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Racial segregation injuring Black and Hispanic neighborhoods continues to be enforced by a variety of government and private policies and decisions. The pandemic has made it impossible to ignore the segregation and its effects on the Black and Hispanic home owners and tenants segregated out of White neighborhoods. This segregation is not economic. Low income White home owners and tenants are not subjected to the same unequal conditions as are Black and Hispanic families of low, moderate, and middle incomes.

Daniel & Beshara, P.C. has represented clients in a variety of court cases challenging the policies and decisions enforcing racial segregation. The facts gathered in these cases show that many of the neighborhoods intentionally segregated under overt segregation are still segregated and unequal. The facts show there is another set of single family and multifamily neighborhoods that are racially segregated by race with the Black and Hispanic neighborhoods still drastically unequal. The facts show that the United States government and three of the affordable housing programs it funds are a modern cause of the modern racial segregation.

This is the first memo in a series intended to convey the facts showing the role of our country's national government and its three largest affordable rental housing programs increasing the extent and the injuries of racially segregated neighborhoods.

Modern Federally Subsidized Housing Segregation

By Laura Beshara and Michael Daniel

I. Introduction

The federal government is the largest funder of affordable housing for very low and extremely low-income tenants today. This does not even include public housing.¹ The three largest federally subsidized housing programs are the Low Income Housing Tax Credit (LIHTC) program, the tenant-based Housing Choice Voucher Program (voucher), and the HUD Project Based Rental Assistance (PBRA). These modern federally subsidized housing programs are concentrated mostly in Black and Hispanic neighborhoods, often with many of the assistance programs overlapping at the same apartment complex or in apartment complexes across the street from one another. These three federally funded housing programs are responsible for concentrating affordable housing in Black and Hispanic neighborhoods and at the same time, these federally funded housing conglomerations are excluded from White non-Hispanic neighborhoods. These federal programs work to provide decent housing in high opportunity² neighborhoods for low income White tenants, but these same programs do not provide the same opportunity for the majority of Black and Hispanic tenants.

These three federal programs serve large numbers of White, Black, and Hispanic tenant households. The Whites in these programs are usually dispersed in neighborhoods that are typically neighborhoods consisting largely of unassisted, standard housing of similar market rents and at lower risks for epidemics and other disasters. The Black and Hispanic households are not. These modern federally subsidized housing programs concentrate Black and Hispanic families in Black and Hispanic neighborhoods consisting significantly of assisted, substandard housing in neighborhoods with conditions unequal to and inferior to the White assisted families' neighborhoods. These neighborhoods are at the highest risk level for epidemics and are severely unequal in conditions including the lack of amenities and safety compared to white neighborhoods.

These three federal programs have worked over the last 15-20 years to segregate low income Black and Hispanic tenants into highly concentrated areas of poverty in Black and Hispanic neighborhoods. On the other hand, these same programs are not clustered together in predominantly White neighborhoods, and these same programs offer White non-Hispanic tenants opportunities and benefits that are not given to Black and Hispanic tenants.

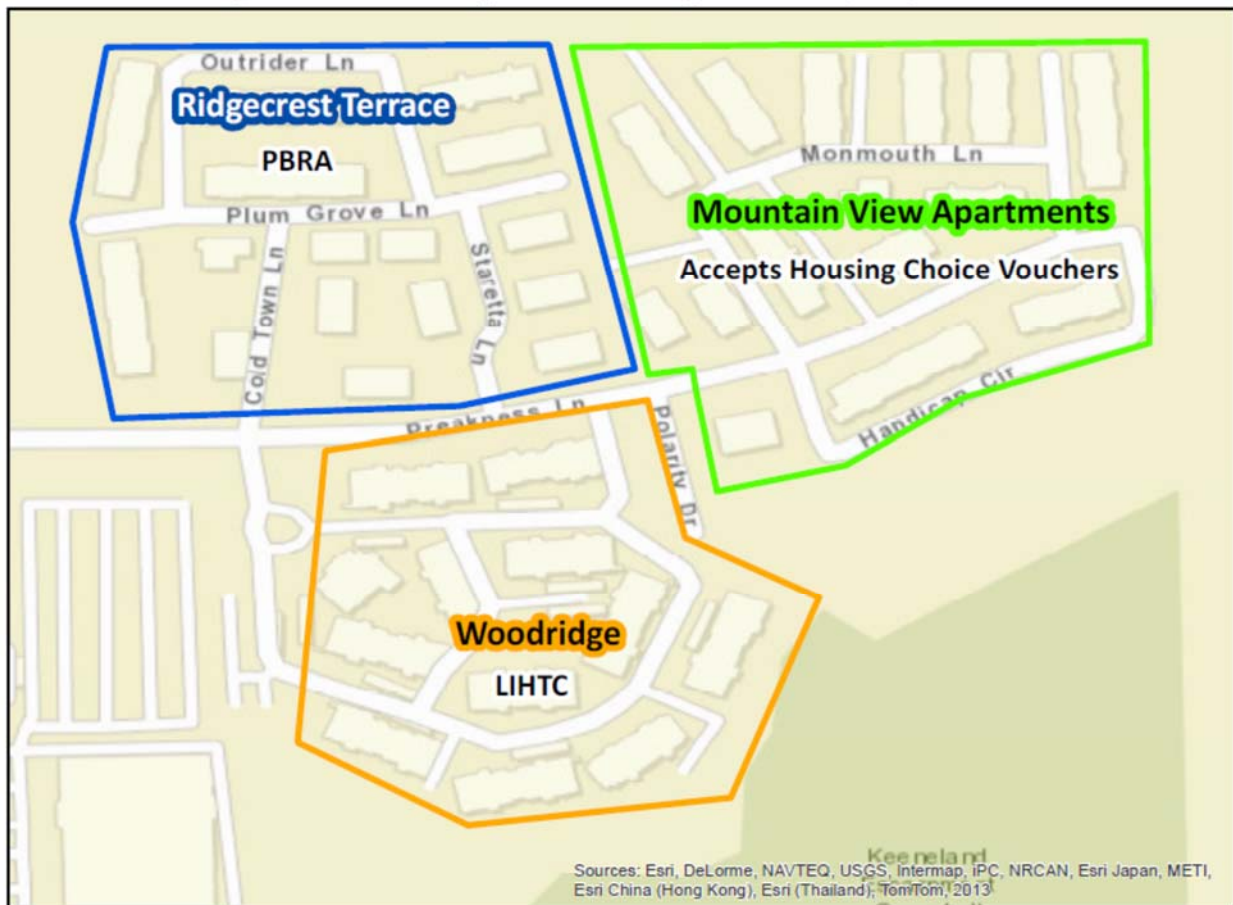
¹ This report does not include public housing as there has been no new funding for public housing since the early 1990s.

² High opportunity in this context refers to areas with low poverty, high performing schools, safe neighborhoods, with private and public investment, adequate municipal services, health care, and employment opportunities.

A. Example of concentrated modern segregation: Ridgcrest Terrace

We use the map below of the Ridgcrest Terrace, Woodridge Apartments, and Mountain View Apartments area in the City of Dallas to illustrate these three federal housing programs and how these programs are concentrated in Black and Hispanic neighborhoods. This neighborhood has a LIHTC project (Woodridge) across the street from a PBRA assisted project (Ridgcrest Terrace) and next to a private apartment complex that accepts Housing Choice Vouchers. The neighborhood is not safe. The high level of crime at these three locations that is endured by the residents violates HUD's standards for decent, safe, and sanitary housing, and is inimical to family life. A few months ago, a man was murdered in the parking lot of the Ridgcrest Terrace apartments. The census tract location, 107.04 is 69% Hispanic, 25% Black, and 4% White non-Hispanic, and the poverty rate for the tract is 36%. The Centers for Disease Control Social Vulnerability Index overall rating for the tract is 0.92 out of a maximum vulnerability of 1.0. The index shows that the tract is one of the nation's most vulnerable to disasters including disease outbreaks. These three apartments are located in Zip Code 75211 which has consistently reported the highest number of confirmed COVID-19 cases in Dallas County.

Ridgcrest Terrace apartment neighborhood, City of Dallas



II. Description of the three federal housing programs

As shown in the above example and map, the federal government subsidizes the concentration of housing in racially segregated locations with these three programs. These housing programs are found in significant concentrations in neighborhoods of color. The following is a description of these three programs.³

A. LIHTC Program of 3.23 million units

According to the U.S. Treasury, the OCC and HUD, the LIHTC is the primary federal resource for creating affordable housing in the United States today.⁴ The program was created by the Tax Reform Act of 1986 and has placed in service 3.23 million housing units between 1987 and 2018.⁵ The U.S. Treasury and IRS allocate federal tax credits to state housing finance agencies. The state agencies then allocate the federal tax credits to developers to subsidize the construction or rehabilitation of affordable housing. The LIHTCs allow investors to claim tax credits on their federal income tax returns over a ten year period. The equity raised with the sale of the LIHTC finances the development of the affordable housing. The LIHTC is estimated to cost the government an average of \$9.9 billion annually.⁶

Under the LIHTC statute, the LIHTC projects must not refuse Housing Choice Voucher tenants solely because the status of the tenant as a voucher holder. 26 U.S.C. § 42(h)(6)(B)(iv). The rents at the LIHTC projects are not affordable for extremely low-income tenants unless the tenant is renting with a voucher. To qualify for the credit, a project must set aside at least 40 percent of the units for renters earning no more than 60 percent of the area's median income or 20 percent of the units for renters earning 50 percent or less. So, for tenants whose income are below 50% AMI, generally the only way to reside in a LIHTC development is with a voucher.

A large majority LIHTC projects are owned by national banks or bank related entities. In order to obtain the tax credit the investor must be the owner of the project. OCC estimates that 85% of the equity for LIHTC were from the banking sector.⁷

In the urban cities of Texas, the vast majority of the LIHTC projects are located in racially and ethnically concentrated areas. The map of the LIHTC projects in the City of Dallas shows that 96% of the LIHTC units are in racially concentrated neighborhoods. Exhibit 1.

³ Sometimes these federal subsidies overlap at the same project. There can be HCV tenants using their vouchers to live in a LIHTC project or there can be LIHTC projects with PBRA contracts.

⁴ "Low-Income Housing Tax Credits: Affordable Housing Investment Opportunities for Banks," Office of the Comptroller of the Currency, Community Development Insights, March 2014.

⁵ U.S. Dept. of Housing and Urban Development, LIHTC Database, <https://www.huduser.gov/portal/datasets/lihtc.html>

⁶ An Introduction to the Low-Income Housing Tax Credit, Congressional Research Service, Feb. 27, 2019.

⁷ OCC, *supra* n. 4, pages 21-22.

B. Housing Choice Vouchers with 2.2 million units

The U.S. Department of Housing and Urban Development's (HUD's) Housing Choice Voucher (HCV) program provides housing assistance to more than 2.2 million families, making it HUD's largest rental assistance program. The federal housing assistance is provided in the form of a voucher and participants must find a willing landlord in the private housing market to accept the voucher subsidy, that along with the tenant's portion pays for the rent. Housing choice vouchers (also known as "Section 8 vouchers") are administered locally by public housing agencies (PHAs). The PHAs receive federal funds from HUD and HUD sets the rules for the program.

Housing Choice Vouchers are supposed to provide housing choice everywhere but because of the lack of willing landlords to participate in the program and structural inequities built into the program by HUD, vouchers are only able to be used almost solely in low income Black and Hispanic census tracts. HUD recently sponsored a study showing how difficult it is for a voucher tenant to find a landlord to accept the voucher.⁸ HUD stated that the researchers of this study found voucher recipients are hard pressed to find a landlord who will accept their vouchers, especially in higher opportunity neighborhoods. One of the five study sites was Ft. Worth where there was a 78% denial rate for acceptance of a voucher by a landlord. The denial rate for acceptance of a voucher by landlords in low poverty areas was higher, 85%. DBPC performed a landlord survey in 2017 for the Inclusive Communities Project in the Dallas, Denton, Collin and Rockwall counties in the Dallas area and found entire suburban cities with no or very few private multifamily landlords accepting vouchers. Of the 1,901 properties surveyed a mere 226 (12% of those surveyed) responded "YES" to accepting Section 8 vouchers. 1,675 (88% of those surveyed) responded "NO" to accepting Section 8 vouchers. There were no multifamily housing landlords willing to rent to voucher families in 26 majority White non-Hispanic suburban cities in the Dallas area.

The majority of the vouchers in the Dallas area are concentrated in the City of Dallas in racially and ethnically concentrated neighborhoods. Exhibit 2.

C. PBRA program of 1.2 million units.

HUD has entered into housing assistance payments contracts with private landlords to provide housing for very low-income tenants. Originally, the assistance was provided in connection with various HUD assisted projects built in the 1970s and 1980s, but the program was ended in 1983. The complexes are privately-owned and the federal rental subsidy is tied to the unit. The low-income tenants may not move out of the location with the subsidy to another location. While funding is no longer available for new commitments, congressional funding is available for the renewal of Section 8 HAP contracts for units already assisted with project-based Section 8 renewal assistance.⁹ The original location of these projects has remained intact with

⁸ "A Pilot Study of Landlord Acceptance of Housing Choice Vouchers" by the Urban Institute, sponsored by HUD, 2018.

⁹ HUD "Renewal of Project Based Rental Assistance," <https://www.hud.gov/hudprograms/rs8pbra>

projects serving Black tenants located in Black neighborhoods and vice-versa. HUD has the ability to transfer the contract to other locations but the transfers are not made from Black neighborhoods to White neighborhoods.

The PBRA projects in the Dallas area are largely located in neighborhoods of color in the City of Dallas.

II. Some Dallas and Houston illustrations show how these federal programs are clustered in Black and Hispanic neighborhoods

The following neighborhoods and the maps (attached as Exhibits 3-6) show the extreme concentration of affordable housing funded by the federal government today with more than one of these federal housing projects concentrated together in multiple clusters in Black and Hispanic neighborhoods. The harm to children living in these unequal neighborhood conditions is well documented.¹⁰ The research by the social scientist experts indicates that growing up in socioeconomically disadvantaged, racially concentrated neighborhoods is disadvantageous for children's well-being and future life chances.¹¹

Three examples are in the City of Dallas and one example is from the City of Houston. These examples are only a few of numerous such concentrations of assisted housing in Black and Hispanic neighborhoods in those cities. Many of these concentrations are located adjacent to or in the midst of single-family homes.

A. Far southern Dallas

The map at Exhibit 3 shows the West Virginia Park LIHTC area. This census tract 166.05 in far Southern Dallas became a racially concentrated and high poverty tract after the placement of 8 LIHTC projects there in the 2000s. A total of 1,648 LIHTC units in eight projects including four national bank investment LIHTC properties, have been developed there. The LIHTC projects are majority Black occupied. The poverty in the neighborhood increased dramatically. The childhood poverty rate for children under 5 increased from 13% in 1990 to 74% in 2015. This tract has the largest concentration of Housing Choice Vouchers in the City of Dallas with over 700 vouchers. The tract is in an economically distressed area according to the U.S. Treasury's CDFI Distress Index. This neighborhood is ranked as being one of the most unsafe locations for residents in the City. The four projects located above and next to 166.05 show even more concentrations of federally assisted housing. There are adjoining complexes that are

¹⁰ Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz. 2016. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project." *American Economic Review* 106(4):855–902.

¹¹ Dr. Ann Owens, Associate Professor of Sociology, Univ. of Southern California, Expert report for *ICP v. Department of Treasury and Office of the Comptroller of the Currency*.

LIHTC projects and additional complexes with vouchers. This area is racially concentrated with high levels of poverty and unequal neighborhood conditions.

B. The Jim Miller Road location

As seen in the attached Exhibit 4 map, there are 8 projects within a short distance with 5 of them in a row along Jim Miller Road. Interspersed in and around these 8 projects are single family neighborhoods. The federally subsidized housing programs for these 8 projects show the overlap of the federal subsidies. The concentration of poverty in this area is extreme and is by race, Black and Hispanic. The racial concentration of children in poverty is reflected in the schools where 90% or more of the students are economically disadvantaged. The schools serving the children in these projects fall far below the school proficiency rating for low-income White non-Hispanic children elsewhere in the City. The lack of neighborhood amenities, high crime, economically distressed area, and excessive illegal dumping marks this neighborhood.

C. Southern Oaks

The map attached as Exhibit 5 shows the Southern Oaks area of concentrated federally assisted housing. A developer recently proposed the building of another LIHTC project in between and within a few feet of the two existing LIHTC projects. The proposal awaits the award of federal LIHTC from the state housing finance agency. Next to these LIHTC complexes is a private complex that accepts vouchers and there is a PBRA project less than a mile from this conglomeration. This neighborhood is racially concentrated with high poverty. The occupants of the federally subsidized housing are predominantly Black. This concentration of federally subsidized housing is surrounded by single family homes.

D. The Cullen Park location in Houston

The pattern of the conglomerations of federally assisted housing with LIHTC, vouchers and PBRA is highly concentrated in the City of Houston's neighborhoods of color. Such conglomerations are not found in White areas in and around Houston. The Cullen Park neighborhood is an example. The units, site, and neighborhood at Cullen Park are not decent, safe or sanitary. Cullen Park Apartments is located in a predominantly Black, high poverty census tract. Cullen Park is located in an area concentrated with low income housing complexes. The tenants in the assisted projects are predominantly Black. The neighborhood is an area with high violent crime. Thirty-four percent of the households and 50% of the children in the Cullen Park census tract are below the poverty rate. The attached Exhibit 6 map of Cullen Park shows the five LIHTC projects, one PBRA project, and one mixed PBRA and Housing Choice Vouchers project and one private complex that accepts vouchers.

III. Racial segregation by occupancy and location

Nationally, the approximately 2 million voucher tenants are 70% minority and 30% White. Of the 70% minority, the voucher tenants are 48% Black and 18% Hispanic.¹² The

¹² HUD Picture of Subsidized Households for 2019 Housing Choice Vouchers, <https://www.huduser.gov/portal/datasets/assthsg.html>

470,000 or so White voucher families living in 50% or greater White census tracts are 78% of all White voucher tenants. The average risk of epidemics and other disasters for these families, 0.53, is well below the average for all voucher families, 0.64. By comparison, the smaller number of Black and Hispanic families living in White tracts with the moderate risk level, 370,000, are only 27% of Black and Hispanic voucher families. The vast majority of Black and Hispanic families, 1,000,000 plus, live in non-White tracts with an average disaster risk of 0.78. This risk level exceeds both the White risk in the White tracts, 0.53, and the overall average tract voucher risk level, 0.64.

The national distribution of the HUD PBRA projects shows a similar distribution. In the Metropolitan areas, 40% of the 1.2 million PBRA units are occupied by Whites, 34% by Blacks, and 16% by Hispanics.¹³ When there are few Black or Hispanic families the PBRA projects, the neighborhoods are similar to neighborhoods with unassisted rental units of similar rents. The 63,885 available PBRA units in non-Metro areas are 69% White occupied. The average census tract is 78% White and 20% below poverty. In addition, 68% of the units in these tracts are occupied by single family homeowners. By comparison, 26% of the 47,976 PBRA units in the Chicago Metro area are White occupied. The average census tract is 65% non-White and 27% below poverty. Only 27% of the units in these tracts are occupied by single family homeowners.

The racial segregation of the PBRA program in the urban cities is extreme. For example, in the City of Houston, 42 of the 44 PBRA projects are located in predominantly non-White neighborhoods and are adversely affected by various unequal neighborhood living conditions. The tenants at the 42 PBRA project are majority Black. The only two PBRA projects not in a predominantly White area are restricted to elderly tenants. The unequal neighborhood conditions affecting the 42 HUD PBRA housing in minority concentrated areas include high crime, high poverty including high childhood poverty, distressed neighborhoods, poor drainage, flooding, segregated and unequal schools, and lack of childhood opportunities. At the same time, HUD pays for decent, safe, and sanitary housing for similarly situated, disproportionately White non-Hispanic low income PBRA tenants in majority White non-Hispanic neighborhoods outside of the City of Houston. For example, there are six PBRA projects in The Woodlands, Texas, a suburb of Houston that are located in predominantly White neighborhoods. Four of the properties have a majority White tenant population and the other two are integrated. The Woodlands' PBRA projects are decent, safe, and sanitary and are in neighborhood living conditions that are free from environmental and other conditions that adversely affect the health, safety, and general welfare of the area residents. Six of these PBRA units are in The Woodlands. The rents for the assisted units at these projects are comparable to the rents for the assisted units at the PBRA sites in Houston.

The national LIHTC program is similarly segregated and unequal. The 1,300,000 LIHTC units in 50% or greater White census tracts are 44% of the 3,120,000 LIHTC units. The average

¹³ HUD Picture of Subsidized Households for 2019 Project Based Section 8, by MSA
<https://www.huduser.gov/portal/datasets/assthsg.html>

epidemic/disaster risk for these tracts is 0.56. The average epidemic/disaster risk for the 1,650,000 LIHTC units in non-White census tracts is far higher, 0.84. No agency tracks national LIHTC occupancy by race of location. The HUD data on LIHTC occupancy by state indicates that the LIHTC occupancy patterns include a substantial number of White tenants.

Past studies of the LIHTC occupancy data that is available show the same pattern of racial segregation and unequal neighborhood conditions in the LIHTC program as in the voucher program and the PBRA program. Approximately 500,000 or 29% of LIHTC units are White occupied.¹⁴

IV. These federal programs are not clustered and concentrated in areas in white neighborhoods.

This systematic and extensive placement of federally subsidized housing in minority areas in concentrated locations does not happen in majority White neighborhoods. White low-income tenants in these federal programs are not living in the same conglomerations of concentrated assisted housing. These federally assisted programs work for White people and for White neighborhoods. White people in these programs are in better conditions and Whiter locations.

Why don't these conglomerations exist in White neighborhoods? There are several reasons, all of which could be addressed by the federal government administering these federal housing subsidy programs.

1. The federal government allows local municipalities to have a veto over the acceptance of a LIHTC project in their municipality. This has resulted in very few LIHTC projects in the Dallas or Houston or other major metropolitan suburbs. The veto operates to exclude affordable housing from predominantly white areas. The U.S. Dept. of Treasury states that these vetoes can be discriminatory, perpetuate racial segregation, and are not required by the LIHTC tax code¹⁵, but the federal government does not act to prevent the operation of the vetoes or prevent LIHTCs from being excluded from White areas.
2. HUD has found that voucher tenants are unable to use their vouchers to obtain adequate housing outside of Black and Hispanic concentrated areas, but HUD has done nothing to change the voucher program to help the tenants or to increase landlord participation. Landlord incentives, financial assistance for security deposits, etc., and mobility counseling work to provide housing opportunities for voucher tenants as shown by the work of the ICP mobility program, but HUD refuses to fund such efforts. Housing Choice Voucher tenants are unable to use their vouchers in multifamily projects in the suburbs because very few private landlords accept vouchers in White neighborhoods.

¹⁴ HUD LIHTC database, 2017.

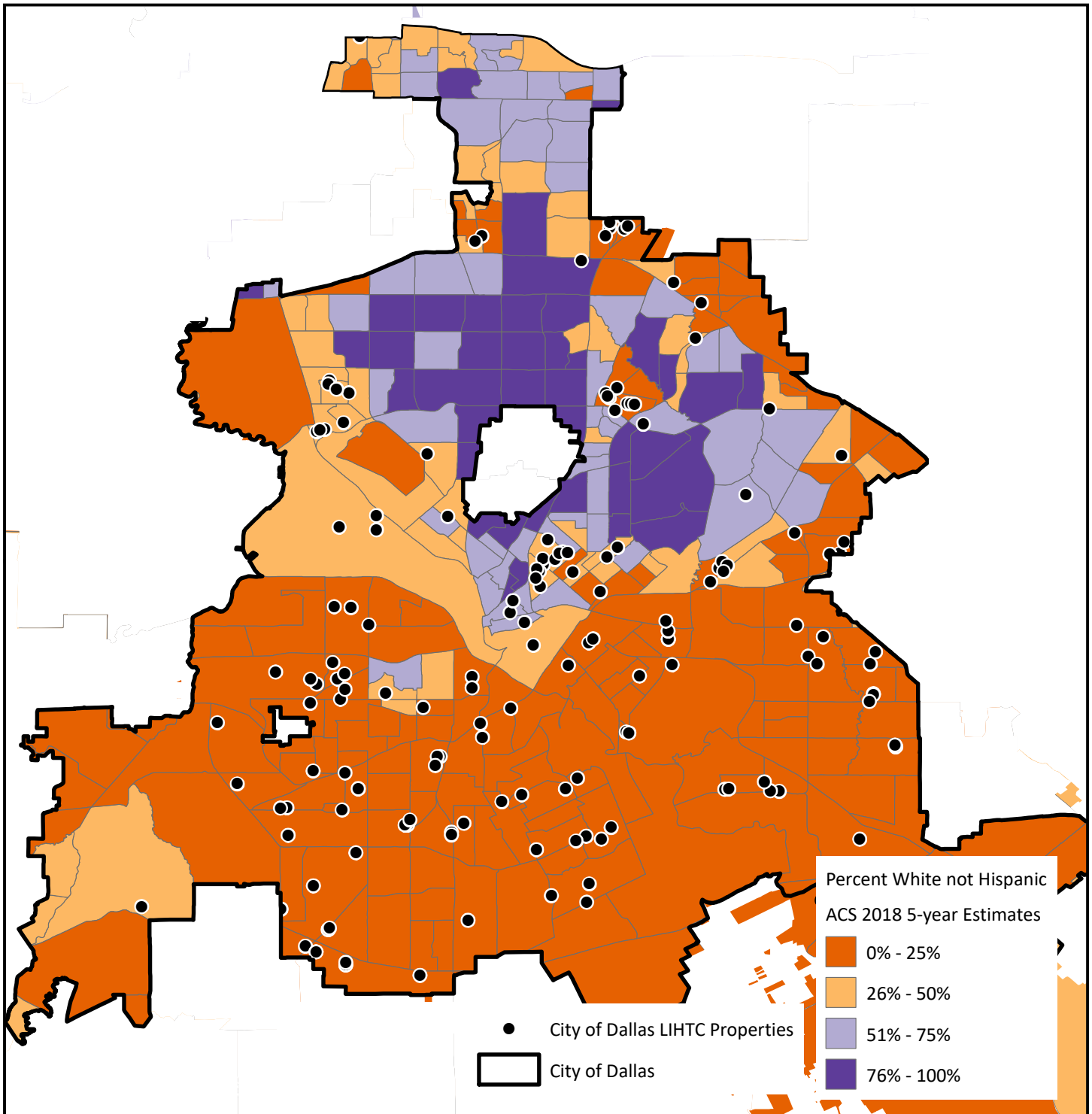
¹⁵ Treasury Revenue Ruling 2016-29.

3. HUD does not transfer PBRA subsidy to majority White areas. The original placement of the HUD assisted complexes in the PBRA program was often in racially segregated locations and HUD has maintained those assistance contracts in those same locations.

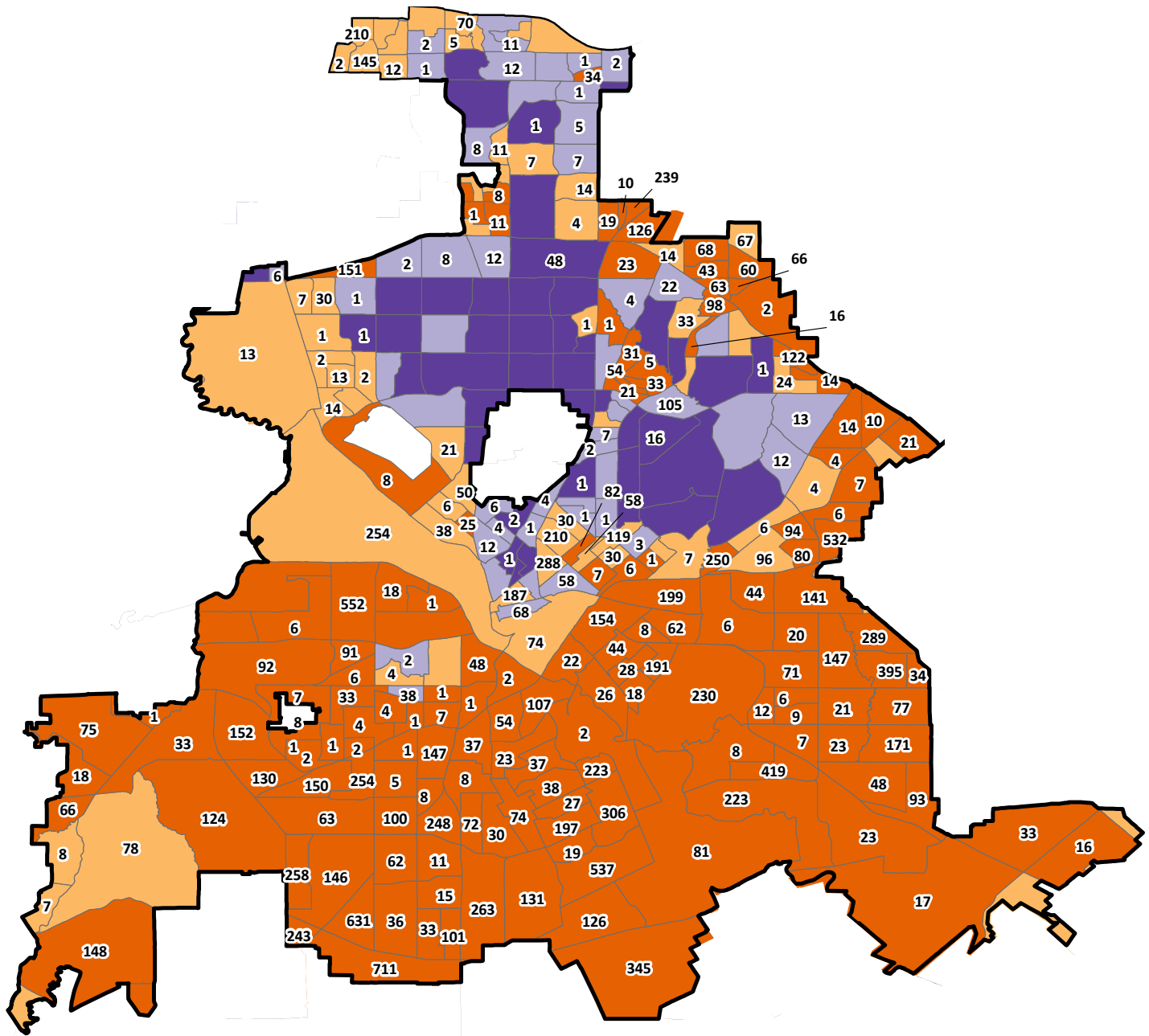
When these federally assisted programs are available in White neighborhoods then these programs work for white neighborhoods and for the tenants. Without the concentrations of the multiple subsidized housing and without the lack of neighborhood amenities, the programs offer the tenants decent, safe and sanitary housing with opportunities for the tenants.

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City of Dallas LIHTCs



Number of Housing Choice Vouchers per Census Tract in the City of Dallas with Race by Census Tract

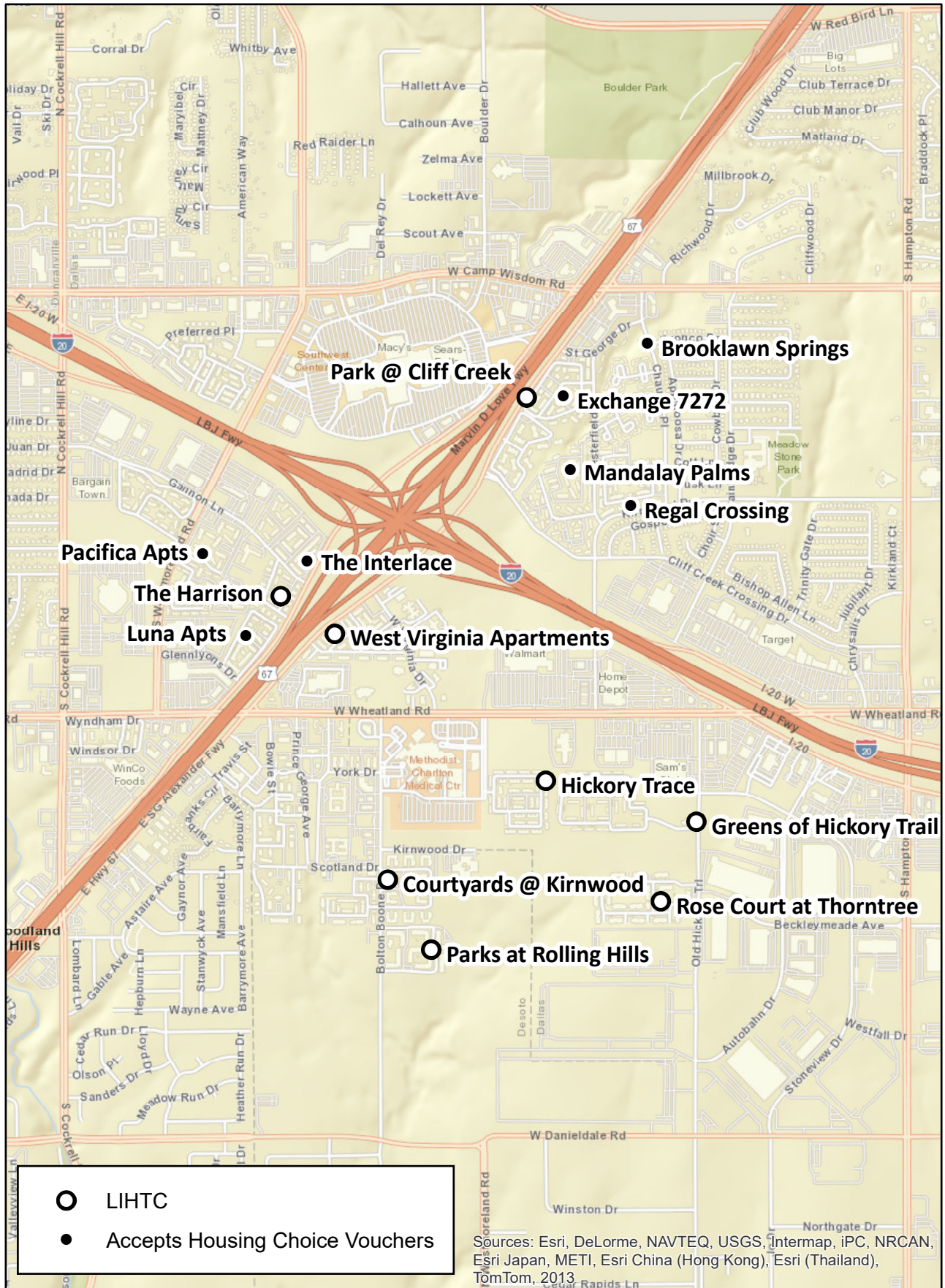


City of Dallas: 16, 321 Total HCVs
 ACS 2017 5-year Estimates
 Percent White not Hispanic by Census Tract

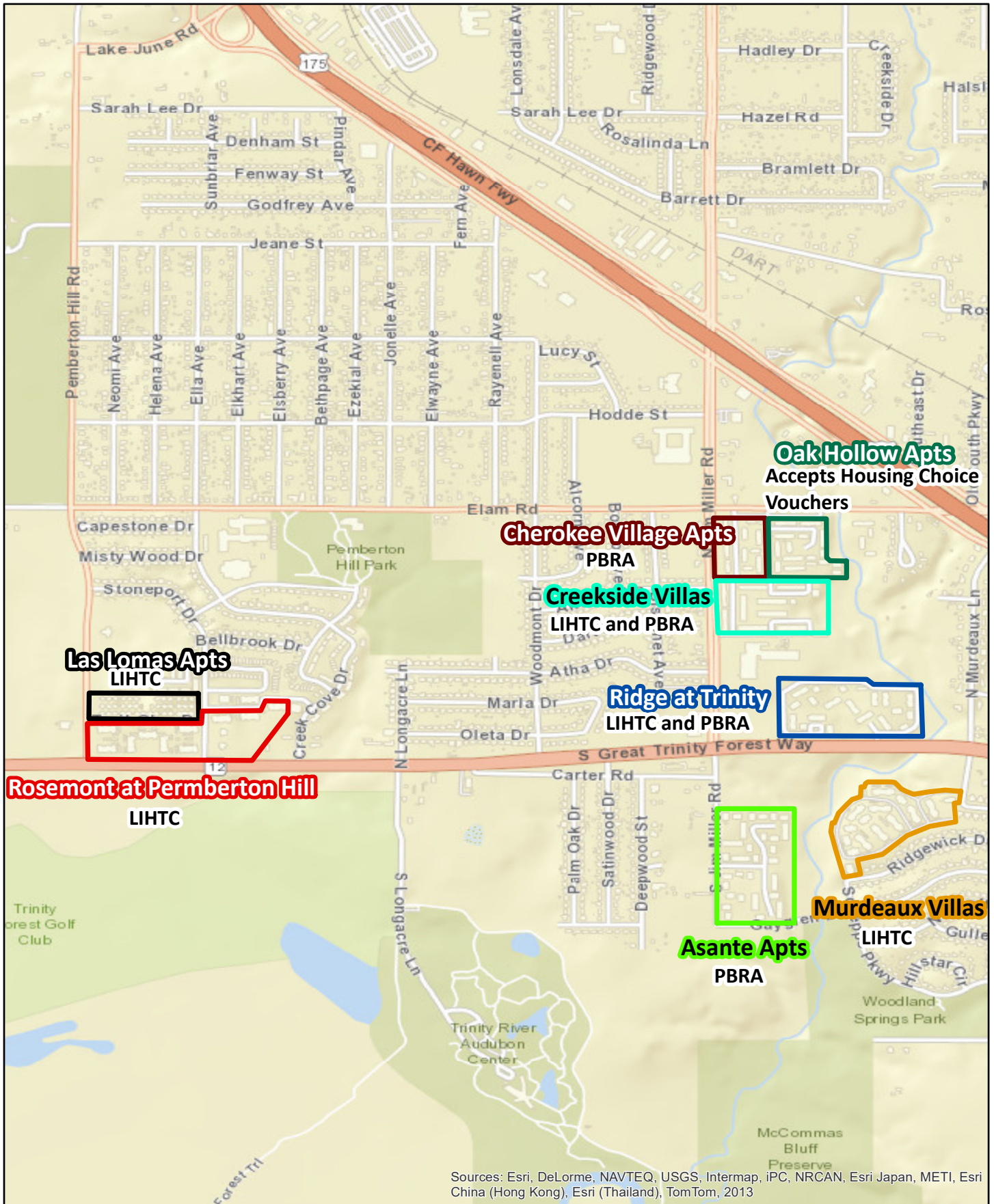
- 0% - 25%
- 26% - 50%
- 51% - 75%
- 76% - 100%

Sources: American Community Survey 2017 5-year Estimates, Table B03002; HUD 2018 Picture of Subsidized Households. 11

Park at Cliff Creek apartment neighborhood, City of Dallas

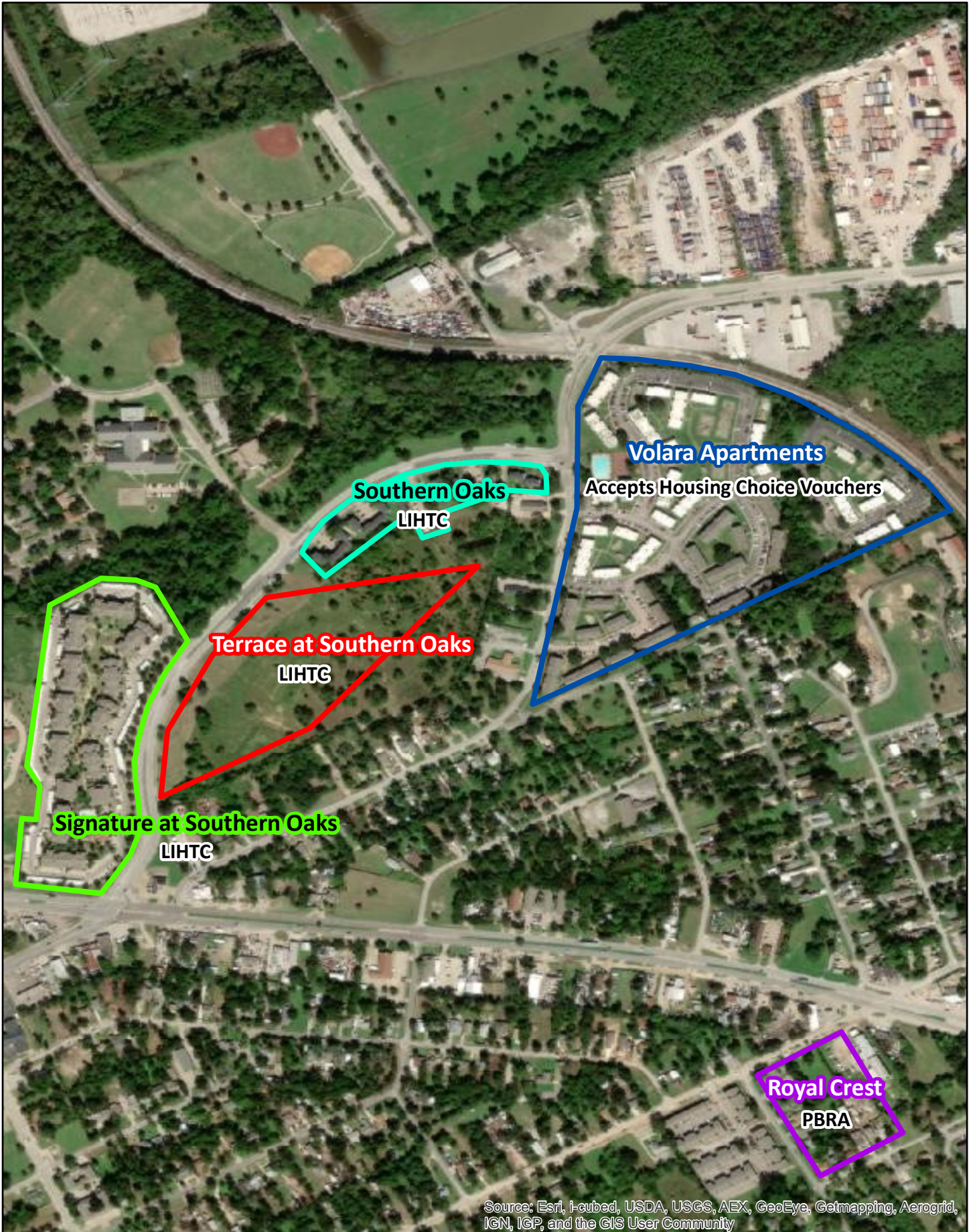


Jim Miller Rd neighborhood, City of Dallas



Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, IPC, NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, 2013

Southern Oaks apartment neighborhood, City of Dallas



Source: Esri, i-cubed, USDA, USGS, AEX, GeoEye, Getmapping, Aerogrid, IGN, IGP, and the GIS User Community

Cullen-Park apartment neighborhood, City of Houston

