

## MEMORANDUM

### MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

TO: COUNTYWIDE PRIORITY SETTING COMMITTEE

FROM: Roy Bateman, Community Development Coordinator

SUBJECT: Analysis of Impediments to Fair Housing Choice (including Executive Summary and Implementation Plan)

DATE: September 9, 2011

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The draft Analysis of Impediments to Fair Housing Choice (AI), including the Executive Summary and the Implementation Plan, will be presented and considered at the Countywide Priority Setting Committee public hearing on Monday, September 12, 2011, at 7:00 p.m., at the Pickleweed Park Community Center, Classrooms 4 and 5, 50 Canal Street, San Rafael. Please note the meeting location.

Subject to approval by the Countywide Priority Setting Committee on September 12, 2011, and by the Marin County Board of Supervisors on October 11, 2011, the Analysis of Impediments will be submitted to the U.S. Department of Housing and Urban Development (HUD) by the HUD deadline of October 30, 2011.

#### **Organization of the Analysis of Impediments to Fair Housing Choice**

The Analysis of Impediments to Fair Housing Choice consists of two parts. The main document, which includes six chapters, an Appendix, a Bibliography, and an Executive Summary, was drafted by Caroline Peattie and Jessica Tankersley of Fair Housing of Marin under contract to the County of Marin. Of those sections, the Executive Summary and Chapter 4 (The Public Sector) are most relevant to the work of the Priority Setting Committee, although all chapters should be of interest. The County has prepared a draft Implementation Plan, which describes actions the County plans to take to address the issues raised by the Analysis of Impediments. All of the documents described in this paragraph are posted at [www.marincdbg.com](http://www.marincdbg.com).

At a HUD AI training last month, experts described the main part of an AI as “a technical exercise” and “a research study.” While the experts did not agree on the usefulness of public hearings on the main part of the AI, they did agree that public hearings are appropriate for the Implementation Plan (also referred to as an Action Plan).

#### **The Public Meeting Process**

On March 29, 2011, the Community Development Block Grant (CDBG) Countywide Priority Setting Committee established a Subcommittee to review the AI, including the Implementation Plan. The Subcommittee consists of Supervisor Judy Arnold, Novato

Councilmember Denise Athas, San Rafael Councilmember Greg Brockbank, and Mill Valley Mayor Ken Wachtel. The Subcommittee has held seven public meetings, including four community forums in low-income neighborhoods with a high concentration of minorities:

1. May 11, 2011 meeting at San Rafael City Hall,
2. May 23, 2011 community forum in Marin City,
3. May 24, 2011 community forum in the Canal neighborhood,
4. May 31, 2011 meeting at the Marin County Civic Center,
5. July 25, 2011 community forum in Marin City,
6. July 27, 2011 community forum in the Canal neighborhood,
7. August 24, 2011 meeting at San Rafael City Hall

At the four community forums in Marin City and the Canal neighborhood, we asked attendees to describe barriers to fair housing and to suggest opportunities to overcome those barriers. Comments from those meetings raised broad issues about inclusion and diversity, some of which went beyond the scope of the AI. We also received a large volume of written comments.

A number of Marin residents concerned about diversity issues and affordable housing has been attending the Subcommittee meetings. The Marin Community Foundation has helped to organize the group as the Action Coalition for Equity. County staff met with the Action Coalition for Equity on August 30, 2011, and another meeting is scheduled for September 9, 2011.

### **Evolution of the Implementation Plan**

HUD's guidelines for the AI require that we identify what isn't working in our community. The Implementation Plan also considers the strengths and opportunities in Marin.

The first draft of the Implementation Plan was tied closely to the recommendations in the Executive Summary of the AI. However, over the course of the public meetings, the Implementation Plan was expanded to include recommendations that emerged from the testimony and discussion that occurred in the public meetings. (The notes that follow each item in the Implementation Plan indicate which items were based on the AI Executive Summary and which were based on testimony at the public meetings.)

The other shift in the Implementation Plan was an increased emphasis on the County's role as the lead agency. In the current version, the general approach is that the County government will take the lead on implementation. However, while the focus of many policy items is on the County government, and the commitment for performance falls primarily on the County, some of the recommendations also apply to some or all of the other local jurisdictions (cities and towns) and to nonprofit organizations.

### **Expansion of the Priority Setting Committee**

The Community Development Block Grant (CDBG) Countywide Priority Setting Committee currently consists of one member of the Marin County Board of Supervisors and one member of each City/Town Council, except for the Town of Ross, which participates in the program but not the Committee. For the local hearings in the six Planning Areas, the Local Area Committee consists of all the Council appointees to the Priority Setting Committee from the cities and towns in the Planning Area, plus a County Supervisor whose supervisorial district most closely coincides with the Planning Area. In the case of Novato and San Rafael, the City Councils have the option to substitute for the Local Area Committee. In most years, the Priority Setting Committee has met once or twice to make CDBG and HOME Program budget recommendations to the Board of Supervisors. The Board of Supervisors and all the City/Town Councils in Marin have signed Cooperation Agreements that will make it possible to expand the Priority Setting Committee and its local area subcommittees to add community members who represent classes protected under federal civil rights laws.

### **Role for the Cities and Towns**

The expanded Priority Setting Committee would have an oversight and communications role in relation to the Implementation Plan, adding extra meetings to its annual schedule to perform these functions. In its communications role, the Priority Setting Committee would be a public forum for mutual discussion of progress being made by the County, Cities, and Towns on the items included in the Implementation Plan, the obstacles they have encountered, and ways they have found to overcome obstacles. This would create an opportunity for the County and the Cities and Towns, through their representatives on the Priority Setting Committee, to engage in an ongoing process to be more conscious of the diversity implications of their policies. In its oversight role, the Priority Setting Committee would receive reports from staff about progress on the items listed in the Implementation Plan.

### **Implications of the Certification to Affirmatively Further Fair Housing**

Housing discrimination and differential treatment of minorities are persistent national problems, without easy solutions. HUD requires that its grantee communities certify that they will "affirmatively further fair housing." That requirement goes beyond the absence of illegal discrimination; there is also an obligation to take local action to change past patterns that emerged from historic inequalities.

Each year, as a condition of the County's receipt of urban county CDBG and HOME funds, HUD requires the County to certify that it will "affirmatively further fair housing." Because the County administers the CDBG and HOME Programs on behalf of all the jurisdictions in Marin, the certification requires the County to be aware of actions the Cities and Towns are taking, and to be prepared to take sanctions (which could go as far as excluding a city from the CDBG and HOME programs) if a city's actions interfere with the County's annual certification to HUD that Marin localities are collectively acting to affirmatively further fair housing.

### **Schedule for Adoption of the Analysis of Impediments**

The Voluntary Compliance Agreement (see Appendix) set a May 21, 2011 deadline for completion of the AI. HUD subsequently extended the deadline to July 20, 2011 and then to October 30, 2011.

Including the September 12<sup>th</sup> Priority Setting Committee meeting and the October 11<sup>th</sup> Board of Supervisors meeting, we will have had a total of 10 public meetings on the AI. In view of the lead time needed to schedule a public meeting (including the usual 30 days notice), it is not possible to add any additional meetings to the process and still meet the HUD submission deadline.

### **A Note on the Difference Between Affordable Housing and Fair Housing**

The draft AI identifies barriers to fair housing choice in Marin County. We should be clear that "fair housing" means the ability to buy or rent housing without being subject to discrimination on the basis of race, ethnicity, age, disability, gender, the presence of children, or other categories protected under the law. As the Analysis of Impediments points out, lack of affordable housing can be a barrier to fair housing, so there is much overlap between affordable housing and fair housing issues. Still, it is useful to keep in mind that affordable housing and fair housing are separate concepts, and to distinguish between state and federal requirements.

## APPENDIX

### BACKGROUND INFORMATION ABOUT THE VOLUNTARY COMPLIANCE AGREEMENT

In 2009, the U.S. Department of Housing and Urban Development (HUD) monitored Marin's compliance with its fair housing and equal opportunity regulations. That monitoring has resulted in a Voluntary Compliance Agreement (VCA), which was approved by the Board of Supervisors on November 30, 2010. HUD staff have assured us that they have not found serious violations in Marin, but want to be sure that Marin does not become "another Westchester."

Part of the reason for the attention that HUD is giving Marin is the aftermath of what has become known as "the Westchester case." The Anti-Discrimination Center, a nonprofit, sued Westchester County, just north of New York City, alleging that the County lied when it filed its annual applications for Community Development Block Grant and HOME Program funds. The applications included standard language, required by HUD, certifying that the applicant community will affirmatively further fair housing, conduct an analysis to identify impediments to fair housing choice, and take action to overcome the identified impediments. The suit alleged that each time it drew funds from HUD, the County was committing a separate act of fraud in violation of the federal False Claims Act. HUD joined the litigation, which resulted in a settlement, under which Westchester County agreed to spend over \$50 million in a 7-year period to create affordable housing, targeted to communities with the smallest minority populations.

There are significant differences between Marin and Westchester. Most of the federally-assisted affordable housing built in Westchester has been located in areas of minority concentration and has not contributed towards the goal of residential integration. Some of the largest subsidized family housing projects in Marin are located in communities like Mill Valley and Tiburon, where they contribute significantly to integration. (In fact, the sponsors of those projects had the specific goal of promoting integration.) Because the methodology of their monitoring focused on just a few years, HUD did not look at the overall history of Marin's siting of affordable housing.

However, both Marin and Westchester are very affluent and mostly white counties, and both have significantly less racial and ethnic diversity than some adjacent counties. In Westchester, 60% of the population is non-Hispanic whites. Marin does not have the ethnic and racial diversity of counties to the south and east. In Marin, 75% of the population is non-Hispanic whites.

We are fortunate to have an excellent fair housing agency in Marin. The CDBG Program has a long history of funding Fair Housing of Marin for its education, testing, and enforcement programs. We have contracted with Fair Housing of Marin to prepare an updated Analysis of Impediments to Fair Housing (AI), to replace one which they prepared in 1994. HUD requires all of its CDBG recipient communities to have an AI

and to periodically update it. By its nature, an AI should look beyond current practices and provide some direction towards positive change.

The Westchester pattern was for the affordable housing to be concentrated in the areas of the County with the highest concentrations of low-income and minority residents, and for that housing to be occupied primarily by minorities. It should be our goal in Marin to show that our affordable housing--both past projects and new sites--improve residential integration. To meet that goal, most new projects should be located outside existing areas of minority concentration.

We plan to collect demographic data on the current residents of the affordable housing that has received assistance from CDBG over the history of the program. That data will enable us to determine to what extent these projects have been successful in increasing the diversity of the neighborhoods where they are located.

While the VCA will increase CDBG and HOME recordkeeping and paperwork requirements, HUD's ultimate goal is CDBG and HOME activities that affirmatively further the goal of neighborhood diversity. HUD wants to see our projects track the demographics of their beneficiaries and make efforts to affirmatively market to underrepresented groups. While this principle applies most obviously to housing projects, it also applies to capital and public service projects.

To be successful in meeting the goals of the VCA, it is important that all the local governments in Marin be mindful of possible fair housing and equal opportunity implications of their policies and decisions. In fact, HUD requires that the City-County Cooperation Agreements (the Agreements by which the Cities and the County agree to operate a joint CDBG program) "contain a provision prohibiting urban county funding for activities in, or in support of, any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification. This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e., the county) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department." A provision consistent with this policy has been in Marin's City-County Cooperation Agreements for many years, but in this time of increased scrutiny from HUD on fair housing issues, we may need to be more conscious of how HUD might interpret it.

All the local governments and recipients of CDBG and HOME funds will be asked to provide data for VCA-related reports. We will be asking local governments for demographic information about the occupants of their inclusionary units. That particular requirement will have the most impact on the largest cities; San Rafael and Novato staff have already graciously offered their assistance. We will be asking sponsors of CDBG and HOME projects to increase their affirmative marketing efforts to recruit participants and residents from the demographic groups deemed least likely to apply. For housing projects, where there is likely to be very slow turnover of units after initial occupancy, it is particularly important that affirmative marketing occur at the outset. We will be asking

all project sponsors, including public services, to collect data on the beneficiaries of their programs and to analyze that data to determine how their future affirmative marketing efforts should be shaped and targeted. In some cases, that might mean recruiting non-minorities to participate in programs that currently serve mostly minorities. As part of our evaluation of CDBG and HOME applications, we should consider the sponsor's affirmative marketing plans.