

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel. :
ANTI-DISCRIMINATION CENTER OF :
METRO NEW YORK, INC., :
: :
Plaintiff, :
: No. 06 Civ. 2860 (DLC)
v. :
: :
WESTCHESTER COUNTY, NEW YORK, :
: :
Defendant. :
----- X

**MONITOR’S REPORT REGARDING IMPLEMENTATION OF THE
STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL
FOR THE PERIOD OF FEBRUARY 11, 2010 THROUGH JULY 6, 2010**

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I. Background on Lawsuit and Settlement

In April 2006, the Anti-Discrimination Center of Metro New York, Inc. (“ADC”) filed a federal lawsuit alleging that Westchester County (“County”) had violated the False Claims Act by making certain certifications in its applications to the U.S. Department of Housing and Urban Development (“HUD”) regarding its compliance with the Civil Rights Act of 1964 and the Fair Housing Act. Additionally, the County was required to certify that it would affirmatively further fair housing (“AFFH”), which requires conducting an analysis of impediments to fair housing choice (“AI”) that specifically addresses impediments based on racial discrimination or segregation.

After this Court ruled that the County had made misrepresentations in its applications, the County and HUD reached a settlement, the terms of which are laid out in the Stipulation and Order of Settlement and Dismissal (“Stipulation”) approved by this Court on August 10, 2009. After months of consideration of the Stipulation and several public hearings, the County Board of Legislators (“BOL”) approved the Stipulation on September 22, 2009. Among the requirements of the Stipulation, the County agreed to spend \$51.6 million over seven years to develop at least 750 units of “Affordable AFFH Housing” (*see* ¶ 7¹), primarily in municipalities with overwhelmingly white populations, without setting any racial or ethnic quotas for the eventual residents of the units. The County also agreed to affirmatively market these units in Westchester and nearby communities with large non-white populations. Pursuant to the Stipulation, the County has also committed itself to develop an Implementation Plan (“IP”) “setting forth with specificity the manner in which the County

¹ Unless indicated otherwise, all paragraph citations refer to the Stipulation.

plans to implement the provisions of this Stipulation and Order, set forth in paragraph 7, concerning the development of Affordable AFFH Units.” ¶ 18; *see also* ¶ 22 (specifying activities the County must undertake in developing the IP); ¶ 24 (requirement that the IP include benchmarks); ¶ 25 (listing components that the IP must include).

In addition to the development and affirmative marketing of the Affordable AFFH units, the County has also undertaken to develop an AI that is deemed acceptable by HUD. ¶ 32. Additionally, the County, through the County Executive, agreed to promote legislation to ban “source of income” housing discrimination. ¶ 33(g).

The Court appointed me to serve as a Monitor to oversee and facilitate the implementation of the Stipulation’s terms. This report is submitted to provide the Court with an update on what has taken place since the filing of the first Monitor’s report in February 2010, with an emphasis on the status of the County’s IP and the revisions that must be made before the IP can be deemed acceptable.

II. Monitor’s Activities

Since the filing of the Monitor’s first report in February 2010, the Monitor’s activities have fallen into roughly three categories: capacity building; meeting with the public to discuss the Stipulation; and review and assessment of the submitted IP. The Monitor has also devoted time to mediating the dispute between the County and HUD stemming from the County Executive’s veto of “Source of Income” legislation recently passed by the BOL. *See* Section III.E below.

A. Capacity Building

When the Stipulation was first announced, both parties expressed the view that the approach was unprecedented and permitted the Monitor to engage a Housing Advisor and other experts, as needed to assure proper oversight over the County's efforts. *See* ¶ 13(f). The Stipulation also permitted the Monitor to seek technical assistance. The Monitor has acquired such assistance and secured outside funding to support these efforts, discussed in additional detail in Section II.A.2 below. All of this was intended to ensure that this effort had adequate resources devoted to oversight.

1. Housing Advisor

The Stipulation contemplated the appointment of a Housing Advisor to advise and assist the Monitor in exercising oversight. The Housing Advisor first selected is a prominent expert in housing development in Westchester County and well-regarded by all parties for her probity and ability to develop creative, practical solutions to housing problems. As set forth in the Monitor's First Report, however, it became clear to both the Monitor and the Housing Advisor that the Advisor's day-to-day work would lead, on a regular basis, to questions about the propriety of the Housing Advisor being both a major actor in the field representing both not-for-profit and for-profit developers, and serving as the principal aide to the Monitor responsible for evaluating proposals in which those same clients may have a substantial interest. Efforts to construct ethical walls and procedures to avoid the conflicts yielded potential results that would neither give the public confidence in the impartiality of the Monitor team nor give the Monitor the full benefit of the considerable capacity and resources of the Housing Advisor. Accordingly, the Monitor and the Housing Advisor agreed to

terminate the relationship. The Monitor then commenced a process to secure a replacement Housing Advisor.

Informed by numerous briefings from Westchester County officials and experts at HUD, the Monitor sought a Housing Advisor who was familiar with land use and housing planning in Westchester County, real estate finance and the development of affirmative marketing plans for housing. The Monitor interviewed five candidates for the position, all but one of whom had the support of either a law firm, a consulting firm or an academic institution. At the end of a process that involved the review of resumés, capacity, interviews, and a written submission reflecting each candidate's view of critical path items for the short term, the Monitor selected a team from the Graduate Center for Planning and the Environment ("GCPE") at the Pratt Institute.

The Pratt team is led by GCPE Chair John Shapiro, who previously worked for twenty-five years as a planner in private practice, including as a partner at Phillips Preiss Shapiro Associates, one of the region's leading planning consultancies. In that capacity, Shapiro prepared affordable housing strategies and comprehensive plans for numerous municipalities, including several in Westchester. Other team members include:

- Alan Mallach, a nonresident senior fellow at the Brookings Institution, who served as the Director of Trenton's Department of Housing and Economic Development from 1990 to 1999. Mallach is well-recognized as one of the nation's leading experts in affordable housing, and provides frequent advice to HUD; and
- Ron Shiffman, trained as an architect and urban planner, who founded and for nearly forty years directed the Pratt Center for Community Development, perhaps the nation's leading university-based planning technical assistance and advocacy organization. Shiffman served as a Commissioner of the New York City Planning Commission from 1990 to 1996.

As a whole, the Pratt team represents leaders in the fields of affordable housing, innovative financing, and community-based planning.

The Pratt team provided rigorous review of the IP (the team's final report is attached hereto as Exhibit 1), and has and will continue to evaluate the appropriateness of development proposals presented by the County.

2. Financing Consultant and Legal Advice

One of the critical issues in the implementation of the Stipulation is financing for the proposed real estate developments. In an effort to encourage broad thinking, the Monitor engaged Forsyth Street Advisors, consultants specializing in real estate, affordable housing, and public finance.

The Monitor also engaged a team of attorneys from Orrick Herrington & Sutcliffe LLP with expertise in public finance to provide legal advice on issues related to the creation of a revolving fund to finance development. Both Forsyth and Orrick will be funded through a grant from the Ford Foundation. This grant is administered by the Furman Center for Real Estate and Urban Policy at New York University and arose out of meetings the Monitor and Furman personnel had with the Ford Foundation in the fall.

* * *

The Monitor is confident that the team assembled has the capacity to enable the Monitor to discharge his responsibilities over the near- and long-term requirements of the Monitorship.

B. Meetings with County Legislators, Municipal Leaders and Input from the Public

The Monitor's responsibilities include being an advocate for the Stipulation, an avenue for public comment about the Stipulation, and a contributor to efforts to educate the public about the Stipulation. Since the last report, the Monitor has served in all of the foregoing functions.

1. The Board of Legislators

After the First Report was issued, the Monitor met with the County Executive and his team on February 16, 2010 to discuss concerns with the first IP. Immediately following that meeting, the Monitor met with members of the BOL who expressed their continued support for the Stipulation and repeated their intention to remain engaged in the process and to continue to discharge their oversight and policymaking responsibilities with respect to the Stipulation. The Monitor has maintained an open door with the BOL, and has welcomed its members' insight and input. In addition to informal phone conferences, the Monitor met with the BOL on May 7, 2010 and has had related communications with a smaller group of legislators who are closely monitoring the County Executive's performance under the Stipulation.

2. Municipal Leadership

On March 11, 2010, the Monitor spoke at the monthly gathering of the Westchester Municipal Officials Association. The Stipulation generally was the topic of the discussion, with a particular emphasis on the Monitor's problem-solving approach. Municipal leaders asked a range of questions, but the greatest focus was on the County's flexibility in meeting

the terms of the agreement and a clear interest in technical assistance to be provided under the agreement.

3. Not-for-Profit Organizations and Members of the Public

The Monitor has spoken to and received comments from a wide range of not-for-profit groups focused on fair housing, civil rights, and government reform. On April 16, 2010, the Monitor met with the Executive Director of the Lawyers' Committee for Civil Rights Under Law and learned about the approaches of other communities focused on housing desegregation. On April 23, 2010, the Monitor met with Craig Gurian of the Anti-Discrimination Center to discuss previously received detailed written reports (*see* Prescription for Failure, Anti-Discrimination Center (Feb. 2010), attached hereto as Exhibit 2, and Draft IP, Anti-Discrimination Center (Mar. 25, 2010), attached hereto as Exhibit 3) and receive a briefing conveying the ADC's perspectives on the County's efforts to date. On May 19, 2010, the Monitor was the guest speaker at the annual meeting of the League of Women Voters of New Castle. The Monitor's remarks at this event focused on the Monitor's role in the implementation process. The Monitor also held an extensive question-and-answer session regarding specific provisions of the Stipulation.

In addition to these meetings, the Monitor has received or been copied on correspondence from nearly one hundred organizations expressing concern about the pace of Westchester's implementation of the terms of the Stipulation. The organizations' written comments are attached as Exhibit 4.

* * *

These meetings and correspondence have both given the Monitor an opportunity to further explain the Stipulation and to receive valuable input about the performance of both parties, as well as the Monitor, as work continues to fulfill the purposes of the Stipulation.

III. The County's Performance

The core of the Monitor's work is to exercise oversight over the County's efforts to implement the Stipulation and facilitate problem-solving as called for, either by the County or between the County and HUD. Put another way, the touchstone of the Monitor's job is to assess the County's compliance with the Stipulation and use the available tools, including application to the Court, to compel compliance if necessary. The Stipulation establishes a framework for developing at least 750 affordable AFFH units and expanding opportunity with a view toward providing African American and Hispanic families seeking housing a meaningful chance to reside in communities that such families have not been able, for a variety of reasons, to call home. Full compliance requires attention to all aspects of the Stipulation. Providing the units is an essential component of the strategy, but not the only key element.

Compliance is to be assessed in both substantive and procedural terms. The Monitor must assess not only the results of the effort but, particularly should the County fall short of the benchmarks, the manner in which the County attempted to fill its obligations under the Stipulation. Fairness to the County and its citizens requires regular reporting on both. Indeed, before the first unit receives financing or acquires building approval, the most important question is that of how the County approaches its task. The record, so far, is mixed.

The remainder of this report will do three things: summarize and assess the County's performance as described in the first two quarterly reports; review and assess the County's

second iteration of its implementation plan; and assess the County's procedural compliance. The facts upon which this report are drawn from submissions by the County, information provided by experts, and meetings and conferences held by the Monitor and his team with either one or the other or both of the County and HUD, which were frequent and often lengthy.

Almost any compliance review, to be thorough, must assess a critical factor in compliance: "tone at the top." Employees take their cues from their leaders' messages, how they spend their time, and how they employ their resources. In subsequent reports, the Monitor will provide information concerning the steps County leadership has undertaken in support of the Stipulation. Review of the tone at the top is critical in circumstances, where, as here, an Executive decision has led to an objection by HUD and has raised questions, by other County leaders and at least one editorial board, about the Administration's willingness to comply with all aspects of the Stipulation. Specifically, on June 25, 2010, the County Executive vetoed Source of Income Legislation called for by the Stipulation. The integrity of the Stipulation and fairness to all involved require this issue to be explored carefully. Accordingly, on June 28, 2010, in response to the veto, the Monitor requested information concerning the reasons for that veto. *See* Section III.E below. After receiving that information, the Monitor expects to be in a better position to provide the Court with a more fully rounded assessment of the tone at the top.

A. First IP

On January 29, 2010, in compliance with an extended deadline, the County submitted the first iteration of its IP to the Monitor, as well as to HUD. The County also made the IP publicly accessible via its website. The Monitor did not accept that plan, and in accordance

with paragraph 20 of the Stipulation, provided the County with specific comments about its deficiencies. Those comments were also provided to the Court in February 2010 as part of the Monitor's first report to the Court. As detailed in that report, the primary shortcoming of the first IP was a lack of specificity with respect to accountability, timeframes and processes.

B. Revised IP

After a series of discussions in which the Monitor, the County, and HUD participated, the County submitted a revised IP on March 12, 2010 (the "Revised IP"), which is publicly available at <http://www.westchestergov.com/housingsettlement> and attached hereto as Exhibit 5. Although the County has made progress on a number of aspects of the IP, the revised submission still falls short of a true plan to comply with either the Stipulation's specific terms or its overarching goal of building a more integrated Westchester. The following comments and instructions are provided in accordance with the Monitor's authority under paragraph 20(d) to "specify revisions or additional items that the County shall incorporate into" the IP "[i]n the event that the Monitor deems the revised plan submitted by the County insufficient to accomplish the objectives and terms set forth in [the] Stipulation." The Monitor directs the County to comply with the below instructions no later than August 9, 2010.

Complying with the Stipulation will require creativity and hard work, but the County can and should look for guidance from previous examples of affordable housing that affirmatively furthers fair housing throughout the nation, as well as from experts with experience in the field. The Pratt Report includes specific examples of past successes that can be built upon in Westchester.

1. Strategy and Benchmarks

The Revised IP's discussion of timetables and benchmarks is an improvement on the first version, which simply repeated the benchmarks set forth in the Stipulation (¶¶ 23-24) and did not include any plan for the following six months, in violation of paragraph 19 of the Stipulation. First IP (attached to Monitor's First Report as Exhibit 1) at 19. The County now provides a lengthy list of tasks it will address over the next six months, as well as certain goals to be reached by the one-year anniversary of the Stipulation in August 2010. Revised IP at 27-28. Nevertheless, the Revised IP still fails to spell out long-range timetables beyond the numerical goals for unit financing and permits as already set forth in the Stipulation, explaining that the County will provide the Monitor with updates on progress made as part of the County's quarterly reports. The County should develop more concrete long-term benchmarks now, as part of the strategy presented in the IP itself, even if it later becomes necessary to revise the benchmarks.

As in the first version, the Revised IP lacks concrete medium- and long-term strategies for how the County plans to develop at least 750 Affordable AFFH Units as required by the Stipulation. *See* ¶ 7. For example, the Revised IP still does not lay out a strategy for allocating the \$51.6 million the County must spend on "land acquisition, infrastructure improvement, construction, acquisition," and other development costs. ¶ 5. In addition to spelling out a plan for anticipated resource allocation, an acceptable IP must also state with specificity the process the County will use to make decisions regarding allocation of resources to particular developments.

The County should formulate an overarching strategy for allocating the types of units it will use to reach the 750 minimum, for example: x units will be generated through

inclusionary zoning, y units through the acquisition of foreclosed properties, z units from new construction, and so forth. These figures will almost surely shift over time, but it is crucial for the County to develop an overall strategy at the outset for most effectively utilizing the \$51.6 million to develop the required minimum of 750 units, rather than making resource-allocation decisions on a purely ad hoc basis, particularly given that the types of housing carry very different costs to the County.

As before, the Revised IP lacks a system for tracking the number of units in progress for each of the locational criteria categories (§§ 7(a)-(c)) or units that count toward the limits on the number of age-restricted units (§ 7(f)) or existing housing (§ 7(h)). The County should remedy this deficiency in the final IP.

2. Site Identification and Assessment

The Revised IP includes a list of activities that the County will undertake to identify potential sites, but does not set forth internal guidelines for site identification. Revised IP at 14-15. Such guidelines might include, for example, who within the County's implementation team will take the lead on liaising with banks and financial institutions, and the timeline for doing so. Generally, the IP should explain how and when the activities on its list will be carried out.

The IP should also include the County's strategy as to how the 750 (or more) units will be distributed throughout the eligible municipalities. Significantly, the Revised IP does not indicate that the County has complied with the Stipulation requirements that it promote "sustainable, inclusive communities" (§ 22(a)) or, significantly, how it plans to "maximize the development of Affordable AFFH Units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents." § 22(f).

As part of its site assessment activities, the County should consider using a fair share allocation. A useful starting point is the November 9, 2005 *Westchester County Housing Opportunity Commission Affordable Housing Allocation Plan (2000-2015)*, with specific attention paid to the “Remaining Obligation” in Table C thereof. This Allocation Plan is attached as Exhibit 6. *See also* Pratt Report at 9.

In its process of site identification, the County also should focus particular attention on the possible benefits of low-scale housing typologies or mixed-use development on County- or municipal-owned land. Two-to-four family homes, in which multiple residential units are contained in a structure that from the outside appears to be a large single-family home, can be an attractive alternative to large apartment buildings or townhouses, and may work well in areas with limited sewer, water, or transportation infrastructure. Pratt Report at 11. Other examples of low-scale housing typologies include: upstairs (“above the store”) units, both in village centers and above commercial structures in greyfields; accessory units; conversion of non-residential buildings; and acquisition of foreclosed condominiums. *Id.* at 11-13.

3. Model Ordinance

a. Preferences

The County’s model ordinance, as currently worded, continues to include impermissible preferences for local seniors, employees, and volunteers. Preferences for seniors (who reside in the municipality or whose immediate family members reside in the municipality) would preserve the demographic status quo, directly cutting against the County’s obligation to AFFH. As currently worded, the workforce preferences in the model ordinance would not AFFH. It is conceivable that workforce preferences could further the goals of the Stipulation. That is likely under limited circumstances where the workforce is

more diverse than the existing resident population. These issues should be addressed on a case-by-case basis rather than with a general approach to be embodied in the model ordinance. Housing allocated under such preferences should not exceed 25% of the units in a particular development.

b. Inclusionary Zoning

With respect to the 10 percent inclusionary zoning benchmark in the model ordinance, the County should consider a more flexible approach that would mandate a higher percentage in those municipalities where property values are high enough that developers can fill in a gap in net profit without needing to produce many additional market-rate units. Therefore, a higher mandate could be pegged to the median income or income distribution of each municipality or a more sophisticated analysis. *See Pratt Report at 28.*

c. Approvals

The Revised IP's discussion of the model ordinance continues to emphasize the County's lack of authority with respect to zoning and land use controls. *Compare First IP at 6 with Revised IP at 7.* The discussion and chart illustrating local approval processes and obstacles thereto reflect a pessimistic view without exploring possible remedies that could make these processes faster and smoother for developments with an affordable AFFH component. As detailed in the Pratt Report, there may be a number of ways to bring about such an acceleration, with the goal of encouraging developers to include affordable housing in their projects. *See Pratt Report at 25-26.*

d. Promotion

The Revised IP still lacks a concrete plan to promote the model ordinance (as required by paragraph 25(a) of the Stipulation) beyond letters from the County Executive and Deputy County Executive to municipal officials that do not contain real enforcement mechanisms. Revised IP Appendix D-1(ii).² The IP should clearly state the County’s additional plans for promotion of the model ordinance. Further, the IP should include the County’s plan to condition municipalities’ adoption of the ordinance on something else to make it meaningful, such as membership in the Urban County Consortium (through which municipalities receive federal funding through HUD’s Community Development Block Grant (“CDBG”) program and other funding sources).

4. Relationships with Municipalities; Incentives and Penalties

The Revised IP continues to demonstrate a lack of creativity as to how the County plans to encourage municipalities to comply with the terms of the Stipulation. One prime example is the discretionary funding allocation policy, which has not been modified or expanded in any meaningful way—even after the Monitor and HUD repeatedly stressed its potential usefulness. Instead of adding to the list of funding that will be conditioned on compliance (or stating the types of activities required for compliance), the Revised IP still mentions only that this discretionary funding is “including, but not limited to, CDBG funds and the County Open Space funds.” Revised IP at 8. This is exactly what the first IP

² The County is also required, through the County Executive, to promote “source of income” legislation. ¶ 33(g). The Revised IP does not indicate that the current administration has done anything whatsoever to promote the legislation, and on June 25, 2010, County Executive Robert P. Astorino vetoed “source of income” legislation that had been passed by the Westchester County Board of Legislators on June 14, 2010. See Section III.E for further discussion of this issue.

provided—in both instances restating the Stipulation’s minimum requirements. To have meaningful effect, the policy should be expanded so that it goes above and beyond what is already required through the Urban County Consortium cooperation agreements, to which the vast majority of eligible municipalities are already party.

To gain a fuller sense of the range of funding that could potentially fall within the discretionary funding allocation policy, the Monitor directs the County to provide, by July 30, 2010, a list of all of the types of funding or other assistance that flow from the County to municipalities. This list should differentiate between discretionary and mandatory funding, with an explanation of the legal basis underlying the designation of a particular funding source as mandatory.

For purposes of making determinations as to the withholding of discretionary funding or other penalties, the IP should define what constitutes non-cooperation and formulate a process for executing the appropriate penalty. For example, the IP should indicate that those municipalities that do not cooperate by meeting certain clearly defined benchmarks will be ineligible for funding for a defined period.

The Stipulation explicitly states that the County “shall use all available means as appropriate,” including “pursuing legal action,” to address a municipality’s failure to act to promote the objectives of paragraph 7 (which lays out the general requirements for the required AFFH units), or actions that hinder those objectives. ¶ 7(j). However, the Revised IP contains merely a recitation of this requirement, rather than any meaningful exploration of what shape such legal action might take. Revised IP at 9.

More generally, the County should consider requiring municipalities to report on obstacles to developing the Affordable AFFH Units, including identifying the steps that can

be taken to overcome these obstacles. Noncompliance with this reporting requirement would trigger the penalties available for overall failure to comply with the terms of the Stipulation. At a minimum, the IP should include the County's plan for monitoring local approval processes and municipalities' cooperation with the County's efforts to implement the Stipulation.³

5. Financing

Although the Revised IP provides more information regarding financing than the previous version, it still lacks an overarching plan to leverage the \$51.6 million. *See generally* Section III.B.1 above (discussion of strategy and benchmarks). The IP should include a clear breakdown of the different types of financing tools the County will use, perhaps summarized in chart format. Additionally, the Revised IP does not spell out how financing decisions will be made. The decision-making process should include input from a person or team (perhaps a consultant outside the County's existing staff) with significant experience in putting together deals to develop affordable housing.

As a piece of the overall financing picture, the County should revisit its assessment of the feasibility of utilizing a revolving loan fund (which is, notably, more thorough in the Revised IP than the assessment provided in the first IP). Revised IP Appendix F-1. This is an area in which the County would benefit greatly from the creative thinking of experts with extensive experience in housing finance, as well as outside legal advice to evaluate the

³ The Pratt Report contains an expanded discussion of incentives, penalties, and other policy and planning tools the County should consider in further revising its IP. *See* Pratt Report at 8-9 (describing, *inter alia*, the potential use of a County trust fund, tax abatements or exemptions, adjustments to County transit, and a role for the Westchester Industrial Development Agency).

County's assumptions with regard to state constitutional and legal issues. *See* Pratt Report at 17-18. The Monitor will provide additional comments in this area subject to the analysis of the Orrick team, which is ongoing. The County should also consider more creative options to leverage its funds, such as employer-assisted housing and financing from pension fund managers. *See* Pratt Report at 15-16.

6. Marketing and Outreach

The Affirmative Fair Housing Marketing Plan (“AFHMP”) suffers from two primary deficiencies. First, and easily remedied, the AFHMP states that the Marketing and Outreach Area “must be designated as Westchester County and Contiguous Counties for all County-funded projects.” Revised IP Appendix G-1, at 8. This restriction to contiguous counties has the effect of excluding all boroughs within the City of New York other than the Bronx, as each borough is its own county. Paragraph 33(e) of the Stipulation specifies that the County shall “affirmatively market affordable housing within the County and in geographic areas with large non-white populations outside, but contiguous *or within close proximity to*” Westchester County (emphasis added). To be most effective, the Marketing and Outreach Area should be expanded to include those New York City boroughs with a higher percentage of African-Americans or Hispanics than that of Westchester County as a whole.

Second, the AFHMP places the bulk of the marketing burden on the developer. Revised IP at 21 (“Developers or other professional entities which receive funding by or through the County of Westchester for the development of fair and affordable housing units shall be required to comply with the provisions of this Plan.”); Revised IP Appendix G-1 at 4 (“This manual is a guide to assist Developers”); *id.* at 5 (“In formulating the AFHM Program, the Developer must do the following”). As explained in the Pratt Report, a

developer-focused strategy may work well for large-scale developments, but is not likely to be effective for low-scale typologies such as accessory units. *See* Pratt Report at 31. The AFHMP should be revised to include a clear role for the County in marketing activities beyond monitoring the marketing plan's use. *See* Revised IP Appendix G-1 at 2-3.

The Revised IP states that the County is giving consideration "to hiring an advertising agency with experience in outreach to underrepresented populations." Revised IP at 23. The Monitor directs the County to engage an outside agency or agencies to assist both with (1) outreach and marketing to potential residents of the AFFH units; and (2) general outreach to current residents of the eligible municipalities about the benefits of inclusive communities. For the latter, the County leadership should study successful efforts to promote inclusive communities elsewhere in New York State and the nation generally. The Monitor requests that the County report on such activities in each of the next four quarterly reports.

With regard to outreach, the Revised IP again states that the County will not proceed with its outreach obligations under paragraph 33(h) of the Stipulation until its centralized intake tool is ready, without a sufficient explanation as to why this is the case. Revised IP Appendix H-1 at 2. The County's target completion date for the intake tool is September 1, 2010. *See* Revised IP at 21. The IP should include a fully developed plan for outreach and education, and detail the County's efforts in these areas to date.

Other than a brief mention of "housing counseling," Revised IP at 21, the Revised IP lacks a discussion of housing mobility outreach and counseling for new residents moving into low-poverty, high-opportunity areas for the first time. This assistance will be vital to ensuring that those who move into the Affordable AFFH units can make the most of the increased opportunities available in their new communities. The County should look to the numerous

examples of successful mobility assistance programs implemented elsewhere. Again, the Monitor directs the County to report on these activities in its next four quarterly reports.

7. Capacity

In accordance with the Monitor's comments on the first IP, the revised submission specifies who within County government will be responsible for each set of tasks. Despite this improvement with regard to accountability, the Revised IP and an overall assessment of the County's capacity still suggest a need for additional expertise in certain areas. The Monitor urges the County to consult outside experts regarding, at a minimum, housing finance (particularly the use of a revolving loan fund), zoning, and marketing (as discussed above). Such experts can provide substantial assistance and leadership in both developing and carrying out an acceptable IP. The Monitor team has already provided the County with several suggestions for outside expertise and will continue to do so. The Monitor notes that, since the Revised IP was submitted, the County has engaged two HUD-certified agencies to assist with housing counseling services. *See* June 30, 2010 Quarterly Report, attached as Exhibit 9, at 6.

The Monitor also recommends that the County consider creating an independent advisory panel that would include leaders from various sectors, including but not limited to major local employers and community, religious, and labor organizations. *See* Pratt Report at 6.

8. Reporting

As noted above, the County continues to maintain regular contact with the Monitor team. However, the Revised IP's plan for ongoing reporting to the Monitor about the

development of the Affordable AFFH Units continues to focus on the County's quarterly reporting schedule. Revised IP at 26. As before, the Revised IP does not specify the point at which the County will seek approval from the Monitor or HUD during the site identification or assessment process, despite a stated commitment to have a "continuous and open dialogue with both the Monitor and HUD." *Id.* at 28. The Monitor recognizes the County's legitimate concern that making certain information available to the public might jeopardize the development of the housing units, and appreciates the County's ongoing efforts to keep the Monitor informed about particular projects. Nevertheless, for purposes of the IP and to provide transparency to the public, the Monitor directs the County to explain in greater detail the process by which it will seek and obtain approvals. *See also* Section III.F below.

C. First and Second Quarterly Reports

On March 30, 2010 and June 30, 2010, the County submitted its first and second quarterly reports as required by paragraph 28 of the Stipulation and informed by letter of the Monitor dated February 1, 2010 (attached as Exhibit 7). The reports, attached as Exhibits 8 and 9 hereto, provide information concerning:

- All affordable AFFH units including those approved, in progress and completed;
- Local approval efforts and impediments;
- Detailed descriptions of the Affordable AFFH Units;
- Census analysis;
- Available land;
- Financing and expenditures;
- Outreach and advertising;

- Overall progress; and
- The County's assessment of its need for expert assistance.

1. Affordable AFFH Units

In the first and second quarterly reports, the County reported four projects, representing 30 units, in the public review process. Three of those projects have received local government approvals: Edgar Place, in the City of Rye, Freedom Gardens in the Town of Yorktown and 55 Pleasant Avenue in the Village of Pleasantville.

2. Census Analysis and Efforts to Identify Sites.

In the first and second quarters, the County undertook steps to identify potential sites for the development of Affordable AFFH Units including analysis of census data; meetings with municipal officials; and studying, among other things, current land use, transportation, sewage, water and environmental features. This activity, however, has yet to produce new sites for development. The County has requested permission to reclassify a development previously listed as an Excluded Property pursuant to ¶ 13(h) of the Stipulation because the property will not move forward without funding from the \$51.6 million in required by the Stipulation. The Monitor is in the process of evaluating the County's request.

3. Outreach and Advertising

In the first and second quarters, County officials met with municipal officials, developers and property owners as well as organizations of local leaders and not-for-profits with an interest in the development of Affordable AFFH Units. In neither quarter were there steps taken to fulfill the Stipulation's requirements to engage in affirmative marketing or advertise Affordable AFFH Units because units were not identified. That said, the reporting

indicates no activity to reach out to any organization, whether not for profit, religious or advocacy, that has as its primary constituents either African American or Hispanic potential homebuyers or renters. The County is encouraged to engage with such groups immediately rather than waiting until housing is identified. The foundation for such efforts cannot be built overnight.

4. Local Approval Processes

In the first and second quarters, the County has distributed the revised model ordinance contained in the most recent implementation plan (the Monitor's assessment of which is presented in Section III.B.3 above). The County Planning Board has received and commented on a total of 13 referrals and site plan applications from the 31 eligible Municipalities related to affordable AFFH. Significantly, the County encouraged the City of Rye to eliminate a restriction placed on a housing development that units be limited to a population of 55 and older.

D. Terminology

The County uses the term "fair and affordable" throughout its submissions to the Monitor, as well as on its website. Although this term at first may appear to address the County's AFFH obligations under the Stipulation, the County also uses the label on its website to describe housing developments that completely lack an AFFH component, such as 102 Ringgold Street in Peekskill and 330 Riverdale Avenue in Yonkers. *See* Exhibit 10 ("Fair and Affordable Rental Developments," Westchester County Website, http://homes.westchestergov.com/index.php?option=com_content&task=view&id=2564&Itemid=4429). The term "fair and affordable" conflates fair housing with affordable housing

and obscures the County's obligations to AFFH. Going forward, the County should use the precise language of the Stipulation—"Affordable AFFH Units"—when referring to the housing it is required to develop under the Stipulation. The distinction is not merely semantic. Clarity is vital to the public's understanding of, and confidence in, the County's efforts to meet its obligations under the Stipulation.

E. Source of Income Legislation

Paragraph 33(g) of the Stipulation requires the County to "promote, through the County Executive, legislation currently pending before the Board of Legislators to ban 'source-of-income' discrimination in housing." Despite an expanded discussion of outreach efforts, it is not clear from the Revised IP that the current County administration ever took any action on this front. *See* Revised IP at 6 (only recent action appears to relate to website regarding Housing Choice Voucher Program website, not Source of Income legislation); IP Appendix C-3(ii)-(iii) (letters sent by former County Executive Andrew Spano to the Westchester County Board of Legislators and fair housing advocates; no correspondence from current administration). After a version of the Source of Income legislation was passed on June 14, 2010, current County Executive Robert P. Astorino vetoed it on June 25, 2010. *See* Exhibit 11 (June 25, 2010 Veto Message from Robert P. Astorino to BOL). In a June 28, 2010 letter (attached hereto as Exhibit 12), the Monitor directed Mr. Astorino to explain how this action complied with his specific obligation under paragraph 33(g). The lack of a reference to this requirement—or to the Stipulation at all—in Mr. Astorino's veto message is troubling, to say the least. The County Executive's responses to the Monitor's requests regarding the veto will be filed in a subsequent report to the Court.

F. Inquiries to the Monitor

The County has contacted the Monitor regarding a number of specific developments and questions of interpretation as to the meaning and application of Stipulation provisions. These inquiries raise two sets of concerns.

First, the inquiries have lacked sufficient detail for the Monitor to reach conclusions without substantial additional information. Going forward, the Monitor has directed the County to include the following information in its requests:

- The tax block and lot in which the development is located;
- The County's best estimate of the timeframe within which a decision by the Monitor must be made so as to obtain the necessary financing or approvals for the development;
- The provision(s) of the Stipulation under which the proposed development is purportedly eligible; and
- Information about opportunity indicators (with regard to education, employment, and the other criteria set forth in paragraph 22(a) of the Stipulation) for the location of the proposed development (even if this information has already been provided as part of the County's quarterly reporting).

The Monitor has also directed the County to submit inquiries at least thirty days before the expiration of the necessary financing or approvals for the development.

Second, the inquiries regarding specific developments highlight the County's lack of an overall strategy to "maximize the development of Affordable AFFH Units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents." ¶ 22(f). Several of these inquiries instead appear to relate to sites that meet the less restrictive criteria of paragraph 7(c), under which the County can develop units only after building permits are in place for 175 units that meet the more stringent

requirements of paragraph 7(a).⁴ Further, the proposed developments presented to the Monitor to date may be indicative of an overall weakness in addressing the County's duty, in developing the IP, to assess the potential of available sites to "provide access to services and facilities that will promote sustainable, inclusive communities, such as employment and educational opportunities." ¶ 22(a). In order to meet these obligations, it is crucial for the County to develop long-term strategies, as discussed in Section III.B.1 above.

Dated: July 7, 2010
New York, New York

Respectfully submitted,

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⁴ The Monitor has not completed an analysis of all of the County's inquiries to date, and these comments are preliminary.

Exhibit 1

**Review of the
Westchester County Fair and Affordable
Housing Implementation Plan
of March 12, 2010**

By Alan Mallach, John Shapiro, and Ron Shiffman
of the Pratt Institute Graduate Center for
Planning and the Environment
July 1, 2010

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Acknowledgement:
Frank Lang

1. SUMMARY

This report evaluates Westchester County's *Revised Fair and Affordable Housing Implementation Plan of March 12, 2010*. Westchester County prepared the *Implementation Plan* ("IP") in fulfillment of a settlement reached in 2009 with the Anti-Discrimination Center ("ADC"). The ADC had filed a federal lawsuit under the federal False Claims Act, attesting that the County had willfully misrepresented its use of federal funding with regard to "affirmatively furthering fair housing" ("AFFH"). Following the court's grant of partial summary judgment in ADC's favor, the parties entered into a settlement agreement. In accordance with the terms of the Stipulation and Order of Settlement and Dismissal (the "Stipulation"), the court appointed a Monitor to oversee the execution of the settlement, which included dedication of \$51.6 million of County funding for furthering affordable AFFH housing.

In March 2010, the Monitor retained faculty from the Pratt Institute Graduate Center for Planning and the Environment ("GCPE") to serve as Housing Advisor. Pratt's faculty is distinguished by its blend of academic credentials and vast professional experience. The three key people involved in preparing this report were:

- Alan Mallach, who is doing a residency with the GCPE this summer, is associated with the Brookings Institute. Mallach is well recognized as one of the nation's leading experts in affordable housing and provides frequent advice to the U.S. Department of Housing and Urban Development ("HUD").
- John Shapiro chairs the GCPE, following 25 years as a partner in Phillips Preiss Shapiro Associates, one of the region's leading planning consultancies. Shapiro has prepared affordable housing strategies and comprehensive plans for numerous municipalities, including several in Westchester.
- Ron Shiffman founded and for nearly 40 years directed the Pratt Center for Community Development, perhaps the nation's leading university-based planning technical assistance and advocacy organization. Shiffman is well known as one of the nation's top experts in community-based planning and innovation.

Simon Kawitsky, a recent graduate of Pratt's City and Regional Planning (CRP) Program; and Frank Lang, a housing development expert and a professor in the CRP Program, provided additional research, support and insight.

The IP was quite lengthy, but in many respects it lacked sufficient substance and detail to provide either meaningful guidelines for action or assurances that the County was setting itself on a path to meet goals, or show best efforts should it not meet those goals. If the County already is engaging in the activities recommended below, it should make that clear in the IP and provide at least a brief description of its efforts and how they will further the County's compliance with and implementation of its obligations.

Detailed comments follow the summary provided below. Text framed in green refers to what we view to be key points. Bold text generally represents our recommendations. The next stage of work involves investigation of best practices from around the nation, so as to provide the County with more precedents to draw upon.

Fair housing. The IP's affirmative marketing plan is generic. **Problem solving** is called for – such as involving major employers (hospitals, unions, churches) and others in contact with the target populations. A **single web-based clearinghouse** for affordable housing availability

should be created but not limited in scope to the units actually created under the IP. The affordable AFFH units and clearinghouse should be aggressively promoted throughout the New York metropolitan area, though most especially in Westchester and the Bronx.

Revolving fund. The County's arguments against the revolving fund are likely deficient. The County's negativity here may reflect the County's lack of expertise combined with the political penalty of recurrently sponsoring unpopular projects. To remove the commensurate risk of County recidivism, we suggest that a **competent, experienced third party** be the recipient of revolving fund revenue.

Financing. No new financing techniques are explored. The County makes minimal or no use of existing County programs to indicate targets by community or census tract. There is no discussion of how the more flexible \$51.6 million can be used in combination with other funds. There is no evidence that any outreach has been conducted with potential partners, such as financial institutions with foreclosure holdings. While two-family housing is mentioned in the IP, there is no discussion of "shared equity" or other financing tools that work for this category. A **rigorous financial plan** is needed.

As an all-important sidebar: **Air-tight assurance is needed that use of the County's Community Development Block Grant ("CDBG") funds will not come at the expense of municipalities outside the ambit of the Stipulation, which include communities with large populations of people of color, such as Elmsford, Peekskill and Port Chester.**

Site selection. The County's effort to identify eligible sites is limited to the use of one-dimensional maps that, while visually appealing, lack analysis. These are presumably intended to channel (or perhaps limit?) development to areas with requisite infrastructure – including transit, water and sewer service, among other things. In looking to channel development to these areas (i.e., areas that can accommodate density), the County implicitly assumes that desegregation will need to be met through dense condominium and multi-family development, an approach that would be consistent with the principles of "smart growth." While such an approach is to be applauded, there are other affordable housing models that should be considered, especially since development in most of the County's land area and some of the eligible communities would not conform to smart growth principles. Site selection must be tied to a **broader housing typology that addresses opportunities for small-scale development, such as infill and adaptive reuse.**

Project selection. The County does not indicate the process by which it will select projects. The risk is that the County could choose projects based on non-transparent or questionable criteria, stalling the selected projects or, worse, leading to public criticism that jeopardizes the entire effort. The County should come up with a **detailed and transparent process for selecting projects.**

Model zoning. The County does poorly with regard to incentives beyond a 10 percent mandate. There is no meaningful streamlining of approvals, and the model zoning ordinance addresses only inclusionary mixed-income developments with five or more units. To its credit, the County includes the innovative idea of allowing residential development on office and commercial campus sites. The County should put forward **more aggressive and sophisticated zoning models** (i.e., best reasonable zoning) for meeting its goals.

Considering all of these elements (fair housing, financing, model zoning, etc.) together yields three key observations.

Housing typology. There are two primary ways in which Westchester might meet its obligations under the Stipulation. The first category, which the County does address, is condo and multi-family projects that (1) receive financial incentives, especially federal “80/20” tax-exempt bond financing, and/or (2) are subject to inclusionary zoning for mixed-income development. The second category is comprised of small-scale development, especially (1) housing above retail in village centers, and (2) two- to four-family housing in single-family zones. The County needs to model zoning and financing strategies for this **small-scale typology**, which may in the long run prove to be the most productive in terms of countywide **desegregation**.

County “sticks and carrots.” Presumably, the availability of \$51.6 million for financing is a carrot, and the withholding of County Open Space funding and CDBG funding are sticks. These may be weak when it comes to communities that do not depend on such funding. The County should be far more **aggressive and imaginative in how to compel municipal cooperation**. Some ideas are suggested in the body of this report. Additional carrots include fee waivers, tax abatements, and other tax incentives that may be permitted under New York State law; financial and other support for relevant municipal priorities; and procedural fast-tracking of mixed-income and affordable housing development.

Implementation entity. The third key observation has to do with what might be a lack of institutional will but which may very well be a lack of capacity to fully plan and carry out the IP. The County must either **create additional in-house capacity or employ a third party** to (1) motivate private developers, (2) coordinate countywide databases, (3) leverage additional funds, including the revolving fund, (4) act as an ombudsperson for projects, (5) create strategic partnerships, (6) establish intermediaries able to create affordable housing and committed to meeting fair housing obligations, and/or (7) bring small-scale projects and investments to scale.

Details are provided below, in reverse order from above so as to start with the overarching points.

2. CAPACITY

The lack of sophistication and detail in the IP raises a concern that the County has not provided adequate resources to manage this task successfully. To comply with the Stipulation most effectively, the County should consider including the following types of professional staff and consultants on its team:

- **Leadership team.** Meeting the County's goals will involve coordination of numerous complex and moving parts. We believe the County would benefit significantly from having a highly skilled individual or team devoted specifically to this function. The team would have a broad scope of action and, ideally, a degree of executive authority. The leadership team should be trusted across political lines, known to be forward thinking, and fully adept at **local political and planning** issues.
- **Housing finance.** An independent **entity with broader experience** in housing finance is needed to supplement the existing County capacity. This individual could be a part of the leadership team or contracted as an outside consultant. Various consultants come to mind, including the Community Preservation Corporation. The County has not explored any of the best practice models from around the nation, and instead it seems to be in a reactive mode to what developers propose by way of financing projects.
- **Land trust.** The County could designate the already-created Westchester Housing Land Trust to be the recipient of property and/or land that is donated or owned by institutions and lenders, particularly those that have either owned their property for a long time and/or have received stimulus funds; they might be in a position to donate or enter into bargain sale arrangement for the disposition of their property.
- **Zoning.** The County planners have zoning expertise, but the County needs to augment that ability with **regional or national expertise in fair share housing** to draw upon the vast experience of other places, where there are decades of experience in what does and does not work. In Massachusetts, for example, more than 29,000 affordable units have been built since 1970 as a direct result of the Comprehensive Permit Act. Under the law, which is also known as Chapter 40B, inclusionary housing developers can build more densely than local zoning ordinances would otherwise allow if less than 10 percent of all housing in the municipality qualifies as affordable. Another successful model is the New Jersey Fair Housing Act of 1985, which established the Council on Affordable Housing to certify that municipalities plan for accommodating their fair share of affordable units.
- **Outside advisors.** A wider network of Westchester "**wise**" **men and women** is needed to gain public acceptance for the affordable AFFH units. Such an advisory panel could include selected religious and moral leaders, major employers and trade unions, and civic leaders. It could also include some folks from outside who are non-threatening but committed to the social and equitable goals of affordable and open housing.

Our recommendation is actually that the County retain a third party or group of third parties to elaborate upon and execute the IP. This is especially important for the transaction-intensive options, such as small-scale projects and programs. The following entities are called for:

- **Finance Administrator.** An independent, non-governmental entity could structure financial packages for developers more effectively than the County. This could be a

newly formed Community Development Financial Institution, but an organization such as the **Community Preservation Corporation** or the **Housing Partnership Development Corporation** would be preferred. Both have the in-house capacity to select and oversee developers, administer loans, etc. The advantage of an established entity is not only its expertise and proven capacity but also its ability to creatively leverage other subsidy sources and employ a wealth of finance techniques without trepidation or foolishness.

- **Steward.** The role of the Monitor is to mind the compliance of the *County* with the Settlement. The “Steward” can be created now to monitor the details of compliance over the long term, even after the court-appointed Monitor is discharged once the terms of the Settlement are met (presumably in the next seven years). The Steward has nothing to do with the Settlement as such; its role is to ensure that the provisions governing the housing created through the Settlement are adhered to for each duration stipulated. This includes making sure that houses are resold at a price that preserves their affordability, overseeing compliance with regards to use of any revolving fund, supervising the revisionary interest in affordable homeowner projects, acting as the land trust, etc. The Steward need not be created as an entirely new entity. Its revenue would come from a monitoring fee that is built into the mortgage and rent structure. Potential institutions include the **Housing Partnership**, which ensures efficiency; the **Housing Action Council**, which has the benefit of being Westchester-based; or, as a less preferable option, a new entity that one or the other staffs. Whether through the Board or an Advisory Board, the Anti-Discrimination Center, County, participating municipalities, and others should be active partners.
- **Technical assistance provider(s).** This might be the same as the Finance Administrator or Steward, or a new player or players. There might even be more than one (e.g., for different housing typologies, or for different parts of Westchester). Its (their) purpose would be to **assist new homeowners** (and especially those low- and moderate-income homeowner / landlords under the Owner / Renter model discussed later) with understanding financing, home repair, their responsibilities, mobility counseling, etc. The idea is that the smaller-scale housing typologies are not going to necessarily attract experienced developers. It is in the County’s interest to provide assistance, for example, to homeowners who want to build an accessory unit over their garage or add a rental unit to their building.
- **Fair housing administrator.** This too might be the same as the Finance Administrator, Steward, or technical assistance provider(s). The fair housing administrator would be responsible for the **countywide database** for affordable housing.

The responsibilities of the third party entities noted above can and should be defined based on the specific capacities of the individual groups that might come forward. It is expected that they will, on their own or in response to County preference, form teams to cover all of the bases. With the exception of the Fair Housing Administrator, it is possible, and likely preferable, that these functions be folded into a single entity with a board and a board of advisors selected for their expertise in the field and their commitment to low- and moderate-income housing and fair housing.

3. CARROTS AND STICKS

Inducements. The primary carrot for mixed-income housing in the IP (as in most suburbs and cities) is zoning density bonuses. In the State of New York, however, these are not within the power of *counties* to grant; it is hoped that municipalities will avail themselves of the zoning density bonuses laid out in the IP.

The greatest limitation of this tool is that it is particularly powerful outside of the most affluent (and high-value property) communities. This is because the differential between (1) the affordable sales price (or rent when capitalized) and (2) the total development cost of each affordable unit (inclusive of developer's fee, soft costs, etc.) ultimately comes out of the added value of the development inclusive of the developer's profit for all of the units. (Note that if the incentive is in fact a mandate, the developer discounts the added cost as part of their residual analysis; i.e., the developer simply bids less for the land.) Density bonuses are also dramatically and adversely affected when there is an economic downturn, since this model is predicated on a robust private housing market to subsidize the below-market units. Thus, there needs to be considerable profit, either from the enormous value of the units (as is the case in Bronxville and the City of Rye), or because of an enormous density incentive (as would be the case in the Town of Ossining and Yorktown).

Additional carrots, some of which follow below, generally take the form of financial incentives – which the County does not explore. Each financial incentive typically has an incremental benefit, but the cumulative impact can prove significant. Each would require its own feasibility analysis, as well as its own legal and financial analysis. None of these ideas, however, are beyond reason or without precedent. They include:

- A **variety of financing options** through a County trust fund, which is where the revolving fund – if it can be made to happen – could be particularly valuable. (Such options are discussed at length in the sections on Financing and the Revolving Fund, near the end of this report.)
- Phasing in of the County's share of higher **real estate taxes** in connection with affordable and inclusionary housing development ("graduated real estate taxes"), as is common in New York City, for instance, under its J-51 program and in New York State for economic development projects.
- Waiver of County **sales tax and/or fees** (if any) in connection with construction of affordable and inclusionary housing development. For example, the City of Austin, Texas, provides fee waivers on a sliding scale for developments that are at least 10 percent affordable. Such waivers are also common for Enterprise Zones elsewhere.
- Adjusting County **transit** plans to better meet the needs of the affordable housing, but in a manner that also meets the interest of all local residents of the development and its neighborhood. Examples include shuttle services that make commuter rail more practical (as done in Maplewood, New Jersey), as well as Rapid Bus Transit service to White Plains and/or the Interstate 287 corridor.
- Involvement of the Westchester **Industrial Development Agency**. It might be worth checking, for instance, whether the Agency can issue tax-exempt bonds to finance housing.
- **Creative leveraging** of various funding sources. This, however, should only be for projects where the funding is neither directly nor indirectly used at the expense of projects in Westchester's integrated and more economically modest municipalities and

neighborhoods.

The greatest inducement may take the form of proactive County action with regard to the complementary investments that will enable private development to go forward, or for municipalities to view AFFH projects in their best self-interest. These complementary investments could include County financing, expedited review or support for State or Federal prioritization of local projects and priorities. These might be extensions of sewer lines, brownfield remediation, transit investments, park enhancements, roadway improvements, etc.

Penalties. The County has indicated that it would withdraw CDBG and Open Space funding from non-cooperative municipalities. This strategy falls short for municipalities that receive little CDBG funding relative to their own tax and spend capacity. The “stick” presented by the withdrawal of CDBG and County Open Space funding is so weak that it might be better characterized as a carrot: i.e., comply, and the County will provide some additional funding that the municipality in fact can do without.

Further weakening this stick, the County does not indicate the manner in which it would carry out withdrawal of CDBG and Open Space funding. For instance, what defines non-cooperation and the process for executing the associated penalty? Ostensibly, a municipality would have to be overtly thwarting a proposal, with it readily apparent that the municipality is being non-cooperative, even though the municipality will likely obfuscate its reasons. The County might do well to indicate that CDBG and Open Space funding will, starting in prescribed years, not be available to municipalities that do not have either a plan to develop affordable AFFH units in place or approved affordable AFFH projects underway.

It is likely that a variety of tools will be needed. For instance, other sticks include the following; once again, each idea would require its own test as to both financial feasibility and legality in the State of New York:

- Reviewing all **County funding** directed to the eligible communities, with exploration of how these funds might be withdrawn or held in escrow for non-cooperating municipalities.
- Imposing **County fees** on projects that do not comply with the desegregation effort. The fees would have to be hefty to stall a development or make on-site affordable units a lower-cost option, and given anti-development sentiments in Westchester, certain municipalities will likely be relatively indifferent to the added cost of development. Even if minor, the fees would contribute to a possible revolving fund. One example of a place that exacts these types of fees includes New Jersey under its fair share allocation program, a result of the Mount Laurel decisions.
- Conversely, the County could consider whether it has the ability to impose **impact fees**, whether through legislation or otherwise, for all housing development. The impact fees could be reimbursed or waived in proportion to the percent of affordable housing units provided in any one development. Funds earned could go into an affordable housing revolving fund. For example, Boston and San Francisco regularly impose what are known as “linkage” fees on large non-residential developments and use the funds to support affordable housing development elsewhere.

Allocation of carrots and sticks. A “fair share allocation” by municipality would add pressure for municipalities to address their affordable AFFH obligations. To be sure, in 2005, the Westchester County Housing Opportunity Commission (led by George Raymond) prepared an *Affordable Housing Allocation Plan* for the period 2000-2015. The Plan addresses all of Westchester but has particular bearing for the municipalities subject to the settlement. It calls for

more than 6,800 affordable housing units in those municipalities – far exceeding the stipulated 750 units.

Fair share also begs the issue of what happens if municipalities take the penalties (loss of County CDBG and Open Space revenue) rather than providing the affordable housing. This could lead to an unfair burden on those middle-class eligible communities (e.g., the Town of Ossining or Yorktown) that are as non-diverse as the eligible communities with higher property values but, ironically, in a poorer position to use increased density incentives to leverage affordable housing. This is because each additional market-rate unit leverages far less profit and revenue in the lower-value communities than in the higher-value communities, such that it takes a far greater increase in density to provide sufficient incentives for affordable housing.

In the meanwhile, the County should, in response to an invitation for proposals, set about to select **a minimum of one project and/or investment in every eligible community**. Ideally, these projects should be selected for their moderation in size and impact, and with criteria that includes secondary benefits (e.g., removal of non-conforming uses such as industry in a residential zone, adaptive reuse of a dilapidated building, added vitality to downtown, or pedestrian-friendly development in a commercial corridor).

Selection of **modest and inherently beneficial projects** and investments should do much to obviate community opposition, as well as flush out which communities might be most recalcitrant and on what basis. The selection of a project in every municipality, involving County-owned or purchased land, might give the County greater standing should it take legal action against the municipality.

Each municipality, if asked, would draw out the identification of the preferred sites. There is a ready shortcut if the Monitor or County is prepared to do some **proactive problem-solving / planning**. Most of the civic groups and consulting planners for the involved municipalities know the best sites, and many have already publicly or privately advocated for them. Many of these players could and would identify ideal sites, especially if asked by a presumably neutral party such as the Regional Plan Association.

4. HOUSING TYPOLOGY

Almost all of the IP's recommendations, strategies and discussion deal with large-scale condo and multi-family housing, even though the County lays out a wider variety of housing typologies on page 14 of the IP. In one of its most serious omissions, the County provides a model inclusionary zoning ordinance that only addresses traditional multi-dwelling unit developments larger than four units, while failing to capture those of a different nature. We believe it likely that much of the housing that can be created to meet the terms of the Stipulation may instead come from small-scale solutions, including (in probable order of magnitude from most to least) the following:

- New construction of two- to four-family ("2-4 family") houses in connection with development on subdivision sites or "infill sites" (relatively small sites in otherwise built-out areas)
- Conversion of existing houses into multiple unit buildings, and addition of accessory units in principal or accessory buildings, such as freestanding garages (for simplicity hereafter included with 2-4 family houses)
- Upstairs units above stores in downtown areas, or above commercial buildings on commercial corridors
- Conversion of small non-residential buildings into residential use, or conversion of single-family houses into 2-4 family use, including accessory apartments and shared equity housing
- Acquisition and buy-down of existing condo units

Each of the typologies would require its own strategic planning effort. Each would require its own model zoning. For instance, though the County mentions several of these housing typologies, the County does not elaborate on them in the IP. As a quick primer on each typology:

Two- to four-family house. This typology refers to large, seemingly single-family houses that actually accommodate two, three or four households. In contrast to the traditional townhouse model, this typology is a proven alternative for an attached unit that blends in better with large-lot, detached housing units, which predominate in Westchester. Much the same rules and regulations that would be employed for single-family housing would be involved, including: appearance of a single-family house, limitations on impervious material, floor area limits as absolutes or relative to lot area, etc. It would be hard for municipalities that have legalized accessory housing under these conditions, or that allow houses with more than 3,000 square feet, to argue against the 2-4 family house typology, especially since the purposes, the cumulative number of bathrooms and bedrooms, and even car ownership, will be much the same (given that in some affluent communities, it is not uncommon for a family with driving teen(s) to have three or four vehicles). It would even be a hard argument for municipalities that do not allow accessory housing or boarders but which do not rigorously enforce that prohibition. Good examples of the 2-4 family house typology can be found in Cranbury, New Jersey, and Fairfax County, Virginia.

The 2-4 family house is the most promising typology for municipalities with no or very few smart growth options (i.e., sites with little or no access to sewer, water, transit, or other hard and soft infrastructure associated with higher density housing, or within walking distance to services). On the other hand, the specific applications would need thorough testing with regard to wells and

septic infrastructure. 2-4 family houses might, for instance, be limited to areas with either suitable soils or infrastructure, though not constrained by prevailing density.

The IP's model affordable housing ordinance anticipates use of 2-family houses in connection with development; the opportunity may be even more significant in connection with subdivisions. Most development projects are in fact **subdivisions** of parcels. The same mandatory inclusionary obligations as for affordable housing set asides in condo or multi-family developments can be employed for subdivisions (e.g., subdivisions of five to 10 lots must donate one building lot, and larger subdivisions must donate 20 percent of all lots). In Montgomery County, Maryland, for instance, a provision of the 1974 Moderately Priced Housing Law requires that between 12.5 and 15 percent of the homes in subdivisions of 20 or more units be affordable to households earning less than 65 percent of Area Median Income ("AMI").

Likewise, 2-4 family houses might be the ideal typology when small parcels are acquired or set aside for affordable AFFH units. The County, or another entity, can purchase **infill sites** (small sites in otherwise built-up areas); obtain bank and lender donations of **mortgaged property**; or purchase or receive donations of the peripheral parts of office and **institutional campuses** which are being sold to raise capital for their owners.

Accessory units. Accessory units are ultimately the same as 2-4 family houses, except that they are found in existing buildings, usually with requirements that (1) there be no new construction associated with the creation of the unit, (2) the owner remain in occupancy, (3) design and environmental impacts be minimized, and (4) a registration fee is paid. Most municipalities allow accessory units, but since so many homeowners remain outside of the law, officials only "capture" perhaps half of all these units. There is evidence that when not allowed, there is roughly the same proportion of accessory units; legalization allows better quality and supervision, but it has no meaningful impact on the marketplace.

The biggest obstacles to making accessory housing (as opposed to the 2-4 family house) a source of affordable AFFH units include a lack of incentives for the property owner to seek anything other than market prices or to favor the targeted populations. Two typical prohibitions make it even less likely: additions are not allowed, and accessory units in free-standing garages and other accessory buildings are not allowed. The prohibitions against **accessory units in expanded houses or accessory buildings** could, however, be lifted on the condition that affordable housing is created, at which point accessory units could provide some of the same opportunities provided by 2-4 family houses. This includes existing cottages and buildings on parcels that are being subdivided, where the older house is less valuable than the new construction.

Upstairs units. These are usually the conversion of storage and office space above stores in older buildings in downtowns and **village centers**, though they can also be new construction. Dennis Port, Massachusetts; downtown Poughkeepsie, New York; and Upper Montclair, New Jersey, as well as many other localities, provide excellent examples of where this has been or is in the process of being done. The conversion of space is fairly low-cost. Indeed, this is where much affordable rental housing can be found, where it is allowed or "grandfathered." Parking requirements often prove to be the biggest limitation, but they can be handled through reduced parking obligations, often linked to shared parking arrangements. Shared parking involves recalibration of required parking mindful of the different peaks for different uses.

The "greyfield" development of former and/or underutilized shopping sites on **auto-strips** also provides opportunities for some conversion and lower-cost construction above one-story

commercial structures. Parking ends up being a non-issue due to its abundance. Often, greyfield redevelopment of these auto-dependent uses results in more pleasing transit-oriented development opportunities. There are sites in the City of Rye and Scarsdale, for example, where there is otherwise a shortage of sites, as well as up and down much of Route 1, which traverses a number of municipalities. For good examples of greyfield redevelopment, see Huntington Station in Suffolk County, New York; Mizner Park in Boca Raton, Florida; and the Uptown District in San Diego, California.

Non-residential conversions. In the suburbs, there are a fair number of non-complying, “grandfathered” commercial and industrial uses in residential zoning districts. These are typically small buildings predating the suburbanization of the second half of the 20th century. There is little inducement for property owners to **reuse** the site or the building for housing due to the low density of the underlying district. However, the financing might change if they are converted to 2-4 family houses or another form of affordable housing. For example, the Towns of Enfield and Windsor, Connecticut, allow for the conversion of existing buildings in designated areas to higher density residential use for up to four families.

Acquisition and buy-down of condo units. The urban legend is that the New York suburbs, like the rest of the nation, are awash with failing condo developments and foreclosed property. In reality, the inventory is quite small in the Westchester communities targeted in the Stipulation. But then again, so is the target of 750 affordable AFFH units when all is said and done.

The problem is identifying these units and purchasing them for an amount less than what it would take to construct them otherwise in connection with all of the other options present. The County needs to reach out to the **foreclosure servicers** who are accountable to investor pools. This is because the market price of many condos in foreclosure may be below the cost to create comparable new housing. One area to investigate further is whether the County may be eligible for Neighborhood Stabilization Program grants to help cover acquisition costs.

A third party purchaser is also needed in connection with the purchase or buy-down of several condo units in a single development. Individuals cannot be expected to negotiate with developers and corporate entities, such as a bank that has foreclosed on a property. The third party purchaser could be one of the entities described earlier under Capacity. It might also be a mutual association or another non-profit that has been approved by the County to receive funding under the Stipulation.

General concerns for the low-scale typologies. All of the typologies above (except for the last one) raise a particularly appealing opportunity: “**Owner / Renter Housing**” (our terminology), where there is a low- or moderate-income property owner renting out one or more market rate apartments. This type of shared equity housing has soft benefits as well. While some or even many neighbors might be chagrined, their opposition may be tempered by the presence of for-market apartments. Which of the two units the low- or moderate-income household occupies can also change according to that household’s economic situation and life stage. La Casa de Don Pedro, a community development corporation in Newark, New Jersey, has experience in building these types of structures.

All of the typologies above (including the last one) raise a particular difficulty: **getting to scale** so that there is efficiency in construction costs, etc. This problem is addressed in part by the bundling of sites (e.g., by municipality, along particular corridors across municipal boundaries, etc.). Getting to scale can also be met through the delivery of **technical assistance** to new homeowners. Unlike renters in multi-family housing, or even owners of condo units, the

homeowners under the models above will have considerable responsibilities for home maintenance, paying a variety of bills (not just one), maintaining insurance, and often serving as responsible landlords. But in the end, getting to scale is less of a problem than might be presupposed. If the County creates the machinery for these small-scale solutions, the result may be substantial, especially given that the 750 unit obligation, when spread out among 31 municipalities over seven years, is not that much scale. One resource is Beyond Housing in St. Louis, Missouri, which has ample experience in affordable scatter-site housing. It owns and rents 230 dwelling units located throughout 23 municipalities in St. Louis County.

The **financing for 2-4 family housing** (and related accessory and reuse projects) needs careful analysis but as a first cut could involve:

- Receipt or purchase of the property by a land trust or other approved non-profit entity
- Retention of a non-profit developer (depending on the project and capacity of the non-profit property owner)
- The County providing a construction loan for bundles of property
- Sale of the property to a moderate-income household
- Option for the project sponsor to lower the price of the property by an interest in the property equal to a portion of the down payment, which represents a retained interest in the property that assures its affordability in perpetuity ("shared equity" housing)
- Option for the project sponsor to instead structure the "shared equity" as a balloon mortgage due at the end of a specified time period
- Provision of extra counseling, as per above

5. FINANCING

In reference to IP sections:

Introduction, pages 18-20

Appendix A-2(i): Meeting matrix, summary of all meetings conducted internally and externally in furtherance of Implementation Plan obligations

Appendix A-2(ii): Master List of Housing Meetings for 2010

Appendix B-3(i): A copy of 19-20/Capital Request Form

Appendix E-2(ii): Summary & Outline of historical funding sources, affordability terms (sale price, rental price, taxes), and timelines for completion of projects

Appendix F-2: November 4, 2009 letter from then-Commissioner Mulligan to NYS DHCR

Though mixed-income affordable housing is quite common and with a variety of financing techniques, none are explored in the IP. There is no analysis of how existing programs might be employed for mixed-income housing, upstairs living, scatter-site development of 2-4 family housing, etc. (One financing option for the grass-roots scatter-site and 2-4 family house is discussed immediately above.) Minimal use of and no targets are indicated for existing County programs. At the very least, one would have thought that there would have been a review of how these programs do or do not work in Westchester for AFFH housing at the desired scale, and how the many millions to be disposed of under the IP might be employed to address these “but for’s” to their success. To the extent that the County has expertise in this area and a comprehensive strategy with regard to the range of financing options presented here (and beyond), the IP should make this clear.

As several examples of possible financing options:

- The County should reach out to Westchester **employers** (e.g., hospitals, IBM, etc.) to see if employer-supported housing is an option, particularly for low- and moderate-wage workers. Funds from employers might be blended with and leveraged by the County and CDBG funds. One of the best examples is Yale University. The school encourages employees to invest and live in New Haven, Connecticut, by offering grants of up to \$30,000 to those who purchase homes in locally designated target areas. Another model is REACH Illinois, which provides a 50 percent tax credit to companies for every dollar they invest in an employer-assisted housing program. A third is the Mayo Clinic, which over the past decade has contributed \$7 million towards affordable housing development in Rochester, Minnesota.
- There may be a need and opportunity in some localities to develop a form of **co-housing** to meet the special needs of low-income single adults. Where this has been done it has been done successfully, especially when undertaken in conjunction with well-managed non-profits. One local example is the recently completed Scotts Ridge development in Pound Ridge, Westchester, which includes 12 affordable senior units with access to common areas.
- The County should meet with AFL-CIO union **pension fund managers**, as well as State and municipal pension fund managers, to see if they are ready to provide financing for affordable housing and how they might work with a revolving loan fund. For example, the AFL-CIO Housing Investment Trust has, to date, leveraged union pension capital to help finance over 500 housing projects consisting of over 90,000 units. Note that this option would be relevant only for those projects where prevailing wage requirements were in effect.

The absence of a detailed financing plan or discussion of options in the IP raises one or both of the following concerns: (1) that there are legal impediments yet to be confronted for all of the financing methods with money generated by bonds, not limited to the revolving plan, and/or (2) that the County has no plan as to how to spend its \$30 million in bond revenue.

The Green Technology discussion fails to indicate how other funding sources, especially those for energy efficiency, can be coupled with the funding pursuant to the IP as well as CDBG funding. Reportedly, many jurisdictions are having a hard time meshing these funding sources with other housing funds. On the other hand, Babylon, New York, has devised an innovative program, called Long Island Green Homes, to help fund energy efficiency upgrades. Through the issuance of Property Assessed Clean Energy (PACE) bonds, Babylon pays the upfront costs (up to \$12,000 each) of the retrofit, and the municipality is repaid over 20 years with the money saved on the homeowners' utility bills.

Finally, **criteria** should be developed to determine the contours of a cost-effective financing strategy. These criteria should be considered in selecting projects. An average of approximately \$70,000 is available per unit, based on the \$51.6 million dollars available to create 750 units, which speaks to the order of magnitude in financial support that any one development might get.

But these numbers lack analytical rigor and a framework regarding:

- **Tenure.** Ownership units require deeper subsidies, including financial help with down payments, but are preferred by many housing advocates and municipalities. Rental units are harder to find in the suburbs and represent a significant problem in terms of retaining and attracting young adults of all ethnic and racial backgrounds. Shared equity schemes may bridge the differences here and should be aggressively researched and promoted.
- **Replenishment.** Whether the funds are in the form of a grant or loan, and the time frame for repayment of the loan, are further factors. Higher amounts might be given where the money will be recycled, as with a revolving fund if it proves viable.
- **Target population.** The per-unit cost of affordable housing relative to the income group addressed is a key factor. Projects addressing the needs of lower income households deserve and need deeper funding than those with the same proportion of higher income households.
- **Leveraging of units.** Greater preference could be provided to the first phase of a project that has lower or no subsidies needed for later phases, or for a project that represents a breakthrough precedent in what has been a reluctant municipality.

6. REVOLVING FUND

In reference to IP sections:

Introduction, page 20

Appendix D-3(i): Amendments to Westchester 2025 & Resolution of the Westchester County Planning Board, adopting the overarching goals of the Stipulation and required policy statement, adopted on January 5, 2010

Appendix E-2(iii): Summary & Outline of Green Technology

Appendix F-1: Report on Revolving Loan Fund Feasibility Assessment

Value of a Revolving Loan program. There is good reason to make loans available as soft seconds or other subordinated debt rather than outright grants, and to provide for potential recapture down the road. In many cases, access to financing (rather than cost) may be critically important to the success of a project; this is particularly true with respect to many of the small-scale options, where conventional financing may be extremely hard to come by under current conditions. The prices and rent levels that will qualify under the Stipulation are not particularly low, and many of the small-scale options may not require significant subsidization. In addition, there may be situations where it might be better to use these funds neither as loans nor grants, but as credit enhancements – loan guarantees or loan loss reserves – to help developers leverage private capital. Finally, the revolving fund could be used to renovate and maintain affordable and fair housing in the communities outside the ambit of the Stipulation, including those where there are evident gentrification and displacement pressures.

Legal viability. The fundamental question raised by the County in the IP is how to create a revolving loan fund that is consistent with both federal and New York State law regarding the uses of Government General Obligation Bonds, which are to amount to \$30 million of the \$51.6 million total (the remainder to come from CDBG). The County's legal argument is that the New York State Constitution prohibits the gift or loan of public funds to private entities; but this would also seem to rule out any use (grants included) of the IP's proposed \$30 million in Government General Obligation Bonds for private development. There may be ways to address the legalities:

- The County provides those funds to a **public benefit authority**
- **Blending** federal CDBG and bond funding may change its status
- **Purchasing and leasing the land** with a graduated, balloon, or combination of the two as the method of payment
- Still other possible solutions may be inferred from HUD's *Cityscape Journal (Volume II, Number 2, 2009)* on Regional Innovation and Affordable Housing

Resolving the legality of these options will require finding a lawyer with a “how can we make it work” mentality and expertise in State law, as well as Internal Revenue Service (IRS) requirements. If administering the fund is an issue, there may be a credible entity that could play that role (see the discussion above under Capacity).

This debate may be moot. It now appears that in fact the bonds are not general obligation but capital project bonds. And there would seem to be nothing prohibiting the creation of a Revolving Loan Program with the **\$21.6 million in CDBG funds** – no mean amount.

Financial viability. A second issue raised by the County is the premise that a loan – as compared to a grant – places a burden on what is already a marginal profit project. There are practical solutions to this challenge; the key is the manner in which the loan is repaid. The loan (or lease payment, as per above) can be structured as a balloon, due upon sale of the property, or as a sinking fund, revolving downward. Revenue will not be realized for some time, and while it will be less than the initial outlay, it will still be meaningful.

Strategic viability. The third and final issue is whether the County has the expertise and commitment, assuming the revolving loan fund were set up, to use it in the most productive and cost-effective fashion. If in fact the County's reluctance is political or operational (i.e., how long will they have to do all of this?), the solution would likely be to dedicate the revolving funds to **housing rehab**, energy efficiency, etc. consistent with an effort to maintain affordable housing in the face of further gentrification, high taxes, expiring affordability mandates, etc.

The latter strategy is likely the most just for other reasons: in the lower-income communities, maintaining housing affordability and quality is paramount. The issues of expiring subsidies and the preservation of these units are critical. To the extent possible and feasible, the County should pursue permanently affordable housing with any buy out used to replenish the revolving loan fund.

7. SITE IDENTIFICATION

In reference to IP section:

Introduction, pages 13-15, and 17

Site typology. As discussed at length earlier, out of the many types of housing typologies, the IP, for the most part, focuses on new multiple single-family, condo and multi-family development. The County lists 15 ways to identify sites for such development, falling into the eight groups listed below. (The parenthesized “a” through “m” refers to the County’s itemization; the bracketed, italicized text is for our occasional comments.)

- (a) and (b): Property (including units) controlled by **banks and lending** institutions due to foreclosures, etc. *[There is no discussion of how this data might be obtained or used.]*
- (c), (i) and (m): **Owners and developers** who may show an interest, including owners of office parks where mixed-use development may be appropriate. *[This would be best done with a Request for Expressions of Interest, as there is not much predictability as to which office parks would be interested in selling their land for mixed-income residential development. In some cases it will be to deal with high vacancy rates and, hence, cash flow problems, while in other cases it will be because the land area doesn’t have much use for future office development or in marketing the current development to tenants.]*
- (d) and (e): **County-identified property** based on land use and other analyses; the County indicates only open developable land *[excluding above-store and mixed-use options.]*
- (f) and (h): Advocacy with municipalities of mixed-use and **transit-oriented development** (TOD) *[which the model zoning does not really address.]*
- (g) and (n): **County owned land** *[which was itemized, but not analyzed, and which excluded mixed-use development (see below). The IP also neglected to itemize surplus State and municipal land].*
- (j) and (k): **Affordably priced housing** and developments.
- (l): Promotion of the **model zoning ordinance** to provide inclusionary zoning, mixed-use, or “living above the store” and office park housing opportunities. *[Yet the model zoning is fairly limited in this regard, as is discussed later.]*
- (m): **Outreach** to developers *[without discussion of how this is to be carried out.]*

A further source of sites is indicated elsewhere in the IP, through a right of first refusal on the sale of in rem land (property taken by government due to the failure of the owner to pay property taxes within a time frame of one or several years). This opportunity is pretty slim in Westchester, where in rem takings are rare. A right of first refusal for all municipal land put up for sale would expand the inventory but not necessarily the opportunity for affordable housing, as municipalities need not sell their land. In addition, mixed-use development of **municipally and County owned** land and buildings could be a major source of development sites. This is major oversight that is easily remedied.

Also absent but useful maps include: multi-family zones, office park zones, commercial corridor zones, mixed-use areas, and downtown areas. While “living above the store” is mentioned as a category, it is not otherwise addressed in the IP. No progress is indicated on identifying any of the other sites, though vacant County land is charted. There is no discussion of how the County might employ its superb Geographic Information Systems (GIS) capabilities to map an **inventory of potential sites**.

In reference to IP sections:

Introduction, page 14

Appendix E-6(iv): List of County-owned parcels

List of County-owned land. When all is said and done, there is not that much vacant and under-utilized County-owned *land* in play, according to the inventory presented in the IP (see the table below). But a few of these parcels may be choice, such as those in the City of Rye and Pleasantville, where there is little land to be had, as well as in Yorktown, where property values are not very high; in these places, free land represents an additional source of cross-subsidy. The list also excludes a large number of places where the affordable housing might be built **above or in connection** with reconstructed County buildings and facilities. Such mixed-use development has an advantage in that there is a need to watch out for land enjoyed as parks and open space, as alienation of such property requires State legislative action.

Also, note that the County has no incentive to make any of its own land available for mixed-income development. The IP provides for the \$51.6 million dollars in cash. The disposal of County land does not reduce that amount; so the County would be disposing of its land without earning income for doing so. There is also the opportunity cost: given today's property values, it is unlikely that the County could ever assemble such properties again at any reasonable cost.

Yet the County-owned land has a number of advantages that make it invaluable.

- The County-owned land (as with any land purchased with the County funding) has the advantage of being leased for, say, 50 to 99 years or of being sold with a mortgage with payments that kick in at a later date, such as with a balloon mortgage. This revenue might then feed into the revolving fund.
- The use of Payments in Lieu of Taxes (PILOTs) could mean that the County-owned land is in essence returned to the municipality's tax rolls. Anti-tax sentiment is often channeled into anti-development in suburban communities. This might reduce that passion.
- Any revenue realized through the sale of the County-owned land is in excess of the \$51.6 million required by the Stipulation. It might be used for project improvements and mitigation that would reduce opposition to the project as well as represent improvements to the project itself.
- The disposal of County-owned land can be used to demonstrate the County's substantive commitment to the development of such housing.

County-owned land available for development (according to the IP):

Municipality	Acres	Descriptions
Harrison	9	"HAR residential DD" site
Mount Pleasant	43	"Bradhurst" – IP says retain, but are parts surplus?
Mount Pleasant	512	"Grasslands Campus"
Pleasantville	3	"PLV Residual U"
Rye, City	2	"Theo. Fremd Site" – groundwater issues?
Yorktown	35	"Curry site"

In reference to IP section:

Introduction, pages 13-15, and 17

Top-down versus grass-roots. In general, the IP's list of 15 ways to identify sites (as described above) is based on top-down planning by the County. Rather, the \$51.6 million, which the County is required to spend under the Stipulation, could be leveraged to induce the private sector and non-profits to come forward with their own ideas.

If it is not doing so already, to remedy the top-down planning quality, the County might want to:

- **Prepare requests for proposals** for County-owned land and for other projects (as discussed at the outset of this report).
- **Convene conference and visioning sessions** for all of the affected communities to outline their obligations and solicit through facilitated meetings their input as to how they can meet their fair share obligations without the County having to exercise additional powers and/or top-down approaches.
- **Incentivize local communities and or advocacy groups** to initiate planning approaches to the siting of affordable housing within their communities, whether through visioning grants or other participatory mechanisms.
- **Provide technical assistance** to willing municipalities, and especially to would-be developers and project sponsors.

Banks and lenders committed to CRA could lend a hand. Particularly, the County should explore negotiating with area banks that have received stimulus funds to see if they have properties, including vacant land, that have been foreclosed or are distressed, and whether or not they would be willing to dispose of them to a private or not-profit entity for affordable housing development. The County could sponsor workshops, like those now being conducted by third parties, which can stimulate local creativity and are trusted by the municipalities as well as the fair housing advocates. A countywide coalition, with religious and civic leaders and staffed by the County, could raise the moral imperatives of desegregation.

8. PROJECT AND SITE EVALUATION

In reference to IP sections:

Introduction, pages 24-28

Appendix A-1(iv): A copy of "Monitor's Report Regarding Implementation of the Stipulation and Order of Settlement and Dismissal For the Period of August 10, 2009 through February 10, 2010."

Appendix E-1(ii): Chart outlining Eligible Municipalities/area by tiers of eligibility under Paragraph (7) of the Stipulation

Appendix E-1(iii): Eligible Areas: Fair and Affordable Housing Implementation Program

Appendix E-5: Blocks with Zero Black or African-American and Zero Hispanic Populations in Eligible Communities

Appendix I-(i): A copy of HUD's October 23, 2009 comments on County's May 29 draft AI

These documents provide critiques and stipulations that could be turned into planning criteria for evaluating projects and programs. The relevant data should be mapped, showing the hierarchy of site area preference based on desegregation priority – though the difference between one level of segregation and another is nuanced when dealing with any proportion less than three percent African-American and seven percent Latino.

Significantly, there is no map showing **school districts** ranked in some manner by performance and level of segregation, contradicting the stated goal to provide "equal access to... educational and other opportunities..." (Stipulation, page 1). The Stipulation further requires the County to, in developing its IP, give "consideration . . . 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 educational opportunities" (Stipulation, paragraph 22(a)). Ultimately, the diversity and performance of local school districts may be more important tests of segregation than municipal population criteria, though the authority for project and zoning approvals rests with the municipalities. The IP should address this issue if it is to follow the spirit of the Stipulation.

Note that the demographic maps, which provide the underpinning for the Stipulation, will need to be updated with the results of the 2010 U.S. Census.

In reference to IP sections:

Appendix E-3(iv): Map of Areas within one mile radius of Metro North train stations and a Bee-Line bus route in Eligible Communities

Appendix E-3(v): Map of County Sewer Districts and Private Sewage Treatment Facilities in Eligible Communities

Appendix E-3(vi): Map of Major Water Suppliers in Eligible Communities

Overlaying these maps would be most revealing. First, it would concretize some of the smart growth criteria that the County clearly wishes to promote, which, as criteria only, could be used by proponents and opponents to argue for and against the same site. It would also reaffirm the continuous need for creativity in the types of units and environmental solutions employed with affordable AFFH development if all of the County's municipalities are to be desegregated.

Specific comments:

- E-3(iv), **areas proximate to train stations and bus routes**. The one-mile radius as a standard measurement for access to public transit is a good rule of thumb. However, in addressing bus access, the IP considers all areas within a one-mile radius to a bus *route* – as opposed to a bus *stop* – accessible. In its defense, the County argues that bus stops can be added or changed, and thus this should not be a concern (IP, page 14). Nonetheless, it deserves discussion in the IP. For instance, what is the procedure for changing bus stops to accommodate access for affordable housing? What are the criteria for determining need? Underscoring this point, it is highly unlikely that a bus stop would (or should) be added to accommodate a new 2-4 family house or any other small-scale typology that we believe will prove especially useful in low density areas. In making these considerations, frequency of service also needs to be considered, as weekend and late night service are important to service sector jobholders. Frequency of service is equally as important as routes and stops.
- E-3(iv), **transit** (continued). The County may need to consider how it will enhance transit to better address the affordable housing obligations – as well sustainability and traffic congestion issues. This is especially important where there is an absence of transit, as is the case for most of Bedford, North Castle, North Salem, Pound Ridge and Somers (even at the one-mile radii). The preference for transit access should not, however, be treated as a site location necessity, lest it play into an argument that the County and/or municipalities cannot move forward with the affordable housing projects and mandates until such transit is in place.
- E-3(v), **sewer service**. Innovative housing models (e.g., 2-4 family houses) or wastewater treatment systems (e.g., constructed wetlands) will be needed in a good part of a number of municipalities, including Cortlandt, Lewisboro, North Castle, North Salem, Pound Ridge, Somers and southern Yorktown. This may involve greater flexibility in terms of the innovations now available for wastewater treatment, on the part of the NYS Departments of Environmental Conservation and Health, as well as the NYC Department of Environmental Protection in connection with protecting watershed areas.
- E-3(vi), **water supply**. This map also argues against multi-family solutions and in favor of the 2-4 family housing typology where water supply is based on wells, such as in Lewisboro, North Salem, Pound Ridge, and Somers, as well as parts of Bedford, North Castle, and especially Yorktown.

9. PUBLIC APPROVALS

In reference to IP sections:

Introduction, pages 11-13

Appendix A-1(i): A copy of the County's October 8, 2009 extension request letter

Appendix D-1(i): Model Ordinance provisions

Appendix D-2 : Discretionary Funding Allocation Policy

Appendix E-2(i): Flow Chart of traditional fair and affordable housing development process

Appendix A-1(i) has the critical language that the model zoning must provide procedures for "streamlining the approval process for design, permitting and development." The County's model zoning ordinance lists three approaches to carry out streamlining:

- **Pre-application meeting** with representatives from each of the relevant municipal departments, agencies, boards, and commissions for early identification of issues and coordination purposes. This is an excellent and proven way to move projects along, but only where the municipal leadership wants projects to move along. It all comes down to good intentions, which at present there is little reason to assume will be prevalent among Westchester's exclusive municipalities.
- **A good faith effort** by municipal entities to honor the "conceptual" timeline established at the pre-application meeting and an entitlement of the applicant, after one year, to at least one other meeting per year with the municipal entities as a group. This has very weak teeth, and the extra meeting per year is clearly inadequate; because development approvals often take more than one year, the implication is that the municipality can back-burner projects after a point.
- **Calendar / agenda priority**: The municipal entities "shall give priority to such applications by placing FAH applications proposals first on all meeting and work session calendars and agenda, when feasible." This is an excellent idea, though the operative words of "when feasible" will require rigorous County monitoring and enforcement, which seems difficult if not unlikely given the County's limited staffing as well as the County's weak "sticks."

The County also sets out a number of assumptions about the process for fair affordable housing development. The flow chart provided in Appendix E-2(i) illustrates the development process in its full complexity, from concept to completion going well beyond the normal approval process managed by the municipalities. The chart is wrong in its stated conclusion (in the text) and subtext (in the chart) that somehow developing AFFH units are so very hard to do.

Focusing on the chart: the chart should be for the approval process only. Not every step of the *development* process is in the *approvals* process, such as the front-end efforts of the developers as they do their due diligence, for instance. Also, not every review is as exhaustive as the chart indicates: very few projects involve any historic preservation reviews, for instance. Even the full analyses called for under the State Environmental Quality Review Act (SEQR) are only necessary when development requires discretionary review. If affordability mandates are employed (as discussed later), and as-of-right zoning is applied, the SEQR analyses will as often be relatively moderate or circumspect. That being said, nearly everything in the chart is the normal way of going about real estate development. That County-funded projects take four or more years to come about should not surprise, as this timeframe is commonplace.

The only additional timeframe introduced by the County is for its own financial review and legislative approval. However, these can run coterminous with other project stages, thus not particularly if at all stalling the development. Indeed, since time is risk, it can be presumed that the developer voluntarily enters into that extra process with its potential added delays because it is an essential element of the project. In that sense, it is no different than any other project element that might add several months to the process (e.g., a Stage 2 environmental audit, a traffic study, value engineering, or bringing in another partner). The bottom line is that developers earn and deserve large profits precisely because the process is complex with attendant risks.

That said, the County could do a variety of things to **speed the process**, reduce risk, and thus make mixed-income housing more appealing:

- **Pre-application meetings (revisited).** As the County notes, early pre-development meetings between the developer and reviewing municipal agencies and boards (best with representatives from those agencies and boards convened as a group) can often speed a project through the formal reviews by uncovering issues and preferences at the outset. The County should become an active participant in this process, if not play an ombudsperson-like role for those developers and project proposers who are less sophisticated. The County can also act as the official record-keeper for the meeting, thereby creating an objective paper record.
- **Pre-approvals for publicly owned land.** In these instances, the County can do the upfront due-diligence and approvals before issuing an RFP (or RFEI or RFQ) for the site and project. The due-diligence could not only include site analyses but also pre-approvals for all but site plan approval. This would create the equivalent of an “as-of-right” condition as most planners determine it (i.e., use and density is as-of-right, subject to design and site plan review). Even for those reviews that must follow (e.g., environmental, historic, etc.), County participation in the planning and presentations will likely improve both, and it lends an imprimatur of substantiality to the proposal, discouraging the cupidity of some boards.
- **County study.** The public is highly suspect of developer-sponsored studies. The County paying for and sponsoring these upfront studies would remove much of the suspicion that the studies are self-serving. This is especially true in connection with traffic studies and environmental studies – which are generally combined in the analyses required under SEQR, most usually involving an exhaustive Environmental Impact Statement (EIS). In addition to the EIS, public concern is leveled at two areas: the impact on traffic and the impact on school taxes, both of which the County can address. The cost of the studies could be added to the purchase price associated with the disposal of publicly owned land or, for privately owned land, take the form of a secondary loan on the property (perhaps structured as a balloon loan, as discussed earlier under Financing) or some combination thereof.
- **School taxes.** While this is the greatest lightning rod for development in one of nation’s most heavily taxed counties, it in fact is a false issue. Studies show that condo and multi-family developments hardly add to the population of school-age children: households with school-age children able to afford luxury condos, for example, self-select for houses with yards. Our experience is that each municipality’s constituency argues exceptionalism based on the superiority of their schools or anecdotal evidence. While not required under SEQR, many developers prepare (or are required to prepare) **fiscal impact analyses** documenting the impact on taxes. The County should do these studies as a matter of course, thereby assuring their consistency, timeliness, objectivity, and authority. A smashing argument would be presented if the County agreed to make

whole any increase in school costs over and above the tax revenue generated by the project, based on some formula that accounts for the real cost over time.

- **State historic reviews.** The same upfront effort could be conducted in connection with any sites or structures deemed eligible for listing on the National Register of Historic Places. The reviewing agency is the State Historic Preservation Office (“SHPO”). SHPO review and approval is necessary for any project involving properties deemed eligible and where State or Federal funding is involved. Many developers are entirely unfamiliar with this process and thus self-select to stay away. On the other hand, for those that do venture into “tax act” projects, the combination of federal financial restoration incentives and federal affordable housing incentives is enormous.
- **Financing.** The County notes that “[d]ue to a tight credit market, and intense competition for subsidies, fair and affordable housing developments typically must secure funding from [upwards of] five...sources in order to be viable.... Most developers put up their own pre-development costs to get to this stage. These costs can amount to hundreds of thousands of dollars. These funds are at risk, and in some cases have been lost where a potential development did not move forward.” The use of County funding would therefore not add but likely decrease the risk associated with complex financing, especially if it came in the form of pre-development loans, construction loans, and/or loan guarantees.
- **Coterminous reviews.** The County (or its designate) can provide advice and service in promoting simultaneous reviews that can expedite the permitting process. Under State law, municipalities must refer select land use proposals – including certain subdivision or site plans, special use permits or variances, and zoning ordinances, among other things – to the County Planning Board for review. In addition to accelerating these reviews, the County could convene inter-agency (State, County and municipal) meetings and/or conduct its own review of projects simultaneous to those conducted by others, if only on a preliminary basis.

10. MODEL ZONING

In reference to IP sections:

Introduction, pages 7-12

Appendix D-1(i): Model Ordinance provisions

A clear expectation is that the County produces a model zoning ordinance for the development of the affordable AFFH units consistent with the mandate that municipalities adopt zoning or policies that “demonstrate a commitment.”

The key problem is that the model zoning presented in the IP addresses only inclusionary, mixed-income housing in connection with multiple single family, condo and multi-family housing typologies containing five or more units. It does not address small-scale options (refer to the typology discussion above). The absence of the 2-4 family house (including the related accessory housing) options is particularly egregious, as using small-scale options:

- Legally and conceptually builds on accessory housing ordinances that many Westchester municipalities already have in place.
- Builds on the reality that most municipalities without accessory housing ordinances do not rigorously, if at all, enforce their prohibition against accessory units. Accessory housing is observed in the breach, thus undermining arguments against its use for AFFH units.
- Has more universal applicability than condo and multi-family housing, with particular relevance for the low density districts found throughout Westchester, and which are overwhelmingly prevalent in northern Westchester.

The second key problem is that the County’s draft model zoning is under-developed. Its biggest asset is that it appears to be a floating zone – i.e., applicable as an overlay wherever the municipality so wishes, and not limited to multi-family zones. It also does well with the in-perpetuity clauses for affordability. But it fails to account for decades of trial and learning from error with inclusionary zoning elsewhere.

Detailed below are a number of limitations to the draft model zoning ordinance:

Statement of purposes. There is none. Discretionary actions will be likely. The Statement of Purposes would provide important guidance to the reviewing boards in the execution of the zoning.

Definitions: “fair and affordable housing (FAH) unit.” In addition to income ceilings, the ordinance should provide for ranges, so as to ensure that an adequate pool of buyers and tenants is available, and that units are not marketed exclusively at the top of the range. We would suggest a sliding scale with well-reasoned criteria, with something on the order of 60 to 80 percent of AMI for sales units and 45 to 60 percent for rental units, or some other distribution with well-reasoned criteria. The County has indicated that this goes beyond their obligations under the Stipulation. However, even if this is not explicitly required, its omission would seriously contradict the spirit of the Stipulation.

Required “fair and affordable” housing unit component. There is no provision for “Fair” housing. Just the opposite: the IP calls for preferences for workers, emergency services

volunteers, and seniors from the same municipality. This is the norm for getting local political acceptance for affordable housing ordinances, but it should not be tolerated here. Residency preference language does not belong in an ordinance being crafted specifically to overcome racial and ethnic exclusion. (Paragraph 25(d)(i) of the Stipulation explicitly bans “local residency requirements and preferences and other selection preferences that do not AFFH.” Theoretically, it may be possible that a workforce is sufficiently diverse such that a partial preference could AFFH. However, several issues arise, including: (1) how do you accurately profile the racial composition of the relevant workforce, and (2) how do you effectively and fairly market the units to all members of the workforce?)

Incentives. We had expected significant incentives, especially density bonuses. The fact that the incentive is for one-bedroom market-rate units is faulty: most developers prefer two-bedroom units for good reason. While bulk waivers are mentioned, height is not specifically. (In many instances, an extra floor can add a lot of value.) Nor are other zoning incentives, such as reduced parking obligations. Shared parking is especially valid in connection with housing formats needing structured parking, as the cost can run at \$40,000 per space. If linked with Zipcar or other modes of shared parking, shared parking has bearing for sites not served by transit.

The good news here is that the incentives are for affordable housing in excess of the 10 percent mandate. (NOTE: this is the only place in the model ordinance where the 10 percent mandate is indicated, which is peculiar.) This begs the question of whether the 10 percent mandate is appropriate, whether it should be higher, or, for that matter, whether incentives are better than mandates.

Our view is that **affordable housing mandates** are far more purposeful than incentives. When mandated, developers deduct the added cost of the inclusionary component from their bid for the land, just as they would in connection with any other “ground cost,” such as for sewer connections, site remediation, a drawn out or uncertain approval process, tenant relocation, etc. When incentives are employed, the developer must earn the same profit off of the affordable component as off of the market-rate component; assuming a lower profit or even a loss on the affordable component means that the developer must earn that much more *profit* essentially from the increase in what the site is worth following purchase. There are many extant examples of affordable housing mandates. Some of the most successful ordinances / programs include those employed in Cambridge, Massachusetts; Montgomery County, Maryland; Palo Alto, California; and Stamford, Connecticut.

The use in the model ordinance of the 10 percent benchmark is too conservative, in our view. The 10 percent benchmark is based on a review of only a few developments and proposals. A **20 percent mandate** is not much of a problem in affluent communities (such as in Bronxville) with extraordinary housing values and restrictive zoning, such that it takes only a handful of extra units to create the added land value and fill the gap in net profits. It is of course daunting in middle-income communities, where it takes a good many extra units to generate the same added net profit (such as in the Town of Ossining). It should be possible to still keep a standardized percent in the model zoning by pegging the size of the mandate to the median income or income distribution of each municipality, or in connection with a more sophisticated analysis. Incentives should be reserved for development reaching into lower income categories.

Time period of affordability. Language should be added providing for a **restricted covenant** when a sales unit goes to market that preserves affordability in perpetuity. The County should

explore a variety of options rather than trying for a “one shoe fits all” approach. Some options are noted below.

- **Lump sum recapture** of the differential. The greater part of the difference between the market sale price and what the controlled price would have been is recaptured by the County's affordable housing trust fund. (Fifty years is a long time away, but it will eventually arrive.) For example, New Jersey State regulations, known as the Uniform Housing Affordability Controls, require that the entire windfall be recaptured at the end of the resale period.
- **Graduated recapture.** This might be, for instance, 95 percent recapture of the difference between the original sales price and the price at later point of sale, less 1 percent of the difference for each year the seller has lived in the unit and returning to the purchaser his/her down payment plus major improvements in constant dollars, based on a predetermined formula.
- **Restricted sale to a pre-qualified pool.** The pool could perhaps consist of people already identified through the marketing plan and/or include those who applied but did not previously get apartments.
- **Restricted sale (or purchase option) to a third party entity** (see the earlier discussion in Capacity). The advantage to the seller is that the sale would be predictable and quick. A Montgomery County, Maryland, ordinance gives that county's Housing Opportunity Commission the right to buy up to one-third of all inclusionary housing units as they become available.

Property restriction. The municipal counsel is employed for the restricted covenants, etc. As enforcement is key, either the County should provide this service or independent monitoring of the counsels will be needed. Somebody has to be in place to enforce the deed restrictions.

Unit appearance and integration. Single- and two-family houses are discussed, and then multi-family housing. More creative solutions are missing, other than the cited two-family houses in single-family projects and subdivisions. These include accessory housing, accessory housing in accessory buildings, and 2-4 family houses. Given that a typical large home in northern Westchester might contain 3,000 square feet, one could build a lookalike structure in such a subdivision containing three to five separate dwelling units. (Cranbury, New Jersey, has a successful model of this typology.) These typologies are especially appropriate for upper Westchester. Another typology involving upstairs living (above commercial property) is especially appropriate near train stations and on greyfields (marginal shopping centers and districts).

The integration of the affordable units within the development, as called for in the County's model zoning, is commendable. In our view, they do not have to be completely interspersed with the market units, but on the other hand, they should not be isolated or placed in a clearly undesirable location. This should be clarified.

Off-site solutions involving housing trust funds and land trusts, such as the Westchester Housing Land Trust, should also be allowed, especially on sites that are outside of the targeted areas convenient to mass transit (etc.) but still within the targeted census tracts. This latter requirement is necessary so that the off-site solutions do not undo the underlying desegregation purpose of this effort.

The distribution of affordable unit sizes requires some discussion as to whether it should mirror that of the market-rate units, or whether it should be based on separate criteria.

Affirmative marketing. Again, enforcement is needed. And perhaps reference can be made to the central marketing entity. (See the next section for a detailed discussion of marketing.)

Meeting schedule and timeline. There are no enforcement mechanisms here. A project could be held up indefinitely, with the only mandate to meet annually with the developer. Plus, there is no discussion of SEQR, again opening up the possibility of indefinite review times. This is where County intervention is needed, as discussed in the immediate prior section. While not a very powerful tool, the idea is that the municipalities may be more considerate of the need to maintain timely and consistent reviews if there is a respected third party present.

11. MARKETING, INTAKE, AND OUTREACH

In connection with IP sections:

Introduction, pages 21-23

Appendix G-1: Affirmative Fair Housing Marketing Plan

Appendix G-2: Centralized Intake & Housing Outreach Plan

Appendix H-1: Fair housing Outreach & Education Plan

By its nature, affirmative marketing is a fuzzy subject – tracking exactly how much should be done, and how well it is done, is difficult. Establishing effective affirmative outcomes in this case is particularly difficult because most of the housing will be built in locations quite remote from areas of significant African-American and Latino populations. On the other hand, it is not insurmountable given the relatively low set of numbers stipulated.

The IP's fair housing marketing plan has two major problems. The first is that the "Marketing and Outreach Area" should be expanded to include all of New York City and the metropolitan area (rather than just contiguous counties).

Second, the IP puts the bulk of the fair housing marketing burden on the developer. This is fine for projects of 100 or more units that yield 20+ affordable units (even assuming a more rigorous inclusionary mandate of 20 percent, though the County sets that benchmark at 10 percent). It is, however, likely that many if not most of the units will be of a smaller-scale typology (such as developments above stores, 2-4 family houses, accessory apartments, infill, buy-downs of existing condos, etc.) that involve individuals, such as homeowners, who are relatively unaccustomed to AFFH marketing. There needs to be a clear County-driven umbrella affordable marketing strategy for units where project-specific marketing is limited.

More detailed points and questions are raised below:

Outreach by developers. While the plan describes developer outreach to minority communities, it is not entirely clear how much is required and how extensively that outreach has to be pursued. In light of the fact that this is a racial discrimination settlement, this language has to be much stronger. This includes resolving who is responsible for monitoring performance by developers. If it is the County, are the requisite will and the expertise present?

In Massachusetts, for instance, all developers are required to submit an Affirmative Fair Housing Marketing Plan ("AFHMP") that is subject to the approval of the subsidizing or funding agency. Included in the AFHMP requirements are standards for resident selection procedures and marketing and outreach, among other things. In addition, the State gives preference to developers and contractors that have prior experience and demonstrated success in carrying out AFHMP responsibilities.

There also should be some variation laid out based on the size of the development. If it is a large project, there should be a more extensive process spelled out. Specifically, for developments above a minimum size, the outreach should begin six to nine months before occupancy, not three months (90 days) as indicated in the IP.

Centralized database. A countywide centralized intake system is essential for the small-scale tier of projects, and it would be invaluable for the larger developments, too. A number of elements would be embraced here. The first is a central office or place where people can go to get information and learn about projects. The second is a virtual place (i.e., a website) that provides a **multiple housing list**. The multiple listing could include an access component to realtors, sales offices, etc. The database would logically list all affordable housing units, not limited to those created through the County's obligations under the Stipulation. This is important in order to get to scale in terms of recognition that the centralized database is *the* place to learn about affordable housing. While recognizing that Paragraph 33(f) of the Stipulation requires centralized intake only for home buyers, we feel that if the County were serious about desegregation, it would extend this service to rental units as well. A good model is the MassAccess Housing Registry, an online listing of affordable housing availability throughout the State of Massachusetts.

Media. This is particularly important, since the process of building awareness of the opportunities to be created by the Stipulation in minority concentration areas – mainly southern Westchester and the Bronx, as well as all of New York City – is by its nature a gradual one. If that process only begins 90 days before occupancy of a single project, it is unlikely to yield significant numbers of prospective buyers or tenants.

The County needs to document an aggressive **outreach** effort to reach people from key minority concentration areas inside and outside Westchester to file with the system. In addition to the web, this involves: flyers, social networking sites such as Facebook, postings in public places like public libraries, informational meetings, etc. Given the target populations, the media outreach should be directed to newspapers, etc. that themselves target African-Americans and Latinos, and the material must be in Spanish as well as English.

Strategic allies. The County should, as it notes on page 3 of the affirmative marketing plan, recruit a **network** of advocacy groups, fair housing groups, civil rights groups, faith based-organizations, churches, community-based organizations. In addition, the County should consider working with major employers and unions representing pools of workers, such as hospital workers, communications workers, and transit workers. Hospitals, for instance, are usually a major employer of minorities.