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October 5, 2015

Maryann Sargent
Housing and Community Development Department
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Draft Analysis of Impediments to Fair Housing Choice

Dear Ms. Sargent:

The Analysis of Impediments (AI) is an important tool for understanding barriers to fair housing and de-segregation and for developing a plan to overcome these barriers. While the City of Oakland’s 2015 Draft AI has a number of strengths, several key topics merit greater attention, and we encourage you to incorporate them into the final list of impediments and recommended actions in the AI.

1. Analyze the fair housing impacts of displacement.

Displacement is one of the most pressing housing crises facing Oakland and its low-income residents, among whom people of color, immigrants, and individuals with disabilities are over-represented. The AI hints at this important issue, but fails to explore it clearly or fully. Table 1 shows that, from 2000 to 2013, the African American population decreased by over 34,000 people while the white population increased by about 31,000.¹ And a map caption reveals that a growing Hispanic population has supplanted the African-American population in East Oakland.² Similarly, the AI only mentions gentrification once, explaining that the City’s efforts have only been able to “partially mitigate the gentrification pressures.”³ With an insufficient affordable housing supply, inadequate renter protections, and an influx of higher-income residents, displacement is a major

¹ City of Oakland, Housing and Community Development, Analysis of Impediments Final Report (Sept. 10, 2015, Draft Version for Public Review) 18, available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak054854.pdf>.

² *Id.* at 23.

³ *Id.* at 63.

impediment to fair housing choice that disproportionately impacts communities of color and contributes to re-segregation.

Washington, DC's 2012 AI provides a strong discussion of displacement and gentrification and several anti-displacement strategies that can guide Oakland's analysis.⁴ New displacement data and maps by UC Berkeley researchers are now available at www.urbandisplacement.org and should be incorporated into the AI.

2. **Address displacement and fair housing from a regional perspective.** Public agencies are adjusting their focus to recognize fair housing's regional dimensions, and the AI should keep up with this shift. The Bay Area's Regional Transportation Plan and Sustainable Communities Strategy, "Plan Bay Area," focuses planned growth in Priority Development Areas (PDAs). But Oakland's six transit-oriented PDAs⁵ have a disproportionately high percentage of people of color. African American or Latino populations comprise 57 percent of Oakland's PDAs, yet these same groups only represent 33 percent of non-PDA populations. Compared to non-PDAs, PDAs have higher poverty rates coupled with lower household incomes and education levels. As a result, those living in PDAs have a greater need for affordable housing and are much more vulnerable to displacement from the public and private investment targeted in these areas. The AI should explain these local and regional dynamics and provide a course of action to ensure that transit oriented development and infrastructure investments in Oakland's PDAs do not displace communities of color.
3. **Prioritize public land to address the lack of affordable housing.** The Surplus Land Act requires the City to give priority to affordable housing developers when selling its land⁶ and is a critical tool to addressing the lack of affordable housing, an impediment identified in the draft AI. In the Act, the Legislature declares that "housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order."⁷ It further declares that "there is a shortage of sites available for housing for persons of low and moderate income and that surplus government land ... should be made available for that purpose."⁸ The AI should therefore examine how the Act could increase the availability of land to meet the demand for affordable housing.

⁴ District of Columbia Department of Housing and Community Development, Analysis of Impediments to Fair Housing Choice 2006-2011 (Apr. 2012) 16, 29, 31, 33, 39, 57, 60, 63, 65 111, 140, 141, 151, 158, 174, 175, 178-86, 194-5, available at http://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DC_AI_2012_-_FINAL.pdf.

⁵ See City of Oakland, Priority Development Areas, available at http://www2.oaklandnet.com/Government/o/CityAdministration/d/EconomicDevelopment/s/BID_CBD/index.htm; Plan Bay Area Priority Development Area Showcase, available at <http://gis.abag.ca.gov/website/PDAShowcase/>.

⁶ California Government Code § 54220 et seq.

⁷ *Id.* at § 54220(a).

⁸ *Id.*

4. **Identify discrimination against supportive and transitional housing in the planning code as an impediment.** The 2011 AI found that Oakland’s zoning code unlawfully discriminated against supportive and transitional housing, requiring such housing to “go through additional Planning review” and constraining its presence by requiring that “Service-Enriched Permanent Housing and Transitional Housing Residential Activities [] never be within 300 feet of another residential care facility.”⁹ The 2011 AI recommended revising the code’s “definition and treatment of Residential Care Facilities and group homes.”¹⁰ The 2015 AI asserts that the City “amended its Planning Code in July 2014” to address these concerns, but these amendments did not fully address the issue.¹¹ Counter to state and federal fair housing law¹², there are still over 40 zones where permanent residential activities enjoy preferential treatment over service-enriched permanent housing (e.g., permanent residential activities are permitted by right while service-enriched housing requires a conditional use permit).¹³ Moreover, the municipal code still requires a 300-foot buffer between every service-enriched or transitional housing structure.¹⁴

The AI should identify this issue accurately and outline immediate actions to fix the remaining problems.¹⁵

5. **Analyze the utilization rate and location of Section 8 voucher holders.** According to the 2015 AI, about 70 percent of voucher holders are African American, 20 percent are Asian, and 23 percent include a person with a disability.¹⁶ Yet the AI does not analyze where Section 8 voucher holders are located, i.e., whether they are located in RCAPs or ECAPs, what the utilization rate is for voucher-holders, and what the barriers are to utilizing vouchers. This absence is particularly notable because the 2011 AI found “[i]ndividuals who receive Section 8 housing vouchers ... often find it difficult to locate

⁹ 2011 AI at 78.

¹⁰ *Id.* at 103.

¹¹ 2015 AI at 11.

¹² See *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013) (finding substantial evidence that an ordinance that required group homes for people recovering from alcohol and drug addiction to undergo a permit process which considered, among other things, the number of similar facilities in the neighborhood, violated the Fair Housing Act, the Americans with Disabilities Act, and the Fair Employment and Housing Act); *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d at 775 (9th Cir. 1999) (holding that an ordinance prohibiting methadone recovery clinics from operating within 500 feet of any residential property was discriminatory). See generally Disability Rights California, Everyone’s Neighborhood: Addressing “Not in My Backyard Opposition to Supportive Housing for People with Mental Health Disabilities” (Sept. 2014), available at <http://www.diabilityrightsca.org/pubs/CM5301.pdf>.

¹³ See Oakland Planning Code 1997, effective Jan. 8, 2015, available at www.municode.com.

¹⁴ *Id.* at §17.103.010.B.

¹⁵ Simple solutions are available. For example, the City could excise the Residential Care, Service-Enriched Permanent Housing and Transitional Housing categories from the Planning Code (see §§17.103.010 and 17.10.110-116) and simply list them as Permanent Residential Activities. Alternatively, wherever Permanent Residential Activities are permitted, the code could also permit Residential Care, Service-Enriched Permanent Housing and Transitional Housing.

¹⁶ 2015 AI at 65.

accessible rental housing for which housing vouchers can be used and property owners willing to accept the voucher.”¹⁷

If an analysis reveals that voucher holders (who are disproportionately people of color) are concentrated in RCAPs or ECAPs or that the utilization rate is low, the AI must also include actions to address these impediments. For example, dozens of cities around the country already have ordinances prohibiting source of income discrimination, and many of them specifically include Section 8 as a source of income.¹⁸ HUD has found that such ordinances result in higher utilization rates and less clustering of voucher holders in areas with high poverty rates and high minority concentrations.¹⁹

6. **Explore the neighborhood-level impacts of foreclosures.** The 2015 AI reports that despite a citywide decline in foreclosure rates, “there is still a concentration of at least 5% of all housing units in Census Tracts in East Oakland.”²⁰ East Oakland has a disproportionate number of lower-income, black and Hispanic, and impoverished households.²¹ Given the disproportionate impact, foreclosures should be listed as an impediment. The AI should also chronicle how the City used HUD’s Neighborhood Stabilization Program (NSP) grants and other strategies from 2011 to 2015 to address foreclosures²², and what the City plans to do going forward to further reduce foreclosures.
7. **Distinguish between public and private sector impediments.** HUD’s 1996 Planning Guide urges jurisdictions to consider private and public sector impediments separately²³, and numerous AIs make this distinction.²⁴ Public sector issues include local building, occupancy and health and safety codes; public policies and actions, including building codes, and zoning laws and policies.²⁵ Analyzing public and private impediments separately makes the AI more accessible to the public, and would clarify Oakland’s duties relevant to each sector.

¹⁷ 2011 AI at 47.

¹⁸ Poverty & Race Research Action Council, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination (May 2014), available at <http://www.prrac.org/pdf/AppendixB-Feb2010.pdf>.

¹⁹ See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes (Feb. 2011), available at http://www.huduser.gov/publications/pdf/Freeman_ImpactLaws_AssistedHousingRCR06.pdf.

²⁰ 2015 AI at 35.

²¹ *Id.* at 29-30.

²² HUD’s Neighborhood Stabilization Program, available at <https://www.hudexchange.info/programs/nsp/>.

²³ HUD, Fair Housing Planning Guide, Vol. 1 (Mar. 1996) 4-5 to 4-8, available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

²⁴ See 2012 DC AI at 102, 125, 185; City of Naperville, Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois 2007 (Dec. 2007) 36, 47, available at http://www.planningcommunications.com/ai/naperville_ai_2007.pdf.

²⁵ *Id.* at 4-5. These AIs are also noteworthy in that their recommendations are specific and list which actors will undertake each recommended action.

In addition, the City should allocate sufficient time to complete incorporate public comments and complete a thorough AI. Despite the laws and HUD guidelines governing an AI, the current analysis is incomplete and rushed. The Housing and Community Development Act of 1974, as well as HUD's Fair Housing and Equal Opportunity Office, require the City to conduct an accurate and comprehensive analysis of impediments to fair housing. But the City released the draft AI on September 10th, imposed an October 7th comment deadline, and plans to submit the final AI by mid-October. This raises questions about whether the City will actually address defects in the draft AI and incorporate input from stakeholders.

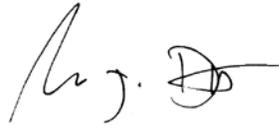
Finally, HUD's Final Rule on Affirmatively Furthering Fair Housing²⁶ provides a clear framework for identifying barriers and planning for fair housing. We hope that the City of Oakland will begin to lay the groundwork now for completing its Assessment of Fair Housing under the new rule and for engaging in a meaningful process with community members that can fully inform the analysis and plan.

Thank you for considering these recommendations. If you would like to discuss further, please contact us at (415) 625-8455.

Sincerely,



David Zisser
Staff Attorney



Nick Dubroff
Law Fellow

To: Maryann Sargent, msargent@oaklandnet.com
CC: Chris Andrews, chris.andrews@cloudburstgroup.com

²⁶ See HUD User, Affirmatively Furthering Fair Housing, available at http://www.huduser.gov/portal/affht_pt.html.