apartments (Multifamily)	20
Almendra Apartments (Multifamily)	18
Total Units	724
Section 8 Vouchers (City)	917
Section 8 Vouchers (County used in City)	605
Total Rental Subsidized Units/Vouchers	2,246

Accessibility. Five percent of the total public housing units are accessible. If units are needed beyond 5 percent, additional units will be retrofitted to be made accessible on an as needed basis. Two percent of the public housing units are accessible to persons who are visually and/or hearing impaired. The HACLCL estimates that 192 of its clients have some type of disability, with the majority of these clients (63 percent) having a physical disability.

Wait list procedures. The HACLCL recently changed its method for placing families on wait lists for public housing authority units. The PHA now advertises units by size when they become available and maintains very small lists (8-10 households) per unit size. When units are expected to become vacant, the HACLCL advertises in print media the potential vacancies and invites interested parties to complete an application. This change was made to avoid building very large wait lists that kept residents waiting indefinitely for units.

Occupancy standard. The HACLCL recently adopted a "two persons per bedroom" occupancy standard. The change to this standard, which is allowed by HUD, was made so voucher holders could find rental units more easily. This was also done to house more families: By broadening the size of unit (and thus supply of units for voucher holders), households can live in more affordable units, enabling the housing authority to serve more people.

Instead of maintaining wait lists based on unit size (number of bedrooms), the HACLC places households in units based on their overall household size and lets the household members determine where members of the household should sleep, depending on their preferences.

At the time this AI was prepared, the HACLC was considering adjusting the “two persons per bedroom” standard for certain types of households to ensure that single heads of households are required to share bedrooms with their children.

Fair housing complaints. In the last 5 years, one resident filed a complaint with HUD about the HACLC. The complaint was dismissed by HUD.

Fair Lending Analysis

This section contains an analysis of home loan, community reinvestment and fair housing complaint data. Community Reinvestment Act (CRA) ratings and Home Mortgage Disclosure Act (HMDA) data are commonly used in AI’s to examine fair lending practices within a jurisdiction. Fair housing complaint data are important to pinpoint the types of discrimination that are most prevalent and detect improvements or deterioration in fair housing conditions. Used in conjunction, these data sets can identify and then diagnose the reasons for potential or existing housing discrimination. Each data set is reviewed in turn below. This section also includes a discussion of recent legal cases and actions in Las Cruces and relevant cases in the state related to fair housing.

The Federal Financial Institutions Examination Council (FFIEC)⁷ is responsible to facilitate public access to data that depository institutions must disclose under the Home Mortgage Disclosure Act of 1975 (HMDA) and the aggregation of annual HMDA data, by census tract, for each metropolitan statistical area (MSA).

CRA compliance. The CRA is federal legislation requiring that financial institutions progressively seek to enhance community development within the area they serve. On a regular basis, financial institutions submit information about mortgage loan applications as well as materials documenting their community development activity. The records are reviewed to determine if the institution satisfied CRA requirements. The assessment includes a review of records as related to the following:

- Commitment to evaluating and servicing community credit needs;
- Offering and marketing various credit programs;
- Record of opening and closing of offices;
- Discrimination and other illegal credit practices; and
- Community development initiatives.

⁷ The Council is a formal interagency body empowered to prescribe uniform principles, standards and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) and to make recommendations to promote uniformity in the supervision of financial institutions.

The data are evaluated and a rating for each institution is determined. Ratings for institutions range from substantial noncompliance in meeting credit needs to an outstanding record of meeting community needs. Figure F-16 represents CRA Compliance for the 3 financial institutions that received CRA exams in Las Cruces in the past 5 years.⁸ It should be noted that large banks like Wells Fargo and Bank of America are examined at their Albuquerque offices; the latest CRA exams for these banks were more than 10 years ago and were also Satisfactory.

Figure F-16.
CRA Ratings,
Las Cruces, 2010

Note:
Some banks may have been examined more than once.

Source:
FFIEC Interagency CRA Rating, March 2010.

CRA Ratings	
First New Mexico Bank	Satisfactory
Citizens Bank of Las Cruces	Satisfactory
Western Heritage Bank	Satisfactory

As shown in Figure F-16, all institutions identified in Las Cruces currently have a rating of satisfactory, although none were rated outstanding.

Mortgage lending. HMDA data are widely used to detect evidence of discrimination in mortgage lending. In fact, concern about discriminatory lending practices in the 1970s led to the requirement for financial institutions to collect and report HMDA data. The variables contained in the HMDA dataset have expanded over time, allowing for more comprehensive analyses and better results. However, despite expansions in the data reported, HMDA analyses remain limited because of the information that is *not* reported.

As such, studies of lending disparities that use HMDA data carry a similar caveat: HMDA data can be used to determine disparities in loan originations and interest rates among borrowers of different races, ethnicities, genders, and location of the property they hope to own. The data can also be used to explain many of the reasons for any lending disparities (e.g., poor credit history). Yet HMDA data do not contain all of the factors that are evaluated by lending institutions when they decide to make a loan to a borrower. Basically, the data provide *a lot* of information about the lending decision—but *not all* of the information.

Beginning in 2004, HMDA data contained the interest rates on higher-priced mortgage loans. This allows examinations of disparities in high-cost, including subprime, loans among different racial and ethnic groups. It is important to remember that subprime loans are not always predatory or suggest fair lending issues, and that the numerous factors that can make a loan “predatory” are not adequately represented in available data. Therefore, actual predatory practices cannot be identified through HMDA data analysis. However, the data analysis can be used to identify where additional scrutiny is warranted, and how public education and outreach efforts should be targeted.

⁸ All state member banks, state nonmember banks, national banks and savings associations, except small institutions, are subject to data collection and reporting requirements of CRA. A small institution is a bank or thrift that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.

HMDA data report several types of loans. These include loans used to purchase homes, loans to make home improvements and refinancing of existing mortgage loans, as defined below.

- **Home purchase loan.** A home purchase loan is any loan secured by and made for the purpose of purchasing a housing unit.
- **Home improvement loan.** A home improvement loan is used, at least in part, for repairing, rehabilitating, remodeling, or improving a housing unit or the real property on which the unit is located.
- **Refinancing.** Refinancing is any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower. The purpose for which a loan is refinanced is not relevant for HMDA purposes.

The HMDA data are separated into two primary loan categories: conventional loans and government-guaranteed loans. Government-guaranteed loans are those insured by the Federal Housing Administration and Veterans Administration.

This section uses the analysis of HMDA data to uncover:

- The geographic areas in Las Cruces where high-cost lending and loan denials are concentrated, and the correlation of these areas with concentrations of minority and low income households;
- Disparities in high-cost lending and loan denials across different racial and ethnic groups.

The Federal Reserve is the primary regulator of compliance with fair lending regulations. When federal regulators examine financial institutions, they use HMDA data to determine if applicants of a certain gender, race or ethnicity are rejected at statistically significant higher rates than applicants with other characteristics are. The Federal Reserve uses a combination of sophisticated statistical modeling and loan file sampling and review to detect lending discrimination.

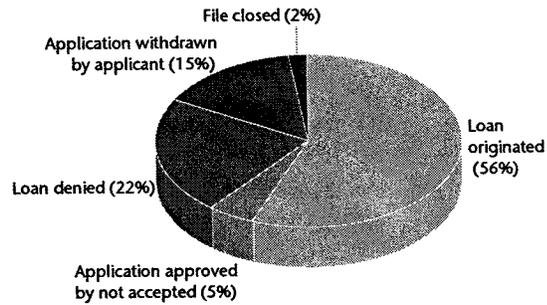
Loan denials. Of the potential actions that could be taken on a loan:

- “Loan originated” indicates that the application was approved and the applicant accepted the loan;
- “Approved, not accepted” means that the application was approved, but the applicant chose not to accept the loan;
- “Denied” signifies that the application was not approved;
- “Withdrawn” indicates that the applicant chose not to pursue the loan before an approval decision had been made; and
- “Determined incomplete” means that the application was incomplete and the loan was not evaluated.

Figure F-17.
Loan Applications and Disposition,
Las Cruces MSA, 2009

Note:
 Does not include loans for multifamily properties or non-occupants.

Source:
 FFIEC HMDA Raw Data, 2009 and BBC Research & Consulting.



During 2009, there were 8,048 loan applications made in the Las Cruces MSA secured by residential properties that intended to be occupied by owners. About two-thirds of the loan applications were for refinances; 27 percent were for home purchases. As shown above, the majority of loans applied for in Las Cruces during 2010 were approved an originated.

Denial rates by race and ethnicity. Figure F-18 presents denial rates by race and ethnicity. It is focused on the largest racial/ethnic groups in Las Cruces: White, Hispanic and African American.

Figure F-18.
Result of Mortgage Loan Applications by Race and Ethnicity, Las Cruces MSA, 2009

Race/Ethnicity of Applicant	Percent of Loans Originated	Percent of Applications Approved but Withdrawn or Not Accepted by Applicant	Percent of Loans Denied	Percent of Files Closed
White	59.6%	17.9%	20.1%	2.3%
African American	61.9%	13.4%	19.6%	5.2%
Non-Hispanic	65.4%	19.1%	15.2%	2.2%
Hispanic	50.3%	19.1%	27.7%	3.0%
<i>Hispanic/White Difference</i>	-9.3%	1.1%	7.5%	0.6%
<i>African American/White Difference</i>	2.2%	-4.5%	-0.6%	2.8%
<i>Hispanic/Non-Hispanic Difference</i>	-15.1%	0.0%	12.4%	0.8%

Note: Does not include loans for multifamily properties or non-occupants.
 Source: FFIEC HMDA Raw Data, 2009 and BBC Research & Consulting.

As shown in Figure F-18, the differences in denial rates are modest, except for between Hispanics and Non-Hispanics. The biggest difference is in loan approvals (and conversely, denials) between Non-Hispanics and Hispanics. This disparity is unchanged from 2004, where the denial rates were 31 percent Hispanics and 18 percent for Non-Hispanics.

Reasons for denial. A final important HMDA analysis involves examining the reasons for denial by type of loan and applicant. These characteristics may help explain some of the variation in approval rates among applicants. Figure F-19 show the reasons for denials of loan applications by race and income. As the table demonstrates, Hispanics have a much higher proportion of loans that are denied because of credit history than White and Non-Hispanics, and a smaller percentage of incomplete loan applications.

Figure F-19.
Reasons for Denials of Loan Applications
by Race, Ethnicity and Income of Applicant, Las Cruces MSA, 2009

	Debt-to- Income Ratio	Employment History	Credit History	Collateral	Insufficient Cash
Race/Ethnicity of Applicant					
White	20.9%	7.2%	28.4%	16.3%	1.8%
Non-Hispanic	20.7%	8.8%	16.8%	16.0%	1.5%
Hispanic	20.6%	5.8%	36.5%	17.0%	1.7%
<i>Continued...</i>					
	Unverifiable Information	Application Incomplete	Mortgage insurance denied	Other	
Race/Ethnicity of Applicant					
White	5.0%	8.0%	0.9%	11.6%	
Non-Hispanic	7.6%	11.2%	1.4%	16.0%	
Hispanic	3.1%	5.0%	0.5%	9.7%	

Note: Does not include loans for multifamily properties or non-occupants.

Source: FFIEC HMDA Raw Data, 2009 and BBC Research & Consulting.

Subprime analysis. This section examines how often minorities in Las Cruces received subprime loans compared to Whites. For the purposes of this section, we define “subprime” as a loan with an APR of more than 3 percentage points above comparable Treasuries. This is consistent with the intent of the Federal Reserve in defining “subprime” in the HMDA data.

We also call loans “super subprime” which have APRs of more than 7 percentage points above comparable Treasuries. This is our own definition, created to identify very high-cost loans.

In 2009, 326 loans in Las Cruces were flagged as subprime loans in the HMDA data. Just 69 had interest rates so high that we considered them “super” subprime. Ninety-four percent of the recipients of subprime loans were White borrowers. Hispanics received subprime loans 6 percent of the time, compared to 3 percent of loans made to Non-Hispanics—suggesting a small disparity in subprime lending based on ethnicity in 2009.

HUD fair housing complaints. Residents who feel they have been discriminated against may contact HUD directly or the City of Las Cruces.

Contacting HUD. Housing discrimination complaints filed with HUD may be done online at (<http://www.hud.gov/complaints/housediscrim.cfm>), by calling 1-800-669-9777 or by contacting the HUD Regional Office of Fair Housing and Equal Opportunity in Albuquerque at (505) 346-6465.

When HUD receives a complaint, the department will notify the person who filed the complaint, then notify the alleged violator and allow that person to submit a response. The complaint will be investigated to determine whether there has been a violation of the Fair Housing Act.

A complaint may be resolved in a number of ways. First, HUD attempts to reach an agreement between the two parties involved. If achieved, this “conciliation agreement” must lay out provisions to protect the filer of the complaint and public interest. If an agreement is signed, HUD will take no further action unless the agreement is breached, in which case HUD will recommend that the Attorney General file suit.

If a person needs immediate help to stop a serious problem being caused by a Fair Housing Act violation, HUD may assist as soon as a complaint is filed. HUD may authorize the Attorney General to go to court to seek temporary or preliminary relief, pending the outcome of the complaint, if irreparable harm is likely to occur without HUD's intervention and there is substantial evidence indicating a violation of the Fair Housing Act.

From 2000 through 2010, HUD received 54 complaints from or against Las Cruces residents and businesses. Of these, 26 were brought by the Border Fair Housing & Economic Justice Center. Figure F-20 shows trends in complaints over the past 10 years.

As shown in Figure F-21, almost half of the complaints had a successful settlement. The vast majority of the complaints with successful settlements were brought by Border Fair Housing.

As shown in Figure F-22, the vast majority of complaints were brought on the basis of discrimination because of disability or familial status.

Figure F-20.
Complaints filed with HUD, Las Cruces, 2010

Source: U.S. Department of Housing and Urban Development.

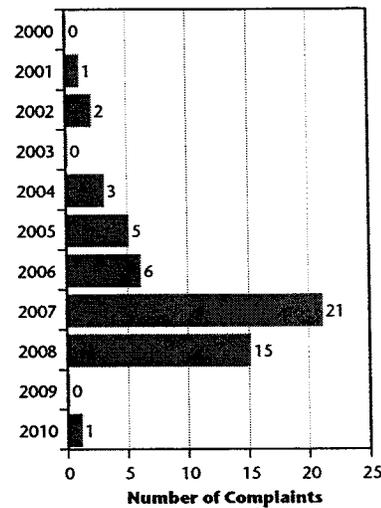
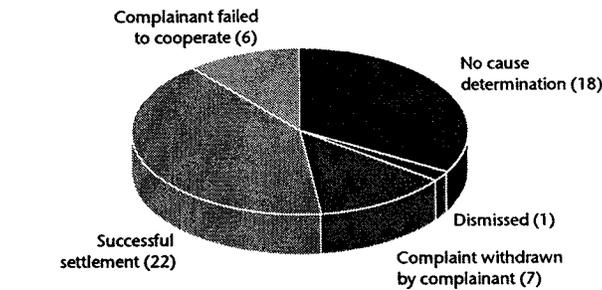
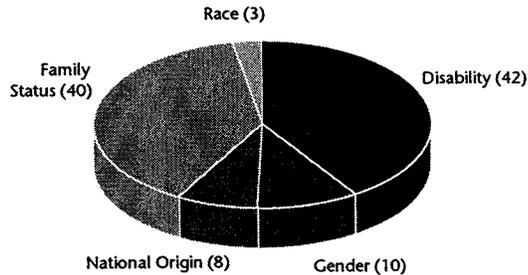


Figure F-21.
Resolution of HUD Complaints



Source: U.S. Department of Housing and Urban Development.

Figure F-23.
Basis for Complaint



Note: The number of bases for complaint exceeds the total number of complaints because many complaints were filed on multiple reasons for alleged discrimination.

Source: U.S. Department of Housing and Urban Development.

Contacting the City. The City's fair housing ordinance establishes a formal procedure for processing fair housing complaints.

Any person who feels they have been discriminated against under the Title VIII of the Civil Rights Act of 1968, the Fair Housing Act of 1988, the Fair Housing Accessibility Guidelines of 1991 and the State's Fair Housing Statute (Discrimination in Housing, NMSA 1978) may refer and/or receive assistance in filing a complaint regarding the alleged violation to the Community Development Department of Las Cruces. The ordinance states that an aggrieved person may request assistance from the Community Development Department of Las Cruces when filing complaints to HUD. If the director of the Community Development Department has any reason to believe that any person has engaged in a discriminatory housing practice, the director shall refer such information regarding the violation to HUD or the State Human Rights Commission for prosecution.

Legal cases. As part of the fair housing analysis, recent legal cases were reviewed to determine significant fair housing issues and trends in Doña Ana County.

There have been three legal cases in Doña Ana County in the past several years that are important to fair housing.⁹ The first case involved religious discrimination. One case involved the alleged discriminatory lending practices of a bank. The third case involved the Village of Hatch and its violation of the Fair Housing Act by discriminating against persons of Mexican origin through selective enforcement of a zoning ordinance.

Border Fair Housing vs. Desert Palms (2006). In July, 2006 a tenant of Desert Palms Apartments (Desert Palms) contacted Border Fair Housing and Economic Justice Center (BFHC) complaining of religious discrimination at the Desert Palms by Mr. Kevin Smith. Mr. Smith was a regional manager for JL Gray Properties and a pastor at Life's Purpose Church near the Desert Palms. Through an investigation, BFHC learned that Mr. Smith used his position to benefit the residents of Desert Palms that were supporters or members of his church while punishing residents that were not affiliated with the church. Specifically, he allegedly provided housing preferences church members including application approval, maintenance and rodent control, waiving late rent fees or skipping rent altogether as well as the ability to keep service animals. Residents who were not members or refused to be members of the church were not afforded any of these privileges and were required to pay fees for violations they did not commit including late rent and fabricated rules violations. In addition, Mr. Smith allegedly fired another housing manager for complying with BFHC's investigation. Mr. Smith and JL Gray Properties denied nearly all of the allegations made in the complaint and indicated that BFHC lacked standing to bring the complaint. After a series of court hearings, procedural motions, and attempts to collect additional evidence the case was settled in October 2007 and subsequently dismissed based on fulfillment of the terms of settlement.

United States Justice Department vs. First National Bank of Doña Ana County (1997).¹⁰ In 1997, a federal court approved a settlement agreement resolving charges that First National Bank of Doña Ana County engaged in a pattern of discrimination against Hispanic borrowers seeking financing for mobile homes from January 1992 through March 1995. Discriminatory practices allegedly included applying stricter underwriting standards to Hispanics than to similar White applicants in violation of

⁹ No recent cases were located on the Department of Justice or National Fair Housing Advocate's websites.

¹⁰ United States of America vs. First National Bank of Doña Ana County, Civil Action No.: 97-0096 HB.

the Fair Housing Act and Equal Credit Opportunity Act. First National Bank of Doña Ana County, at the time the largest bank in Las Cruces, agreed in the settlement to establish a \$485,000 fund to compensate the Hispanic applicants who were unfairly denied loans. The bank also agreed to create a \$750,000 fund allowing applicants to purchase mobile homes at reduced interest rates. First National Bank also consented to target Doña Ana County's Hispanic population for homeownership seminars and marketing programs.

According to the settlement agreement, First National Bank cooperated voluntarily with the investigation and denied all allegations in the complaint. The bank maintained that its mobile home lending program provides non-discriminatory assistance to the Hispanic population in Doña Ana County.

It should also be noted that First National Bank received an "Outstanding" CRA rating in 1995 despite the high number of Hispanic application denials. The investigating office reported later that the review of the bank's records did not contain an evaluation of mobile homes loans because it was believed the mobile home loan review was completed in 1993. However, the Justice Department's investigation uncovered discriminatory treatment of the bank's mobile home loans beginning in 1990.

First National Bank of Doña Ana County was sold to First Security Corporation in 1999. In 2000, First Security Corporation merged with Wells Fargo & Company.

United States Justice Department vs. Village of Hatch, New Mexico (1996).¹¹ In a second Doña Ana County case, the Village of Hatch agreed to pay \$260,000 to settle claims that it had violated the Fair Housing Act by discriminating against Hispanic individuals by selectively enforcing a zoning ordinance that banned mobile homes. The lawsuit alleged that Hatch's zoning ordinance barring mobile homes was only enforced in areas of the town that were mainly populated by legal migrant farm workers. Due to the ordinance, several persons were forced to relocate from Hatch and live in substandard areas outside of town, known as Colonias.

Fair Housing Impediments, Recommendations and Action Plan

This section summarizes the impediments to fair housing choice identified in the research conducted for the FY2011-2015 AI and recommends a Fair Housing Action Plan for FY2011-2015.

Impediments to Fair Housing Choice.

Las Cruces residents experience discrimination

- Both the resident survey conducted for this fair housing study and a similar survey conducted in 2006 found that between 8 and 9 percent of Las Cruces residents believe they have experienced housing discrimination at some point. About 63 percent of those respondents said the discrimination occurred in Las Cruces.
- Based on the survey data, as many as 742 adult residents living in the City's low and moderate income areas and 5,727 adult residents Citywide have experienced housing discrimination.

¹¹ United States of America vs. Village of Hatch, New Mexico, Civil Action No.: 95-0636 HB/JHG.

- The most common reason for housing discrimination experienced by residents according to survey respondents was race and familial status. These were the same reasons as in 2006.
- The good news is that the percentage of residents who say they would file a complaint if they experienced discrimination is very high. In the 2011 survey, 70 percent of residents said they would “file a complaint” if they felt they had been discriminated against; just 2 percent said they would “do nothing.” This differs from what residents who were surveyed in 2006 did in response to discrimination: 77 percent “did nothing” about the discrimination.
- Almost one-third of Las Cruces residents said they know who to contact if they have experienced discrimination.

Development regulations could be improved to facilitate affordable housing development.

As part of the City’s recent Affordable Housing Strategy study in 2008, Clarion Associates, a planning and land use consulting firm, conducted a detailed review of the City’s land use policies and zoning code. The analysis considered barriers to affordable housing development and recommended changes to facilitate affordable housing development.

Although the study did not find an egregious barrier to affordable housing creation in Las Cruces, the regulatory review resulted in several recommendations:

- **Proactively rezone land into the R-4 zone.** Proactively rezone lands along bus routes and major one-way street pairs into the R-4 zone to encourage construction of multifamily housing.
- **Adjust the R-4/C-3 Zone height and density.** Raise the height limit in the C-3 and R-4 zones from 60 feet to 75 feet and revise minimum density requirement.
- **Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones.** Adopt minimum density regulations for key zone districts.
- **Refine R-1-b Zone and provide templates.** Revise the dimensional standards for the R-1-b district and prepare template examples of smaller single family housing on 3,500 square foot lots in order to encourage wider use of this existing zoning tool.
- **Reduce residential parking requirements.** Reduce the minimum off-street parking requirement for accessory dwelling units (ADUs) and multifamily dwelling units to 1 space per unit.
- **Refine Accessory Dwelling Unit regulations.** Remove the requirement that ADUs be occupied by a member of the same family that occupies the primary housing unit, and that the ADU be contained within a primary structure.
- **Expand impact fee exemption.** While the existing exemption from park, water, and sewer fees is good, it covers too few units to make a significant difference in affordable housing supply.

Loan denial rates between Hispanics and Non-Hispanics remain relatively high. Although these disparities are often related to credit scores, existing debt and other similar factors, the result is that Hispanics may be encouraged to take on riskier, high cost and/or informal loan arrangements—especially in refinancing loans— which may lead to foreclosures.

Residential accessibility in the City is lacking. Many stakeholders who participated in this study commented on the lack of accessible housing units in Las Cruces. These comments ranged from the City having too few accessible units to persons with disabilities being unable to rent accessible units because they are occupied by persons without disabilities. Some also noted that landlords are not making accessibility accommodations because they do not understand reasonable accommodations laws. In addition, service providers to persons with disabilities would like to see the City's transit system extended to White Sands, where many persons with disabilities are employed.

Some landlords are ignorant of and/or noncompliant with the Federal Fair Housing Act. Stakeholders engaged in this study offered several examples of landlord ignorance and violations of the Federal Fair Housing Act. These included landlords refusing service animals and not making reasonable accommodations for all types of disabilities (e.g., flashing safety lights for the deaf).

Recommendations. We recommend the following actions for the City's consideration.

1. Improve fair housing visibility on the City's website. The City's website contains general information about fair housing and instructs residents about their options if they feel they have experienced fair housing violations. The information is available in English and Spanish. The website a bit hard to locate, however, as the link on the City's home page appears at the bottom. We recommend that the City periodically rotate the positioning of the fair housing link to ensure adequate visibility.

2. Support organizations that provide credit and homebuyer counseling. The City should work with organizations like Tierra del Sol and the YWCA which provide homebuyer and credit counseling to ensure that the programs are geographically targeted to areas in the community where loan denial rates are the highest. These programs should also contain information on predatory lending and counsel potential borrowers about the risks of carrying high levels of consumer debt. Finally, these programs should contain information about how to access government sponsored and subsidized loans that have more flexible underwriting standards, as well as the types of lenders to avoid.

To this end, the City may assist with marketing the programs, providing venues for the trainings and advising the organizations on their content, as needed.

3. Implement the development recommendations from the Affordable Housing Strategy plan to facilitate affordable housing development.

4. Apply for fair housing grant funds to conduct testing. Residents in the City would benefit from fair housing testing to determine the extent of discrimination based on race, familial status and failure to make reasonable accommodations, as well as predatory lending practices. It is difficult to identify the prevalence of discrimination and implicate violators when there are so few legal cases and the evidence of fair housing violations is mostly anecdotal. That said, the anecdotes that stakeholders described were very serious in nature with adverse consequences—e.g., residents losing their homes, residents being required to live without service animals, etc.

5. Conduct a review of accessibility needs. The City of Las Cruces will adopt a new building code in 2011. As part of this code adoption, the City should review the adequacy of its current requirement for accessible units. If after consulting with service providers and surveying people with

disabilities about how well their homes meet their accessibility needs, the City may want to consider raising the required percentage of accessible units in new construction.

In addition, the City should create and maintain a list of providers of accessible rental units and provide this list to nonprofits and have it available at the senior center. The City may also want to sponsor an event like an “accessibility fair” where residents who have questions about accessibility improvements learn about how these improvements can be made and the reasonable cost range for such repairs, as well as what the repairs should cost.

6. Update the City’s fair housing ordinance. The City needs to update its fair housing ordinance to accurately reflect the actions the City can take when fair housing complaints are received. Because the City is not a HUD-designated enforcement agency, it cannot file complaints on behalf of residents.

7. Monitor HACLC occupancy standards. As mentioned above, the HACLC recently changed their occupancy requirements to a “two heartbeats per bedroom” policy. During the City’s Five-year Consolidated Plan public input process, stakeholders were concerned that this change may discourage families of certain gender and family/child mixes from accepting vouchers and finding suitable units. The change in the occupancy standard was allowed by HUD and done to increase the supply of units from which voucher holders have to choose.

The HACLC is in the process of working with its Section 8 administrator to determine if an exception in the standard to single head of household families would be helpful for clients. Pending this change, the HACLC should report to the City about the effect of the exception on housing single head of household families. Specifically, the HACLC should monitor if the pending exception improves the rate at which single head of household families find units with their vouchers.

If the occupancy requirements are a primary reason voucher holders are not renting units, the HACLC and the City should communicate this concern—which was a consequence of budget cuts—to HUD and discuss policy and funding options.