

MEMORANDUM

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

TO: Board of Supervisors

FROM: Roy Bateman, Community Development Coordinator

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

DATE: October 11, 2011

What is the Purpose of the Analysis of Impediments to Fair Housing Choice?

The U.S. Department of Housing and Urban Development (HUD) requires each of its grantee communities to prepare an Analysis of Impediments to Fair Housing Choice (AI). The AI identifies private and public sector barriers to fair housing choice. Public sector barriers include laws, regulations, administrative procedures, and practices that may have the effect of limiting housing choices for groups protected by fair housing laws. The preparation of an AI includes analysis of statistics on fair housing complaints, fair housing testing, mortgage lending, and the demographics of local residents and workers. Consultation with affected communities and people familiar with various aspects of the housing market is also part of the process.

It is important to keep in mind that some of the recommendations in the AI are beyond the County's purview. While the AI and moreover the Implementation Plan reflect the County's commitment to making fair housing a priority in carrying out our governmental functions, the nature of fair housing issues is multi-faceted and any serious effort to address them should involve other agencies and organizations. Housing discrimination is a national social problem that is both broad and deep, and progress will require a partnership of local governments, the nonprofit sector, local businesses, and civic groups. As a component of that partnership, the County is responsible for going beyond policies of nondiscrimination to the promotion of inclusion and diversity, with a goal of affirmatively furthering fair housing.

Organization of the Analysis of Impediments to Fair Housing Choice

Marin County's 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) have the most direct relevance to local government. The County has prepared an 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.

At a HUD AI training in August 2011, 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 consisted of Supervisor Judy Arnold, Novato Councilmember Denise Athas, San Rafael Councilmember Greg Brockbank, and Mill Valley Mayor Ken Wachtel. The Subcommittee 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; and
7. August 24, 2011 meeting at San Rafael City Hall.

At the four community forums in Marin City and the Canal neighborhood, the Subcommittee 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. The Subcommittee also received a large volume of written comments.

A number of Marin residents concerned about diversity issues and affordable housing have 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 again on September 9, 2011.

The full CDBG Countywide Priority Setting Committee held a hearing on September 12, 2011 to consider the Analysis of Impediments. At that meeting, the Committee approved the following motion:

Ken Wachtel made a motion to approve sending the draft Analysis of Impediments to Fair Housing Choice, including the Executive Summary and the Implementation Plan, with the amendments specified below, to the Board of Supervisors for approval, subject to affirmation by any City/Town that chooses to place a discussion of the Analysis of Impediments on its Council agenda prior to October 11, 2011. The amendments consist of:

- 1. Add the following text about the difference between affordable housing and fair housing as an introduction to the Implementation Plan:*

A Note on the Difference Between Affordable Housing and Fair Housing

The draft Analysis of Impediments 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.

- 2. In the main text and Executive Summary of the Analysis of Impediments, instead of listing the cities that do not have inclusionary zoning policies, say “the cities that don’t have inclusionary zoning policies in place.”*
- 3. In the main text and Executive Summary of the Analysis of Impediments, say that second units can be a viable option but should not be the sole source of affordable housing.*
- 4. Add the changes that County staff is preparing in response to the comments from the Action Coalition for Equity, generally in accordance with the discussion earlier in this meeting.*

The motion was seconded by Greg Brockbank and approved by the following vote:

*YES: Judy Arnold, Denise Athas, Greg Brockbank, Carla Condon,
Kay Coleman, and Ken Wachtel*

NO: Linda Pfeifer

*ABSENT: Larry Chu, Pam Hartwell-Herrero, Jeff Slavitz, and
John Telischak*

A copy of the County staff's response to the Action Coalition for Equity is attached, which is also incorporated by reference in Section 4 of the approved motion.

The Priority Setting Committee's motion contemplates that city and town councils might have subsequent discussions of the AI. The County has received comments from the Corte Madera Town Council, a copy of which is attached. The Town is concerned that the AI represents an unfunded mandate which could affect the cities. No other Cities or Towns have submitted comments to the County in response to the Priority Setting Committee's motion.

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 new 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.

In addition, it should be kept in mind that each City/Town Council may choose to designate a Councilmember as its representative on the Priority Setting Committee, which has been the standard practice, but might also choose an individual who is not a Councilmember. This could be another vehicle for increasing the representation of community members who represent protected classes.

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 and Future Implementation of Specific Recommendations

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 October 11th Board of Supervisors meeting, the County will have conducted a total of 10 public meetings on the AI. This is far beyond the number of public hearings that most communities hold on their AI.

Some of the recommendations in the Implementation Plan will involve future discretionary actions on the County's part, particularly those involving amendments to the County's Development Code to address affordable housing issues. It is important to keep in mind that the Board's decision to approve the Implementation Plan does not constitute "approval" of any proposed code amendment action. By approving the Implementation Plan, the County will not be committing itself to a *definite course of action* until specific code amendments are developed and can be understood insofar as their effects on the physical environment are concerned (from a practical standpoint, it would be impossible to evaluate the environmental impacts of a code amendment that has not been drafted). In addition, the Community Development Agency will prepare the appropriate environmental review documents at the time such code amendments are completed and in doing so, would not be circumscribing or limiting its discretion with respect to that environmental review.

In addition, the County has not yet committed significant resources to shaping these future recommendations. As noted in the October 11, 2011 cover letter to the Board of Supervisors to which this memorandum is attached, the Board of Supervisors will be considering future funding decisions to implement recommendations in the Implementation Plan as each recommendation is developed into a more specific County action. In that regard, the County has not foreclosed any meaningful options to go forward with the specific recommendations involving future discretionary actions.

A Note on the Difference Between Affordable Housing and Fair Housing

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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 suburban 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 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. (The AI Implementation Plan, which describes the actions the County will carry out to address the major issues raised in the AI, was drafted by County staff.) HUD requires each 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 benefiting from federal grant funding and other public financial support should be located outside existing areas of minority concentration and should have effective affirmative marketing programs.

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. For example, the operator of a child care facility might determine that Latino families are under-represented among its clients, and then begin distributing a Spanish-language brochure through agencies based in the Canal neighborhood. Similarly, a senior services program might find that African-Americans are under-represented among its clients, and then meet with Marin City clergy to inform them about the programs they offer.

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.