Affirmatively Furthering Fair Housing

Understanding Current Requirements and HUD's proposed AFFH Rule
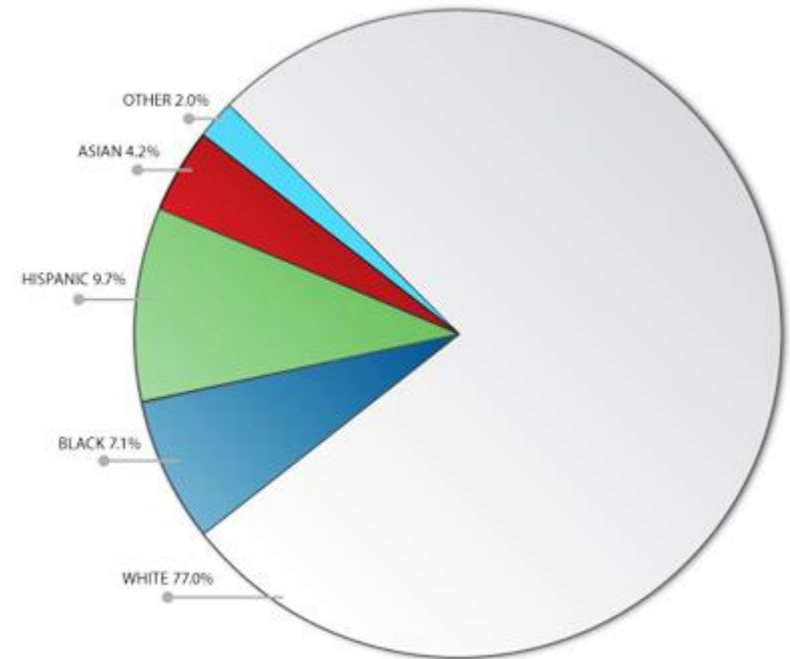
Background of AFFH

- The Fair Housing Act, passed in 1968 immediately following the assassination of MLK Jr.
  - prohibits **discrimination** through the creation of protected classes
- AFFH: promotes **integration**

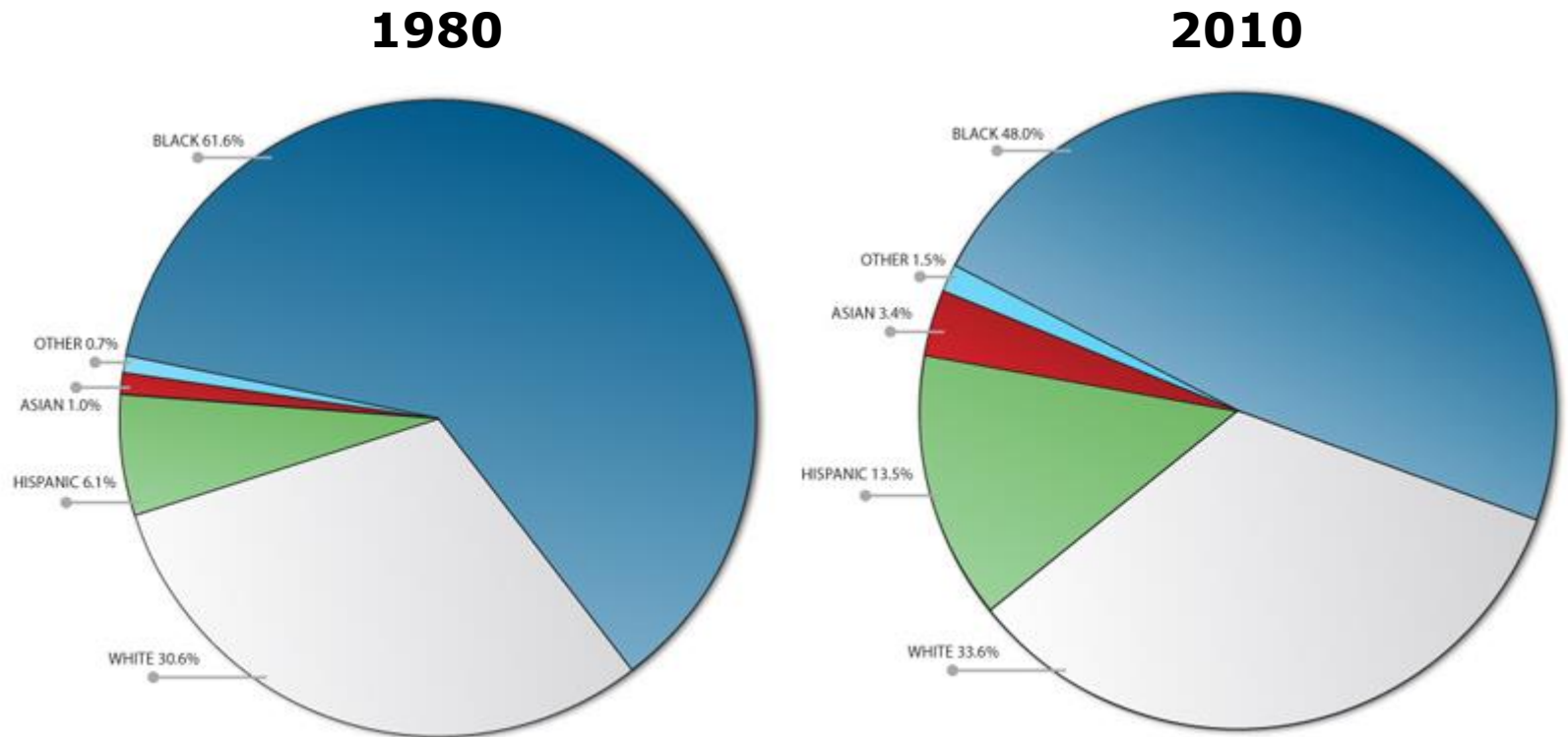# Average White Person's Neighborhood

1980

2010

OTHER 0.7%
ASIAN 1.4%
HISPANIC 4.6%
BLACK 4.9%
WHITE 88.4%
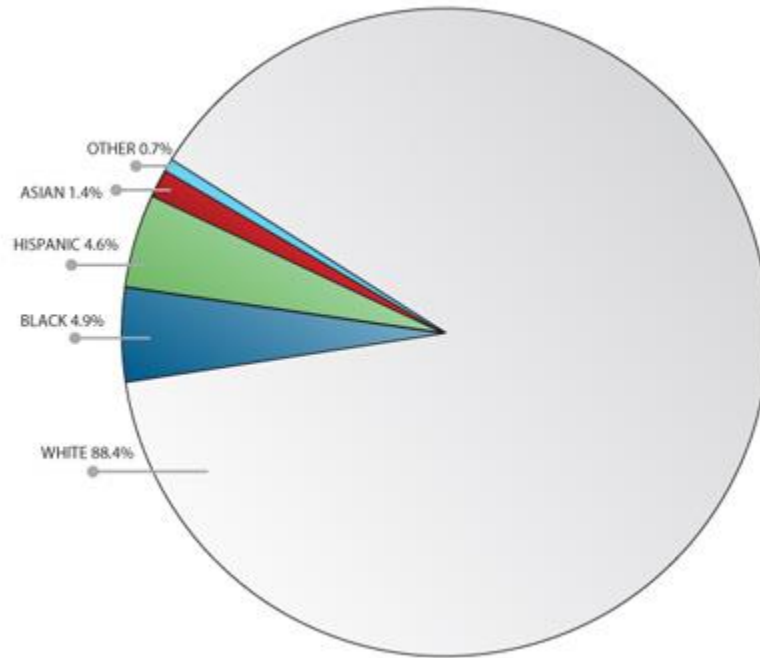
OTHER 2.0%
ASIAN 4.2%
HISPANIC 9.7%
BLACK 7.1%
WHITE 77.0%

Source: Margery Turner, Metrotrends Blog, Urban Institute, March 9, 2011

Average Black Person's Neighborhood

1980

2010

BLACK 61.6%

OTHER 0.7%

ASIAN 1.0%

HISPANIC 6.1%

WHITE 30.6%

BLACK 48.0%

OTHER 1.5%

ASIAN 3.4%

HISPANIC 13.5%

WHITE 33.6%

Source: Margery Turner, Metrotrends Blog, Urban Institute, March 9, 2011

AFFH Statutory Authority

○ 42 USC Sec. 3608 (e)(5) of the FHA says HUD must:

- "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the FHA."

Affirmatively Furthering Fair Housing (AFFH)

- The Dep't of Housing and Urban Development (HUD) defines *AFFH as* **"taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act."**

AFFH cont'd

- Recipients of funds should be **"taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end racially and ethnically concentrated areas of poverty…"**

Who are the "recipients"?

- Grantees of HUD programs including:
  - The Community Development Block Grant (CDBG)
  - The Home Investment Partnership (HOME)
  - Emergency Shelter Grant (ESG)
  - Housing Opportunities for Persons with AIDS (HOPWA)
- PHAs must also examine programs and identify impediments to fair housing as a part of their planning process

Goals of AFFH

- Identify and eliminate housing discrimination in a community
- Promote fair housing choice for all persons
- Provide opportunities for inclusive patterns of housing occupancy regardless of protected class
- Promote housing that is structurally accessible to all persons

AFFH Requirements

- Conduct an Analysis of Impediments (AI) to fair housing choice within a jurisdiction
- Take appropriate actions to overcome the effects of identified impediments
- Maintain records that reflect the analysis and actions taken

Analysis of Impediments(AI)

- A review of impediments to fair housing choice across both the public and private sectors
- Usually by single jurisdictions, but recently HUD allowed a regional-AI to be completed for 12 counties in NE Ohio
- Impediments are identified by engaging with stakeholders and studying demographic trends

Analysis of Impediments cont'd

Do I have to complete an AI?	
State Recipient of HUD Community Planning Development (CPD) funding (CDBG, HOME etc.)	Yes!
Local entitlement communities	Yes!
Non-municipal recipients of CPD funding	No – use local AI if in an entitlement jurisdiction or state AI otherwise

Source: Connecticut Fair Housing Center, "Affirmatively Furthering Fair Housing Guide"

What are "impediments?"

- HUD defines impediments as, "as any actions, omissions, or decisions that restrict, or have the effect of restricting, the availability of housing choices, based on race, color, religion, sex, disability, familial status, or national origin."

Regional Impediment – NE Ohio

- **Impediment:** Denial of home purchase loans

- **Suggestion:** Utilize resources for first-time and low-income homebuyers that belong to protected classes so they can improve their credit, recognize questionable lending practices, and contact the fair housing system

Local Impediment - Akron

- **Impediment:** Denial of available housing units in the rental markets. Denial of housing in the rental markets was found to be most frequently based on race, disability, and familial status.

- **Suggestion:** Additional training for landlords and property managers. Conduct additional complaint based testing related to unlawful denials.

Source: Northeast Sustainable Communities Consortium, 2013 Regional Analysis of Impediments to Fair Housing Choice

Local Impediment – City of Kent

- **Impediment:** Decisions made by the City of Kent regarding housing for "no more than two unrelated people" in zoning policies may restrict housing choice.

- **Suggestion:** Construct a guidebook that lists a series of best practices that are appropriate for the communities in Northeast Ohio, as they relate to promoting consistent, current, and transparent policies and practices that affirmatively further fair housing.

How Can Jurisdictions AFFH?

- Examine local lending and rental practices, land use regulations, and local service provisions for patterns of discrimination
- Encourage banks and lending institutions to provide services in underserved areas
- Analyze neighborhood demographics to find unequal housing opportunity
- Provide annual fair housing training and outreach to all staff members and city officials

Jurisdictions and AFFH cont'd

- Encourage participation in the HCVP by private housing providers
- Create a fair housing library for community use
- Provide fair housing literature and materials around offices and to local housing providers
- Provide trainings on code enforcement and reasonable accommodation
- Review, update, and take actions to address identified impediments to fair housing choice

How Can Housing Providers AFFH?

- Advertise available housing to populations least likely to apply
  - Example: Advertising the availability of housing in a predominately white neighborhood in African-American communities.
- Display the Equal Housing Opportunity Logo and other Fair Housing materials
- Provide annual fair housing training to all staff members and volunteers

Housing Providers and AFFH cont'd

- Accept tenants using Housing Choice Vouchers at unsubsidized properties
- Ensure access to interpreters and translators
- Make fair housing literature available in buildings and rental offices
- Complete an Affirmative Fair Housing Marketing Plan

Affirmative Fair Housing Marketing Plan

○ Developers, managers and other housing providers, must "carry out an affirmative program to attract buyers or tenants….which shall typically involve publicizing to minority persons the availability of housing opportunity."

How to Create an AFHMP

1. Determine the demographics of the housing market area
2. Determine who is least likely to apply
3. Market to those least likely to apply
4. Evaluate the Marketing Strategy and Train Staff
5. Review Every 5 Years

Consequences of Failing to AFFH

- In 2009, HUD ruled that Westchester County, NY failed to meet obligation to AFFH
- To restore HUD funding, the Settlement required the county to:
  - Build additional affordable housing units in predominately white areas
  - Correct exclusionary zoning policies
  - Add source of income protection

Consequences cont'd

- HUD withheld $1.7 **BILLION** in CBDG-funding after Hurricane Ike until Texas:
  - Set aside $100 million to rebuild public housing
  - Use an additional $152 million for low income and moderate housing
  - Create a "Moving to Opportunity" program
  - Create a buyout program to allow low-income victims to move out of damaged areas

Proposed AFFH Rule

- New AFFH Rule proposed by HUD in 2013
- AI is replaced by an Assessment of Fair Housing (AFH) completed every 5 years.
- Improves assessment by providing data to participants and clear evaluation standards for the AFH.
- http://www.huduser.org/portal/affht_pt.html

Why did HUD Create a New Rule?

- Currently, HUD does not review AIs
- HUD does not provide information for the AI process
- No connection between the AI and planning
- Quality of AIs differs between participants
- Creates standard definitions

Outcomes HUD Hopes to Achieve with AFFH

- Replace the AI with the AFH
- Provide data participants must use
- Incorporate fair housing plans and priorities in the consolidated plan and PHA plan
- Encourage regional collaboration between jurisdictions and PHAs
- Greater community participation
- Requires a coordinated effort to fight housing discrimination

Issues an AFH Must Address

- Integration and Segregation
- Concentrations of Poverty
- Disparities in access to community assets
- Disproportionate housing needs based upon protected classes

Items an AFH Must Include

- Summary of fair housing issues and capacity to address
- Analysis of data
- Assessment of determinants of fair housing issues
- Identification of fair housing priorities and goals
- Summary of community participation

Summary of Fair Housing Issues and Capacity to Address

- Summary of issues in a jurisdiction
- Assessment of compliance with fair housing laws
- Assessment of jurisdiction's fair housing enforcement and outreach capacity

Analysis of HUD-Provided Data

- Patterns of integration and segregation
  - Dissimilarity Index; Isolation Indices; Racial/Ethnic Composition Ratios
- Racial and Ethnically concentrated Areas of Poverty
  - Census tracts with a poverty rate of greater than 40% and a majority non-white population (>50%).
- Disproportionate Housing Needs
  - Census data for households that lack complete kitchens, plumbing facilities, more than 1 person per room and have a high cost burden
- Community Asset Indicators

Community Asset Indicators

| Dimension	Input Variables
Poverty Index	% of families living below the poverty line and % of households receiving public assistance.
School Proficiency Index	% of elementary students proficient in reading and math
Labor Market Engagement Index	Neighborhood unemployment rate; neighborhood labor force participation rate; % population over the age of 25 with a bachelors degree or higher.

Community Asset Indicators

Dimension	Input Variables
Job Access Index	# of jobs in a neighborhood; distance from a neighborhood to an employment center, and # of workers commuting to an employment center.
Health Hazards Exposure Index	Distance to facilities in EPA's Toxic Release Inventory database; volume of releases; and toxicity of released chemicals.
Transit Access Index	Distance to nearest fixed-rail or bus rapid transit station.

Identifying Concentrations of Race/Ethnicity
(Nonwhite population > 50%) and Poverty (Poverty > 40%)
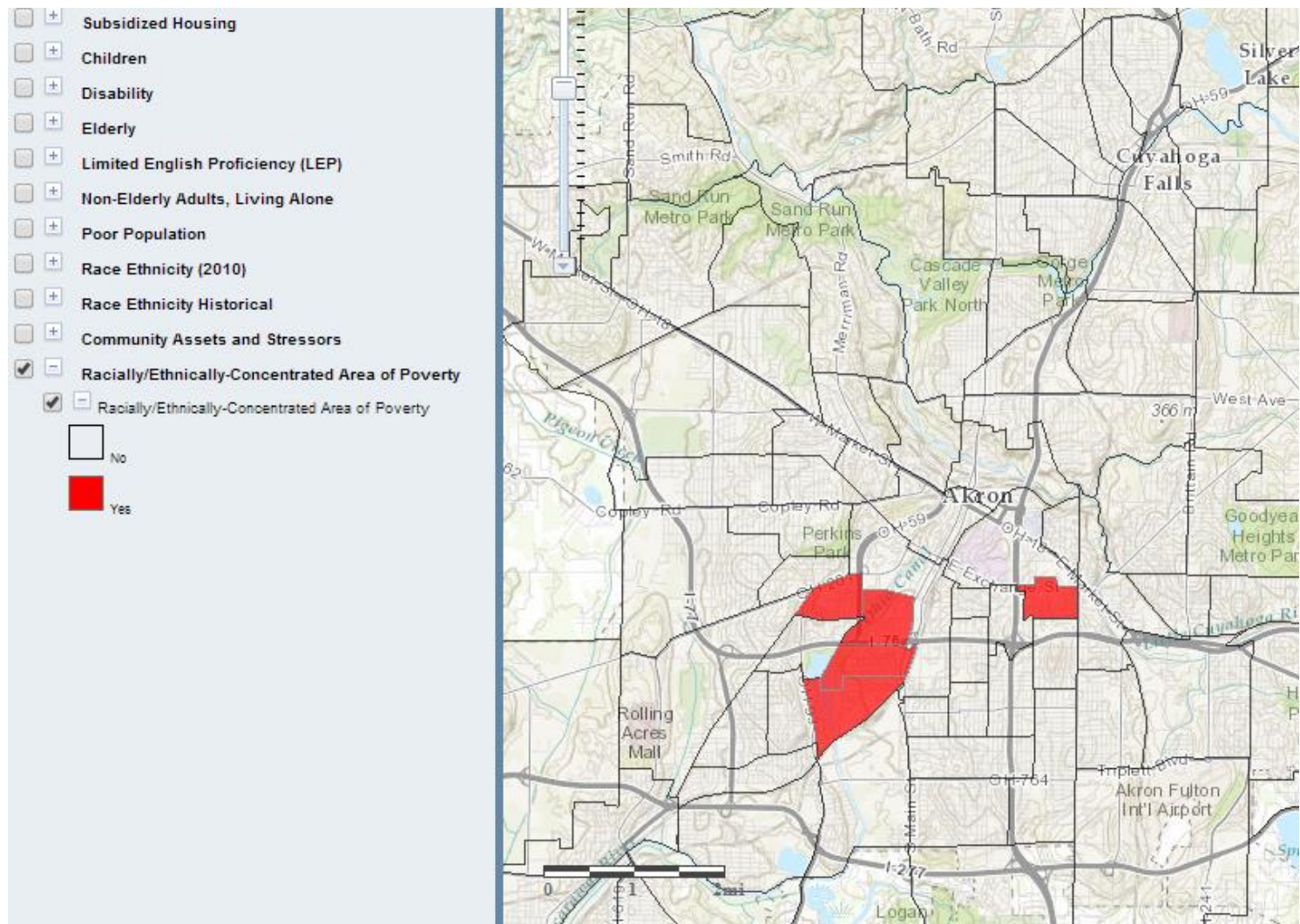
Identifying Segregated Areas
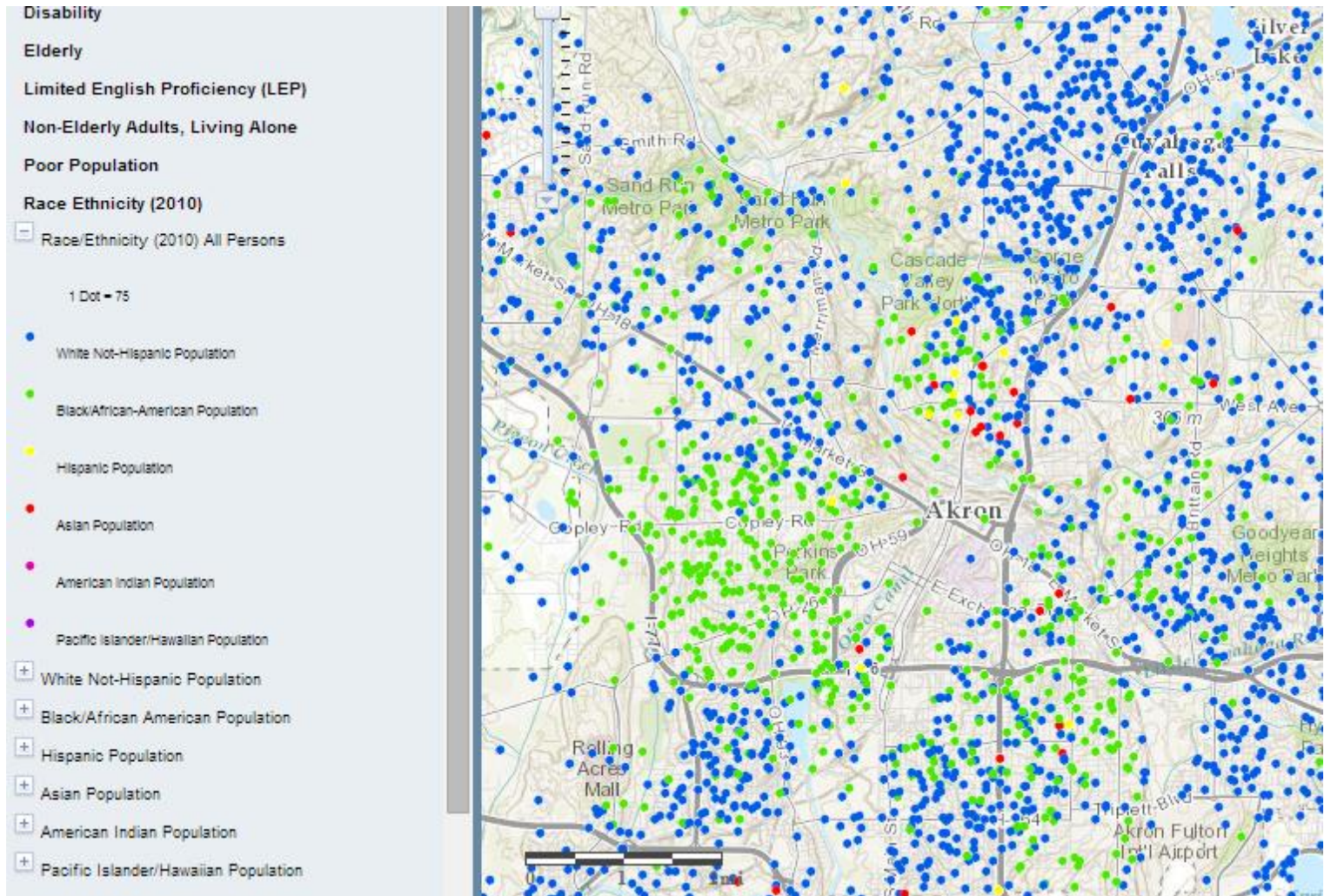
Assessment of the Determinants of Fair Housing Issues

- Analyze the primary factors that cause segregation/integration, concentrations of poverty, and differences in access to community assets and housing needs

Identification of Fair Housing Priorities and Goals

○ Identify and **prioritize** fair housing issues arising from previous assessments

○ Set and prioritize one or more goals to address identified issues that lead to segregation or unequal access to housing opportunity or community assets

Summary of Community Participation

- A summary of public and written comments, efforts to broaden participation, any comments that were rejected and why during:
  - Development of the AFH, public hearings and development of the final version of the AFH

When will HUD reject an AFH?

- The community is not properly engaged
  - Example: If a regional or multi-jurisdictional AI is completed, citizens of each area should be involved
- Goals are not consistent with data
  - Example: A jurisdiction seeks to diversify a neighborhood that the data shows is already diverse
- If not rejected within 60 days, will be considered approved

Resources

- *Fair Housing Planning Resource Guide,* National Community Reinvestment Coalition
- *Municipal Guidebook to Affirmatively Furthering Fair Housing*, Oak Park Regional Housing Center
- *Affirmatively Furthering Fair Housing: A Guide for State and Federal Housing Grantees,* Connecticut Fair Housing Center
- *A Practical Guide & Toolkit for Affirmatively Furthering Fair Housing,* Missouri Commission on Human Rights
- *Affirmatively Furthering Fair Housing, Proposed Rule,* 78 FR 43709, HUD