

**IMPLEMENTATION PLAN PURSUANT TO PARAGRAPH 18  
OF THE SETTLEMENT ORDER IN THE CASE OF  
U.S. EX REL. ANTI-DISCRIMINATION CENTER V. WESTCHESTER COUNTY  
March 25, 2010**

I. Background

As part of its obligations under the Settlement Order entered in the case of *U.S. ex rel. Anti-Discrimination Center v. Westchester County*, Westchester is obligated to ensure the development of at least 750 units of affordable housing that affirmatively further fair housing (“affordable AFFH units”). This obligation exists in addition to Westchester’s general obligation to affirmatively further fair housing, an obligation that requires the County to analyze, identify, and act to overcome impediments to fair housing choice, including those based on race and those based on municipal resistance to the construction of affordable AFFH units.

II. Policy

Westchester has recognized that it continues to be characterized by residential racial segregation, and the fundamental purpose of the Settlement Order is to begin the process by which that segregation is ended. Westchester shall operate all its housing policies and programs in a manner to eliminate de facto residential segregation.

Westchester has recognized that action to affirmatively further fair housing significantly advances the public interest of the County and the municipalities therein. Westchester has also recognized that 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 County and the municipalities therein.

Westchester is obliged under the Settlement Order to take legal action to compel

compliance if a municipality were to hinder or impede the development of affordable AFFH units, and the County is committed to doing so. Thus, while the County has and will continue to encourage all municipalities to cooperate with the effort to take the necessary steps to permit the development of affordable AFFH units, the County shall be concurrently taking the steps to identify and acquire interests in appropriate parcels of land so that the County will be able to proceed with development even if were cooperation not to be forthcoming.

III. Developing on Census Blocks with lowest concentrations of African-Americans and Latinos

Focusing development on the blocks that have the lowest concentrations of African-Americans and Latinos will have the greatest impact on creating opportunities to reduce the level of segregation. The first means by which the County will maximize development on the Census Blocks with the lowest concentrations of African-Americans and Latinos is to define, for purposes of this Implementation Plan, “affordable AFFH units” to be units that meet the affordability requirements set forth in Part V of this Implementation Plan and that meet the locational criteria set forth below:

<u>% of total units</u>	<u>Census Block composition</u>
1/3	Less than 1% African-American and less than 3% Latino
1/3	Less than 2% African-American and less than 5% Latino
1/3	Less than 3% African-American and less than 7% Latino

In respect to Census Blocks with no population, development shall not count towards the minimum of 750 affordable AFFH units if any adjoining Census Block wholly or partially within

the same municipality has an African-American population of 3% or greater or a Latino population of 7% or greater.

On or before April 1, 2010, the County shall provide a report to the Monitor and to HUD containing:

(a) a list and a map of Census Blocks in eligible municipalities, broken down by the demographic compositions set forth earlier in this section;

(b) a list and map of parcels in eligible municipalities, broken down by permitted use;

(c) a list and map of parcels in eligible municipalities, correlating demographic composition and permitted use; and

(d) the underlying data from which the lists and maps described have been generated.

The second means by which the County will maximize development on Census Blocks with the lowest concentrations of African-Americans and Latinos is to deal with the fact that existing zoning makes a high percentage of Census Blocks eligible for affordable AFFH units off-limits to affordable housing development. As such, the County shall use all means at its disposal to overcome zoning barriers that limit the ability to develop affordable housing in those locations that would permit the affordable housing units to be considered of affordable AFFH units within the definition set forth in this Implementation Plan. These zoning barriers include inadequate provision in local zoning ordinances for townhouse style and multi-family housing, density limitations that make such construction infeasible, other zoning restrictions commonly referred to as exclusionary zoning, and time-consuming approvals processes. The specifics of how the County shall overcome these zoning barriers are discussed later in this Implementation Plan.

IV. Requirements of and in relation to municipalities

A. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, each eligible municipality to submit a report to the County on or before June 1, 2010 setting forth the following:

(1) the impediments that exist to fair housing choice in the municipality (any factor that constrains the ability to develop affordable AFFH units shall be deemed an impediment; illustrations of such impediments are lack of multiple family housing, density restrictions, and asserted public transportation or sewage treatment limitations);

(2) concrete measures by which to assess progress in respect to overcoming impediments;

(3) the steps that the municipality is taking to overcome impediments to fair housing choice; and

(4) the location of municipal properties – both vacant and in use -- and the feasibility of retrofitting any such facilities – either vertically or horizontally – to create affordable AFFH units.

B. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality amend its zoning ordinance on or before September 1, 2010 to permit inclusionary zoning sufficient to meet each of the following criteria:

(1) substantially increase the percentage of parcels meeting the locational criteria for affordable AFFH units that are zoned for each of the following as-of-right uses: (i) two-family; (ii) four-family; and (iii) five-family and greater;

(2) provide for as-of-right development with substantial density bonuses based on the percentage of units in a development that are affordable AFFH units and the size of the parcel;

(3) provide for increased as-of-right mixed-use housing, including permitting creation of second-floor as-of-right residential add-on to single-story commercial structures;

(4) require that all developments of 5 to 9 units create at least one affordable AFFH unit and require that all developments of 10 or more units create at least 20% of the units as affordable AFFH units;

(5) enable the development of affordable AFFH units throughout the municipality so that desegregation opportunities in one part of the municipality do not exist side-by-side with continuing residential segregation in the balance of the municipality; and

(6) enable the development of affordable AFFH units at a rate that would allow the number of such units that can realistically be developed in the municipality by the year 2015 to equal or exceed the difference between: (i) the number of units specified as “Remaining Obligation” in Table C of the November 2005 Housing Opportunity Commission Affordable Housing Allocation Plan; and (ii) the number of affordable AFFH units that have been developed in the municipality subsequent to the issuance of the November 2005 Housing Opportunity Commission Affordable Housing Allocation Plan. This number shall hereafter be referred to as the “allocation target.” The term “can realistically be developed” means developed in a fashion that is financially feasible, environmentally sensitive, and desirable to prospective renters or owners. Each municipality shall be responsible for documenting to the County how its zoning changes are designed to achieve the results set forth in this sub-paragraph.

The County, in consultation with HUD and the Monitor, shall by May 1, 2010 propose for incorporation into the Implementation Plan pursuant to paragraph 26 of the Settlement Order

a Model Ordinance that incorporates the six principles set forth above; defines with specificity the terms “substantially” and “substantial” in paragraphs (1) and (2), respectively; and also incorporates the affordability criteria set forth in Part V of this Implementation Plan. The Model Ordinance shall be designed with variation in focus applicable to different types of communities. For example, in a predominantly rural community, a key factor to facilitating the development of affordable AFFH units might be a change from zoning that permits one residential unit on four acres to zoning that allows new townhouse style development with substantially higher density, whereas, in a community that currently features single-family homes on quarter-acre lots, key factors to facilitating the development of affordable AFFH units might be changes to facilitate the conversion of homes to two-to-four family use, and changes that permit context-sensitive multiple dwellings if two or more lots are aggregated.

That County shall in its Analysis of Impediments describe the zoning and project review changes that are needed in each municipality to enable each municipality to facilitate sufficient affordable AFFH units by 2015 to equal or exceed the allocation target.

In reaching this determination, the County shall engage in outreach to developers, planners, municipalities, affordable housing advocates outside of Westchester who have experience with successful rezonings that have facilitated the construction of housing equivalent to affordable AFFH units, civil rights advocates, HUD, and the Monitor. The principal question to be posed will be, “What zoning changes are necessary to make to facilitate financially feasible, environmentally sensitive affordable AFFH units that are pleasing to prospective residents?” As part of this inquiry, the County shall discuss with developers projected cost per unit of affordable AFFH units based on variety of scenarios including different levels of upzoning, provision by the County of construction financing, developer ownership versus

County ownership and long-term lease, and different mixes of market and affordable AFFH Unit mixes, including mixes that involve inclusion of Section 8 tenants.

C. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality adopt project review procedures that permit an applicant seeking to develop a project containing affordable AFFH units to receive final approval within nine months, barring the existence of extraordinary circumstances.

The County, in consultation with HUD and the Monitor, shall by May 1, 2010 propose for incorporation into the Implementation Plan pursuant to paragraph 26 of the Settlement Order a Model Review Procedure consistent with the requirement set forth in the preceding paragraph.

Commencing January 1, 2011, the County shall make available to municipalities, at the County's cost and expense, a centralized project review office that would provide technical assistance and review as desired by municipalities that are otherwise cooperating with their obligations as set forth in this Implementation Plan.

D. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality ban:

- (1) local residency of all types; and
- (2) all other preferences not otherwise required by federal law.

E. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality offer the County a Right

of First Refusal to retain and/or purchase any and all land acquired in rem to be used for affordable housing that affirmatively furthers fair housing.

F. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality require that the Affirmative Marketing Plan required by this Implementation Plan be adhered to for any and all affordable AFFH units.

G. The County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, that each eligible municipality take all other steps that can be taken to actively further implementation of the Settlement Order.

H. Commencing July 1, 2010, the County shall require, subject to the sanctions or other actions described in Parts VIII and IX of this Implementation Plan, each eligible municipality to submit a monthly report to the County detailing the actions it has taken as required by this Implementation Plan. The County shall promptly provide a copy of each such report to the Monitor and to HUD.

#### V. Definition of “affordable”

The locational parameters of “affordable AFFH units” have already been described in Part III of this Implementation Plan. The “affordable” parameters are set forth in this Part.

- Note: the Implementation Plan should not conflate different affordability requirements set forth in the Settlement Order



- Note: the plan should have set-asides for percentage of units to be affordable to households earning less than permitted maximums.

VI. Principles of cooperation and compliance

The County shall focus its technical and financial support on those jurisdictions that have cooperated as described in this Implementation Plan. The County shall focus its acquisition of interests in land and its efforts to challenge unnecessarily restrictive zoning ordinances on those jurisdictions that have been least cooperative. In each quarterly report subsequent to the March 31, 2010 quarterly report, the County shall report on with specificity on:

- (a) what steps the County has asked which municipalities to take; and
- (b) the extent to which, each municipality is or is not cooperating with the facilitation of the development of affordable AFFH units, and the nature of the cooperation or lack of cooperation.

VII. Identification of Prospective Sites and Acquisition of land

The County shall identify potential sites in each municipality on which sufficient affordable AFFH units can be developed by 2015 to equal or exceed the allocation target. The identifications shall be contained in quarterly reports to the Monitor, or, if the Monitor requests, on a more frequent basis, and shall include the number of projected units per site and the assumptions that yielded the projection. The timetable for identification of sites shall be:

<u>Percentage of municipality's sites</u>	<u>Due Date</u>
1/3	December 31, 2010
1/3	December 31, 2011

By December 31, 2010, the County shall have acquired in each eligible municipality with an African-American population of less than 3% and a Latino population of less than 7% interests in at least two sites (whether an ownership interest, a long-term leasehold interest, or an option to purchase or to enter into a long-term lease). The sites shall be those that require material zoning modifications to make the development of affordable AFFH units possible, and shall be those where developers and planners consulted by the County believe would support attractive and environmentally sensitive housing. By April 30, 2011, the County shall have acquired an interest in three additional sites in each eligible municipality with an African-American population of less than 3% and a Latino population of less than 7% and under the conditions described above. A further site acquisition schedule for the period subsequent to April 30, 2011 shall be proposed by the County as an amendment to this Implementation Plan pursuant to paragraph 26 of the Settlement Order no later than December 31, 2010.

Upon the acquisition of an interest in each site, the County shall supplement its general efforts to foster zoning changes with efforts to persuade the relevant municipality to make the relevant zoning changes and provide the requisite approvals for development on the acquired sites to proceed.

Note: as referenced in Part IV(B)(5), it is important not only to increase opportunities for residential desegregation throughout Westchester (*i.e.*, including all municipalities), it is important to increase opportunities for residential desegregation throughout each municipality. In some municipalities, therefore, some development of affordable AFFH units will have to occur in areas not currently located in close proximity to public transportation.

As a practical matter, this will not be a problem for many income-eligible families. Indeed, according to 2008 data from the Census Bureau's American Community Survey, 95% of households in the United States with household income from \$40,000 to \$65,000 own or lease one or more vehicles; in Westchester, the figure is 85%. Nevertheless, the County is committed to increasingly the sustainability of communities, and shall expand the availability of public transportation in areas that are currently not served by public transportation but that have high concentrations of parcels that meet the locational requirements for affordable AFFH units. The County shall also analyze in its Analysis of Impediments the potential utility of an expansion of "Wheels-to-Work" programs.

#### VIII. Litigation

The County shall vindicate the vital public interest in the development of affordable AFFH units, and reserves the right to do so at any time and in any location, using all the legal tools available to it, including but not limited to the *Huntington* doctrine (any entity that has acquired an interest in land has the authority to challenge exclusionary zoning and other local development barriers as having a disparate impact on the basis of race under the federal Fair Housing Act); the *County of Monroe* doctrine (a County may challenge a municipality's restrictive zoning on the grounds that the County's public interests in proceeding with development outweigh the municipality's interests in restricting such development); and the *Berenson* doctrine (any party that owns or controls land may challenge a municipality's restrictive zoning on the grounds that such zoning does not take sufficient account of regional housing needs for multi-family housing).

As a matter of prioritizing, however, the County will focus its initial litigation efforts on challenging those municipalities that have been most resistant to the County's efforts to foster development of affordable AFFH units. It is, of course, the County's hope that the list of such recalcitrant municipalities will be small.

Unfortunately, experience has shown that it is likely that there will be significant municipal and other opposition to developing affordable AFFH units, especially in terms of resistance to the dismantling of zoning barriers. As such, the County shall develop and implement the prerequisite steps to litigation concurrently with its efforts to foster voluntary cooperation, and will keep HUD and the Monitor informed of such steps. The County shall commence at least two challenges of the types described in this Part by January 31, 2011; provided, however, that the Monitor may defer the litigation commencement deadline upon a demonstration by the County that, contrary to both historical experience and the information gathered by the County to date, every municipality has cooperated to eliminate all material zoning and project review obstacles to the development of affordable AFFH units. A further litigation commencement schedule for the period subsequent to January 31, 2011 shall be proposed by the County as an amendment to this Implementation Plan pursuant to paragraph 26 of the Settlement Order no later than February 1, 2011.

#### IX. Withholding of Funds

On or before April 1, 2010, the County shall issue a report to the Monitor and to HUD identifying specifically and comprehensively the types of funding and other assistance provided by the County to municipalities, labeling such funding or assistance type as "discretionary" or

“mandatory,” and, in the case of funding and assistance types characterized as “mandatory,” setting forth the legal basis for asserting that the funding or assistance is mandatory.

Westchester is already required by regulations promulgated under the Fair Housing Act and identified in the Cooperation Agreements with municipalities participating in the Westchester Urban County Consortium not to provide CDBG or other federal housing funds in or to municipalities that either themselves fail to affirmatively further fair housing or that interfere with the County’s efforts to affirmatively further fair housing, and the County shall be enforcing that requirement effective immediately.

In addition, as of October 1, 2010, the grant of discretionary inter-municipal funding and assistance, including County Open Space funds, CDBG funding, and other funding and assistance required to be identified by this Part as discretionary shall be specifically conditioned on the municipality’s compliance with each and all of the requirements of Part IV of this Implementation Plan. The County shall incorporate the requirements and the funding limitation into each notice of availability of funds or assistance and into each agreement, law, or regulation by which funding or other assistance is provided. The County shall take all steps necessary to insure strict compliance with these funding limitations.

#### X. Affirmative Marketing

Affirmative Marketing shall be targeted to African-Americans and Latinos living in:

(a) those municipalities of Westchester where the percentage of the population that is African-American or Latino is higher than the percentage of the population of Westchester as a whole that is African-American or Latino; and

(b) those boroughs of New York City where the percentage of the population that is African-American or Latino is higher than the percentage of the population of Westchester as a whole that is African-American or Latino.

The County shall conduct as part of its Analysis of Impediments two surveys to determine what inhibitions on relocating to eligible communities, if any, are experienced by any material portion of respondents. One survey should be of African-Americans and Latinos who live in the municipalities described in paragraph (a); the other should be of African-Americans and Latinos who live in the boroughs described in paragraph (b). The County shall, as with other impediments to fair housing choice, take the necessary actions to overcome such impediments.

Note: the Affirmative Marketing Plan needs, *inter alia*, to be conformed to the no preferences rule. The specifics of the Affirmative Marketing Plan continue to be extraordinarily weak in terms of outreach to households in New York City and, indeed, to households in municipalities in Westchester that have large concentrations of African-Americans and Latinos. There is still, for example, no outreach coordinated with [nyc.gov](http://nyc.gov), nor other online effort designed to educate outsiders to the advantages to locating to communities of opportunity (compare the Centralized Intake and Housing Outreach Tool with something like [movesmart.org](http://movesmart.org)). There is not even a specification of how to reach someone with the news of the advantages of a Bronxville apartment if that person is looking online (be it on craigslist or otherwise) at, for example, apartment availability in Harlem. The reference at page 13 of the Affirmative Marketing plan that is apparently meant not to be “developer” selection but “prospective homeowner” selection identifies Westchester-based organizations, but neither has inquired nor has required organizations to have capacity or experience in partnering with organizations outside of Westchester to facilitate out-of-County outreach. It is particularly

important for outsiders that there be a relatively long application period available to counteract the built-in advantage regarding the existence of a project that local residents have.

#### XI. Monitoring of and reporting on the County's efforts to end residential segregation

The County shall include in its Analysis of Impediments an assessment of the extent to which any of its housing programs or policies currently perpetuate or act to reduce residential segregation, and shall set forth the ways in which any of its housing programs and policies can be modified, first, to stop perpetuating segregation, and, second, to maximize the extent to which they are segregation reducing.

#### XII. Source of Income Legislation

The County Executive shall regularly urge all County Legislators to pass legislation making discrimination based on lawful source of income illegal in Westchester County. [Note: when asked at a legislative committee hearing about the County Executive's support for the legislation, the County Executive's Chief of Staff failed to make a statement of support, but asserted that the Settlement Order obligation had been fulfilled. The County's second submission references only support for the measure – which has now been further watered down – by the previous County Executive. As of this writing, a vote to schedule the public hearing that is a prerequisite to a vote by the full County Legislature, has been repeatedly postponed.]

#### XIII. Additional Considerations

A. In the wake of the announcement of the Settlement Order, the County has observed significant public comment that reflect either race-based stereotyping, class-based stereotyping,

or both. The County recognizes the harm that these comments create, both in creating an atmosphere in Westchester not conducive to inter-group harmony and mobility, and in creating the sense outside of Westchester that members of racial and ethnic minorities are not welcome in some towns and villages. The County shall identify in its Analysis of Impediments the means by which it shall act to educate residents as to basic principles of inclusion and community, and to remediate the harm caused by the hatred that has already been expressed.

B. Even where development is permitted, it is often the case that municipalities pressure developers to configure developments in a manner designed to minimize the number of units that are available to families with children. As such, the County shall:

(1) require that no more than 25% of the total affordable AFFH units developed shall be one-bedroom or smaller; and

(2) shall report in its Analysis of Impediments the extent of the phenomenon described and the steps needed to counteract familial status bias engaged in by municipalities.

C. Experience has shown that movement to neighborhoods of opportunity requires an organized plan for housing mobility, including not only outreach but the provision of relevant supportive services as well. As such, the County shall, in consultation with the Westchester Enhanced Section 8 Outreach Program and with organizations outside of Westchester with successful experience in facilitating housing mobility, develop a Housing Mobility Plan to be submitted as an amendment to this Implementation Plan pursuant to paragraph 26 of the Settlement Order no later than May 31, 2010.



D. By December 1, 2010, The County shall have located at least 50 developers who have expressed interest in developing affordable AFFH units, and shall identify those developers in a report to the Monitor to be submitted no later than December 15, 2010. A further developer identification schedule for the period subsequent to December 1, 2010 shall be proposed by the County as an amendment to this Implementation Plan pursuant to paragraph 26 of the Settlement Order no later than December 15, 2010.

E. Note regarding CDBG allocation process: the County's submission (General Section, p. 9) effectively says that 90% of projects will not be those that promote activities that AFFH; does not provide any guideline to give points in the application process to those proposed activities that provide the greatest AFFH bang for the buck; and makes no reference to the fact that the County is not permitted to disburse funds to municipalities that fail to AFFH or that interfere with the County's efforts to AFFH.

F. Note regarding funding of organizations that already develop housing with Westchester County funding: many of these organizations develop housing exclusively in areas of minority concentration. The Implementation Plan should require the County to include in future contracts a requirement that a portion of the housing development to be funded shall be in areas that qualify for affordable AFFH units.

#### XIV. Supplementation of Implementation Plan

The County shall supplement this Implementation Plan at the times and in the manner directed by the Monitor by submitting proposed amendments to the Implementation Plan

pursuant to paragraph 26 of the Settlement Order. These amendments shall include those necessary to adjust the Implementation Plan to the results of the 2010 Census.