

CHAPTER 6

PREVIOUS IMPEDIMENTS IDENTIFIED, COMPLIANCE REVIEWS, AND AFFIRMATIVELY FURTHERING FAIR HOUSING IN MARIN COUNTY

Marin County's previous Analysis of Impediments (AI) was conducted in 1994. This analysis was undertaken prior to the development of HUD's Fair Housing Planning Guide, which provides a section outlining the components of the AI. The Fair Housing Planning Guide also helps jurisdictions to understand not only how to affirmatively further fair housing, but also how to develop and implement strategies to overcome any identified impediments with measurable progress. As a result, the 1994 AI is not as sophisticated in its analysis as those of other jurisdictions who revised their AIs according to the Guide.

Impediments Identified in the 1994 Analysis of Impediments

HUD officials summarized the impediments identified in the 1994 AI in the Final Investigative Report (FIR) of HUD's compliance review of Marin County's Community Development Block Grant Program (CDBG).¹ The FIR states "the failure to prominently summarize these other impediments has apparently resulted in the fact that, by and large, they have not been translated into issues to be addressed with corresponding remedies or measurable goals in the county's 1994 or successive Consolidated Plans. Through interviews and documentary information collected during this compliance review, FHEO² believes that most all of these impediments summarized ... remain valid as impediments even as of 2009."³ Below is a list of these impediments. It should be noted that HUD identified nine additional impediments during the course of the compliance review; those have been included throughout the rest of this AI.

- *There are too few rental units in Marin County, driving up prices and demand and increasing competition, and this can lead to discriminatory practices with potentially negative consequences, particularly for minorities, families with children, or persons on fixed incomes (elderly, people with disabilities).*
- *There is a dearth of larger rental units, which are traditionally desirable to many Asian and Latino households with more children or multi-generational households.*

¹ HUD FIR at 66-67.

² The Office of Fair Housing and Equal Opportunity

³ *Ibid.*

- *The county's Latino population doubled from 1980 to 1990 and may have given rise to anti-immigration sentiment, which in turn may have led to segregation of Latino and some Asian families, with many settling in the Canal Area of San Rafael.*
- *Single female-headed households are particularly impacted by the high cost of housing in the county because they have half the mean incomes of male-headed households and only a third of the income in married households.*
- *Marin City's population is 59 percent Black, and 47 percent of the Canal Area residents are Latino. Both areas are racially segregated; Marin City's has shown historic patterns of racial segregation dating back to World War II.*
- *Marin's elderly population is growing by 23 percent, far more rapidly (seven times more) than the national increase. The elderly and persons with disabilities, both groups more likely to be on fixed incomes, will be impacted by the rising cost of housing and put at risk of homelessness.*
- *Marin's transportation director at the time had stated that public transportation "is focused in the areas with multi-family housing that serves minorities, single mothers with children, and the disabled," and therefore not a significant impediment in the county. HUD noted in its FIR that "this comment appears to fail to recognize the effects of perpetuating segregation and clustering that is implicit in the statement."*
- *People in middle- and lower-income levels working within the county are more likely to live outside the county because of the high cost of housing, and this is more likely to impact racial and ethnic minorities.*
- *Non-Latino whites and Asians account for most of Marin's homeowners, while Blacks and Latinos together represent less than five percent of the homeowners.*
- *Because of the high cost of land and development, the federal subsidy formulas and limits are not enough for the development of new subsidized housing units, and this particularly impacts minorities, families with children, and persons on fixed incomes.*
- *The increase from one percent to two percent granted by CDBG from 1993 to 1994 was insufficient for Fair Housing of Marin to combat the significant racial and ethnic discrimination existing in the county.*
- *Interviews of Blacks, Latinos, and Asians revealed the following: Blacks perceived that they would experience discrimination in housing if they were to move outside Marin City; Latinos and Asians had similar perceptions if they were to move out of the Canal Area; all groups were unlikely to search in other areas even if they could find better quality housing at comparable prices.*
- *Marin's high cost of housing made it difficult for the Marin Housing Authority's Section 8 voucher-holders to find housing within the authorized rental ranges, often resulting in "porting" the vouchers to other counties with more affordable housing; and because the number of Blacks and Latinos in the Section 8 program had grown due to MHA's affirmative marketing, this meant that the county was becoming less, rather than more, diverse.*
- *As identified by the Director of MHA, the 30 units supported by Shelter-plus-Care were completely insufficient to serve the needs of persons with disabilities in Marin.*
- *As identified by the Director of MHA, Blacks in Marin City resisted MHA's attempts to place non-Blacks in what had been historically Black developments.*

- *Much of the county is zoned as open space or for agriculture, or is not suitable terrain for building, leaving very little land for residential development, mostly around major transportation corridors.*
- *Residential development in Marin has slowed down drastically (in the 1980s and even more in the 1990s), because anti-development sentiment either leads to litigation or there is a threat of litigation, which not only has a dampening effect on building, but also drives up the cost of doing so.*

HUD’s Compliance Review of Marin County and its Final Investigative Report

In July 2009, staff from HUD’s Fair Housing and Equal Opportunity Division conducted an onsite compliance review of Marin County’s CDBG program to determine whether it was being administered free from the effects of discrimination based on race, color, national origin, religion, gender, and disability. As a result of its compliance review, HUD issued a FIR.⁴

The review focused on four issues:

1. citizen participation
2. benefits, services, and methods of administration
3. Section 504 program requirements
4. limited site accessibility analysis

In terms of the second issue listed above, HUD staff considered specifically whether Marin County “and its sub-recipients have affirmatively furthered fair housing choice through policies, practices, procedures and methods of administration which promote effective participation in funded programs, and promote integrated communities, regardless of race, color, national origin, gender or disability.”⁵ It is this issue and its relation to Affirmatively Furthering Fair Housing (AFFH) on which this AI has focused when referring to the FIR throughout several sections of the AI. HUD noted in the FIR, “Marin County’s failure to update its AI in response to these several recommendations by FHEO, coupled with the historically low minority population of the county, were factors of elevated risk that played a role in FHEO’s selection of this relatively small CDBG program for a compliance review this year.”⁶ Even as the FIR was being written, negotiations were underway between Marin County’s Program Coordinator and Fair Housing of Marin to undertake the development of a revised AI.

⁴ HUD’s 2009 Final Investigative Report: Section 109, Title VI and Section 504 Compliance Review, County of Marin, California CDBG Program Final Investigative Report, Case Numbers 09-09-R003-9 (Section 109), 09-09-R008-6 (Title VI), 09-09-R009-4 (Section 504), Compliance Review Team: Sharon Chan, Team Leader, Celia Bobisud (Headquarters-FHEO), Jeff Jackson, Patricia Miskovich, and Donald Roby.

⁵ *Ibid.* at pg. 3.

⁶ *Ibid.* at pg. 63.

Affirmatively Furthering Fair Housing and the Precedent Set by *Westchester*

In 2006, the Anti-Discrimination Center brought suit against Westchester County on a precedent-setting charge, alleging that the County's failure to include race as an impediment to housing choice in multiple analyses of impediments constituted failure by the County to meet its obligation to affirmatively further fair housing. Westchester County, located just north of New York City, includes 45 municipal entities. At the time of the 2000 Census, 15 percent of residents in the county were Black. However, over half the county municipalities had Black populations of three percent or less, and Black residents were highly concentrated in four communities: Mt. Vernon, Peerskill, New Rochelle, and Yonkers. In fact, Blacks made up the majority of residents in Mt. Vernon. Although the County identified areas of minority concentration in its consolidated plan, further noting that minorities were priced out of the expensive home market and that many jurisdictions had enacted restrictive and exclusionary zoning ordinances, the County did not identify any barriers to housing choice based on race in its analyses of impediments. Instead, the County argued that any discrimination in the county was a problem of income discrimination, not racial discrimination, and that income was arguably a better proxy than race for determining housing need.

In February 2009, the U.S. District Court for the Southern District of New York ruled on the Anti-Discrimination Center's motion for partial summary judgment and agreed with the plaintiff's allegations, finding that Westchester County had "utterly failed" to meet its AFFH certification requirements. The court noted that Westchester County conducted its two previous analyses of impediments "through the lens of affordable housing, rather than fair housing and its focus on protected classes such as race. Both AIs [2000 and 2004] are devoted entirely to the lack of affordable housing in the county...[T]here is simply no evidence that either of the county's AIs...analyzed race-based impediments to fair housing." Further, the court noted that although Westchester County was aware of the racial makeup of its municipalities, it did not consider whether its production of affordable housing had the effect of increasing or decreasing racial diversity in the neighborhood in which the housing was built, and that, in fact, the production and placement of affordable housing *increased* segregation in each jurisdiction. The court also noted that Westchester failed to require its participating municipalities to take any steps to affirmatively further fair housing, and refused to monitor the efforts of participating

municipalities to further fair housing. After the court granted the Anti-Discrimination Center's motion, the County ultimately chose to settle the case for an unprecedented sum of \$62.5 million.

In the wake of the Westchester case, it is clear that recipients of federal funding must demonstrate that they are, in fact, affirmatively furthering fair housing. On its face, Marin County bears many similarities to Westchester County. Like Westchester, Marin's overall minority population is very small. And like Westchester, Black and Latino residents are overwhelmingly concentrated in only a few communities within the county. Compounding the problem of racial concentration, the few future developments planned are, by large, slated for locales that may perpetuate segregation.

Marin is notably dissimilar from Westchester in several key respects. Affirmatively furthering fair housing requires more from a jurisdiction than simply funding affordable housing development. Marin County has taken some notable steps towards that end. First, the Marin County Board of Supervisors funded a Housing Discrimination Taskforce, a consortium of community groups dedicated to identifying and combating discrimination against people of color, people with disabilities, and members of other protected classes. The County also supports (through funding and other mechanisms) Fair Housing of Marin, the fair housing agency within the jurisdiction. In addition, though Marin County has waited perhaps longer than it should have to update its AI, the County has allocated resources to contract with a third party with fair housing expertise to produce its 2010 AI. Further, though Westchester County refused to pursue housing development within any municipality that expressed opposition, Marin County has provided funding for development of affordable housing in every municipality, and Marin County staff have taken a role in educating municipal officials on fair housing laws.⁷

However, some similarities between Westchester County and Marin County give rise to issues that merit serious consideration by Marin. The analysis undertaken in this AI demonstrates that opposition to affordable housing may often be a pretext for discrimination against minority groups. Given that the majority of the few developable parcels in the county tend to be in close proximity areas that are already highly segregated, new development in Marin may often have the effect of perpetuating segregation. A troubling question then arises: is it better policy to try to integrate difficult-to-develop outlying municipalities and thus disperse the currently concentrated populations of Black residents in Marin City (and Latinos in the Canal in

⁷ Interview with Roy Bateman and Reid Thaler.

San Rafael) by developing small projects across the rest of the county, or to continue to focus development in concentrated neighborhoods but aim for increased integration within those communities? According to anecdotal reports documented in interviews for this AI as well as other sources, many Black residents characterize Marin City as a tightly knit, insular community. Although historically many Black residents had few, if any, housing choices beyond Marin City because of the restrictive covenants and racial discrimination in the county, the community now exhibits a fierce sense of ownership. As stated by one resident, “We’ve got this one little piece of land here, and this is where we’ve got to maintain ourselves.”⁸ Further, one community advocate has received reports regarding the increase of ethnic tension between established Black residents and Latinos moving in to Marin City, which may be supported by the sharp growth of Latino residents and the percentage decrease of Black residents over the last decade.⁹ Developing low-income housing elsewhere in the county with the intention of relocating current Marin City residents may be viewed as an attempt to devitalize a strong minority community, while attempts to integrate Marin City with residents of other racial and ethnic backgrounds suggests gentrification that may result in the “economic eviction” of lower-income residents and threaten a community’s sense of self.

In Westchester County, despite the County’s stated goal of the creation of 5,000 affordable housing units, at least 16 municipalities had not created a single affordable housing unit 12 years later. Under the current Regional Housing Needs Allocation (RHNA), all jurisdictions in Marin County must supply a total of 4,882 new housing units. Unincorporated Marin County’s allocation for the 2007-2014 RHNA cycle is 773 units.¹⁰ The table below illustrates distribution of units by income level. Although the County does not bear responsibility for constructing units outside of the unincorporated areas, it must ensure that its own zoning regulations and development policies are sufficient to allow for such development.¹¹

⁸ Perrigan, Dana, “Marin City Looks to Better Days,” San Francisco Chronicle, 03/15/09, accessed 05/03/10 at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/15/BU2H16DH7A.DTL>

⁹ Interview with Cecilia Zamora, Latino Council.

¹⁰ Marin County Planning Commission, Housing Element Working Session Staff Report, October 12, 2009.

¹¹ *Ibid.*

ABAG Regional Housing Needs Allocation 2007-2014¹²

Jurisdiction	Very Low-Income	Low-Income	Subtotal Lower-Income	Moderate-Income	Above Moderate-Income	Total Units
Belvedere	5	4	9	4	4	17
Corte Madera	68	38	106	46	92	244
Fairfax	23	12	35	19	54	108
Larkspur	90	55	145	75	162	382
Mill Valley	74	54	128	68	96	292
Novato	275	171	446	221	574	1241
Ross	8	6	14	5	8	27
San Anselmo	26	19	45	21	47	113
San Rafael	262	207	469	288	646	1403
Sausalito	45	30	75	34	56	165
Tiburon	36	21	57	27	33	117
Unincorporated	183	137	320	169	284	773
Total	1095	754	1849	977	2056	4882
Percent	22.4%	15.4%	37.9%	20.0%	42.1%	100%

Compare the preceding, then, with the number of housing permits issued in 2008.

2008 Housing Permits Issued¹³

Jurisdiction	Very Low R	Very Low NR	Low R	Low NR	Moderate R	Moderate NR	Above Moderate	TOTAL
Belvedere	0	0	0	0	0	3	1	4
Corte Madera	0	0	0	0	0	0	0	0
Fairfax	0	0	0	0	0	0	0	0
Larkspur	24	0	0	0	0	0	6	30
Mill Valley	0	4	2	2	3	3	9	23
Novato	7	0	0	0	0	0	121	128
Ross	0	2	0	1	0	1	0	4
San Anselmo	0	0	1	0	2	0	16	19
San Rafael	0	1	0	1	0	3	2	7
Sausalito	0	0	1	0	0	0	7	8
Tiburon	0	0	0	1	0	0	7	8
Unincorporated	0	0	0	0	0	0	56	56
County Total	31	7	4	5	5	10	225	287

¹² http://www.abag.ca.gov/planning/housingneeds/pdfs/Final_RHNA.pdf

¹³ Association of Bay Area Governments, San Francisco Bay Area Housing Data 2009 (R: Restricted Affordable, NR: Non-Restricted; from ABAG: “Restricted units are those that, because they receive financial assistance (such as HUD or redevelopment agency funds) or are otherwise subject to deed restrictions, or have protections that require the units to remain affordable to households at lower income levels. All non-restricted units are included in the market rate category. Many market rate units — especially second units, mobile homes, and apartments — are undoubtedly affordable to lower income households, but do not have the same protections as restricted units.”).

Using 2008 as a representative year, it is clear that some jurisdictions are falling short of meeting their RHNA needs. Four jurisdictions did not develop any very low- or low-income housing in 2008: Belvedere, Corte Madera, Fairfax, and the Unincorporated County. Further, an additional four jurisdictions developed only one or two very low- or low-income units in 2008: San Anselmo, San Rafael, Sausalito, and Tiburon. If 2008 is a snapshot of development trends in Marin County, then it would appear that a number of jurisdictions within the County will not meet their housing needs allocations by 2014. However, it should be noted that there was an unusually small amount of development in Marin in 2008, so 2008 may not be a representative year. More troubling, those jurisdictions not on track to meet their housing needs allocations are also the least racially integrated jurisdictions within the County. However, it should be noted that a snapshot of a single year may not account for affordable housing developments built prior to 2008, or slated for construction shortly thereafter.

RECOMMENDATIONS

1. The County of Marin and other local jurisdictions should track the development of affordable housing towards meeting RHNA needs. Further, the County should require municipalities to report on actions they have taken to affirmatively further fair housing (AFFH). To ensure compliance, the County should be prepared to implement enforcement measures such as withholding funding from municipalities that it deems to be failing to affirmatively further fair housing.
2. Marin County should institute a system for tracking the racial and ethnic demographics of residents of all housing developed with County funds and federal funds that pass through the County. The County should consider conducting regular surveys of those privately developed affordable housing properties which are subject to local government restrictions on household income, to determine racial and ethnic demographics of residents.
3. The County of Marin should rank recommendations contained within the 2010 Analysis of Impediments and amend its Consolidated Plan 2010-2014 to incorporate those prioritized recommendations as part of its action plan.
4. Marin County should undertake to update its AI within two years of the release of the 2010 Census data.

5. The County should utilize the public hearing and AI adoption process to raise community awareness of the barriers to fair housing choice by publicizing the hearing and inviting all segments of the community to participate.
6. The County should include the community as part of the solution to fair housing rights education and monitoring, and should incorporate community recommendations in the final version of the AI.
7. The County should explore the expansion of the Marin County Task Force on Housing Discrimination to include fair housing advocates, governmental representatives, community and business leaders, Realtors, lenders, and academics to explore and lend urgency to fair housing issues and their potential effect on Marin County's economic and social future.
8. The County should ensure that one County department consistently monitors and tracks progress in meeting the AI recommendations.
9. As the 2010 AI is considerably more comprehensive than the 1994 AI, the AI should be updated every two to five years, with updates to be funded such that they do not detract from resources for fair housing counseling and enforcement.