EXHIBIT 90

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 24, 2014

James E. Johnson, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Re: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC)

Dear Mr. Johnson:

We write in response to your letter of September 26, 2014, to Helen R. Kanovsky, General Counsel of the Department of Housing and Urban Development ("HUD"). We appreciate the opportunity to provide you, in consultation with HUD, with more specific suggestions for your analysis of zoning impediments in Westchester County (the "Report"). We fully endorse HUD's expressions of appreciation, in its letter of September 24, 2014, for the significant effort that you have undertaken in preparing the Report. We also appreciate the steps that certain municipalities have taken to follow your recommendations in the Report and your report of September 13, 2013 (the "*Berenson* Report").

The purpose of the Report is to assist the County with a proposed analysis of zoning impediments that could be incorporated into the County's Analysis of Impediments to Fair Housing Choice ("AI"), which is long overdue. The Consent Decree in the above-referenced case requires that the County submit an AI that is "deemed acceptable by HUD." (Consent Decree ¶ 32.) This is consistent with applicable law that leaves review of the AI exclusively to HUD's discretion. *See* 42 U.S.C. §§ 5304(b)(2) and 12705(b)(15); 24 C.F.R. § 91.225(a)(1); *see also County of Westchester v. United States Dep't of Housing & Urban Dev.*, 2013 WL 4400843, at *3 (S.D.N.Y. Aug. 14, 2013); *United States ex rel. ADC v. County of Westchester*, 2012 WL 1574819, at *11 (S.D.N.Y. May 3, 2012). Provided that the following changes are made to the Report, the County's inclusion of the Report would be deemed acceptable by HUD to satisfy the County's obligation to identify and analyze local zoning impediments in Westchester County. We stress that by deeming the zoning analysis acceptable as part of an AI submitted by the County, HUD does not necessarily agree in all respects with the analysis or its results. Nor would deeming the zoning analysis acceptable mean that HUD agrees that any ordinance does or does not violate the Fair Housing Act's nondiscrimination provisions, such as 42 U.S.C. § 3604. It means only that the Report, if submitted by the County, would satisfy the County's obligation to identify zoning ordinances that act as impediments to fair housing, as required by the Settlement, 42 U.S.C. §§ 5304(b)(2) and 12705(b)(15), 24 C.F.R. § 91.225(a)(1), and by HUD's Fair Housing Planning Guide. With that in mind, we offer the suggestions below.

1. Although the transmittal letter to the Report indicated that the Report was not binding on the parties, some of the statements in the Report can be read broadly to preclude any claim, complaint, or lawsuit alleging violations of the Fair Housing Act or any substantially equivalent State, County, local, or municipal law or act. The Report should indicate at the outset that its purpose is to identify impediments to fair housing imposed by local zoning codes in Westchester County, and that where it did not find a particular municipality's zoning code to be problematic for this limited purpose, that finding is not intended to be definitive or preclusive of any potential claims that could be brought against that municipality, nor has any particular finding been made or endorsed by HUD. By the same token, the Report should clarify that a conclusion in the Report that an ordinance is an impediment to fair housing does not equate to a conclusion that the ordinance violates the Fair Housing Act.

2. We understand the Report to analyze whether municipal zoning ordinances tend to exclude minorities from predominantly white areas, or tend to restrict minorities to predominantly minority areas. It is animated by the affirmatively furthering fair housing requirements set forth in 42 U.S.C. §§ 5304(b)(2) and 12705(b)(15), and 24 C.F.R. § 91.225(a)(1). HUD views the "*Huntington* analysis" referred to in the Report as a familiar framework that can be used for analyzing impediments to fair housing choice and for identifying practices that tend to exclude minorities or tend to further segregation. However, it is not necessary for such a practice to satisfy all the prongs of the *Huntington* disparate-impact analysis in order to constitute an impediment to fair housing that should be addressed in an AI. For that reason, we believe there is no need to analyze the disparate-impact cases discussed in the Report.

3. The Report should also use appropriate and familiar terminology for its impediments analysis. This analysis considers whether ordinances are impediments to fair housing choice because they tend to restrict minority housing opportunities to predominantly minority neighborhoods (concentration), and/or they tend to limit minority access to predominantly white neighborhoods (exclusion). The Report uses the term concentration (or clustering) to refer to patterns that tend to restrict minority access to minority areas. We do not object to that terminology. But it also uses the term "disparate impact" to describe an analysis that is more properly characterized, in an AI, as an exclusion analysis. Re-labeling will clarify the scope of the Report, and avoid further confusion.

4. The Report makes a number of broad statements that can easily be taken out of context. We request that the Monitor review the Report closely and appropriately limit statements such as those stating that a municipality's zoning code "does not perpetuate racial and ethnic clustering" (*see, e.g.*, Report at 32, 35, 39) and does not "disparately impact the countywide minority household population by restricting the development of housing that minority groups disproportionately use" (*see, e.g.*, Report at 32, 36, 39). These statements appear in nearly every analysis of a municipal zoning code. The Report should use appropriate terminology, as explained above, and add qualifying language every time the Report makes a

statement of this sort, such as beginning each statement with "This analysis did not show the ordinance to be exclusionary because . . ."; "This analysis demonstrated that the ordinance is an impediment to fair housing because . . . ."

5. The Report should provide greater clarification in its analysis of concentration, which the Report also refers to as "clustering" (which, as discussed above, is distinct from its analysis of exclusion). We request that the Report more specifically delineate what standards and statistical factors, and in what combination, the Report considered in concluding that a given municipality's zoning ordinances concentrate (or do not concentrate) minorities in certain areas. Additionally, it appears the Report is limited to analyzing concentration within each municipality. To the extent the Report did not consider the extent to which each municipality's zoning code contributes to patterns of concentration in the County as a whole, the Report should expressly state that it conducted a more limited analysis or describe a more robust analysis.

6. With respect to the analysis of exclusion (which the Report also refers to as disparate impact), the Report describes a regional review by assessing the degree to which each municipality permits multifamily, affordable, and rental housing because minority households county-wide disproportionately use these types of housing. (Report at 16-17, 22-23.) The Report also states that each municipality's demographics were compared to the county as a whole (Report at 16) and sets forth additional factors that were considered in the analyses (Report at 17 and 26-27). Yet in the separate analysis of each municipality's zoning code, it is not always apparent how the Report considered the existence of multifamily, affordable, and rental housing, or the ability or inability to develop such housing, against the backdrop of demographics and other conditions. The Report should specifically state and identify the local statistics and the regional statistics that were compared to reach each conclusion.

7. As noted above, the Report found, among other things, that minority households county-wide disproportionately reside in affordable housing. We request that the Report more transparently describe its methodology for assessing the impact that municipal density restrictions in single-family zoning districts, such as minimum lot size restrictions, have on the construction of affordable housing, and also whether any of these restrictions tend to concentrate minorities in predominantly minority areas or certain municipalities, or tend to exclude minorities from predominantly white areas or certain municipalities. If the Report did not consider the impact of these restrictions, the Report should expressly state that it conducted a more limited analysis.

8. The Report relies heavily on Census data, in which Hispanics may be of any race, and appears to combine blacks and Hispanics for purposes of the concentration and exclusion analyses ("clustering" and "disparate impact"). We do not believe this approach is appropriate in this case. Instead, the Report should conduct separate

analyses (a) comparing the residency patterns of whites and blacks, and (b) comparing the residency patterns of non-Hispanic whites to Hispanics of any race.

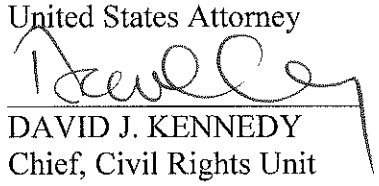
9. The Report should include more precise information about variations in the implementation of the Model Ordinance. The Report should consider whether residency preferences are permitted, even with the adoption of the Model Ordinance, and whether scoping or other provisions of the Model Ordinance were changed when they were enacted.

The Government recognizes that you are communicating with several municipal officials to address the concerns raised in the Report as well as the *Berenson* Report, and these discussions should continue. Notwithstanding the commendable efforts of certain municipalities to move forward, those efforts alone do not discharge the County's continuing obligations under the Settlement, and the remaining obligations are primarily ones the County must fulfill. Provided the concerns listed above are accommodated, and the County adopts the revised Report as its own, the only remaining steps for the County to complete an AI "deemed acceptable by HUD" would be for the County to adopt the Monitor's *Berenson* analysis, and identify a strategy to overcome any zoning impediments identified in the *Berenson* report and this Report, such as the strategy included in HUD's letter to the County dated April 23, 2014.

We look forward to engaging further with you and the County on these issues.

Sincerely,

PREET BHARARA
United States Attorney

By: 

DAVID J. KENNEDY
Chief, Civil Rights Unit
Tel. No.: (212) 637-2733
Fax No.: (212) 637-0033
E-mail: david.kennedy2@usdoj.gov

Cc: Helen R. Kanovsky, Acting Deputy Secretary
Holly M. Leicht, Regional Administrator, HUD Region II
Glenda L. Fussá, Deputy Regional Counsel
Hon. Michael B. Kaplowitz, Chairman, Westchester County Board of Legislators
Robert F. Meehan, Westchester County Attorney