

Optimizing Siting for Equitable Development

Wednesday, September 29, 2021



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HUD's Efforts to Affirmatively Further Fair Housing

William Lynch, Assistant General Counsel
For Fair Housing Compliance



Obligation to Affirmatively Further Fair Housing (AFFH)

- ▶ The Fair Housing Act requires HUD to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies” of the Act.

42 USC 3608(e)(5)

- ▶ Various other statutes supplement this requirement.
- ▶ Since 1968, HUD has taken numerous steps to implement this mandate.

HUD Mechanisms to AFFH Include

- ▶ Certifications and other requirements in block and discretionary grant programs
- ▶ Site and Neighborhood Standards
- ▶ Affirmative Fair Housing Marketing
- ▶ Advertising
- ▶ Enforcement Mechanisms and Fair Housing Policy Levers (e.g., Qualified Allocation Plans and local requirements)
- ▶ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications Interim Final Rule (AFFH IFR) – Effective July 31, 2021

AFFH Interim Final Rule (IFR)

- The rule restores certain key definitions and certifications from the 2015 Affirmatively Furthering Fair Housing (AFFH) rule. See 24 C.F.R. § 5.151, 5.152.
- This restoration will ensure that recipients certify compliance with a meaningful definition of AFFH.
- The rule provides clarity and familiarity to funding recipients, who can engage in familiar fair housing planning processes to comply with their AFFH obligations. See 24 C.F.R. § 5.152(b)(1)(i)-(ii).
- The rule also establishes a process by which funding recipients can voluntarily seek HUD's assistance in satisfying their AFFH obligations. 24 C.F.R. § 5.152(b)(2).
- Applies to consolidated plan program participants (i.e., CDBG, HOME, ESG, and HOPWA) and PHAs (collectively, program participants).

Restored Definition of AFFH

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.

24 C.F.R. § 5.151; *see also Otero v. New York City Housing Auth., et al.*, 484 F.2d 1122 (2d Cir. 1973); *NAACP, Boston Chapter v. HUD*, 817 F.2d 149 (1st Cir. 1987); *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970).

Other Restored Definitions

- The rule restores many of the definitions from the 2015 AFFH rule including:
 - Disability
 - Fair Housing Choice
 - Integration
 - Meaningful Actions
 - Racially or Ethnically Concentrated Areas of Poverty
 - Segregation, and
 - Significant Disparities in Opportunity.

Restored Certifications

- The rule also reinstates certifications in the program regulations that incorporate the restored definitions.
- As a result, program participants will once again be certifying that they will take meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
- The rule thus restores this important and familiar substantive standard for compliance with AFFH obligations.

Fair Housing Planning

- The rule permits program participants to carry out their AFFH obligations in support of their certifications in a number of ways, so long as they meet the substantive obligation to AFFH.
 - Perform an Assessment of Fair Housing (AFH), or continue the implementation of an already completed AFH; or
 - Perform an Analysis of Impediments (AI) or continue the implementation of an already completed AI; or
 - Engage in other methods of fair housing planning, so long as its consistent with their substantive obligations to AFFH, as defined by the updated regulatory definition (e.g., Fair Housing Equity Assessment/FHEA plus the IFR definitions and certifications).

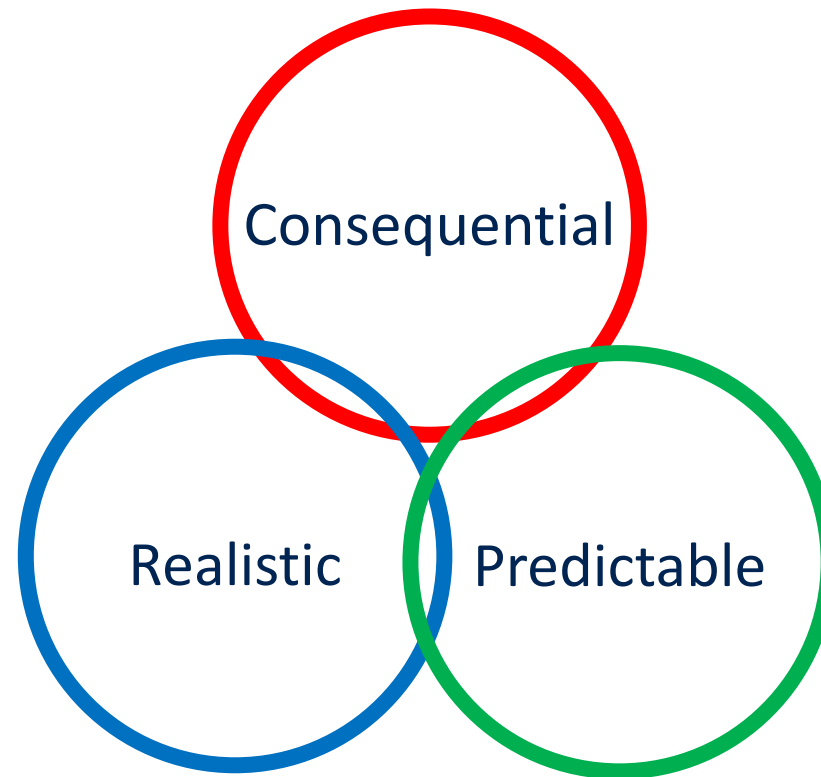
Restored and Available Resources

- Assessment Tools
- Fair Housing Planning Guide (including goals designed to AFFH through place-based and mobility strategies)
- AFFH Data and Mapping Tool
- Fair Housing Planning Guide
- Fact Sheets
- FAQs
- https://www.hud.gov/program_offices/fair_housing_equal_opp/affh

Longer-Term AFFH Plans

- ▶ As indicated in the IFR and HUD's Regulatory Agenda, HUD will undertake a separate rulemaking to improve upon 2015 AFFH rule.
- ▶ Will include specific fair housing planning processes.

Limits of Site Criteria



Only Two Out of Three

▶ Consequential:

- Produces a range of scores
- Difficult to earn the maximum

▶ Predictable:

- Possible to calculate the exact amount of points
- Allows for “self-scoring”

▶ Realistic:

- Avoids incentives to make poor choices
- Does not push the competition too far

Combination	Example Policies	Why Not the Other
A. Consequential and Predictable	set amount of distance to amenities	bidding wars for the most competitive tracts
	being in an opportunity area	many applications cluster in specific locations
B. Predictable and Realistic	being outside of a RECAP	all applications meet
	not close to negative features	no applications are near
C. Consequential and Realistic	truly comparative assessments	cannot anticipate what other applicants will submit
	lottery	random

<https://www.novoco.com/notes-from-novogradac/creating-competition-post-6-10>

POLICY INNOVATION

LENDING

DEVELOPMENT

ENERGY SOLUTIONS

Optimizing Siting for Equitable Development

NCSHA Annual Conference | September 29, 2021

Laura Abernathy

Snr Director of State & Local Policy | NHT



About NHT

The National Housing Trust is committed to creating and preserving affordable homes that provide opportunity, advance racial equity, reduce economic disparities and strengthen community resilience through practice and policy.

Policy Innovation

Real Estate Development

Community Outreach & Impact

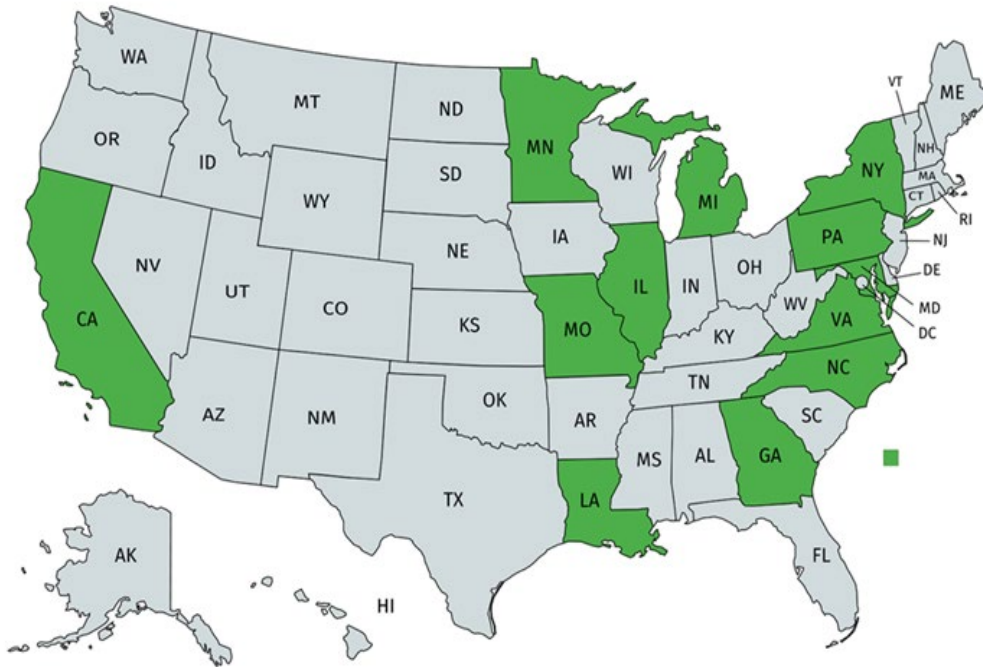
Lending

Energy Solutions



Energy Efficiency for All (EEFA)

Who We Are



- **4 National Partners**
- **12 State Coalitions**
 - Mission-driven coalitions of varying size and composition
 - Including 50 coalition partners funded through the Energy Foundation
- **~300 NEWHAB Members and Allies**



NRDC



ENERGY FOUNDATION

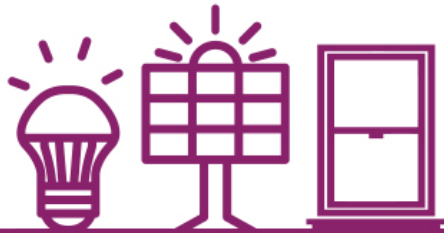


ELEVATE ENERGY

<https://www.energyefficiencyforall.org/>



EEFA Impact to Date



\$1 Billion

**IN CONFIRMED & ESTIMATED
NEW FUNDING FOR
EFFICIENCY UPGRADES
SECURED BY EEFA PARTNERS**



213,487

**AFFORDABLE APARTMENTS
HAVE RECEIVED
ENERGY EFFICIENCY
UPGRADES SO FAR**



426,974*

**LOW-INCOME RENTERS
HAVE BENEFITED
FROM ENERGY EFFICIENCY
UPGRADES SO FAR**

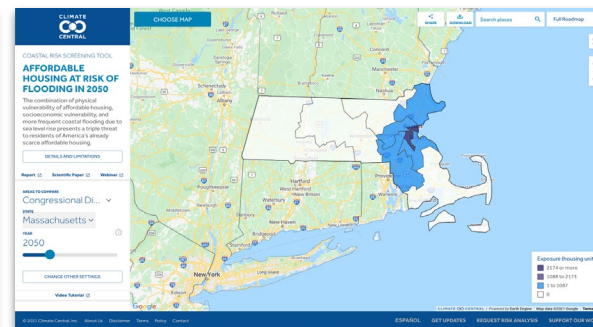
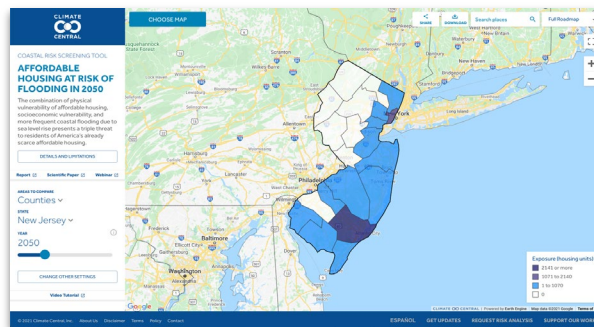
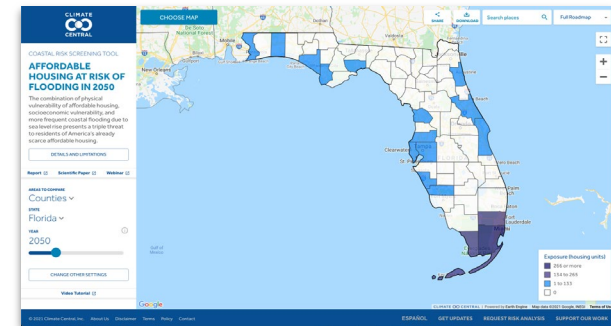
**assumes 2 persons per apartment*



Affordable Housing at Risk from Coastal Flooding

New ways of measuring risk to affordable housing

- Quantify coastal flood risk to the nation's affordable housing inventory
- Focused on 2050
- Advances upon prior methods



What types of housing are included in the report?

Exposure of housing that is considered affordable to low-income households

- Housing that is:
 - federally subsidized
 - “naturally occurring,” meaning it is unsubsidized but rents below local market rates or for less than 30% of local median household incomes



Findings

- Risk expected to more than triple
- Virtually every coastal state
- New Jersey, New York, and Massachusetts have the largest share at risk
- Triple threat: combination of physical vulnerability of affordable housing, socioeconomic vulnerability, and more frequent flooding due to sea level rise

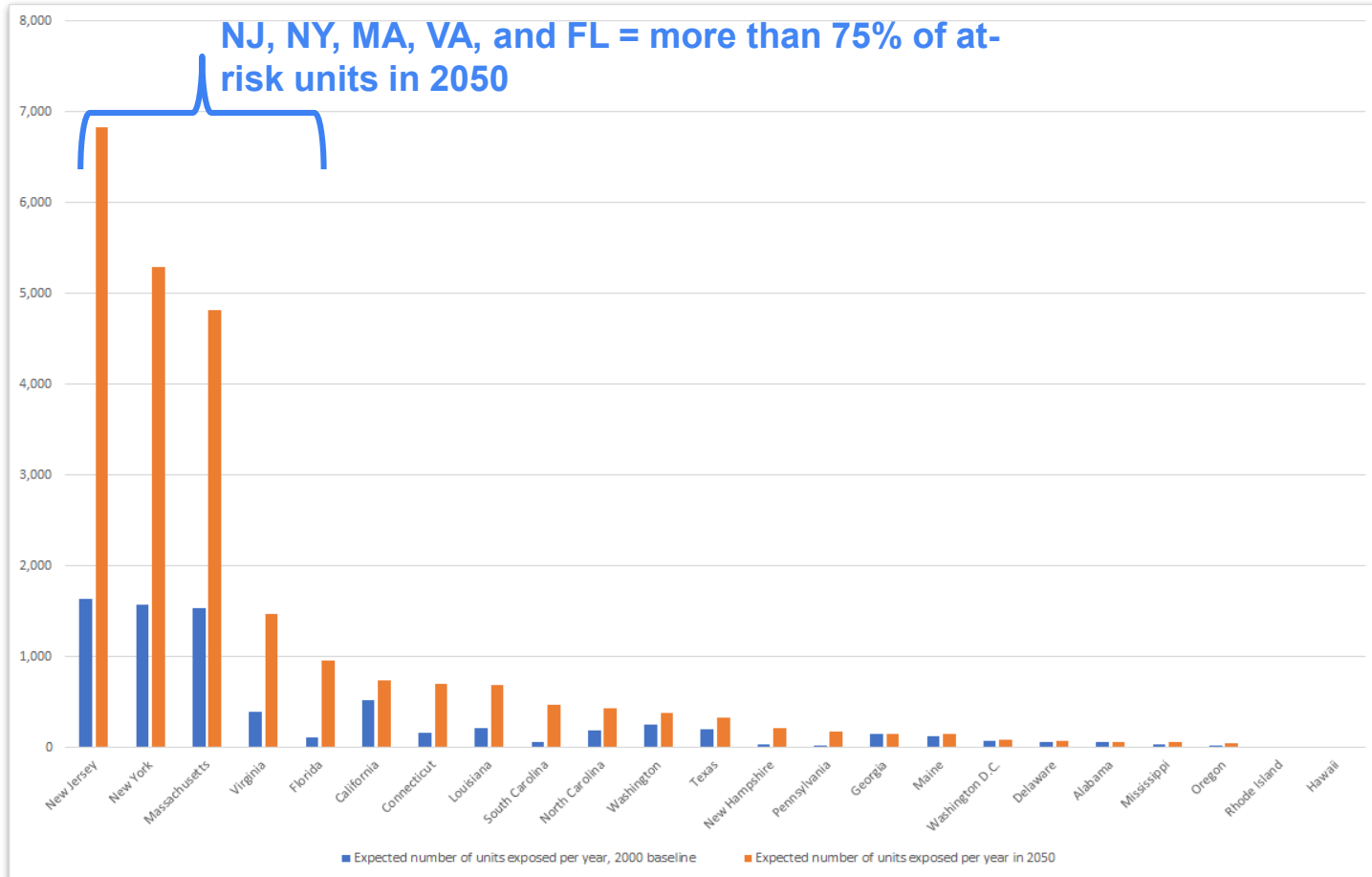


<https://www.climatecentral.org/news/report-coastal-flood-risk-to-affordable-housing-projected-to-triple-by-2050>



Affordable Units at Risk of Coastal Flood Event

TABLE 1 - Affordable housing units at risk now and in 2050, under high carbon emissions scenario (RCP 8.5)



Mapping Tool

CHOOSE MAP

COASTAL RISK SCREENING TOOL

AFFORDABLE HOUSING AT RISK OF FLOODING IN 2050

The combination of physical vulnerability of affordable housing, socioeconomic vulnerability, and more frequent coastal flooding due to sea level rise presents a triple threat to residents of America's already scarce affordable housing.

DETAILS AND LIMITATIONS

Report Scientific Paper Webinar

AREAS TO COMPARE

Counties

STATE
New Jersey

YEAR
2050

CHANGE OTHER SETTINGS

Video Tutorial

Exposure (housing units)

- 2141 or more
- 1071 to 2140
- 1 to 1070
- 0

Strategies to increase energy and water efficiency in LIHTC properties

In 2017 and 2020, NHT scanned QAPs to track the 10 most-common strategies HFAs use to improve the energy and water efficiency of Housing Credit properties.

Strategy	2017	2020
Third-party building standards	33	38
Water Conservation	26	29
Performance-based incentives	13	22
Utility Coordination	12	17
Energy Audits/Modeling	13	15
Green Capital Needs Assessment	12	14
Required Energy professional	4	15
Renewable Energy	8	11
Energy and Water Benchmarking	6	9
Project-specific utility allowances	2	3

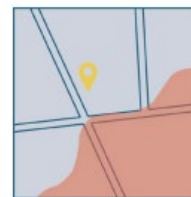


DSHA Climate Risk Analysis and Resiliency Assessment

Delaware State Housing Authority requires developers to complete a resiliency assessment tool to identify the unique climate risks to a property. They also identify 8 climate resilience strategies that developers should consider.

1. Dry Floodproofing (Building)
2. Backwater Valves
3. Component Protection Floodproofing
4. Elevated Equipment
5. Maintaining Backup Power to Critical Systems
6. Develop Emergency Management Manual
7. Properly Vent or Eliminate Combustion Appliances
8. Creating Community Resiliency Hub

PLAN



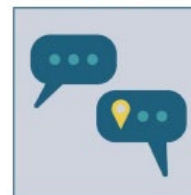
review property info, site plans, flood maps, and site vulnerability score

VISIT



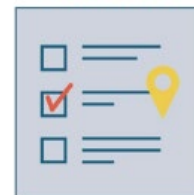
assess property and building characteristics to evaluate site vulnerabilities

ASK

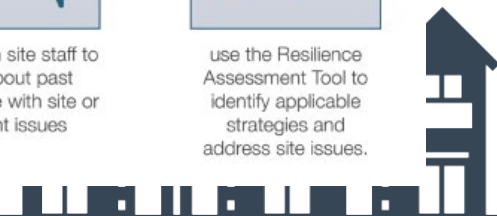


speak with site staff to learn about past experience with site or resident issues

IDENTIFY



use the Resilience Assessment Tool to identify applicable strategies and address site issues.

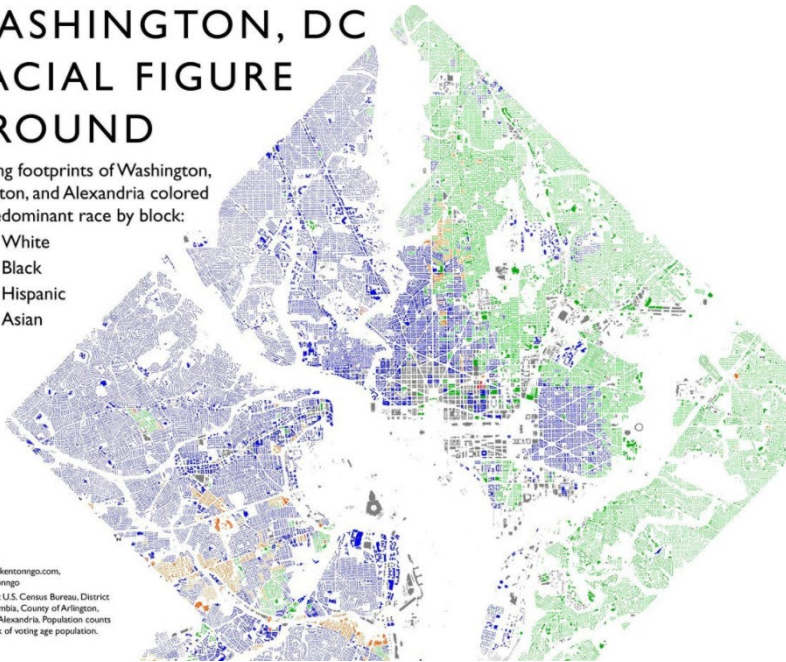


BIPOC communities in Washington, D.C. are more vulnerable to rising temperatures

WASHINGTON, DC RACIAL FIGURE GROUND

Building footprints of Washington, Arlington, and Alexandria colored by predominant race by block:

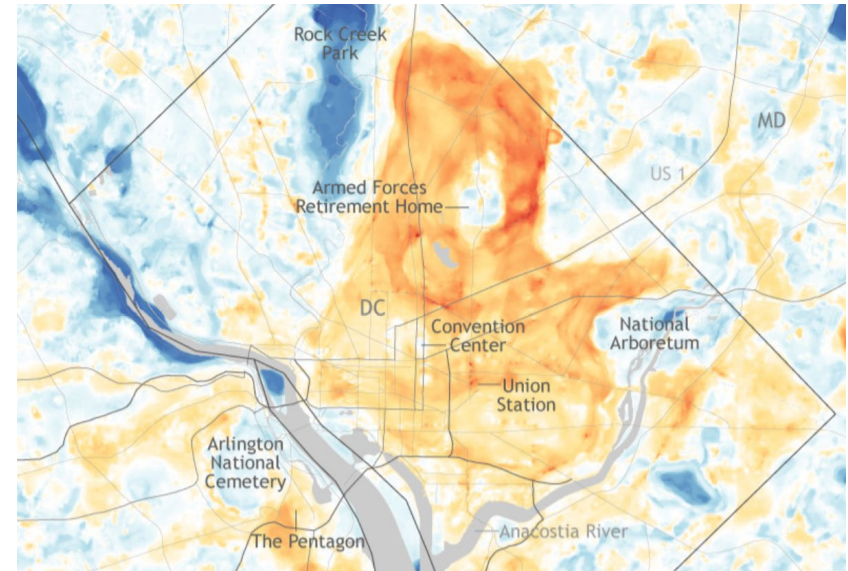
- White
- Black
- Hispanic
- Asian



Map by kentonrgo.com.
@kentonrgo
sources: U.S. Census Bureau, District of Columbia, County of Arlington, City of Alexandria. Population counts by block of voting age population.

Source: Clean Energy DC plan

Urban Heat Island Effect



Source: NOAA Climate.gov



Thank you!

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