

Our Role and Responsibility for Fair and Affordable Housing

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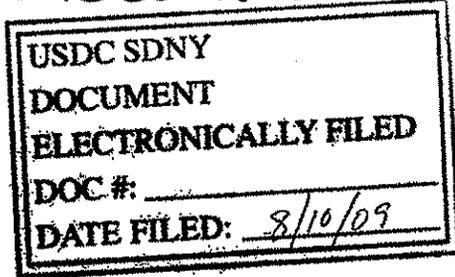
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Committee*

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Housing Action Council

ENCLOSURE F



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
ANTI-DISCRIMINATION CENTER OF
METRO NEW YORK, INC.,

Plaintiff,

v.

WESTCHESTER COUNTY, NEW YORK,

Defendant.

STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL

No. 06 Civ. 2860 (DLC)

WHEREAS, the development of affordable housing in a way that affirmatively furthers fair housing is a matter of significant public interest;

WHEREAS, the broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational and other opportunities, and advances the health and welfare of the residents of the defendant County of Westchester, New York (the "County") and the municipalities therein;

WHEREAS, the County receives federal funding for housing and community development, including funds under the Community Development Block Grant ("CDBG") program, the Emergency Shelter Grant program, the HOME Investment Partnerships, and the Housing Opportunities for Persons with AIDS program;

WHEREAS, as a recipient of CDBG funds, the County must comply with, *inter alia*, the provisions of the Housing and Community Development Act, including the requirement that it affirmatively further fair housing ("AFFH") as set forth in 42 U.S.C. § 5304(b)(2);

WHEREAS, as an applicant for those funds, the County was required to certify – as a material condition of its eligibility to receive such funds – that it would AFFH;

WHEREAS, the United States and the County agree and acknowledge that: (i) pursuant to New York State law, municipal land use policies and actions shall take into consideration the housing needs of the surrounding region and may not impede the County in its performance of duties for the benefit of the health and welfare of the residents of the County; (ii) it is incumbent upon municipalities to abide by such law and for municipalities that are parties to the Urban County Cooperation Agreement to comply with that agreement, including the commitment to AFFH; and (iii) it is appropriate for the County to take legal action to compel compliance if municipalities hinder or impede the County in its performance of such duties, including the furtherance of the terms of this Stipulation and Order;

WHEREAS, the County was obligated to conduct an analysis of the impediments to fair housing choice within its jurisdiction (an "AI"), and obligated to take appropriate actions to overcome the effects of any impediments identified through that analysis;

WHEREAS, for the years 2000 to the present, the County has certified that it was in compliance with those requirements;

WHEREAS, the Anti-Discrimination Center of Metro New York, Inc. (the "Relator") filed a civil action as a relator under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "False Claims Act"), against the County to recover damages allegedly sustained by the United States of America (the "United States" or "Government") as a result of the County's alleged violations of the False Claims Act during the period April 1, 2000 to April 1, 2006 (the "Relator's Complaint");

WHEREAS, the Relator alleged in particular that the County had failed to conduct a meaningful AI and failed to take appropriate steps to overcome existing and known impediments to fair housing arising from racial discrimination and segregation;

WHEREAS, the Relator further alleged that, as a result of such failures and inaction, the County's certifications to the United States to receive CDBG and other federal funds were false;

WHEREAS, the United States subsequently filed a notice of intervention pursuant to 31 U.S.C. § 3730(b)(4), and filed a Complaint-in-Intervention (the "Government's Complaint") against the County (i) to recover, under the False Claims Act, damages sustained by, and penalties owed to, the United States as the result of the County having knowingly presented or caused to be presented to the United States false claims to obtain federal funding for housing and community development, and (ii) seeking, pursuant to 42 U.S.C. § 5311(b), appropriate remedies for the County's non-compliance with community development requirements, including mandatory or injunctive relief;

WHEREAS, the United States Department of Housing and Urban Development ("HUD") contends that it has administrative claims against the County to address some or all of the alleged conduct set forth in the Relator's Complaint and the Government's Complaint;

WHEREAS, the County denies all of the allegations in the Relator's Complaint and the Government's Complaint, denies that it has any liability relating to these allegations, and denies that the United States was damaged by its actions;

WHEREAS, the County contends that it reasonably believed that it was complying with the requirement to AFFH because, among other things, the County maintains that: (i) it actively supported and gave priority status to the construction, rehabilitation, and preservation of affordable housing; (ii) it undertook to analyze impediments to housing opportunities and submitted AIs to HUD in 2000 and 2004; (iii) prior to the filing of relator's complaint, it never had its submissions or certifications to HUD disapproved or rejected; and (iv) the HUD Office of

Policy Development and Research identified the County in 2005 as a community that demonstrated effective sub-recipient management practices with respect to CDBG grants;

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation and Order") is neither an admission by the County of any liability or wrongful conduct nor a concession by the United States that its claims are not well-founded; and

WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation, pursuant to the terms set forth below, the United States and the County desire to reach a full and final compromise and resolution of the claims against the County in this action;

NOW, THEREFORE, in consideration of the mutual promises, undertakings, obligations and commitments set forth below, the parties hereto covenant and agree as follows:

Subject Matter Jurisdiction

1. The parties hereto consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

Administrative Payment to HUD

2. The County shall pay twenty-one million, six hundred thousand (\$21,600,000) into the County's account with HUD in accordance with HUD's administrative procedures. Such payment is for settlement of the claims brought pursuant to this action and not for the financing of a capital improvement. The County shall make such payment by electronic funds transfer pursuant to written instructions that the United States Attorney's Office for the Southern District of New York or HUD will provide to counsel for the County. HUD shall make those funds available to the County for the development of new affordable housing units that will AFFH in the County, provided that the County's use and expenditure of the funds, and any program

income earned from the use of the funds, as defined by 24 C.F.R. § 570.500(a), shall be subject to the requirements of the CDBG program and the terms and conditions set forth in paragraph 7.

**Payment to the Federal Government
to Settle False Claims Act Allegations**

3. The County shall pay to the United States the sum of thirty million dollars (\$30,000,000) (the "Settlement Amount"), in full compromise and satisfaction of the False Claims Act allegations in this action. This Settlement Amount shall constitute a debt due and owing upon entry of this Stipulation and Order by the Court, and shall be discharged upon payment to the United States, no later than ninety (90) calendar days after the Court's entry of this Stipulation and Order. With respect to such payment, the County shall receive a credit of twenty-one million, six hundred thousand (\$21,600,000) for the payment to HUD set forth in paragraph 2. The County shall pay the remaining eight million, four hundred thousand (\$8,400,000) to the United States by electronic funds transfer pursuant to written instructions that the United States Attorney's Office for the Southern District of New York will provide to counsel for the County.

Relator's Attorneys' Fees Under the False Claims Act

4. Pursuant to 31 U.S.C. § 3730(d)(1), no later than ninety (90) calendar days after the Court's entry of this Stipulation and Order, the County shall pay to Relator's Counsel the sum of two million, five hundred thousand dollars (\$2,500,000) as expenses, attorneys' fees, and costs in full settlement of Relator's claims against the County. The County shall make such payment pursuant to instructions that counsel for the Relator, no later than five (5) business days prior to the due date for payment, shall provide to counsel for the County. The United States has no liability or responsibility for the payment of the Relator's expenses, attorneys' fees, or costs.

**Mandatory and Injunctive Relief to Develop
Affordable Housing to AFFH in Settlement of
Housing and Community Development Act Claims**

5. The County shall, in full compromise and satisfaction of the Housing and Community Development Act claims in this action, undertake the mandatory and injunctive relief set forth below. To pursue such equitable relief, the County shall, in addition to the payment of the Settlement Amount described in paragraph 3, secure resources sufficient to ensure the equitable relief is funded by thirty million dollars (\$30,000,000) for County fiscal years 2009 through 2014 for land acquisition, infrastructure improvement, construction, acquisition, or other necessary direct costs of development of new affordable housing units that AFFH as set forth in paragraph 7.

6. The County shall meet the funding obligation set forth in paragraph 5 solely through County funds, and not from any Federal, State, or other funding sources.

County's Development of Affordable AFFH Units

7. Through the use of the funds set forth in paragraphs 2 and 5, the County shall, within seven (7) years of the entry of this Stipulation and Order, ensure the development of at least seven hundred fifty (750) new affordable housing units that meet the terms and conditions set forth in this paragraph ("Affordable AFFH Units"):

(a) No less than six hundred thirty (630) of the Affordable AFFH Units shall meet the following locational criteria:

(i) the municipality in which the units are to be developed had, according to 2000 Census data, both a "single race African-American only" population less than three (3) percent and a Hispanic population less than seven (7) percent, as calculated after removing people living in group

- quarters as defined by the 2000 Census of Population and Housing (U.S. Census Bureau) (“group quarters”) from the relevant population; and
- (ii) the units shall not be developed in any census block which had, according to 2000 Census data, (A) a “single race African-American only” population of more than ten (10) percent and a total African-American population of twenty (20) or more, or (B) a Hispanic population of more than ten (10) percent and a total Hispanic population of twenty (20) or more, as calculated after removing people living in group quarters from the relevant population, except to the extent such requirement is waived pursuant to paragraph 15(a)(ii).
- (b) A maximum of sixty (60) of the Affordable AFFH Units may meet the following locational criteria:
 - (i) the municipality in which the units are to be developed had, according to 2000 Census data, both a “single race African-American only” population less than seven (7) percent and a Hispanic population less than ten (10) percent, as calculated after removing people living in group quarters from the relevant population; and
 - (ii) the units meet the terms and conditions set forth in paragraph 7(a)(ii).
 - (c) A maximum of sixty (60) of the Affordable AFFH Units need not meet the locational criteria set forth in paragraphs 7(a) or 7(b), provided that:
 - (i) the municipality in which the units are to be developed had, according to 2000 Census data, a “single race African-American only” population less than fourteen (14) percent and a Hispanic population less than sixteen

- (16) percent, as calculated after removing people living in group quarters from the relevant population;
- (ii) no funds governed by this Stipulation and Order shall be used for such units until one hundred seventy-five (175) units meeting the locational criteria set forth in paragraph 7(a) have received building permits; and
 - (iii) the County shall use no more than four million dollars (\$4,000,000) of the funds set forth in paragraph 5, and none of the funds described in paragraphs 2 and 3, on such units.
- (d) At least fifty (50) percent of the Affordable AFFH Units shall be rental units, of which rental units at least twenty (20) percent shall be affordable to and occupied by households with incomes at or below fifty (50) percent of Area Median Income ("AMI"), with the remainder of such rental units affordable to and occupied by households with incomes at or below sixty-five (65) percent of AMI. Affordable as used in this subparagraph shall be defined by the rent limitations for HOME-assisted units set forth in 24 C.F.R. § 92.252 (a) and (b). Such units shall be controlled by deed restrictions or other legal measures to ensure that they remain affordable to and occupied by eligible households for a period of no less than fifty (50) years. Such rental units may be converted to cooperative or condominium occupancy during the fifty (50) year period, provided that:
- (i) tenants shall be given the opportunity to purchase their units;
 - (ii) the affordability levels provided in this paragraph are preserved; and

- (iii) tenants who do not exercise such a purchase option shall not be displaced as a result of the conversion.
- (e) The remaining portion of Affordable AFFH Units shall be home-ownership units affordable to and occupied by households with incomes at or below eighty (80) percent of AMI and shall be controlled by deed restrictions or other legal measures to ensure that they remain affordable to and occupied by eligible households for a period of no less than fifty (50) years. Affordable as used in this subparagraph shall mean no more than thirty-three (33) percent of the adjusted income of a family whose annual income equals eighty (80) percent of the AMI for principal, interest, taxes, insurance, and condo fees where applicable, based on a no more than forty-year fixed-rate mortgage with a down payment of five (5) percent.
- (f) No more than twenty-five (25) percent of the Affordable AFFH Units shall be units intended for occupancy by senior citizens that are controlled by age restrictions ("senior units"). No funds governed by this Stipulation and Order shall be used for such senior units until at least one hundred seventy-five (175) non-senior units meeting all of the criteria specified in this paragraph have received building permits, and no funds governed by this Stipulation and Order shall be used for any senior unit above a total of ninety (90) senior units until three hundred fifty (350) non-senior units have received building permits.
- (g) In the County's facilitation of the development of the Affordable AFFH Units, priority shall be given to sites within qualifying municipalities and census tracts that are located in close proximity to public transportation. No sites,

however, shall be excluded from consideration because of lack of public transportation access.

- (h) No more than twenty-five (25) percent of the total number of Affordable AFFH Units described in this paragraph may be achieved through the acquisition of existing housing units, provided that:
 - (i) all such units shall meet all terms and conditions set forth in this paragraph;
 - (ii) no such units, before acquisition, may be controlled by a deed restriction or other legal measure to be affordable to households with incomes at or below eighty (80) percent of AMI; and
 - (iii) if any such units, before acquisition, are affordable to households with incomes at or below eighty (80) percent of AMI, they shall be made affordable, after acquisition, through deed restrictions or other legal measures that ensure they remain affordable to and occupied by households with incomes at or below sixty-five (65) percent of AMI for a period of no less than fifty (50) years.
- (i) The County shall use all available means as appropriate to achieve the objectives set forth in this paragraph, including, but not limited to, developing financial or other incentives for other entities to take steps to promote the objectives of this paragraph, and conditioning or withholding the provision of County funds on actions that promote the objectives of this paragraph. It is anticipated that the County will accomplish the objectives of this paragraph by leveraging the funds that it is expending pursuant to paragraphs 2, 3 and 5 with

supplemental funds, and nothing in this paragraph shall be construed to prevent the County from meeting the objectives of this paragraph by identifying and combining other affordable housing funding sources.

- (j) In the event that a municipality does not take actions needed to promote the objectives of this paragraph, or undertakes actions that hinder the objectives of this paragraph, the County shall use all available means as appropriate to address such action or inaction, including, but not limited to, pursuing legal action. The County shall initiate such legal action as appropriate to accomplish the purpose of this Stipulation and Order to AFFH.

8. Affordable units in housing developments that have received preliminary or final land use or financing approval at the time of the Court's entry of this Stipulation and Order shall be excluded from the Affordable AFFH Units described in paragraph 7. If a development with such units is no longer viable and the County believes it can resuscitate the development by providing financing or other specified means within the County's control, the County can seek inclusion of the units in such a development pursuant to paragraph 13(h). The County shall provide to HUD a list of housing units that are excluded pursuant to this paragraph contemporaneously with the execution of this Stipulation and Order.

**Implementation and Enforcement of
the Settlement – Appointment of Monitor**

9. The Government, in its sole discretion but with input from the County, shall select a monitor to be appointed by the Court (the "Monitor"). The Government shall submit the name of the Monitor to the Court for approval within sixty (60) calendar days of the Court's entry of this Stipulation and Order.

10. The Monitor shall serve for so long as the County's obligations set forth in this Stipulation and Order remain unsatisfied. Upon the County's satisfaction of its obligations set forth in this Stipulation and Order, the Monitor shall inform the Court, the Government, and the County that the services of the Monitor are no longer needed.

11. If the Monitor is unable to complete the Monitor's term of office, the Government shall submit, after consultation with the County, another candidate to serve as Monitor for the Court's review and approval.

12. The Government, in its sole discretion, may remove and terminate the service of the Monitor. In such an event, the Government shall submit, after consultation with the County, another candidate to serve as Monitor for the Court's review and approval.

13. The Monitor shall have all powers, rights, and responsibilities necessary to achieve the AFFH purposes of this Stipulation and Order, including the authority to:

- (a) Review all County programs, policies, and procedures to ensure compliance with this Stipulation and Order.
- (b) Take reasonable and lawful steps to be fully informed about all aspects of the County's compliance with this Stipulation and Order. Specifically, the Monitor shall have access to all books, records, accounts, correspondence, files and other documents, and electronic records of the County and its officers, agents, and employees concerning the subject matter and implementation of this Stipulation and Order. It is recognized that the Monitor may have access to sensitive information; accordingly, the Monitor shall limit distribution of such information obtained hereby to representatives of the Department of Justice and HUD, and consultants and personnel retained by the Monitor. The

Monitor shall not have access to materials protected by the attorney-client privilege or the work-product doctrine.

- (c) Identify, recommend, and monitor implementation of additional actions by the County needed to ensure compliance with this Stipulation and Order.
- (d) Make recommendations, if needed, to the County and the Government of any remedies to foster compliance with applicable laws and regulations.
- (e) Seek outside expert technical assistance to review the County's actions, advise the County, and develop recommendations for County action. The County and HUD shall explore the availability of private funding to support such technical assistance.
- (f) Employ, in accordance with paragraph 17(b), personnel necessary to assist in the proper discharge of the Monitor's duties, including but not limited to a housing advisor.
- (g) Apply to the Court, upon reasonable notice to the County and the Government, for such assistance as may be necessary to the performance of the Monitor's duties. The Monitor shall provide the Government and the County with copies of the application and all accompanying materials.
- (h) Deem units otherwise excluded from the AFFH Affordable Units pursuant to paragraph 8 as AFFH Affordable Units based on compelling evidence provided by the County that, even though the units are in a development that previously received preliminary or final land use or financing approval, the development is no longer viable and the County can resuscitate the development in a manner that complies with the terms and conditions set forth

in paragraph 7 by providing financing or other specified means within the County's control.

14. The Monitor shall have the authority to resolve disputes between the County and the Government:

- (a) At all stages, the County and the Government pledge good faith to resolve their disputes with regard to the implementation of this Stipulation and Order.
- (b) In the event such efforts fail to resolve the dispute, the County and the Government shall, in writing and in accordance with such procedures as the Monitor may establish, notify the Monitor of the dispute.
- (c) The Monitor shall, within a reasonable time from receiving such notification, issue to the County and the Government a written report and recommendation addressing the matter(s) in dispute.
- (d) Within ten (10) business days of receipt of the Monitor's report and recommendation, the County or the Government may seek additional review from the magistrate judge assigned to this case; otherwise, the Monitor's resolution shall be final, binding and non-appealable. Should the County or the Government seek such additional review from the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

15. The Government and the County understand that the nature of real estate development, especially in the context of developing affordable housing, depends on a number of factors that cannot always be predicted or controlled. To address those uncertainties of real

estate development, the Monitor, consistent with the terms of paragraphs 28, 29, 39 and 40, shall conduct an assessment of the County's efforts and progress related to the obligations set forth in this Stipulation and Order, particularly those described in paragraph 7, to be completed on December 31, 2011 and every two years thereafter until the expiration of the Stipulation and Order. In making such an assessment, the Monitor may consider any information appropriate to determine whether the County has taken all possible actions to meet its obligations under this Stipulation and Order, including, but not limited to, exploring all opportunities to leverage funds for the development of the Affordable AFFH Units, promoting inclusionary and other appropriate zoning by municipalities by offering incentives, and, if necessary, taking legal action.

- (a) For one hundred eighty (180) calendar days following each such assessment, the Monitor shall have the authority, after having first secured the written consent of the Government and the County, to modify or refine:
 - (i) paragraph 5 to the sole extent of specifying an allocation of the resources specified therein among uses such as the purchase of land, infrastructure improvements, construction, or other necessary development activities;
 - (ii) the applicability of sub-paragraph 7(a)(ii) to the sole extent of authorizing development of Affordable AFFH Units in census blocks otherwise precluded by that sub-paragraph upon a written finding by the Monitor that to do so would not be inconsistent with the purpose of this Stipulation and Order to AFFH;
 - (iii) the locational criteria set forth in sub-paragraph 7(a), in the event that the Monitor determines that such locational criteria do not serve the purpose

of the Stipulation and Order to AFFH, to take into account 2010 Census data in the determination of eligible municipalities and census blocks set forth in paragraphs 7(a), 7(b), and 7(c), or to remedy a concentration or other issue related to the geographic distribution of the Affordable AFFH Units that does not serve the purpose of the Stipulation and Order to AFFH, except no municipality included under the calculations set forth in paragraphs 7(a), 7(b), or 7(c) shall be excluded after modification or refinement to those subdivisions;

- (iv) the terms, conditions and criteria set forth in sub-paragraphs 7(d) and 7(e) that govern the development of Affordable AFFH Units;
- (v) the benchmarks described in paragraph 23 and the interim or final time frames in which the Affordable AFFH Units must be developed, provided that the Monitor determines that the County has employed best efforts and has taken all appropriate actions within its control to meet its obligations, but, due to factors outside of the County's control, the County will not be able to meet those obligations;
- (vi) the number of Affordable AFFH Units described in paragraph 7, provided that: (A) such modification or refinement occurs no earlier than four years following the entry of the Stipulation and Order, and no earlier than two years after the Monitor has first modified or refined the final time frames in which the Affordable AFFH Units must be developed; and (B) the County has provided compelling evidence and the Monitor finds that the County has taken all appropriate actions to

meet the obligations set forth in paragraph 7, further extension of the time frames will not be sufficient to permit the possible satisfaction of the County's obligations, and specific factors beyond the County's influence or control exist that preclude the County's satisfaction of its obligations; and

- (vii) the AFFH obligations described in paragraph 33.
- (b) The Monitor, however, shall have no authority to modify or refine any other provisions of this Stipulation and Order.
- (c) The Monitor shall provide the Government and the County written notification of any proposed modifications or refinements, upon recommendation of either the Government or the County or in the Monitor's discretion; and all decisions concerning those proposed modifications or refinements.
- (d) In the event that the Government and the County provide the requisite consent, modifications or refinements approved by the Monitor shall be submitted to the Court to be so-ordered and incorporated into this Stipulation and Order.
- (e) The County, within ten (10) business days of receipt of notice pursuant to sub-paragraph 15(c), may seek review with the magistrate judge assigned to this case where the Government has refused to provide consent or the Monitor has refused to approve a proposal from the County. Should the County seek such review with the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

- (f) The Government, within twenty (20) business days of receipt of notice pursuant to sub-paragraph 15(c), may seek review with the magistrate judge assigned to this case where the County has refused to provide consent or the Monitor has refused to approve a proposal from the Government. Should the Government seek such review with the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

16. The County shall direct all County officers, employees, agents, and consultants to cooperate fully with the Monitor concerning any matter within the Monitor's jurisdiction as set forth in this Stipulation and Order, including providing any documents requested by the Monitor and submitting to interviews by the Monitor.

17. The County shall, out of funds exclusive of the amounts identified in paragraphs 2-5, 33(h) and 38, pay for the Monitor and all necessary personnel and consultants retained by the Monitor to assist in the proper discharge of the Monitor's duties. The Monitor and any persons retained by the Monitor shall receive reasonable compensation comparable to that received by personnel and consultants of similar skill and experience, as well as reimbursement for any reasonable expenses necessary to the performance of the Monitor's role.

- (a) On a monthly basis, the Monitor shall submit to the County an itemized invoice, with supporting material, for services and expenses. The Monitor shall also certify that the Monitor's expenses were reasonably incurred. The County shall have ten (10) business days from receipt in which to contest the invoice by filing a written objection with the Monitor. If the Monitor and the

County are unable to resolve any objections, the Monitor shall refer the matter to the assigned magistrate judge for decision. If no objection is submitted, the County shall pay all amounts due within fifteen (15) business days of receipt and, if a written objection is filed, all amounts not in dispute shall be paid as provided above.

- (b) During the first two years following the entry of this Stipulation and Order, the Monitor shall incur no more than \$250,000 in annual fees and expenses for which the County is responsible, and no more than \$175,000 in such fees and expenses annually thereafter, provided that the Monitor may make an application to the magistrate judge to incur fees and expenses for which the County shall be responsible beyond those amounts upon a showing by the Monitor that such fees are appropriate to fulfill the obligations set forth in this Stipulation and Order.

**The County's Implementation Plan, Benchmarks,
Additional Obligations to AFFH, and AI**

18. The County shall, within one hundred twenty (120) calendar days of the Court's entry of this Stipulation and Order, provide to the Monitor and the Government a plan setting forth with specificity the manner in which the County plans to implement the provisions of this Stipulation and Order, set forth in paragraph 7, concerning the development of Affordable AFFH Units (the "implementation plan"). Provided that the Government, in its sole discretion, provides written consent, the Monitor may extend the deadline once for the submission of the implementation plan.

19. The implementation plan shall include, *inter alia*, proposed timetables and benchmarks for the first six-month and one-year periods and for each year thereafter.

20. Upon receipt of the County's proposed implementation plan, the Monitor shall review it and, in the Monitor's discretion and based upon such outside expertise and consultants as the Monitor deems necessary, accept or reject the proposed plan. In the event that the Monitor rejects the County's implementation plan:

- (a) The Monitor shall, within twenty (20) calendar days of rejecting the plan, meet with the County and the Government.
- (b) At that meeting, the Monitor shall identify with specificity the deficiencies that led to the rejection and potential cures that should be incorporated into the implementation plan.
- (c) The County shall have ten (10) business days after that meeting to submit to the Monitor a revised implementation plan for the Monitor's review and acceptance or rejection.
- (d) In the event that the Monitor deems the revised plan submitted by the County insufficient to accomplish the objectives and terms set forth in this Stipulation and Order, the Monitor shall specify revisions or additional items that the County shall incorporate into its implementation plan.

21. Following the Monitor's approval and acceptance of the implementation plan, the County shall incorporate the implementation plan into its AI.

22. In developing the implementation plan, the County shall, among other activities it deems appropriate and in consultation with the Monitor:

- (a) Assess the availability of vacant land suitable for development and adaptive reuse opportunities in the municipalities that meet the locational criteria described in paragraphs 7(a), 7(b), and 7(c), with consideration given to the way in which the available sites provide or have the potential to provide access to services and facilities that will promote sustainable, inclusive communities, such as employment and educational opportunities, medical and other family services, and public transportation.
- (b) Conduct meetings with developers (for-profit and non-profit) and property owners (including office park owners) to determine their interest in furthering developments that will AFFH.
- (c) Conduct meetings with key local officials in each of the municipalities that meet the locational criteria set forth in paragraph 7(a) to explore potential development opportunities.
- (d) Conduct meetings with the New York State Division of Housing and Community Renewal and the New York State Housing Finance Agency to explore opportunities for targeted state financing for projects that will implement the provisions of this Stipulation and Order Settlement, as well as other forms of state assistance.
- (e) Explore and implement mechanisms by which the monies made available pursuant to paragraphs 2, 3 and 5, and proceeds from the expenditure of those funds, can be placed in a revolving fund dedicated to the development of Affordable AFFH Units. To the extent there are obstacles to doing so, the

County shall identify the obstacles in writing to the Monitor and any steps that can be taken to overcome the obstacles.

- (f) Assess the means by which the County can maximize the development of Affordable AFFH Units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents.

23. To ensure the satisfaction of the goals set forth in paragraph 7, the County shall meet the following interim benchmarks:

| By end of calendar year | Sites with financing in place (number of units) | Units with building permits |
|-------------------------|---|-----------------------------|
| 2010 | | |
| 2011 | 100 | 50 |
| 2012 | 200 | 125 |
| 2013 | 300 | 225 |
| 2014 | 450 | 350 |
| 2015 | 600 | 525 |
| 2016 | 750 | 750 |

24. The County's implementation plan shall include the benchmarks set forth in paragraph 23 and specify steps and activities that will be needed to meet those benchmarks. The Monitor, upon acceptance of the County's implementation plan, may designate any elements of the plan as benchmarks that shall be incorporated into this Settlement and shall be enforceable in the same fashion as the other terms of this Stipulation and Order.

25. To facilitate the development of the Affordable AFFH Units, the County shall include in the implementation plan:

- (a) A "model ordinance" that the County will promote to municipalities to advance fair housing. The model ordinance shall include, *inter alia*:

- (i) a model inclusionary housing ordinance that requires new development projects to include a certain percentage of affordable units, including criteria and standards for the affordable housing units and definitions of who is eligible for affordable housing;
 - (ii) standards for affirmative marketing of new housing developments to ensure outreach to racially and ethnically diverse households;
 - (iii) standards for expedited review of proposals for affordable housing that AFFH including procedures for streamlining the approval process for the design, permitting, and development of these units; and
 - (iv) standards for legal mechanisms to ensure continued affordability of new affordable units.
- (b) A CDBG allocation process/plan designed to promote activities that AFFH, including such steps as providing priority to projects that further the development of AFFH affordable housing units as set forth in paragraph 7, and providing incentives and priority to municipalities throughout the County that take actions that further fair housing.
- (c) A commitment to amend County Law to eliminate a municipality's right of "first refusal" with respect to Fair Housing or Affordable Housing land purchases by the County.
- (d) A policy to condition, as appropriate, the use of public funds and resources, including, but not limited to, CDBG funds and the County Open Space funds, by municipalities on commitments included in the funding agreement between the County and the municipalities that the municipalities shall, *inter alia*:

- (i) ban local residency requirements and preferences and other selection preferences that do not AFFH;
- (ii) offer the County a “right of first refusal” to retain and/or purchase land acquired in rem to be used for affordable housing that AFFH; and
- (iii) actively further implementation of this Stipulation and Order through their land use regulations and other affirmative measures to assist development of affordable housing.

26. The County may propose amendments to the implementation plan, which shall be subject to the Monitor’s review and approval pursuant to paragraph 20.

27. The County shall, within one hundred twenty (120) calendar days of the entry of this Stipulation and Order, amend the Long Range Land Use Policies as contained in Westchester 2025 to embody the goals of this Stipulation and Order, as well as the substantive provisions of the model ordinance described in paragraph 25(a) and the policy statement adopted pursuant to paragraph 31.

28. The County shall, beginning March 31, 2010, prepare reports for the Monitor and the Government on a quarterly basis providing all information the County believes is relevant to its implementation efforts and all information deemed necessary by the Monitor. The Monitor shall, no later than February 1, 2010, prepare a template report for the County to follow. In addition to all items identified by the County and the Monitor, the quarterly reports shall include:

- (a) the location of the Affordable AFFH Units (i) for which there are sites with financing in place, (ii) which are under construction, and (iii) which are completed, and the racial and ethnic demographic information of the municipality and the census block in each location; and

- (b) racial and ethnic demographic information of the occupants of the Affordable AFFH Units.

29. If the County believes that market conditions or other circumstances outside of the County's influence or control will prevent it, or have prevented it, from meeting its obligations under this Stipulation and Order, the County shall, as soon as possible, but in no event later than the submission of its next quarterly report, notify the Monitor in writing. The County's submission shall provide sufficient information for the Monitor to assess the obstacles to compliance, the County's actions, and the results of those actions.

30. All reports prepared by the County pursuant to this Stipulation and Order shall be publicly available.

31. The County acknowledges the importance of AFFH, and shall adopt, within ninety (90) calendar days after the date of the Court's entry of this Stipulation and Order, a policy statement providing that:

- (a) the elimination of discrimination, including the present effects of past discrimination, and the elimination of de facto residential segregation are official goals of the County's housing policies and programs;
- (b) AFFH significantly advances the public interest of the County and the municipalities therein; and
- (c) the location of affordable housing is central to fulfilling the commitment to AFFH because it determines whether such housing will reduce or perpetuate residential segregation.

32. The County shall complete, within one hundred twenty (120) calendar days of the entry of this Stipulation and Order, an AI within its jurisdiction that complies with the guidance

in HUD's Fair Housing Planning Guide, *see* U.S. Dept. of HUD, Fair Housing Planning Guide (1996). The AI must be deemed acceptable by HUD. The County shall take all actions identified in the AI. In the AI, the County shall:

- (a) commit to collecting data and undertaking other actions necessary to facilitate the implementation of this Stipulation and Order; and
- (b) identify and analyze, *inter alia*:
 - (i) the impediments to fair housing within its jurisdiction, including impediments based on race or municipal resistance to the development of affordable housing;
 - (ii) the appropriate actions the County will take to address and overcome the effects of those impediments; and
 - (iii) the potential need for mobility counseling, and the steps the County will take to provide such counseling as needed.

33. As part of its additional obligations to AFFH, the County also shall:

- (a) solicit CDBG proposals that would AFFH from community leaders, public interest groups, and others;
- (b) advertise the rights of all persons to fair housing and avenues to redress allegations of housing discrimination, including informing the public that complaints may be filed with the Westchester County Human Rights Commission ("HRC") and requiring County agents to refer housing discrimination complaints and any information about possible violations of fair housing laws to the HRC and to HUD;

- (c) create and fund campaigns to broaden support for fair housing and to promote the fair and equitable distribution of affordable housing in all communities, including public outreach specifically addressing the benefits of mixed-income housing and racially and ethnically integrated communities;
- (d) educate realtors, condominium and cooperative boards, and landlords with respect to fair and affordable housing activities;
- (e) affirmatively market affordable housing within the County and in geographic areas with large non-white populations outside, but contiguous or within close proximity to, the County, and include in all agreements between the County and a developer requirements that the developer meet these same affirmative marketing requirements and hire consultant(s) to carry out outreach activities, where appropriate;
- (f) centralize the intake of potential home buyers for affordable housing that AFFH, working in conjunction with local not-for-profit organizations and community organizations, and through that centralized service provide, *inter alia*, information concerning home-buyer counseling, community resources, job data by municipality, affordable housing developments under construction and in development;
- (g) promote, through the County Executive, legislation currently before the Board of Legislators to ban "source-of-income" discrimination in housing;
- (h) pay for consultants and public education, outreach, and advertising to AFFH, as described in this paragraph, out of County resources and CDBG funds over

five years, exclusive of the amounts set forth in paragraphs 2, 3 and 5, in an amount not less than four hundred thousand dollars (\$400,000); and

- (i) incorporate each undertaking set forth in this paragraph in the County's AI.

Penalties for Non-Payment and Non-Compliance

34. The County shall be in default of this Stipulation and Order if it fails to make the payment set forth in Paragraph 3 on or before its due date. The United States shall provide written notice of the default, and the County shall have an opportunity to cure such default within five (5) business days from the date of its receipt of the notice. Notice of default shall be sent by e-mail and overnight mail to the undersigned attorneys for the County. If the County fails to cure the default within five (5) business days, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of twelve (12) percent per annum compounded daily from the date of default on the remaining unpaid principal balance. The County shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its option, may:

- (a) rescind this Stipulation and Order and reinstate the Government's Complaint-in-Intervention filed in this action;
- (b) seek specific performance of the Stipulation and Order;
- (c) offset the remaining unpaid balance from any amounts due and owing the County by any department, agency or agent of the United States at the time of default; or
- (d) exercise any other rights granted by law, or under the terms of this Stipulation and Order, or recognizable at common law or in equity.

35. The County shall not contest any offset imposed nor any collection action undertaken by the United States pursuant to paragraph 34, either administratively or in any state or federal court.

36. The County shall pay the United States all reasonable costs of collection and enforcement under paragraph 34, including attorneys' fees and expenses.

37. In the event that the United States opts to rescind this Stipulation and Order, the County expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the allegations in the Government's Complaint, except to the extent those defenses were available on the date of entry of this Stipulation and Order.

38. In the event that the County fails to comply with its obligations set forth in paragraph 7 or with the interim benchmarks for the development of the Affordable AFFH Units set forth in paragraph 23, the County shall, as further mandatory and injunctive relief, make available additional resources funded by thirty thousand dollars (\$30,000), exclusive of the amounts funded pursuant to paragraph 5, on the first day of the failure, for the development of affordable housing to AFFH in addition to the Affordable AFFH Units required pursuant to paragraph 7 ("Additional Affordable AFFH Units"). If, after thirty (30) calendar days, the failure to comply has not been remedied, the County shall, for each and every month the non-compliance persists, make available additional resources funded by sixty thousand dollars (\$60,000) for the development of Additional Affordable AFFH Units. The Monitor shall determine the formula for calculating the number of Additional Affordable AFFH Units required each time a specified amount in imposed penalties is accumulated. In the Monitor's discretion, the Monitor may waive or alter the imposition of penalties or the number of additional

Affordable AFFH Units required pursuant to this paragraph. In the event the County has failed to comply with the obligations set forth in paragraph 7 or with the interim benchmarks set forth in paragraph 23 by more than 50 percent, the penalties provided for in this paragraph shall be doubled.

**Reports to Court Concerning Implementation
and Enforcement of Settlement**

39. The Monitor shall report to the Court in writing, with copies to the Government and the County, as often as the Monitor believes appropriate, but no less than every six months for the first two years after the Monitor's appointment and annually thereafter. Such report shall incorporate, when available, assessments undertaken pursuant to paragraph 15. The report to the Court shall address, *inter alia*:

- (a) the Monitor's activities;
- (b) observed or substantiated lapses in the County's compliance with the Stipulation and Order;
- (c) the adequacy of the County's implementation plan and efforts; and
- (d) recommended steps or activities to improve the County's performance.

40. Prior to the submission of such reports to the Court, the Monitor shall meet with representatives of the County and the Government to discuss compliance issues, recommendations for corrective action, and other matters included in the Monitor's reports to the Court.

Releases

41. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in

full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the County from any civil or administrative monetary or injunctive claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, the Housing and Community Development Act, 42 U.S.C. § 5311, or under the common law or equitable theories of payment by mistake, unjust enrichment, constructive trust, misrepresentation, breach of contract, and fraud for the conduct alleged in the Relator's Complaint or the Government's Complaint.

42. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in full of the Settlement Amount, HUD releases the County, its officials, and employees from administrative liability pursuant to 2 C.F.R. Part 2424 and 24 C.F.R. Part 28 with respect to any and all allegations concerning the County's failure to comply with its certification to AFFH in connection with its participation in the CDBG and HOME programs through the date of execution of this agreement by HUD. This release does not extend to any conduct that occurs after such date.

43. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in full of the Settlement Amount, HUD agrees to refrain from instituting, directing, or maintaining any suspension or debarment action under 24 C.F.R. Part 2 against the County based on the conduct alleged in the Relator's Complaint or the Government's Complaint. Nothing in this Stipulation and Order precludes HUD from:

- (a) taking enforcement actions pursuant to the Fair Housing Act (42 U.S.C. § 3601-18), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. § 5309), their implementing regulations, or any other appropriate non-discrimination or equal opportunity law or regulation, including, but not limited to, limiting future grant awards; or
- (b) taking action against entities or persons, or for conduct and practices, for which claims have been reserved in paragraph 46.

44. The County agrees to the following:

- (a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the County, and its present or former officers, directors, employees, shareholders, and agents in connection with:
 - (i) the matters covered by this Stipulation and Order;
 - (ii) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation and Order;
 - (iii) the County's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation and Order (including attorneys' fees);
 - (iv) the negotiation and performance of this Stipulation and Order;

- (v) the payment that the County makes to the United States pursuant to this Stipulation and Order and any payments that the County may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to collectively as "Unallowable Costs").
- (b) Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the County, and the County shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- (c) Treatment of Unallowable Costs Previously Submitted for Payment: The County further agrees that within 90 calendar days of the entry of this Stipulation and Order it shall identify any Unallowable Costs included in payments previously sought by the County from the United States. The County agrees that the United States, at a minimum, shall be entitled to recoup from the County any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the County regarding any Unallowable Costs included in payments previously sought by the County, or the effect of any such Unallowable Costs on the amount of such payments.
- (d) Nothing in this Stipulation and Order shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the County's books and

records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

45. The County agrees to release the United States, its agencies, departments, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated), that the County has asserted, could have asserted, or may assert in the future against the United States or its agencies, departments, employees, servants, and agents related to the matters covered by the Government's Complaint, and the United States' investigation and prosecution thereof and this Stipulation and Order.

46. Notwithstanding the releases given in paragraphs 41 and 43, or any other term of this Stipulation and Order, the United States does not release or discharge the County, including the County's employees, agents, representatives, subdivisions, and agencies, from:

- (a) any liability arising under the Internal Revenue Code, Title 26 of the United States Code, and the regulations promulgated thereunder;
- (b) except as explicitly stated in this Stipulation and Order, any administrative liability, including the suspension and debarment rights of any federal agency;
- (c) any liability to the United States (or its agencies) for any conduct other than the conduct alleged in the Government's Complaint; or
- (d) any obligations created by this Stipulation and Order.

Miscellaneous Provisions

47. This Stipulation and Order is intended to be for the benefit of the parties to this Stipulation and Order only, and by this instrument the parties to this Stipulation and Order do not release any claims against any other person or entity, except as expressly provided by this Stipulation and Order.

48. None of the amounts that the County must pay pursuant to paragraphs 2, 3, 4, 5, 33(h), or 38, except to the extent specified in those paragraphs, shall come from funds received by the County from any federal programs, grants or contracts, and the County certifies and warrants that such payment is not being and shall not be made from any such federal funds.

49. The County will retain all material records relating to the conduct alleged in the Government's Complaint in their original form for no less than six (6) years after the Court's entry of this Stipulation and Order. Before the expiration of the six-year period and before disposing of any records covered by this paragraph, the County will consult with the United States Attorney's Office for the Southern District of New York concerning the continuing need for preserving such records. The County shall make such records, subject to redactions of privileged material, available to the United States upon written request.

50. Each party to this Stipulation and Order shall bear its own legal and other costs incurred in connection with this matter, including costs incurred in connection with the preparation and performance of this Stipulation and Order, except as provided in paragraph 4.

51. This Stipulation and Order is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute arising between and among the parties under this Stipulation and Order as it relates to this action will be the United States District Court for the Southern District of New York.

52. This Stipulation and Order sets forth the entire agreement and understanding among the parties, and fully supersedes any and all prior agreements or understandings among the parties pertaining to the subject matter hereof.

53. With the exception of modifications made by the Monitor pursuant to paragraph 15, this Stipulation and Order may not be supplemented, modified, canceled, or waived or otherwise altered in any way, in whole or in part, except in writing, by the United States and the County.

54. The undersigned representatives of the parties certify that they are authorized by the parties to enter into and consent to the terms and conditions of the Stipulation and Order, and to execute and bind the parties to it. In particular, the individuals signing this Stipulation and Order on behalf of the County represent and warrant that they are authorized by the County Executive to execute this Stipulation and Order, subject to final approval of the Stipulation and Order by the County Legislature as set forth in paragraph 55. The United States and HUD signatories represent and warrant that they are signing this Stipulation and Order in their official capacities.

55. This Stipulation and Order is subject to and conditioned upon:

- (a) approval by a simple majority of the County's Board of Legislators; and
- (b) approval of a Bond Act in the amount of \$32.9 million by a two-thirds majority of the County's Board of Legislators.

56. In the event that the County's Board of Legislators fails to provide the necessary approvals within forty-five (45) calendar days of the Court's entry of this Stipulation and Order, the Stipulation and Order shall be null and void. In such an event, trial of this action shall proceed at the Court's earliest convenience.

57. Subject to and upon receipt of the Settlement Amount, the Relator's Complaint and the Government's Complaint shall be dismissed with prejudice, with each party to bear its own attorneys' fees and costs, except as provided in paragraph 4. The dismissal of this action shall be subject to paragraph 46.

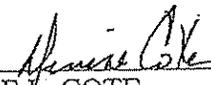
58. Notwithstanding any other provisions of this Stipulation and Order, this Court shall retain exclusive jurisdiction over this Stipulation and Order, including, but not limited to, any application to enforce or interpret its provisions, and over each party to the extent its obligations herein remain unsatisfied.

59. Each party and signatory to this Stipulation and Order represents that it freely and voluntarily enters in to this Stipulation and Order without any degree of duress or compulsion.

60. This Stipulation and Order may be executed in one or more original, facsimile or PDF counterparts, each of which constitutes an original and all of which constitute one and the same agreement. For purposes of this Stipulation and Order, signatures transmitted by facsimile or PDF shall constitute acceptable, binding signatures.

61. The effective date of this Stipulation and Order is the date on which this Stipulation and Order is entered by this Court.

SO ORDERED:

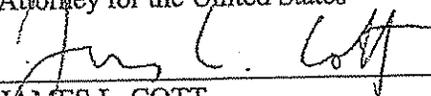


DENISE L. COTE
UNITED STATES DISTRICT JUDGE

August 10, 2009

Dated: New York, New York
August 7, 2009

LEV L. DASSIN
Acting United States Attorney for the
Southern District of New York
Attorney for the United States

By: 

JAMES L. COTT
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Dated: Washington, D.C.
August , 2009

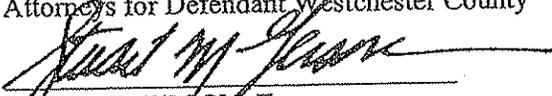
UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

By: _____

RON SIMS
Deputy Secretary for the U.S. Department of
Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dated: Washington, D.C.
August 7, 2009

EPSTEIN BECKER & GREEN
Attorneys for Defendant Westchester County

By: 

STUART GERSON, Esq.
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Dated: White Plains, New York
August 7, 2009

WESTCHESTER COUNTY

By: 

ANDREW SPANG
Westchester County Executive
148 Martine Avenue
White Plains, New York 10601
Telephone: 914-995-2900
Fax: 914-995-3372

Dated: New York, New York
August _____, 2009

LEV L. DASSIN
Acting United States Attorney for the
Southern District of New York
Attorney for the United States

By: _____
JAMES L. COTT
SEAN C. CENAWOOD
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Dated: Washington, D.C.
August 6, 2009

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
By: 
RON SIMS
Deputy Secretary for the U.S. Department of
Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dated: Washington, D.C.
August _____, 2009

EPSTEIN BECKER & GREEN
Attorneys for Defendant Westchester County
By: _____
STUART GERSON, Esq.
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Washington, D.C. 20037
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Fax: 202-861-3540

Dated: White Plains, New York
August _____, 2009

WESTCHESTER COUNTY
By: _____
ANDREW SPANO
Westchester County Executive
148 Martine Avenue
White Plains, New York 10601
Telephone: 914-995-2900
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HOUSING DEVELOPMENT

AFFIRMATIVE FAIR HOUSING MARKETING PLAN REQUIREMENTS

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I. Overview

Westchester County requires the affirmative fair housing marketing of affordable housing units that affirmatively further fair housing (the “AFFH units”). This marketing will be conducted under a two-pronged approach so as to reach all potentially eligible households, especially those least likely to apply (“LLA”). The County will conduct its own marketing, under the Westchester County Affirmative Fair Housing Marketing Plan (the “Westchester County AFHMP”), and also will require that developers of housing developments work with the county-selected Marketing Consultant (see Section IV.A below) to prepare and implement a Housing Development Affirmative Fair Housing Marketing Plan (the “Plan”) for all specific housing developments. The purpose of the Plan is to ensure outreach to racially and ethnically diverse households. The Plan must include all of the required elements listed herein, and must receive the written approval of the County. Below are the requirements for the Plan.

II. Housing Development Identification

For each development funded by the County, the development-specific Plan must include the following information:

| | |
|--------------------------------|---|
| Owner | [Name] [Address] [Phone] [Email] |
| Developer | [Name] [Address] [Phone] [Email] |
| Sponsor | [Name] [Address] [Phone] [Email] |
| Property Manager | [Name] [Address] [Phone] [Email] |
| Housing Development | [Name] [Address] [Phone] [Email] |
| Marketing Agent | [Name] [Address] [Phone] [Email] |
| Number of Units to be Marketed | [Unit Breakdown] |
| Target Income | [% of Area Median Income ("AMI")] |
| Net Purchase/Rental Price | [Price range for each type of unit] |
| Construction Status | [Type; Target Dates for Construction, Marketing, Occupancy] |
| Census Tract | [Census Tract Numbers] |

| | |
|-----------------------------|---|
| Local Market Area (“LMA”) | [Description of LMA] |
| Marketing and Outreach Area | Westchester County, NY Putnam County, NY Rockland County, NY Fairfield County, CT New York City (five boroughs) |

III. Accessibility/Adaptability Policies

Below is a list of policies (based on the New York State Office of Fair Housing and Equal Opportunity (“OFHEO”) Marketing Plan Guidelines) to be used in formulating specific plans. The Plan should state or include:

- A. Of the total number of units, how many units are accessible and how many units are adaptable.
- B. A description of how requests for reasonable accommodations will be handled, who will be authorized to approve or deny any such requests, and an appeal process for denied reasonable accommodation requests.
- C. A statement noting whether the development has a Telecommunication Device for the Deaf (“TDD”) or an equally effective communication system available to the residents.
- D. A description of any procedures established to accommodate the hearing and sight impaired. (Examples of methods to be used might include readers, signs language, interpreters, and Braille materials.)
- E. State whether priority will be given for fully accessible units to persons who are in need of the special design features of an accessible unit, and if priority will be given first to those living in the complex and then to persons on the waiting list.
- F. A statement that before accessible units are temporarily rented to persons who do not need the special design features, whether there have been diligent marketing efforts to market the units to special need persons, and how those efforts are to be documented.
- G. For those rental developments including such units, whether marketing efforts will continue after rental of units to someone who does not need the special design feature.
- H. State whether lease clauses will be included to require non-special needs occupants to relocate to another unit in the building if the unit is needed by a special needs person.

- I. A description of the policies and procedures that will be used to verify an applicant's disability and noting such information will be limited to only that which is needed to establish eligibility. In developing such policy, the Plan should be in accordance with the Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Modifications Under the Fair Housing Act (March 5, 2008) where, among other provisions, the housing provider should inquire into the nature of the disability only to the extent necessary to determine the reasonableness of a particular accommodation.
- J. A statement that verification will be required only after a prospective tenant or homeowner has asked that his or her disability be considered in selection for an accessible or adaptable unit.
- K. A description of any policy which permits persons with disabilities to have service and/or companion animals.
- L. A description of unit choice options available to persons with disabilities as those expected to be given to other persons applying for the housing units, e.g., an offer for both first- and second-floor apartments.

IV. Marketing Consultant and Marketing Agent

- A. To promote uniformity, efficiency, and oversight, the County will select a Marketing Consultant in an RFP or RFQ process. The Developer will work in cooperation with the Marketing Consultant.
 - 1. The Marketing Consultant will centralize marketing functions of the AFFH units, as described in greater detail below.
 - 2. The Marketing Consultant will take primary responsibility for drafting each Plan and submitting it to the County for approval.
 - 3. The Developer will contribute a fee, commensurate with the size of the development, toward the cost of the Marketing Consultant.
 - 4. The Developer may supplement the Marketing Consultant's outreach activities and other activities as appropriate.
- B. The Developer may hire and/or designate a Marketing Agent, a firm or individual, to handle determinations and tenant selection procedures. Developers will not be required to hire a Marketing Agent. Any individuals involved in counseling and qualifying residents shall not be involved in marketing activities and the selection of residents. The Marketing Agent may also be the Property Manager, as appropriate. The Plan must be specific with regard to the role and responsibility of the Developer, the Marketing Agent, if any, and/or the Property Manager, if any.

V. Direction of Marketing Activities

- A. The Plan must define the Local Market Area (“LMA”) which shall encompass a population of between 5,000 to 50,000, depending upon population density; or comprise a 1-2 mile radius surrounding the Housing Development site. The Plan shall list the census tracts within the LMA, and identify the racial/ethnic characteristics of the LMA population using relevant 2010 U.S. Census data obtained from <http://www.census.gov/> or <http://www.westchestergov.com/planning/research/default.htm>. The U.S. Department of Housing and Urban Development (“HUD”) regional office is available to provide technical assistance to the Marketing Consultant in performing the requisite demographic analysis.
- B. The Plan must include an appendix with detailed demographic characteristics of the LMA, and a narrative within the Plan describing the LMA including a list of all Census tracts and municipalities included in the LMA; the total number of persons in the LMA; and of the total LMA population the number and percentage of each racial and ethnic population within the LMA. The Plan should specifically provide both the number and percentage of persons identified as White, African American or Black, Asian, and Hispanic/Latino, as defined by the U.S. Census.
- C. The Plan must identify each racial and/or ethnic population with the lowest percentages in the LMA. These are the populations which should be determined to be the least likely to apply for the new AFFH units covered by the Plan.
- D. The Plan must identify the target market for the units in terms of the income groups to be eligible for the AFFH units as households whose total gross household income does not exceed a certain percentage of the Westchester County AMI.
- E. The Marketing and Outreach Area for the AFFH units must include Westchester County and all contiguous counties which include: Putnam County and Rockland County in New York, Fairfield County in Connecticut, and the five (5) counties which comprise New York City. The total population according to the 2010 Census in this 9-county Marketing and Outreach Area was 10,452,472, with the following ethnic and racial breakdown: 5,248,477 (50.2%) White; 2,365,353 (22.6%) African American or Black; 1,153,563 (11.0%) Asian; and 2,758,577 (26%) Hispanic or Latino. (NB: As above, the U.S. Census counts “Hispanics” as “of any race,” meaning there is duplicate counting of the population.)

VI. Marketing Program

- A. In accordance with HUD’s Handbook 8025.1 “Implementing Affirmative Fair Housing Marketing Requirements,”¹ no later than 90 days prior to the commencement of any marketing activities, the Plan must provide that the

¹ Available at <http://www.hud.gov/offices/adm/hudclips/handbooks/fheh/80251/index.cfm>.

Developer (directly or through the Marketing Consultant) must submit to the Westchester County Department of Planning a notice of intent to begin marketing. This notice should be in writing and state the date on which the applicant proposes to commence marketing activities. Marketing may commence up to six months or more prior to expected occupancy of a Housing Development, but no later than three months (90 days) prior to the expected occupancy.

- B. The Plan must provide that marketing for the AFFH units will comply with the requirements set forth in this document, and with applicable New York State, federal and local fair housing requirements. All advertising for all units will be consistent with the Fair Housing Advertising Regulations at 24 CFR 109 and the Fair Housing Act Regulations at 24 CFR 100.75.
- C. The Plan will provide that the Marketing Consultant will affirmatively market the AFFH units to households whose total incomes are at or below the specific income groups which are expressed as a percentage of the Westchester County AMI, adjusted for household size. The maximum income limit for homeownership units is 80% AMI and the maximum for rental housing is 60% AMI. However, the Housing Development may serve a range of incomes lower than these maximums.
- D. The Plan must outline special efforts to reach and engage those in the Marketing and Outreach Area who are least likely to apply. Plan activities should also include:
 - 1. Any Plan which includes homeownership AFFH units must provide that the potential home purchasers receive homeownership counseling and education through a HUD-certified housing counseling agency approved by the County. The Developer may also designate the housing counseling agency as its Marketing Agent to conduct selection and qualification activities in addition to the homeownership counseling and education, so long as such services are delivered in accordance with HUD regulations. Housing counseling staff involved in counseling and qualifying residents shall not be involved in marketing activities and the selection of residents.
 - 2. Marketing requirements may vary by development size with “small project” developments of 1-4 units included in the Westchester County AFHMP and all low-cost measures described below. Developers of larger developments must conduct the below described marketing activities as indicated.
 - 3. The Plan must also provide that any development which includes rental units, such units will be registered with <http://www.nyhousingsearch.gov> when marketing commences. This is a free service provided by New York State to advertise and search for affordable and accessible rental housing. The service is also available through toll-free, bilingual call center at 1-

877-428-8844. Representatives are available to assist with listings and searches.

4. The Plan shall include Spanish language marketing material to serve the Spanish-speaking population that is Limited English Proficient (“LEP”). To address the needs of LEP who do not speak either English or Spanish, and/or to assist the Spanish-speaking population beyond the capacity of the Developer or Marketing Consultant’s staff, the Marketing Consultant shall seek alternative resources to address the need, such as opening an account with a “Language Line” or alternative provider that provides 24/7 translators which can be accessed as needed by marketing staff to assist in serving all other LEP persons.

E. Commercial Media

1. Press Releases

For developments of five units or more, the Plan must provide that Marketing Consultant will issue press releases announcing available AFFH units that will be circulated to media outlets within the Marketing and Outreach Area, including but not limited to those listed in the below charts. The press releases should include: location of the units; total number of units available; bedroom sizes of the units; rents or purchase price; income requirements and limits; building amenities and features; and neighborhood amenities. The Marketing Consultant will be identified in the press release as the contact for inquiries.

Information about available units at different developments may appear in combined press releases, as appropriate; this is especially encouraged for small developments, including those with four units or less. Issuance of the initial press release will coincide with the commencement of the initial marketing period.

2. Advertising

The Marketing Consultant will coordinate advertising for all AFFH units so as to reduce overall costs. The Plan shall indicate the commercial media within the Marketing and Outreach Area to be used to advertise the availability of the housing so as to ensure outreach to racially and ethnically diverse households from groups deemed to be least likely to apply for the units in question. In drafting the Plan, the Marketing Consultant shall consider the outlets listed below in making determinations about where to advertise. In making such determinations with respect to general population media, the Marketing Consultant shall analyze data regarding the readership/audiences of media outlets within the Marketing and Outreach Area, and advertise in a manner that most effectively reaches the LLA population; this includes a determination that

any general market media selected do not diminish the effect of targeted marketing to the LLA population. The frequency of the ads should be indicated in the Plan. Information about available units at different developments may appear in combined advertisements, as appropriate in those cases where the LLA population is identical for those developments; this approach is especially encouraged for small developments.

For developments of fewer than five units, the Plan must provide whether the Marketing Consultant will use commercial media. If the Marketing Consultant does not intend to use any commercial media, the Plan should indicate the reasons for not using such media.

3. Newspapers/Publications to be considered

a. General Population Newspapers/Publications

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| <p>All Counties in Market and Outreach Area</p> | <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| <p>New York City (All boroughs)</p> | <p><i>Metro</i> or <i>AMNY</i>, a free daily newspapers serving the five boroughs of New York City.</p> <p><i>Newsday</i>, a daily Long Island and New York City newspaper with a circulation of over 300,000 available throughout the New York metropolitan area.</p> |
| <p>Fairfield County</p> | <p>The <i>Norwalk Hour</i>, an independent daily in the Norwalk, CT area with a focus on real estate listings.</p> <p>The <i>Stamford Advocate</i>, a daily newspaper with a stated market area of lower Fairfield County with a daily real estate section.</p> |
| <p>New York City (Bronx)</p> | <p>The <i>Riverdale Press</i>, <i>The Bronx News</i>, <i>Co-Op City Times</i>, <i>Norwood News</i>, <i>Parkchester News</i>, and/or the <i>Mott Haven Herald</i>, Bronx local weekly newspapers.</p> <p><i>Newsday</i>, a daily Long Island and New York City newspaper with a circulation of over 300,000 available throughout the New York metropolitan area.</p> |
| <p>Putnam County</p> | <p>The <i>Putnam Examiner</i>, local weekly publication covering Putnam County.</p> <p>The <i>Brewster Standard</i>, the <i>Putnam County Courier</i> (Carmel), and/or the <i>Putnam County Press</i> (Mahopac),</p> |

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| | <p>Putnam County local weekly newspapers.</p> <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| Rockland County | <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> <p><i>Rockland Times</i> – a weekly newspaper serving Rockland County <i>Rockland Review</i> – a weekly newspaper serving Rockland County.</p> <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| Westchester County | <p><i>Patch</i>, an online community-specific news and information platform providing local coverage electronically covering the Local Market Area.</p> <p>The <i>Pennysaver</i>, a weekly paper delivered free to all households in the Marketing and Outreach area; contains a real estate section.²</p> <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> |

² The *Pennysaver* is published to local markets throughout the Marketing and Outreach Area and should be utilized wherever it is practical.

b. Publications to be considered that specifically target the LLA populations³

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| <p>Fairfield County</p> <p>African American</p> | <p><i>Inquiring News</i>, New England’s largest African American newspaper, covering Connecticut, including Fairfield County.</p> <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Fairfield County</p> <p>Hispanic</p> | <p><i>El Sol News</i>, a Spanish-language newspaper published in Stamford, CT, distributed in southern-Fairfield County and Westchester County.</p> <p><i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> |
| <p>New York City (all boroughs)</p> <p>African American</p> | <p><i>Amsterdam News</i>, historic weekly newspaper published in Harlem, with large African American following in New York City, especially Manhattan.</p> <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> <p>The <i>Black Star News</i>, weekly newspaper with on-live edition published in Manhattan.</p> <p><i>Our Time Press</i>, a weekly newspaper published in Brooklyn with African American following, especially Brooklyn.</p> <p><i>Caribbean Life</i>, New York City’s weekly Caribbean community weekly newspaper serving the New York area.</p> |
| <p>New York City (all boroughs)</p> <p>Asian</p> | <p><i>World Journal</i>, a Chinese language daily newspaper covering news of interest to the Chinese community in New York City, particularly New York County.</p> <p><i>Sing Tao Daily</i>, the second largest Chinese daily newspaper published in New York City; markets to the Chinese immigrant community in communities with high concentrations of Chinese immigrants (e.g., Chinatown).</p> |

³ This list may be updated and expanded over time.

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| <p>New York City (Manhattan/ Brooklyn/ Queens)</p> <p>Asian</p> | <p><i>Newsletter of the Asian American Federation of New York</i>, which is distributed through member agencies in Manhattan, Brooklyn and Queens.</p> |
| <p>New York City (all boroughs)</p> <p>Hispanic</p> | <p><i>Hoy NY</i>, a Spanish-language daily newspaper, serving the New York metropolitan area, including Westchester.</p> <p><i>El Diario NY</i>, Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> |
| <p>Putnam County</p> <p>African American</p> | <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Putnam County</p> <p>Hispanic</p> | <p><i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> <p><i>El Aguila del Hudson Valley</i>, a bi-weekly publication geared to the Hispanic/Latino community; “the only Spanish and English newspaper in New York”; published in Wappinger’s Falls, it serves Dutchess, Putnam, and Westchester counties.</p> |
| <p>Westchester County</p> <p>African American</p> | <p>The <i>Westchester County Press</i>, a weekly newspaper that covers African American news throughout Westchester County.</p> <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Westchester County</p> <p>Asian</p> | <p><i>Newsletter of the Organization of Chinese Americans</i>, which is distributed throughout Westchester County.</p> |
| <p>Westchester County</p> <p>Hispanic</p> | <p><i>El Sol News</i>, a Spanish-language newspaper published in Stamford, CT, distributed in southern-Fairfield County and Westchester County.</p> |

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| | <p><i>Hoy NY</i>, a Spanish-language daily newspaper, serving the New York metropolitan area, including Westchester.</p> <p><i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> <p><i>El Aguila del Hudson Valley</i>, a bi-weekly, bilingual, free publication targeted to the Hispanic/Latino community, published in Wappinger’s Falls, serving Dutchess, Putnam, and Westchester counties.</p> |
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For newsletters and media that do not publish explicit ads, the Plan must state that press releases and news stories will be provided. Any ad or announcement should include: location of the units; total number of units available; bedroom sizes of the units; rents or purchase price; income requirements and limits; building amenities and features; and neighborhood amenities. Contact information should also be provided for inquiries, obtaining an application and/or additional information. Information about available units at different developments may appear in combined ads or announcements, as appropriate in those cases where the LLA population is identical for those developments.

The Plan must provide that all print materials produced by the Developer or the Marketing Consultant will include both the Equal Housing Opportunity (“EHO”) logo and, where applicable, the International Accessibility logo, which can be found at <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm> and <http://nysdhcr.gov/Forms/FairHousing/>. The HUD logo website provides guidance on size and use of the EHO logo.

The Plan must further provide that draft ads and announcements will be submitted to the Westchester County Department of Planning one month before marketing is to begin. The County may comment on any draft press release, ad or announcement.

4. Radio and Television

The Plan must include that, for developments with five or more units, the Marketing Consultant will seek opportunities for radio and television coverage (via interviews, press releases, and news coverage) as frequently as possible beginning on the date of initial marketing period. The Plan will not require purchase of commercial time. Any press releases prepared should also be sent to all television and radio outlets listed below.

The Plan must also state that, for developments with five or more units, the Marketing Consultant will request that public service announcements be run on each of the municipal cable stations in the Local Market Area

and the Marketing and Outreach Area. The below listed outlets should be included:

- a. General population television networks: Local cable television (Cablevision, Time Warner, RCN, RNN, News 12, NY1 and others that may be identified in the Plan) and regional/ network television (local CBS, NBC, ABC, FOX, and CW affiliates).
- b. Radio stations: Local (WFAS, WHUD, WVOX, WVIP) and regional/network resources (WINS, WCBS, and others that may be identified in the Plan) throughout the Marketing and Outreach Area are to be utilized.
- c. Additionally, the Plan must anticipate that the Developer or Marketing Consultant will seek radio and television coverage with stations that focus on the LLA populations, including the following:

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| <p>Marketing and Outreach Area</p> <p>African American</p> | <p><i>Black Entertainment Television (“BET”).</i></p> |
| <p>New York City (Bronx)</p> <p>African American/ Hispanic</p> | <p><i>BronxNet</i>, local cable television network covering the Bronx, NY.</p> |
| <p>New York City (all boroughs), Rockland County, Westchester County</p> <p>Hispanic</p> | <p><i>Telemundo</i>, Channel 47, NYC Hispanic television network</p> <p><i>Univision</i>, Channel 41 (WXTV-NY), Univision’s Spanish language television network broadcasting from Teaneck, NJ, to New York City and Westchester and Rockland counties.</p> <p><i>Univision Radio WADO</i> (1280 AM), <i>Radio La Kalle</i> (105.9 FM), and <i>WQBU</i> (92.7 FM), Univision’s Spanish-language radio outlets in NYC, both AM and FM.</p> <p><i>La Mega</i> (97.9 FM), Latin music, news, and culture radio station broadcast from Manhattan to New York City, as well as Westchester, and Rockland counties. (Hispanic/Latino).</p> |

F. Web-Based Media

The Plan must further anticipate that the Marketing Consultant will seek Web-Based media coverage with sites that focus on the LLA populations, including the following:

1. Bronx News Network, a community-based website focusing on local Bronx news (<http://www.bronxnewsnetwork.org>) (African American and Hispanic/Latino populations targeted);
2. Asian Community Online Network (<http://www.acon.org>);
3. Craigslist;
4. The Disability Network (<http://www.dnny.net>);
5. Able Newspaper (<http://www.ablenews.com>), which focuses on people with disabilities.

G. Other Web-Based Platforms

1. Centralized Intake System: The Plan must include steps to undertake specific outreach to persons interested in ownership and rental of AFFH units who have signed up via the Westchester County Centralized Intake System (the “List”), available at <http://homes.westchestergov.com/homeseeker-opportunities> (or its successor sites). The Marketing Consultant must request a download of the contact information of all who have signed up on the List two-weeks prior to initiation of the marketing period. The County will provide the List with the contact information of all those on the List at that time, or within one week of such request. The List may include both email and regular mailing addresses as provided by those who have signed up on the List. The Plan must provide that the Marketing Consultant will notify all persons on the List provided by the County of the available AFFH units and direct them to sources of additional information. The Marketing Consultant will provide the County with copies of the materials provided to all potential applicants, including marketing and outreach materials.
2. County-run website for all AFFH opportunities: The Plan should address provision of marketing materials to the County for posting on the County’s housing website featuring available affordable homes.
3. Development-specific sites: For Housing Developments of 50 or more units, the Plan must provide that the Developer or Marketing Consultant will create a Housing Development-specific website to provide information on the Housing Development and the community or neighborhood in which the development is located. All marketing information must be posted, providing information on the site, residential

units, amenities, income guidelines and how to access an application. Such site must include the Fair Housing Logo and also contain information or links to fair housing information including contact information and sites for how to file a fair housing complaint with the Westchester County Human Rights Commission (“HRC”) and HUD.

4. Other websites: The Plan must describe expected efforts by the Developer or Marketing Consultant to encourage community-based organizations, advocacy groups, and libraries to include on their websites links to the Centralized Intake System website and Housing Development-specific websites. This request may be made in the letter sent to community contacts. For developments of fewer than 5 units, the development may be included in broader outreach that the Marketing Agent may be conducting which includes other small projects.

H. Brochures, Signs and Leaflets and HUD’s Fair Housing Poster

1. The Plan must provide that a temporary sign, as required by the County or other development funding sources, if consistent with and permitted by any local sign ordinance, will be erected. The sign to be erected at the Housing Development site during construction should list all funding sources, the development team, and contact information to obtain an application, and must include the EHO logo and, where applicable, the International Accessibility logo. The EHO and International Accessibility logo on the sign must be of a size at least equal to the largest of the other logos to be included. The sign is to be placed on the construction site at the commencement of construction. A draft or photo of the sign, if any, will be submitted to the Westchester County Departments of Planning for comment prior to start of construction.
2. The Plan must describe development and distribution of leaflets and brochures which are to be produced in English and Spanish. Distribution should include circulation to the organizations and community-based groups serving LLA populations. The Plan should provide that the materials will describe the name and location of the Housing Development; the number of units available; the size and purchase prices or monthly rental cost of the units; income requirements; a list of building features and amenities; a community profile with resources and features; as well as contact information for obtaining an application and/or additional information. The brochures should include information about the related cost of owning or renting a unit, including property taxes, HOA or common charges for homeownership or tenant paid utilities for rental units. The brochure or other information should also describe nearby amenities such as the proximity of schools, religious institutions, shopping, transportation, and public facilities. Where feasible, the materials should also include graphics and floor plans. Drafts of leaflets and brochures, are to be submitted to the Westchester County Department of Planning prior

to initiation of the marketing period for comment. These marketing materials are to be distributed through the contacts identified in the Plan, which should include those contacts listed in appendices for the LLA population, made available at the Developer's and/or Marketing Consultant's Office and/or Marketing Office (if applicable), as well as in information boxes to be available on-site at developments of more than 50 units.

3. The Plan must acknowledge that a HUD Fair Housing Poster must be posted at any office or location where the Developer or Marketing Consultant will be providing information in person to potential applicants, which may include their Office(s), on site Marketing Office or other locations. The Fair Housing Poster is to also be posted in the Model Unit, if one is used for marketing purposes.
4. The Plan must provide that all brochures, leaflets, and signs publicizing the AFFH units will communicate the Developer's Equal Housing Opportunity Policy, will include the Equal Housing Opportunity logo, and, where applicable, the International Accessibility logo. The EHO and International Accessibility logos will be of a size at least equal to the largest of other logotypes used in the publication. If no other logotypes are used, the logos will be in accordance with HUD guidelines and will include the Fair Housing Statement. These items are to be submitted for review to the Westchester County Department of Planning along with the proposed Plan if available, or two weeks prior to printing such items in preparation to initiation of the marketing.

I. Social Media

The Plan must anticipate that information on the development will be posted on Developer or Marketing Consultant's Facebook and Twitter pages, if such exist. It is expected that Westchester County will also post links to such information on the County's Facebook and Twitter pages upon being provided with the materials in electronic format. In addition, the Plan must provide that the Marketing Consultant will request community contacts and other outlets to distribute information through their social networks. This aspect of the Plan must be evaluated and updated over time, as new forms of social media emerge and gain mainstream membership.

J. Community Contacts

1. In developing the Plan, the Developer or Marketing Consultant should review listings contained in Appendix C, D and E which includes homeownership counseling agencies which serve the Marketing and Outreach Area, community contacts that serve the disabled community, and groups and organizations providing services to racial and ethnic LLA populations, including professional associations and immigrant service

organizations. The Plan must include a description and listing of those community contacts serving LLA populations which the Developer or Marketing Consultant will contact in implementing such Plan.

2. The Plan should provide that homeownership counseling agencies and community contacts are to be engaged through letters, emails, and/or information packets that include leaflets/brochures, followed by personal contact conducted by the Developer or Marketing Consultant. Upon initiation of the Marketing period, a letter must be sent by regular mail or email to each of the homeownership counseling agency and community contact listed in the Plan requesting that they advise their constituencies and clients of the availability of these affordable AFFH homeownership units and encourage them to take advantage of this housing opportunity. The HUD Equal Housing Opportunity logo and, where applicable, the International Accessibility logo must appear on the letter to the community contacts.
3. The Plan must describe the Developer or Marketing Consultant's efforts to follow up with regard to each letter, such as calls to the contact person to explore the most effective outreach approach to their respective constituencies and clients. The Plan should also provide for how such efforts by the Marketing Consultant will be documented, including through maintenance of call logs and email correspondence.
4. Examples of such follow-up may include documentation provided by the Developer or Marketing Consultant that:
 - a. The community contact will follow up with a specific action;
 - b. The community contact provided a list of names for direct contact;
 - c. The community contact is hosting an event or meeting where the Developer or Marketing Consultant may present information to potential applicants, such as workshops in community centers, coffee hour at church service, etc.
5. The Plan should anticipate documentation secured by the Marketing Consultant of the outreach that each community contact has agreed to undertake. This should be retained in the Developer's or Marketing Consultant's marketing and outreach file. Documentation may include call logs to such groups, notes from phone conversations or meetings, letters and/or email correspondence documenting such contact and outreach activities.
6. The Plan shall also describe planned participation or outreach efforts in cultural festivals and other large events that are well-attended by members of the LLA populations throughout the Market and Outreach Area. Participation in these events can strengthen and enhance recruitment of

LLA populations such as distribution of informational brochures, showing floor plans, providing information about the community where the development is located, and other activities that may draw interest.

7. The Plan shall provide that the Marketing Consultant will conduct or participate in at least two information workshops in locations with concentrations of LLA populations within the Marketing and Outreach Area. The locations of the workshops will be reasonably accessible to public transportation.
8. The Plan shall provide that the Marketing Consultant, in consultation with municipal leadership and community contacts, will conduct outreach to local civic organizations, neighborhood associations, faith-based organizations, and other groups to describe the AFFH units and the value of diversity, and to encourage community members to welcome applicants and new residents of the AFFH units. These outreach activities should begin soon after all municipal and financing approvals for the development are in place, and should be coordinated with and complement the County's overall outreach efforts to promote the AFFH housing.
9. The Plan shall provide that the Marketing Consultant will encourage the community groups described in the preceding paragraph to hold open house sessions for prospective residents in which the municipality's current residents serve as ambassadors by offering testimonials about the community's assets and participating in or co-leading tours coordinated by the Marketing Consultant.

K. Employer- and Union-Based Marketing

The Plan should describe any outreach efforts and provision of marketing materials to the Marketing and Outreach Area to the following groups, if such outreach is determined to be helpful in marketing to LLA population: labor organizations, business associations or chambers of commerce, and large employers including hospitals, schools and colleges/universities. The Plan may include that the Marketing Consultant will offer to make an in-person presentation to employees and union members of local businesses.

L. Real Estate Associations

1. The Developer or Marketing Consultant will conduct outreach efforts to real estate trade organizations to inform them of the availability of AFFH units.
2. The Developer or Marketing Consultant should seek to have AFFH units for homeownership included in the Multiple Listing Service ("MLS"), if this is determined to be helpful in marketing to the LLA population.

M. Marketing Office

For developments of 50 units or more, the Developer is encouraged to consider leasing a marketing office in the retail core of the municipality and retain it throughout construction. The marketing office is intended to promote the housing by providing a physical location where potential homebuyers and rental tenants from the Marketing and Outreach Area can obtain information and applications for the AFFH units being built and marketed at the development, as well as information on the municipality and surrounding communities. If such office is proposed, it should include the display of aerial photos and visual depictions easily understood by prospective buyers, including site plans, site improvements, and unit floor plans. The Marketing Office must be accessible and a HUD Fair Housing Poster must be posted.

VII. Homeowner and Rental Tenant Application and Selection Procedures

- A. The Plan must provide that applications will be available in English and Spanish. Additionally, applications will be made available at the following physical locations: Developer’s Office, Consultant’s Office, or Marketing Agent’s Office (where applicable), and Marketing Office (where applicable). Links to the application or the electronic application form must be provided to the County so that it can be made available as a download from the County’s housing website. The Plan should anticipate posting the application on the Developer’s or Marketing Consultant’s website (if any); and the Housing Development-specific website, when required. A copy of the application should be provided to the County for comment prior to initiation of the marketing period. The application must be available upon initiation of the marketing program.
- B. The Plan must affirm that no processing or application fee will be charged to any applicant, apart from a modest processing fee to acquire a copy of each applicant’s current credit report. Any proposed fee must be included in the Plan submitted to the County for comment, and must be disclosed on the application.
- C. The Plan must provide a timeline for the full application and selection of residents, including a reasonable period from the date where the marketing program begins through to the application deadline, and include such schedule. The Plan should also state the instructions to applicants to submit applications to Developer or Marketing Agent, and that the location and deadline for application submission will be clearly noted in all marketing materials and on the application itself.
- D. The Plan must specify the target income groups as expressed through use of the Westchester County AMI, as defined by HUD and adjusted for household size.
- E. The Application must request information regarding race/ethnicity, household composition and source of referral, but must also note that providing this information is voluntary and is requested for recordkeeping purposes only.

- F. The Plan must describe how applicants' income and asset information will be screened and certified by the Marketing Agent/Developer for income eligibility. Details to include in the description include documents applicants will be required to submit related to current income and asset documentation. Such documentation may include but not be limited to the following and as applicable:
1. Statement of Social Security benefits from the Social Security Administration;
 2. Statement of pension benefits;
 3. Statement of annuity payments;
 4. Three months of all bank, credit union and investment statements;
 5. Statement of retirement fund accounts (e.g., 403(b), 401(k));
 6. One month's most recent pay stubs;
 7. Three previous years of federal tax returns with all schedules and W-2s;
 8. Documentation of child support, if applicable.
- G. The Plan must explain how this documentation will be used for prospective homebuyers, to determine: whether the applicant has sufficient assets to cover the down payment and closing costs, and whether the applicant has sufficient income to carry the debt service on the mortgage, real estate taxes, common charges, and related costs.
- H. For prospective rental tenants, the Plan must explain how this documentation will be used to determine whether they have adequate income to cover the rent.
- I. The Plan must state that all applicants for ownership units must demonstrate that they have completed a HUD-certified homeownership counseling program in order to be determined eligible. Further, the Plan should provide that if the prospective purchaser has not completed such program, he or she will be directed to an appropriate not-for-profit housing agency to enroll in the program for homeownership and, if appropriate, landlord/tenant counseling.
- J. The Plan must describe the Developer's or Marketing Agent's procedure to receive, date-stamp, number, and log each application; and enter contact and receipt information in a database created expressly for the development.
- K. The Plan must describe processing of the applications, including the review criteria for completeness and initial determination of eligibility.
- L. The Plan must describe next steps for entering the application into the selection lottery. For example, applications deemed preliminarily eligible based on appropriate income for the household size, by the designated staff will then have that information along with their application number and contact information entered into the database and their application placed in a lottery.

- M. The Plan must also provide applicants who do not submit complete applications an opportunity to cure before the lottery takes place.
- N. The Plan must describe the steps to prepare and implement a public lottery, including the expected schedule to do so. The lottery should be conducted at a previously announced accessible public/community facility that is reasonably accessible to public transportation; at a date and time previously announced, by the Developer or Marketing Agent. All applicants should be informed of the date, time, and location of the lottery drawing, and invited and encouraged to attend. Included in the description of the lottery is the procedure to draw and announce those selected through the lottery. For example, each applicant's name will be announced as their name is drawn, and their information will be entered in a lottery database in sequential order.
- O. The Plan must provide for the method of notification of applicants of their status. For example, applicants may be notified of their lottery ranking by telephone and U.S. mail, or whatever other means of notification has been requested by the applicant and accepted by the Developer or Marketing Agent.
- P. The Plan must describe the steps to process the applications in lottery order, and that this work will be conducted by trained and experienced staff of the Developer or Marketing Agent. This description should explain the process to identify any information or documentation that is either missing or needs to be updated in the application, process to contact applicant to request such information, and timeframe the applicant must respond. For example, applicants are given seven days in which to provide this information.
- Q. The Plan must provide that the Developer or Marketing Agent will take steps to verify that the applicant understands the nature of the housing arrangements for which they have applied. Such understanding may be conveyed through use of a disclosure or acknowledgement form signed by the applicant. Such verification and acknowledgement will confirm that the applicant wants to pursue the application.
- R. The Plan must provide that all income and asset information submitted by the applicant, and verified pursuant to the County's guidelines, must be confirmed and certified by the Developer or Marketing Agent to the County.
- S. The Plan must describe steps to be taken if an applicant either withdraws or is deemed ineligible. For example, he or she will be informed of such by a letter from the Developer or Marketing Agent of their status as ineligible or acknowledgement of withdrawal.
- T. The Plan must also describe disposition of applications submitted after the application deadline or later, after the lottery is conducted. For example, such applicants could be added to the end of the lottery list in the order their application is received.

- U. In addition to the above, the Plan must describe steps and timeline to communicate with applicants to secure any additional documentation, and confirm their continued interest in purchasing or renting the AFFH unit. For example, applicants can be given five days from notification of lottery ranking to confirm that they are interested in pursuing the purchase or rental of the units; an additional seven days to meet with Developer or Marketing Agent to determine eligibility; and an additional seven days to submit additional documentation if needed to determine if they qualify.
- V. The Plan must describe the procedure that will be used to contact applicants determined to be eligible to arrange for unit selection and the purchase or leasing of the unit. In the case of home purchase, the Plan should detail information and assistance that will be made available to the buyers in order to secure a mortgage. This activity may be completed by the housing counseling agency which is providing the homebuyer education and counseling for the development's prospective buyers.
- W. The Plan must detail what will be done with the applications of any qualified applicants in excess of the number of available units. For example, they could be put on a waiting list in the order in which their names were selected during the lottery, and on a first come, first served basis after all the lottery-drawn names have been exhausted, as provided in the above; or receive notification of future marketing for AFFH units.
- X. Additional criteria for which applicants may be screened must be described in the Plan, and may include the following, as examples to be included in the Plan:
 - 1. Legal residency in the United States;
 - 2. Whether the applicant has a satisfactory rent payment history;
 - 3. Whether the applicant provides false information on his/her application;
 - 4. Whether the applicant has an unsatisfactory credit history;
 - 5. Provision of signed authorization allowing Marketing Consultant to obtain a credit report; and/or
 - 6. Failure to respond to a request for verification of information or for additional information within 14 days of such request.
- Y. The Plan must describe criteria for tenant applicants to be rejected, in addition to inadequate income to cover the rent. For example, applicants may also be rejected if any of the following exists:
 - 1. Previous housing evictions;
 - 2. History of lease violations involving repeated late payments, failure to pay rent, public disturbances, damage to the living unit or the property of others and/or physical or verbal attacks on others as documented by police reports;

3. Applicants or household members 18 years of age or older convicted of a drug-related offense;
 4. History of criminal offenses or disruptive behavior, specifically, offenses involving, but not limited to, violence, prostitution, burglary, arson, child pornography and pedophilia, being currently engaged in substance abuse or illegal drug use or trafficking.
- Z. The Plan must detail any other reasons an application may be rejected from consideration, which may include that the applicant does not meet the income, asset, or credit requirements or if the household size either exceeds or does not meet occupancy standards. An applicant who is rejected may appeal the decision to the Developer or Agent.
- AA. The Plan must explain efforts undertaken by the Developer or Agent to ensure the confidentiality of the information provided by applicants, especially with respect to sensitive and personal information including criminal records and child support payments.
- BB. The Plan must detail the process and procedure to notify rejected applicants in writing, which must include the grounds for the rejection. The applicant will be given 10 days from the date of the letter to request a meeting with the Developer or Agent to discuss and review the rejection. In the event that the applicant requests a meeting, such shall be scheduled for a mutually agreeable time within five business days of the request. The procedures should provide that all documents used in rejecting the applicant will be made available upon the applicant's request. The applicant may bring additional documentation to support their appeal of why they should not be denied occupancy. Factors that may be taken into consideration include, but are not limited to: evidence of rehabilitation or repair of the disqualifying act; length of time since the occurrence of the disqualifying act; the likelihood of the reoccurrence of the disqualifying act; evidence of income qualification; or evidence of additional income, savings, or other funds for homeownership qualification. The Plan must state that the appeal meeting will be documented by either written notes and/or voice recording. A written decision of the appeal will be provided to the applicant within 5 days of the meeting.

VIII. Assessment of Marketing Efforts

- A. The Plan must describe steps to be taken by the Developer or Marketing Consultant to monitor and evaluate, on an ongoing basis, the effectiveness of the marketing efforts to reach LLA populations. Such monitoring may result in modifications or adjustments to the Plan during the marketing period. Any changes must be communicated to the County, which may comment or advise the Developer or Marketing Consultant regarding such changes.
- B. In accordance with HUD's Handbook 8025.1, Chapter 2 (page 16), the Plan should describe the means by which the effectiveness of various components of

the AFHM Plan such as advertising methods and the outreach activities targeted toward the groups identified as LLA or the use of community contacts will be assessed. Indicators such as the anticipated racial/ethnic composition of the tenant populations or applicant pool are not to be used as indicators of effectiveness of the Plan under any circumstances. The Developer or Marketing Consultant is encouraged to use indicators based on good faith efforts, including the number of referrals by community organization; the number of visits to the site or walk-ins due to outreach or advertising; or the representation of persons identified as LLA as part of the potential purchaser or renter group in comparison to the percentage of that group within the housing market area.

- C. The Plan must describe collection and retention of data relating to race and ethnicity, household composition and source of referral from applications; inquiries, whether by phone, letter, email, or in person; referrals from community groups; and information provided by attendees at informational meetings conducted by the Developer or Marketing Consultant. Collection of this information will assist in determining whether the provisions of the Plan have been successfully implemented and how effectively the affirmative marketing program has helped attract potential tenants and purchasers of majority and minority groups. The data should be kept and maintained in a excel file, exportable database, or other electronic format for ease of analysis, and must be made available to the County for its review of the marketing efforts.
- D. The Plan must provide for remedial steps that will be taken if LLA populations are not well-represented as described above in section VIII.B. For example, the Developer or Marketing Consultant can request information from contact organizations in the Marketing and Outreach Area to aid in assessing the results and in developing a plan to achieve a higher representation of LLA populations in the applicant pool.
- E. Alternatively, the Developer or Marketing Consultant may develop other tools to assist in evaluation of a lower response, including preparation and distribution of a survey to those who inquired about the Housing Development, and were among the LLA population, and to community groups who serve the LLA populations. Such survey may ask questions that may help determine whether foreign language or minority-controlled media used are effective mechanisms for AFFH marketing; if the marketing materials effectively conveys to LLA purchasers the message that they are welcome to apply and will not encounter discrimination; the particular community contacts (and which ones) are advertising the availability of the affordable AFFH units effectively; and if members of the targeted groups are learning about the housing more through informal means/networks rather than commercial media. Such survey will assist in providing evaluation of the specific provisions of the Plan, and may be the basis for adjustments to the Plan.

IX. Future Marketing Activities

The Plan must detail ongoing marketing of the units once initial sale or lease of the Housing

Development has taken place.

- A. The initial and subsequent homeowner must ensure that any resale of their home is in accordance with the County requirements, including marketing of the property. In order to provide that the marketing is conducted in accordance with County requirements and the approved Plan for the property, the County-selected Marketing Consultant (or a successor to be chosen by the County through an RFP or RFQ process) will be authorized by the County to conduct marketing of such units and to determine income eligibility of the next owner. The homeowner must contract with the Marketing Consultant to provide the necessary services. The cost to be charged for such services will be approved by the County, but will not be in excess of costs typically charged by Real Estate firms for similar services. At a minimum, the marketing of the units will include notification of availability of the unit(s) to persons interested in ownership of AFFH units who have signed up via the Westchester County Centralized Intake System. The marketing of the unit may be included in broader outreach that the Marketing Consultant may be conducting which includes other small projects. All requirements for such resale will be contained in the Declaration of Restrictive Covenants filed on each ownership property, including setting of the resale price by the County and marketing of the unit.
- B. The initial and subsequent homeowner of 2-family, 3-family or 4-family homes must ensure that the leasing of accessory rental units are also in accordance with County requirements, including marketing of the rental units. In order to provide that the marketing is conducted in accordance with County requirements and the approved Plan for the property, the County-selected Marketing Consultant (or a successor to be chosen by the County through an RFP process) will conduct marketing of the rental unit and to determine income eligibility of the next tenant. The homeowner must contract with the Marketing Consultant to provide the necessary services. The cost to be charged for such services will be approved by the County, but will not be in excess of costs typically charged by Real Estate firms for similar services. At a minimum, the marketing of the units will include notification of availability of the unit(s) to persons interested in rental of AFFH units who have signed up via the Westchester County Centralized Intake System. The marketing of the unit may be included in broader outreach that the Marketing Consultant may be conducting which includes other small projects. All requirements for rental of the units will be contained in the Declaration of Restrictive Covenants filed on each ownership property, including setting of the rents by the County and marketing of the unit(s).
- C. The Plan for rental properties must describe ongoing marketing and application submission requirements. This will include the review and selection of tenants to occupy units upon any unit turnover and the maintenance of waitlists to ensure units targeted to lower-income groups continue to be available to households within that income group. Each rental development of five or more units must comply with the Plan approved by the County for that development.

X. Staff Experience and Instructions for Fair Housing Training

The Plan should include a biography and the relevant experience of the Developer, Marketing Consultant, and Property Manager or Marketing Agent in conducting Property Management and/or marketing activities for affordable housing developments.

- A. At a minimum the Developer, Property Manager or Marketing Agent should have three years of property management or sales experience in the affordable housing field. This experience must include conducting income eligibility of prospective tenants and/or potential homeowners and experience in affirmative fair housing marketing. If the person or firm does not have this experience, the County will assist in identifying a qualified agency.

- B. In accordance with HUD Handbook 8025.1, during the 90-day or more period prior to the commencement of taking applications or sales, all management or sales staff must be provided training in Federal, State and local fair housing laws, The County’s AFFH objectives and the approved Plan for the Housing Development. The Developer, Marketing Consultant, and Property Manager and/or Marketing Agent will instruct their employees and agents – in writing and orally – concerning nondiscrimination in housing. These employees and agents will attend workshops on fair housing as necessary. The specific civil rights laws and Executive Orders on which marketing and sales staff will be trained are the following:
 - 1. The Fair Housing Act and 24 CFR Part 100;
 - 2. Executive Order 11063 and 24 CFR Part 107;
 - 3. The Affirmative Fair Housing Marketing Regulations, 24 CFR 200, Subpart M;
 - 4. The New York State Human Rights Law;
 - 5. The Westchester County Fair Housing Law;
 - 6. Title VI of the Civil Rights Act of 1964;
 - 7. Section 504 of the Rehabilitation Act of 1973, as amended and 24 CFR Part 8;
 - 8. Westchester County’s Affirmative Fair Housing Marketing Plan.

The Developer, Marketing Consultant, Property Manager and/or Marketing Agent must make provision for and describe in the Plan all continuing education efforts and instructions regarding fair housing requirements and objectives will be a continuing part of the agenda of staff meetings and other activities related to the marketing and screening of applicants.

XI. Record Keeping

The Plan must outline retention records related to the marketing of the Housing Development, including:

- A. Copies of all advertising and records of publication dates.
- B. Up-to-date records including all applications for housing units; records documenting the selection process for residents of the Housing Development; resident information; and all records and documents selection or rejections.
- C. All application, inquiries and resident records shall include racial and ethnic data on all applicants and inquirers.
- D. Copies of all records shall be made available to the County's Planning Department for monitoring purposes, as scheduled and requested – either on-site monitoring at the Developer's, Marketing Consultant's, Property Manager's or Marketing Agent's Office, or submitted directly to the County.
- E. These records must be kept on file at the Developer's, Marketing Consultant's, Property Manager's and/or Marketing Agent's office, and at the Housing Development-specific Marketing Office, if applicable. If the Marketing Consultant's role in marketing the Housing Development is limited to the initial sale or lease of the Housing Development, the records should be transferred to the Developer's or Property Management Office at the conclusion of the marketing. These records must be retained for a minimum period of 6 years, in accordance with the New York State Records Law, after the issuance of a certificate of occupancy on a homeownership unit or for a rental Housing Development.

XII. Continued Compliance and Modification of the Plan

The Plan shall state that the Developer, Marketing Consultant, Property Manager and/or Marketing Agent, if applicable, are responsible for implementing the entirety of the Plan, as approved by the County. The Plan should also state that the Marketing Consultant, Developer, Property Manager and/or Marketing Agent further agree to comply with any changes required by County to the Housing Development Plan, as it may be amended from time to time to assure continued compliance with federal and state requirements. Any changes will require that the Developer submit an amended Plan to the County for approval. The Marketing Consultant, Developer, Property Manager and Agent will implement such amended on a going forward basis.

XIII. Signature

The Plan must be signed by an authorized official of the sponsoring or ownership organization, the Developer, the Marketing Consultant, and, if a Marketing Agent or Property Management agency is to be involved, by these entities as well. The signatories assume responsibility for the Plan's implementation and agree to make any changes which may be required to assure continued compliance with affirmative fair housing marketing regulations (CFR 200.620). These requirements are to be incorporated in any future agreements related to the sale or transfer

of the housing binding a new or subsequent owner.

XIV. Sample Appendices

- A. Summary Demographic Charts for the Local Market Area and the 9-County Marketing & Outreach Area
- B. Demographic Profiles of the 9-County Marketing and Outreach Area
- C. Homeownership Counseling Agencies for Marketing to General Populations, including LLA
- D. Community Contacts that Serve the Disabled Community
- E. Community Contacts for Marketing to LLA Populations
- F. Maps of Local Market Area and Marketing and Outreach Area
- G. Sample Letter to Contacts
- H. Sample Advertisement
- I. Applicant/Inquirer Datasheet
- J. Staff Affirmative Action Equal Opportunity Acknowledgement
- K. AFHMP Schedule

WESTCHESTER COUNTY

AFFIRMATIVE FAIR HOUSING MARKETING PLAN

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I. Overview

Westchester County (the “County”) requires the marketing of affordable housing units that affirmatively further fair housing (the “AFFH units”). This marketing will be conducted under a two-pronged approach to promote its fair housing efforts so as to reach all potentially eligible households, especially those least likely to apply (“LLA”). The County will conduct its own marketing, under the Westchester County Affirmative Fair Housing Marketing Plan (the “Westchester County AFHMP”), and also will require that developers of housing developments work with the County-selected Marketing Consultant to prepare and implement a Housing Development Affirmative Fair Housing Marketing Plan (the “Plan”) for all developments.

II. Marketing Consultant

- A. In consultation with local government leaders, the U.S. Department of Housing and Urban Development (“HUD”), and the local development community, the County will conduct an RFP or RFQ process to select an experienced housing counseling agency to serve as Marketing Consultant to assist in marketing the AFFH units. It would be appropriate to consider, in choosing a Marketing Consultant, whether the candidate has a record of successful outreach and placement of applicants who might be considered least likely to apply.
- B. The qualitative criteria to be used in evaluating applicants for the Marketing Consultant position should include previous experience with HUD, housing counseling, and affirmative marketing.
- C. Developers will contribute a fee, commensurate with the size of their developments, toward the cost of the Marketing Consultant.
- D. The County will contribute toward the cost of the Marketing Consultant by using funds in its Outreach and Education budget. The County should explore using additional amounts under the Settlement to support the efforts of the Marketing Consultant.

III. Fair Housing Marketing

The County will:

- A. Advertise the rights of all persons to fair housing and avenues to redress allegations of housing discrimination, including informing the public that complaints may be filed with the Westchester County Human Rights Commission (“HRC”) and HUD.
- B. Create and fund campaigns to broaden support for fair housing and promote the fair and equitable distribution of affordable housing in all communities including public outreach specifically addressing the benefits of mixed-income housing and racially and ethnically integrated communities. Such campaigns will include development of materials such as press releases, public services announcements (“PSAs”), brochures and other literature to be made available for wide distribution as appropriate. The press releases will be issued to all outlets included below in Section III.C. Other campaign items will be made available as part of the County Activities in Section V, including subsections D, I, J and M.
- C. Educate realtors, condominium and cooperative boards, landlords and municipalities with respect to fair and affordable housing activities. The County will reach out to these entities through their respective associations such as:
 - 1. Hudson Gateway Association of Realtors (the successor organization to the Westchester Putnam Association of Realtors, the Rockland County Board of Realtors and the Orange County Association of Realtors) which is one of the largest Realtor Associations in the nation
 - 2. Real Estate Board of New York
 - 3. Greater Fairfield Board of Realtors
 - 4. Westchester County Association and Business Council of Westchester
 - 5. Building & Realty Institute which services primarily Westchester/Mid-Hudson Valley (1,500 members); also serves as staff to the following organizations which also serve primarily Westchester/Mid-Hudson Valley:
 - a. The Apartment Owners Advisory Council
 - b. Cooperative and Condominium Advisory Council
 - c. Advisory Council of Managing Agents
 - 6. Council of New York Cooperatives & Condominiums
 - 7. Federation of New York Housing Cooperatives & Condominiums

8. Rent Stabilization Association of New York City
9. Landlords of Rockland County
10. 1199 SEIU NYC
11. Westchester Municipal Officials Association
12. Fairfield County
13. Putnam County
14. Rockland County
15. City of New York

IV. Affirmative Fair Housing Marketing

The County has developed this Westchester County AFHMP to promote and publicize AFFH units and ensure outreach to racially and ethnically diverse households in Westchester County and all contiguous counties, which include: Putnam County and Rockland County in New York, Fairfield County in Connecticut, and the five counties which comprise New York City, which includes areas that have large non-white populations (the “Marketing and Outreach Area”). Such outreach will be in conformance with HUD Handbook 8025.1 REV-2, which states in Section 2-2:

“PURPOSE OF THE AFHM PLAN. The Affirmative Fair Housing Marketing Plan is a marketing strategy designed to attract buyers and renters of all majority and minority groups, regardless of sex, handicap and familial status to assisted and insured rental projects and sales dwellings which are being marketed by an applicant.”

The County’s efforts will include marketing of AFFH units through County activities described below:

- A. Centralize the intake of potential homebuyers and renters for AFFH units through the use of a internet-based interest form, the Westchester County Homeseeker (the “Centralized Intake System” or the “List”), which collects contact information, racial and ethnic characteristics of the head of household, and household size and income information. The County requires that housing developers undertake specific outreach to persons interested in AFFH units who have signed up via the List.
- B. In the process of accessing the List to sign up on the County’s Homeseeker webpages, interested persons are provided with information for home buyer counseling, including HUD-certified housing counseling agencies and their contact information, and are given the opportunity to review current housing opportunities including community resources, location of employers in the area,

affordable housing developments in development, under construction, or completed as detailed in subsection III.F below.

- C. Use press releases, PSAs and other means to inform interested homebuyers and renters that they may sign up on the List, available at <https://www.westchestergov.com/homeseeker> (or its successor sites) to receive notification of AFFH housing units as they are being marketed. The press releases and announcements will include the Equal Housing Opportunity (“EHO”) logo and, where applicable, the International Accessibility logo, which can be found at <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm> and <http://nysdhr.gov/Forms/FairHousing/>. The HUD logo website provides guidance on size and use of the EHO logo.

The media outlets to which the County will issue press releases and announcements include:

1. Newspapers/Publications
 - a. General Population Newspapers/Publications

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| All Counties in Market and Outreach Area | <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| New York City (All boroughs) | <p><i>Metro</i> or <i>AMNY</i>, a free daily newspapers serving the five boroughs of New York City.</p> <p><i>Newsday</i>, a daily Long Island and New York City newspaper with a circulation of over 300,000 available throughout the New York metropolitan area.</p> |
| Fairfield County | <p>The <i>Norwalk Hour</i>, an independent daily in the Norwalk, CT area with a focus on real estate listings.</p> <p>The <i>Stamford Advocate</i>, a daily newspaper with a stated market area of lower Fairfield County with a daily real estate section.</p> |
| New York City (Bronx) | <p>The <i>Riverdale Press</i>, <i>The Bronx News</i>, <i>Co-Op City Times</i>, <i>Norwood News</i>, <i>Parkchester News</i>, and/or the <i>Mott Haven Herald</i>, Bronx local weekly newspapers.</p> <p><i>Newsday</i>, a daily Long Island and New York City newspaper with a circulation of over 300,000 available throughout the New York metropolitan area.</p> |

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| <p>Putnam County</p> | <p>The <i>Putnam Examiner</i>, local weekly publication covering Putnam County.</p> <p>The <i>Brewster Standard</i>, the <i>Putnam County Courier</i> (Carmel), and/or the <i>Putnam County Press</i> (Mahopac), Putnam County local weekly newspapers.</p> <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| <p>Rockland County</p> | <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> <p><i>Rockland Times</i> – a weekly newspaper serving Rockland County <i>Rockland Review</i> – a weekly newspaper serving Rockland County.</p> <p>The <i>Daily News</i>, a daily New York City newspaper with a circulation of over 630,000 available in the eight New York counties in the Marketing and Outreach Area.</p> <p>The <i>New York Post</i>, a daily New York City newspaper with a circulation of over 500,000 available in the eight New York counties in the Marketing and Outreach Area.</p> |
| <p>Westchester County</p> | <p><i>Patch</i>, an online community-specific news and information platform providing local coverage electronically covering the Local Market Area.</p> <p>The <i>Pennysaver</i>, a weekly paper delivered free to all households in the Marketing and Outreach area; contains a real estate section.¹</p> <p>The <i>Journal News</i>, a Westchester, Rockland and Putnam daily newspaper published by Gannett Westchester Newspapers, containing a daily real estate section, available in print and electronic formats.</p> |

¹ The *Pennysaver* is published to local markets throughout the Marketing and Outreach Area and should be utilized wherever it is practical.

b. Publications that specifically target the LLA populations²

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| <p>Fairfield County African American</p> | <p><i>Inquiring News</i>, New England’s largest African American newspaper, covering Connecticut, including Fairfield County.</p> <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Fairfield County Hispanic</p> | <p><i>El Sol News</i>, a Spanish-language newspaper published in Stamford, CT, distributed in southern-Fairfield County and Westchester County.</p> <p><i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> |
| <p>New York City (all boroughs) African American</p> | <p><i>Amsterdam News</i>, historic weekly newspaper published in Harlem, with large African American following in New York City, especially Manhattan.</p> <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> <p>The <i>Black Star News</i>, weekly newspaper with on-live edition published in Manhattan.</p> <p><i>Our Time Press</i>, a weekly newspaper published in Brooklyn with African American following, especially Brooklyn.</p> <p><i>Caribbean Life</i>, New York City’s weekly Caribbean community weekly newspaper serving the New York area.</p> |
| <p>New York City (all boroughs) Asian</p> | <p><i>World Journal</i>, a Chinese language daily newspaper covering news of interest to the Chinese community in New York City, particularly New York County.</p> <p><i>Sing Tao Daily</i>, the second largest Chinese daily newspaper published in New York City; markets to the Chinese immigrant community in communities with high concentrations of Chinese immigrants (e.g., Chinatown in NYC).</p> |

² This list may be updated and expanded over time.

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| <p>New York City (Manhattan/ Brooklyn/ Queens) Asian</p> | <p><i>Newsletter of the Asian American Federation of New York</i>, which is distributed through member agencies in Manhattan, Brooklyn and Queens.</p> |
| <p>New York City (all boroughs) Hispanic</p> | <p><i>Hoy NY</i>, a Spanish-language daily newspaper, serving the New York metropolitan area, including Westchester. <i>El Diario NY</i>, Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> |
| <p>Putnam County African American</p> | <p><i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Putnam County Hispanic</p> | <p><i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area. <i>El Aguila del Hudson Valley</i>, a bi-weekly publication geared to the Hispanic/Latino community; “the only Spanish and English newspaper in New York”; published in Wappinger’s Falls, it serves Dutchess, Putnam, and Westchester counties.</p> |
| <p>Westchester County African American</p> | <p>The <i>Westchester County Press</i>, a weekly newspaper that covers African American news throughout Westchester County. <i>Haitian Times</i>, a weekly newspaper serving the Haitian community in the New York metropolitan area, available in print and electronic format.</p> |
| <p>Westchester County Asian</p> | <p><i>Newsletter of the Organization of Chinese Americans</i>, which is distributed throughout Westchester County.</p> |
| <p>Westchester County Hispanic</p> | <p><i>El Sol News</i>, a Spanish-language newspaper published in Stamford, CT, distributed in southern-Fairfield County and Westchester County. <i>Hoy NY</i>, a Spanish-language daily newspaper, serving the New York metropolitan area, including Westchester. <i>El Diario NY</i>, a Spanish-language daily published in New York City with distribution throughout the Marketing and Outreach Area.</p> |

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| | <p><i>El Aguila del Hudson Valley</i>, a bi-weekly, bilingual, free publication targeted to the Hispanic/Latino community, published in Wappinger’s Falls, serving Dutchess, Putnam, and Westchester counties.</p> |
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2. Radio and Television

The County will seek opportunities for radio and television coverage (via interviews, press releases, and news coverage) The press releases prepared will also be sent to all television and radio outlets listed below.

The County will request that PSAs be run on each of the municipal cable stations in the County. The below listed outlets will be included:

- a. General population television networks: Local cable television (Cablevision, Time Warner, RCN, RNN, News 12, NY1 and others that may be identified in the Plan) and regional/ network television (local CBS, NBC, ABC, FOX, and CW affiliates)
- b. Radio stations: Local (WFAS, WHUD, WVOX, WVIP) and regional/network resources (WINS, WCBS, and others that may be identified in the Plan) throughout the Marketing and Outreach Area are to be utilized.
- c. Additionally, the Plan must anticipate that the Developer or Marketing Consultant will seek radio and television coverage with stations that focus on the LLA populations, including the following:

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| Marketing and Outreach Area African American | <i>Black Entertainment Television</i> (“BET”). |
| New York City (Bronx) African American/ Hispanic | <i>BronxNet</i> , local cable television network covering the Bronx, NY. |

| | |
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| <p>New York City (all boroughs), Rockland County, Westchester County Hispanic</p> | <p><i>Telemundo</i>, Channel 47, NYC Hispanic television network</p> <p><i>Univision</i>, Channel 41 (WXTV-NY), Univision’s Spanish language television network broadcasting from Teaneck, NJ, to New York City and Westchester and Rockland counties.</p> <p><i>Univision Radio WADO</i> (1280 AM), <i>Radio La Kalle</i> (105.9 FM), and <i>WQBU</i> (92.7 FM), Univision’s Spanish-language radio outlets in NYC, both AM and FM.</p> <p><i>La Mega</i> (97.9 FM), Latin music, news, and culture radio station broadcast from Manhattan to New York City, as well as Westchester, and Rockland counties. (Hispanic/Latino).</p> |
|--|---|

3. Web-Based Media

The County will seek web-based media coverage with sites that focus on the LLA populations, including the following:

- a. Bronx News Network, a community-based website focusing on local Bronx news (<http://www.bronxnewsnetwork.org>) (African American and Hispanic Latino populations targeted);
 - b. Asian Community Online Network (<http://www.acon.org>);
- D. Work in conjunction with local not-for-profit organizations and community organizations, to provide information about the availability and purpose of the Homeseeker webpage and the List, which may include participation in ethnic festivals and fairs and other events where interested persons will be provided with information on how to sign up. Where feasible, this may also include providing onsite access to the internet-based form.
- E. Work with each municipality included in the Marketing and Outreach Area to provide information about housing opportunities on their local networks and to their employees through requesting each to post information regarding housing opportunities on their websites, or other means of communications, including sharing of press releases, public services announcements, fliers and links to the County’s Homeseeker webpages.
- F. The County will maintain a website with general information about affordable housing, which will include:
- 1. Information about the types of documentation (financial or otherwise) generally required to apply for affordable ownership/rental units.
 - 2. Westchester County Income Limits for affordable housing.

3. Contact information for HUD-certified housing counseling agencies.
 4. Contact information for local fair housing agencies and organizations, including the HUD Office of Fair Housing and Equal Opportunity (“OFHEO”), the County’s Human Rights Commission (“HRC”) and Westchester Residential Opportunities (“WRO”).
 5. Contact information for the State of New York Mortgage Agency (“SONYMA”), which provides home mortgage financing.
- G. The County will maintain the Homeseeker website containing specific developments as they become available, which will include:
1. Information on all available units and housing developments (both rental and ownership), including location, size, and prices or rents for the available units;
 2. GIS maps of the location of each development showing schools, municipal and other local government offices, community facilities and services, availability of public transportation and a selection of other nearby features;
 3. Floor plans and unit layouts;
 4. Estimated dates that the AFFH units may become available for occupancy and any available marketing materials;
 5. Contact information for the Marketing Consultant and Developer for more information;
 6. Links to marketing material provided by the Marketing Consultant;
 7. A link to the application for the development including submission requirements and schedule for application processing and selection; which will be made available at the time it is made available by the Marketing Consultant through other marketing efforts;
 8. Links to the municipality within which the development is located;
 9. Links to the school district within which the development is located;
 10. Announcements and calendar of upcoming information sessions for the development;
 11. Announcements and calendar of upcoming tours of the communities where the AFFH developments are located;

12. The HUD Fair Housing Logo and the Accessibility Logo, where applicable, will be included.
- H. The County will publicize the general and specific websites to HUD-certified counseling agencies within the Marketing and Outreach Area, and instruct the agencies on how to assist potential applicants in submitting information to the Centralized Intake System and submitting applications for specific developments.

V. County Activities

Additional County activities in support of the marketing effort will include:

- A. Reviewing of marketing data collected by the Marketing Consultant, including information on the number of inquires and applications submitted for the development, the source of any referral, and the racial and ethnic data provided to the developer by the persons inquiring or applying for AFFH units.
- B. Monitoring the Marketing Consultant's efforts to conduct outreach to least likely to apply populations as determined by the housing development specific Plan.
- C. Taking steps to direct the Marketing Consultant to increase and/or re-evaluate outreach efforts if LLA populations are not well-represented in accordance with HUD's Handbook 8025.1, Chapter 2 (page 16). The AFHM Plan for any given development will:

“describe the means by which the effectiveness of various components of the AFHM Plan such as advertising methods and the outreach activities targeted toward the groups identified as LLA or the use of community contacts” will be assessed.

“Indicators such as the anticipated racial/ethnic composition of the tenant populations or applicant pool are not to be used as indicators of effectiveness of the Plan under any circumstances.”

The Marketing Consultant is “encouraged to use indicators based on good faith efforts, including the number of referrals by community organization; the number of visits to the site or walk-ins due to outreach or advertising; or the representation of persons identified as LLA as part of the potential purchaser or renter group in comparison to the percentage of that group within the housing market area.”

- D. Placing public service advertisements on Bee-Line Buses and Metro-North trains that inform the public about the Fair Housing Campaign and the Affirmative Fair Housing Marketing and promote the County's AFFH Program and the Centralized Intake List.

- E. Periodically, conducting “Housing Alive” bus tours open to the public, municipal officials, press and others to demonstrate how AFFH units fit into any community, including location and aesthetic aspects of the AFFH unit.
- F. Periodically, updating “Housing Alive” Video to add footage of new AFFH developments and to include messages about fair housing, and assess the most effective ways in which to distribute the video.
- G. Preparing PSAs and requesting media outlets to broadcast PSAs regarding the County’s AFFH Housing Program, in general and for specific developments as they become available.
- H. Issuing press releases when specific developments begin to initiate their marketing and applications are being accepted.
- I. Utilizing the County’s website, Twitter and Facebook (and any emerging or successor social media) to promote open houses, availability of applications and other housing information.
- J. Working with community informational resources including: libraries, churches, community agencies, municipalities and non-profit agencies, including agencies who deal specifically with the disabled community, senior citizens and minority groups who have been identified as least likely to apply, to help disseminate information to the public.
- K. Marketing must include Spanish-language marketing material to serve the population that is Limited English Proficient (“LEP”). To address the needs of LEP persons who do not speak either English or Spanish, the County has an account with a “Language Line” that provides 24/7 translators which can be accessed as needed by County staff to assist in serving all other LEP persons.
- L. Providing marketing materials to faith-based and community organizations that serve newly arrived immigrants.
- M. Providing marketing materials to adult-education training centers or during English as a Second Language classes as requested.
- N. Encouraging Voluntary Affirmative Marketing Agreements between local real estate industry trade associations and the HUD-certified housing counseling agencies to help further fair housing and conduct outreach. Such agreements may include provisions regarding reduced fees and a commitment to advise potential customers about available AFFH units.

VI. Review, Approval and Monitoring of AFHMP for AFFH Developments

The Marketing Consultant must seek the review and approval by the County of all Plans submitted for AFFH developments. The County’s approval must be given prior to the funding of the development. The County’s approval of the Plan will be based on whether the Plan

addresses all the requirements set forth in the requirements for the specific housing development Plan. County staff utilizes HUD's Guidebook 8025.1, Implementing Affirmative Fair Housing Marketing Requirements, as guidance to ensure that all required items are addressed appropriately in the Plan.

- A. The County will track timely submission of all required documentation by the Marketing Consultant. This documentation will include items identified in the Housing Development specific Plan that must be provided to the County for comment, marketing data and other items as identified in the requirements for the Plan.
- B. The County will review documentation that marketing activities in the Plan have been performed, including affidavits of publication of ads, copies of published articles, logs of contacts made to community contacts, copies of letters and other communications as described in the County approved Plan including outreach steps taken to persons signed up on the List.
- C. The County will also require a monthly report provided by the Marketing Consultant summarizing the marketing activities for each month that marketing takes place.
- D. The County will require a report upon completion of the initial marketing period that includes the total number of applicants, the race and ethnicity of the applicants, and disposition of the applications, including the number accepted for processing, the number rejected and reason for rejection, or other disposition status and action including selection for occupancy. This information documents the results of the affirmative marketing activities.
- E. Such monitoring will assist the County in determining the effectiveness of the Housing Development specific Plan, including the effectiveness of the outreach to LLA populations and advise the Marketing Consultant to adjust or increase outreach and advertising to encourage increased interest in the development by LLA households.
- F. The County will withhold certification of qualified tenants and homebuyers if the Marketing Consultant is not in compliance with the approved Plan for that development.
- G. If any non-compliance remains unresolved, the Developer/Marketing Consultant will be required to discard all current applications and re-market the development.

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING
IMPLEMENTATION PLAN
August 9, 2010

Appendix D-1(i): Model Ordinance Provisions

Westchester County
Affordable Affirmatively Furthering Fair Housing Units
Model Ordinance Provisions

These model ordinance provisions are proposed to supplement existing municipal zoning codes in Westchester County municipalities for the purposes of ensuring the provision and promotion of fair and affordable housing development throughout the County of Westchester. The text below contains recommended zoning language, as well as advisory comments which are italicized.

Affordable Affirmatively Furthering Fair Housing

1. Definitions

Affordable Affirmatively Furthering Fair Housing (AFFH) Unit

A for-purchase housing unit that is affordable to a household whose income does not exceed 80% of the area median income (AMI) for Westchester as defined annually by the U.S. Department of Housing and Urban Development (HUD) and for which the annual housing cost of a unit including common charges, principal, interest, taxes and insurance (PITI) does not exceed 33% of 80% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

A rental unit that is affordable to a household whose income does not exceed 60% AMI and for which the annual housing cost of the unit, defined as rent plus any tenant paid utilities, does not exceed 30% of 60% AMI adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

2. Required Affordable FFH Unit Component

Within all residential developments of 10 or more units created by subdivision or site plan approval, no less than 10% of the total number of units must be created as affordable AFFH units. In residential developments of five to nine units, at least one affordable AFFH unit shall be created.

A municipality should require that a higher percentage of units be set aside as affordable AFFH units on sites where there is no, or marginal, land cost and significant infrastructure is in place. One type of such potential site is an existing office park which can meet specific criteria (e.g. has routinely vacant parking spaces during business hours). A study prepared by the County Department of Planning ("Office Park Housing" March 2008) recommends an inclusionary requirement of 15% in such situations.

No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for affordable AFFH units created under this subsection.

The zoning provisions may address a process to target non-resident workforce of a municipality for occupancy of not more than 25% of the affordable AFFH units in a particular development if a legal and feasible means is identified to show such targeted non-resident workforce is more diverse than the existing resident population.

Notwithstanding the above, all such affordable AFFH units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

3. Incentives for Creation of Additional Fair and Affordable Housing

A municipality should utilize one or more of a variety of incentives to encourage the creation of affordable AFFH units above the number required to be created by the ordinance (no less than 10% as per Section 3 above). Potential incentives include allowing higher densities such as "1.5 additional two-bedroom market-rate units for each affordable AFFH unit provided over the required 10%," the easing of minimum height, bulk and setback requirements and an allowance for shared parking so as to reduce infrastructure costs.

4. Maximum Rent and Sales Price

The maximum monthly rent for an affordable AFFH unit and the maximum gross sales price for a FAH unit shall be established in accordance with U.S. Department of Housing and Urban Development guidelines as published in the current edition of the "Westchester County Area Median Income (AMI) Sales & Rent Limits" available from the County of Westchester.

5. Time Period of Affordability

Units designated as affordable AFFH units must remain affordable for a minimum of 50 years from date of initial certificate of occupancy for rental properties and from date of original sale for ownership units.

6. Property Restriction

A property containing any affordable AFFH units must be restricted using a mechanism such as a declaration of restrictive covenants in recordable form acceptable to Municipal Counsel which shall ensure that the affordable AFFH unit shall remain subject to affordable regulations for the minimum 50 year period of affordability. Among other provisions, the covenants shall require that the unit be the primary residence of the resident household selected to occupy the unit. Upon approval, such declaration shall be recorded against the property containing the affordable AFFH unit prior to the issuance of a Certificate of Occupancy for the development.

7. Unit Appearance and Integration

Within single-family developments, the affordable AFFH units may be single-family homes or may be incorporated into one or more two-family homes. Each single-family affordable AFFH unit may be located on a lot meeting seventy-five per cent (75%) of the minimum lot area for the single-family homes in the development. Each such two-family home shall be located on a lot meeting the minimum lot area for the single-family homes in the development. All such units shall be indistinguishable in appearance, siting and exterior design from the other single-family homes in the development, to the furthest extent possible. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH units.

Within multi-family developments, the affordable AFFH units shall be physically integrated into the design of the development and shall be distributed among various sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as all other units in the development. The affordable AFFH units shall not be distinguishable from other market rate units from the outside or building exteriors. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH units.

8. Minimum Floor Area

The minimum gross floor area per affordable AFFH unit shall not be less than 80% of the average floor area of non-restricted housing units in the development and no less than the following:

| <u>Dwelling Unit</u> | <u>Minimum Gross Floor Area (square feet)</u> |
|----------------------|---|
| Efficiency | 450 |
| 1 bedroom | 675 |
| 2 bedroom | 750 |
| 3 bedroom | 1,000 (including at least 1.5 baths) |
| 4 bedroom | 1,200 (including at least 1.5 baths) |

For the purposes of this section, paved terraces or balconies may be counted toward the minimum gross floor area requirement in an amount not to exceed 1/3 of the square footage of such terraces or balconies.

As an alternative or supplemental standard -- The minimum gross floor area per affordable AFFH unit shall be in accordance with the standards set forth by the New York State Division of Housing and Community Renewal & the New York State Housing Trust Fund Corporation in Section 4.03.03 of the most recent edition of its joint Design Manual. http://nysdohcr.gov/Publications/DesignHandbook/UF2009_DesignHandbook.pdf

9. Occupancy standards

For the sale or rental of affordable AFFH units, the following occupancy schedule shall apply:

| <u>Number of Bedrooms</u> | <u>Number of Persons</u> |
|---------------------------|--------------------------|
| Efficiency | Minimum:1 , Maximum:1 |
| 1 Bedroom | Minimum:1 , Maximum:3 |
| 2 Bedroom | Minimum:2 , Maximum:5 |
| 3 Bedroom | Minimum:3 , Maximum:7 |
| 4 Bedroom | Minimum:4 , Maximum:9 |

10. Affirmative Marketing

The affordable AFFH units created under the provisions of this section shall be sold or rented, and resold and re-rented during the required period of affordability, to only qualifying income-eligible households. Such income-eligible households shall be solicited in

accordance with the requirements, policies and protocols established in the Westchester County Fair & Affordable Housing Affirmative Marketing Plan so as to ensure outreach to racially and ethnically diverse households.

11. Resale Requirements

In the case of owner-occupied affordable AFFH units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in this ordinance, or the sum of:

- (i) the net purchase price (i.e. gross sales prices minus subsidies) paid for the unit by the selling owner, increased by the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers in the New York-Northern New Jersey Area, as published by the United States Bureau of Labor Statistics (the "Index") on any date between (a) the month that was two months earlier than the date on which the seller acquired the unit and (b) the month that is two months earlier than the month in which the seller contracts to sell the unit. If the Bureau stops publishing this index, and fails to designate a successor index, the Municipality will designate a substitute index; and
- (ii) the cost of major capital improvements made by the seller of the unit while said seller of the unit owned the unit as evidenced by paid receipts depreciated on a straight line basis over a 15 year period from the date of completion and such approval shall be requested for said major capital improvement no later than the time the seller of the unit desires to include it in the resale price.

Notwithstanding the foregoing, in no event shall the resale price exceed an amount affordable to a household at 80% of AMI at the time of the re-sale.

12. Lease Renewal Requirements

Applicants for rental affordable AFFH units shall, if eligible and if selected for occupancy, sign leases for a term of no more than two years. As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered renewal leases for a term of no more than two years each. Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development or to the provisions of other applicable local law.

If no such provisions are applicable and if a resident's annual gross income should subsequently exceed the maximum then allowable, as defined in this chapter, then:

Option (a): said resident may complete their current lease term and shall be offered a non-restricted rental unit available in the 30% development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign one additional one-year lease for the affordable AFFH unit they occupy but shall not be offered a renewal of the lease beyond the expiration of said term.

-OR-

Option (b): said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms.

-OR-

Option (c): said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms for a term of not more than one (1) year.

13. Administrative and Monitoring Agency

A municipal office or department or a local non-profit agency must be designated to administer the requirements of this section. The designated office, department or agency will be responsible for monitoring the affordable AFFH units during the units' periods of affordability and for monitoring compliance with the affirmative marketing responsibilities of those creating the affordable AFFH units

14. Expedited Project Review Process

(a) Pre-application meeting: The applicant for a development including affordable AFFH units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each municipal agency, board, commission and staff expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:

- The early identification of issues, concerns, code compliance and coordination matters that may arise during the review and approval process.
- The establishment of a comprehensive review process outline, proposed meeting schedule and conceptual timeline.

(b) Meeting schedule and timeline: Municipal departments, agencies, authorities, boards, commissions, councils, committees and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including affordable AFFH units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils or committees to review any and all items discussed at previous pre-application meetings.

(c) Calendar/agenda priority: Municipal departments, agencies, authorities, boards, commissions, councils or committees with review or approval authority over applications for

developments including affordable AFFH units shall give priority to such applications by placing applications for developments including affordable AFFH units first on all meeting and work session calendars and agenda and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening minimum advance submission deadlines to the extent practicable.



Housing Diversity and Accessibility

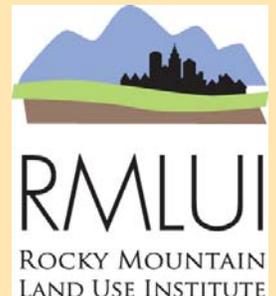
*Leigh Ann King, AICP
Jeff Hirt*

The Rocky Mountain Land Use Institute

Sustainable Community Development Code

Research Monologue Series:

Healthy Neighborhoods, Housing, Food System



Housing Diversity and Accessibility

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The Rocky Mountain Land Use Institute

About the Research Monologue Series

The Sustainable Community Development Code, an initiative of the Rocky Mountain Land Use Institute, represents the next generation of local government development codes. Environmental, social, and economic sustainability are the central guiding principles of the code. Supporting research for the code is represented by a series of research monologues commissioned, presented and discussed at a symposium held at the University of Denver in September of 2007. RMLUI and the University of Denver's Sturm College of Law extend its gratitude to the authors of the papers who have provided their talents and work pro bono in the service of the mission of RMLUI and the stewardship of the creation.

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Leigh Anne King, AICP is an Associate and planner in Clarion's North Carolina office. Since joining Clarion, Leigh Anne has worked on a variety of public sector planning projects. Among them are development of neighborhood and comprehensive plans for Fredericksburg, Virginia, and Wake Forest and Chapel Hill, North Carolina; growth management plans for Rock Hill, South Carolina, and Hillsborough, North Carolina; Affordable Housing Methodology and Mitigation Programs for four southern Florida communities; design strategies for two village centers in Emerald Isle, NC and for Henrico County, Virginia; updating the zoning ordinance for Alachua, Florida; and impact fee support studies and implementation legislation for DeSoto County, Florida, and Beaufort County, South Carolina. Leigh Anne holds a Masters in Regional Planning from the University of North Carolina, Chapel Hill, where she was awarded the NCAPA Outstanding Student Award. While in graduate school, Ms. King worked on a research project with the Center for Urban and Regional Studies assessing collaborative planning efforts between school districts and local governments in North Carolina, and published Green Infrastructure Plan Evaluation Framework, evaluating systems for assessing green infrastructure conservation plans. Prior to joining Clarion Associates, she worked for a national conservation nonprofit in Arlington, Virginia.

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INTRODUCTION

America's face is changing. The last few decades have seen an evolution in the demographic makeup of U.S. households that requires communities to address the type, location, and design of their housing. These households require a diversity of housing types to meet their basic needs, including access to public transportation, employment centers, and needed services. Moreover, recent research suggests that housing choices that provide an opportunity for interaction with persons of different backgrounds is advantageous for improving our quality of life.

Because housing is such a critical necessity, these dynamic housing issues must be addressed. Creating a sustainable future requires that the economical, environmental, and *social* needs of our communities be met while also ensuring the needs of future generations. Just as the economic and environmental health of our communities is important, so is providing opportunities for safe, healthy, accessible, and adequate housing to our diverse population.

THE NEED FOR HOUSING DIVERSITY AND ACCESSIBILITY

Aging Population

One of the most striking changes in our nation's demography is the distribution of age among our current population. We have moved from a society of mostly younger members, to one that has nearly equal numbers of children, young professionals, parents, young retirees, and senior citizens.¹ This increase in the older population is due to multiple factors, including the aging baby boomer generation and advances in health care. The 2000 U.S. Census indicated that 12% of Americans were over the age of 65, and that by 2030 the percentage of seniors could rise as high as 20-25% of the total population. With an increase in aging comes an increase in the number of disabled persons.² The 2000 Census showed that 41.9% of all seniors have some form of disability.

According to the National Association of Area Agencies on Aging, given the choice most Americans would choose to live in the same community where they have spent their lives. As most residential developments built under current standards are not designed for the needs of elderly and disabled persons, this makes it difficult for seniors to "age in place." The traditional single-family home with multiple bedrooms and bathrooms and a large lawn are often more than a senior citizen can adequately manage to maintain - both physically and financially. Similarly, simple obstacles like a step up to a front door, or traditionally designed kitchen cabinetry with high shelving can become impossible to negotiate for a person walking with a cane or using a wheelchair. Removing zoning obstacles to senior-style housing, such as permitting accessory dwelling units and elder cottages located proximate to needed services and facilities can address this housing need.³ To ensure that new homes are designed to provide for the long-term needs of their residents, some communities are implementing *visitability*⁴ and *universal design*⁵ standards that make aging in place possible. Incorporating these design techniques when a home is constructed is

much more affordable over the long-term rather than retrofitting an existing home. For example, a cost estimate of implementing visitability features at the time of construction is \$365. In contrast, adding a zero-step doorway to a pre-existing home is estimated at \$1,000 and the cost of widening a doorway is \$700.⁶

Many communities are moving forward to encourage or require development that includes accessibility features. Fort Collins, Colorado has adopted “Practical Housing for All” standards which encourage the use of universal design concepts in new home construction. Arvada, Colorado has taken this a step further and adopted a visitability ordinance.⁷ Virginia’s Transportation and Housing Alliance, a committee of the Virginia Association of Planning District Commission’s has developed a tool to assist local planners in evaluating community accessibility.

Change in Households

America’s population is not only growing older, but its average household size is shrinking. There are now more households of married couples without children and single person households than any other types, including the traditional married couple with children (i.e., the nuclear family). In 1999, married couples with children represented 24% of all households, which is expected to decrease to 20% by 2020.⁸ The suburbs are no longer home to just the nuclear family. With growth over the last two decades, they have become home to more non-traditional households – young singles and elderly persons living alone – than married couples with children. Because the suburbs are still the location of choice for many of these households – non-traditional households included – the typical 3-bedroom home with a 2-car garage may be more house than they demand and require a higher mortgage than they can afford. Experts project that the future will see a higher demand for condominiums, townhomes, duplexes, accessory apartments, and one and two-bedroom single-family homes to meet the needs of these smaller, non-traditional households.⁹

Urban Units for Families

While it is important to provide housing fit for the non-traditional households of the new millenium, it is also important to continue to provide housing choices to our nation’s families. Some communities, such as Portland, Oregon, are finding a resurgence of young couples with children moving to urban areas. Many of these young families find it difficult to find adequate housing. Studios, one-bedrooms, or luxury units typically found in urban environments don’t fit the bill for these growing families.¹⁰ Changing zoning regulations to ensure that multi-family housing developments incorporate 2, 3, and maybe even 4-bedroom units could provide additional opportunities for downtown family living. Communities in Illinois, New Jersey, and Massachusetts are responding to the changing needs in housing by enacting what some have called “vasectomy zoning”. This type of zoning regulation actually limits the ability of families to move to an area by providing incentives to developers that minimize traffic, preserve open space, and provide housing for senior citizens. In Rowley, Massachusetts, developers have been allowed to build extra

units if they construct townhouses with no more than two bedrooms. While the intent may be to provide needed senior and singles housing, the development incentives effectively limit the number of children moving into the community by reducing the number of housing products fit for families.¹¹ Zoning regulations and development incentives should be written such that a diversity of housing can be developed in a community, ensuring that all needs of the community can be met.

Grandfamilies

Due to an inability or unwillingness for biological parents to care for their children, many grandparents and other family members are becoming caregivers to their grandchildren. According to the 2005 American Community Survey conducted by the U.S. Census Bureau, there are over 6 million children living in “grandfamily” or “kinship care” households in the United States, half of which are cared for solely by their grandparents. That equates to 6.3% of all the children under age 18 in the U.S. While the majority of these children are Caucasian, the percentage of minority children in grandfamily households is considerable. Thirteen percent of all African American children are living with grandparents, along with 8% of all Hispanic children.¹² These grandfamilies require a type of housing that can provide both for the needs of children and of their aging grandparents. Several cities, such as Chicago, New York City, and Cleveland are working to develop intergenerational housing projects that meet grandfamily needs. The Grandfamily Apartment Complex in the Bronx includes 2 and 3 bedroom apartments with safety features for young and old, a playroom, a teen retreat area, a room for holding tutoring services, and a community room for residents. To allow this type of development, ordinances will need to ensure that housing is available near services, schools, and community centers that provide the needed programs and services to these households.

Minority Housing and Segregation

It is a widely known fact that the United State’s minority population is growing significantly. In 2007, we saw the nation's minority population reach 100 million – approximately one third of the total U.S. population. The location of housing for minority households is a critical determinant for ensuring social cohesion between different races and the personal success of minorities. As history has shown us, the location of housing plays a vital role in the educational success of children. Research shows that African-Americans that go to integrated schools are much more likely to attend college. Results from analyses of several U.S. Department of Housing and Urban Development’s Hope VI housing projects show that interspersing housing for different races and socioeconomic groups can have positive effects on families and households and the greater community.¹³ Eliminating exclusionary housing policies, limiting sprawl development, and dispersing public housing are ways to reduce racial segregation.¹⁴

Unfortunately, many communities that were desegregated during the Civil Rights era are moving towards again being segregated. Southern and border states show high instances of resegregation of schools. This phenomena appears to be clearly related to the Supreme Court decisions in the 1990s permitting a return to segregated

neighborhood schools.¹⁵ While the idea of a walkable, neighborhood school is an ideal vision for any community, it has its price. Many of the nation's black and Hispanic households earn lower wages, limiting their ability to afford to live in wealthier communities and attend quality schools. School segregation has long been attributed to a lack of housing choices.¹⁶ Some scholars argue that integration of communities would likely work better to solve the problem of segregation rather than by bussing children from one community to another.¹⁷

Need for Choices

Many communities are recognizing the need to develop a diversity of housing that delivers the housing features demanded by these new households, in locations that provide access to needed transportation, medical, social, and educational services. Households are changing dramatically and if communities are to succeed in creating healthy environments that meet the needs of their citizenry, it will be important to lay the groundwork to provide for their needs. This awareness is illustrated in a quote from a Chicago Metropolis 2020 report on housing choice in Metro Milwaukee:

*"...in southeastern Wisconsin, as in metro Chicago, housing diversity may underlie our prosperity as a region, our quality of life in the long-run, and our role in the larger region that includes the Chicago metropolis."*¹⁸

Choice is a highly espoused American value. Our current housing options do not provide adequate choice for our population and its evolving needs. Planners have long promoted the use of tools to create communities that provide housing choice to the masses. The APA Policy Guide on Housing (1999) states the general policy that "Planners should promote, through Comprehensive Plans, Zoning Codes, and Subdivision Regulations, housing stock in a wide range of prices, with a variety of types and configurations, to offer choice in location, type, and affordability to all members of the community." It is time that we implement these tools to ensure our own sustainability.

SUSTAINABILITY MEASURES

Several sustainability measures have been used by communities to quantify the extent of housing diversity and accessibility. Such measurements include:

- Calculating the number of multi-family housing developments in urban areas;
- Calculating the number of Accessory Dwelling Units (ADUs) in a given area;
- Calculating the number of new homes implementing *visitability* and *universal design* standards;
- Calculating the number of intergenerational housing projects;
- Conducting a housing needs assessment; and
- Calculating the percentage of housing diversity in a given area.

The first four measurements are calculations of supply that can be compared with the number of households that may demand this type of housing to determine whether the stock is currently meeting community needs and whether it will be sustainable given projections for future populations. The latter two measurements –conducting a housing needs analysis and calculating housing diversity in a given area – are more sophisticated studies that provide a comprehensive snapshot of housing diversity and accessibility within a community.

Housing Needs Assessment

Conducting a housing needs assessment is a useful tool to quantify the amount and type of housing demand that exists within a community or sub-area, and provides a foundation for proposing solutions for meeting demand. Housing needs analyses commonly address affordability issues and mismatches between income levels and available units, but many take this further and specify types of housing that may be lacking relative to the demographics and subsequent needs in a community. The Vermont Housing Needs Assessment Guide, produced in 2003 by the Center for Rural Studies at the University of Vermont and the Vermont Housing Finance Agency, is an example framework for conducting a housing needs assessment.

A housing needs analysis may quantify the need for housing for the following *groups*:

- Seniors
- Special needs groups, such as
 - Homeless
 - Veterans
 - People with disabilities
 - Grandfamilies
- Families
- Single and two-person households
- Low-income households

A housing needs analysis may also quantify the need for the following *types* of housing:

- Single and multi-family
- Small lot versus large lot
- Rowhouses/townhouses
- Accessory Dwelling Units (ADUs)
- Group living
- Accessible units/universal design

LEED-ND Housing Diversity Measurement

The LEED Neighborhood Development program, currently in its pilot stage, has a number of excellent measures proposed to advance the goal of neighborhood location and design “based on the combined principles of smart growth, new urbanism, and green building.” One of the measures proposed relates to housing diversity in communities. A specific measure of housing diversity has been

developed, based on an extensive list of housing categories set forth in the LEED ND policies, and works as such:

- Housing categories are listed (detached residential, duplex, multi-family, live/work unit, ADU, etc.) and differentiated by size.
- An index score for a development is used, where points are earned based on the number of different housing categories included in the development.

$$\text{Score} = 1 - \sum (n/N)^2$$

n = the total number of dwellings in a single category, and
 N = the total number of dwellings in all categories.

| Score in Diversity Index | Points Earned |
|--------------------------|---------------|
| ≥ 0.5 and < 0.6 | 1 |
| ≥ 0.6 and < 0.7 | 2 |
| ≥ 0.7 | 3 |

REGULATORY CODE STRATEGIES

While they have lagged behind their European and Australian counterparts, many local governments in the United States have recognized the importance of creating sustainable communities through housing diversity policies and regulations. In many cases, the most powerful tools to further this goal are comprehensive plans and zoning codes. Many communities have policies and guidelines for housing diversity, and some have taken this a step further and mandated specific provisions and provided incentives within their zoning and subdivision ordinances to foster the development of specific types of housing that may be lacking. It is also important to note that many older neighborhoods and developments may already provide the type of housing diversity a community needs, and protection of this housing stock may be paramount.

Housing Types

Requiring a certain diversity of housing types for residential developments in zoning regulations and supported by comprehensive plan policies can help to ensure the housing stock does not get oversaturated with a particular type of housing – which can minimize the housing choices for individuals with different needs that may change throughout their lives. This may include requiring diversity of the following:

- Housing categories (single family, multi-family, ADUs, etc.)
- Lot sizes

- Lot configurations
- Clustering
- Mix of builders

Accessory dwelling units (ADU)

Accessory dwelling units are defined differently from community to community but essentially create separate residences on one property. These can take the form of converting all or part of a garage to a dwelling unit (carriage house), building a separate structure on the property, or converting a portion of a residence to another dwelling unit (e.g., mother-in-law unit). These units can provide multiple benefits. Rental revenues on these units can help landowners offset the cost of their mortgage and increase the affordability of the primary residence. Because the units are smaller and more modest, they are generally more affordable for tenants.

Creating more allowances for, and even encouraging the creation of such units in development codes have proven to be valuable in increasing the supply of affordable, attainable housing units. With dramatically increasing housing prices, the City of Santa Cruz's Accessory Dwelling Unit Program has aimed to create more housing opportunities by making it easier for homeowners to build accessory units.¹⁹ The highlights of the program (implemented in 2003) include the following:

- The city revised its zoning ordinance to eliminate covered parking requirements for single-family homes, thus freeing up space for accessory units.
- Architects were retained to design accessory unit prototypes (500 square feet) that address a variety of site needs. These plans have been pre-approved by city departments so selecting one of these designs reduces time and fees for homeowners wishing to add an accessory unit to their property.
- In 2001 (before the program was implemented), 8 accessory dwelling units were built. In 2003, the programs first full year, 35 units were built.
- The EPA awarded the program the Policies and Regulations Smart Growth Achievement Award in 2005.

In 2005, the State of Vermont adopted a law that requires all jurisdictions in the state to allow all homeowners the right to add one ADU with the following conditions:

1. The property has the capacity to handle the additional demand for septic (wastewater) disposal.
2. The size of the ADU is no more than 30% of the total habitable square footage of the house. Towns can adopt less restrictive regulations.
3. The property must meet all applicable setback, coverage, and parking requirements in the jurisdiction.

ECHO Housing

Similar to ADUs, ECHO housing is another option for accommodating our nation’s elderly, and does so proximate to family members. “ECHO” stands for Elder Cottage Housing Opportunity. These are portable, fully accessible cottages that are placed on the lot of a residence to provide accommodations for an older person. Despite their popularity in Australia and Canada and strong promotion by the AARP (American Association of Retired Persons), they have not caught on as a housing alternative.²⁰ Nevertheless, they are allowed in communities like Fort Kent, Maine. In Fort Kent’s code, they are defined as follows:

“A small detached temporary residential structure placed or constructed to the side or rear of an existing single family dwelling to be occupied by one or two people who are: (a) 62 years of age or older or disabled, (b) who are related by birth, marriage, or adoption to the occupants of the principal residence, and who benefit from living close to family.”

“Adaptable” Dwelling Units

The Parramatta (Australia) local government area, a suburb of Sydney, Australia, has adopted some progressive regulations to require a diversity of housing units in their community, including a mix of bedrooms and “adaptable” housing units. Adaptable dwelling units are differentiated from accessible dwelling units in that they have design features that are easily adapted at a later date to flex with the changing needs of the occupants. For instance, tiling the kitchen floor before fitting the cupboards, so that if a cupboard needs to be removed to provide knee-space under a bench later on, the floor remains intact. According to Jane Bringolf of the Independent Living Centre of New South Wales, this construction method only costs about 5% more on average in Australia. The following summarizes the Parramatta regulation for diversity of housing relating to adaptable units and number of bedrooms:

For residential high-density housing, the residential component must include the following diversity of units: ²¹

- 3 bedroom – 10% - 20%
- 2 bedroom – 60%-75%
- 1 bedroom – 10% - 20%

Adaptable units must be provided as follows:

| Total number of dwellings in development | Number of adaptable dwellings required |
|--|--|
| Less than 10 | 1 |
| 10 – 20 | 2 |
| More than 20 | 10% |

Urban Families

Many regions have recognized that a key component to curbing sprawl is encouraging reinvestment in urban core areas and downtowns. Specifically, residential development in areas that have seen decades of population decline while

cities continued to expand outward. Cities like Portland, Oregon and Vancouver, British Columbia have made great progress in achieving this goal. But one key component missing is the presence of families in these areas. Unfortunately, planners have for many years operated under the assumption that families do not want to live in the central city, which means that downtown neighborhoods often lack the necessary child-friendly amenities that would support a family lifestyle.²² A study by the Portland (OR) Development Commission found that out of 5,300 residential units in one of the cities' downtown districts, 68 percent are studios or one-bedroom units, 28 percent are two bedroom units, and just four percent are three bedroom units²³ - not exactly a family-friendly residential market.

There are a number of factors involved that may be outside the scope of a development code such as quality of schools and safety concerns, but a development code can be a powerful tool to encourage more families to locate in the urban core and downtown areas. Vancouver, British Columbia, has implemented a "*Living First*" program²⁴ that includes design guidelines for high-density housing aimed at families and children:

- 25% of units must have at least two bedrooms, and
- Developers must contribute to public amenities such as child care facilities and parks.

There are a variety of ways to incorporate housing diversity goals into a zoning ordinance, a few of which are described above. A comprehensive list of implementation options includes:

Removing Obstacles

- Remove barriers for constructing ADUs and ECHOs in residential districts.
- Remove large minimum lot size regulations to allow for small lot residential development.
- Permit duplex and multi-family development in more districts, or as conditional/special uses in all residential districts.
- Revise the definition of family if it is an obstacle to allowing non-traditional families.

Providing Incentives

- Density bonuses when incorporating a variety of housing products in a development.
- Reduction in mandatory development standards (landscaping, parking, setbacks).
- Expedited review and waiver of fees.

Regulations

- Allow ADUs and ECHOs by-right in residential zone districts with conditions.
- Allow for development of group homes and co-housing by-right or with conditions.

- Require mix of housing types for residential development.
 - Codify LEED ND formula (or adapt for community).
 - Adopt a matrix with housing types (single-family, multi-family, rowhouse, etc.) corresponding to number of overall units to determine required number of housing types.
 - Require variations in lot sizes and densities.
 - Require certain number of units to be “adaptable,” ADA accessible, or include visitability or universal design standards.
- Require residential units in urban areas (downtown) to include family-friendly amenities.
 - Certain percentage of units to include 3+ bedrooms.
 - Require contributions to child-friendly parks/open space amenities or construction on site.
 - Require park space/playgrounds to be adjacent to interior living space in urban areas (“eyes” on the park for children.) Other standards may include assurances for well-lit, visible areas that incorporate safety features.
- Implement a points system for incorporating community objectives.
 - Siting of senior housing near walkable areas.
 - Family/child-friendly amenities in urban core areas (downtown).
 - Meeting or exceeding housing diversity standards.

Endnotes

¹ Martha Farnsworth Riche, *The Implications for Changing U.S. Demographics for Housing Choice and Location in Cities*. (The Brookings Institution Center on Urban and Metropolitan Policy, March 2001).

² Joel Casselman, *Visitability: A New Direction for Changing Demographics*, Practicing Planner. (American Planning Association: Winter 2004).

³ *A Blueprint for Action: Developing a Livable Community for All Ages*. National Association of Area Agencies on Aging and Partners for Livable Communities.

⁴ Visitability is a design approach which charges that all new homes of all types should be designed and built with basic level access. The intent is for the disabled to be able to “visit” and access the homes of their non-disabled peers and for disabled persons to be given the capacity to continue residing in their own homes. Basic features of visitability include one-level, no-step entrances; accessible doorways; and a bathroom on the entry-level floor. It does not entail comprehensive accessibility within the residence. Joel Casselman, *Visitability: A New Direction for Changing Demographics*, Practicing Planner. (American Planning Association: Winter 2004).

⁵ Universal Design, like Visitability, is a design approach. Its driving tenant is that the design of the home should accommodate the physical, sensory, and psychological abilities and limitations of all its occupants, and their visitors, over a lifetime. In contrast to visitability, universal design incorporates a more comprehensive approach to home design that includes entrances, interior circulation, vertical circulation, bathrooms, kitchens, laundry areas, etc. *Universal Design in Housing*. (The Center for Universal Design, N.C. State University, January 2006).

⁶ Joel Casselman, *Visitability: A New Direction for Changing Demographics*, Practicing Planner. (American Planning Association: Winter 2004).

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⁸ Martha Farnsworth Riche, *The Implications for Changing U.S. Demographics for Housing Choice and Location in Cities*. The Brookings Institution Center on Urban and Metropolitan Policy, March 2001.

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¹³ Robin E. Smith, *Housing Choice for Hope VI Relocates*. (U.S. Department of Housing and Urban Development, April 2002).

¹⁴ Dolores Acevedo-Garcia and Theresa L. Osypuk, *Racial Disparities in Housing and Health*. Planners Advisory Service Memo. (American Planning Association, Jan/Feb. 2005).

¹⁵ Gary Orfield and ChungMei Lee, *Racial Transformation and the Changing Nature of Segregation*. (The Civil Rights Project, Harvard University, January 2006).

¹⁶ Gary Orfield and Susan E. Eaton, *Dismantling Desegregation: The Quiet reversal of Brown vs. Board of Education*. The Harvard Project on School Desegregation. (News Press, 1996).

¹⁷ Ibid.

¹⁸ *Housing, Diversity, and Choices: A Metro Milwaukee Opinion Survey*. Regional Report Volume 1, Number 1. (Public Policy Forum, September 2004).

¹⁹ Smart Growth Online “Smart Growth in Action: Accessory Dwelling Unit Development Program, Santa Cruz, California” www.smartgrowth.org/library/articles.asp?art=1828

²⁰ Funders Network for Smart Growth and Livable Communities “Aging and Smart Growth: Building Age-Sensitive Communities” http://www.fundersnetwork.org/info-url_nocat2778/info-url_nocat_show.htm?doc_id=98175

²¹ Parramatta City Council “Parramatta Development Control Plan” http://www.parracity.nsw.gov.au/data/assets/pdf_file/0014/2228/DCP2001.pdf

²² Groc, Isabelle, *Family Friendly*, Planning (June 2007).

²³ Groc, Isabelle, *Family Friendly*, Planning (June 2007).

²⁴ Beasly, Larry, "Living First" in Downtown Vancouver, Zoning News (American Planning Association, April 2000).

Chapter 7.3, A Better Way to Zone (Island Press, 2008) Reprinted with Permission.

Attainable Housing

Housing affordability is one of the five new land use drivers identified in Chapter 3. While good zoning can be part of the solution to this problem, it can also make the problem worse. A 1998 study of regulatory barriers to affordable housing in Colorado identified five separate types of barriers, including zoning and subdivision controls.¹ The other areas were development processing and permitting (which overlaps zoning), infrastructure financing mechanisms, building codes, and environmental and cultural resource protection tools. Obviously, all regulatory barriers are byproducts of trying to promote some social good, and few would support simply waiving the building code or repeal environmental laws for the sake of attainable housing. But the findings of the report do point the direction to areas where city governments should make sure they get the tradeoffs right, because getting it wrong creates an inefficient burden on housing prices.

In the area of zoning and subdivision, the Colorado study identified four specific types of barriers:

- Minimum house size, lot size, or yard size requirements;
- Prohibitions on Accessory Dwelling Units; and
- Restrictions on land zoned and available for multifamily housing and manufactured housing;
- Excessive subdivision improvement standards.

The third and fourth items on this list are outside the scope of this book; the third because it involves mapping rather than text, and the fourth because it involves subdivision rather than zoning, but the first two are clearly relevant to creating a better way to zone.

Across the U.S. the legal obligations of local governments on affordable housing vary significantly. Some states such as New Jersey, California, and Oregon, require cities to draft housing plans based on both the existing and the anticipated population of the city. Other states have no such requirement. But whether or not it is required by law, comprehensive plans are supposed to be based on population projections. Unfortunately, few cities go to the added effort to identify the likely income ranges of the existing and anticipated residents. In addition, the resulting plan often gets disconnected from the projections themselves. By the time the plan is adopted it is clear that the preferred types and densities of development cannot accommodate the numbers and incomes of people who are likely to move to the city.

Even if the plan does a good job accommodating projected growth with housing types appropriate to income levels, there is often no requirement that the zoning ordinance be modified to reflect the plan. In this area, the approach sometimes seems to be: “Don’t build it and they won’t come.” It is interesting to see how far practice has diverged from theory in this very fundamental area of planning. If we do not take seriously the need to accommodate housing for our people (people who earn what our citizens really earn), what do we take seriously?

Of course, the predictable need for attainable housing over the long run does not mean that zoning must allow new housing to be built at prices affordable to median wage earners. For all larger cities, the new housing built in any decade is a small fraction of the total housing stock. The relevant question is whether a median wage earner can afford a median rental or ownership unit – not a new one. In many U.S. cities, car ownership is pretty necessary, and lots of people would like to buy a new car, but we don’t try to regulate car prices so that they are affordable to median wage earners. Those who cannot afford new cars buy used cars, and the same is true for housing. But the sales price of new housing is still relevant because it can pull that median price

figure up or down. In large, mature cities, if the median house price is above the affordable level for a median family, the zoning ordinance should clearly contain some tools to promote attainable housing.

Ideally, of course, our cities' plans would accurately reflect anticipated housing needs for different income groups and then zoning would be changed to allow those types of housing to occur. But even if that does not happen, planners will need to ensure that zoning ordinances do not place unnecessary barriers in front of reasonably priced housing. Affordable housing professionals know that addressing the housing needs of poorer income groups often requires direct or indirect subsidies to construct and operate affordable housing programs. The need for those programs is beyond the scope of this book, but removal of regulatory barriers is not.

As noted in the illustration above, the most obvious regulatory barriers to the affordability of single family housing are minimum lot sizes, minimum dwelling unit sizes, and maximum densities of development. Unfortunately, discussion of these zoning parameters often degenerates into a 'numbers game'. I have worked in cities where the magic number was 5,000 square feet -- as in: "We will not approve any single family lots smaller than 5,000 square feet" -- and in other cities where the magic number was as high as one acre. But most members of the public cannot visually identify lots that are bigger or smaller than these numbers. Designers regularly fool participants in public meetings by showing attractive housing that compares favorably with the audience's homes and then telling them the density is actually 50% higher than theirs.

When apartments and condominiums are discussed, the situation is even worse. Few members of the public can visualize the difference between 14 and 28 units per acre or the types of housing that could be built within those limits. The debate about the right number has become

divorced from discussion of what will fit into the community and promote greater affordability. And of course, the numbers game feeds the NIMBY machine. Focusing on numbers allows neighborhoods to draw a line in the sand and rally support or opposition around that line.

To produce housing that working people can afford, a better way to zone will need to include two types of changes. First, it will have to get away from the density/intensity numbers game -- or at least move the battle to numbers that make more sense. Higher densities are often opposed on the basis of additional traffic or school children that will need to be accommodated. Those are valid concerns, and it would be much more helpful to debate the available capacity of roadways and school systems and the costs of expanding them. A debate over the fiscal impacts of the proposed development would also be an improvement, even though the vast majority of housing will still be built in ways that generate net costs to the community. This is a key fact: You probably cannot house America on a 'break-even' basis. Residential growth is usually not able to pay its own way. So deal with it, and move towards intelligent tradeoffs between housing attainability and service costs.

As the Denver area has grown rapidly in the last 20 years, the flat, serviceable lands east on the east side have become a magnet for single-family housing. Much of that land is in the suburb of Aurora, Colorado, which at times felt that it was drowning in a sea of applications for ever smaller residential lots. One application called for almost 800 3,500 sq. ft. lots rolling across the land in a grid pattern with no thought to the terrain or any sense of community. Anyone who wants to do that is building a future slum, not because the lots are too small, but because too much of any good thing is a bad thing.

After holding the line on a 6,000 square foot minimum lot size for several years, in the late 1990s Aurora commissioned a study to see how smaller lots could be permitted without

compromising community image or fiscal health. The result was a set of regulations that allowed some lots in a development to be as small as 4,700, 4,200, or even 3,700 sq. ft. depending on the location of the garage and access to it. Each design built in features to protect privacy from neighbors. The secret for Aurora was to allow smaller lots as a part of a mix that allowed more varieties of housing -- no more than 35% of the lots in the development could be small lots. While they were at it, Aurora adopted regulations requiring all builders to begin by looking at the natural features of the land (not the hoped for 'yield' of dwelling units) as the starting point in subdivision design, and to organize all large subdivisions into distinct neighborhoods. Not only does that better address the housing affordability issue, but it closed the door on 'grind-'em-out' 800 lot subdivisions. It opened the door to innovation and better design, and in the years since then Aurora has continued to refine and improve the regulations to permit even more creativity.

The City of Santa Cruz took another approach. It hired a team of architects and developed ready-made plans for attainable housing that would meet city regulations. The result was not only affordable but attractive. No one was required to use those designs, but those builders who do use them receive expedited processing, because there was no time lost confirming compliance with city standards.ⁱⁱ Austin Texas tried a third approach. Its SMART (which stands for 'Safe, Mixed-income, Accessible, 'Reasonably-priced, Transit-oriented') Housing program gives builders eight options for producing more innovative housing products. Those options include single family cottage lots, single family urban lots, a small lot amnesty, secondary apartments, residential infill, mixed-use buildings, a neighborhood corner store, and a neighborhood urban center. Builders who use the options also benefit from expedited approval processing and waivers of some fees.

Small lots and pre-packaged designs are not the only example of innovation, of course. Over the past decades, the building community has brought us ‘Z-lots’, ‘L-lots’, cluster subdivisions, live-work units, loop lanes, auto courts, shared driveway subdivisions, assisted living facilities, and mixed-use, mixed income developments.

A better way to zone will also allow housing developers to be more creative in the housing products they supply. Fortunately, the American housing industry is intensely competitive and there is every reason to believe it can develop products to meet needs if it is allowed to. The painful news for neighborhoods is that promoting attainability may mean allowing smaller lots and higher densities in built-up areas, and particularly near transit lines. The good news is that there are lots of creative ways to do that.

America is generating new households faster than it is gaining population. The old, the young, and singles of all types are choosing to live in smaller, separate households rather than living with either their parents or their children. Not only has this produced demand for smaller single-family/apartment/condo units, it has also created demand for small units attached to or built into single-family homes. Originally called ‘granny flats’ or ‘mother-in-law’ units, these Accessory Dwelling Units (or ADUs) often have separate entrances, kitchens, and bathrooms so that someone can live close to the family. In recent years the children-returning-home phenomenon is feeding this demand. Just because the children have left does not mean they will not be back someday, and they will not want to live in their old bedroom, either.

But ADUs are only one example of new products. What about manufactured homes, whose growing popularity shows that they are often considered good value for the money? Even before World War II, innovators began envisioning a house that could be built on an assembly line like cars. In the early post-war years, Swedish-born Carl Strandlund convinced the U.S.

government to put up \$40 million to capitalize an effort to mass produce the Lustron House. But the effort fell into bankruptcy after only a few years, having produced less than 2,500 pre-fabricated houses. Lustron failed because the capital costs of developing the factories themselves were very high. Those costs either had to be passed on to buyers in a more-expensive-than-we-hoped-for housing unit, or builders had to accept a very long payback period for the up-front investment, or both.ⁱⁱⁱ

Fortunately, it turned out that we were not dependent on government-sponsored development programs to reap the savings of manufactured and modular homes. Despite the failure of the Lustron experiment (and others), the American economy kept on doing what it does best – it allowed the private sector to have at it, rewarded winners, and allowed the losers to start over – so that today we have an unprecedented variety of manufactured, modular, component, and kit housing products available that meet either the building standards of local building codes or the federal Manufactured Housing Act.¹

The language of the Manufactured Housing Act clearly focuses on building standards and not zoning. But ever since it was passed in 1974 there has been a continuing debate over whether

¹ Manufactured Housing Terms. This is one of those areas where confusion gets sown because hot button words are bandied about loosely and often poorly understood. To avoid that problem, I need to clarify how many updated Euclidean hybrid ordinances define some key terms. ‘Mobile home’ generally means a home designed originally to be moved from place to place on wheels but is not a recreational vehicle and does not meet the requirements of the Manufactured Housing Act of 1974 (generally meaning a home built before 1976). ‘Manufactured home’ generally means the same thing except that it meets the requirements of the Manufactured Housing Act. ‘Modular home’ means a home not designed to be moved on wheels and built with the same general materials used to build stick-built homes, but with some or all key components built off-site and then transported to the site for assembly into a home. ‘Single-family detached home’ means just what it says, but the term is increasingly defined to include both modular and manufactured homes provided that they meet all zoning requirements that would be applicable to a stick-built home. Often, the term explicitly excludes ‘mobile homes’ (pre-1976 units) because they were not subject to generally accepted safety standards and are therefore fundamentally different from dwellings that were subject to approved safety standards of one kind or another.

language requiring that manufactured housing be treated as the equivalent of stick-built housing for building purposes also means they have to be treated the same for zoning purposes. The manufactured housing industry has sometimes insisted that the Act should be read that way, but the courts have been largely unpersuaded.^{iv} This has allowed cities to maintain some ‘manufactured-home free’ residential areas, and this is clearly in line with the wishes of many voters. Incidentally, several states have weighed in on the side of the industry to enact state laws limiting local ability to zone out manufactured homes.

In the past, opposition to manufactured housing was often supported by complaints about appearance, building quality, and impacts on surrounding property values. But there are now both manufactured and modular products that are almost impossible to tell from stick-built homes. To address the appearance issue, some cities adopted regulations stating that all housing had to be at least 25 feet wide (i.e. wider than a double-wide mobile home constructed of two 12 foot wide sections) – so the modular industry delivered 16 foot wide sections that could be assembled into a 32 foot wide home. Other cities said the roof pitch had to be more than 3:12, which would make the roof too tall to fit under interstate highway bridges. But the industry responded with hinged roofs -- they could be tilted downward in transit and back upward when they arrived at the site. Some cities required a ‘real stone’ foundation, or a ‘real brick’ façade, so the manufactured and modular builders developed products that delivered those appearance items. And they still undersold some of their stick-built competition.^v

In fact, it is going to become increasingly difficult to keep the lines between modular, manufactured, and conventional stick-built housing intact. Because of the efficiency of modular construction, many ‘conventional’ builders are now incorporating modular parts. The use of pre-build modular trusses is now common, and the use of pre-built kitchen and bathroom

components is on the way. At what point does a stick-built home become a ‘modular’ home, and how much effort should we spend debating that question?

This reminds me of changes in the auto industry. In the 1960s Japanese cars were ‘cheap’, but by the 1980s we had decided they were as good as or better than others. Then it was the Korean cars that were ‘cheap’, but that gap has rapidly narrowed if not disappeared. It became increasingly difficult to tell just what a Japanese or Korean car was. First components of foreign cars were built in America, and then entire cars with foreign names were built in the U.S. – lots of them. Pundits quipped that if you wanted an American car you would have to decide between a Ford built in Canada and a Honda built in Ohio. Although the manufactured and modular building industry cannot substitute capital and technology for labor as readily as the auto industry, they can do so to some extent, and they will provide increasingly stiff competition for conventional builders.

In the face of continuing pressure for housing affordability and steadily improving manufactured home quality and variety, these barriers will erode. The economic advantages of manufactured and modular homes are often real. Over the next 20 years we will see a steady stream of communities looking for affordable housing that fits in with their existing neighborhood character and concluding that it is not wise to keep manufactured or modular housing out of as many zoning districts as they do now. The number of residential zone district that keep these products out will decline, but they will not go away completely.

While changes in future zoning ordinances to allow smaller lot sizes and higher multi-family densities will be visible, changes to allow more modular and manufactured housing will be less so. Instead of adding something to the zoning ordinance, these changes involve deleting things – namely the barriers. If necessary, cities could remove the barriers to allow for a wider

range of housing products and then require a mix of those products in order to allay fears about having too much of any one type of housing. Yes, the greatest efficiencies of production and potentially greatest reductions in housing price may come through large volumes of the same thing, but most cities learned long ago that it did not produce good cities.

This is an area where the pure economics of housing runs into the other goals of great cities. Maintaining the status quo will mean losing ground on the housing affordability, and allowing dramatically smaller lots or denser developments would significantly change the character of some residential areas, so I believe most cities will take a measured approach. But 20 years from now they will allow a wider variety of housing types than they allow today. Smart Growth advocates, New Urbanists, and some form-based zoners have been pushing for this for a decade or so, and they are right. But I think the attainability crunch will provide an additional push towards this result. Even communities that do not embrace New Urbanism will move in this direction.

Is it Legal? Compliance with procedural and substantive due process and avoidance of vagueness in the design and adoption of those changes is no more difficult than for current housing provisions. By expanding the types of uses and the densities of development available to property owners, it is unlikely that these changes would give rise to takings or vested rights claims. Objections to smaller and more affordable housing generally come from neighboring property owners, but there is no constitutional right to not have attainable housing near your property. Since adequate housing is a legitimate governmental concern, as well as very big business, many states have legislation related to residential zoning, so amendments will need to be consistent with those state laws. As noted earlier, the federal Fair Housing Act Amendments of 1988 and the Americans With Disabilities Act of 1990 both have provisions that address the

provision and design of housing and housing sites, so zoning should be drafted consistent with those requirements, or the requirements themselves should at least be cross-referenced. While the Fair Housing Act Amendments do not require zoning for attainable housing, allowing a wider variety of housing products in more locations might help keep cities in compliance with the requirements of the Act addressing ‘handicapped’ persons.

ⁱ. Colorado Department of Local Affairs, *Reducing Housing Costs through Regulatory Reform* (Denver: Colorado Department of Local Affairs, 1998).

ⁱⁱ. The Santa Cruz program is described at <http://www.ci.santa-cruz.ca.us/pl/hcd/ADU/adu.html> (visited Feb 25, 2007).

ⁱⁱⁱ. See, for example, Fetters, Thomas and Vincent Kohler, *The Lustron Homes: The History of a Postwar Prefabricated Housing Experiment* (Jefferson, North Carolina: McFarland Publishing, 2001).

^{iv}. See, for example, Colo. Manufactured Housing Ass’n v. Pueblo County, 946 F. Supp. 1539 (D.Colo. 1996).

^v. For a good discussion of this topic, see Weitz, Eric, “Manufactured Housing: Trends and Issues in the ‘Wheel Estate’ Industry” *Practicing Planner* (Winter 2004).