

CHAPTER 4 THE PUBLIC SECTOR

ZONING AND SITE SELECTION

Location and Distribution of Low- and Moderate-Income Housing

Only a small percentage of land in Marin County is available for the development of housing. Based on figures provided by the Marin County Community Development Agency, 84 percent of land area in Marin is designated for agriculture, parklands, open space and watershed; thus, only 16 percent of the total land area in the county, including cities, is suitable for development. Eleven percent of the land in the county has already been developed, leaving only five percent available for future development.¹

Approximately 2,890 low-income assisted housing units sponsored by non-profit organizations exist in Marin County.² For example, the Hilarita Apartments, a 102-unit subsidized apartment complex in Tiburon, and the Shelter Hill Apartments, a 75-unit complex in Mill Valley, are currently owned entirely by non-profits.³ Marin County has an additional inventory of 274 inclusionary rental units, 758 below market rate (“BMR”) ownership units, 573 units of public housing, and 2,269 Section 8 housing choice vouchers.⁴ While affordable housing exists in all Marin jurisdictions, the affordable housing stock is concentrated in Novato, San Rafael, and the unincorporated County. Although affordable developments for seniors and people with disabilities are located throughout most jurisdictions in the County, public housing is concentrated in the unincorporated County. In Corte Madera, Mill Valley, and Tiburon, affordable rentals comprise at least 7.5 percent of the overall rental stock.⁵ Below market rate home ownership units exist in eight jurisdictions in Marin. An estimated 20 percent of Marin’s affordable housing units are reserved for persons with disabilities or seniors.⁶ The table below illustrates the distribution of affordable as well as market rate housing units across jurisdictions within the county.

¹ Marin County Consolidated Plan 2010-2014 (“Con Plan”) § 91.210(a), pg. 45.

² Con Plan § 91.210(b)(2), pg. 58.

³ *Ibid.* at 58-59.

⁴ Marin County Affordable Housing Inventory 2008.

⁵ *Ibid.*

⁶ *Ibid.*

Existing Housing Units in Marin County⁷

Jurisdiction	Very Low (R)	Low (R)	Moderate (R)	Restricted Total	Market Rate	TOTAL
Belvedere	0	11	0	11	1056	1067
Corte Madera	62	33	23	118	3950	4068
Fairfax	97	3	0	101	3322	3423
Larkspur	20	81	28	129	6321	6450
Mill Valley	228	22	29	283	6100	6383
Novato	615	584	245	1444	19221	20665
Ross	0	0	0	0	819	819
San Anselmo	11	23	3	42	5401	5443
San Rafael	422	611	267	1300	22361	23661
Sausalito	6	33	0	39	4531	4570
Tiburon	84	39	29	152	3815	3967
Unincorporated	619	82	69	770	27210	27980
County Total	2164	1522	693	4389	104107	108496

Using the data provided above, the following table illustrates the percentage of all affordable housing in Marin County that is located within a given jurisdiction, as compared to the percentage of the county's total housing stock (both affordable and market rate units) located within that jurisdiction.

Percentages of Affordable Housing

Jurisdiction	% Total County Affordable Housing Stock Located in Jurisdiction	% Total All County Housing Stock Located in Jurisdiction
Belvedere	0.3 %	1.0 %
Corte Madera	2.7 %	3.7 %
Fairfax	2.3 %	3.2 %
Larkspur	2.9 %	5.9 %
Mill Valley	6.4 %	5.9 %
Novato	32.9 %	19.0 %
Ross	0.0 %	0.8 %
San Anselmo	1.0 %	5.0 %
San Rafael	29.6 %	21.8 %
Sausalito	0.9 %	4.2 %
Tiburon	3.5 %	3.7 %
Unincorporated County	17.5 %	25.8 %

⁷ Association of Bay Area Governments, San Francisco Bay Area Housing Data 2009 (R: Restricted).

Statistically, one would expect rough proportionality between the percentage of the county's housing stock located in a jurisdiction, and the percentage of the county's *affordable* housing stock located in a jurisdiction. However, the above figures clearly illustrate that relative to the total amount of housing located therein, Mill Valley, Novato, and San Rafael have a disproportionately high number of affordable units. On the other hand, Belvedere, Corte Madera, Fairfax, Larkspur, Ross, San Anselmo, Sausalito, and the unincorporated County⁸ all have disproportionately low amounts of affordable housing within their jurisdictions. Only Tiburon has a proportionate number of affordable units given the total amount of housing units located therein.

Future affordable housing developments are proposed in Novato, San Rafael, and the unincorporated County. To wit, the Marin County Community Development Agency has identified two proposed housing developments: Toussin Senior Housing in Kentfield (unincorporated), and Warner Creek Senior Housing in Novato.⁹ Recent development of The Next Key in Novato also aligns with this trend. The Next Key, with 32 units of transitional housing, was built adjacent to Homeward Bound's New Beginnings Center in Novato for the purpose of housing students enrolled in the Center's Fresh Starts Culinary Training Program as well as other training programs.¹⁰ Novato required the development of affordable housing through its Reuse Plan for the decommissioned Hamilton Army Air Field, which called for 425 units of market rate housing and 783 units of below market rate housing, including owner-occupied homes, conventional rental housing, and transitional rental housing. Though the development resulted in the creation of hundreds of lower-income units, the conversion of Hamilton Army Air Field was a "one-time" opportunity and not easily replicable in the future.¹¹

Current Zoning Policies

Numerous advocates for increased affordable housing development in Marin County agree: restrictive zoning and permitting requirements constitute significant barriers to

⁸ Note that the above data does not separate Marin City from the rest of the unincorporated County; the bulk of affordable units in the unincorporated County are concentrated in Marin City specifically.

⁹ Con Plan Executive Summary.

¹⁰ Con Plan § 91.210(c), pg. 65.

¹¹ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 18 (2009).

development, further exacerbating the problem of making land available for housing development.¹²

The overriding issue...is that the vast majority of land in Marin is not available for development as it is dedicated to parks, agricultural land or open space. In the areas that remain available for development, most jurisdictions have chosen to create zoning that restricts residential development primarily to single-family homes. There are very few areas in the county where zoning permits multi-family residential development at the densities needed to make affordable housing economically feasible. The underlying reasons for these restrictions are many, but include concerns about traffic, environmental impact, and community opposition, resulting from a lack of understanding of affordable housing and fear and stigma associated with people who are low-income, homeless, or disabled...

California law requires every community to develop a Housing Element that identifies a sufficient number of sites to accommodate that jurisdiction's fair share of regional housing need, and to ensure that these sites are appropriately zoned for affordable multi-family housing. None of the jurisdictions in Marin currently have State-approved Housing Elements...The reality, however, is that many of the affordable housing sites identified in these Housing Elements still pose substantial barriers to development because they have not been zoned to allow multi-family housing at the needed densities "by right," meaning they can be developed without securing conditional use permits or other approvals that require public input.

California law defines "by right" development as that which does not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval.¹³ "In other words, a use that is permitted 'by right' is one that does not burden the developer with the cost, delay and uncertainty of requesting an approval that the local government retains the discretion to deny, or to grant only after imposing onerous conditions."¹⁴

Housing developers, and particularly the non-profit developers who create the vast majority of affordable housing, are typically very reluctant to take the risk of acquiring and developing sites where needed approvals have to be secured through a long and arduous public process. The lack of appropriately zoned sites presents a tremendous

¹² *Marin County Housing Study: Analysis of Best Practices to Meet the Housing Needs of Homeless and Precariously Housed People in Marin County*, Kate Bristol Consulting, 02/05/10, pg. 14; See also Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc. (2009); Interview with Richard Marcantonio, Public Advocates; Interview with Dave Coury, Marin Continuum of Housing and Services.

¹³ Cal. Gov. Code § 65583.2(i).

¹⁴ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 23 (2009).

*obstacle to the creation of new housing and is one of the major reasons the rate of new unit production in Marin is so low.*¹⁵

The Marin County Development Code (“Code”) imposes a number of zoning regulations that may have the effect of impeding the development of affordable housing.^{16,17} The Code requires that all structures must comply with a maximum allowable height standard,¹⁸ with the exception that single-family dwellings in specified zoning districts may increase in height by a maximum of ten feet without special approval, so long as side setbacks of fifteen feet or greater are provided.¹⁹

An affordable housing project may be granted a use permit in *any* zoning district, so long as residential uses are allowed under the Countywide Plan land use designation.²⁰

Proposed residential developments with two or more units must provide 20 percent of the total number of housing units as inclusionary, affordable to low- or very low-income families, and provide 20 percent of the total number of parcels when land is subdivided for inclusionary units. If the development is of such small scale that application of the 20 percent requirement results in a fraction less than 0.50, the developer must pay an in-lieu fee.²¹

Under California Housing Element law, sites must be rezoned to meet shortfalls in very low- and low-income housing needs at recommended minimum densities.²² “In Marin, that means a minimum density of 30 units per acre for the unincorporated County and its two largest cities, San Rafael and Novato. Remaining cities and towns must zone sites at a minimum density of 20 units per acre to meet the shortfall in the lower-income portion of their regional housing

¹⁵ *Marin County Housing Study: Analysis of Best Practices to Meet the Housing Needs of Homeless and Precariously Housed People in Marin County*, Kate Bristol Consulting, 02/05/10, pg. 14-15.

¹⁶ *Marin County Housing Study: Analysis of Best Practices to Meet the Housing Needs of Homeless and Precariously Housed People in Marin County*, Kate Bristol Consulting, 02/05/10.

¹⁷ It should be noted that the County code applies only to the unincorporated County. Similar provisions may be in effect in individual cities, but municipal codes are not examined in this Analysis.

¹⁸ Marin County Dev’t Code § 22.20.060(A).

¹⁹ Marin County Dev’t Code § 20.20.060(E)(2).

²⁰ Marin County Dev’t Code § 22.22.020(A). Note that residential use must also be allowed under the County Plan, which presents another obstacle to obtaining a use permit for affordable housing projects.

²¹ Marin County Dev’t Code § 22.22.020(B).

²² Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 11 (2009); *see also* AB 1233 (“if a city or county in the prior planning period failed to identify or make adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.”).

need.”²³ Current zoning regulations, however, provide that housing may be developed at a lower density. To wit, in Marin County, “two-story apartments can be built at densities of 15 to 25 units per acre.”²⁴

Notwithstanding zoning regulations, parcel size may also detrimentally affect the development of affordable housing.

Parcels that are too small pose difficulties for non-profit builders of affordable housing. In economic terms, very-low and low-income housing projects for families are at their most viable when they include between 50 and 80 units. (Special needs housing, by contrast, such as housing for people with disabilities, can sometimes succeed on a smaller scale.) At a density of 50 units per acre, this requires a site of at least an acre in size. While affordable housing can be built on smaller sites, these smaller projects are more difficult to fund, less efficient to operate, and benefit less from the economies of scale necessary to achieve the lower per-unit cost needed to keep housing affordable.... [Public Advocates] found that many Marin jurisdictions have placed undue reliance on sites too small to be economically feasible.”²⁵

In looking at 179 sites identified by jurisdictions in previous housing elements as potential development sites, Public Advocates found that “more than a third were under an acre, and more than a fifth under half an acre.”²⁶ Further, only one jurisdiction in Marin “provided a developable site of at least an acre with appropriate zoning: Corte Madera provided a 3.5 acre site with the Town’s “Affordable Housing Overlay” zoning.”²⁷ According to Roy Bateman, if a subsidized rental housing complex is too small, that limits economies of scale for both property management and support services for tenants, and there is a related effect on obtaining development financing. Institutions that make loans to support the development of subsidized housing want the complex to show that its revenue can cover its expenses for 15 years, assuming that rents increase by 2% per year and expenses increase by 3% per year. If a complex has per-unit operating expenses that are above the norm, that gap will be magnified by the assumption that expenses increase faster than rents, and the complex won’t pass the Lender’s underwriting criteria. Building small projects is not sustainable in the long run because those smaller projects

²³ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 11 (2009); see also Cal. Gov. Code § 65583.2(c)(3)(B).

²⁴ Marin Countywide Housing Element Workbook, *Density and Mixed Use*, April 7, 2009.

²⁵ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 21 (2009).

²⁶ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 21 (2009) (emphasis added).

²⁷ *Ibid.* at 22.

fail to achieve the economies of scale necessary to fund operating expenses and support services for residents. The general standard is that the minimum project size for long-term financial sustainability is 50 units.²⁸

The County Development Code requires that 20 percent of the total number of housing units of all new residential developments containing two or more units should be required to be affordable by very low- or low-income households, and that commercial and industrial development provide affordable housing units for 25 percent of the total number of very low-, low-, and moderate-income jobs generated by the new commercial and industrial developments.²⁹

In residential development projects of two or more units with units intended for sale, 20 percent of units must be inclusionary units affordable in perpetuity to households earning 60 percent of area median income.³⁰ The inclusionary requirement extends to lot subdivisions: in subdivisions of two or more parcels suitable for residential development, 20 percent of the developable parcels must be set aside for development of low- or very low-income rental or owner-occupied units.³¹ The County has strict limitations on resale prices of inclusionary units.³²

Inclusionary requirements also apply to commercial and industrial developments. Twenty-five percent of the total number of housing units for very low-, low-, and moderate-income households that are generated by the development must be provided within the development.³³

The County provides several incentives for inclusionary and other affordable housing, including a county density bonus of up to ten percent of the number of units normally allowed, exceptions to standard interior design requirements, fee waivers, technical assistance, and priority processing. Further, in a residential project that contains single-family detached homes, inclusionary units may be attached living units or constructed on smaller lots. A developer of an ownership development has the option of constructing rental units to meet its inclusionary

²⁸ Interview, Roy Bateman, Community Development Coordinator, County of Marin, Community Development Agency

²⁹ Marin County Dev't Code § 22.22.010(D).

³⁰ Marin County Dev't Code § 22.22.040(A).

³¹ Marin County Dev't Code § 22.22.060.

³² Marin County Dev't Code § 22.22.070.

³³ Marin County Dev't Code § 22.22.095(B)(1).

requirements.³⁴ Corte Madera, Larkspur, Mill Valley, Novato, San Anselmo, San Rafael, Tiburon, and the County of Marin all have inclusionary housing ordinances.

Inclusionary units should be “reasonably dispersed throughout the development, where feasible.”³⁵ If inclusionary units cannot be developed on-site, the developer may: (1) construct inclusionary units on one more locations off-site, after determination that overall project character, density, size, location, proximity to retail and service establishments, etc. support a finding that placement of inclusionary units within the larger development is not reasonable or appropriate; (2) dedicate suitable real property for the inclusionary housing to the County or an applicant; or (3) pay an in-lieu participation fee. Inclusionary rental units not constructed within the larger development must be constructed within the unincorporated areas of the County; inclusionary units may only be constructed within incorporated boundaries if there is a pre-existing interagency agreement with the County that defines the sharing of affordable housing resources and compliance with fair share housing allocations.³⁶ When the construction of inclusionary units is impractical or unreasonable within a residential development, the developer may pay an in-lieu participation fee instead. The in-lieu fee is calculated as the difference between the ability of low-income families to pay for housing and the estimated cost of a market rate unit of appropriate size, multiplied by the required number of inclusionary units.³⁷

Any affordable housing units that qualify in a development for a density bonus under California Government Code section 65915 must be provided in addition to the required inclusionary units.³⁸ A density bonus is an incentive offered to developers that permits an increase in the number of market-rate units that may be constructed on a given property over the applicable density restrictions contained within zoning ordinances and land use elements of the general plan, in exchange for developing more affordable housing units. Under section 65915, a county or city must grant at least one density bonus and permit an additional housing incentive for developers who agree to construct affordable housing. The County density bonus is available to developments that result in a net increase of at least five dwelling units. A developer may receive a 20 percent density bonus for projects that include (1) ten percent low-income

³⁴ Marin County Dev’t Code § 22.24.020.

³⁵ Marin County Dev’t Code § 22.22.020(D)(2).

³⁶ *Ibid.*

³⁷ Marin County Dev’t Code § 22.22.080.

³⁸ Marin County Dev’t Code § 22.22.020(H).

affordable units, (2) five percent very low-income affordable units, or (3) 35 or more senior living units. A developer may receive a five percent density bonus for projects that include ten percent affordable moderate-income units for ownership in a common interest development.³⁹ The density bonus increases if the percentage of units available to very low-, low-, and moderate-income households exceed prescribed percentages. For very low-income units, each one percent increase above five percent in the percentage of affordable units results in a corresponding two and a half percentage increase in density, up to 35 percent. For low-income units, each one percent increase above ten percent results in a corresponding one and one half percentage increase in density, up to 35 percent. For moderate-income units, each one percent increase above ten percent results in a corresponding one percent increase in density, up to 35 percent.⁴⁰

However, one affordable housing advocate noted that inclusionary housing policies and second units do not create *deeply* affordable housing, i.e. housing affordable for extremely low- and very low-income people. Robert Hickey, program manager for the Marin Community Housing Initiative at the Non-Profit Housing Association of Northern California, believes that the bulk of affordable housing is skewed toward low-income, rather than very low- or extremely-low income families. Further, according to anecdotal reports, non-profit developers are reticent to undertake projects in Marin because of the tedious and unpredictable permitting process in the County, and often turn to Oakland or Richmond instead.⁴¹

In 2009, all of the towns, cities, and the County collaborated on a Housing Element Workbook (“the Workbook”), which provided background materials for developing local housing elements. The Workbook stated that to “protect [Marin’s] natural areas and community character, respect urban limits, and make the best use of the land that [Marin] commits to development, [the county’s] challenge is to find ways to make sure that vacant or redevelopable parcels are developed efficiently, under-used areas are put to better use, and new development

³⁹ A common interest development can be a community apartment project, a condominium project, a planned development, or a stock cooperative. Cal. Civ. Code § 1351(c). A planned development is “a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: (1) the common area is owned either by the association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area. (2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367.” Cal. Civ. Code § 1351(k).

⁴⁰ Marin County Dev’t Code § 22.24.030.

⁴¹ Interview with Robert Hickey, Non-Profit Housing Association of Northern California.

‘fits in’ with existing neighborhoods.” The Workbook endorses the development of second or “in-law” units as one strategy towards maximizing Marin’s limited land resources.

Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, and the County of Marin “have encouraged second unit conversion as a means of providing affordable housing in existing built-out neighborhoods. Most communities limit the size of second units, which has the effect of limiting rents.”⁴² In 2009, Public Advocates, a non-profit law firm and advocacy organization based in San Francisco, published a case study on zoning in Marin County as it relates to developing affordable housing. There, Public Advocates noted “a number of Marin jurisdictions relied heavily on second units as meeting a portion of their very-low income share of the Regional Housing Need Allocation. In particular, Mill Valley relied on second units for at least 36 of the 69 very-low income units. The rationale given, however, was not that the actual rents of existing second units were affordable, but instead that no rent was charged at all. The City provided no evidence that the reported units were actually made available to very-low income renters.”⁴³ Indeed, it is quite possible that many reported second units are rented to family members, who may or may not be low income. However, a 2008 survey conducted on second units in the unincorporated County found that they are a valuable resource for affordable housing for small households; 17% of the units were affordable to extremely low income households, 23% to very low and 31% to low income households (units charging no rent were taken out in order to not skew the results.⁴⁴ It is possible that second units are less likely than units in conventional apartment buildings to be broadly marketed. As a result, second units in practice may have limited availability to those who need affordable housing, particularly minorities. While second units are a viable option in some neighborhoods, they should not be relied upon as the sole source of affordable housing in Marin.

The Workbook also endorsed the use of Transit Oriented Development Overlay Districts as a means of ensuring efficient development of land.

The purpose of the Transit Oriented Development (TOD) Overlay District is to encourage property owners to develop their property using transit oriented design principles through the use of incentives while preserving rights under the existing district

⁴² Con Plan § 91.210(c), pg. 65.

⁴³ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 18 (2009).

⁴⁴ Leelee Thomas, Marin County Community Development Agency

designation. Although the underlying zoning remains in place, the TOD District designation can encourage mixed-use development close to transit systems while enhancing and complementing existing and adjacent development.

As an example of the utility of TOD Overlay Districts, the Workbook spotlighted San Rafael.

The City of San Rafael uses both a carrot and a stick to help meet its housing needs. The stick is an inclusionary policy which requires that a small number of affordable units be included in the development. The carrot is provided by policies creating an open ended density bonus for affordable units and incentives for housing downtown...that: (1) allow a height bonus for affordable housing; (2) encourage mixed-use development by allowing residential densities in addition to the floor area ratio for a site; and (3) reduce the parking requirements for downtown units.

Examples of such TOD Overlay District projects in San Rafael include The Clocktower, 1 H Street, and Rafael Town Center. The City of San Rafael has municipal zoning regulations that allow affordable multi-family housing in most residential districts, and the City provides additional density bonus policies in its housing element.

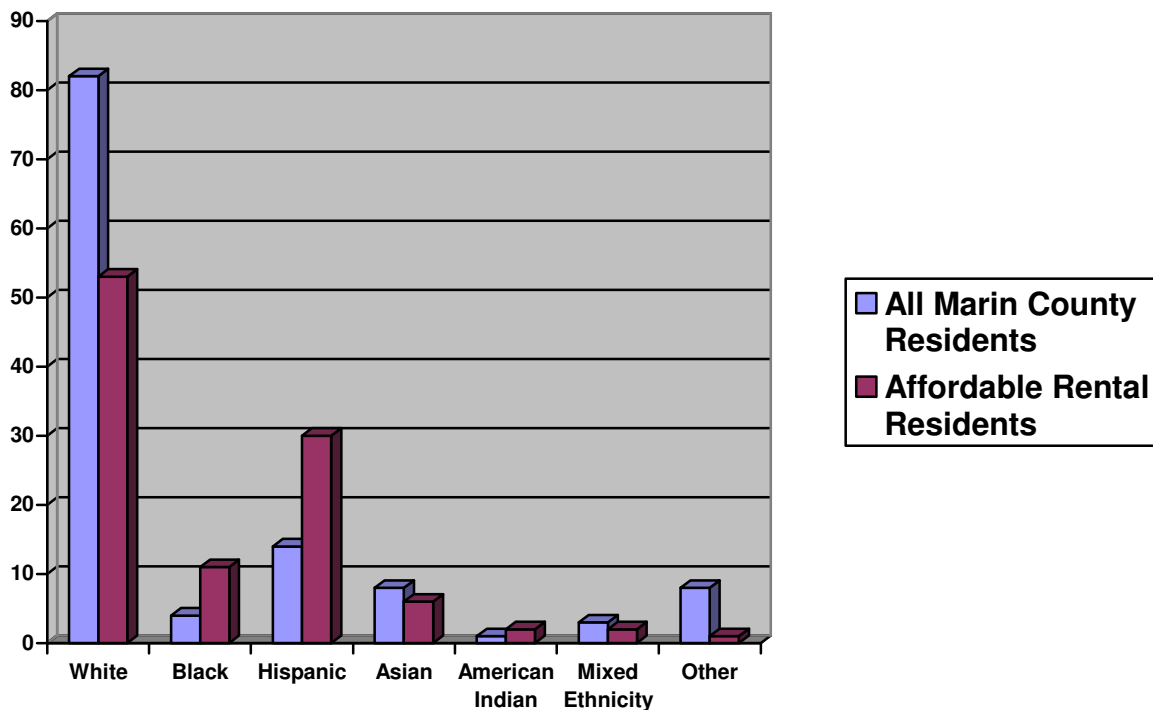
The Workbook pointed to successful strategies in other jurisdictions as well, noting that Mill Valley and Sausalito “have been supportive of infill projects in their densely built communities.”⁴⁵ Marin County, Mill Valley, and Tiburon “have supported affordable housing using funds collected through their in-lieu fee programs....Mill Valley has sought cooperative development opportunities between the City and nonprofit developers, and has completed two such projects for low-income families.”⁴⁶

Current Policies for Placement of Low-Income Residents

In its Affordable Housing Inventory of 2008, the Marin County Community Development Agency collected the following racial and ethnic data for 2,079 residents in affordable rental housing:

⁴⁵ Con Plan § 91.210(c), pg. 65.

⁴⁶ *Ibid.*



In public housing specifically, “of the 1,220 residents for whom ethnicity was provided, 47 percent are White, 41 percent are African-American, 11 percent are Asian, and 1 percent are American-Indian. Hispanic ethnicity is counted as a separate category than race, and 17 percent of public housing residents identify as Hispanic, close to the countywide percentage of 13 percent. Ethnicity data has not been collected about home owners.”⁴⁷

Looking broadly at the residents of all the complexes listed in the Affordable Housing Inventory, it is notable that the residents of affordable housing are significantly more racially and ethnically diverse than residents of the County as whole. While some argue that increasing the number of affordable housing units will likely increase the diversity of the county as a whole, the production of affordable housing is unlikely to increase neighborhood diversity unless the housing is located outside areas of minority concentration. Further, increased production of affordable housing is an ineffective means of increasing racial and ethnic diversity at the upper end of the economic spectrum. There is also a largely unexplored question of how to increase community diversity by attracting minorities who are not low-income.

⁴⁷ Marin County Affordable Housing Inventory 2008, pg. 28.

Some municipalities have attempted to utilize locality preferences to select residents for low-income housing developments. Debate over the effect of locality preferences has been contentious. All cities within Marin County have a majority White population; thus, when affordable housing developers and city governments give a preference in the application process to current residents of the municipality in which the development is located, people of color are disparately impacted. As part of its fair housing advocacy efforts, Fair Housing of Marin relied on a disparate impact theory to argue against the use of preferences in the affordable housing projects at the former Hamilton Air Field in Novato, San Clemente Place in Corte Madera, and an EAH development in Pt. Reyes Station. At San Clemente Place, for example, the town of Corte Madera originally intended to limit the new housing to Corte Madera residents, who are 90 percent White. Fair Housing of Marin broached the possibility of an administrative complaint or other legal action, and effectively persuaded each of three referenced developments to either substantially limit application the locality preference, or expand the preference parameters to include areas with large non-White populations. The Marin County Community Development Agency states that the use of locality preferences in Marin has become much less frequent than in the past.⁴⁸ FHOM also supports developers in designing and implementing affirmative marketing plans that target members of protected classes within a set income group.

As required by many funding sources, non-profit affordable housing providers employ comprehensive tenant screening criteria. For example, Eden Housing, the non-profit housing provider that manages Fireside Affordable Apartments in Mill Valley, screens tenants by running a credit check, criminal background check, and a check on court records for all applicants. Among other factors, an applicant will be disqualified for acceptance if she or he has a poor rental history, including a negative reference from a former landlord or past disturbance of neighbors, unpaid utility balances, a past unlawful detainer action, or bankruptcy within the preceding one-year period.⁴⁹ Individual tenant screening processes such as that employed by Eden Housing, and most other non-profit developers, may make it difficult for some people with mental disabilities and single mothers with children to secure housing.

⁴⁸ Leelee Thomas, Marin County Community Development Agency.

⁴⁹ Eden Housing, Resident Selection Criteria, available at <http://edenhousing.org/edenhousing.asp?Page=96>, accessed 05/05/10.

Efforts by the County to Determine the Existence of Problems Leading to Opposition to Housing

The 2009 Countywide Housing Workbook (“Workbook”) identified community resistance to new housing as the fourth most visible constraint to development, behind land costs, construction costs, and financing.⁵⁰

*There are a number of concerns that are often expressed at meetings, including: 1) new developments will cause increased traffic, 2) additional housing or density will adversely affect the community character, 3) affordable housing will impact property values, and 4) valuable open space will be lost...Additionally, at times there is a tension between the desire to provide certain individuals (such as nurses, teachers, law enforcement, etc) preferential access to affordable housing, and Fair Housing Law...These concerns are often expressed during project review processes and can present significant political barriers to development.*⁵¹

Neighborhood opposition to specific affordable housing proposals is pervasive in Marin County.⁵² One of the most recent examples is the strong opposition voiced by residents of an unincorporated area between Tiburon and Mill Valley to the proposed development of four affordable homeownership units by Habitat for Humanity. Although the housing was carefully designed so as to be consistent in character with surrounding residential and commercial buildings, residents of the area were still vocally opposed to its development. In fact, “opposition to affordable housing in the county was so fierce in the 1990s that a Marin chapter of Habitat for Humanity disbanded, former members say, after finding itself unable to get a single project built in five years.”⁵³ An article published by Mother Jones magazine in July 2007 neatly illustrated the rampant anti-development sentiment surrounding the Habitat project. The article quoted a homeowner in Marin County who referred to Habitat’s projects as “coming into an enhanced neighborhood and blighting it.”⁵⁴ Another neighbor, in reference to the nearby

⁵⁰ Marin Countywide Housing Element Workbook, *Nongovernmental Constraints*, March 31, 2009.

⁵¹ Marin Countywide Housing Element Workbook, *Nongovernmental Constraints*, March 31, 2009.

⁵² Neighborhood opposition has often been termed the “Not in My Backyard” phenomenon, commonly referred to as “NIMBY-ism.” However, Roy Bateman of the Marin County Community Development Agency suggests that use of the term NIMBY as a pejorative can be a form of name-calling that implies motives that cannot be verified, and may tend to solidify positions that may actually be more fluid than project proponents believe.

⁵³ Harkinson, Josh, *NIMBY Notebook: Habitat for Hypocrisy*, Mother Jones, 07/17/07, available at <http://www.motherjones.com/politics/2007/08/nimby-notebook-habitat-hypocrisy>.

⁵⁴ *Ibid.*

Krueger Pines public housing development for seniors and disabled individuals, stated “[t]he characters in those units are not the best kind of people. People say some of them go down to the street and beg.”⁵⁵ Anonymous comments from online readers shed further light on the bigotry and racism underlying much of the opposition to affordable development:

“[T]he poor, minorities, immigrants, or uneducated (read ‘white trash’)...move into a neighborhood and, inevitably, they destroy the property and drive up crime (vandalism, drug dealing, gangs, etc.)” – speakthetruth

“I have worked hard all my life to live AWAY from people who require low-cost housing. Because of the problems they usually bring to the neighborhood, I try to avoid living near areas like that. Why the hell should anyone be subjected to this?” – ccrashh⁵⁶

Housing advocates in the Marin community spoke of similar experiences, noting that “traffic” and “neighborhood character” often act as a pretextual cover for discrimination against low-income people of color. Dave Coury, of the Marin Continuum of Housing and Services, noted that “neighborhood character” is often invoked as a code to limit development to single-family homes, thereby bypassing most multi-family affordable housing development.⁵⁷ Similarly, Kathleen Harris at the Marin Community Foundation noted that there is always community resistance to the development of affordable housing, based in part on the public perception about the types of people who live in affordable housing. At a planning commission meeting convened to discuss a proposed 20-unit development in Mill Valley, slated to include four low- and moderate-income inclusionary units, residents voiced “vehement” opposition, citing a detrimental environmental impact, increased traffic congestion and safety hazards, and aesthetic and noise concerns.⁵⁸ One resident quoted in the local newspaper “asked why the city was even required to consider the development in the first place. ‘Why can’t you just say no now?’ he asked, to loud applause.”⁵⁹ The unstated subtext is that people who live in affordable housing – those identified as undesirable by neighbors – are minorities, people with disabilities, and female-headed households.

It bears mention, however, that some environmental concerns that may be pretextual in East Marin may be more legitimate in West Marin. Because of West Marin’s minimal

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, comments

⁵⁷ Interview, Dave Coury, Marin Continuum of Housing and Services.

⁵⁸ White, Ryan, “Residents Blast Kite Hill Plans,” Mill Valley Herald, May 12-19, 2010, A1-A2.

⁵⁹ *Ibid.*

infrastructure, its limited capacity in relation to traffic, water, and septic presents real constraints on development there.⁶⁰

Location of Facilities for Persons with Disabilities

The following table tracks the location of subsidized housing facilities for persons with disabilities.⁶¹ Notes on accessibility are taken directly from material provided by the Marin Housing Authority.⁶² The Marin Housing Authority states that it sends out a monthly e-mail to all the affordable housing providers asking them to update the information on the list before the list is posted.

Name	Location	Total Units	Wait List	Accessibility
Alto Station	Mill Valley	17	Open, 3-5 years	Wheelchair access
Art Works Downtown	San Rafael	17	Closed, 2-4 years	No wheelchair access, steep stairway, no parking
Bay Vista	Novato	220	Closed for studios/1 bdrms	Wheelchair access
Bee Street Housing	Sausalito	6	Closed	1 wheelchair accessible unit; seniors only
Belvedere Place	San Rafael	26	Closed	No wheelchair access
Bennett House	Fairfax	70	Open	Only seniors & mobility impaired adults; 7 accessible rooms; close to bus
Bradley House	Tiburon	15	Open	2 accessible units
Camino Alto	Mill Valley	24	Open	Only for persons with severe mobility impairments
Casa Nova	Novato	40	Closed	1 wheelchair accessible unit, 2 accessible parking spaces
Centertown	San Rafael	60	Closed	Wheelchair access, parking
Creekside at Meadow Park	Novato	76	Closed	2 bdrm units have wheelchair access
Ecology House	San Rafael	11	Open	Only for people with Multiple Chemical Sensitivities
Edgewater Place	Larkspur	28	Closed	3 units have wheelchair access
Fairfax Apartments	San Rafael	40	Open	No wheelchair access
Farley Place	Belvedere	11	Open	Seniors only; wheelchair access
Fireside Apartments	Mill Valley	49	Open	No wheelchair access
Golden Hinde	San Rafael	40	Closed	2 accessible units, 2 accessible

⁶⁰ Interview, Leelee Thomas, Marin County Community Development Agency.

⁶¹ “Subsidized Housing,” compiled by the Marin Housing Assisline, 09/22/09; Marin Housing Authority data

⁶² It appears that some of the information regarding accessibility is incorrect. For example, MHA reports that Fireside Apartments is not wheelchair accessible. However, the Fireside Apartment development was a substantial rehabilitation completed in 2009, and thus is required to comply with state and federal law regarding accessibility. If MHA provides inaccurate information to individuals with disabilities, thus further limiting their ability to find appropriate housing by unnecessarily narrowing their housing options, this constitutes another barrier to housing choice.

				parking spaces
Homestead Terrace	Mill Valley	28	Closed	1 accessible unit
Isabel Cook	San Anselmo	18	Open	2 units for seniors, 2 accessible units
Kruger Pines	Mill Valley	56	Closed	3 accessible units
Larkspur Isle	Larkspur	28	Closed	Wheelchair access
Mackey Terrace	Novato	49	Closed	5 wheelchair accessible units, 1 hearing impaired unit; at distance from public transportation
Marin City Family Housing	Marin City	294	Open only for 3 + 4 bdrms	15 wheelchair accessible units, 22 accessible parking spaces
Marin Lagoon	San Rafael	4	Closed	Wheelchair access
Parnow Friendship House	San Rafael	70	Closed	8 wheelchair accessible units for adults under 62
Pickleweed Apartments	Mill Valley	32	Open	Wheelchair access
Pilgrim Park	San Rafael	60	Closed	6 wheelchair accessible units, parking
Pt. Reyes Affordable Housing	Pt. Reyes Station	26	Open	Wheelchair access
Ponderosa Estates	Marin City	56	Open	No wheelchair access
Ridgeway Apartments	Marin City	255	Closed, 1-10 years	No wheelchair access
Riviera San Rafael	San Rafael	28	Open	Wheelchair access
San Clemente Place	Corte Madera	79	Closed	Wheelchair access
San Rafael Commons	San Rafael	83	Closed	9 wheelchair accessible units
St. Vincent de Paul	San Rafael	8	Closed	No elevator
Sundance Apartments	San Rafael	28	Open	No wheelchair access
The Hilarita	Tiburon	102	Closed	4 wheelchair accessible units, laundry room not accessible
Venetia Oaks	San Rafael	36	Closed	2 accessible units, 3 accessible parking spaces
Village Oduduwa	Marin City	25	Open	Seniors or people with disabilities age 55 +
West Marin Senior Housing	Pt. Reyes Station	24	Closed	2 accessible units for mobility-impaired younger adults

More than one-third of the total complexes identified as appropriate for persons with disabilities are located in San Rafael. Taken together, more than 70 percent of buildings for persons with disabilities are concentrated in San Rafael, Mill Valley, Marin City, and Novato. Only two housing complexes for persons with disabilities exist in the entirety of West Marin; this is particularly of concern to people with environmental illness and mental disabilities who seek out housing in less densely populated rural areas. Further, no such complexes exist in

Kentfield, and the cities of Sausalito, Belvedere, Corte Madera, Fairfax, and San Anselmo only have one such property each.

Sources of Revenue to Fund Affordable Housing

According to EAH, a local non-profit housing developer formerly known as Ecumenical Association for Housing, the cost of building affordable rental housing can range from \$405,000 to \$565,000 per unit. The high cost of land in Marin County adds to the total development cost for new affordable housing.

The Marin County In-Lieu Housing Trust Fund (“Housing Trust”) acts as a local funding mechanism for affordable housing projects within the county. The Housing Trust is currently funded at three million dollars. The stated goal of the Housing Trust is to “advance the values of a balanced community,” and “increase the stock of homes affordable to low and very-low income families and individuals, local workers and people with special needs.”⁶³ The Housing Trust typically funds between \$10,000 and \$25,000 per unit, prioritizing projects that increase the stock of rental housing in unincorporated areas of the county and utilize long-term affordability restrictions. More specifically, the Housing Trust funds projects such as: affordable rental housing, single-room occupancy projects, agricultural worker housing, supportive or transitional housing, mixed-use and live/work projects, conversion of market-rate housing to affordable housing, and affordable homeownership projects. Funds are available for all stages of the construction process, including initial development, land acquisition, predevelopment costs, and construction/rehabilitation/conversion. Non-profit organizations, public agencies, and for-profit developers working in conjunction with non-profit organizations are all eligible to apply for funds. Every major affordable housing project in the unincorporated County receives Housing Trust funds. The Housing Trust permits funding in jurisdictions outside the unincorporated County as well, however, given the limited resources available, the County Board of Supervisors may be reticent to fund projects in incorporated areas.⁶⁴

The Housing Trust is funded through in-lieu fees paid by developers of market-rate properties, as well as affordable housing impact fees assessed on property owners building or remodeling single-family homes. The affordable housing impact fee applies to all new single-family homes greater than 2,000 square feet, teardowns, and major remodels that result in more

⁶³ Marin County Housing Trust Fund Implementation Guide.

⁶⁴ Interview, Leelee Thomas, Marin County Community Development Agency.

than 500 square feet of new space. Moderate sized homes between 2,000 and 3,000 square feet are required to pay a fee of \$5 per square foot over 2,000 square feet, and homes in excess of 3,000 square feet are assessed \$10 per square foot over 2,000 square feet.⁶⁵

The Marin Workforce Housing Trust, a countywide housing trust fund, is another means of funding affordable housing. The Workforce Housing Trust was created through the collaborative efforts of a number of major employers, the Marin Community Foundation, and the County of Marin.⁶⁶ The Workforce Housing Trust has raised over three million dollars to assist in financing future affordable housing development.

The County also receives funds through the Housing Opportunities for Persons with AIDS Program (HOPWA), administered by HUD. HOPWA funds are used for rental assistance for low-income people with AIDS. The Marin Housing Authority currently serves 29 HOPWA participants; however, “the program is now closed to new applicants as the level of funding can support only those already in the program.”⁶⁷

Further, Marin County receives approximately \$1.6 million annually in CDBG funding, as well as \$1.2 million in HOME funds. The County of Marin, Novato, San Rafael, and Tiburon “have established redevelopment districts, which produce funding earmarked for affordable housing. The County of Marin committed redevelopment funds to a mixed-use housing and retail project in Marin City. The City of San Rafael has used redevelopment funds to assist in the acquisition, rehabilitation, and development of affordable housing in the downtown area and the Canal neighborhood. The Town of Tiburon committed redevelopment funds to the development of subsidized senior housing and to the preservation of existing Section 236 subsidized family housing which had been threatened with conversion to market rents. The City of Novato has used redevelopment funds to assure affordability of housing built on the site of the former Hamilton Army Air Base.”⁶⁸

The Marin Community Foundation (“MCF”), a large, private funder, makes both grants and loans for affordable housing projects. The majority of construction funds MCF provides go

⁶⁵ Marin County Ordinance No. 3500, 10/14/08.

⁶⁶ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 33 (2009).

⁶⁷ Con Plan § 901.205(b)(1), pg. 28.

⁶⁸ Con Plan § 91.210(c), pg. 64.

towards senior housing. As part of its Strategic Initiative, MCF is currently working to create and stabilize housing for farm workers in West Marin.⁶⁹

Legal Precedents Affecting Site Selection

In 1998, a coalition of Marin non-profit organizations, led by Marin Family Action, sued the town of Corte Madera over its failure to include an affordable housing plan in its housing element. The trial court invalidated Corte Madera's housing element, and enjoined the town from using any land use approvals for purposes of development, other than affordable housing development, until it adopted an adequate housing element.⁷⁰ As a result, four years later, Corte Madera had developed an ambitious plan with an affordable housing overlay zone that allows housing developers to exceed the standard density level by three times, so long as 50 percent of units are affordable.⁷¹ After the Town's adoption of the overlay zone, EAH developed San Clemente Place in Corte Madera, a development with 79 units (all of which are affordable units). Housing advocates cite the Corte Madera precedent when they ask other jurisdictions to adopt similar affordable housing overlay zones.

THE HOUSING – EMPLOYMENT – TRANSPORTATION LINKAGE

Between 1995 and 2005, the number of jobs in Marin County increased by 18 percent. However, the bulk of jobs in the County today are low-paying service jobs, filled mostly by “women and young people entering the workforce, people moving into Marin County, and commuters from neighboring counties.”⁷² Quite simply, only persons who earn at least 80 percent to 100 percent of the median wage in the Bay Area can afford the average rent in Marin.⁷³ Further, “only three of the top twelve employment sectors in Marin offer an annual median salary that exceeds the income needed to afford the median rent price in the county. The employees in these three sectors represent 16 percent of the workforce. Two of the top five sectors, Retail and Hospitality/Recreation, have median salaries that place a single-person household in the very low-income category. These two sectors employ nearly 20,000 (24

⁶⁹ Interview, Kathleen Harris, Marin Community Foundation.

⁷⁰ *Marin Family Action v. Town of Corte Madera*, Marin County Superior Court No. 17493 (1998).

⁷¹ Ginsberg, Steve, “Affordable” Finds a Home, San Francisco Business Times, 09/23/05, available at <http://www.bizjournals.com/sanfrancisco/stories/2005/09/26/focus1.html>.

⁷² Con Plan § 91.210(a), pg. 46.

⁷³ See Marin County Affordable Housing Inventory 2008, pg. 11.

percent) of workers in Marin. A household with two workers earning median salary in either sector cannot afford the median rent in Marin.”⁷⁴

People employed within the county tend to commute from outlying areas with lower costs of housing.⁷⁵ On an average day, nearly 44,000 people commute into Marin from other counties for work.⁷⁶ The 2000 Census provided a snapshot of Marin’s workforce: at that time, only one-quarter of jobs in Marin were held by employees who lived and worked in the same city.⁷⁷ In Corte Madera, 81 percent of employees commuted from outside the city.⁷⁸ Workers commuting from other counties held more than one-third of jobs within the county; similarly, more than one-third of Marin County residents commuted outside the county for employment.⁷⁹ A great number of non-residents commute in to Marin for low-wage jobs, while an equal percentage of residents commute out of Marin for high-wage positions. This clearly illustrates the deficit of workforce housing in Marin County: many of those who work in the county cannot actually afford to live in it. Moreover, the majority of commuters use personal vehicles to travel an average of 32.9 miles per capita and do not carpool, to an increasingly detrimental effect on the environment.⁸⁰ Currently, a high number of employees commute to Marin from Sonoma County, where the cost of housing is lower. Further population projections estimate that commuters into Marin County will continue to increase, with the largest increases coming from individuals who reside in Alameda, Contra Costa, and Solano counties; all with notably less expensive housing than Marin County.⁸¹

Notably, however, “a 2008 Marin County Affordable Housing Inventory Report found that 91 percent of those who live in low-income homes in Marin work in Marin.”⁸² Residents of affordable housing developments buck the trend towards commuting because “higher-density development makes more efficient use of Marin’s limited land stock while at the same time

⁷⁴ *Ibid.* at 12.

⁷⁵ Con Plan § 91.210(a), pg. 46

⁷⁶ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 7 (2009).

⁷⁷ Marin County Affordable Housing Inventory 2008, pg. 14.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 7 (2009).

reducing the amount of rent that hard-working families, seniors and people with disabilities must pay.”⁸³

Location and Distribution of Transportation and Social Services

Social service providers in Marin County tend to be concentrated in San Rafael and Novato. For example, Buckelew Programs, Marin Center for Independent Living, Ritter Center, St. Vincent de Paul, the Marin County Department of Health and Human Services, and the Marin Housing Authority are all located in San Rafael. The Marin Community Clinic also has a location in San Rafael, as well as Novato and Greenbrae. Marin General Hospital is located in Greenbrae.

The Transportation Authority of Marin (“TAM”) published a plan for San Rafael’s Canal neighborhood in 2007. TAM noted that the Canal is physically isolated from other parts of San Rafael by both the Canal waterway and Highway 101/Interstate 580. Further, TAM found that available services are limited in the Canal, and travel to other locations for services is constrained by poor bicycle, pedestrian, and motor vehicle connections.

Twenty percent of San Rafael’s total population resides in the Canal. As discussed previously, 70 percent of residents in the Canal are Latino, and most do not speak English at home. Canal residents are especially reliant on public transportation, as they “own fewer cars and ride transit more frequently than other residents of San Rafael and Marin County. Bus routes 35 and 36, which serve the Canal Neighborhood, are the most heavily used routes in Marin County. In previous outreach efforts, the community said that better connections were needed to other parts of San Rafael, that bus service should be improved, and that it should be safer to walk and ride a bike in the neighborhood.”⁸⁴

As a result of its study, TAM identified six high priority projects in the Canal: (1) adjustments to bus transit service to include increased frequency and capacity of service; (2) crosswalk and lighting improvements; (3) a pedestrian/bicycle connection from the Canal to downtown, San Rafael High School, and shopping districts; (4) increased safety measures on routes to schools; (5) additional bus shelters; and (6) undertaking a neighborhood safety and streetscape improvement project. TAM identified two low-priority projects: reducing transit fare

⁸³ *Ibid.*

⁸⁴ Transportation Authority of Marin Canal Neighborhood Community Based Transportation Plan, 09/07, available at <http://www.tam.ca.gov/index.aspx?page=160>.

for trips between the Canal and downtown, and subsidizing a car share program. TAM also conducted a similar study in Marin City; however, the agency declined to publish its draft findings, and has yet to adopt the plan. Marin Transit states that is planning to provide more local service within Marin City and to provide more service between Marin City and Marin General Hospital, service upgrades which would be consistent with the highest priorities of the Marin City transit plan.

Transportation authorities have stated that transportation in Marin effectively serves low-income neighborhoods.⁸⁵ However, this ignores a dilemma: if local public transportation service is concentrated in low-income communities where current demand and current ridership are greatest, it can have the unintended effect of confining residents to those same communities. Such a pattern can perpetuate the segregation of low-income people of color, people with disabilities, and single female head of household families who are dependent on public transportation are unable to move out of impacted neighborhoods because other, less impacted communities do not have adequate transit resources. But if subsidies for public transportation are limited, it is difficult to justify cutting service in low-income communities in order to provide more service in areas where there is currently not enough demand to justify a service increase. Funding constraints necessitate a balancing of transportation resources, but such balancing should not be conducted to the detriment of low-income communities. Clustering public transportation resources, though cost-effective, effectively corrals minorities, people with disabilities, and single mothers with children in a handful of already-segregated communities.⁸⁶ A way forward would be the pursuit of transit-rich development in non-impacted neighborhoods, but that would require local governments to allow development at densities high enough to create sufficient demand for public transportation. If higher densities are built, transportation officials can justify redistribution of transit capacity. Marin Transit is pursuing the vision of community-focused transit hubs (“Green Hubs”) throughout the County in cooperation with local jurisdictions to make transit both more visible and easier to use. TAM identified 17 potential Green Hub sites in its 2009 Central and Southern Marin Transit Study. However, implementation becomes feasible only if local jurisdictions allow for development at sufficient

⁸⁵ In the 1994 AI, the then-transportation director states that public transportation “is focused in the areas with multi-family housing that serves minorities, single mothers with children, and the disabled.”

⁸⁶ See HUD Final Investigative Report at 65.

densities and if local jurisdictions simultaneously invest in accessible paths of travel to reach the Green Hubs.

MARIN HOUSING AUTHORITY: TENANT SELECTION AND HOUSING CHOICE

Marin County has a total of 500 public housing units, 300 of which are in Marin City and 200 of which are in elderly/disabled complexes in Mill Valley, Novato, and San Rafael. The Marin Housing Authority (“MHA”) administers an extensive waiting list for its public housing units and Section 8 vouchers. As of 2010, the Housing Authority also has 2,100 Section 8 vouchers used for tenant-based and project-based assistance.⁸⁷ The Housing Authority Board of Commissioners, consisting of the five members of the County Board of Supervisors as well as two public housing tenants, has the power to appoint the Housing Authority Director.

Golden Gate Village in Marin City is the only public family housing complex in the County of Marin. Only 265, or 53 percent, of the public housing units in Marin County are appropriate for families. The following represents a complete accounting of all public housing units, as distributed by size:⁸⁸

Studio	122 units
1 – Bedroom	113 units
2 – Bedroom	138 units
3 – Bedroom	119 units
4 – Bedroom	8 units

The Marin Housing Authority developments that participate in the HUD Capital Fund Program are as follows:⁸⁹

Name of Project	Address
Casa Nova	35 Carmel Dr., Novato
Golden Hinde	5 Golden Hinde Blvd., San Rafael
Homestead Terrace	100 Linden Lane, Mill Valley
Krueger Pines	47 North Knoll Rd., Mill Valley
Marin City Public Housing	429 Drake Ave., Marin City
Venetia Oaks	263 North San Pedro Rd., San Rafael

Marin Housing Authority Policies

Public Housing

Although the public housing waiting list is less competitive than other assisted housing programs, it is currently closed. When the waiting list is open, the Marin Housing Authority

⁸⁷ Con Plan § 91.205(d) at 53.

⁸⁸ Reproduced from *Ibid.*

⁸⁹ *Ibid.*, Table N.

utilizes a local preference point system in the administration of its low rent public housing program. Under the preference system, involuntarily displaced persons, such as victims of domestic violence, victims of a natural disaster, victims of eminent domain, and participants in witness protection programs are awarded a substantial preference in the public housing program. Families of two or more persons, elderly persons, and people with disabilities also earn preference points. Lesser preferences are awarded to applicants who are currently homeless, defined as persons who lack a fixed, regular and adequate nighttime residence or reside temporarily at a homeless shelter or place not ordinarily used as an accommodation for human beings, or applicants who are veterans. Finally, minimal preference points are awarded to applicants who are employed, enrolled in a job training program full-time, current residents of Marin County, or currently employed at least 32 hours per week in Marin County.⁹⁰

In the event of an emergency that necessitates that a tenant must immediately vacate his or her unit, the Marin Housing Authority will, at its own expense, relocate the affected tenant(s) to an available appropriate unit, or temporarily relocate the tenant to a hotel or similar accommodation.⁹¹ The Housing Authority may require a resident to transfer to make an accessible unit available to a disabled resident, to comply with occupancy standards if a household is overcrowded or over-housed, or to undertake demolition, disposition, or major capital or rehabilitation work on site.

The Housing Authority will only consider transfer requests initiated by residents when the purpose of the transfer is “to alleviate a serious or life threatening medical condition,” due to the “threat of physical harm or criminal activity,” requested as a reasonable accommodation, to move to a different size unit in compliance with MHA occupancy standards, or to relocate closer to employment. The Housing Authority states that it will not consider any other transfer requests.⁹² Not all tenants are eligible to request transfers; the Housing Authority will only consider transfer requests from residents with a “good record.” This includes no history of criminal activity that poses a threat to residents or staff, no back rent charges, and no housekeeping lease violations or history of damaging property.⁹³

⁹⁰ Marin Housing Authority Admissions and Continued Occupancy Policy (“MHA ACOP”), Attachment C, Local Preference Point System, Low Rent Public Housing Program.

⁹¹ MHA ACOP Ch. 11-1.

⁹² MHA ACOP Ch. 11-4.

⁹³ MHA ACOP Ch. 11-5.

The Housing Authority prioritizes transfer requests based on verified medical problems, verified threat of physical harm or criminal activity, and reasonable accommodations. Residents receive one offer of a transfer. If a resident refuses to accept a transfer required by the Housing Authority without good cause, MHA will terminate the resident's lease.⁹⁴ However, tenant may decline a unit offered as the result of a transfer request.⁹⁵ Residents who request a transfer, then refuse an offer without good cause must wait for one year to reapply for another transfer.⁹⁶

Good cause for unit refusal includes:

The unit is inappropriate for the applicant's disabilities...

Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an education institution or job training program, or take a child out of day care or an educational program for children with disabilities.

*The family demonstrates to MHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court order, or risk assessment related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. **Refusals due to location alone do not qualify for this good cause exemption.***⁹⁷

Section 8 Housing Choice Voucher Program

When the Marin Housing Authority's Section 8 waitlist last opened in September 2008, 11,200 applications were received. 2,566 homeless individuals applied, while the remaining 8,634 applications came from families, disabled individuals and seniors.⁹⁸ The Housing Authority estimates that the Section 8 waiting list will likely remain closed for the next six to seven years.⁹⁹

To apply for admission into the voucher program in Marin County, families must first complete a written pre-application form when the waiting list is open. When the family reaches

⁹⁴ MHA ACOP Ch. 11-7.

⁹⁵ MHA ACOP Ch. 11-5 ("Transfers requested by the tenant are considered optional for the tenant.").

⁹⁶ MHA ACOP Ch. 11-7.

⁹⁷ MHA ACOP 11-IV.D (emphasis added).

⁹⁸ Con Plan § 91.205(b)(1) at 23.

⁹⁹ Interview, Kimberly Carroll, Marin Housing Authority.

the top of the waiting list, MHA will issue a final determination of eligibility; eligible families at the top of the waiting list then receive Section 8 vouchers.¹⁰⁰

On the waiting list, applicants will be listed in sequence assigned through the local point preference system. Pre-applications equal in preference will be maintained in lottery-determined sequence of pre-application receipt. In making its annual determination of whether to open the waiting list, MHA will consider both the length of the current waiting list (i.e., whether the waiting period for current applicants is in excess of two years), and the availability of future funding. When the waiting list opens, MHA will make written announcements to various local housing and service organizations that assist homeless persons, low-income individuals, and people with disabilities. MHA will suspend acceptance of pre-applications if there are enough already submitted to fill anticipated openings within the next twelve months. MHA will not maintain a list of individuals who wish to be notified when the waiting list is open.¹⁰¹

Families are selected from the waiting list using the preference-determined sequence, regardless of family size. To be eligible for admission to the Section 8 voucher program, the applicant must be: (1) a family; (2) within appropriate income limits; (3) able to provide social security numbers; (4) a U.S. citizen or eligible immigrant; (5) able to show no violation of any family obligation during previous participation in Section 8; (6) able to show no commission of a criminal act in connection with federal housing programs over the last decade; (7) able to show no drug-related or violent criminal activity over the last five years; and (8) able to show no evictions from public housing over the past five years.¹⁰²

The Marin Housing Authority employs a local preference point system in the administration of its housing choice voucher program, similar to that used in the public housing program.¹⁰³ The Housing Authority reserves its right to limit the number of applicants that may qualify for any local preference.¹⁰⁴ Under the preference system, involuntarily displaced persons, such as victims of domestic violence, victims of a natural disaster, victims of eminent domain, and participants in witness programs, are awarded substantial preference in the voucher program. Families of two or more persons, elderly persons, and people with disabilities also earn

¹⁰⁰ MHA Section 8 Housing Choice Voucher Administrative Plan (“MHA Section 8 Admin Plan”).

¹⁰¹ MHA Section 8 Admin Plan.

¹⁰² MHA Section 8 Admin Plan, Ch. 3-1. The definition of “family” includes two or more persons related by blood or law who share the same dwelling; two or more persons who have a stable 6-month history as a family unit; an elderly person; a displaced person; a person with a disability; and any “other single” person.

¹⁰³ Local Preference Point System, Housing Choice Voucher Program, Revised 11-09.

¹⁰⁴ MHA Section 8 Admin Plan, Ch. 4-2.

preference points. Equivalent preference points are awarded to individuals or families who have successfully completed, or are currently participating in, a supportive housing program for disabled homeless persons. To qualify, an applicant must be homeless, disabled, a previous or current participant in a supportive housing program, and no longer in need of supportive services. Homeless applicants, defined as persons who lack a fixed, regular and adequate nighttime residence or reside temporarily at a homeless shelter or place not ordinarily used as an accommodation for human beings, merit a 4-point preference. In 2008, when the Section 8 waitlist opened, veterans qualified for a 1-point preference. Finally, applicants who are enrolled in school or a job training program full-time, current residents of Marin County, or currently work in Marin County receive 2 points, however if the head of household or sole member is age 62 or older or disabled they will also receive these 2 preference points, under the assumption that they will less likely to be enrolled in school or employed (MHA Admin Plan).

For HUD targeted funded programs (such as the Family Unification Program) from which admissions are handled separately, MHA also employs a local preference to its Section 8 voucher waiting list for families identified by the County as families for whom the lack of adequate housing is a primary factor in the imminent removal of a child from the home. However, the Housing Authority does not explicitly identify the amount of preference points awarded to families in this category.

The Housing Authority may make an offer of assistance to families ranked lower on the waiting list ahead of families ranked higher on the waiting list in the interest of achieving deconcentration of poverty.¹⁰⁵ In the past, the Housing Authority purged the waitlist annually, so that applicants who failed to respond to notice of purging were removed from the waitlist. (The Housing Authority's Admin Plan was revised in late 2010 through a public comment process, and as a result, this practice was dropped). The Marin Housing Authority maintains its Section 8 Voucher waitlist separately from its Public Housing Waitlist.

Participants in the housing choice voucher program may move to a new unit if a current lease has expired, or the owner agrees to terminate the lease during its term. Families are restricted to one move during a one-year period, although MHA may make exceptions for hardship.¹⁰⁶ Recipients of Section 8 vouchers may procure housing anywhere within the United

¹⁰⁵ This is discussed in more detail in subsequent sections.

¹⁰⁶ MHA Section 8 Admin Plan, Ch. 15-1.

States, as long as they were Marin County residents when they applied to be added to the waitlist. HUD requires that families find an eligible unit, with an owner or landlord who will enter into a Housing Assistance Payments Contract with the Housing Authority.¹⁰⁷ Marin Housing Authority has a Housing Search Specialist available to those families and individuals who need support navigating the housing search process; in addition MHA offers generous time extensions to the voucher to give the voucher-holder more time to search for eligible units.

Demographics of Public Housing Developments

According to HUD data, 3,318 households, accounting for 5,809 total individuals, reside in HUD-funded housing units in Marin County. The Marin Housing Authority's largest low-income housing development is located in Marin City. The population of Marin City is 46 percent Black, representing 16 percent of the County's total Black population.

Blacks and Latinos "are disproportionately represented in rental housing. Blacks are also disproportionately represented as renters of lower cost units, units that cost less than the median gross rent. Blacks are disproportionately represented in the family public housing complexes in Marin City."¹⁰⁸ In 2004, nearly 72 percent of public housing residents in Marin City were Black.¹⁰⁹ The County Consolidated Plan states "the county has fewer lower income Black families with housing problems than Hispanic families, since families in public housing live in standard quality housing and they tend not to be rent burdened or live in overcrowded conditions;" however, Black families in Marin city public housing face "significant neighborhood-related social problems, particularly related to unemployment and substance abuse."¹¹⁰

Between 1995 and 2000, the demographics of Marin City shifted because of the completion of the Marin City USA redevelopment project, which included 225 apartments and 85 town homes, as well as the 30-unit Braun Court affordable homeownership program. In 1999, property management staff for the new apartments at Marin City USA estimated that 40 percent of residents were Black, 35 percent were White, 15 percent were Latino, five percent were Asian/Pacific Islander, and five percent were "other."

¹⁰⁷ MHA Section 8 Admin Plan, Ch. 9-1.

¹⁰⁸ Con Plan § 91.205(b)(2) at 30.

¹⁰⁹ Con Plan § 91.210(a) at 50-51.

¹¹⁰ Con Plan § 91.205(b)(2) at 31.

As discussed previously, people of color were concentrated in Marin City because of historical restrictions on their right to own or lease land elsewhere in the county. One housing advocate noted that generations of Black families now live in Marin City as a result of restrictive housing practices elsewhere in the County, and that those families still feel unwelcome outside of Marin City.¹¹¹ Staff at the Marin Housing Authority noted that Marin City has become a “generational project,” wherein generations of families continue to reside in the same housing project.¹¹² Kimberly Carroll, Deputy Director at the Housing Authority, stated that one emerging problem in Marin City is that some older single adults continue to reside in multi-bedroom units well after their children move out, thus limiting the availability of larger units for families in need of housing.¹¹³

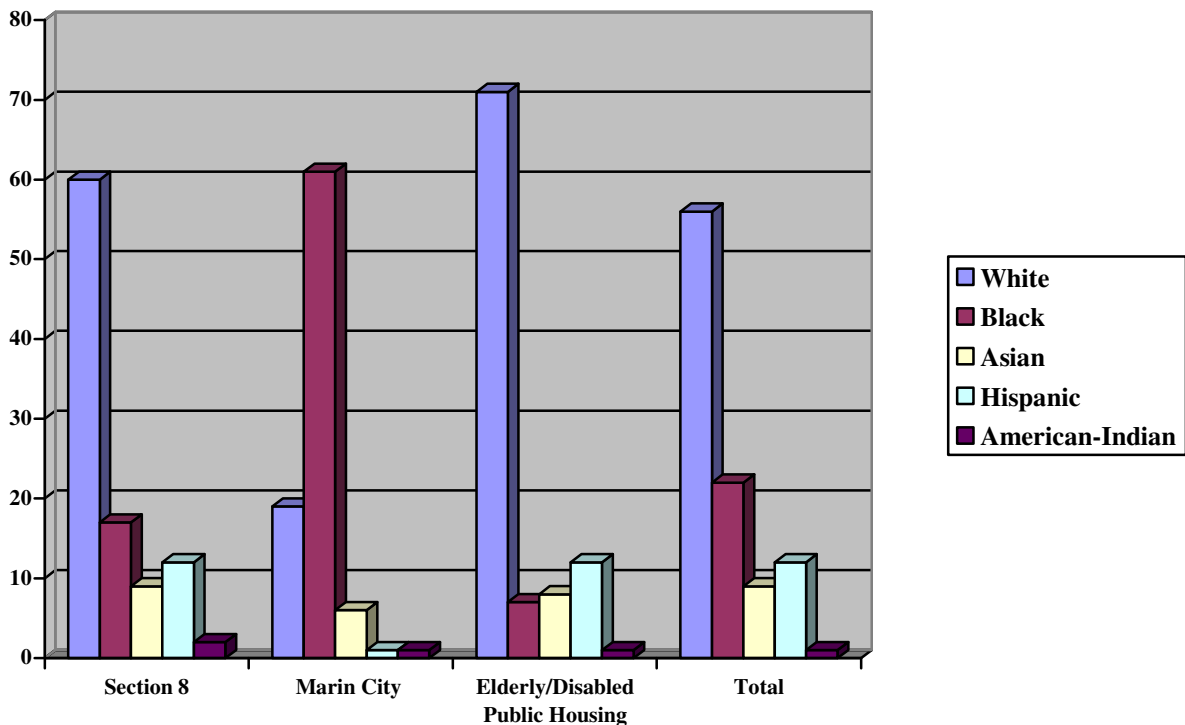
The following table, adapted from the Consolidated Plan 2010-2014, illustrates the race and ethnicity of recipients of public housing assistance by household, as of March 31, 2010.

Race/Ethnicity	Section 8	Marin City Public Housing	Elderly/Disabled Public Housing	Total
White (Non-Hispanic)	1243 60.01 percent	70 19.4 percent	173 71.19 percent	1486 55.6 percent
Black	345 16.7 percent	220 60.9 percent	17 7 percent	582 21.77 percent
Asian	189 9.13 percent	23 6.37 percent	20 8.2 percent	232 8.68 percent
Hispanic	251 12.13 percent	46 1.27 percent	30 12.34 percent	327 12.23 percent
American Indian	33 1.59 percent	2 0.55 percent	3 1.23 percent	38 1.42 percent
Total Minority	818 40 percent	291 82 percent	70 28.8 percent	1179 44.11 percent
Total	2,069	361	243	2,673

¹¹¹ Interview, Makini Hassan, Marin City Community Development Corporation.

¹¹² Interview, Kimberly Carroll, Marin Housing Authority.

¹¹³ Interview, Kimberly Carroll, Paul Cummins, Marin Housing Authority.



More than half of Section 8 voucher recipients are non-Hispanic Whites. Although the majority of residents of elderly and/or disabled public housing are White, the majority of residents of public housing in Marin City are Black. Hispanics are statistically underrepresented in Marin City public housing.

Inclusiveness of MHA Policies Regarding Persons with Disabilities

According to the Marin Center for Independent Living, 50,000 to 55,000 persons with disabilities reside in Marin County. Further, it is estimated that this number will increase exponentially as the County’s senior population grows.¹¹⁴

People with physical disabilities enter the regular public housing or Section 8 voucher program pool. However, people with disabilities do earn some preference points on the waitlists for both public housing and vouchers. HUD gives Public Housing Authorities funding to provide 5% of the units as handicapped accessible. MHA received a highly competitive American Recovery and Reinvestment Act (ARRA) grant in order to provide 10 additional accessible units at its five elderly and disabled properties. This funding has allowed MHA to far

¹¹⁴ Con Plan § 91.205(d), pg. 41.

exceed the 5% HUD requirement. At the five elderly/disabled complexes managed by the Marin Housing Authority, 15% of the units are handicapped accessible, but the need is greater. Currently, 5% of the units at the MHA family public housing complex are handicapped-accessible.¹¹⁵ At two additional complexes, the Housing Authority “has made additional handicapped improvements to 84 units, by installing grab bars in bathrooms and installing hot water valves that prevent scalding.”¹¹⁶

An estimated 1,500 residents of Marin County are developmentally disabled.¹¹⁷ Many live in group homes operated by nonprofit providers, but there is an increasing trend towards more independent living in individual apartments rented on the private market.

People with mental disabilities may benefit from the Shelter Plus Care program if their disability includes acute mental illness. Shelter Plus Care is a MHA program designed to “provide rental assistance and supportive services to homeless individuals and families where the head of household has a serious mental illness (and may also have other disabilities).”¹¹⁸ Under Shelter Plus Care, the Housing Authority subsidizes rent at private apartments for participants. Housing Authority caseworkers collaborate with community-based service providers, including mental health case managers, nurse practitioners, and psychiatrists, to preserve participants’ housing. The Marin Housing Authority administers 75 Shelter Plus Care vouchers to individuals who are chronically homeless and suffer from an acute mental illness.¹¹⁹

MHA was awarded a HUD grant in 2006 to assist residents residing in its five senior and disabled complexes. The grant funds case management services for residents facing challenges. Many of the clients served through this program suffer from a mental health disability. In addition, MHA also offers case management services to families living in public housing to address mental health disabilities, which impact both their quality of life and the housing management services at MHA’s five senior/disabled properties.¹²⁰

Fair Housing and Reasonable Accommodation Policy

¹¹⁵ E-mail from Kimberly Carroll, Marin Housing Authority.

¹¹⁶ Con Plan § 91.205(d), pg. 41.

¹¹⁷ *Ibid.*

¹¹⁸ Marin Housing Authority website <http://www.marinhousing.org/seniorOrDisabled.htm>

¹¹⁹ Interview, Kimberly Carroll, Marin Housing Authority.

¹²⁰ E-mail from Kimberly Carroll, Marin Housing Authority.

MHA's "Fair Housing and Reasonable Accommodation Policy" states that the Housing Authority may "tak[e] affirmative steps to reduce racial and national origin concentrations by enforcing tenant selection and assignment plans." However, there is no information publicly available on whether MHA actually takes such affirmative steps. Further, even if MHA did affirmatively act to reduce racial concentrations, it would be stymied by institutional limitations, as all of the public housing for non-disabled, non-elderly residents is located in Marin City.

For residents of Marin City public housing, MHA has propounded a "Reasonable Accommodation Request" form for use in requesting reasonable accommodations. The form, among other onerous criteria, requires the resident's medical provider to aver that he or she would be "willing to testify under oath" to the information provided, and dedicates four large, bold, capitalized font lines to "warning" a medical provider that he or she may be liable for perjury under the Penal Code. Fair Housing of Marin is concerned that such language could act as a deterrent, and effectively dissuade a medical provider from attesting to the extent of a patient's disability for fear of future prosecution – a concern validated by anecdotal evidence from housing advocates. The form also asks a medical provider to state whether he or she recommends the requested accommodation for other individuals, a calculation which should be irrelevant as the law mandates that reasonable accommodations should be considered on a case-by-case basis. Further, the form states not once but twice that "Additional bedrooms require additional rent subsidy; this reduces the agency's ability to assist other families." A medical provider might infer that he or she should take into account the Housing Authority's internal operating budget allocations when determining the best course of medical treatment for a patient. The reasonable accommodation request form may have the effect of increasing the barriers to accommodation.

"One-Strike" Policy

MHA's public dwelling lease, section 6, states:

In an effort to make public housing communities safer, the MHA has implemented a "zero tolerance" policy towards the commission of criminal activities. Tenant agrees that the MHA may terminate this Lease if any Tenant, Household Member, guest, or other person under Tenant's control, whether a minor or adult, engages in criminal activity or drug-related activity...

The lease defines criminal activity as “a violation of State or Federal law,” and extends the prohibition on criminal activity to cover activity “on or off MHA owned property.” An addendum to the “One-Strike Policy: Illegal Drug and Criminal Behavior” requires tenants to explicitly acknowledge the above lease provision.

While federal regulations require that all public housing authority dwelling leases contain a clause providing for termination of tenancy if a resident or person under the resident’s control engages in criminal activity that threatens the “health, safety, or right to peaceful enjoyment of the premises by other tenants” or drug-related criminal activity, public housing authorities are not *mandated* to evict all tenants suspected of engaging in *any* criminal activity.¹²¹ U.S. Supreme Court precedent vests in a public housing authority the discretion to consider all the circumstances in an eviction for criminal activity; further, the Court emphasized that evictions should be based on criminal activity that poses a direct threat to the health or safety of others.¹²²

According to MHA, in practice, MHA reviews all the facts of the case and exercises discretion before it will evict a family under its one-strike policy. MHA has evicted a total of 2 households or .006% of its tenants in 2009, and 5 or .016% of its tenants in 2010 due to “one strike” policies. Historically MHA has not actively evicted residents from Public Housing due to drug related or violent criminal activity which helps to perpetuate a unsafe living environment, thus limiting the choices for individuals with disabilities to remain in or find appropriate housing. MHA states that its “one strike” and “zero tolerance” policies are implemented only to target households involved in drug-related or violent criminal activities, and each situation is reviewed on case-by-case basis. However, the MHA policy, as written, does not preclude evictions for criminal activity which is neither drug-related nor violent.¹²³

If applied literally, the “zero tolerance” or “one-strike” policy may have a disparate impact based on race or mental disability. As of March 2010, over 60 percent of public housing residents in Marin City were Black and a total of 82 percent of residents in Marin City are people of color. Further, 40 percent of all Section 8 recipients are minorities. If the “One-Strike” policy is enforced in such a way as to terminate the tenancy of residents for issues beyond those which

¹²¹ 42 U.S.C. § 1437(d)(1)(6).

¹²² *Dep’t of Hous. and Urban Dev. v. Rucker*, 535 U.S. 125 (2002) (“Regardless of knowledge, a tenant who ‘cannot control drug crime, or other criminal activities by a household member which threaten the health or safety of other residents, is a threat to other residents of the project.’”).

¹²³ E-mail from Kimberly Carroll, Marin Housing Authority

pose a *direct threat* to other residents, this may disproportionately impact Black public housing residents and Section 8 recipients. Because a disproportionately high number of public housing residents are Black, it is statistically likely that, through consistently strict enforcement of the policy, a similarly disproportionately high number of Black residents will be at risk of losing their housing. Further, some residents report that local law enforcement personnel engage in racial profiling in the public housing projects in Marin City, heightening the possibility that Black residents, simply by virtue of their skin color, will be illegally questioned or detained by police in relation to suspected criminal activity; activity which could ostensibly constitute the basis for the Housing Authority's termination of tenancy.

Mental disability is also a protected class. MHA administers 200 elderly/disabled public housing units, which are open to both seniors and younger disabled people. MHA has not evicted any residents from these elderly/disabled complexes in 2009 and 2010 due to the one-strike policy.¹²⁴ People with mental disabilities, especially people who have serious mental illness, may be more likely to engage in unusual and possibly criminal behavior. For example, a person with a mental illness may vandalize property, trespass, or commit criminal nuisance as a direct effect of his or her disability. Although the aforementioned criminal activity would not be violent or drug-related, it could still form the basis for termination of assistance under an inflexible application of the MHA One-Strike policy. Further, even a resident who posed a one-time threat to the health or safety of others may be neutralized through medical treatment. For example, a resident who is suspected of harassing a neighbor as a result of a psychotic episode may be able to eliminate the risk of future potential outbursts through proper medical care. MHA's supportive housing case manager works closely to provide support services and coordination for these residents with special needs, and MHA's practice is to perform a discretionary case-by-case review before proceeding with a "One-Strike" eviction.¹²⁵ However, a written "One-Strike" policy that does not explicitly recommend the exercise of discretion in circumstances where a person with mental disabilities engages in criminal activity that does not pose a direct threat to other residents, or is demonstrably a treatable symptom of the individual's disability, could disparately impact residents with mental disabilities.

¹²⁴ E-mail from Kimberly Carroll, Marin Housing Authority.

¹²⁵ E-mail from Kimberly Carroll, Marin Housing Authority.

Finally, it is of concern that the “One-Strike” Policy does not explicitly exempt victims of domestic violence. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) provides that:

*Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of the tenant’s household, or any guest or other person under the tenant’s control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate family member of the tenant’s family is the victim or threatened victim of that domestic violence, dating violence, or stalking.*¹²⁶

Although MHA includes an addendum statement in its “Fair Housing and Reasonable Accommodation Policy” that “instances of domestic and similar violence” will be exempted from “good cause” for eviction, or as a barrier to housing eligibility for the affected victim, the domestic violence victim exemption is not referenced in the dwelling lease itself. This could foster two problems: (1) inconsistent enforcement of the “One-Strike” Policy, perhaps against victims who have not been adequately apprised of their rights under VAWA, and (2) the emergence of a misperception among residents that if they report domestic violence, they will be evicted. Residents’ perceptions are especially important, as fear of eviction could engender a cycle of further victimization.

Limited English Proficient Persons

Title VI of the Civil Rights Act of 1964 requires that public housing providers take reasonable steps to ensure meaningful access by Limited English Proficient (LEP) persons. Failure to ensure that LEP persons can participate in or benefit from federally assisted programs may constitute illegal national origin discrimination under Title VI. Further, the U.S. Supreme Court in *Lau v. Nichols* held that conduct that has a disproportionate effect on LEP persons constitutes national origin discrimination, and is prohibited under Title VI.¹²⁷ Pursuant to Executive Order 13166, the Department of Housing and Urban Development (HUD) published formal guidance to clarify the obligations held towards LEP persons by recipients of federal funds.¹²⁸ As recipients of federal funds, public housing authorities are covered.

¹²⁶ 42 U.S.C.A. §§ 1437(d)(1)(6)(A), 1437(f)(d)(1)(B)(iii).

¹²⁷ *Lau v. Nichols*, 414 U.S. 563 (1974).

¹²⁸ Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, (“HUD Final Guidance”), Fed. Reg. vol. 72, no. 13, 01/22/07.

Under the guidance published by HUD, a public housing authority should balance four factors to determine the extent of its obligation to provide LEP services:¹²⁹

- (1) *The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;*
- (2) *The frequency with which LEP persons come in contact with the program;*
- (3) *The nature and importance of the program, activity, or service provided by the program to people's lives; and*
- (4) *The resources available to the grantee/recipient and costs.*

Oral language interpreters must meet competency standards stricter than merely language fluency; although formal certification is not required, language competency necessitates more than “self-identification as bilingual.”¹³⁰ HUD recommends the use of certified interpreters in any circumstance “where individual rights depend on precise, complete, and accurate interpretation or translation.”¹³¹

In addition to oral interpretation, all vital written information should be translated. To wit, “[t]he obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming.”¹³² To determine whether information is vital, a housing authority should consider the importance of the information or service provided, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.¹³³ Vital information includes leases and tenant rules, consent forms, intake forms, written notices of rights, denial, loss, or decreases in benefits or services, notices of eviction, notices advising LEP persons of free language assistance, and applications to participate in a public housing authority program or activity, or to receive benefits or services.¹³⁴

As discussed previously, Marin County has sizeable Latino and Vietnamese populations, a large number of whom are LEP.¹³⁵ According to Vinh Luu at the Asian Advocacy Organization, over 3,000 Vietnamese persons reside in Marin County as of 2010. In addition to having limited English proficiency, a large number of Latino and Vietnamese immigrants in the

¹²⁹ *Ibid.* at 2740.

¹³⁰ *See ibid.* at 2742.

¹³¹ *See ibid.*

¹³² *Ibid.*

¹³³ *Ibid.* at 2744.

¹³⁴ *See* HUD Final Guidance at 2741.

¹³⁵ *See* “Demographics,” *supra*.

county are low- or very-low income:¹³⁶ the very population most in need of public housing assistance and benefits.¹³⁷ Based on estimates provided by Asian Advocacy, 30 to 40 percent of low- to moderate-income clients serviced by that organization receive some sort of housing subsidy, whether that is rental assistance or public housing.¹³⁸ However, LEP persons are often least likely to apply for a benefit.¹³⁹

MHA's published Admissions and Continued Occupancy Policy recognizes that language proficiency may be a barrier to accessing benefits, understanding rights, and complying with responsibilities for LEP persons.¹⁴⁰ MHA's policy states that the agency will take "affirmative steps" to communicate with LEP persons, including offering competent interpretation services in any situations in which access to important benefits and services is at stake. MHA's policy on providing written translations utilizes language from the HUD Guidance's "Safe Harbor" provision, which states:¹⁴¹

The following actions will be considered strong evidence of compliance with the recipient's written-translation requirements: (a) The HUD recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or (b) If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but instead provides written notice in the primary language of the LEP language group on the right to receive competent oral interpretation of those written materials, free of cost...

The MHA policy does not, however, include reiteration of HUD's statement that the "safe harbor" provisions "do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable."¹⁴²

In contrast to the MHA's stated policy, some legal service providers and housing advocates report that many LEP persons encounter language accessibility barriers in communications with the MHA. For example, Fair Housing of Marin worked with a

¹³⁶ Asian Advocacy estimates that over 80% of the Asian population it services are low- or moderate-income individuals.

¹³⁷ See "Demographics," *supra*.

¹³⁸ Interview with Vinh Luu, Asian Advocacy Organization.

¹³⁹ HUD Final Guidance at 2748.

¹⁴⁰ MHA ACOP, Ch. 2-III.A at 20.

¹⁴¹ MHA ACOP, Ch. 2-III.C, at 22; HUD Final Guidance at 2745.

¹⁴² HUD Final Guidance at 2745.

monolingual Vietnamese resident of public housing; although the Housing Authority was aware that the resident did not speak English from the inception of the tenancy, upon review of the resident's file none of the documents relevant to the resident's lease were available in the resident's language of fluency. According to MHA, it provides oral and written translation services in both Spanish and Vietnamese and is in the process of updating its procedures through a Voluntary Compliance Agreement with HUD so that all clients are aware this service is available to them at no charge.¹⁴³

According to some legal service providers, many LEP persons do not understand MHA paperwork provided to them only in English, and experience difficulty because they rely on family members to translate or interpret vital information. One local housing advocate stated that after questioning MHA staff about the absence of translated vital documents or interpreters available for important meetings or hearings, MHA staff blamed the LEP person for failing to ask for translation or interpretation services; however, many LEP persons say they are unaware of the availability of translation or interpretation from MHA, and feel like they bear the burden of providing an interpreter. That same advocate noted that on some occasions when MHA has provided an interpreter, interpretation has been inadequate, and related an incident where a Spanish-speaking staff member attempted to interpret for an LEP client, but the interpretation was informal and the LEP person had difficulty understanding the information at hand. According to the housing advocate, the Spanish-speaking staff member stated that the Housing Authority would send an LEP applicant only documents in English relating to status on the Section 8 waiting list, that it was the LEP applicant's responsibility to have a friend or family member translate, and that the LEP applicant would be held responsible for missing a meeting or task even though the information was only available in English.

Further, although the MHA website includes a Google translation bar, and many forms are posted in English, Spanish, and Vietnamese, MHA's website navigation and most links are only available in English. Although the embedded Google translation bar makes some of the MHA website available in 50 languages, the subsidized housing list and directions to the Housing Authority office are available only in English on the website.

Pattern by Location of Minority and Non-Minority Voucher Holders

¹⁴³ E-mail from Kimberly Carroll, Marin Housing Authority.

Currently, the Housing Authority administers Section 8 vouchers for 2,104 households distributed across all jurisdictions in Marin.¹⁴⁴ As stated previously, MHA last opened its Section 8 waiting list for one week during September 2008, during which approximately 11,200 households applied. According to data supplied by the County, only 25 percent of applicants were residents of cities within Marin County. Sixty-one percent of applicants were Black, 32 percent of applicants were White, and 14 percent were Latino. Approximately one-fourth of applicants were disabled, and another estimated one-quarter of applicants were homeless. Nine percent of applicants were elderly.

It is important to note that when the wait list last opened, three-quarters of applicants for Section 8 in Marin were not current residents of the county; this indicates that people from other counties, and quite possibly, people of color from the neighboring counties of Alameda, Contra Costa, San Francisco, Solano, and Sonoma, are interested in moving to Marin County.

Data provided by the county shows that the majority of Section 8 recipients live in San Rafael, Novato, and the unincorporated county (predominately Marin City).¹⁴⁵ Together, the three preceding jurisdictions account for 80 percent of all voucher holders and constitute 70% of the county’s population. The towns of Belvedere, Ross, and Sausalito have the lowest percentages of voucher holders: combined, less than three percent of all voucher holders live in those jurisdictions, although the three communities include approximately 4% of the county’s population. The following chart provides a comparison of the percentage of all Section 8 voucher holders that live within a jurisdiction, versus the percentage of the total county population that resides within that jurisdiction. Comparison of the two percentages may shed light on whether certain jurisdictions have a disproportionately high, or a disproportionately low, number of Section 8 voucher holders based on the total population within the jurisdiction.

Location of Section 8 Voucher Holders by Jurisdiction¹⁴⁶

City	Total Section 8 Vouchers	Percentage of All Section 8 Voucher Holders in City	Percentage of Total County Population in City
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¹⁴⁴ Marin Countywide Housing Element Workbook, Section 8 Statistics, February 2, 2009.

¹⁴⁵ Though “unincorporated county” includes all unincorporated areas, Marin City accounts for almost half of the vouchers within the unincorporated planning areas. Greenbrae comes in as a distant second, with less than 15 percent of vouchers. See Marin Countywide Housing Element Workbook, Section 8 Statistics, February 2, 2009, Table 1, Current Section 8 Vouchers by Jurisdiction.

¹⁴⁶ Data provided by MHA, “Distribution of Section 8 Units as of 6/23/10.”

Belvedere	6	0.3%	0.8%
Bolinas	12	0.6%	0.5%
Corte Madera	36	1.7%	3.7%
Fairfax	84	4.1%	2.8%
Forest Knolls	8	0.4%	0.7%
Greenbrae	22	1.0%	4.9%
Inverness	3	0.1%	0.6%
Kentfield	18	0.9%	2.5%
Larkspur	47	2.3%	4.7%
Marin City	110	5.3%	1.0%
Mill Valley	104	5.0%	5.3%
Novato	707	34.6%	21.2%
Ross	1	0.05%	0.9%
San Anselmo	121	5.8%	4.8%
San Geronimo	4	0.2%	0.2%
San Rafael	708	34.1%	22.3%
Sausalito	13	0.6%	2.9%
Tiburon	27	1.3%	3.5%

Given the data above, it is clear that Section 8 voucher holders are overrepresented in Bolinas, Marin City, San Anselmo, San Rafael, Novato, and Fairfax, while they are underrepresented in almost every other jurisdiction in Marin County. It should be noted that some jurisdictions have a much larger stock of rental housing and greater availability of public transportation, however, which probably affect distribution of rental voucher holders. Information on the race and ethnicity of voucher holders by municipality was not available. MHA does submit data annually to HUD about the proportion of its Section 8 voucher holders who live in poverty areas; those reports show that 77% of Section 8 voucher holders reside in low poverty census tracts within Marin County.¹⁴⁷

¹⁴⁷ E-mail from Kimberly Carroll, Marin Housing Authority.

Steps Taken by MHA to Promote Choice

According to MHA, all of its Section 8 program participants are told at their intake briefing that they may use their voucher nationwide. In addition, MHA has recently started providing this information to all participants at the time of the annual recertification.

Family Self-Sufficiency Program

The Family Self-Sufficiency Program (FSS) promotes the development of local strategies to coordinate the use of housing choice vouchers and public housing with public and private resources, so as to enable participating families to earn increased income and progress toward economic independence and housing self-sufficiency. The FSS program has 130 slots for housing choice voucher participants, and 25 slots for public housing participants. MHA selects participants without regard to race, familial status, or disability. To be eligible, a resident must be the head-of-household, and receiving either voucher or public housing assistance in good standing. The program lasts approximately five to seven years, and includes employment training, education, and employment referrals, as well as other support services. To provide incentives for residents to participate, the Housing Authority establishes an interest-bearing escrow account for participating families who have an increase in earned income during the time period of participation. The Housing Authority also coordinates with community partners to provide workshops on credit repair, financial literacy, preparation for homeownership, and asset building.¹⁴⁸

FSS participants, as well as all Housing Choice participants, are eligible to move their vouchers to another jurisdiction after they have lived in Marin for at least one year. The only restriction HUD has regarding portability is that the applicant must have been a Marin resident at the time of application. Demographic data on program participants was not available for analysis.

Project-Based Assistance Program

¹⁴⁸ MHA Section 8 Admin Plan, Ch. 24.

As part of the Section 8 Housing Choice Voucher program, the Marin Housing Authority administers a Section 8 Project-Based Assistance Program. In this program, the rental subsidy is attached to the unit or building, rather than to the tenant. New construction, rehabilitated housing units, and existing housing units are all eligible under the program. Further, single-family homes, multi-family dwellings, cooperatives, PHA-owned properties, and group homes are all eligible. Towards the goal of “promot[ing] mixed-income neighborhoods and prevent[ing] the concentration of low-income housing, projects assisted under [the program] must be located in census tracts with poverty rates of less than 20 percent.”¹⁴⁹ To select tenants, MHA utilizes its housing voucher waiting list. The rental contract between the private housing provider and the program participant must allow the tenant to move out at any time after the first 12 months of assisted occupancy. Recently, MHA has awarded 60 project-based vouchers for a 61-unit senior development in Novato (Warner Creek Senior Housing) and has also provided 13 vouchers for a senior housing project in Kentfield (Toussin Senior Apartments). The Toussin Senior Apartments, located in the unincorporated community of Kentfield, provide housing to extremely low income seniors in an area with an average household income of over \$120,000. All of the units have project-based Section 8 vouchers and the residents are formerly homeless seniors selected from the MHA wait list.

Assistance in the Home Search Process

Rental

The Marin Housing Authority formerly maintained the Housing Assistline, a phone number that home seekers could call for information on locating and procuring available affordable rental housing. However, the Assistline was de-funded by the County and the Marin Community Foundation, and the Housing Authority now refers home seekers to 211. For recipients of Section 8 vouchers, the Marin Housing Authority updates apartment availability weekly, and refers many tenants to Craigslist.¹⁵⁰ The Housing Authority also publishes a list of subsidized housing throughout the County, though a number of properties included therein do not have open waitlists. Although MHA has a goal of updating the list monthly, the list posted on its website does not appear to meet that standard.

¹⁴⁹ MHA Section 8 Admin Plan, Ch. 26-3.

¹⁵⁰ Interview, Kimberly Carroll, Leslie Klor, Marin Housing Authority.

Ownership

The Marin Housing Authority administers a Section 8 Housing Choice Voucher Homeownership Program, which allows the voucher payment to be applied towards a mortgage payment rather than rental assistance. To be eligible, an applicant must have been on Section 8 for at least one year, the head of household/responsible adult must demonstrate a minimum of one year's employment, and the applicant must be a first-time homebuyer. To meet the minimum income requirements, an applicant must demonstrate a gross annual income of twice the payment standard for the size voucher held, as well as a sufficient sum to cover a down payment and closing costs. The program carves out several exceptions for elderly and disabled households, including exempting those applicants from minimum work requirements. However, applicant households must qualify and secure their own lender financing, and assistance from MHA is limited to 15 years for non-disabled or elderly households. Further, the program is essentially only effective in communities where housing is available in the \$100,000 range; almost unheard of in Marin County. Notwithstanding the potential barriers, there have been over 20 first-time homeowners through Marin's Section 8 homeownership program.

The Marin Housing Authority also administers a Below Market Rate (BMR) Home Ownership Program, which offers low and moderate-income, first-time homebuyers the opportunity to purchase specified condominium units in Marin County at less than market value; there are approximately 300 homes in the program. However, some housing advocates state BMR owners, predominately people of color and the elderly, are targeted by predatory lenders and conned into taking out second mortgages. Despite MHA's efforts to educate BMR buyers about the dangers of predatory lenders and second loans, the problem persists. Because additional mortgages are not permitted under the terms of the BMR deed restrictions, MHA pursues lenders to forgive unauthorized loans that were improperly provided to BMR homeowners with deed restrictions in place. In addition, MHA has taken steps to reduce lenders from providing second loans on BMR units by instituting the use of a "Notice of Affordability Restriction" that is recorded on the property. MHA has asked that all title companies notify MHA of any second loans on BMR properties. Marin Housing works with BMR families to assist them to modify their loans in order to continue to make homeownership sustainable. One housing advocate expressed concern that the Marin Housing Authority was too aggressive in its

actions to enforce BMR deed restrictions.¹⁵¹ Makini Hassan, Executive Director at the Marin City Community Development Corporation, noted that her organization has encountered growing hostility from homeowner’s associations against BMR homeowners. Ms. Hassan stated that other owners may resent BMR owners, and HOAs sometimes discriminate against BMR owners.¹⁵²

Marin City USA contains a mix of market rate and subsidized rental and ownership units. Of the 225 Marin City USA apartment units, 66 are available to very low-income households and 28 to low-income families. Of the 85 town homes, 74 are part of the below market rate program and will have resale restrictions for 30 years. Half of the BMR units were sold to low- and moderate-income Marin City residents, which fulfilled the project’s goal of providing homeownership opportunities to Marin City residents. At least three of the new homebuyers were former public housing residents.

A new 82-unit development located in San Rafael and known as “33 North” includes 16 affordable inclusionary units. At present, the Marin Housing Authority is accepting applications from prospective homeowners. The waiting list currently has approximately 70 applicants; the Housing Authority will administer a lottery to offer units to applicants for occupancy in September 2010.¹⁵³ San Rafael city officials pointed to the complex’s close proximity to the to-be-developed SMART transit station as well as the Civic Center (home to one of the County’s largest employers), as beneficial.¹⁵⁴ An aside in a newspaper article about the complex noted that it was approved “despite neighborhood concerns over density, scale and traffic;”¹⁵⁵ as discussed earlier in this chapter, such concerns are often a pretext for community opposition to the development of affordable housing based on underlying discriminatory motives.

Incentives Provided to Landlords to Encourage Participation in the Section 8 Program

The Housing Authority engages in some outreach on its website, touting the benefits of the voucher program to potential landlords as “guaranteed rent,” the security of having a greater assurance that a tenant will be able to afford the unit, and attracting long-term tenants and thus

¹⁵¹ Interview, Makini Hassan, Marin City Community Development Corporation.

¹⁵² Interview, Makini Hassan, Marin City Community Development Corporation.

¹⁵³ Swartz, Jennifer Upshaw, “Affordable Condos Available,” *Marin Independent Journal*, 06/04/10, A3.

¹⁵⁴ Swartz, Jennifer Upshaw, “Affordable Condos Available,” *Marin Independent Journal*, 06/04/10, A3.

¹⁵⁵ *Ibid.*

experiencing lower turnover rate and associated costs. The Housing Authority also offers that owners may list their vacant units with MHA's Vacancy Hotline referral at no cost.¹⁵⁶

The Housing Authority also provides information regarding an applicant's current address, as well as the names and addresses of the applicant's previous landlords, if available. MHA also provides written information regarding eviction history, damage to rental units, and drug trafficking by family members in any MHA program over a five-year period to prospective landlords upon request.¹⁵⁷

Leslie Klor, housing advocate at the Marin Housing Authority, actively works with landlords and prospective landlords to encourage participation in the Section 8 program. To promote participation, Ms. Klor offers herself to landlords as a troubleshooter or intermediary.¹⁵⁸ The Marin Housing Authority provides a quarterly newsletter for participating landlords, and is currently considering the possibility of putting on seminars for landlords as well as training programs for tenants to encourage successful habits.¹⁵⁹ However, it is still a challenge to find landlords willing to accept Section 8 vouchers. Section 8 participants still have to find rental units offered at a rental rate within the program's price parameters. MHA states that the price parameters do not currently seem to be a major problem because the Fair Market Rents established by HUD for the San Francisco-San Mateo-Marín area reflect market realities, and MHA has the ability to raise the payment standard when appropriate. However, some landlords may be reticent to participate in the program based on negative stereotypes about Section 8 tenants; stereotypes which may be rooted in underlying prejudices about race, ethnicity, or economic class. Sometimes, concerns about economic class may be a proxy for prejudice on the basis of race or ethnicity.

SALE OF SUBSIDIZED HOUSING AND POSSIBLE DISPLACEMENT

Marin County espouses a stated policy of working to "minimize the displacement of persons as a result of community development activities," and "whenever possible, avoid using HUD funds to undertake or support activities which would result in involuntary displacement of

¹⁵⁶ <http://marinhousing.org/rentalOwners.htm#12>, accessed 05/28/10.

¹⁵⁷ MHA Section 8 Admin Plan, Ch. 9-6.

¹⁵⁸ Interview, Leslie Klor, Marin Housing Authority.

¹⁵⁹ *Ibid.*

persons from their homes and neighborhoods.”¹⁶⁰ Further, Marin County has a policy of providing assistance to “persons actually displaced by community development activities.”¹⁶¹ For those persons who experience involuntary displacement, “Marin County will attempt to assist displaced persons to relocate within their own neighborhoods or in newly constructed or substantially rehabilitated publicly assisted housing. Marin County will provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of HUD funds to acquire or substantially relocate property. This assistance may take the form of technical assistance and/or financial assistance, depending on the circumstances.”¹⁶² The County also pledges to comply with HUD regulations requiring relocation assistance, as well as the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.¹⁶³

Recent events relating to the sale of the Highlands of Marin illustrate some of the impediments to housing choice created after the sale of subsidized housing.¹⁶⁴ The Highlands of Marin, a 104-unit property in San Rafael, was sold in 2007 to Northbay Properties II, L.P. (“Northbay”), a subsidiary of United Dominion Realty Trust. In 2009, Northbay won approval to undertake large-scale renovation at the property, including substantial remodeling of residential units. Approximately 380 tenants were or will be displaced because of the renovation process, many of whom are residents of BMR rental units. Although the City of San Rafael requires relocation assistance to be paid to low-income residents forced out of their homes as a result of a development project, Northbay is free to raise rents on renovated units to market rate, thus denying many low-income residents the ability to return to their homes once construction is completed.¹⁶⁵

Golden Gate Village in Marin City is another site oft referenced in the discussion of the sale of subsidized housing and displacement of current residents. Despite pervasive rumors to the contrary, Marin Housing Authority stated that it has no intention to sell subsidized or public housing in Marin City to private developers. However, the Housing Authority is considering

¹⁶⁰ Con Plan § 91.105(X)(A),(B).

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ “Subsidized” as used here refers to properties that received a tax credit.

¹⁶⁵ Upshaw, Jennifer, “Highlands of Marin Residents Lose Renovation Appeal, Marin Independent Journal,” 04/07/09 http://www.marinij.com/ci_12093240

redeveloping its Marin City property into a mixed-income property.¹⁶⁶ Many Marin City residents have expressed concerns about displacement. In the event that a public housing site is sold, the Marin Housing Authority's relocation plan "may or may not require transferring affected families to other available public housing units. If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list."¹⁶⁷ However, HUD would require that all displaced tenants be provided housing. It merits noting that if public housing in Marin City is sold in the future, MHA's relocation plan would prove very difficult to implement in practice, given the scarcity of apartments suitable for large families in Marin County. MHA states that it does not intend to sell public housing, and if it redevelops the Golden Gate Village, the work would likely be done in stages to minimize displacement and provide housing for all as the renovations take place.

TAX POLICIES

The federal Low-Income Housing Tax Credit, a competitive grant program that considers a proposed development's proximity to transit, retail, and public amenities, acts as a significant source of funding for affordable housing development.¹⁶⁸ However, the Low-Income Housing Tax Credit, as implemented in California, has a priority for proximity to transit. Because of intense competition for Tax Credits, projects typically have to meet all priority criteria to have a chance of obtaining a Tax Credit allocation. As a result, developments that are not within the required proximity to public transportation do not qualify for the credit; this is a serious and recurrent problem in Marin. At the state level, California provides a Low-Income Housing Tax Credit Program to encourage private investment in affordable rental housing for households meeting certain income requirements.¹⁶⁹ Marin County does not have any specific low-income exemption or credit.¹⁷⁰

According to the County, local tax policies generally:

¹⁶⁶ Interview, Kimberly Carroll, Marin Housing Authority.

¹⁶⁷ MHA ACOP Ch. 11-4.

¹⁶⁸ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 21 (2009).

¹⁶⁹ http://www.treasurer.ca.gov/ctcac/programreg/20100217_nonstrikeout.pdf

¹⁷⁰ http://www.co.marin.ca.us/depts./AR/main/real_property.cfm

Facilitate the development and preservation of subsidized housing. Most subsidized housing qualifies for an exemption from local property taxes, and Marin County has been cooperative in processing applications for tax exemptions. Proposition 13, a statewide policy, has resulted in property tax rates that vary minimally across municipal boundaries. Because tax rates vary so little among jurisdictions, differences in tax rates have no effect on housing prices or on the availability of affordable homeownership opportunities. Proposition 13 has, however, put communities in fiscal competition for retail development that generates sales tax revenues, and may result in more land being zoned for retail development than is needed, thereby reducing the amount of land zoned for housing. However, much of the land zoned for retail use in Marin is not desirable for housing use, because of traffic, noise, or toxic contamination.¹⁷¹

PLANNING AND ZONING BOARDS

Under the Marin County Municipal Code, the planning commission consists of seven members appointed by the Board of Supervisors.¹⁷² Five members of the commission are from each of the five supervisorial districts, and the remaining two members serve at large. District members serve for four years, while at large members serve for two years.¹⁷³ The County does not collect demographic information on planning commission members. Two of the stated purposes of the Development Code are to “protect the character and social and economic stability of agriculture, residential, commercial, industrial, and other areas within the County and ensure the orderly and beneficial development of those areas as part of a well-coordinated community,” and to “provide a diversity of areas characterized by differing land use activity, scale and intensity, while maintaining a community identity and quality development.”¹⁷⁴

BUILDING CODES AND STATE LAW

Accessibility

Building codes in Marin County do not vary substantially from other jurisdictions in the region. The County endorses strict enforcement of building codes, as a means of ensuring “quality construction and lower long-term maintenance and upkeep expenses.”¹⁷⁵

¹⁷¹ Con Plan § 91.210(c), pg. 64.

¹⁷² This Analysis looks only at County Planning and Zoning Boards, not individual city boards and the issues that may stem from the structure of those boards.

¹⁷³ Marin County Dev’t Code § 0.04.020.

¹⁷⁴ Marin County Dev’t Code § 22.01.020.

¹⁷⁵ Con Plan § 91.210(c), pg. 64.

Although building code provisions guaranteeing accessibility govern the construction of new residential properties in Marin County, many properties built prior to 1991 do not comply with contemporary accessibility requirements. This presents a problem in Marin, as a great number of residential properties, particularly rental properties, were constructed prior to 1991. The age of Marin’s housing stock constitutes a substantial barrier to accessibility: because so many residential properties were built prior to 1991, many properties are not in compliance with current ADA requirements. Because new housing development occurs infrequently in the County, it is rare that new multi-family homes that would be required to comply with contemporary design accessibility are actually constructed. Thus, it is difficult for people with mobility impairments to find appropriate housing. Often, people with disabilities must modify existing structures. However, modifications are not an ideal solution, as the cost of renovations can be high, and according to anecdotal reports, some landlords are reticent to allow for modifications.¹⁷⁶

Visitability

While not required under local building codes, HUD has set a standard for visitability that encourages public jurisdictions to incorporate additional accessible design and construction features into all housing the jurisdiction develops with HOME funds. Housing that is “visitable” is accessible at a basic level, enabling persons with disabilities to visit the homes of their friends, relatives, and neighbors. Visitability can be achieved at little cost by utilizing two simple design standards: (1) providing a 32-inch clear opening in all interior and bathroom doorways; and (2) providing at least one accessible means of ingress and egress for each unit. By adopting these visitability standards, public jurisdictions can vastly increase the ability of a disabled person to independently visit others.

RECOMMENDATIONS

1. Additional affordable rental housing is needed, but current zoning ordinances impose onerous restrictions on the development of high-density, multifamily housing. In its analysis of efforts at residential development in commercial zones, Public Advocates

¹⁷⁶ More detailed discussion of reasonable modifications, including financial resources available to low-income persons with disabilities for making necessary modifications, can be found in the “Enforcement” chapter *supra*.

found that zoning regulations related to density, height, parking, and limitations of ground-floor space to commercial uses act as a significant hurdle to development of affordable housing.¹⁷⁷ The County and other local jurisdictions should undertake comprehensive reviews of zoning regulations, taking into consideration research already conducted on the matter. The County and other local jurisdictions should consider adopting design guidelines for multi-family developments that could be used to review and permit affordable housing projects either “by right” (meaning ministerial review) or through a streamlined process of discretionary design review limited to design aspects of the site and the proposed improvements. Local jurisdictions should consider the creation of affordable housing overlay zones. Local jurisdictions can establish a list of sites where affordable developments may benefit from increased residential density standards, fee waivers, and relaxation of other development standards such as parking requirements.¹⁷⁸ Further, all jurisdictions should ensure that within the overlay zone, the general zoning code permits either “by right” development of multifamily dwellings or allows such development through a streamlined discretionary review process that is limited to site and building design considerations based upon multi-family design guidelines. Marin can look to the Town of Corte Madera’s Affordable Housing Overlay (AHO) zone and San Rafael’s Transit Overlay District as successful exemplars.¹⁷⁹ None of the jurisdictions with high-density multifamily “by right” zoning districts currently has a minimum density requirement; the effect is that sites zoned to permit higher-density residential use may instead be used to develop low-density housing. Local jurisdictions should consider imposing zoning restrictions that include a density floor to prevent lower-density development of a site.¹⁸⁰

2. Countywide, most jurisdictions have inclusionary zoning, which requires a percentage of new development to be set aside as below-market-rate housing. A number of jurisdictions still do not have inclusionary policies, while others have policies that are in need of updating to ensure they are promoting fair housing. The jurisdictions that do not

¹⁷⁷ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 27 (2009).

¹⁷⁸ *Marin County Housing Study: Analysis of Best Practices to Meet the Housing Needs of Homeless and Precariously Housed People in Marin County*, Kate Bristol Consulting, 02/05/10, pg. 18.

¹⁷⁹ *Ibid.*

¹⁸⁰ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 24 (2009).

have inclusionary zoning policies should evaluate the potential effects of adopting inclusionary zoning ordinances as a strategy for developing more affordable housing. Current inclusionary zoning regulations should be studied and changed if necessary to remove policies which may act as a barrier to increasing housing options for low income and minority households. For example, in the County, inclusionary units may be allowed to be developed off-site if they do not fit with the “overall project character.” This exception may be exercised as a pretext for discrimination against very-low and low-income residents, predominantly people of color, families, and people with disabilities. Local jurisdictions should define “overall project character” and develop clear criteria for determining when inclusionary units would not fit with overall project character and therefore may be built off-site, so that the regulation is applied consistently and not in a manner as to disparately impact minorities, families, and people with disabilities. Finally, in-lieu fees should be assessed in direct proportion to the cost to construct a unit.

3. Inclusionary zoning requirements are only effective at creating affordable housing during times when substantial market-rate development takes place; inclusionary zoning requirements are, however, ineffective during a real estate downturn. Other options for providing affordable housing and funding for local housing trusts should be explored, including considering adopting affordable housing impact fees, similar to the County’s fee. More generally, local schedules of in-lieu fees and impact fees should be periodically reviewed to determine whether they should be adjusted.
4. Second units can supply only a limited portion of needed affordable housing, as the units are often small. Some second units are not broadly marketed, and those that are on the rental market are often inadequate housing for people with disabilities and the elderly, as many units do not meet accessibility standards or cannot pass Section 8 housing choice voucher inspection requirements. While second units are a viable option in some neighborhoods, they should not be relied upon as the sole source of affordable housing in Marin. The County and other local jurisdictions must diversify development of affordable housing beyond second units.
5. Redevelopment funds are often committed to project areas that are already highly segregated, which might perpetuate the concentration of minorities in certain communities. However, redevelopment funds have also been used for projects which

increase neighborhood diversity. Further, affordable housing is disproportionately senior housing. Senior housing comports with the idea of a “deserving poor,” whereas housing for minorities and families does not.¹⁸¹ Finally, affordable housing development tends to be studios and one-bedroom units – generally inappropriate for families with children. The County and its jurisdictions should encourage and facilitate the development of more subsidized and affordable housing for families with children, particularly in areas with low concentrations of minorities. Substantial investment in acquisition and rehabilitation may also be a successful strategy for developing more affordable housing for families outside impacted areas; the County and other local jurisdictions should also consider working with community advocates and developers to develop non-traditional housing arrangements such as shared housing. However, the market for shared housing may be limited to tenants who prefer more involvement with their neighbors than occurs in traditional housing.¹⁸²

6. Almost all properties identified as appropriate for people with disabilities are at capacity, and many properties have closed their waiting lists completely. Additionally, many properties for people with disabilities are not wheelchair accessible. Further, the properties for people with disabilities are concentrated in certain localities; only two properties exist in West Marin. The Housing Authority should review information it provides regarding accessibility to ensure accuracy. Funders and the County should devote resources to developing more housing for persons with disabilities in diverse geographic locations, especially underserved communities such as West Marin.
7. Local public transportation service is concentrated in low-income communities where current demand and current ridership are greatest, but this can perpetuate the segregation of minorities in those neighborhoods. A way forward would be the pursuit of transit-rich development in non-impacted neighborhoods (for example, the “Green Hubs” concept), but that would require local governments to allow development at densities high enough to create sufficient demand for public transportation. The Transportation Authority of Marin should approve and implement the Marin City transportation plan it commissioned in 2007. The Transportation Authority of Marin should work with local public transit

¹⁸¹ Interview, Richard Marcantonio, Public Advocates.

¹⁸² Interview, Roy Bateman, Marin County Community Development Agency.

providers to increase transportation options in higher-income, less impacted communities as well as to broaden opportunity for all residents.

8. The County does not regularly update data collected on the race or ethnicity of residents of affordable housing projects, and therefore cannot measure whether these developments have the long-term effect of further concentrating racial minorities in certain localities. Marin County should institute a system for tracking the racial and ethnic demographics of residents of all housing developed with County funds and federal funds that pass through the County. The County should consider conducting regular surveys of those privately developed affordable housing properties which are subject to local government restrictions on household income, to determine racial and ethnic demographics of residents.¹⁸³
9. All tenants in Marin Housing Authority properties must sign a lease before they can live in public housing; the dwelling lease sets forth rules and requirements for tenancy. MHA should ensure that its public housing lease and rental notices are translated into Spanish and Vietnamese and should make them available on a consistent basis when needed. MHA should have a procedure to access interpreters if oral discussion is necessary.¹⁸⁴
10. When the Section 8 Housing Choice Voucher or Public Housing wait lists are open, MHA should affirmatively market the availability of units to all families within the jurisdiction by placing a public service announcement in English, Spanish, and Vietnamese in local circulation language-specific newspapers, radio, and/or television.¹⁸⁵
11. Section 8 voucher holders are disproportionately represented in localities with higher-than-average proportions of minorities¹⁸⁶, which may perpetuate patterns of residential segregation. However, these are also the localities where there are higher-than-average concentrations of rental housing and greater availability of public transit service. As many Section 8 voucher holders are people of color, people with disabilities, and families with children, this perpetuates patterns of segregation. Some landlords are reticent to participate in the program, in part due to negative stereotypes about race, ethnicity, and recipients of public assistance, which exacerbates the concentration of protected classes

¹⁸³ This recommendation is also propounded in “Compliance” chapter.

¹⁸⁴ See HUD Final Guidance at 2750.

¹⁸⁵ *Ibid.*

¹⁸⁶ HUD internal guidelines define areas with over 40% minority population as racially impacted.

in certain neighborhoods and communities. The County and other local jurisdictions should collaborate with the Housing Authority and community housing advocates to strategize ways to encourage landlord participation and expand housing choice.

12. Disproportionately high numbers of Black residents receive Section 8 housing voucher subsidies or reside in Marin City Public Housing. In fact, the majority of Marin City public housing tenants are Black. Although public housing applicants with families express the desire to live outside Marin City, there is no other family public housing in the county. Public housing effectively perpetuates segregation based on race and familial status, although there has been some increase in racial diversity in the family public housing in the last 15 years, and the most recent redevelopment project has made Marin City a more diverse community. The County and other local jurisdictions should devote resources to developing more subsidized housing outside impacted areas. Given current funding patterns, new subsidized housing is unlikely to be public housing, and instead will most likely be owned or sponsored by non-profit organizations.
13. The MHA's "One-Strike" Policy, if implemented as written, could disproportionately affect Black residents, women who are victims of domestic violence, and people with mental disabilities, jeopardizing their tenancies and destabilizing housing opportunities. The Marin Housing Authority should consider modifying its written policy to make it clear that only residents who present a direct threat to the health or safety of others will be evicted from public housing or terminated from public housing assistance, and that there will be an opportunity for case-by-case review of specific circumstances. The MHA should include specific language in its lease alerting victims of domestic violence to their rights under the Violence Against Women Act. The administration of the One-Strike Policy should be monitored to ensure that it does not disparately impact any protected classes.
14. BMR homeowners may fall prey to predatory lending and may ultimately lose their homes for failure to abide by their deed provisions restricting additional encumbrances. BMR owners need advocacy and education. Local jurisdictions with BMR programs should be sensitive to this issue and ensure that BMR homeowners receive adequate pre-purchase and post-purchase counseling and education.

15. Few resources exist to assist precariously housed persons with finding stable, permanent housing. Funders and local jurisdictions should consider providing funding for improved housing information and referral services, which might include reviving the Housing Assistline.
16. Outreach to English as a Second-Language communities is insufficient. Large numbers of Spanish-speaking and Vietnamese-speaking households could benefit from Housing Authority programs, yet information about those programs is not always easily accessible in a language other than English. For example, the MHA should include Spanish and Vietnamese translations on www.marinhousing.org, list contact information for staff fluent in Spanish and Vietnamese in prominent locations, and ensure compliance with federal regulations by publishing all relevant or vital documents relating to tenancy in Spanish, Vietnamese, and any other language as needed. Other housing and service providers should review whether their services are accessible in multiple languages as needed.
17. Developers cannot always take advantage of the available Low-Income Housing Tax Credit because of poor proximity of developments to public transportation. Further, commercial development is more appealing to many municipalities than residential development because of the increased sales tax revenue. Local jurisdictions should continue their inclusionary zoning policies to ensure that commercial developments include affordable housing units. The Transportation Authority of Marin should also secure more resources for developing transportation hubs outside racially-impacted areas so that properties located near those hubs which are suited for higher-density housing can qualify for the Low-Income Housing Tax Credit. Other public transportation improvements which would qualify infill housing opportunity sites for tax credits would facilitate the financing of needed affordable housing.
18. Some of the stated purposes of local jurisdictions' development codes may be interpreted as potentially conflicting with affirmatively furthering fair housing. . For example, the County's Development Code includes language to "protect the character and social and economic stability" and maintain "community identity and quality development."¹⁸⁷ The County should consider amending its Development Code to limit the language that could

¹⁸⁷ Marin County Development Code, Section 22.01.020.

be used as a pretext for discrimination against minorities, people with disabilities, and families with children, and add clarifying language noting that the code is intended to expand housing opportunities for all people, regardless of their membership in a protected class, as well as to implement other public policy objectives. Other local jurisdictions should undertake similar amendments where needed.

19. The aging housing stock limits accessibility of units to people with disabilities, despite new construction's compliance with contemporary building codes. The County and other local jurisdictions should consider providing incentives for property owners to make residential properties constructed before 1991 accessible, thus increasing the available housing stock for people with disabilities and the elderly. Incentives could take the form of financial rebates or credits, or education and outreach.